

**Saddleback Valley Unified School District  
Response and Recommended Findings of Fact  
Regarding the Oxford Preparatory Academy  
Charter School Petition**

**I. BACKGROUND FACTS**

On October 30, 2009, petitioners submitted the Oxford Preparatory Academy (“OPA” or “charter school”) charter school petition to the Saddleback Valley Unified School District (“District”) for sponsorship of a charter school. The petitioners propose opening the charter school in the fall of 2010. The OPA charter petition contains conflicting enrollment projections of 264 and 656 students.

A public hearing on the OPA charter petition was held during a regularly scheduled meeting of the District’s Board of Education on November 10, 2009.

Pursuant to Education Code section 47605(b), during the public hearing, 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.”

During the public hearing only 9 individuals spoke in support of the OPA charter. Three of those individuals were OPA Executive Director Susan Roche, OPA Educational Director Jason Watts, and OPA’s attorney Jerry Simmons. Four individuals that identified themselves as parents of District students also spoke in support of the petition and two individuals identified themselves as parents of students in Capistrano Unified School District in support of the petition, one of whom is seeking employment with OPA. Two persons identifying themselves as parents of District students spoke and stated that they did not support the OPA charter petition.

Mr. Tom Turner, Assistant to the Superintendent met with OPA Executive Director Susan Roche on November 30, 2009 to discuss the OPA charter school petition.

**II. EXECUTIVE SUMMARY**

After a comprehensive review of the OPA charter petition by District administration, District staff and legal counsel, and based upon comments received at the public hearing on November 10, 2009, it is recommended that the Board of Education *deny* the petition based on the following:

1. The charter school presents an unsound education program for the pupils to be enrolled;
2. The petitioners do not provide all required affirmations and assurances required by Education Code section 47605(d);
3. The petitioners are demonstrably unlikely to successfully implement the program described in the Petition; and

4. The Petition does not contain reasonably comprehensive descriptions of 10 of the 16 required elements of a charter Petition.

Beyond the fundamental flaws in the OPA charter petition, the District has serious and substantive concerns about the proposed charter school, including its questionable budget assumptions and unrealistic enrollment projections. As the fiduciary of the Saddleback Valley community's resources and trust, the Board must remain vigilant in ensuring sound instructional and financial planning in District schools and in any charter schools it authorizes.

### III. STANDARD OF REVIEW

Education Code section 47605 sets forth the statutory requirements for the establishment of charter schools. Section 47605(b) provides that the governing board of a school District may deny a charter petition only if *one or more* of the following findings are made in writing:

1. The charter school presents an unsound education program for the pupils to be enrolled in the charter school (EC 47605 (b)(1).)
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 Education Code section 47605(a).
4. The petition does not contain the affirmations of each of the conditions described in Education Code section 47605(d).
5. The petition does not contain reasonably comprehensive descriptions of all of the 16 elements required by Education Code section 47605(b)(5).

The California State Board of Education has developed criteria to be used for the review and approval of charter school petitions presented to the State Board pursuant to Education Code section 47605(j)(2). (5 C.C.R. section 11960 et seq.) Section 47605(j)(2) states: "The criteria shall address all elements required for charter approval, as identified in subdivision (b) and shall define 'reasonably comprehensive' as used in paragraph (5) of subdivision (b) in a way that is consistent with the intent of this part." Because the State Board of Education reviews petitions that have been denied by school districts, the District reviews charter school petitions for compliance with State Board of Education regulations.

The District finds that, applying these standards, there are numerous grounds to deny the petition based on the specific and detailed findings of fact stated herein.

#### IV. RECOMMENDED FINDINGS OF FACT

A. THE PROPOSED OXFORD PREPARATORY ACADEMY CHARTER PRESENTS AN UNSOUND EDUCATIONAL PROGRAM.

Education Code section 47605(b)(1) provides that a petition may be denied if specific facts support a finding that the “charter school presents an unsound educational program for the pupils to be enrolled in the charter school.”

In enacting the Charter Schools Act of 1992, the intent of the California legislature was to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish *all* of the following:

“(a) Improve pupil learning.

“(b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.

“(c) Encourage the use of different and innovative teaching methods.

“(d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

“(e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system.

“(f) Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.

“(g) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools.”  
(Education Code section 47601.)

The California Code of Regulations at Title 5, section 11967.5.1(b) defines “an unsound educational program” as either:

“(1) A program that involves activities that would present the likelihood of physical, educational, or psychological harm to the affected pupils.

“(2) A program...not...likely to be of educational benefit to the pupils who attend.”

As above, one of the goals of the legislature in enacting the Charter School Act of 1992 was to “[i]ncrease learning opportunities for all pupils, *with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.*” (Education Code section 47601(b), emphasis added.) The Oxford Preparatory Academy charter petition fails to identify a sufficiently detailed plan for expanding learning opportunities for academically low achieving students. Approximately one page of the petition addresses the services to be provided to students who are at risk of low achievement. The plan consists primarily of diagnostic measures and goal setting, with “Excellence Academy” remedial intervention, provided before and after school and on Saturdays. The plan does not address the key issue of presentation of the core curriculum during the school day in a manner that will allow at risk students to increase their achievement to the basic level.

Without an effective plan for expanding learning opportunities in place, the OPA educational program presents the likelihood of educational and possible psychological harm to low achieving students enrolling at the charter school. The program is therefore not likely to be of educational benefit to low achieving pupils.

On page 159, the petition states “OPA will actively recruit a diverse student population, including low achieving and low-income students ...” While the petition states that it will recruit low achieving students, it does not provide an effective plan for assisting low achieving students in succeeding at the charter school. Additional specific deficiencies in services for at risk students are listed at pages 12 and 13 of these Findings at section 1d, “Meeting the Needs of Special Student Populations.”

The OPA charter petition therefore presents an unsound educational program for low achieving students and fails the specific legislative goal of increasing learning opportunities for academically low achieving students.

**B. THE OXFORD PREPARATORY ACADEMY PETITIONERS ARE DEMONSTRABLY UNLIKELY TO SUCCESSFULLY IMPLEMENT THE PROGRAM SET FORTH IN THE PETITION.**

Education Code section 47605(b)(2) provides that a petition may be denied if specific facts support a finding that “the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.”

California Code of Regulations, Title 5, section 11967.5.1(c) provides the following factors to determine whether the “the petitioners are demonstrably unlikely to successfully implement” the charter school program:

“(1) If the petitioners have a past history of involvement in charter schools or other education agencies (public or private), the history

is one that the State Board of Education regards as unsuccessful, e.g., the petitioners have been associated with a charter school of which the charter has been revoked or a private school that has ceased operation for reasons within the petitioners' control.

“(2) The petitioners are unfamiliar... with the content of the petition or the requirements of law that would apply to the proposed charter school.

“(3) The petitioners have presented an unrealistic financial and operational plan for the proposed charter school.

\* \* \*

“(4) The petitioners personally lack the necessary background in the following areas critical to the charter school's success, and the petitioners do not have plan to secure the services of individuals who have the necessary background in these areas:

“(A) Curriculum, instruction, and assessment.

“(B) Finance and business management”

**1. The Oxford Preparatory Academy Petitioners Have Presented An Unrealistic Financial And Operational Plan For The Proposed Charter School**

The District obtained an independent analysis of OPA's projected charter school budget from Mr. Michael Ammermon, a Certified Public Accountant, with extensive expertise in charter school finance. Attached hereto as Exhibit A is Mr. Ammermon's independent analysis and a detailed report of his findings.

Mr. Ammermon found that the proposed OPA budget has not clearly described the material assumptions necessary to support its proposed budget figures. Mr. Ammermon's report states that the OPA charter petitioners have not budgeted for any startup costs as required by Education Code and the California Code of Regulations. Mr. Ammermon concluded that “based on the material nature of the omissions and lack of assumptions identified throughout this report ... the OPA budget presents an unrealistic financial and operational plan for the proposed charter school.”

Mr. Ammermon also found that “the charter will experience higher costs and lower revenues than anticipated.” It is clear from Mr. Ammermon's independent analysis that the budget projections presented in the OPA petition are unrealistic and unlikely to result in a successful, fiscally solvent charter school.

**2. The Oxford Preparatory Academy Petition Proposes Unrealistic Facilities Costs**

The OPA petition does not include any budgeted amount for rent or for payment of a pro rata share of facilities provided by the District. The petitioners have submitted a request for District facilities pursuant to Education Code section 47614. In the event that the District denies the requested facilities, objects to the projected in-district ADA or charges a "pro rata share ... of those school district facilities costs which the school district pays for with unrestricted general fund revenues" pursuant to Education Code section 47614(b)(1), the petitioners will experience a sizable budget deficit because they have not budgeted for any potential facilities costs.

**3. The Oxford Preparatory Academy's Projected Enrollment Numbers Are Unrealistic And Are Unlikely To Be Met.**

It is unlikely that the charter school will reach the unrealistic enrollment numbers stated in the charter school petition.

Petitioners have provided OPA Intent to Enroll forms of 123 K-7 students. The petitioners have stated that they have a "strong feeling" that their past experience and successes will attract more students. However, the petitioners have failed to provide any evidence that their projected first year enrollment of 264 or 656 (Petition at p. 55) will be met. In addition, only six parents of District and out-of-District students spoke in favor of the proposed charter school at the November 10, 2009 public hearing.

The petitioners are unlikely to meet the stated enrollment projections, thus further impacting OPA's projected budget negatively because funding based upon ADA will be much lower than projected. OPA's 123 Intent to Enroll forms as submitted are less than one-half of OPA's projected enrollment of 264, and less than one-fourth of OPA's projected enrollment of 656.

**4. The Oxford Preparatory Academy's Projected Budget Contains No Funds For Special Education Encroachment Costs.**

Notwithstanding the OPA's petitioners' assurances at the public hearing, no funds are budgeted by OPA for the proposed school's "fair share" of special education encroachment costs, despite OPA's proposed reliance on the District to provide its students with special education services, and despite the OPA's petition's statement at Appendix J that "The Charter School shall contribute its fair share to offset special education's encroachment upon the District's general fund."

C. **THE OXFORD PREPARATORY ACADEMY PETITION CONTAINS PARENT OR TEACHER SIGNATURES AS REQUIRED BY STATE LAW.**

Education Code section 47605(a)(1) requires that either of the following conditions be met prior to submitting a petition for a charter school:

“(A) The petition has been 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**

“(B) The petition has been signed 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.”

Pursuant to Education Code section 47605(a)(3):

“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. The proposed charter shall be attached to the petition.”

The OPA petitioners have estimated the initial year enrollment to be 264 students. The OPA charter petition at page 55 states that the projected enrollment for 2010-2011 school year will be 656. The petitioners provided 123 Intent to Enroll forms for K-7 students to the District along with a Facilities Request. This number of parent signatures is not equal to half of either the 264 or the 656 projected students for year one.

At page 133, the OPA charter petition provides that the school assumes it will employ 16 elementary school teachers, 6 middle school teachers, and two teachers on assignment during the first year, for a total of 24 teachers. The charter petitioners have included a list of 11 teachers in Orange County that stated they are meaningfully interested in teaching at the charter school. The petitioners also included signatures from 7 teachers in the Chino and Corona areas that state they are meaningfully interested in teaching at the Oxford Preparatory Academy of Mission Viejo charter school.

Therefore, the OPA charter petition has provided the required number of teacher signatures pursuant to Education Code section 47605(a)(1).

**D. THE OXFORD PREPARATORY ACADEMY PETITION DOES NOT PROVIDE ALL OF THE REQUIRED AFFIRMATIONS AND ASSURANCES IN COMPLIANCE WITH STATE LAW.**

Pursuant to Education Code section 47605(b)(4), charter school petitions must contain all of the following affirmations as described in Education Code section 47605(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.

“(2)(A) A charter school shall admit all pupils who wish to attend the school.

“(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

“(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and in no event shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

“(3) If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil's last known address within 30 days, and shall, upon request, provide that school district with a copy of the cumulative record of the pupil, including a transcript of grades or report card, and health information. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.”

The OPA petition states that the proposed charter school will be nonsectarian in all its programs, admissions policies, and employment practices, and will not charge tuition.

However, the petition does not contain adequate assurances regarding discrimination against all protected classes.

Education Code section 220 states:

“No person shall be subjected to discrimination on the basis of disability, gender, nationality, race or ethnicity, religion, sexual orientation, or any other characteristics that is contained in the definition of hate crimes set forth in section 422.55 of the Penal Code.”

Penal Code section 422.55(a)(7) provides a protected class for “[a]ssociation with a person or group with one or more of these actual or perceived characteristics.” The OPA petition at page 6 states that the charter school “[s]hall not discriminate on the basis of race, ethnicity, national origin, religion, gender, sexual orientation, perceived sexual orientation, home language, or disability.” The OPA petition fails to state that OPA will not discriminate based on association with a “person or group” having one or more of the above actual or perceived characteristics.

The OPA charter petition therefore fails to meet the minimum requirements for providing the required affirmations and assurances of Education Code section 47605(d).

**E. THE OXFORD PREPARATORY ACADEMY PETITION DOES NOT CONTAIN REASONABLY COMPREHENSIVE DESCRIPTIONS OF 10 OF THE 16 ELEMENTS REQUIRED BY THE EDUCATION CODE.**

Pursuant to California Code of Regulations, Title 5, section 11967.5.1(g), “A ‘reasonably comprehensive’ description” shall include, but not be limited to, information that:

“(1) Is substantive and is not, for example, a listing of topics with little elaboration.

“(2) For elements that have multiple aspects, addresses essentially all aspects the elements, not just selected aspects.

“(3) Is specific to the charter petition being proposed, not to charter schools or charter petitions generally.

“(4) Describes, as applicable among the different elements, how the charter school will:

“(A) Improve pupil learning.

“(B) Increase learning opportunities for its pupils, particularly pupils who have been identified as academically low achieving.

“(C) Provide parents, guardians, and pupils with expanded educational opportunities.

“(D) Hold itself accountable for measurable, performance-based pupil outcomes.

“(E) Provide vigorous competition with other public school options available to parents, guardians, and students.”

**1. The Oxford Preparatory Academy Charter Petition Does Not Provide A Reasonably Comprehensive Description Of The Educational Program**

Education Code section 47605(b)(5)(A)(i) requires the petition to include:

“A description of the educational program of the school, designed...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.”

Initially, the District notes that the OPA petition misquotes the above Education Code section on page 20 of the OPA charter petition.

**a. Targeted Student Population**

At a minimum, the petition’s description of the school’s targeted population must include grade levels, approximate numbers of pupils, and specific educational interests, backgrounds, or challenges. (5 C.C.R. section 11967.5.1(f)(1)(A).)

(1) The OPA charter petition at page 24 states, “We anticipate that a majority of the students to be served by our school will be the students currently enrolled in schools within the Saddleback Valley Unified School District (SVUSD) boundaries.” The petition provides ethnic characteristics of students based on demographics of students. The OPA petition fails to provide the targeted students’ “specific educational interests, backgrounds, or challenges.” The OPA petition also fails to provide the “approximate number of pupils” as required by section 11967.5.1 because the OPA budget states there will be 264 students while page 55 of the OPA charter petition states there will be 656.

(2) Further, the data used by OPA to estimate 2010-2011 demographics is from the 2007-2008 school year, as are other data references, even though 2008-2009 Standardized Testing and Reporting (“STAR”), Academic Performance Index (“API”), and Adequate Yearly Progress

("AYP") data has been available to the public and easily accessible online since August 18, 2009.

b. Framework For Instructional Design

California Code of Regulations, Title 5, section 11967.5.1(f)(1)(C) requires the petition to include "a framework for instructional design that is aligned with the needs of the pupils that the charter school has identified as its target student population."

(1) The OPA petition states at page 20, "core instructional strategy will be based on Howard Gardner's *Theory of Multiple Intelligences (MI)*." The assessment component to Gardner's theory is built on authentic or alternative assessment as opposed to standardized assessment. OPA's Description of the Educational Program states, "Each year, STAR testing data will be utilized to create a plan for improving our academic program." (Petition at p. 21.) The petitioners provide for the use of "authentic assessments" on page 69; however, the term "authentic assessments" is included in a bulleted list and offers no elaboration.

(2) The STAR standardized assessments is the only assessment program noted in "Mission and Goals" on page 21 and throughout the petition when providing for the use of test results to make programmatic decisions. Multiple measures and authentic assessments are missing from these areas, thus contradicting the OPA's stated core instructional strategy of Multiple Intelligences.

(3) The OPA petition includes a misinterpretation of District Physical Fitness Test ("PFT") results. For example, the petition at page 31 states, "In the area of physical fitness we saw low achievement levels in grades [sic] five (5) across the Saddleback Valley Unified School District boundaries..." The chart on page 32 shows the District's 2007-2008 fifth grade PFT pass rate at 61.5%, which exceeds both State performance (55.1%) and County performance (59.8). Pages 32-33 focus on the percent of students meeting 6 out of 6 Healthy Fitness Zone ("HFZ") criteria, even though the pass rate is based on meeting 5 out of 6 criteria.

c. Instructional Approach To Meet Content Standards

California Code of Regulations, Title 5, section 11967.5.1(f)(1)(E) requires the petition to "indicate the instructional approach or approaches the charter school will utilize including, but not limited to, the curriculum and teaching methods (or a process for developing the curriculum and teaching methods) that will enable the school's pupils to master the content standards for the four core curriculum areas adopted by the State Board of Education pursuant to Education Code section 60605 and to achieve the objectives specified in the charter."

(1) On page 38, the OPA petition states that the "California Writing Standard Assessment" will be administered to "Grades 4 and 8." The California Writing Standards Test ("CWST") has never been administered to eighth grade students and is no longer administered to fourth grade students. The test is now administered to seventh grade students as a component of the 7<sup>th</sup> Grade English Language Arts California Standards Test ("CST") and California Modified Assessment ("CMA").

(2) On page 38, the OPA petition states that the “California Standards and Achievement Test (STAR)” will be administered to “Grades 3- 8.” There is no “California Standards and Achievement Test” currently in existence. Other states, such as Ohio, utilize a “Standards and Achievement Test,” but no such test exists in California.

(3) The “Intervention” section on page 43 of the OPA charter school petition provides that CST strand performance data will be used to make determinations, noting “a student scoring ‘Advanced’ overall in English Language Arts may score ‘Basic’ in the Reading Comprehension strand ...” This approach is also referred to in the “College Prep” section on page 59. CST scores are never broken down by strands (grouping of content standards in STAR blueprints), rather, CST scores are broken down by cluster (a grouping of content standards that is used for reporting purposes based on subject area and grade or level). Results cannot be analyzed by strand as they can by cluster. However, not even clusters feature proficiency levels. Scaled scores and proficiency levels are available for overall CST performance but are never available for cluster performance. Only raw scores and percentages are available for cluster performance.

(4) The instructional materials section included on pages 53-55 indicates that OPA will evaluate materials currently adopted by the California Department of Education (“CDE”) to select the programs to be utilized. There is no indication that the required English Language Development (“ELD”) materials or the required intervention materials for either Reading/Language Arts or Mathematics will be reviewed.

(5) The use of Professional Learning Communities (“PLC”), as summarized by DuFour, is mentioned frequently in the OPA charter petition. (e.g. page 22, 35, 47, etc.) The petition states it will be used to analyze data, collaborate on instruction and other goals throughout the school year. The OPA charter petition makes no mention of when this extensive PLC time will take place. For example, the master schedule does not mention PLCs (pages 56-57), nor the sample school day (page 58), the regular schedules (page 59), the minimum day schedules (page 59), nor the “Components of the Daily Schedule” section (pages 59-60). On the Projected Master Calendar (pages 56-57), most minimum days are on Friday afternoons. If PLC time will be scheduled for minimum days, Friday afternoons typically are not the best times for concentrated work and attention.

#### d. Meeting The Needs of Special Student Populations

Title 5, section 11967.5.1(f)(1)(G) requires the petition to indicate “how the charter school will meet the needs of students with disabilities, English learners, students achieving substantially above or below grade level expectations, and other special student populations.”

(1) On page 27, the OPA petition provides that 13% of OPA students will be English Learners. On page 33, the English Learner (“EL”) projection changes to 12.5% to 14% with “10.4% or more” being Spanish speakers. Despite the number of English Learners and Spanish speakers, the petitioners make no mention of the Standardized Test in Spanish (“STS”), which is a STAR test required if certain English Learners take the CST. Even the OPA petition’s “Game Plan for Success” chart on page 23 notes that the CST will be used to drive instruction without

making reference to the STS assessment for EL students. OPA's "data-driven model" also completely ignores the STS.

(2) In discussing the "(Socio)Economically Disadvantaged" student subgroup on page 33, the OPA petition references the percent of students receiving free/reduced lunch services. The OPA petition never mentions parent education level, even though this is the other (equally weighted) determining factor in (Socio)Economically Disadvantaged subgroup participation.

(3) The "Economically Disadvantaged Students" section on page 78 focuses on health issues and the availability of medical insurance and free and reduced lunch services. Research has provided specific recommendations for the instructional program for students from high poverty backgrounds. The OPA petition makes no mention of a specific instructional program for these students.

(4) The "English Learners" section on page 79 of the OPA charter petition mentions testing all EL students with the Home Language Survey and the California English Language Development Test ("CELDT"). The OPA petition does not provide plans for training teachers to administer the CELDT, which is an extensive, subjectively-graded test, and may require testing in the student's native language when initially given. The only professional development mentioned is said to target instructional steps for ELs. (Petition at p. 80.)

(5) On page 80 of the OPA petition, the description of support for EL learners makes no mention of ELD standards or required state adopted instructional materials. On page 81, brief mention is made of "ELD and grade level standards." There is no explanation of how ELD standards are utilized to design instruction for EL students.

(6) On pages 80 and 81 of the OPA charter petition, mention is made of Structured English Immersion ("SEI") and English Language Mainstream ("ELM") classrooms. Students are transferred from one classroom to another as their English fluency improves. There is no explanation of how ELD standards are utilized in these two classrooms, how these classrooms integrate into the regular education program at the proposed charter school or how a small charter school can provide these types of classrooms without impacting class size in other classrooms.

(7) On page 81, the OPA petition states, "Students are taught ELD and other core subjects by authorized teachers using textbooks and supplementary materials approved by OPA's Board of Directors." There is no indication that ELD instructional materials approved by the CDE will be used. Research indicates that differentiating core content is not sufficient to improve English language fluency. Content area knowledge and English language fluency are different and both must be taught directly and explicitly. The OPA charter petition is unclear how such instruction will occur at OPA.

#### e. Plan For Special Education

California Code of Regulations, Title 5, section 11967.5.1(f)(1)(H) requires the petition to specify the charter school's "special education plan, including, but not limited to, 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 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 the law for special education pupils, and how the school intends to meet those responsibilities."

Page 2 of the OPA Special Education Plan states, "...the Charter School seeks services from the District for special education students enrolled in the Charter School in the same manner as is provided to students in other District schools." The OPA petitioners propose that the District be responsible for the following:

- "...the hiring, training, and employment of site staff necessary to provide special education services to its students..." (Special Education Plan at p. 3.)
- "...the hiring, training, and employment of itinerant staff necessary to provide special education services to Charter School students..." (Special Education Plan at p. 3.)
- "...provide the Charter School with any assistance that it generally provides its schools in the identification and referral processes..." (Special Education Plan at p. 3.)
- "...determine what assessments, if any, are necessary and arrange for such assessments for referred or eligible students..." (Special Education Plan at p. 4.)
- "...arrange and notice the necessary IEP meetings." (Special Education Plan at p. 4.)
- "...arrange for the attendance or participation of all other necessary staff..." (Special Education Plan at p. 4.)
- Make "decisions regarding eligibility, goals/objectives, program, services, placement, and exit from special education..." (Special Education Plan at p. 4.)
- "...implementation of the IEP." (Special Education Plan at p. 5.)
- "...selecting, contracting with, and overseeing all non-public schools and non-public agencies used to serve special education students." (Special Education Plan at p. 5.)
- "...investigate as necessary, respond to, and address the parent/guardian concern or complaint." (Special Education Plan at p. 6.)
- "...initiate a due process hearing or request for mediation with respect to a student enrolled in Charter School if the District determines such action is legally necessary or advisable." (Special Education Plan at p. 6.)
- "...represent the Charter School at all SELPA meetings and report to the Charter School of SELPA activities..." (Special Education Plan at p. 7.)

Page 2 of the OPA's petition "Plan for Serving Students with Disabilities" ("Special Education Plan") states, "The Charter School shall remain, by default, a public school of the District for purposes of Special Education purposes pursuant to Education Code section 47641(b) **so long as the charter is sponsored by the Chico Unified School District.**" (Emphasis added.) The OPA petitioners have requested that the Saddleback Valley Unified School District authorize their charter. The District is unaware of any involvement of the Chico Unified School District. The presence of the Chico Unified language in such an important area of their charter petition indicates that the OPA petitioners evidently "are unfamiliar ... with the content of the petition..." (5 C.C.R. section 11967.5.1(c)(2).)

Further, while the OPA petition states that the "Charter School shall contribute its fair share to offset special education's encroachment upon the District's general fund," and while the petitioners asserted more than once in the public hearing that they would "pay [their] fair share" of special education encroachment costs, OPA provides no such funds in their projected budget for the first 3 years. Using the formula set out by the OPA petitioners in Appendix J "Plan for Serving Special Education Students" of the OPA charter petition, Mr. Ammermon's OPA Budget Review Analysis and Report calculated the unbudgeted special education encroachment for OPA's first year of operation to be approximately \$99, 919.00. This is still another instance showing that the petitioners "are unfamiliar ... with the content of the petition..." or are reusing language from other charter petitions without understanding its meaning.

The OPA charter petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of the educational program.

**2. The Oxford Preparatory Academy Charter Petition Does Not Provide A Reasonably Comprehensive Description Of Measurable Pupil Outcomes**

Education Code section 47605(b)(5)(B) requires the petition to include, "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."

California Code of Regulations, Title 5, section 11967.5.1(f)(2)(A) requires the petition to include measurable pupil outcomes that, at a minimum:

"specify skills, knowledge, and attitudes that reflect the school's educational objectives and can be assessed, at a minimum, by objective means that are frequent and sufficiently detailed enough to determine whether pupils are making satisfactory progress. It is intended that the frequency of objective means of measuring pupil outcomes vary according to such factors as grade level, subject matter, the outcome of previous objective measurements, and information that may be collected from anecdotal sources. To be sufficiently detailed, objective means of measuring pupil outcomes must be capable of being used readily to evaluate the effectiveness

of and to modify instruction for individual students and for groups of students.”

a. The OPA petition at page 91 states that “85% of students tested will score proficient/advanced” on English-language arts and mathematics CSTs “by year five.” However, by the fifth year of the charter school’s existence, No Child Left Behind will require that 100% of all students score proficient or advanced in those two subject areas.

b. On page 92, the OPA petition states that “85% of students tested will score proficient/advanced in Writing” as measured by the California State Writing Test in fourth grade. However, the CDE and STAR requirements state that this test should be administered to seventh grade students as a component to the seventh grade English-language arts CST and CMA, but is no longer available for fourth grade students.

c. The OPA petition states that “85% of students will meet or exceed 4 out of 6 Healthy Fitness Zone Levels” as measured by the California physical fitness test. However, CDE has established a passing rate and goal that involves meeting **five** out of six HFZ levels rather than the four out of six as listed in the charter petition.

d. The OPA charter petition includes goals for all core subject areas except for history-social science. The OPA petitioners should be aware that state content standards for history-social sciences for grades 6, 7, and 8 are tested on the eighth grade history-social science CST. Further, the OPA petition’s section on measurable pupil outcomes fails to include vital standardized testing recording programs such as California Alternate Performance Assessment (“CAPA”), Standardized Test in Spanish (“STS”), and CMA.

e. The section outlining “science-measurable pupil outcomes by grade level” starting on page 109 of the OPA charter petition provides that CST scores will be used for grades 2 through 7. However, science CST only occurs for grade 5.

f. The pupil outcome goals, in the section of the OPA charter petition beginning on page 92, do not provide for measurable outcomes for the core subject of history-social science.

g. The measurable pupil outcomes section for English language learners starting on page 113 of the OPA charter petition does not make any mention of the STS, which is a STAR test required if English learners take the CST.

The OPA charter petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of measurable pupil outcomes.

**3. The Oxford Preparatory Academy Charter Petition Does Not Provide A Reasonably Comprehensive Description Of The Method For Measuring Pupil Progress**

Education Code section 47605(b)(5)(C) requires the petition to state the method by which pupil progress in meeting pupil outcomes is to be measured.

California Code of Regulations, Title 5, section 11967.5.1(f)(3) requires the method used to measure student progress, at a minimum:

“(A) Utilizes a variety of assessment tools that are appropriate to the skills, knowledge, or attitudes being assessed, including, at a minimum, tools that employ objective means of assessment consistent with paragraph (2)(A) of subdivision (f) of this section.

“(B) Includes the annual assessment results from the Statewide Testing and Reporting (STAR) program.

“(C) Outlines a plan for collecting, analyzing, and reporting data on pupil achievement to school staff and to pupils’ parents and guardians, and for utilizing the data continuously to monitor and improve the charter school’s educational program.”

a. On page 117, the OPA charter petition states that “there will be less ‘textbook developed’ tests and more teacher created and project-based assessments.” The OPA petition does not provide for the authentic assessments that will be in place during the first year while the teacher-developed assessment system is being created or how time is to be allocated for the extensive process of developing teacher-created and project-based assessments that are refined and aligned to content standards.

b. On page 118, the OPA petition lists API and AYP as assessments that will be administered in the Spring. Neither the API nor the AYP is an assessment, but instead are state and federal accountability systems that include student performance on state assessments. This is an illustration of petitioners’ apparent lack of understanding of state-wide assessments and school performance.

c. The OPA charter petition at page 118 provides that California Writing Standards Test will be used to assess the writing ability in grades 4 and 7. The CWST test is only administered to seventh graders and is no longer available for fourth graders.

d. On page 118, the OPA charter petition states that “OPA will utilize data analysis software and programs to examine and monitor all student academic progress ...” Given the fact that a school’s data management software selection is vital to its academic success, the District finds it a serious omission that the charter petitioners did not identify OPA’s chosen data management program.

e. The OPA charter petition at page 34 states, “OPA will provide a complete program of staff development and will participate in selected staff development programs.” The charter petition provides many references to OPA’s success being based on data-driven models requiring extensive staff training and many references to teachers developing the expertise in data-related topics. The petition also indicates that staff members will collaborate on many other tasks such as merging collective experience to formulate consistent language, policies, and programs to establish school-wide goals and in-service training on curriculum calibration and technology uses. However, the OPA charter petition contains no staff development plan to accomplish these tasks.

f. At page 34, the charter petition states, “OPA will apply the best *research-proven strategies* to provide a rich and rigorous academic program that gives all students a chance to be successful.” (Emphasis added.) This language is inconsistent with the statement at page 47 that OPA will promote ““new, innovative, and *experimental* ideas in education.”” (Emphasis added.)

g. On page 64, the OPA petitioners provide a pronoun lesson purportedly demonstrating the multiple intelligence approach to pronouns. The OPA lesson provided misapplies the English Language Arts (“ELA”) content standard target because students are not “identifying and correctly using pronouns” when students merely “[g]raph the frequency of different pronouns found on a page of your favorite book.” (Petition at p. 64.)

h. On page 67, the OPA charter petition describes how OPA staff will teach a unit of study, but does not include multiple intelligences which is posited as the basis of all lessons throughout the OPA charter petition. The multiple intelligences method is also not included in the list of what teachers are trained to do in designing a lesson on page 67 of the OPA petition.

i. On page 69, the petition provides that OPA will teach all students “the grade level standards with increased rigor” without any differentiation for EL or special needs students.

The OPA charter petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of the methods to be used for measuring pupil progress.

**4. The Oxford Preparatory Charter Petition Does Not Provide A Reasonably Comprehensive Description Of The Governance Structure Of The School**

Education Code section 47605(b)(5)(D) requires the petition to state the governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental development.

California Code of Regulations, Title 5, section 11967.5.1(f)(1)(4) requires the petition to, at a minimum:

“(A) Include evidence of the charter school’s incorporation as a non-profit public benefit corporation, if applicable.

“(B) Includes evidence that the organizational and technical designs of the governance structure reflect a seriousness of purpose necessary to ensure that:

“1. The charter school will become and remain a viable enterprise.

“2. There will be active and effective representation of interested parties, including, but not limited to parents (guardians).

“3. The educational program will be successful.”

a. On page 122, the OPA petition states, “OPA-Mission Viejo will operate autonomously from the chartering agency and will comply with the Brown Act.” Aside from specified exceptions, the Brown Act requires that “regular and special meetings of the legislative body... be held within the boundaries of the territory over which the local agency exercises jurisdiction...” (Government Code section 54954(b).)

The corporate board of directors for Oxford Preparatory Academy, Inc. (“OPA, Inc.”) includes six individuals from the Chino area. The petition states that three individuals from the Mission Viejo community will be added once the OPA-Mission Viejo charter petition is approved. The charter petition states that meetings will be held on a monthly basis, but does not state where those meetings will take place. Government Code section 54954(b) requires that OPA-MV meetings take place in the territorial boundaries of the Saddleback Valley Unified School District. To the extent that the corporate board also operates another charter school in Chino Valley Unified School District, holding meetings within the SVUSD boundaries will render the Board out of compliance as to the Chino charter school.

b. During the public hearing on November 10, 2009, Ms. Roche stated that the budget for OPA-Chino Valley is two to three times as large as the budget for OPA-Mission Viejo. She also stated that if the Chino Valley Unified School District denies that charter petition, the amount budgeted for OPA-Mission Viejo will not be enough to pay for its employees and other services. Ms. Roche stated if that were to occur, “then we go to the County and then to the State.” Ms. Roche’s statement does not provide evidence that the “organizational and technical designs of the governance structure reflect a seriousness of purpose” because the petitioners acknowledge the success of OPA-Mission Viejo is contingent upon the charter petition for OPA-Chino being granted by the Chino Valley Unified School District. Therefore, OPA-Mission Viejo as proposed cannot “become and remain a viable enterprise” on its own.

c. At page 123, the OPA charter school petition states: “The governing body for OPA Mission Viejo will be the Oxford Preparatory Academy, Inc. Board of Directors.” On page 124, the charter petition states, “Bylaws will be developed by the corporate board of directors at the first meeting following the approval” of either charter school. Title 5, section 11967.5.1 requires that the governance structure in a charter petition must include evidence that the “charter school will become and remain a viable enterprise.” Developing bylaws only after the charter petitions have been approved evidences that there are presently no written governance standards for the nonprofit organization that will run the charter school and does not allow the District to

understand how OPA, Inc. or OPA – Mission Viejo will operate in order to make an informed decision on whether the charter school “will become and remain a viable enterprise.”

d. Education Code section 47604.32(d) provides that a chartering authority shall “[m]onitor the fiscal condition of each charter school under its authority.” The OPA charter petition at page 123 states, “The specific purpose of this corporation will be to exclusively establish and operate Oxford Preparatory Academy charter school campuses, including OPA-Chino and OPA- Mission Viejo campuses ...” The OPA petition states that the two proposed campuses will share certain staff positions. However, the OPA petition does not specify whether there will be shared costs with OPA, Inc.

The OPA petition states on page 123 that “the Chartering Agency hereby reserves the right, pursuant to its oversight responsibility, to audit OPA Mission Viejo’s books ...” but the petition does not provide the District with the ability to audit the financial records of OPA, Inc. to ensure that OPA - Mission Viejo remains financially viable and is receiving an equitable share of management from OPA, Inc. Mr. Ammermon’s report on the OPA charter school petition budget concluded that “From an accounting and auditing perspective, without full disclosure of all financial and operational arrangements between OPA, Inc. and OPA – MV, and OPA – CH, the Saddleback Valley Unified School District cannot carry out the statutory monitoring responsibility it is required to provide.”

e. The petition at page 130 states that “[e]ach family will also be given an *OPA- Mission Viejo Parent Information Handbook* outlining the parent and student-related policies and procedures.” Because such policies and procedures will impact parent participation, governance and pupil discipline at OPA- Mission Viejo, the District must be able to review the handbook. No example of such a Handbook was included with the OPA charter petition.

f. On page 122, the charter petition states that “members of the Oxford Preparatory Academy, Inc. corporate board of directors, members of the OPA-Mission Viejo Advisory Council, any administrators, managers or employees, and any other committees of the school, shall comply with federal and state laws and nonprofit integrity standards regarding ethics and conflicts of interest.” California Government Code section 1099 states:

“A public officer, including, but not limited to, an appointed or elected member of a governmental board, commission, committee, or other body, shall not simultaneously hold two public offices that are incompatible.”

Pursuant to an opinion of the California Attorney General, a city manager may not serve simultaneously on the board of trustees of a school district. (See 80 Ops.Cal.Atty.Gen. 74.) A California court has held that “charter school officials are officers of public schools to the same extent as members of other boards of education of public school districts.” (*Ghafur v. Bernstein* (2005) 131 Cal.App.4th. 1230, 1240.)

On page 124, the charter petition states that Mr. Frank Ury, Mayor of the City of Mission Viejo, will sit on the Board of Directors for the Oxford Preparatory Academy, Inc. Since Mr.

Ury is an elected official in the City of Mission Viejo and the proposed OPA Mission Viejo charter school is within the city limits of Mission Viejo, the District is concerned this could be an instance of the simultaneous holding of incompatible public offices.

The OPA charter petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of the governance structure of the proposed charter school.

**5. The Oxford Preparatory Charter Petition Does Not Provide A Reasonably Comprehensive Description Of The Qualifications of School Employees**

Education Code section 47605(b)(5)(E) requires the petition to state the qualifications to be met by individuals employed by the school.

California Code of Regulations, Title 5, section 11967.5.1(f)(5) requires the qualifications of employees to, at a minimum,

“(A) Identify general qualifications for the various categories of employees the school anticipates (e.g., administrative, instructional, instructional support, non-instructional support.) The qualifications shall be sufficient to ensure the health, and safety of the school’s faculty, staff and pupils.

“(B) Identify those positions that the charter school regards as key in each category and specify the additional qualifications expected of individuals assigned to those positions.

“(C) Specify that the all requirements for employment set forth in applicable provisions of law will be met, including, but not limited to credentials as necessary.”

a. The OPA petition provides general job descriptions for various categories of employees, however, none of the job descriptions contain any information as to the number of required years of experience for any of the positions described. Without minimum years of experience required, the general qualifications for administrative, instructional support and non-instructional support positions are incomplete.

b. The OPA petition also fails to identify general or additional qualifications for administrative, instructional and instructional support positions because no academic degree requirements are specified.

The budget provided with the OPA charter petition states the executive director and director of education services will be “split between OPA-Chino and OPA-MV.” According to the OPA budget each employee will account for .25 FTE. From the positions hired for during the first year, this leaves a void for the day to day management of the Mission Viejo campus.

c. The petitioners have budgeted for a campus dean for the Mission Viejo campus. However, the petition provides no job description for the campus dean position and does not specify any required qualifications. For a position as critical as campus dean in the day to day management of the proposed Mission Viejo charter school, the petition should provide qualifications and a definition of what the position will entail. A mere budget line is inadequate.

d. The petition calls for a position titled Director of Operations. No funding for this position is included in the proposed OPA budget.

The OPA petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of the qualifications of all school employees.

**6. The Oxford Preparatory Academy Charter Petition Provides A Reasonably Comprehensive Description Of The Health And Safety Procedures For Pupils And Staff**

Education Code section 47605(b)(5)(F) requires the petition to state 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.”

California Code of Regulations, Title 5, section 11967.5.1(f)(6) requires these procedures, at a minimum to:

“(A) Require that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.

“(B) Include the examination of faculty and staff for tuberculosis as described in Education Code section 49406.

“(C) Require immunization of pupils as a condition of school attendance to the same extent as would apply if the pupils attended a non-charter public school.

“(D) Provide for the screening of pupils’ vision and hearing and the screening of pupils for scoliosis to the same extent as would be required if pupils attended a non-charter public school.

The OPA petition provides a reasonably comprehensive description of the required health and safety procedures for pupils and staff.

**7. The Oxford Preparatory Academy Petition Does Not Provide A Reasonably Comprehensive Description Of The Means To Achieve A Reflective Racial And Ethnic Balance**

Education Code section 47605(b)(5)(G) requires the petition to state “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.”

a. The OPA charter petition provides a plan that it believes will “reach a racial and ethnic balance reflective of the Saddleback Valley Unified School District.” This language misconstrues the statute. The Education Code requirement is to “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.” The racial and ethnic balance of the school district may be different in comparison to the general population as not all individuals in the general population have students in District schools.

b. The petition states that it will make efforts through local media to attempt to achieve a racial and ethnic balance. The OPA charter petition states on page 155 that “All press releases will be translated into Spanish, if required.” Given the number of individuals within the territorial jurisdiction of the Saddleback Valley Unified School District whose primary language is Spanish, it should be required to translate all press releases into Spanish. Without such translation, the charter school will not reach a large portion of the community it proposes to serve.

c. The petitioners provide four radio stations on which it intends to advertise its educational program. Three of the four radio stations listed are in the Riverside/San Bernardino area and are not local to Mission Viejo or Orange County. The one local radio station included is a small public radio jazz station located at Saddleback College that is unlikely to reach a significant portion of the Saddleback Valley population.

The OPA petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of the means to achieve a reflective racial and ethnic balance of the general population within the territorial jurisdiction of the District.

**8. The Oxford Preparatory Academy Charter Petition Does Not Provide A Reasonably Comprehensive Description Of Pupil Admission Requirements**

Education Code section 47606(b)(5)(H) requires the petition to provide admission requirements, if applicable. Education Code section 47605(d) states:

“(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 parents 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.

“(2)(A) A charter school shall admit all pupils who wish to attend the school.

“(B) However, if the number of pupils who wish to attend the charter school exceeds the school’s capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.”

a. On page 159 the charter petition states that “OPA will actively recruit a diverse student population, including low achieving and low-income students...” As above, the OPA charter petition does not include an effective plan for expanding learning opportunities for low achieving students.

b. On page 161 the charter petition provides that the “hierarchy of preferences for enrollment in OPA is children of: faculty; employees; founding members; and members of the board of directors.” The petition states, “provided there are spaces available, incoming siblings of students who are presently enrolled in OPA will have preference of enrollment over new students.” OPA’s hierarchy and list of preferences is contrary to the requirement stated in Education Code section 47605(d)(2)(B), which states, “Preference shall be extended to pupils currently attending the charter school and pupils who reside in the District except as provided for in section 47614.5.” The OPA charter petition makes no mention of preference for students within the territorial jurisdiction of the District. The OPA petition instead emphasizes preferences for children of OPA faculty, employees, founding members and members of the OPA Board of Directors

Education Code section 47605(d)(2)(A) provides, “A charter school shall admit all pupils who wish to attend the school.” On page 160 the petition states, “Prospective students and their parents or guardians will be required to attend an in-service regarding the schools instructional and educational philosophy, prior to the beginning of each year.” Section 47605(d)(2)(A) requires the charter school to admit all pupils who wish to attend the school and does not mention of any such conditions upon admission.

The OPA charter petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of pupil admissions requirements.

**9. The Oxford Preparatory Academy Charter Petition Provides A Reasonably Comprehensive Description Of The Annual Independent Financial Audit**

Education Code section 47605(b)(5)(I) requires the petition to state “[t]he 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.”

California Code of Regulations, Title 5, section 11967.5.1(f)(9) requires the petition’s financial audit procedures to, at a minimum:

“(A) Specify who is responsible for contracting and overseeing the independent audit.

“(B) Specify that the auditor will have experience in education finance.

“(C) Outline the process of providing audit reports to the State Board of Education, California Department of Education, or other agency as the State Board of Education may direct, and specifying the time line in which audit exceptions will typically be addressed.

“(D) Indicate the process that the charter school will follow to address any audit findings and/or resolve any audit exceptions.”

The OPA charter school petition adequately describes the annual independent financial audit.

However, page 164 of the OPA charter petition states that “OPA will submit the following reports to the Chartering Agency and the **San Bernardino County Office of Education**” rather than the Orange County Department of Education, the County in which the District is located. This misstatement of the proper County office to submit statutorily required financial reports to evidences that the OPA petitioners are “unfamiliar ... with the content of the charter petition or the requirements of the law that would apply to the proposed charter school.” (Title 5, section 11967.5.1(c)(2).)

**10. The Oxford Preparatory Academy Charter Petition Does Not Provide A Reasonably Comprehensive Description Of The Procedures For Pupil Suspension and Expulsion**

Education Code section 47605(b)(5)(J) requires the petition to state the procedures by which pupils can be suspended or expelled.

California Code of Regulations, Title 5, section 11967.5.1(f)(10) requires the petition’s suspension and expulsion procedures to, at a minimum,

“(A) Identify a preliminary list, subject to later revision pursuant to subparagraph (E), of the offenses for which students in the school must (where non-discretionary) and may (where discretionary) be suspended and, separately, the offenses for which students in the charter must (where non-discretionary) or may (where discretionary) be expelled, providing evidence that the petitioners’ reviewed the offenses for which students must or may be suspended or expelled in the non-charter public schools.

“(B) Identify the procedures by which pupils can be suspended or expelled.

“(C) Identify the procedures by which parents, guardians, and pupils will be informed about reasons for suspension or expulsion and of their due process rights in regard to suspension or expulsion.

“(D) Provide evidence that in preparing the lists of offenses specified in subparagraph (A) and the procedures specified in subparagraphs (B) and (C), the petitioners reviewed the lists of offenses and procedures that apply to students attending non-charter public schools, and provide evidence that the charter petitioners believe their proposed lists of offenses and procedures provide adequate safety for students, staff, and visitors to the school and serve the best interests the school’s pupils and their parents (guardians.)

“(E) If not otherwise covered under subparagraphs (A), (B), (C), and (D):

“1. Provide for due process for all pupils and demonstrate an understanding of the rights of pupils with disabilities in regard to suspension and expulsion.

“2. Outline how detailed policies and procedures regarding suspension and expulsion will be developed and periodically reviewed, including, but not limited to, periodic review and (as necessary) modification of the lists of offenses for which students are subject to suspension or expulsion.”

a. The OPA charter petition fails to comply with the California Code of Regulations requirement that it identify a preliminary list of offenses for which students in the charter school must or may be suspended and to separately provide the offenses for which students in the charter school must be expelled.

b. Title 5, section 11967.5.1 requires that the charter petition provide for due process for all pupils, but due process is lacking for pupils under the suspension and expulsion procedures of the proposed OPA charter school. On page 174, the OPA charter petition states, "The pupil shall have no right of appeal from expulsion from the charter school as the Board of Directors' decision to expel shall be final."

c. Further, the expulsion procedures provide that the notification to the student and the student's parent/guardian will include the "date and place of the expulsion hearing." The charter petition further states, "The administrative panel should consist of at least three members who are certificated and neither a teacher of the pupil or a board member of the Board of Directors." The petition does not make it clear whether the hearing will be conducted within the boundaries of Saddleback Valley Unified School District or within the boundaries of Chino Valley Unified School District. Because the charter petitioners are attempting to open two campuses, the OPA petition should specify where expulsion hearings will be conducted.

The OPA charter petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of the procedures for pupil suspension and expulsion.

**11. The Oxford Preparatory Academy Charter Petition Provides A Reasonably Comprehensive Description Of Staff Retirement Systems**

Education Code section 47605(b)(5)(K) requires the petition to state 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."

California Code of Regulations, Title 5, section 11967.5.1(f)(11) requires that, at a minimum, the petition specify which positions will be covered under each system and the staff who will be responsible for ensuring that appropriate arrangements for that coverage have been made.

The OPA petition adequately identifies staff retirement systems.

**12. The Oxford Preparatory Academy Charter Petition Provides A Reasonably Comprehensive Description Of Pupil Attendance Alternatives**

Education Code section 47605(b)(5)(L) requires the petition to state "the public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools."

California Code of Regulations, Title 5, section 11967.5.1(f)(12) requires the petition to specify 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 of any local education agency (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 extended by the local education agency."

The OPA petition adequately addresses pupil attendance alternatives.

**13. The Oxford Preparatory Academy Charter Petition Provides A Reasonably Comprehensive Description Of The Return Rights Of Employees**

Education Code section 47605(b)(5)(M) requires the petition to include 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.”

California Code of Regulations Title 5, section 11967.5(f)(13) states:

“The description of the rights of any employees or 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, as required by Education Code section 47605(b)(5)(M), at a minimum, specifies that an employee of the charter school shall have the following rights:

“(A) Any rights upon leaving the employment of a local education agency to work in the charter school that the local education agency may specify.

“(B) Any rights of return to employment in a local education agency after employment in the charter school as the local education agency may specify.”

The OPA petition adequately defines return rights of employees.

**14. The Oxford Preparatory Academy Charter Petition Does Not Provide A Reasonably Comprehensive Description Of Dispute Resolution Procedures**

Education Code section 47605(b)(5)(N) requires the petition to include the “procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to the provision of the charter.”

a. On page 182 the OPA charter petition states “All parties will refrain from public commentary regarding any disputes until the matter has progressed through the dispute resolution process.” Such an agreement could violate the Brown Act. (Government Code section 54950, et seq.) The legislative intent of the Brown Act states, “The people of this State do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.” (Government Code section 54950.) As such, any decisions that must be made by the District’s Board of Education regarding a dispute between the proposed charter school and the District, must be made in open session of a board meeting unless the decision falls under an enumerated closed session topic. (See Government Code section 54954.5.)

b. The dispute resolution process requires written notification identifying the nature of the dispute and supporting facts. The party notified of the dispute must respond to the other party within 20 business days (4 weeks) from the date of the written notification to schedule a resolution conference that shall take place within 15 business days (3 weeks) from the date the written response is received. If the dispute is not resolved in the resolution conference, the parties will agree to mediate within 120 days of the resolution conference. The entire dispute resolution process could take up to six months if each party were to follow the deadlines listed in the charter petition. The OPA petition's dispute resolution timelines are not designed to resolve disputes in a prompt and efficient manner before the quality of instruction or governance is compromised.

c. Page 183 of the OPA petition states, "Any party who fails or refuses to submit to arbitration shall bear all costs and expenses incurred by such other party in compelling arbitration of any controversy, claim, or dispute." The dispute resolution process specified in the OPA charter petition does not otherwise mention arbitration as a step in the process, but the petition then requires the party refusing to submit to arbitration to bear all costs. If petitioners are proposing that arbitration be a part of the dispute resolution process, they must do so with specificity, e.g. binding or non-binding arbitration.

The OPA charter petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of the dispute resolution process.

**15. The Oxford Preparatory Academy Charter Petition Declares That The Charter School Shall Be The Exclusive Public School Employer**

Education Code section 47605(b)(5)(O) requires the petition to declare whether or not the charter school shall be deemed the exclusive public school employer of the employees for EERA purposes.

The OPA charter petition provides that it will be the exclusive public employer for all OPA employees.

**16. The Oxford Preparatory Academy Charter Petition Does Not Provide A Reasonably Comprehensive Description Of The Procedures For Charter School Closure/Disposition Of Assets And Liabilities And Transfer Of Records**

Education Code section 47605(b)(5)(P) requires the petition to include 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 any net assets and for the maintenance and transfer of pupil records."

California Code of Regulations, Title 5, section 11962 "Definition of Procedures for School Closure" interprets Education Code section 47605(b)(5)(P) and states that "procedures"

as in "description of the procedures to be used if the charter school closes" means, at minimum, each of the following:

"(a) Designation of a responsible entity to conduct closure-related activities.

"(b) Notification of the closure of the charter school to parents (guardians) of pupils, the authorizing entity, the county office of education ..., the special education local plan area in which the school participates, the retirement systems in which the school's employees participate ..., and the California Department of Education ...

\* \* \*

"(c) Provision of a list of pupils in each grade level and the classes they have completed, together with information on the pupils' district of residence, to the responsible entity designated in subdivision (a).

"(d) Transfer and maintenance of all pupil records, all state assessment results, and any special education records to the custody of the responsible entity designated in subdivision (a), except for records and/or assessment results that the charter may require to be transferred to a different entity.

"(e) Transfer and maintenance of personnel records in accordance with applicable law.

"(f) Completion of an independent final audit within six months after the closure of the school that may function as the annual audit ...

\* \* \*

"(g) Disposal of any net assets remaining after all liabilities of the charter school have been paid or otherwise addressed ...

\* \* \*

"(h) Completion and filing of any annual reports required pursuant to Education Code section 47604.33.

"(i) Identification of funding for the activities identified in subdivisions (a) through (h)." (5 C.C.R. section 11962.)

a. The OPA charter petition fails to clearly designate a responsible entity to conduct closure related activities. The petition states that “for six calendar months ... or until the budget allows, whichever comes first, sufficient staff ... will maintain employment to take care of all necessary tasks ... for ... closing the school.” The petition fails to designate a responsible entity to conduct the closure activities in the event of its budget being depleted. The OPA charter petition also fails to provide for the transfer and maintenance of personnel records in accordance with applicable law.

On page 186, the charter petition states:

“In accordance with state law, all other assets (acquired with public or private funds) including but not limited to, all real estate properties, capital outlay and equipment, personal properties, intellectual properties, all ADA apportionments, and other revenues generated by students attending OPA, remain the sole property of OPA and shall be distributed in accordance with the distribution plan adopted by the OPA Board of Directors. The distribution plan may include allocation to other charter schools, or other public or nonprofit entities, in accordance with state law.”  
(Emphasis added.)

This language states that OPA has not yet developed a complete asset distribution plan in the event of school closure. The lack of a plan for distribution of assets makes it impossible for the District to determine whether the District can agree with any such plan as consistent with its statutorily mandated fiscal oversight of the proposed charter school.

The OPA charter petition therefore fails to meet the minimum requirements for providing a reasonably comprehensive description of charter school closure, disposition of assets and liabilities, and transfer of records.

## V. CONCLUSION & RECOMMENDATIONS

Based upon a comprehensive review of the Oxford Preparatory Academy charter petition by District administration, District staff, and legal counsel, and based upon comments received at the public hearing on November 10, 2009, it is recommended that the Board of Education *deny* the petition.

This denial recommendation is based on 4 findings, supported in detail herein, that:

1. The charter school presents an unsound education program for the pupils to be enrolled;
2. The petitioners do not provide all required affirmations and assurances required by Education Code section 47605(d);
3. The petitioners are demonstrably unlikely to successfully implement the program described in the Petition;
4. The Petition does not contain reasonably comprehensive descriptions of 10 of the 16 required elements of a charter Petition.

---

Ginny Fay Aitkens,  
Board President

---

December 8, 2009

Date

---

Dore J. Gilbert, M.D.  
Board Clerk