

**STAFF REPORT AND PROPOSED FINDINGS OF FACT
REGARDING INVICTUS ACADEMY OF RICHMOND
CHARTER PETITION**

I. Introduction

A. Background

On May 5, 2017, the West Contra Costa Unified School District (“District”) received a charter petition (“Petition”) from Invictus Academy, Inc. (“Petitioner”), a California nonprofit public benefit corporation, seeking to establish a public charter school to be called Invictus Academy of Richmond (“Charter School”).

Petitioner requests a five year term for the Charter School from July 1, 2018 through June 30, 2023. Petitioner anticipates that the Charter School would serve students in grades 7 through 12 and would commence operations in the 2018-2019 school year with a Year 1 enrollment of 128 students in grade 7. Starting in Year 2, the Charter School would add 128 students each year, as it grows to a full capacity of 768 students by Year 6. (Petition, pp. 42-43.) Petitioner does not currently operate any other charter schools.

Pursuant to Education Code section 47605, subdivision (a)(1), a charter petition may be submitted to the governing board of the school district for review only after one of the following conditions is met:

(A) The petition is 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 is 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.

Petitioner submitted signatures from both parents and teachers with its Petition (See Appendices 1, 3.) At Appendix 1, the Petition includes the signatures of ten teachers who indicate that they are meaningfully interested in teaching at the proposed Charter School. (Appendix 1.) As the Petition indicates that the Charter School intends to hire seven teachers for the 2018-2019 school year, the ten teacher signatures meet the requirement of Education Code section 47605(a)(1)(B). There are parent signatures of only 37 students who would be in 7th grade and meaningfully interested in attending the Charter School in 2018-2019. There are approximately 89 total parent signatures on the Petition, and 37 indicate that their child would be in 7th grade in the commencement year of the school. If approved, however, the school will have a year to recruit families.

B. Timeline for Board Action

Petitioner submitted its Petition on May 5, 2017. Subsequently, the parties agreed to extend the date for Board action until July 19, 2017. Pursuant to the Education Code, the District held a public hearing on June 14, 2017, so that the District's Governing Board ("Board") could consider the level of support for the Petition. (Ed. Code, § 47605, subd. (b).) The matter has been agendized for the Board to take final action regarding approval or denial of the Petition on July 19, 2017.

C. Standard of Review

The Charter Schools Act of 1992 ("Act") governs the creation of charter schools in the State of California. The Act includes Education Code section 47605, subdivision (b), which provides the standards and criteria for petition review. The Act provides that a school district governing board considering whether to grant a charter petition "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." (*Id.*) Specifically, the Board may not deny a petition unless it makes written factual findings setting forth specific facts to support one, or more of six findings:

1. The charter school presents an unsound educational program for the students to be enrolled in the charter school;
2. The petitioner is demonstrably unlikely to successfully implement the program set forth in the petition;
3. The petition does not contain the number of signatures prescribed by Education Code section 47605, subdivisions (a)(1)(A) or (a)(1)(B);
4. The petition does not contain an affirmation of each of the conditions set forth in Education Code section 47605, subdivision (d), including that the charter school: (1) will be nonsectarian in its admission policies, employment practices and all other operations; (2) will not charge tuition; and (3) will not discriminate against any student on the basis of the characteristics set forth in Education Code section 220;
5. The petition does not contain reasonably comprehensive descriptions of 15 certain elements in its program and operations as set forth in Education Code section 47605, subdivisions (b)(5) (A-O), which describes the elements that must be addressed in every petition to establish a charter school. These elements include a description of the school's governance structure, admissions policy, health and safety and student discipline policies; or
6. The petition does not contain a declaration of whether the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

Charter school petitions are also required to include discussion of the impact on the chartering district, including the facilities to be utilized by a proposed charter school, the manner in which administrative services will be provided, potential civil liabilities for the school district, and a three-year projected operational budget and cash flow (Ed. Code § 47605, subd. (g)).

II. Summary and Recommendation for Approval of Petition

For purposes of Education Code section 47605, a charter petition is “consistent with sound educational practice” if it is likely to be of educational benefit to pupils who attend. (5 CCR § 11967.5.1.) District Staff has concluded that the proposed program is consistent with sound educational practice. Specifically, Staff notes that the Petition is generally well-crafted, thoughtful, and adequately describes most aspects of the educational program proposed by Petitioner. The Petition proposes a rigorous academic program that includes required speech and debate classes for students, with social justice implications based on a focus on effective communication. While this component of the proposed instructional program is unique and innovative, Petitioner should be cautioned that the Charter School’s focus on speech and debate, in lieu of traditional visual and performing arts (“VAPA”) electives and limited foreign language offerings, may dissuade some students from enrolling.

The proposed Charter School would also offer instruction in mindfulness training and intends to “foster a sense of joy in a safe and structured environment”, and clear and persuasive non-academic goals (Petition, pp. 81- 82) illustrating a commitment to the social and emotional well-being of students. (Petition, p. 22.) Staff acknowledged the strong preparation in drafting the petition, including a review of numerous effective schools and programs that informed the petition. This resulted in decisions that will support a strong program, such as an increased academic day and year, significant Professional Development for staff, home visits for enrolled families, and a planned dual block for mathematics and English Language Arts. A number of the Charter School’s founders have well-established connections with the Richmond community, which suggests that the Charter School’s administration and Board may be particularly attuned to community-based concerns and recruitment strategies.

While Staff has concluded that the Charter School intends to offer a sound educational program with a unique speech and debate component, it should be noted that the college preparation program proposed by Petitioner is offered by other charter schools in the Richmond area, as well as a District-wide focus on preparing students for college and career.

In addition to the Petition’s strengths, Staff has identified concerns as addressed in greater detail below. District Staff believes deficiencies in the Petition in its present form could warrant a denial based on the following grounds, pursuant to Education Code section 47605:

1. The Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition. (Ed. Code, § 47605, subd. (b)(2).)
2. The Petition does not contain reasonably comprehensive descriptions of certain required elements set forth in Education Code section 47605, subdivisions (b)(5)(A-P).

However, Staff further believes that the deficiencies identified in the Petition can be addressed or remedied to the Board's satisfaction, in a separate operational memorandum of understanding ("MOU") entered into between the Charter School and the District. Therefore, Staff recommends approval of the Petition. In the event the Board votes to approve the Petition, Staff further recommends that approval be conditioned upon Petitioner's agreement that an MOU remedying deficiencies in the Petition, as identified in this Report, and setting out other terms and conditions governing operation of the Charter School will be executed within thirty (30) days of the Board's approval of the Petition.

In order to deny a Petition on the grounds set forth above, Education Code section 47605, subdivision (b), requires the Board to make "written factual findings, specific to the particular Petition, setting forth specific facts to support one or more" of the grounds for denying the charter. Therefore, if the Board determines it will deny this Petition, Staff recommends that the Board adopt the proposed findings of fact, set forth below, as its own findings.

III. Petition Review Process and Findings of Fact

In evaluating a charter petition, a District governing board is obligated to ensure that the proposed educational program is sound and that the petitioners are likely to be successful in implementing the program. (Ed. Code, § 47605, subd. (b).) Moreover, the Education Code imposes a number of significant supervisorial oversight duties on a governing board that approves a charter petition. (Ed. Code, §§ 47604.32 and 47604.33.)

The Education Code does not provide explicit guidance for District governing boards in evaluating whether a charter petition's components are "reasonably comprehensive." Neither does the Code prescribe specific criteria when considering each of a petition's required elements. However, the California Code of Regulations ("CCR" or "Regulations") sets out regulations for use in evaluating a charter school petition submitted to the State Board of Education ("SBE") on appeal. Those Regulations define a "reasonably comprehensive" program and set out specific criteria for consideration of each of the required program elements. (5 CCR § 11967.5.1.) Thus, in order to ensure the District's Board can conduct a comprehensive review of the Petition and will be able to effectively carry out its supervisorial oversight duties if the Petition is approved, it is appropriate to look to the standards set out in the Regulations as exemplars in considering the present Petition.

In making the findings of fact set out in this Report, Staff and legal counsel have considered each element of the Petition in light of the standard for a “reasonably comprehensive” program description and the specific criteria for each required element as set out in 5 CCR § 11967.5.1. The Regulations provide that: “[a] ‘reasonably comprehensive’ description, within the meaning of subdivision (f) of this section and Education Code section 47605, subdivision (b)(5) 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.”

(5 CCR § 11967.5.1, subd. (g).)

Please note that these findings of fact have been grouped for convenience under the aforementioned grounds for denial of a charter petition. However, certain findings of fact may support more than one ground for denial.

In the event that the Board decides to approve the Petition, these findings also include Staff recommendations for inclusion in an MOU to be executed by the parties within thirty (30) days of the Board’s approval.

Finding 1: There are Facts in the Petition to Support a Finding That Petitioner Is Demonstrably Unlikely to Successfully Implement the Program Set Forth in the Petition.

In order to successfully implement the program described in the Petition, Petitioners must demonstrate that they are familiar with the content of the Petition and the requirements of laws applicable to the proposed school; present a realistic financial and operational plan; have the necessary background in areas critical to the Charter School’s success, or have a

plan for securing the services of individuals with the necessary background, including curriculum, instruction, assessment, finance and business management.

As reviewed below, there is concern whether the Charter School will successfully implement its program, as currently described in the Petition.

A. The Petition Does Not Describe a Recruitment Plan that is Likely to Attract a Diverse Student Body Reflective of the Demographics of the Territorial Jurisdiction of the District.

The law requires that the Charter School provide a description of the “means by which it 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.” (Ed. Code, § 47606, subd. (b)(5)(G).)

The Petition states that the Charter School “will strive, through recruitment, to achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the District.” (Petition, p. 154.) However, on the same page, Petitioner states that the Charter School expects to “recruit a population generally reflective of the community we seek to serve in South and Central Richmond.” (*Id.*) Thus, there seems to be misunderstanding on Petitioner’s part as to the distinction between the legal requirement that the Petition must describe the means by which the Charter School will recruit a student body reflective of the general population residing within the territorial jurisdiction of the District, and a student body “generally reflective” of South and Central Richmond.

The Petition includes demographic data for WCCUSD, indicating that in 2015-2016, Districts schools enrolled, among other groups, 18% African Americans, and 16% Asian/Filipino/Pacific Islanders. However, students residing in the South and Central Richmond areas, where the Charter School proposes to locate, are likely to be predominately Hispanic or Latino. (Appendix 2.) The Petition does not address how the Charter School intends to recruit African American students, Asian students, and other student populations residing within the District. Instead, the Petition simply notes, without any specific detail, that the Charter School will “monitor” the racial and ethnic balance of its student body and “modify its community outreach plan to achieve a racially and ethnically diverse student population.” (Petition, p. 154.)

The brief recruitment strategy described in the Petition is vague, and a table listing Measures of Community Outreach does not list any specific venues, events, and community resources the Charter School has, or will use target and recruit African American, Asian, and other racial and ethnic student populations residing within the District’s boundaries. (Petition, pp. 41, 154.) However, during the Capacity Interview, the petitioning team listed more detailed, innovative and targeted outreach measures implemented after the petition’s submission, and revealed further ideas to insure balanced ethnic and racial student demographics. One such example includes leveraging board

member access to Rubicon, and the Richmond Rescue Mission to recruit and serve homeless or Foster youth.

Recommendation: The MOU should identify updated information on the Charter School's plan to recruit a student population that is reflective of the general population residing within the District's territorial boundaries, including Asian, African-American, Filipino/Pacific Islander and white students and update or identify specific strategies it will use to identify and recruit special education students, foster students and other underserved populations.

B. The Charter School Is Likely To Have Difficulty Hiring and Retaining Quality Teachers

The Charter School is likely to have difficulty recruiting and retaining quality teachers, given the substantial gap between the Charter School's teacher's average salary (\$54,000) and the average District teacher's average salary (\$60,687)—a difference of \$6,687. (Petition, p. 188.) In addition, the Charter School's calendar calls for 182 instructional days and 24 professional development days for a total of 206 teacher workdays. By contrast, the District's teacher contract provides for 186 days—20 fewer workdays than required by the Charter School. Overall, this means that the average daily pay at the Charter School would be \$262.14 (\$54,000 divided by 206 workdays) as compared to average daily pay at the District of \$326.27 (\$60,687 divided by 186 workdays). The Petition also indicates that Charter School staff will not participate in STRS or PERS, although an alternate retirement plan was offered. Given these differences, as well as the shortage of teachers nationwide and in the Bay Area, the Petition should explain how the Charter School intends to recruit and retain quality teachers in the Bay Area.

Recommendation: The MOU should address the Charter School's plan for recruiting and retaining high quality teachers, plus provide a timeline with benchmarks and hire dates.

C. The Charter School's Founding Team Has Limited Experience Operating a Charter School

As discussed in the Petition, Gautam Thapar, the Charter School's lead Petitioner and proposed Executive Director, has four years' teaching experience at Leadership Public Schools, Richmond. Mr. Thapar does not hold an administrative credential. While he has leadership experience on school campuses, and strong references included in the petition he has no prior experience as administrator of a charter school. The Petition indicates that he has received training in charter school development and operations, and will receive continued support through the Building Excellent Schools (BES) program that includes a network of peers. (Petition, pp.12- 13). Staff notes that the charter board includes several individuals with significant experience in leadership, coaching and operations in charter schools.

Staff noted that the job description for Executive Director does not require an administrative credential and requires “Four years teaching and/or school leadership position.” The Charter Act lists multiple purposes, including to “Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site” (47601.(d)). The qualifications for essential school positions, including Director of Operations, Dean of Students, and Dean of Curriculum and Instruction require two years’ teaching experience, and an unspecified amount of other experience relevant to the position, suggesting that insufficient experience may pose challenges to the organization. (Petition, pp. 145-147.)

All of the teachers who signed the Petition as being “meaningfully interested” in teaching at the Charter School have at least some teaching experience, and most have taught in a charter school. (Appendices 1, 3.) However, approximately 25% of those teachers are not residents of the area and it not clear whether letters from some of these individuals express genuine interest in relocating to Richmond and teaching at the Charter School, express support for the establishment of the Charter School or to express support of the lead founder, Mr. Thauper. (*Id.*)

Recommendation: Require the Charter School’s proposed Executive Director to secure the services of a mentor, and codify the support frequency and focus in the MOU.

Finding 2: There are Facts that Support a Finding that the Petition Does Not Contain Reasonably Comprehensive Descriptions of Certain Required Elements

The Petition serves as Petitioner’s proposal for the Charter School’s establishment and operation. Therefore, the Petition must provide reasonably comprehensive descriptions of certain elements in its program and operations as required in Education Code section 47605, subdivision (b)(5). As set forth below, the Petition does not contain reasonably comprehensive descriptions of certain elements required by law.

A. Element 1: Instructional Program

The Petition does not include a reasonably comprehensive description of the Charter School’s proposed instructional program. Areas of deficiency noted by Staff include the Charter School’s plans for serving its special education and Section 504 students, and its English Learners.

1. Plan for Serving Students Eligible for Special Education and Section 504 Services

As a whole, the Petition does not adequately address how the Charter School will serve special education and Section 504 students. The Petition does address certain substantive issues, including child find (“Search and Serve”), assessment, required content in an IEP, membership of an IEP team, IEP team meetings, and timelines for referrals, assessments, and meetings. However, it is missing other elements essential to a reasonably comprehensive plan for serving special education and Section 504 students, including the following:

- a. *Special Education Status; Funding & Fiscal Allocation Plan.* The Petition states that the Charter School will remain, by default, a public school of the District for the purposes of special education and that the District will provide special education services to eligible charter school students. (Petition, pp. 89-90). The Petition leaves open the possibility that the Charter School may apply for membership in a charter SELPA such as the El Dorado County Charter SELPA. However, in a Capacity Interview, Charter School representatives expressed a strong preference for remaining a public school of the District. Assuming that is the case, Petitioner does not appear to understand the District's obligations to ensure that all eligible students enrolled in the Charter School receive a free appropriate public education ("FAPE"). As one example, the Petition states that Charter School "reserves the right to contract with agencies and vendors outside the [WCCUSD] when appropriate to secure special education services." (Petition, p. 90.) As a public school of the District, it will be up to the District, not the Charter School, to determine when it is appropriate to secure outside service providers and to contract with those providers.

The Petition does not include a clear and comprehensive fiscal allocation plan for special education and is not clear whether Petitioner understands that, as a public school of the District, special education funding will remain with the District and/or the SELPA and will only be allocated to the Charter School in the same manner as the District allocates special education funds to its other schools. The Budget Narrative included in the Petition indicates that the Charter School's proposed budget assumes that the Charter School will operate "as a School of the District with a Fair Share contribution of \$822 per current year ADA, consistent with other schools in Richmond." (Petition, p. 190.) The Multiyear Budget Summary lists a line item Special Education Fair Share Contribution of \$99,955 for 2018-2019 and notes that his forecast is based on "rates of EdTec client in Richmond." (Appendix 7.) However, the Petitioner has not consulted with the District or the SELPA in calculating these figures. In addition, the Petition does not discuss the allocation of actual and excess special education costs.

- b. *Least Restrictive Environment.* Petitioner does not describe how the Charter School intends to comply with special education law with regard to providing placement in the least restrictive environment ("LRE") for special education students. The Petition provides that "if the student's needs as documented on the IEP require a program other than inclusion, the school will work with [WCCUSD] and/or SELPA to provide an appropriate placement and services." (Petition, p. 90.) There is no reference in the Petition to other placement options for students, suggesting that the Petitioner may intend to serve only those students who can be fully mainstreamed in a general education classroom and that students requiring other services or placements may be directed back to the District.

The IDEA requires that, to the maximum extent appropriate, individuals with exceptional needs shall be educated in the least restrictive environment. (Ed. Code

§ 56040.1.) However, while a general education placement with modifications and/or accommodations may be the LRE for one student, another student may require a more restrictive placement or educational setting to receive a FAPE. Special education services must be individualized to meet each student's unique educational needs, and must comport with each student's IEP. Thus, Petitioner's inclusion-focused service model does not comply with the mandates of federal and state special education law. Failure to provide an appropriate placement for a special education student could expose the Charter School, and the District, as its chartering authority, to liability for a failure to provide a FAPE.

- c. Assessment. The Petition does not adequately describe the respective responsibilities of the Charter School and the District with regard to assessments. The petition also states that the Charter School will notify the District within five days of receiving a request for assessment. However, notification of the District should happen immediately upon receipt of the request.
- d. Staffing. The Petition states that the Charter School intends to hire "at least one full time teacher who in addition to having the proper credentials to teach a general education subject, will also possess the necessary Special Education Credential." (Petition, p. 95.) This staff member will, along with the Executive Director and the Director of Operations, be responsible for overseeing implementation of IEPs and Section 504 Plans, and performing other special education-related duties (*Id.*) Elsewhere, the Petition provides that the Executive Director will be "responsible for assuring compliance with all laws and regulations, and ensuring the provision of speech and language therapy, tutoring, speech and occupational supports for all students with special needs, as appropriate." (Petition, p. 89.) This is troubling, in that the Executive Director position does not require experience implementing special education programming or a special education credential. It is not clear whether the Special Education Teacher position is the same as the position of "Special Education Director," which only requires just one year prior teaching experience and an unspecified amount of experience working with special needs students. (Petition, p. 146.) The Budget Narrative provides for hiring "seven core teachers in year one, adding seven teachers each year until reaching scale" but does not mention a Special Education Director. (Petition, p. 188.) Further confusing matters, the budget does not include any line item for the costs of hiring a Special Education Director or Special Education teacher. (Appendix 7.) The Capacity Interview provided an opportunity for the petitioners to clarify, as staff questions focused on this issue. The petitioners were adamant that their strong preference is to be a school of the District.
- e. Professional Development. The Petition intends that WCCUSD trainings will be made available to Charter School staff; however, other than one mention of "best practices for SPED students" in the Charter School's list of professional development topics, the Petition does not describe any substantive professional development in the areas of special education and Section 504. (Appendix 17.)

- f. Discipline. The very brief discussion of discipline for students with disabilities does not include any description of the District and Charter School’s respective roles with regard to manifestation determinations and other due process proceedings. (Petition, pp. 176-177.) As a result, it is not clear that the Charter School’s discipline procedures will provide sufficient due process for disabled students in regard to suspension and expulsion.
- g. Interim Placements. The Petition states that the Charter school will notify the District within five days of the enrollment of a student with an existing IEP. However, such notification to the District should happen immediately upon the student’s enrollment
- h. Extended School Year Services. The Petition does not mention the Charter School’s obligation to provide extended school year (“ESY”) services for an eligible student as determined by the student’s IEP team. It is not clear if the Charter School intends to provide ESY, and if so, where they are to be provided during the ESY period.
- i. Notice of Procedural Safeguards. The Petition states that a written Notice of Procedural Safeguards will be provided to a parent “at least once per year.” (Petition, p. 97.) No mention is made of additional triggers for notice of procedural safeguards, such as the initial referral or parent request for evaluation; upon receipt of the first state complaint or first due process request in the school year; in accordance with disciplinary procedures; and upon parent request. (34 C.F.R. §§ 300.504(a).)
- j. Other Missing Elements. (a) The Petition does not acknowledge the Charter School’s responsibility to provide special education, instruction and related services to students enrolled in the school regardless of the students’ districts of residence; (b) the Petition does not describe the process for notifying both the district of residence and the authorizing school district when a special education student enrolls, becomes eligible, ineligible, and/or leaves the Charter School.; and (c) the Petition omits discussion of a number of other special education program elements, including, but not limited to: transportation for special education students; requests for an independent educational evaluation (“IEE”), mental health services and/or behavioral assessments; functional assessment analyses; or the development of behavioral intervention plans.
- k. Section 504. The Petition provides that the Charter School “will be solely responsible for its compliance with Section 504 of the Rehabilitation Act and the Americans with Disabilities Act.” (Petition, p. 98.) Petitioner must also indicate that its obligations include sole responsibility for the costs of implementing Section 504 services, including the costs of providing health and nursing services to students whose Section 504 Plans require such services.

Recommendation. The MOU should include a revised plan for Special Education clarifying the intention to join the WCCUSD SELPA as a school of the District, and Section 504 that includes: (1) missing elements identified in this Report; (2) a discussion of alternative settings that the Charter School will make available to students whose needs cannot be met in the general education setting; and (3) a detailed list of professional developments related to special education and Section 504 that will be provided to Charter School staff. The MOU should also provide that the Charter School will consult with the SELPA Director with regard to: the charter School's special education responsibilities, the application of SELPA policies; and how special education services will be provided consistent with the SELPA Plan and/or SELPA policies and procedures.

2. Plan for Serving English Learners

At a minimum, a charter petition should identify a consistent English Language Development ("ELD") curriculum, specific assessments, and a schedule for monitoring student progress in reaching English proficiency. The Charter School's plan for serving English Learners lacks clarity, purpose and goals regarding language acquisition. Without a reasonably comprehensive plan for serving its English Learners, the District cannot be assured that the Charter School understands its obligations under federal and state law with regarding to serving English Learners, who are likely to make up a large percentage of the Charter School's student population.

- a. English Language Development. The Petition indicates that direct ELD will be provided in small groups during ELA and during the tutorial period at the end of the school day for 7th and 8th grades and that high school students can take English Extension as an elective. (Petition, p.p. 100-102.) Other than that, there is very limited information as to how and when ELD will be delivered during the regular school day, and no reference or discussion of the specific ELD curricular materials the Charter School will use.
- b. Assessments. There is little discussion or description in the Petition of specific targeted summative or formative assessments for English Learners, and the assessments that are measured are limited in scope. If English Learners are to progress and meet the goals the Charter School has set for them, they will need a comprehensive assessment system.
- c. Targeted Supports for English Learners. The Petition does not offer adequate explanation of core instructional practices for English Learners. The EL supports listed on page 102 appear to be general classroom supports that are used with all students, rather than specific strategies and supports for English Learners. These strategies for EL instruction are not research-based, and no language supports for overcoming low performance with regard to EL acquisition are named other than "small group" and SDAIE. SDAIE is useful as a strategy to access grade level content, but is not sufficient for the teaching of the full scope of the California ELD Standards and the full acquisition of English. In addition, the Petition does

not describe how small group instruction will specifically address the needs of English Learners.

- d. *Professional Development.* Charter School intends to implement SDAIE and GLAD, but other than a single reference in summer professional development series—“Supporting SPED & ELL Students”—there is no information as to how EL professional development will be provided to teachers (Appendix 17).

Recommendation: The MOU should include a revised plan for serving English Learners that includes all missing elements identified in this Report, as well as detailed list of professional development topics that will be provided to staff, including but not limited to: the process for identification and classification of ELs, programming provided to specific EL levels, oversight, reclassification and monitoring of EL progress.

B. Element 4: Governance Structure

1. *District Representative.* Pursuant to Education Code section 47604, subdivision (b), the District has the right to appoint a single voting representative the Charter School’s Board of Directors. Moreover, The Charter School has no authority to remove, or abridge the power of the District’s appointed representative to the Charter School’s Board. However, the right to a District representative is not mentioned in either the Petition or the nonprofit’s corporate bylaws. (Petition, pp. 131-139; Appendix 5.) The Petition and bylaws should specify that the District may appoint a representative to the Board of Directors at any time and should exempt the District’s representative from the removal process.
2. *Brown Act Training.* The Petition provides that “Board members will receive an annual training on the Brown Act led by the Governance Committee.” (Petition, p. 138.) However, the Governance Committee is itself a Board committee composed of Board members. Given the limited experience of the Charter School’s founding members, trainings regarding compliance with the Brown Act should be conducted by the Charter School’s legal counsel or other qualified consultants.

Recommendation: The MOU should require the Charter School to amend its bylaws to specify that the District may appoint a representative to the Board of Directors at any time and should exempt the District’s representative from the removal process. The MOU should also require the Charter School to ensure that Brown Act training will be provided annually to its Board and will be conducted by the Charter School’s legal counsel or another qualified consultant.

C. Element 7: Means to Achieve Racial/Ethnic Balance Reflective of the District

Concerns regarding the Charter School’s proposed plan for achieving a racial and ethnic balance reflective of the population residing within the District are discussed in detail above, at Finding 1.

IV. Recommendation

Based on its review of the Petition and Appendices, and the Capacity Interview, Staff finds that the Charter School's instructional program, including the unique speech and debate component, as well as the founding team's close community ties to the Richmond area, would be of educational benefit to the students enrolled at the Charter School and therefore, Staff recommends that the Petition be approved. In the event the Board desires to approve the Petition, District Staff recommends that such approval be conditioned upon Petitioner's agreement to execution of an operational memorandum of understanding ("MOU") between the Charter School and the District, including all of the recommendations set forth in this Report.

Alternatively, the Board may choose to deny the Petition based on the following grounds:

1. The Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition. (Ed. Code, § 47605, subd. (b)(2).)
2. The Petition does not contain reasonably comprehensive descriptions of certain required elements set forth in Education Code section 47605, subdivisions (b)(5)(A-P).

In order to deny the Petition on the grounds set forth above, Education Code section 47605, subdivision (b), requires the Board to make "written factual findings, specific to the particular petition, setting forth specific facts to support one or more" grounds for denying the Petition. Should the Board decide to deny the Petition, District Staff recommends that the Board adopt these final findings of fact as its own.