



Agenda Item Details

Meeting	Jan 27, 2016 - Regular Meeting of the Board of Education
Category	15. REGULAR AGENDA ITEMS
Subject	15.4 Staff Report Magnolia Science Academy - Fremont
Type	Action
Absolute Date	Jan 27, 2016
Fiscal Impact	No
Recommended Action	Based upon a comprehensive review and analysis of the Petition by legal counsel in collaboration with District Staff, denial of the Petition is recommended. Adopt the staff report as the written finding in support of denial.

I. BACKGROUND

Petitioners submitted a charter petition ("Petition") to establish a charter school named Magnolia Science Academy – Fremont ("Charter School") to be operated by Magnolia Educational & Research Foundation dba Magnolia Public Schools ("MPS") under the oversight of the Board of Education ("Board") of the Fremont Unified School District ("District"), for the term July 1, 2016 to June 30, 2021. The Board formally received the Petition at its meeting on December 9, 2015.

Pursuant to Education Code section 47605, subdivision (b), within 30 days after receiving a petition, the Board must "[hold] a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents." On January 13, 2016, the Board held a public hearing to consider the level of support for the Petition from teachers employed by the District, other employees of the District, and parents. Although petitioners made a presentation on the terms of the Petition, no teachers, district employees, parents, or members of the community spoke in support of the petition. Several speakers, including teachers, parents, and community members, raised concerns regarding the charter petitioners and the Petition itself.

Education Code section 47605, subdivision (b) requires the Board to "either grant or deny the charter within 60 days of receipt of the petition, however that date may be extended by an additional 30 days if both parties agree to the extension." As such, the Board must act on whether to grant or deny the Petition at its meeting on January 27, 2016.

If the District grants the Petition, the Charter School becomes a legal entity. Under Education Code section 47605, subdivision (j)(1), if the District denies the Petition, the Petitioners may appeal that denial to the Alameda County Board of Education ("County Board"). If the County Board grants the charter, the County Board becomes the supervisory agency over the Charter School. If the County Board denies the Petition, Petitioners may then appeal to the State Board of Education ("SBE"). (Ed. Code, § 47605, subd. (j)(1).)

II. STANDARD FOR REVIEW OF CHARTER PETITION

Education Code section 47605, subdivision (b), sets forth the following guidelines for governing boards to consider in reviewing charter petitions:

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.

Ø 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.

Ø 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 number of signatures required by statute.*
- (4) *The petition does not contain an affirmation of each of the conditions required by statute.*
- (5) *The petition does not contain reasonably comprehensive descriptions of the required elements of a charter petition.*

In addition to the foregoing, review and analysis of the Petition was also guided by the regulations promulgated for the SBE's evaluation of charter petitions at Title 5, Division 1, Chapter 11, Subchapter 19 of the California Code of Regulations ("Regulations").

III. RECOMMENDATION

Based upon a comprehensive review and analysis of the Petition by legal counsel in collaboration with District Staff, denial of the Petition is recommended because Staff is not satisfied that granting the Petition is consistent with sound educational practice. Findings with respect to the primary deficiencies appear in numbered paragraphs in Section IV, below. This Staff Report contains analysis of the Petition, and the written factual findings supporting the recommendation of denial. Denial of the Petition is recommended because:

- Ø **The Petitioners are demonstrably unlikely to successfully implement the program presented in the Petition;**
- Ø **The Petition is not supported by sufficient valid signatures; and**
- Ø **The Petition fails to provide a reasonably comprehensive description of all required elements of a charter petition.**

Factual findings regarding the most significant areas of concern with the Petition are described below. This Staff Report does not exhaustively list every concern, and focuses on those concerns believed to most greatly impact the Board's decision on whether to grant or deny the Petition. Should the Board take action to deny the Petition, it may adopt this Report as the written factual findings required to support its denial of the Petition.

IV. FINDINGS IN SUPPORT OF DENIAL

Review and analysis of the Petition resulted in the following findings:

A. Petitioners are Demonstrably Unlikely to Successfully Implement the Program. (Ed. Code § 47605, subd. (b)(2).)

Education Code section 47605 ("Statute") requires Petitioners to show they are demonstrably likely to successfully implement the program set forth in the Petition. (Ed. Code, § 47605(b)(2).) In determining whether petitioners are demonstrably likely to successfully implement the program, the authorizing agency may consider the success or failure of petitioners' past history with charter schools. (Cal. Code Regs., tit. 5 ("5 C.C.R."), § 11967.5.1(c)(1).) The Regulations also require consideration of whether a petition has presented a realistic financial and operational plan, including the areas of administrative services, financial administration, insurance and facilities. (5 C.C.R. § 11967.5.1(c)(3).)

Subdivision (g) of the Statute and section 11967.5.1(c)(3)(B) of the Regulations require Petitioners "to provide financial statements that include a proposed first year operational budget, including start-up costs, and cash flow, and financial projections for the first three years of operation."

Under section 11967.5.1(c)(3)(D), the Regulations require, in the area of facilities, for the charter and supporting documents to adequately: one, describe the types and potential location of facilities needed to operate the size and scope of educational program proposed in the charter; two, in the event a specific facility has not been secured, provide evidence of the type and projected cost of the facilities that may be available in the location of the proposed charter school; and three reflect reasonable costs for the acquisition or leasing of facilities to house the charter school, taking into account the facilities the charter school may be allocated under the provisions of Education Code section 47614.

Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition for the following

reasons:

a. Failure to Comprehensively Describe the Required Elements

The issues set forth below in Section IV.C concerning the Petition's failure to comprehensively describe Elements 1, 4, 5, 6, 7, 8, 10, and 14 support the finding that the program is incomplete and does not pass pedagogical or legal muster. As such, it cannot be successfully implemented.

b. Past History

Due diligence reveals that in addition to the eleven MPS charter schools currently in operation, ten of which are located in Southern California and one of which is located in Santa Clara County, Petitioners previously operated two other charter schools in San Diego that were not successful. One charter, Magnolia Science Academy San Diego 2, voluntarily closed due to low enrollment. Another charter, Magnolia Science Academy San Diego 3, was unable to open before the charter expired. Magnolia Science Academy Santa Clara, approved by the Santa Clara County Office of Education as a countywide charter, has also failed to enroll adequate students to meet its projections, enrolling only 25% of the projected students in 2015.^[1] Reports show that enrollment has steadily declined for the last several years. Staff view this as a negative history of operating charter schools, at least when they are located outside of Los Angeles Unified School District, particularly in the area of successfully opening and maintaining sufficient enrollment to continue operations.

c. Facilities/Location

In order to comply with geographic restrictions in the law, identification of the location within the authorizer's boundaries where the charter school will operate is a fundamental requirement for any party seeking the establishment of a charter school. (Ed. Code, § 47605, subd. (a)(1), (g).) According to the Petition, the Charter School will locate within the District's boundaries; however, there is no specific or general information about the Charter School's location beyond that broad statement. Indeed, the Petition and supporting materials are not consistent with respect to the Charter School's intentions. On page 213, for example, the Petition states:

1. MPS "is in the process of searching for a suitable site on privately owned property."
2. The Charter School "is concurrently pursuing both public school facilities via Prop. 39 as well as private facilities in order to maximize facilities options for the school in its first few years of operation."
3. "Once the school has been operating for a minimum of three (3) school years ... a permanent facility will be secured a developed."

At the same time, the budget narrative states the Charter School "is looking to lease private facilities for the 2016-2017 school year ... [and] [t]he school may apply for a Prop39 (sic) facility with Fremont Unified school (sic) District in subsequent years." And the Charter School did not make a request under Proposition 39 for the 2016-2017 school year. The budget allocates \$240,000 to rent for a private facility.

These statements are inconsistent and leave the District without a clear picture or understanding of where the Charter School will locate. Further, these statements suggest the Charter School will move around, at least to some degree, potentially with some disruption to the detriment of enrolled students, and the Petition does not confirm that it will only change location by means of a material revision of its charter and with authorization from the Board.

d. Budget and Financial Plan

The Petition's budget and financial plan is incomplete and includes questionable assumptions. Accordingly, the Petition does not present a sound, realistic financial plan.

1. The budget assumes revenues based on projected student enrollment that is inconsistent with the Petition. On page 6, the Petition states the Charter School will start with 225 students in grades kindergarten through eight and add a grade each year to be kindergarten through grade eleven in year 5. The enrollment layout plan on page 16, however, states the Charter School will start with grades kindergarten through three in the first year and add a grade each year to be kindergarten through grade seven in year 5. With "approximately 30 students per class," total enrollment for kindergarten through grade three would be 120 students. Furthermore, Table 4 on page 17 demonstrates yet another enrollment projection in which the Charter School reaches 545 total students in year 5, but within a grade span of kindergarten through grade ten. Thus, the budget assumptions for revenue based on projected student enrollment are not consistent with the program described in the Petition. As noted above, Magnolia student enrollment projections have been significantly overstated in other Magnolia schools which also calls into question the projections used in developing the budget. Staff therefore finds the assumptions are unreliable and do not provide reasonable support that Petitioners can successfully implement the program described in the Petition.
2. The Petition purports to reserve the right to evaluate and change the Charter School's election to receive funds directly on an annual basis. Fundamental changes to operations and structure of the Charter School, however, would require a material revision and approval by the Board.
3. The budget assumes salaries for "1 Principal, 1 Assistant Principal, 10 full time, 3 part time teachers, 1

Secretary, [and] 1 Custodian" in the first year of operation. These assumptions do not match the program described in the Petition and therefore demonstrate Petitioners cannot successfully implement it.

- According to the Petition, the Charter School will be staffed with a Dean of Academics, Dean of Students, and Dean of Culture in order to support the academic program. These positions list detailed responsibilities ranging from curriculum development to student discipline to ensuring diversity and inclusion among the student body. Yet, despite repeated references to these positions throughout the Petition, the Charter School will not actually employ them.

- The Petition does not provide for or list qualifications of an Assistant Principal.

- According to the Petition, students who are achieving above grade level or fit within the category of "gifted and talented" will be identified by the Charter School's school psychologist; however, the budget does not allocate funding for such a position.

- According to the Petition, the Charter School will employ "special education teachers, paraprofessionals, and resource specialists" to meet the needs of its students with disabilities who are in need of special education. The Petition lists the qualifications for the special education teacher and special education aides; however, the budget does not allocate funding for such positions.

4. The budget narrative explains that the Charter School will require a \$350,000 loan from MPS payable over three years, to be used for startup costs and other operating expenses. This covers a \$185,701.20 operating deficit in year one and is repayable at \$100,000 per year in years two and three and \$150,000 in year four. The loan repayments are not entered as a line item in the budget, which reflects negative net cash flow in all three years, with negative ending cash balances at various times throughout years two and three. There is also concern regarding the loan from MPS as it relates to revenue that is generated by other public charter schools. State revenue allocated to a charter school is to be used to the benefit of that school and the ability to loan funds is contingent upon many factors including the best interests of the school that generated the revenue. There is no indication that the loan meets these criteria or is otherwise lawful.

5. In addition to the \$350,000 loan from MPS, the budget relies on donations as part of the operating budget, including \$50,000 in year one and growing to \$100,000 by year four. Such donations are speculative, and in light of the ongoing negative cash flow reflected in the budget documents, problematic as a basis for funding the Charter School over time.

6. Fees paid to the Charter Management Organization are confusing and substantial. According to the budget documents, business services fees are "11% of total revenue (maximum allowed due to 5% reserve)" but span from 6% in year one to 14% in year five. Additionally, it is not clear what services are received for this fee or why these services are not provided by the school's extensive staff.

7. Overall, the budget documentation and projections lack sufficient detail to ascertain how they were derived and whether line entries are reasonable for stated purposes.

e. Hold Harmless/Indemnification

Although the Petition includes a general provision stating the Charter School will indemnify, defend, and hold the District harmless for claims arising out of or relating to the Charter Petition, it does not expressly hold harmless, defend, and indemnify the District, its board members, agents, and employees against claims related to MPS, as Charter Management Organization, and operations as they relate to other schools operated by MPS.

For these reasons, Staff finds Petitioners are demonstrably unlikely to successfully implement the program described in the Petition.

B. The Petition Is Not Supported by Sufficient Valid Signatures. (Ed. Code, § 47605, subd. (b)(3).)

Sufficient signatures to support a charter petition are a *prerequisite* to valid submission of the petition, as a petition may only be submitted after petitioners meet the "condition" of collecting adequate signatures. (Ed. Code, § 47605, subd. (a)(1).) Specifically, a petition must be "signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation" or "by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation." (*Ibid.*) Further, the only signatures that count are those that are submitted at the time of the original submission to the Board pursuant to section 11967.5.1, subdivision (d), of the Regulations. To be valid, a "petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school." (Ed. Code, § 47605, subd. (a)(3).) "The proposed charter *shall be attached* to the petition." (*Ibid.*, emphasis added.)

The Petition is not supported by sufficient valid signatures. First, the Petition attaches signatures, together with resumes and credentialing information, of eight teachers who reside in Los Angeles County and are currently employed

as teachers in another Magnolia school. It is not clear how or why these teachers would all relocate to Fremont to teach at the Charter School, and Staff finds it is unlikely that they would in fact do so. It also strains credibility to suggest that the teaching staff of another school in Southern California will disrupt that school's program to teach in Northern California. Additionally, due diligence reveals that the same teacher signatures have been offered in support of up to eight other charter petitions submitted by MPS across the state of California at or around the same time this Petition was presented to the District. Due diligence further reveals that Petitioners are aware of the problems with teacher signatures and withdrew their petitions in other districts; yet, they have not acknowledged the problem to District Staff and continue to rely on the teacher signatures here. Staff therefore finds the teacher signatures and supporting documentation do not satisfy the prerequisite of sufficient valid signatures as required by the Education Code. Staff further notes that their inclusion reflects negatively on the credibility of the Petition as a whole and that Petitioners' failure to acknowledge the issue with the District portends future relationship problems concerning trust and reliable disclosure should the Petition be approved.

Second, attached to the Petition is a document entitled "Intent to Re/Enroll Form" for what at first glance appears to be approximately 167 students. Closer inspection, however, reveals that at least 20 of these students will be in grades 9 through 12 in the 2016-2017 school year; thus, they cannot be meaningfully interested in attending the Charter School because it will not serve those grades in the first year. Additionally, at least four students are duplicated in the paperwork, and forms for 17 students were not signed by the parent. To the extent they can be relied upon at all, then, the Intent to Re/Enroll Forms relate to approximately 126 students. Although this number represents more than one-half of the anticipated enrollment of 225 students in 2016-2017 (if indeed that is the projected enrollment, see above), the signatures are nevertheless invalid for two reasons:

- The forms do not indicate that the proposed charter was attached and available for review when signatures were gathered, as required by Education Code section 47605, subdivision (a)(3). Had the charter been attached to the Intent to Re/Enroll Form, parents of students in grades 9 through 12 presumably would have known that the Charter School could not serve their children.
- By its own terms, the Intent to Re/Enroll Form is for purposes of requesting facilities under Proposition 39, not the establishment of the Charter School. Thus, and in addition to the fact the Petition was not attached for reference, the forms are not being used for the purpose that signatories understood when signing.

For these reasons, Staff finds the Petition is not supported by sufficient valid signatures.

C. The Petition Fails To Set Forth Reasonably Comprehensive Descriptions of Charter Elements. (Ed. Code, § 47605, subd. (b)(5).)

Education Code section 47605, subdivision (b)(5)(A)-(P), requires a charter petition to include "reasonably comprehensive" descriptions of numerous elements of the proposed charter school. The Regulations require the "reasonably comprehensive" descriptions required by Education Code section 47605(b)(5) to include, but not be limited to, information that:

- Is substantive and is not, for example, a listing of topics with little elaboration.
- For elements that have multiple aspects, addresses essentially all aspects of the elements, not just selected aspects.
- Is specific to the charter petition being proposed, not to charter schools or charter petitions generally.
- Describes, as applicable among the different elements, how the charter school will:

- Ø Improve pupil learning.
- Ø Increase learning opportunities for its pupils, particularly pupils who have been identified as academically low achieving.
- Ø Provide parents, guardians, and pupils with expanded educational opportunities.
- Ø Hold itself accountable for measurable, performance-based pupil outcomes.
- Ø Provide vigorous competition with other public school options available to parents, guardians, and students.

(5 C.C.R. § 11967.5.1, subd. (g).)

Element 1 - Educational Program

The Statute and Regulations provide various factors for considering whether a charter petition provides a reasonably comprehensive description of the educational program of the school, including, but not limited to, a description of the following: the charter school's target student population, including, at a minimum, grade levels; approximate numbers

of pupils, and specific educational interests, backgrounds, or challenges; the charter school's mission statement with which all elements and programs of the school are in alignment and which conveys the petitioners' definition of an educated person in the 21st century; belief of how learning best occurs; goals consistent with enabling pupils to become or remain self-motivated, competent, and lifelong learners; the instructional approach of the charter school; the basic learning environment or environments; the curriculum and teaching methods that will enable the school's students to meet state standards; how the charter school will identify and respond to the needs of pupils who are not achieving at or above expected levels; how the charter school will meet the needs of student with disabilities, English learners, students achieving substantially above or below grade level expectations; and the charter school's special education plan, to include the means by which the charter school will comply with the provisions of Education Code section 47641; the process to be used to identify students who may qualify for special education programs and services; how the school will provide or access special education programs and services; the school's understanding of its responsibilities under law for special education pupils; and how the school intends to meet those responsibilities. (Ed. Code, § 47605(b)(5)(A); 5 C.C.R. § 11967.5.1(f)(1).)

The Petition does not contain a sufficient description of the Charter School's educational program based on the following findings:

a. Target Population

As previously noted in the budget context, the Charter School's targets for enrollment are inconsistent. On page 6, the Petition states the Charter School will start with 225 students in grades kindergarten through eight and add a grade each year to be kindergarten through grade eleven in year 5. The enrollment layout plan on page 16, however, states the Charter School will start with grades kindergarten through three in the first year and add a grade each year to be kindergarten through grade seven in year 5. With "approximately 30 students per class," total enrollment for kindergarten through grade three would be 120 students. Furthermore, Table 4 on page 17 demonstrates yet another enrollment projection in which the Charter School reaches 545 total students in year 5, but within a grade span of kindergarten through grade ten. Additionally, Petitioners held a single outreach and, despite asserting the intent to target Latino students, its single outreach effort did not result in signatures reflecting meaningful interest in enrolling by Latino students.

b. Programs Outside School Hours

According to the Petition, the Charter School will offer an "exciting after-school program" for academic assistance and enrichment. This will include tutoring and clubs such as Computer Programming and Coding, MathCounts, Robotics, and Science Olympiad. In addition, the Charter School will offer intervention before, during, and after school, as well as a Saturday program. However, the budget does not support such programs and services and the Petition does not explain how such programs would be staffed and/or funded.

c. Students Achieving Below Grade Level

According to the Petition, Students who are struggling will be required to attend obligatory after school programs. Although voluntary services after school are commendable, it is not realistic to require all struggling students to participate for reasons ranging from transportation to family commitments to personal preference. Creating such an obligation, as opposed to an option, may act as a bar to students achieving below grade level would might otherwise wish to enroll in the school. It also fails to provide these students the supports they need during the school day.

d. Special Education

The Petition's discussion of special education is confusing. It does not clearly state how it wishes to proceed, i.e., as a school of the District or as its own local educational agency as part of a special education local plan area: "the Charter School will choose to participate in either the option of being designated as 'a public school of the local education agency that granted the charter' or joining another Special Education Local Plan Area (SELPA) in California." The Petition goes on to reserve the right to change its election. This reservation fails to acknowledge the need for a material revision of the charter or the requirements for transition between "school of the district" and "LEA" status. The Petition states the Charter School will be responsible for employing special education teachers, paraprofessionals, and itinerant staff; however, the budget makes no allocation for such positions and provides only minimally for special education costs. It is unclear whether Petitioners have overlooked special education as a component of the Charter School's program or do not expect to have any special education students in their population. Either way, the Petition does not present a reasonably comprehensive description for special education or otherwise demonstrate that Petitioners are knowledgeable it the requirements for special education.

Element 4 – Governance Structure

The Statute and Regulations provide for a charter petition to identify the governance structure including, at a minimum, evidence of the charter school's incorporation as a non-profit public benefit corporation, if applicable, the organizational and technical designs to reflect a seriousness of purposes to ensure that the school will become and remain a viable enterprise, there will be active and effective representation of interested parties, and the educational program will be successful. (Ed. Code, § 47605(b)(5)(D); 5 C.C.R. § 11967.5.1(f)(4).) The Statute and Regulations also provide for evidence that parental involvement is encouraged in various ways.

The Petition does not contain a sufficient description of the Charter School's governance structure based on the following findings:

a. CMO Structure

The governance structure described in the Petition is problematic because the Charter School is proposed to be part of the larger MPS charter management organization ("CMO"). Although the CMO structure has some superficial appeal, it is inherently concerning because it gives rise to conflicts of interest throughout the network. The District has concerns about the ability of a single MPS board of directors to make decisions in the best interests of the Charter School when it must simultaneously juggle the potentially competing interests of the at least eleven other charter schools in the network. Furthermore, a centralized CMO fails to adequately provide for local participation in board decision making, as it is unlikely that community members from the local charter school will travel to a distant corporate office for board meetings and may not feel connected to organization located over 380 miles to the south in Westminster. Indeed, all but one of MPS's current charter schools is chartered and operates in Southern California, and all but two MPS board members live in Southern California (with the exception of one whose resume indicates a New York address). Further, while the Petition promises compliance with the Brown Act, the Petition is inconsistent with the requirements of the Brown Act with regard to when and where the Board will hold meetings. These inconsistencies demonstrate a lack of understanding of the requirements of the Brown Act.

It is also noted that the Petition does not provide detail about other schools/members of the CMO. Although due diligence demonstrates that there are multiple MPS schools in California, the Petition does not identify these schools or the interaction among the schools and governing board. Staff has also learned that the CMO operates out of state, but the Petition does not identify the reach of its operations. The Petition did not include any CMO management or affiliation agreements or licenses with the CMO, particularly as relates to its other schools and larger operations. Nor does the governance structure identified in the Petition safeguard against the perils of resource and fiscal commingling. The Petition is silent on the issue of commingling the funds of the various schools operated MPS. Without an independent local governing body with the ability to make autonomous financial decisions, the potential for conflicts and commingling is heightened.

It is further noted that the State Auditor conducted an audit of MPS and found various deficiencies in its operations including "a general lack of authorization and support for both Foundation [CMO] and academy expenditures and consequently the Foundation was unable to demonstrate that some transactions we reviewed were for educational purposes and not for private benefit." (State Audit May 2015, p.31.) See table below from State Audit at p. 35:

Table 8
Summary of Tested Expenditures by the Magnolia Education and Research Foundation (Foundation) and Four Magnolia Science Academies from Fiscal Years 2011–12 Through 2013–14

ENTITY	FISCAL YEAR	TOTAL REVIEWED	PROPERLY SUPPORTED AND AUTHORIZED	PROPERLY SUPPORTED BUT LACKING AUTHORIZATION	PROPERLY AUTHORIZED BUT LACKING SUPPORT	NEITHER PROPERLY SUPPORTED NOR AUTHORIZED		
Foundation								
	2011–12	15	2	3	2	8		
	2012–13	15	2	5	0	8		
	2013–14	15	5	5	3	2		
	Subtotals	45	9	13	5	18		
Magnolia Science Academy (Academy) 5								
	2011–12	15	5	6	1	3		
	2012–13	15	7	6	1	1		
	2013–14	15	14	0	0	1		
	Subtotals	45	26	12	2	5		
Academy 8								
	2011–12	15	4	6	0	5		

2012-13	15	6	6	2	1		
2013-14	15	10	4	0	1		
Subtotals	45	20	16	2	7		
Academy Santa Clara							
2011-12	15	1	6	2	6		
2012-13	15	1	6	3	5		
2013-14	15	7	6	1	1		
Subtotals	45	9	18	6	12		
Academy San Diego							
2011-12	15	2	10	0	3		
2012-13	15	0	9	2	4		
2013-14	15	3	8	1	3		
Subtotals	45	5	27	3	10		
Totals	225	69	86	18	52		
Total Dollar Amounts	\$682,243	\$281,169	\$224,343	\$72,903	\$103,827		

As evidenced by this review and the weaknesses in fiscal operations identified by the State Auditor, staff does not find that MPS has a successful history in its fiscal operations.

b. Scope of Authority

According to the Petition, "The Board may initiate and carry out any program or activity, or may otherwise act in a manner that is not in conflict with or inconsistent with or preempted by any law, and which is not in conflict with the purposes for which charter schools are established." Although California school districts enjoy permissive authority under Education Code section 35160 to engage in acts not otherwise prohibited to them, charter schools are strictly creatures of statute and must conform their existence and activities to the Charter Schools Act, other expressly applicable laws, and their approved charters. The District does not believe the inclusion of this language accurately reflects the law governing charter schools in California and creates a structure that avoids proper public oversight of the Charter School's activities.

c. CMO Fees

As previously discussed in the budget context, the Petition's supporting documents reflect a confusing, but significant fee structure running from the Charter School to MPS. According to MPS's organizational chart, those fees will support a complex hierarchy of executives, including a Chief Executive Officer, a Chief of Staff, a Chief Academic Officer, a Chief Financial Officer, a Chief Information Officer, and a Chief External Officer as part of the organizational structure of the CMO. Although the CMO will provide certain "Home Office" support, such as in the area of human resources management, it is not clear how or why local District students will benefit from the transfer of educational funds away from the Charter School to a network of charter schools operating around the state (and primarily at a significant distance) and inclusive of a top-heavy bureaucratic scheme. The Petition does not demonstrate that the services purportedly provided by the CMO are not services that could be, and typically would be, performed by the local school administrative staff. As mentioned above, the Petition does not explain or provide detail regarding the provision of services, nor any agreements, contracts or other information to determine how the Charter School would be charged, served and funded as one of a group of schools operated by a single CMO and board. This reflects a lack of transparency as well as a deficient description of the charter school.

d. Parent Participation

One of the fundamentals of adequate governance structure is ensuring parent involvement in the charter school. In addition to concerns that have already been noted in this area, the Petition states: "It is not required, but expected, that parents will contribute a minimum of 10 hours per year to the school." The difference between a "requirement" and an "expectation" is a fine line, and such language is problematic under the California Constitution and Education Code. As the California Department of Education reiterated in Fiscal Management Advisory 15-01 dated January 20, 2015, public schools, including charter schools, are barred from "requiring 'volunteer hours' or payment of a fee in lieu of performing volunteer hours as a condition of admission, enrollment, continued enrollment, sibling preference, attendance, participation in educational activities or receipt of credit or privileges related to educational activities"

under Education Code section 49011, subdivision (b)(4). Such requirements also serve as a barrier to participation by those students whose parents cannot or choose not to participate.

Element 5 – Employee Qualifications

The Statute requires the Petition to describe the qualifications to be met by individuals employed by the Charter School. (Ed. Code, § 47605(b)(5)(E).) The Regulations provide that the qualifications should at a minimum, identify general qualifications for the various categories of employees; ensure the health and safety of the school's faculty, staff, and students, and the academic success of the students; identify the key positions in each category and specify the additional qualifications expected for those positions; and specify applicable legal requirements will be met, including but not limited to credentials as necessary. (5 C.C.R. § 11967.5(f)(5).)

The Petition fails to reasonably comprehensively describe this element, as follows:

a. Administrators

At the Charter School level, as opposed to the CMO level, the Charter School will have a Principal, Dean of Academics, Dean of Students, and Dean of Culture. While some teaching experience is preferred, it is not required of any of these individuals, nor is an administrative or teaching credential. This is despite the fact that the Principal and Dean of Academics are responsible for supervising and evaluating teachers and monitoring instructional processes. In addition, the Dean of Academics is responsible for providing teacher in-service training and overseeing curriculum and textbooks. The Dean of Students is responsible for student discipline and supervising students during non-instructional hours before and after school and lunch.

b. Assistant Principal

As noted previously, the budget narrative states the Charter School will employ an Assistant Principal in year one. Element 5, however, does not discuss or provide for qualifications for such a position.

c. "MSA-9"

The "Qualifications and Evaluations" section of Element 5 relates to an entity called "MSA-9." This entity is not defined in the Petition and indicates that the Petition is not tailored to the District, but rather a stock form presented to multiple districts for purposes of expansion of MPS rather than service to students. "MSA-9" is also referenced in other areas of the Petition.

Element 6 – Health and Safety Procedures

The Statute requires the Petition to identify the procedures that the Charter School will follow to ensure the health and safety of students and staff. (Ed. Code, § 47605(b)(5)(F).) The Regulations provide the procedures should, at a minimum, require that each employee of the school provide a criminal records summary as described in Education Code section 44237, include the examination of faculty and staff for tuberculosis as described in Education Code section 49406, require immunization of students as a condition of school attendance to the same extent as would apply if the students attended a non-charter public school, and provide for the screening of students' vision and hearing and the screening of students for scoliosis to the same extent as would be required if the students attended a non-charter public school. (5 C.C.R. § 11967.5(f)(6).)

The Petition does not contain sufficient description of the Charter School's health and safety procedures based on the following findings:

a. Volunteers

The Petition provides that volunteers "who will volunteer outside of the direct supervision of a credentialed employee shall be fingerprinted and receive background clearance prior to volunteering without the direct supervision of a credentialed employee." The Petition is not clear, however, regarding the activities these volunteers would be engaged in and if/why they would ever be with students outside the direct supervision of a credentialed staff member. Volunteers offer supplemental support, not instruction, and must be under the immediate supervision and direction of certificated personnel at all times. (Ed. Code, § 35021.) Thus, the Petition contemplates an inappropriate instructional model to the extent that would not be the case.

d. Sexual Harassment Policy

Although the Petition states the Charter School has developed a comprehensive sexual discrimination and harassment policy, the policy was not attached, and in any event addresses employee to employee, employee to student, and student to employee harassment, but not student to student harassment.

Element 7 – Racial and Ethnic Balance

The Statute requires the Petition to identify the means whereby the Charter School will achieve a racial and ethnic balance among its students that is reflective of the authorizing district's general population. (Ed. Code, § 47605(b)(5)(G).)

The Petition does not contain sufficient description of the Charter School's means of ensuring racial and ethnic balance consistent with the District's demographics based on the following findings:

The Petition states that the Charter School will implement a recruiting strategy to achieve racial and ethnic balance reflective of the District. Achieving racial and ethnic balance in a charter school is important to make it reflect the community, to avoid discrimination, and to ensure that charter schools do not foster segregation. However, the Charter School's plan is problematic. First, it is inconsistent to the extent that it repeats the statutory language of balancing racial and ethnic background to reflect the District's general population, but then states the Charter School will focus outreach efforts within a 10-mile radius of the school location. As noted previously, the Charter School has not identified a location; thus, it is not possible to compare the impact of the limited geographic area for outreach on the makeup of the District as a whole. Second, reference to an "attendance area" is confusing, as the Petition indicates the Charter School will be open to all students and does not provide a description of an attendance area for purposes of recruiting.

In addition, the Petition is not realistic to the extent that it suggests outreach will target "socioeconomically disadvantaged members of the community," particularly to the extent that outreach is District-wide, while at the same time expressly stating that the Charter School will not provide transportation to and from school, except for students with exceptional needs. The lack of transportation likely creates a barrier to enrollment for low-income students whose parents may not be in a position to transport them to and from school every day, whether due to lack of personal transportation, work schedules, competing child care needs, or other reasons.

Element 8 – Admissions Requirements

The Statute and Regulations require the Petition to identify admission requirements that are in compliance with applicable law. (Ed. Code, § 47605(b)(5)(H); 5 C.C.R. § 11967.5.1(f)(8).)

The Petition does not contain sufficient description of the Charter School's admission requirements based on the following findings:

a. Preference Policy

The Petition purports to provide admissions preferences that do not comply with the requirement of Education Code section 47605, subdivision (d)(2)(B), that preference be given to students currently attending the charter school and pupils who reside in the District. Instead, the Petition improperly exempts existing students and provides a preference to siblings of existing students (first), children of school board members and staff (second), and students transferring from another MPS school (third). Students who reside in the District are prioritized fifth, behind these non-statutorily identified groups. In all, the Petition provides for 10 iterations of preference and is overly complicated. The statute does not provide for exemption, only statutorily recognized preferences.

e. Documentation of Admissions and Enrollment

At tab 8, Petitioners provided the Charter School's lottery form and enrollment form. As an initial matter, the lottery form is for "Magnolia Science Academy 7" in Northridge, and not for the Charter School – again reflecting "cut and paste" from various petitions rather than a document reflecting thoughtful analysis of a program to be provided to the Fremont community. In any event, the only "preference" category identified on the form is "Does the student have a sibling currently enrolled at MSA-7." Thus, from the face of the form, it is unclear how the Charter School would plan to implement its preference policy if it were acceptable.

In addition, the Charter School's "Registration Checklist" requires the following documentation: "Copy of Student's Birth Certificate" and "Parent/Guardian DMV Drivers License/I.D., Passport, or birth certificate." Although the Charter School may request proof of age, including through a birth certificate or other birth record, federal law prohibits any public schools from preventing or discouraging enrollment or attendance based on the lack of a birth certificate or a record indicating a foreign place of birth. This is particularly relevant here in light of Petitioners' reference to its purported desire and ability to serve English learners and immigrant students.

Finally, the Registration Checklist indicates that parents must bring copies of the "required paperwork" with them and that the school will not make copies. Such a policy stands as a bar to access to families who do not have the means, whether physically or financially, to obtain copies of documents. As such, it presents an illegal pupil fee. As explained in Fiscal Management Advisory 12-02 dated April 24, 2013, public schools, including charter schools, are barred from charging fees as a condition for registering for school or classes.

Element 10 – Suspension and Expulsion Procedures

The Statute and Regulations require the Petition to describe the procedures by which students can be suspended or expelled. (Ed. Code, § 47605(b)(5)(J); 5 C.C.R. § 11967.5(f)(10).)

The Petition does not contain sufficient description of the procedures by which students can be suspended or expelled based on the following findings:

The Petition provides a lengthy discussion of student suspension and expulsion procedures, designed to track the requirements of Education Code section 48900 et seq. The procedures, however, limit student rights in two important ways. First, under the administrative panel process described in Education Code section 48918, subdivision (j), which is adopted by the Petition, only the governing board may take final action to expel a student. But according to the

Petition, it is the Charter School's administrative panel that will make expulsion decisions. Second, although the administrative panel's decisions can be appealed to the MPS board, that decision will be final. This process eliminates the student's right to appeal to the County Office of Education under Education Code section 48919.

Element 14 – Dispute Resolution

The Statute requires the Petition to describe the procedures to be followed by the Charter School and the entity granting the charter to resolve disputes relating to provisions of the charter. (Ed. Code, § 47605(b)(5)(N).) The Regulations require a description of how the costs of the dispute resolution process, if needed, would be funded, and also a recognition that if the substance of a dispute is a matter that could result in the taking of appropriate action, including, but not limited to, revocation of the charter, it will be handled in accordance with that provision of law and any regulations pertaining thereto. (5 C.C.R. § 11967.5(f)(14).)

The Petition does not contain a sufficient description of the Charter School's dispute resolution process based on the following findings:

The dispute resolution process required by the Petition is time consuming and overly formal, including the following:

1) requiring written notification of any dispute; 2) requiring a written response to a written dispute notification within 20 days; 3) conducting an "Issue Conference" within 15 business days; and finally 4) mediation within 120 days, with the cost to be split between the Charter School and the District.

V. CONCLUSION

For the reasons stated above, the Petition, as submitted, is not supported by the required number of signatures; fails to provide a reasonably comprehensive description of several essential charter elements; and indicates that Petitioners are demonstrably unlikely to successfully implement the program presented in the Petition. Accordingly, it is recommended that the Petition be denied. Should the Board take action to deny the Petition, it may adopt this Report as the written factual findings required to support its denial of the Petition.

Motion & Voting

Based upon a comprehensive review and analysis of the Petition by legal counsel in collaboration with District Staff, denial of the Petition is recommended. Adopt the staff report as the written finding in support of denial.

Motion by Yang Shao, second by Michele Berke.

Final Resolution: Motion Carries

Yea: Michele Berke, Desrie Campbell, Ann Crosbie, Yang Shao, Larry Sweeney