

**WEST CONTRA COSTA UNIFIED SCHOOL DISTRICT  
BOARD OF EDUCATION  
SPECIAL MEETING AGENDA  
DECEMBER 3, 2014**

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**BOARD AGENDA PACKETS AND INFORMATION:**

Complete Board meeting packets are available for review at the Administration Building, the District's six high schools, and at public libraries throughout West County.

Complete Board agendas and packets are available online at: [www.wccusd.net](http://www.wccusd.net).

Any writings or documents that are public records and are provided to a majority of the governing board regarding an open session item on this agenda will be made available for public inspection in the District office located at 1108 Bissell Avenue, Richmond, CA 94801 during normal business hours. In addition, such writings and documents may be posted on the District's website as noted above.

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**VIEWING THE BOARD MEETINGS:**

**Television:**

Live television broadcast of regularly scheduled Board meetings is available by the City of Pinole on PCTV Channel 26/28, the City of Richmond KCRT Channel 28 and the City of Hercules Cable Channel 28. Please check the city websites for local listings of broadcast schedules.

You may also find the complete meeting available on a tape-delay basis through the Richmond City Web Page at: <http://www.kcrt.com> within a few days of the recording date.

Audio recordings of Board meetings are kept on file at the Administration Building, 1108 Bissell Avenue, Richmond, CA 94801 (510-231-1101).

The Board of Education would like to acknowledge Comcast, the cities of Pinole and Richmond, and WCCUSD staff for their generosity and efforts in helping to televise WCCUSD Board of Education meetings.

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**ATTENDING BOARD MEETINGS:**

The public is warmly invited to attend and participate in all WCCUSD Board of Education meetings.

**Location:**      **LOVONYA DEJEAN MIDDLE SCHOOL  
3400 MACDONALD AVENUE  
RICHMOND, CA 94805**

**Time:**            The **Board of Education's Open Session meeting will begin at 6:30 PM.** The Board will convene at **5:45 PM** in the Multi-Purpose Room to receive comments from anyone wishing to address the Board regarding closed session items (Exhibit A). The Board will then adjourn to closed session and reconvene in open session to address the regular agenda (Exhibits B-G) at 6:30 PM.

**Order of Business:** **ORDER OF BUSINESS MAY BE CHANGED WITHOUT NOTICE**

**Special Accommodations:** Upon written request to the District, disability-related modifications or accommodations, including auxiliary aids or services, will be provided. Please contact the Superintendent's Office at 510-231-1101 at least 48 hours in advance of meetings.

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"of children be more careful than anything."  
e.e. cummings

**B. OPENING PROCEDURES**

- B.1 Pledge of Allegiance**
- B.2 Welcome and Meeting Procedures**
- B.3 Roll Call**
- B.4 Report/Ratification of Closed Session**
- \* **B.5 Agenda Review and Adoption (Public Comment)**

**F. ACTION ITEMS**

\* **F.1 Resolution No. 43-1415: Requesting BAAQMD Reconsider Permit**

Comment:

At the request of Mr. Andres Soto, Board President Ramsey has placed Resolution No. 43-1415 on the agenda for the Board to consider requesting the Bay Area Air Quality Management District (BAAQMD) reconsider its decision to grant a permit to Kinder Morgan.

Recommendation:

That the Board review and act upon Mr. Soto’s request

Fiscal Impact:

None

\* **F.2 Revision to Board Bylaw 9260 Legal Protection**

Comment:

The District recognizes the necessity to protect Board members and employees while acting within the scope of their office or employment in accordance with Education Code 35208. The policy revision stipulates provisions regarding legal counsel.

Recommendation:

Recommend Approval

Fiscal Impact:

None

\* **F.3 Aspire Richmond Technology Academy Charter School Staff and Counsel Findings of Fact, and Board Decision**

Comment:

On or about September 5, 2014, the West Contra Costa Unified School District (“District”) received a charter petition (“Petition”) from Aspire Public Schools (“Petitioners”). The Petition proposes establishing Aspire Richmond Technology Academy (“Charter School”) for a term of five years from July 1, 2015 through June 30, 2020. Pursuant to Education Code section 47605 subdivision (a)(1)(A), the Petition is signed by the requisite number of parents/legal guardians meaningfully interested in enrolling their students at the Charter School (Appendix I).

The District held a public hearing on October 1, 2014, so that the District’s Governing Board (“Board”) could consider the level of support for the Petition (Ed. Code, § 47605, subd. (b)). Petitioners are an established charter school operator, and support for the Petition among the District’s teachers, employees and parents appeared to be split.

Staff reviewed the petition, then provided written feedback on all elements including the proposed educational program, fiscal and governance structures, student admissions and discipline, labor and personnel issues, facilities and legal issues. The review team from the District staff included: Steve Collins, Director of Special Education, Cheryl Cotton, Director of Human Resources, Linda Delgado, Coordinator of Educational Services, Phil Gonsalves, Director for Mathematics Instruction, Mimi Melodia, Coordinator for English Language Development, Lyn Potter, Director for Educational Services, Daniela Parasidis, Director of Business Services, and Mehdi Rizvi, Principal Accountant.

District staff has identified concerns within the Petition, which are described in detail below, and believes that those deficiencies could warrant a denial of the Petition. However, staff finds its concerns are relatively minor when compared with the legislative intent of the Charter Schools Act “that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged.” (Ed. Code, § 47605, subd. (b)).

In sum, District staff recommends that the Board approve the Petition for the establishment of the Charter School without conditions for a five year term, commencing with the 2015-2016 school year and expiring on June 30, 2020. In the event the Board approves the Petition, District staff also recommends that a separate memorandum of understanding that addresses the concerns regarding the Petition, as noted herein, be negotiated between the Petitioners and the Superintendent and/or his designee, for consideration by the Board at its meeting scheduled for January 21, 2015.

Notwithstanding the above, if after review of the Petition and the discussion herein the Board wishes to deny the Petition, the Board may base its denial on the findings of fact set forth below. Please note that these findings of fact have been grouped for convenience under the grounds for denial of a charter petition, which are also discussed below. However, certain findings of fact may support more than one ground for denial.

**Finding 1: The Petitioners are 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.

Based upon the information provided in the Petition, the Petitioners are demonstrably unlikely to successfully implement the educational program for the following reasons:

- A. The Petition presents an inadequate plan for facilities.
- B. The Petition presents an inadequate financial plan for the proposed charter school.

- C. The Petition presents an inadequate plan for English language learners.
- D. The Petition is not compliant with the Brown Act.
- E. The Petition’s discussion regarding the transitional kindergarten program lacks specificity.
- F. The Petitioners present an inadequate plan to meet the needs of foster youth.
- G. The Petition’s discussion regarding the summer technology program lacks specificity.
- H. Petitioners present an inadequate plan for students with emotional challenges.

A. The Petition Presents an Inadequate Plan for Facilities.

Education Code section 47605, subdivision (g) requires Petitioners to, “...provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be used by the school, [including] where the school intends to locate.” The Petition fails to identify with any specificity where the school intends to locate. The Petition states that the Charter School is actively searching for a private facility “*yet to be identified* in Richmond, California.” (p. 123, emphasis added.) Without more, the Petition simply lists an ambition, rather than a concrete plan specifying *where* the Charter School intends to locate and *how* the Charter School will attain a school facility.

The indefinite location of the proposed Charter School negatively impacts other key elements, such as the opening date for the Charter School. Although the Petition seeks a term from July 1, 2015 through June 30, 2020, the Petition conditions the start date of the academic year on the attainment of facilities, which Petitioners state is “yet to be identified.” (p. 84.) According to the Petition, “[t]he opening date of The Charter School will *depend* on when Aspire is able to secure a suitable facility.” (p. 123, emphasis added.) Even if the Petition is approved, the District has no assurances at this time as to when or where the Charter School will open.

B. The Petition Presents an Inadequate Financial Plan for the Proposed Charter School.

A charter petition should, at a minimum, include a first-year operational budget, start-up costs and cash flow, and financial projections for the first three years. (Ed. Code, § 47605, subd. (g).) Among other things, the operational budget must: (1) include “reasonable estimates of all anticipated revenues and expenditures necessary to operate the school;” (2) “demonstrate an understanding of the timing of the receipt of various revenues and their relationship to [the] timing of expenditures;” and (3) “appear[ ] viable and over a period of no less than two years of operations provide[ ] for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school.” (5 CCR § 11967.5.1, subd. (c)(3)(B).)

The Petition’s budget fails to provide detail in several critical areas, including special education. Although the Charter School’s 2015-2016 budget identifies approximately \$153,000 in state special education revenues, the budget fails to specify where the Charter School makes corresponding expenditures equal to the total revenues received for this category. (Three Year Budget.) The budget does provide a single line-item where approximately \$25,300 in “Special Education Home Office Charges” are given to Petitioners for unspecified reasons, however, there is over \$127,000 that remains

unaccounted. (Three Year Budget.) The Petition does not provide the required specificity as to its budget because to fails to explain on how the Charter School intends to spend the state special education revenues.

Another budgetary line-item that lacks specificity is the revenue account titled “Other Federal”. Petitioners project “Other Federal” revenues in the amount of \$350,000 in the Charter School’s first year of operation. (Three Year Budget.) This amount accounts for more than 10% of the Charter School’s budget and yet there is no explanation of what the source is for this revenue or whether there are any restrictions on how this revenue may be spent. This revenue source *may* be a reference to federal charter school start up grant funding. However, Petitioners do not identify the source of this “Other Federal” revenue. Without the \$350,000 in “Other Federal” revenue, the Charter School would not be able to close the 2015-2016 fiscal year with a positive cash balance, making this revenue source a critical part of the Charter School’s first year budget. (2015-2016 Cash Flow.)

Additionally, the Petition contemplates a loan from Petitioners’ Home Office to the Charter School in the amount of \$400,000 for cash flow purposes. This loan is critical to the Charter School’s ability to have a positive cash balance on a month to month basis as well as at year end. Without this nearly half-a-million dollar loan, the Charter School would not be fiscally solvent. However, Petitioners do not provide any detail about the terms of this loan, or whether Petitioners’ Home Office could sustain the temporary transfer of these funds to the Charter School.

Petitioners have also filed another charter petition with the District seeking the establishment of a school (grades 6 through 12) that is also scheduled to receive a loan from Petitioners’ Home Office ranging from \$425,000 to \$500,000. If both petitions were granted, Petitioners’ Home Office would be loaning more than \$800,000 to two new charter schools in the District. The Petition does not provide any detail on how the Home Office would be impacted by these loans. Petitioners’ fiscal solvency cannot be evaluated without information regarding the terms and condition of these loans, as well as budget documents detailing the finances of Petitioners’ Home Office.

C. The Petition Presents an Inadequate Plan for English Language Learners.

According to the California Department of Education, charter schools are subject to all federal requirements and specific state requirements established for English Language Learner (“ELL”) programs. Program reviews for charter school, just as for other public schools, are conducted under the State’s Categorical Program Monitoring Process. (See <http://www.cde.ca.gov/sp/cs/re/qandasec4mar04.asp#Q1>.) At a minimum, the Petition should identify specific assessments, a consistent curriculum, and a schedule for monitoring student progress in reaching English proficiency.

Petition describes a Parental Exception Waiver, whereby parents can remove their students from an ELL classroom. (Appendix IV.) However, Petition lacks a description of either the language, or the method of instruction to be offered for students who have effectively waived out of the Mainstream English Program. Without more, it is unclear as to whether the Charter school can properly implement their program for ELL.

D. The Petition is not compliant with the Brown Act.

The Petition states that the Charter School shall “[c]omply with the Ralph M. Brown Act.” (p. 11.) The purpose of the Brown Act (Gov. Code, §§ 54590, et seq.), is to ensure that agencies take actions “openly

and that their deliberations be conducted openly” and to ensure that the public remains informed about public affairs. (Gov. Code, § 54590.) However, the Petition presents numerous instances whereby the Charter School’s practices are inconsistent with the Brown Act.

Providing the members of the governing board, as well as the public, with notice of regular and special meetings is an essential requirement of the Brown Act. “Every notice for a special meeting shall provide an opportunity for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.” (Gov. Code, § 54594.3, subd. (a).)

The Petition does not ensure that members of the public receive proper notice under the Brown Act. In order to hold a special meeting consistent with the Brown Act, an agency must,

[D]eliver written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency’s Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice.

(Gov. Code, § 54596, subd. (a).)

The Petition does not ensure that notice of the Charter School Board’s meetings are actually received as required by the Brown Act. The Petition states that the Charter School’s Board may hold special meetings “only after twenty-four (24) hours notice is given to each Director and to the public ... .” (Appendix VIII, § 6.4, para. (a).) However, the Petition defines its process for notice in a manner that is inconsistent with the Brown Act. The Petition states that, “Notice by mail or email shall be deemed received at the time a properly addressed written notice is deposited in the United States mail, postage prepaid.” (Appendix VIII, § 6.4, para. (c).) However, deeming notice received upon mailing is improper because it effectively defeats the purpose of a notice requirement. Simply dropping a written notice into the U.S. Mail, which may take 2-3 days for delivery, does not legally comply with the Brown Act regarding meetings to take place within 24 hours. The process set forth in the Petition for notifying the public also fails to ensure that the public receives actual notice of the special meeting in any meaningful manner. As a result, this practice is likely to diminish parental participation, and is not reasonably calculated to fulfill the Brown Act’s notice requirement.

Regarding special meetings, the Petition has no mention of whether the Charter School will provide the local media with notification of a special meeting as required under the Brown Act. Without such a process, the Petition is out of compliance with the Brown Act.

The Brown Act defines a “meeting” as “any congregation *of a majority of the members* of a legislative body at the same time and location... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” (Gov. Code, § 54592.2, subd. (a).) Despite this rule, the Petition allows the Charter School to delegate “all authority of the [Charter School’s] Board in the management and business affairs of the Corporation...” to an Executive Committee, which is comprised of two or more Directors and a Chairperson. (Appendix VIII, § 8.2.) Staff has concerns about the concentration of such broad authority in a committee that is small as three members and which stands apart from the Charter School’s Board of Directors.

E. The Petition's Discussion Regarding the Transitional Kindergarten Program Lacks Specificity.

In addition to a traditional kindergarten class, Petitioners intend to offer transitional kindergarten program. "The Charter School will also offer transitional kindergarten and comply with all applicable requirements regarding transitional kindergarten." (p. 21.) However, the Petition offers no details about this program. The Petition fails to describe the curriculum, the associated costs and expenditures, and the staffing levels and qualifications required for those involved with the program.

Petition also fails to describe how the introduction of a transitional kindergarten program will affect the initial enrollment numbers. Petition proposes an initial enrollment of 312 students, with 48 students in each of the K, 1st, 2nd, and 3rd grades, and enrollment of 60 students in each of the 4th and 5th grades. (Appendix XIV.) It is unclear whether the transitional kindergarten students will count towards the 48 students in kindergarten, or whether an entirely different enrollment number is contemplated.

F. The Petitioners Present an Inadequate Plan to Meet the Needs of Foster Youth.

As a part of the new Local Control Funding Formula, the Petition must describe how the Charter School will achieve each of the eight state priorities listed in Education Code section 52060 subdivision (d). More specifically, the Petition must provide how each enumerated subgroup of pupils, including foster youth, will achieve each state priority. (Ed. Code, § 52052, subd. (a)(2)(A-E).)

The Petition fails to describe how the Charter School will address the needs of foster youth. In fact, the Petition in its entirety fails to mention foster youth at all. The Petition fails to detail any strategies, curriculum, or support aimed at helping the foster youth achieve each state priority.

G. The Petition's Discussion Regarding the Summer Technology Program Lacks Specificity.

In addition to a traditional school year, Petitioners intend to offer a Summer Boot Camp that focuses on technology issues. The Petition states that, "In order to effectively prepare students for an immersive technological environment, we aim to offer students a summer technology boot camp in which students will learn the basics around computer usage and safety, keyboarding skills, foundational information about Google Apps for Education, and how to access their work from home." (p. 26.) However, the Petition provides no further detail about this program. The Petition does not explain how many students will be enrolled in the Summer Boot Camp, or how many teachers will participate in the camp. The Petition fails to address how long the boot camp will last, or provide the curriculum that the teachers will be following.

H. Petitioners Present an Inadequate Plan for Students with Emotional Challenges.

The Petition states, "Aspire's multi-tiered, trauma-informed approach to supporting students' mental health and behavioral needs will ensure that these challenges are identified early and often." (p. 24.) Petitioners' primary method for addressing the mental health and behavioral needs of students is the formation of groups such as the "Grade Level Team (GLT)". The Petition states, "For students who are experiencing behavioral challenges, the GLT may work to create an individualized Behavior Map and/or Behavior Contract. Behavioral goals will be developed and assessed over time to determine if students are ready to return to [lower levels of assessment]." (p. 24.) However, the Petition lacks discussion on which personnel will constitute the GLT, or what training and qualifications will be required to ensure the proper identification and assessment of students with mental health and behavioral needs.

The Petition goes on to state, “It is our aim to have a Spanish-speaking, on-site mental health provider who will be able to work with individual students and families in need of mental health support, while other students may be referred to quality mental health providers within the community.” (p. 25.) The Petition does not indicate whether the “Spanish-speaking, on-site mental health provider” would be an employee of the Charter School, a volunteer or a professional from another entity. The Petition also does not state the type of qualifications this position must have or costs associated with this position. Petitioners do not address whether similar services will be available to students who speak neither English nor Spanish.

It is also unclear whether Petitioners intend to take responsibility for students struggling with mental health and behavioral issues to provide services at no cost or, if they are simply referring such students to services they may not necessarily be able to afford.

### **Finding 2: The Petition Does Not Contain Reasonably Comprehensive Descriptions of Certain Required Elements**

The Petition serves as Petitioners proposal for the Charter School’s establishment and operation. As such, 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)(A-P). The following elements do not meet this standard due to incomplete or inadequate information, which in some instances contradict the requirements of the law:

- A. The Petition lacks a clear and consistent expulsion policy.
- B. The Petition lacks a description of how the Charter School will outreach to students with disabilities.
- C. The Petition fails to demonstrate an understanding of Richmond’s racial and ethnic diversity.
- D. The Petition does not adequately describe a clear governance structure that will encourage parental participation.
- E. The Petition lacks a reasonably comprehensive description of individuals to be employed by the Charter School.
- F. The Petition does not provide a reasonably comprehensive description of the health and safety procedures.
- G. The Petition does not provide a reasonably comprehensive description of the dispute resolution process.

#### **A. The Petition Lacks a Clear and Consistent Expulsion Policy.**

The Petition’s expulsion policy is inconsistent and unclear. In one instance, the Petition states that “A student may be expelled by the Aspire Administrative Panel.” (p. 102.) However, this statement is later contradicted where the Petition states, “The Aspire Administrative Panel may *recommend* expulsion of any student found to have committed a suspendable or expellable offense.” (p. 102, emphasis added.) It



is unclear whether the Aspire Administrative Panel (“Panel”) has the authority to expel students or may solely recommend an expulsion.

There is also confusion regarding the Charter School’s expulsion procedures. The Petition lists certain offenses that require a “second finding of fact.” (p. 104.) However, the Petition fails to provide a comprehensive description as to what constitutes a secondary finding of fact.

The Petition is also unclear as to readmission of previously expelled students. In describing the readmission process, the Petition states “there is no guarantee of re-enrollment to the expelling school (or a partner school), even if the rehabilitation plan is met.” (p. 102.) However, this statement is later contradicted where Petition states “If a student has met all terms, the student is re-admitted [. . .]” (p. 103.) It is unclear whether a student is guaranteed readmission when he/she meets all of the terms of a rehabilitation plan, or if Charter School offers no guarantee of re-enrollment, even if the terms of a rehabilitation plan have been met. The policies as provided in the Petition are inadequate and do not provide parents proper notice as to what the accurate readmission process is for their student.

**B. The Petition Fails to Demonstrate an Understanding of Richmond’s Racial and Ethnic Diversity.**

Staff has serious concerns regarding Petitioners’ discussion of the racial and ethnic diversity of Richmond. Petitioners assert that they “selected Richmond as the location for this new school because Richmond has a high need population, a high percentage of FRL students, and a lack of high-performing schools.” (p. 6.) While the Petition discusses the racial and ethnic demographics of the District, Petitioners fail to demonstrate an understanding of the racial and ethnic demographics of the Richmond community they specifically target. Without a clear understanding of Richmond’s racial and ethnic makeup, it is uncertain whether the Charter School will be able to strive for, obtain, and ultimately maintain a racial and ethnic balance that is reflective of the Richmond community.

**C. The Petition Lacks a Description of how the Charter School will Outreach to Students with Disabilities.**

Staff has concerns about the Charter School’s outreach to, and recruitment of students with disabilities. According to the U.S. Department of Education, Office for Civil Rights, charter schools should “recruit [students] from all segments of the community served by the school, including *students with disabilities* and students of all races, colors and national origins.” (United States Department of Education’s Office for Civil Rights, Applying Federal Civil Rights Laws to Public Charter Schools (May 2000), <<https://www2.ed.gov/offices/OCR/archives/pdf/charter.pdf>> [as of Oct. 21, 2014], emphasis added.) The Petition does mention a basic outreach plan aimed to “achieve a racially and ethnically diverse student population” (p. 88.) reflective of the District, however, the Petition is silent with regard to outreach strategies for the recruitment of students with disabilities.

**D. The Petition Does Not Adequately Describe a Clear Governance Structure that will Encourage Parental Participation.**

The Petition must include a reasonably comprehensive description of, “the governance structure of the school, including, but not limited to, the process to be followed by the school to *ensure* parental involvement.” (Ed. Code, § 47605, subd. (b)(5)(D), emphasis added.) In the case of the District, parents become involved in the decision making process by participating in the District’s Board meetings which are regularly held within the District’s boundaries for the convenience of the parents

and the public at large. However, the Petition does not offer similar convenient opportunities on a regular basis. The Petition states that the, “Meetings shall be conducted at the principal office of the Corporation. The Board of Directors may also designate that a meeting be held in any place within California ... .” (Appendix VIII, §6.2.) Because the Charter School’s corporate principal office is located in Oakland (Appendix VIII, § 1.1), the Charter School’s Board will likely meet in locations outside of the District’s boundaries on a regular basis. Given the inconvenience of securing transportation for travel outside of the District boundaries for many District families, out-of-District Board meetings will likely dissuade parental involvement rather than encourage it.

Additionally, the Petition presents a confusing and unclear governance structure. While the Petition describes the duties and roles of the Charter School’s Board, the Petition also mentions several other positions throughout, without explaining the roles or duties for these positions. The positions which lack description include, but are not limited to:

- District Superintendent (Appendix IX)
- President (Appendix VIII)
- Director of Expanded Legal Positions (Appendix VIII)
- Director of School Support and Improvement and Sustainability (Appendix VIII)

Without properly delineating the roles, and duties of these referenced positions, parents are not afforded a clear and reasonably comprehensive description of the Charter School’s governance structure.

Education Code section 47604, subdivision (b) entitles the District to appoint one representative to the Charter School’s governing board. The right to appoint the District’s representative is at the sole discretion of the District’s Governing Board. However, the Petition inappropriately asserts that the Charter School’s Board of Directors retains the power select and remove members of the Board, which would include the District’s representative. The Petition states, “Any Director may be removed, with or without cause, by a vote of the majority of the entire Board of Directors... .” (Appendix VIII, § 5.3, para. (e), emphasis added.) The Petition also states, “Subsequent Directors shall be elected by a majority vote of the Directors at each Annual Meeting, including the vote(s) of any Director whose term of office expires with that meeting.” (Appendix VIII, § 5.3, para. (a).) Any requirement that the District’s representative must be vetted by, or can be removed by, the Charter School is an impermissible limitation on the District’s right to appoint its representative.

E. The Petition Lacks a Reasonably Comprehensive Description of the Individuals to be Employed by the Charter School.

Education Code section 47605 subdivision (b)(5)(E) requires the Petition to include a reasonably comprehensive description of the qualifications to be met by individuals to be employed by the school. The Regulations clarify that a petition should: identify the general qualifications for the various categories of employees that the charter school intends to hire; identify key positions and their specific qualifications; and specify requirements for employment. (5 CCR § 11967.5.1, subd. (f)(5).) The Petition only lists the qualifications for the Principal, Business Manager, and general education Teachers. (pp. 44-46.) However, the Petition fails to define the credentials or qualifications required for the “Cert. Support”, “Instructional Aides”, “Class. Support”, “Clerical/Office Staff” and “Class. Other” positions listed in the Charter School’s budget. (Appendix XIV.) The Petition also fails to define the credentials and qualifications required for special education teachers, para-professionals and other

special education staff (resource specialist, speech and language pathologist, occupational therapist, etc), which may be needed in support of providing required special education services.

Furthermore, the Petition states that the “Charter School may choose not to require credentials for teachers in non-core, noncollege-prep courses.” (p. 78.) While charter schools have “flexibility” for hiring instructors for noncore classes, the qualifications for these positions should nevertheless be clearly articulated. The Petition fails to provide such details.

F. The Petition does not Provide a Reasonably Comprehensive Description of the Health and Safety Procedures.

Petitioners are required to provide a comprehensive description of “procedures that the school will follow to ensure the health and safety of pupils and staff.” (Ed. Code, § 47605, subd. (b)(5)(F).) The Petition fails to meet this requirement, and specifically fails to provide a comprehensive description of how the Charter School will implement and oversee medication usage by students.

Petitioners states the school will adhere to the Education Code, California Department of Education guidance, and applicable law. Simply citing what is required by law is not a sufficient substitute for a plan on how the Charter School will address medication usage and administration. In the attached Student Family Handbook, Petitioners do describe policies regarding the required documentation and prescriptions for medication. Petition also states that “all medication must be dispensed through the office.” (Appendix XVII.) However, Petitioners fail to mention *who* can administer the medication, a crucial aspect of any school’s health and safety procedures.

G. The Petition Does Not Provide a Reasonably Comprehensive Description of the Dispute Resolution Process.

Education Code section 47605, subdivision (b)(5)(N) requires a petition to include “the procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.” However, the Petition’s dispute resolution process goes beyond establishing a process to resolve conflicts, and instead attempts to impose requirements upon the District. For instance, the Petition states, “[t]he staff and Governing Board members of Aspire agree to attempt to resolve all disputes between the district and Aspire regarding this charter pursuant to the terms of this section. Both will refrain from public commentary regarding any disputes until the matter has progressed through the dispute resolution process.” (p. 114.) The Petition is not a contract. Any suggestion that the Petition somehow requires the District to refrain from making public comments, or compels the District to act in a particular manner is misguided. Even assuming that these conditions and restrictions were acceptable to the District, they should be negotiated and set out in an operational Memorandum of Understanding between the parties, rather than in the Petition. Approving the Petition with these terms may inhibit the District’s ability to conduct effective oversight.

Recommendation:

District staff recommends approval of the Petition for a five year term without conditions, commencing with the 2015-2016 school year and expiring on June 30, 2020. In the event the Board approves the Petition, staff recommends that a separate memorandum of understanding that addresses the concerns regarding the Petition, as noted herein, be negotiated between the Petitioners and the Superintendent and/or his designee, for consideration by the Board at its meeting scheduled for January 21, 2015.

Notwithstanding the above, should the Board decide that the concerns raised herein warrant a denial of the Petition, the Board could base its denial 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(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 Governing 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 enumerated in the attached Staff Report as its own.

Fiscal Impact:  
None at this time.

\* **F.4 Aspire Richmond California College Preparatory Academy Charter School Staff and Counsel Findings of Fact, and Board Decision**

Comment:

On or about September 5, 2014, the West Contra Costa Unified School District (“District”) received a charter petition (“Petition”) from Aspire Public Schools (“Petitioners”). The Petition proposes establishing Aspire Richmond California College Preparatory Academy (“Charter School”) for a term of five years from July 1, 2015 through June 30, 2020. Pursuant to Education Code section 47605 subdivision (a)(1)(A), the Petition is signed by the requisite number of parents/legal guardians meaningfully interested in enrolling their students at the Charter School (Appendix I).

The District held a public hearing on October 1, 2014, so that the District’s Governing Board (“Board”) could consider the level of support for the Petition (Ed. Code, § 47605, subd. (b)). Petitioners are an established charter school operator, and support for the Petition among the District’s teachers, employees and parents appeared to be split.

District staff reviewed the petition, then provided written feedback on all elements including the proposed educational program, fiscal and governance structures, student admissions and discipline, labor and personnel issues, facilities and legal issues. The review team from the District staff included: Steve Collins, Director of Special Education, Cheryl Cotton, Director of Human Resources, Linda Delgado, Coordinator of Educational Services, Phil Gonsalves, Director for Mathematics Instruction, Mimi Melodia, Coordinator for English Language Development, Lyn Potter, Director for Educational Services, Daniela Parasidis, Director of Business Services, and Mehdi Rizvi, Principal Accountant.

District staff has identified concerns within the Petition, including, but not limited to, the Charter School’s plans for facilities and projected finances and believes that those deficiencies could warrant a denial of the Petition. However, staff finds its concerns are relatively minor when compared with the legislative intent of the Charter Schools Act “that charter schools are and should become an integral part

of the California educational system and that establishment of charter schools should be encouraged.” (Ed. Code, § 47605, subd. (b)).

In sum, District staff recommends that the Board approve the Petition for the establishment of the Charter School without conditions for a five year term, commencing with the 2015-2016 school year and expiring on June 30, 2020. In the event the Board approves the Petition, District staff also recommends that a separate memorandum of understanding that addresses the concerns regarding the Petition, as noted herein, be negotiated between the Petitioners and the Superintendent and/or his designee, for consideration by the Board at its meeting scheduled for January 21, 2015.

Notwithstanding the above, if after review of the Petition and the discussion herein the Board wishes to deny the Petition, the Board may base its denial on the findings of fact set forth below. Please note that these findings of fact have been grouped for convenience under the grounds for denial of a charter petition, which are also discussed below. However, certain findings of fact may support more than one ground for denial.

### **Proposed Findings of Fact**

#### **Finding 1: The Petitioners are 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.

Based upon the information provided in the Petition, the Petitioners are demonstrably unlikely to successfully implement the educational program for the following reasons:

- I. The Petition presents an inadequate plan for facilities.
- J. The Petition presents an inadequate financial plan for the proposed Charter School.
- K. The Petition over relies on community colleges to provide class options for older students.
- L. The Petition imposes inappropriate student fees.
- M. The Petition is not compliant with the Brown Act.
- N. The Petition presents an inadequate plan for intra-Aspire transfers.
- O. The Petition miscalculates the Charter School’s instructional day minutes.
- P. The Petition presents an inadequate plan for their proposed summer school instructional program.
- Q. Petitioners present an inadequate plan for students with emotional challenges.

R. The Petition presents an inadequate plan for English language learners.

A. The Petition Presents an Inadequate Plan for Facilities.

Education Code section 47605, subdivision (g) requires Petitioners to, "...provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be used by the school, [including] where the school intends to locate." The Petition fails to identify with any specificity where the school intends to locate. The Petition states that the Charter School is actively searching for a private facility "*yet to be identified* in Richmond, California." (p. 127, emphasis added.) Without more, the Petition simply lists an ambition, rather than a concrete plan specifying *where* the Charter School intends to locate and *how* the Charter School will attain a school facility.

The indefinite location of the proposed Charter School negatively impacts other key elements, such as the opening date for the Charter School. Although the Petition seeks a term from July 1, 2015 through June 30, 2020, the Petition conditions the start date of the academic year on the attainment of facilities, which Petitioners state is "yet to be identified." (p. 127.) According to the Petition, "[t]he opening date of The Charter School will *depend* on when Aspire is able to secure a suitable facility." (p. 127, emphasis added.) Even if the Petition is approved, the District has no assurances at this time as to when or where the Charter School will open.

B. The Petition Presents an Inadequate Financial Plan for the Proposed Charter School.

A charter petition should, at a minimum, include a first-year operational budget, start-up costs and cash flow, and financial projections for the first three years. (Ed. Code, § 47605, subd. (g).) Among other things, the operational budget must: (1) include "reasonable estimates of all anticipated revenues and expenditures necessary to operate the school;" (2) "demonstrate an understanding of the timing of the receipt of various revenues and their relationship to [the] timing of expenditures;" and (3) "appear[ ] viable and over a period of no less than two years of operations provide[ ] for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school." (5 CCR § 11967.5.1, subd. (c)(3)(B).)

Although the Petition provides the basic financial information for the Charter School, Petitioners propose two very different enrollment scenarios. Appendix XVa is entitled "School financials – enrollment scenario 1" ("Scenario 1"), and Appendix XVb is entitled "School financials – enrollment scenario 2" ("Scenario 2"). Scenario 1 lays out the more ambitious plan with an expected enrollment of 420 students in grades 6 through 12 during the Charter School's first year of operation. Approximately 39 staff members are projected under Scenario 1 with about 60 students enrolled per grade level. Scenario 1 also projects approximately \$4.6 million in revenue and \$4.1 million in expenses during the Charter School's first year.

Scenario 2 has an expected enrollment of 300 students in grades 6, 9, 10, 11 and 12 during the Charter School's first year of operation. Approximately 33 staff members are projected under Scenario 2 with about 60 students enrolled per grade level. Scenario 2 also projects approximately \$3.4 million in revenue and \$3.3 million in expenses during the Charter School's first year.

Scenarios 1 and 2 describe two separate charter school enrollment plans with significant differences in their staffing, revenues and expenses. It is not clear which of these enrollment plans would be

implemented because Petitioners predicate that decision on the type of facility they are able to secure. (p. 20.) The Petition fails to state when Petitioners will select a facility or when they will commit to an enrollment scenario. The alternative scenarios presented in the Petition lack clarity, and interfere with the District's ability to provide proper oversight.

Additionally, the Petition contemplates a loan from Petitioners' Home Office to the Charter School ranging from \$425,000 to \$500,000 for cash flow purposes. This loan is critical to the Charter School's ability to have a positive cash balance on a month to month basis as well as at year end. Without this nearly half-a-million dollar loan, the Charter School would not be fiscally solvent. However, Petitioners do not provide any detail about the terms of this loan, or whether Petitioners' Home Office could sustain the temporary transfer of these funds to the Charter School.

Petitioners have also filed another charter petition with the District seeking the establishment of an elementary school that is also scheduled to receive a loan from Petitioners' Home Office in the amount of \$400,000. If both petitions were granted, Petitioners' Home Office would be loaning more than \$800,000 to two new charter schools in the District. The Petition does not provide any detail on how the Home Office would be impacted by these loans. Petitioners' fiscal solvency cannot be evaluated without information regarding the terms and condition of these loans, as well as budget documents detailing the finances of Petitioners' Home Office.

#### C. The Petition Over Relies on Community Colleges to Provide Class Options for Older Students.

Petitioners' goal to prepare students for college is one that the District shares. However, the Petitioners appear to pass this responsibility largely on to the community colleges. The Petition's educational program requires students to enroll at a community college in order to complete their high school graduation requirements. (pp. 32, and 51-52.) The Petition states "[a]s an Early College High School, [the Charter School] aims to blend high school and college into a coherent educational program, making it possible for all students to earn two years of college credit at the same time they are earning a high school diploma ... ." (p. 31, emphasis added.) However, the Charter School's educational program does not "blend", rather, it depends on community colleges to complete the high school education of the Charter School's students.

According to the Charter School's sample class schedule, high school seniors in their second semester are expected to enroll in seven (7) classes, five (5) of which will be at a community college and one (1) as an internship. (p. 32.) In order to graduate, Charter School seniors must enroll at a community college in order to take: U.S. Government; CC English 1A; "CC AA Lit.,"; Statistics or Calculus; and Biology. (pp. 31-32, and 51-52.) The only class seniors are scheduled to take at the Charter School is their "Advisory" class. (p. 32.)

The Petitioners' plan to require students to attend community colleges in order to graduate high school, though well intentioned, presents concerns. Under this plan, the District would have little to no authority over how the community colleges fulfill the high school education of the Charter School students. Concerns regarding the community colleges' services may also go unresolved, or proceed too slowly to benefit affected graduating seniors. Another area of concern is the availability of community college classes to the Charter School's students. It is unclear whether any community college would offer the necessary classes to the Charter School's senior class in a manner that would allow the students to graduate in a timely fashion. The Petition is also unclear on whether any community college would grant priority enrollment to graduating high school seniors. The practice of requiring students to attend

community colleges in order to graduate may expose the Charter School to liability regarding the imposition of inappropriate student fees, which is addressed in greater detail below.

The lack of a comprehensive description regarding the relationship between the Charter School and the local community colleges, and the programs that might be available, makes the Petitioners demonstrably unlikely to successfully implement the educational program as set forth in the Petition.

D. The Petition Imposes Inappropriate Student Fees.

The Petition states that the Charter School has the following graduation requirements:

- Students *must* take at least 5 college courses [at community colleges], 15 college credits. College units may be equivalent to 50 or more high school credits and may be used to satisfy the academic elective or A-G requirements above. (¶) This may be waived by schools due to financial constraints, however student must still meet the academic elective requirement above.
- Students *must* apply to at least three (3) 4-year colleges or universities (*in addition to or instead of* community colleges).

(p. 52, emphasis added.) Although community colleges are generally offered as affordable postsecondary options to *college* students, *high school* students attending public schools, like the Charter School, are guaranteed a free education. (Cal. Const. Art. IX, § 5; Ed. Code, § 49011.) Requiring students to enroll in a community college, or apply to certain number of schools, triggers the need for students to pay for college applications, tuition, books and lab fees. Such requirements are contrary to state law. (Ed. Code, § 49010, subd. (b)(1).)

The Education Code also states, “[a] fee waiver policy shall not make a pupil fee permissible.” (Ed. Code, § 49010, subd. (b)(2).) The fact that the Charter School offers a fee waiver based on “financial constraints” does not remediate the Charter School’s practice of imposing inappropriate fees.

E. The Petition is not Compliant with the Brown Act.

The Petition states that the Charter School shall “[c]omply with the Ralph M. Brown Act.” (p. 10.) The purpose of the Brown Act (Gov. Code, §§ 54590, *et seq.*), is to ensure that agencies take actions “openly and that their deliberations be conducted openly” and to ensure that the public remains informed about public affairs. (Gov. Code, § 54590.) However, the Petition presents numerous instances whereby the Charter School’s practices are inconsistent with the Brown Act.

Providing the members of the governing board, as well as the public, with notice of regular and special meetings is an essential requirement of the Brown Act. “Every notice for a special meeting *shall provide an opportunity* for members of the public to directly address the legislative body concerning any item that has been described in the notice for the meeting before or during consideration of that item.” (Gov. Code, § 54594.3, subd. (a).)

The Petition does not ensure that members of the public receive proper notice under the Brown Act. In order to hold a special meeting consistent with the Brown Act, an agency must,



[D]eliver written notice to each member of the legislative body and to each local newspaper of general circulation and radio or television station requesting notice in writing and posting a notice on the local agency’s Internet Web site, if the local agency has one. The notice shall be delivered personally or by any other means and shall be received at least 24 hours before the time of the meeting as specified in the notice.

(Gov. Code, § 54596, subd. (a).)

The Petition does not ensure that notice of the Charter School Board’s meetings are actually received as required by the Brown Act. The Petition states that the Charter School’s Board may hold special meetings “only after twenty-four (24) hours notice is given to each Director and to the public ... .” (Appendix IX, § 6.4, para. (a).) However, the Petition defines its process for notice in a manner that is inconsistent with the Brown Act. The Petition states that, “Notice by mail or email shall be deemed received at the time a properly addressed written notice is deposited in the United States mail, postage prepaid.” (Appendix IX, § 6.4, para. (c).) However, deeming notice received upon mailing is improper because it effectively defeats the purpose of a notice requirement. Simply dropping a written notice into the U.S. Mail, which may take 2-3 days for delivery, does not legally comply with the Brown Act regarding meetings to take place within 24 hours. The process set forth in the Petition for notifying the public also fails to ensure that the public receives actual notice of the special meeting in any meaningful manner. As a result, this practice is likely to diminish parental participation, and is not reasonably calculated to fulfill the Brown Act’s notice requirement.

Regarding special meetings, the Petition has no mention of whether the Charter School will provide the local media with notification of a special meeting as required under the Brown Act. Without such a process, the Petition is out of compliance with the Brown Act.

The Brown Act defines a “meeting” as “any congregation *of a majority of the members* of a legislative body at the same time and location... to hear, discuss, deliberate, or take action on any item that is within the subject matter jurisdiction of the legislative body.” (Gov. Code, § 54592.2, subd. (a).) Despite this rule, the Petition allows the Charter School to delegate “all authority of the [Charter School’s] Board in the management and business affairs of the Corporation...” to an Executive Committee, which is comprised of two or more Directors and a Chairperson. (Appendix IX, § 8.2.) Staff has concerns about the concentration of such broad authority in a committee that is small as three members and which stands apart from the Charter School’s Board of Directors.

#### F. The Petition Presents an Inadequate Plan for Intra-Aspire Transfers.

Staff has serious concerns regarding the process for enrollment of students from the Berkeley, Aspire California College Preparatory Academy (“Berkeley”) into the proposed Charter School. According to the Petition, “pending approval of this charter petition, Aspire will open a new secondary school in Richmond in place of a high school we currently operate in Berkeley, Aspire California College Preparatory Academy.” (p. 7; emphasis added.) “[A]pproximately half of the high school students currently attending the 9-12 school in Berkeley commute from within the borders of WCCUSD and the majority come from the Richmond area.” (p. 7.)

Petitioners imply that the Aspire students previously enrolled in the Berkeley campus, and who reside in the Richmond area, will be attending the proposed Charter School. The Petition states, “It is important to Aspire that we are honor current Aspire families living in the Richmond area, as well as the new

families whom we are eager to serve and that we manage demand appropriately.” (p. 20.) However Petitioners fail to describe how these “current Aspire” students will be transferred, including, but not limited to, what preference, if any, they will be afforded in the case a public random drawing is necessary.

Petitioner’s do provide an “Intra-Aspire Transfer” policy in the attached Aspire Student Family Handbook (“Handbook”), however it is unclear as to whether this transfer policy applies. (Appendix XVIII.) The Handbook’s transfer policy is not applicable to the Charter School, unless the Petition has specific enabling language. According to the policy, students currently attending an Aspire School who wish to transfer, can do so by filling out an “Intra-Aspire Transfer Request.” (Appendix XVIII.) By filling out the request, students are provided “enrollment priority to transfer to an alternate Aspire campus (*if applicable, based on specifications of school’s charter*).” (Appendix XVIII; emphasis added.) By its own language, the Intra-Aspire Transfer policy does not apply to the proposed Charter School because the Petition lacks any enabling language that specifies that the Intra-Aspire Transfer Policy will apply.

Even if the Intra-Aspire Transfer policy were applicable, Petitioner’s failure to provide how these transfer requests will align with their enrollment preferences creates an unclear and inadequate plan. The Petition establishes enrollment preferences in the case a public random drawing becomes necessary. (p. 93.) Under the stated policy, preferences will be given as follows:

- Children of Aspire Regular, Full-time employees
- Siblings of students already admitted to the Charter School
- Children of founding families of the Charter School
- Students who are eligible for free or reduced price meals
- Children residing within the District
- All other students who reside in the state of California

(p. 93.) Nowhere in this policy is there mention of intra-Aspire transfer students. There is also no mention of how much preference will be given to such students. Note that this is a new school, and these are not “returning” students with admissions priority. If they were given priority as “returning” students, such a practice would be ripe for a legal challenge from students who are not provided admissions. As a result, it is unclear how Petitioners intend to implement the Intra-Aspire procedure and enroll students from the Berkeley campus into the proposed Charter School. Without more, the Petition presents an inadequate plan for transfers between Aspire Charter Schools.

#### G. The Petition Miscalculates the Charter School’s Instructional Day Minutes.

Petitioners boldly state that, “Aspire provides roughly 15% more *learning time* for students than traditional public schools, and uses time more effectively during the year and day to maximize in-depth learning. [...] Aspire schools have, on average, a *7.5 hour school day* for grades 1-12. In other words, Aspire students receive about *one hour more* instruction each day than students in traditional public schools. A sample school bell schedule is attached in Appendix II.” (p. 27, emphasis added.) However, a close review of the sample bell schedule provided by Petitioners reveals that Petitioners have miscalculated the length of their average school day. When Petitioners’ average school day is adjusted to reflect only the instructional minutes given to students, the Charter School’s average school day is actually shorter than promised by approximately an hour.

The sample bell schedule states that students in grades 6-12 begin the day at 8:00 a.m. and end at 3:30 p.m., for total of 7.5 hours for the entire day. (Appendix II.) However, when the time allocated for lunch and passing between periods is calculated, using the times listed in the Petition, the instructional minutes for students in grades 6-12 is actually 6 hours and 35 minutes per day, or nearly an hour less instructional time than what Petitioners promise. Although Petitioners boast of having more instructional time than traditional schools, the reality is Petitioners offer nearly identical amounts of instructional time.

#### H. The Petition Presents an Inadequate Plan for their Proposed Summer School Instructional Program

The Petition states that the Charter School may require “summer school instructional programs for students in grades 7-12 who do not demonstrate sufficient progress towards passing the exit examination.” (p. 51.) However, the Petition fails to detail any specifics of this proposed program. It is unclear whether Petitioners plan on enrolling their students in the District’s already impacted summer programs or if Petitioners aim to run their own summer school program. If Petitioners intend to run their own program, they fail to describe the essential elements of the program including, but not limited to;

- Curriculum for each grade level
- Staffing required for the program
- Number of students expected to enroll
- Where the classes will be held
- Costs and expenditures

Without a detailed description of the aforementioned aspects of a summer educational program, Board cannot be, and is not, assured that Petitioners’ summer school program will be successful.

#### I. Petitioners Present an Inadequate Plan for Students with Emotional Challenges.

The Petition states, “Aspire’s multi-tiered, trauma-informed approach to supporting students’ mental health and behavioral needs will ensure that these challenges are identified early and often.” (p. 24.) Petitioners’ primary method for addressing the mental health and behavioral needs of students is the formation of groups such as the “Grade Level Team (GLT)”. The Petition states, “For students who are experiencing behavioral challenges, the GLT may work to create an individualized Behavior Map and/or Behavior Contract. Behavioral goals will be developed and assessed over time to determine if students are ready to return to [lower levels of assessment].” (p. 24.) However, the Petition lacks discussion on which personnel will constitute the GLT, or what training and qualifications will be required to ensure the proper identification and assessment of students with mental health and behavioral needs.

The Petition goes on to state, “It is our aim to have a Spanish-speaking, on-site mental health provider who will be able to work with individual students and families in need of mental health support, while other students may be referred to quality mental health providers within the community.” (p. 25.) The Petition does not indicate whether the “Spanish-speaking, on-site mental health provider” would be an employee of the Charter School, a volunteer or a professional from another entity. The Petition also does not state the type of qualifications this position must have or costs associated with this position. Petitioners do not address whether similar services will be available to students who speak neither English nor Spanish.

It is also unclear whether Petitioners intend to take responsibility for students struggling with mental health and behavioral issues to provide services at no cost, or if they are simply referring such students to services they may not necessarily be able to afford.

**J. The Petition Presents an Inadequate Plan for English Language Learners.**

According to the California Department of Education, charter schools are subject to all federal requirements and specific state requirements established for English Language Learner (“ELL”) programs. Program reviews for charter school, just as for other public schools, are conducted under the State’s Categorical Program Monitoring Process. (See <http://www.cde.ca.gov/sp/cs/re/qandasec4mar04.asp#Q1>.) At a minimum, the Petition should identify specific assessments, a consistent curriculum, and a schedule for monitoring student progress in reaching English proficiency.

Petition describes a Parental Exception Waiver, whereby parents can remove their students from an ELL classroom. (Appendix V.) However, Petition lacks a description of either the language, or the method of instruction to be offered for students who have effectively waived out of the Mainstream English Program. Without more, it is unclear as to whether the Charter school can properly implement their program for ELL.

**Finding 2: The Petition Does Not Contain Reasonably Comprehensive Descriptions of Certain Required Elements**

The Petition serves as Petitioners’ proposal for the Charter School’s establishment and operation. As such, 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)(A-P). The following elements do not meet this standard due to incomplete or inadequate information, which in some instances contradict the requirements of the law:

- A. The Petition lacks a clear and consistent expulsion policy.
- B. The Petition fails to demonstrate an understanding of Richmond’s racial and ethnic diversity.
- C. The Petition lacks a description of how the Charter School will outreach to students with disabilities.
- D. The Petition does not adequately describe a clear governance structure that will encourage parental participation.
- E. The Petition lacks a reasonably comprehensive description of individuals to be employed by the Charter School.
- F. The Petition does not provide a reasonably comprehensive description of the health and safety procedures.
- G. The Petition does not provide a reasonably comprehensive description of the dispute resolution process.

H. The Petition Lacks a Clear and Consistent Expulsion Policy.

The Petition’s expulsion policy is inconsistent and unclear. In one instance, the Petition states that “A student may be expelled by the Aspire Administrative Panel.” (p. 105.) However, this statement is later contradicted where the Petition states, “The Aspire Administrative Panel may *recommend* expulsion of any student found to have committed a suspendable or expellable offense.” (p. 105, emphasis added.) It is unclear whether the Aspire Administrative Panel (“Panel”) has the authority to expel students or may solely recommend an expulsion.

There is also confusion regarding the Charter School’s expulsion procedures. The Petition lists certain offenses that require a “second finding of fact.” (p. 107.) However, the Petition fails to provide a comprehensive description as to what constitutes a secondary finding of fact.

The Petition is also unclear as to readmission of previously expelled students. In describing the readmission process, the Petition states “there is no guarantee of re-enrollment to the expelling school (or a partner school), even if the rehabilitation plan is met.” (p. 105.) However, this statement is later contradicted where Petition states “If a student has met all terms, the student is re-admitted [ . . . ]” (p. 106.) It is unclear whether a student is guaranteed readmission when he/she meets all of the terms of a rehabilitation plan, or if Charter School offers no guarantee of re-enrollment, even if the terms of a rehabilitation plan have been met. The policies as provided in the Petition are inadequate and do not provide parents proper notice as to what the accurate readmission process is for their student.

B. The Petition Fails to Demonstrate an Understanding of Richmond’s Racial and Ethnic Diversity.

Staff has serious concerns regarding Petitioners’ discussion of the racial and ethnic diversity of Richmond. Petitioners assert that they “selected Richmond as the location for this new school because Richmond has a high need population, a high percentage of FRL students, and a lack of high-performing schools.” (p. 7.) While the Petition discusses the racial and ethnic demographics of the District, Petitioners fail to demonstrate an understanding of the racial and ethnic demographics of the Richmond community they specifically target. Without a clear understanding of Richmond’s racial and ethnic makeup, it is uncertain whether the Charter School will be able to strive for, obtain, and ultimately maintain a racial and ethnic balance that is reflective of the Richmond community.

Additionally, Staff has concerns regarding the enrollment of ELL students. In the 2013-2014 school year, Aspire California College Preparatory Academy, Berkeley (“Berkeley”), the charter school that Petitioners propose to close down if this Petition is granted, had an ELL enrollment of only 5% of their student population. (p. 19.) In contrast, District high schools located in the Richmond area had a significantly higher enrollment of ELL students; Richmond High, 41%, Kennedy High, 35%, De Anza Senior High, 16%. (p. 19.) This discrepancy is concerning because nearly one-half of the students attending the Berkeley campus “commute from within the borders of WCCUSD and the majority come from the Richmond area.” (p. 7.) The Petitioners fail to provide an explanation as to why the Berkeley ELL enrollment is significantly lower than other schools in the Richmond area, even though a large portion of their students reside in the Richmond area. Berkeley’s enrollment numbers regarding ELL students do not reflect the numbers found in other public schools in Richmond.

C. The Petition Lacks a Description of how the Charter School will Outreach to Students with Disabilities.

Staff has concerns about the Charter School's outreach to, and recruitment of students with disabilities. According to the U.S. Department of Education, Office for Civil Rights, charter schools should "recruit [students] from all segments of the community served by the school, including *students with disabilities* and students of all races, colors and national origins." (United States Department of Education's Office for Civil Rights, Applying Federal Civil Rights Laws to Public Charter Schools (May 2000), <<https://www2.ed.gov/offices/OCR/archives/pdf/charter.pdf>> [as of Oct. 21, 2014], emphasis added.) As noted above, the Petition does mention a basic outreach plan aimed to "achieve a racially and ethnically diverse student population" reflective of the District, however, the Petition is silent with regard to outreach strategies for the recruitment of students with disabilities (p. 91.).

D. The Petition Does Not Adequately Describe a Clear Governance Structure that will Encourage Parental Participation.

The Petition must include a reasonably comprehensive description of, "the governance structure of the school, including, but not limited to, the process to be followed by the school to *ensure* parental involvement." (Ed. Code, § 47605, subd. (b)(5)(D), emphasis added.) In the case of the District, parents become involved in the decision making process by participating in the District's Board meetings which are regularly held within the District's boundaries for the convenience of the parents and the public at large. However, the Petition does not offer similar convenient opportunities on a regular basis. The Petition states that the, "Meetings shall be conducted at the principal office of the Corporation. The Board of Directors may also designate that a meeting be held in any place within California ... ." (Appendix IX, §6.2.) Because the Charter School's corporate principal office is located in Oakland (Appendix IX, § 1.1), the Charter School's Board will likely meet in locations outside of the District's boundaries on a regular basis. Given the inconvenience of securing transportation for travel outside of the District boundaries for many District families, out-of-District Board meetings will likely dissuade parental involvement rather than encourage it.

Additionally, the Petition presents a confusing and unclear governance structure. While the Petition describes the duties and roles of the Charter School's Board, the Petition also mentions several other positions throughout, without explaining the roles or duties for these positions. The positions which lack description include, but are not limited to:

- District Superintendent (Appendix X)
- President (Appendix IX)
- Director of Expanded Legal Positions (Appendix IX)
- Director of School Support and Improvement and Sustainability (Appendix IX)

Without properly delineating the roles, and duties of these referenced positions, parents are not afforded a clear and reasonably comprehensive description of the Charter School's governance structure.

Education Code section 47604, subdivision (b) entitles the District to appoint one representative to the Charter School's governing board. The right to appoint the District's representative is at the sole discretion of the District's Governing Board. However, the Petition inappropriately asserts that the Charter School's Board of Directors retains the power select and remove members of the Board, which would include the District's representative. The Petition states, "Any Director may be removed, with or without cause, by a vote of the majority of the entire Board of Directors... ." (Appendix IX, § 5.3, para. (e), emphasis added.) The Petition also states, "Subsequent Directors shall be elected by a majority vote of the Directors at each Annual Meeting, including the vote(s) of any Director whose term of office

expires with that meeting.” (Appendix IX, § 5.3, para. (a).) Any requirement that the District’s representative must be vetted by, or can be removed by, the Charter School is an impermissible limitation on the District’s right to appoint its representative.

E. The Petition Lacks a Reasonably Comprehensive Description of Individuals to be Employed by the Charter School.

Education Code section 47605 subdivision (b)(5)(E) requires the Petition to include a reasonably comprehensive description of the qualifications to be met by individuals to be employed by the school. The Regulations clarify that a petition should: identify the general qualifications for the various categories of employees that the charter school intends to hire; identify key positions and their specific qualifications; and specify requirements for employment. (5 CCR § 11967.5.1, subd. (f)(5).) The Petition only lists the qualifications for the Principal, Business Manager, and general education Teachers. (pp. 83-85.) However, the Petition fails to define the credentials or qualifications required for the “Cert. Support”, “Instructional Aides”, “Class. Support”, “Clerical/Office Staff” and “Class. Other” positions listed in the Charter School’s budget. (Appendix XVa.) The Petition also fails to define the credentials and qualifications required for special education teachers, para-professionals and other special education staff (resource specialist, speech and language pathologist, occupational therapist, etc), which may be needed in support of providing required special education services.

Furthermore, the Petition states that the “Charter School may choose not to require credentials for teachers in non-core, noncollege-prep courses.” (p. 83.) While charter schools have “flexibility” for hiring instructors for noncore classes, the qualifications for these positions should nevertheless be clearly articulated. The Petition fails to provide such details.

F. The Petition Does Not Provide a Reasonably Comprehensive Description of the Health and Safety Procedures.

Petitioners are required to provide a comprehensive description of “procedures that the school will follow to ensure the health and safety of pupils and staff.” (Ed. Code, § 47605, subd. (b)(5)(F).) The Petition fails to meet this requirement, and specifically fails to provide a comprehensive description of how the Charter School will implement and oversee medication usage by students.

Petitioners states the school will adhere to the Education Code, California Department of Education guidance, and applicable law. (p. 88.) Simply citing what is required by law is not a sufficient substitute for a plan on how the Charter School will address medication usage and administration. In the attached Student Family Handbook, Petitioners do describe policies regarding the required documentation and prescriptions for medication. Petition also states that “all medication must be dispensed through the office.” (Appendix XVIII.) However, Petitioners fail to mention *who* can administer the medication, a crucial aspect of any school’s health and safety procedures.

G. The Petition Does Not Provide a Reasonably Comprehensive Description of the Dispute Resolution Process.

Education Code section 47605, subdivision (b)(5)(N) requires a petition to include “the procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.” However, the Petition’s dispute resolution process goes beyond establishing a process to resolve conflicts, and instead attempts to impose requirements upon the District. For

instance, the Petition states, “[t]he staff and Governing Board members of Aspire agree to attempt to resolve all disputes between the district and Aspire regarding this charter pursuant to the terms of this section. Both will refrain from public commentary regarding any disputes until the matter has progressed through the dispute resolution process.” (p. 117.) The Petition is not a contract. Any suggestion that the Petition somehow requires the District to refrain from making public comments, or compels the District to act in a particular manner is misguided. Even assuming that these conditions and restrictions were acceptable to the District, they should be negotiated and set out in an operational Memorandum of Understanding between the parties, rather than in the Petition. Approving the Petition with these terms may inhibit the District’s ability to conduct effective oversight.

Recommendation:

District staff recommends approval of the Petition for a five year term without conditions, commencing with the 2015-2016 school year and expiring on June 30, 2020. In the event the Board approves the Petition, staff recommends that a separate memorandum of understanding that addresses the concerns regarding the Petition, as noted herein, be negotiated between the Petitioners and the Superintendent and/or his designee, for consideration by the Board at its meeting scheduled for January 21, 2015.

Notwithstanding the above, should the Board decide that the concerns raised herein warrant a denial of the Petition, the Board could base its denial 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(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 Governing 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 enumerated in the attached Staff Report as its own.

Fiscal Impact:

None at this time.

\* **F.5 John Henry High School Staff and Counsel Findings of Fact, and Board Decision**

Comment:

On or about September 5, 2014, the West Contra Costa Unified School District (“District”) received a charter petition (“Petition”) from Amethod Public School (“AMPS” or “Petitioners”) for the establishment of John Henry High School (“Charter School”). The Petitioners requested a five year term from July 1, 2015 through June 30, 2020. Pursuant to the Education Code, the District held a public hearing on October 15, 2014, so that the District’s Governing Board (“Board”) could consider the level of support for the Petition (Ed. Code, § 47605, subd. (b)).

District staff members who read and analyzed the petition included: Steve Collins, Director of Special Education, Cheryl Cotton, Director of Human Resources, Linda Delgado, Coordinator of Educational



Services, Phil Gonsalves, Director for Mathematics Instruction, Mimi Melodia, Coordinator for English Language Development, Sonja Neeley-Johnson, Director for Educational Services, Daniela Parasidis, Director of Business Services, and Mehdi Rizvi, Principal Accountant. Staff provided written feedback on all elements, including the proposed educational program, fiscal and governance structures, student admissions and discipline, labor and personnel issues, facilities and legal issues.

District staff has identified concerns within the Petition, which are described in detail below, and believes that those deficiencies could warrant a denial of the Petition. However, staff finds its concerns are relatively minor when compared with the legislative intent of the Charter Schools Act “that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged.” (Ed. Code, § 47605, subd. (b)).

In sum, District staff recommends that the Board approve the Petition for the establishment of the Charter School without conditions for a five year term, commencing with the 2015-2016 school year and expiring on June 30, 2020. In the event the Board approves the Petition, District staff also recommends that a separate memorandum of understanding that addresses the concerns regarding the Petition, as noted herein, be negotiated between the Petitioners and the Superintendent and/or his designee, for consideration by the Board at its meeting scheduled for January 21, 2015.

Notwithstanding the above, if after review of the Petition and the discussion herein the Board wishes to deny the Petition, the Board may base its denial on the findings of fact set forth below. Please note that these findings of fact have been grouped for convenience under the grounds for denial of a charter petition, which are also discussed below. However, certain findings of fact may support more than one ground for denial.

**Finding 1: The Petitioners are 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.

**A. The Petitioners are Demonstrably Unlikely to Enroll a Student Body Whose Diversity is 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 it “seeks to enroll a student body in grades ninth through twelve whose diversity represents the general population residing within the geographical boundaries of the district and community where the Charter School is to be located.” (Petition, page 18.) The Petition further states that the Charter School will make a “substantial effort to recruit the

underserved, low-income students in the school’s target service area of Richmond, CA.” (Id.) Notwithstanding these assurances, data supports that AMPS schools that are currently in operation are engaged in a trend where a large percentage of students enrolled in the schools are Hispanic or Latino, and the African American student population does not account for a significant percentage of enrollment.

According to the Petition, the African American student population in the District in 2012 was 22.7%, and the Hispanic or Latino population was 48.2%. (Petition, page 19.) According to the 2010 census conducted by the United States Census Bureau, 26.6% of the population in Richmond is African American. However, CDE “Dataquest” reports for RCA illustrate that, for the 2012-13 school year, 87.8% of RCA students were Hispanic or Latino, while only 11.1% were African American. The following school year, the percentage of African American students at RCA was even lower. Specifically, for the 2013-14 school year, 95.2% of RCA students were Hispanic or Latino, while only 2.7% were African American. From school year 2012-13 to school year 2013-14 RCA, without explanation, experienced a significant 8.4% decrease in its enrollment of African American students from one school year to the next.

Data regarding OCA and OCHS demonstrate a similar trend of high Hispanic or Latino student enrollment and very low enrollment of African American students. A five year summary of student enrollment data for Hispanic or Latino and African American subgroups for AMPS’s schools in Oakland is as follows:

**Oakland Charter Academy**

<b>School Year</b>	<b>% of Latino or Hispanic Students of Total Enrollment</b>	<b>% of African American Students of Total Enrollment</b>
2009-10	91.2	1.5
2010-11	91.0	2.8
2011-12	89.0	2.3
2012-13	68.9	2.5
2013-14	41.1	2.1

**Oakland Charter High School**

<b>School Year</b>	<b>% of Latino or Hispanic Students of Total Enrollment</b>	<b>% of African American Students of Total Enrollment</b>
2009-10	73.9	2.2
2010-11	70.2	4.1
2011-12	60.8	4.4
2012-13	61.3	2.2
2013-14	50	3.4

Further, the Petition states that “African American and Latino subgroups, which make up approximately 70% of the WCCUSD populations, are performing well below the academic achievement rate of the Asian and White populations.” (Petition, page 19.) A stated goal of the Petitioners’ education program is to “seek to address such gaps in performance for Richmond students.” (Petition, page 20.) The Petition states, with regard to RCA, that “specifically the Latino and low income subgroups have thrived within the AMPS model scoring at an API score above 800 over the years.” (Petition, page 20.) While

there is no question that AMPS has experienced great success with its Latino student population, the Petition offers no discussion with regard to the success of African American students at AMPS schools.

Moreover, the Petition contains a vague plan for the recruitment and marketing of students. For example, the Petition states that the Charter School will undertake recruitment activities such as “attending option fairs,” “meet with local Athletic Teams and leagues,” and “attend local community functions and fairs.” However, there are no specific fairs or meetings discussed. (Petition, page 98.) Similarly, there is no explanation as to what “Athletic Teams and leagues” the Charter School will meet or how those organizations will have an impact on the Charter School’s recruitment process. Overall, while the Petition assures the recruitment efforts of the Charter School will “target all populations within the area, regardless of race, disability or gender,” there is no specific discussion in the Petition as to how the Charter School will reach out to the African American community in its recruiting and marketing efforts. (Petition, page 97.)

Taken as a whole, the student enrollment data set forth above demonstrates a problem with the ability of AMPS to enroll, enroll and/or retain African American students amongst its student population. This fundamental flaw serves as evidence of the Charter School being demonstrably unlikely to implement its educational program in compliance with the legal requirement that the Charter School seeks 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 as described in the Petition.

**B. The Petitioners are Demonstrably Unlikely to Implement the Special Education Program as Described in the Petition.**

The Petition states that “all students will have access to the Charter School and no student shall be denied admission nor counseled out of the Charter School due to the nature, extent, or severity of his/her disability or due to the student’s request for, or actual need for, special education services.” (Petition, page 47.) The Petitioners also recognize its responsibility to “enroll and support students who can benefit from its programs...” (Petition, page 42.) Despite these assurances, the percentage of special education students served by existing AMPS schools operating within the District is not commensurate with the percentage of special education students enrolled in District schools.

Specifically, for the 2014-15 school year, the special education student enrollment at the District is 13.49%. The special education student enrollment data for RCA and BJE is summarized as follows:

<b>School</b>	<b>% of Special Education Students Served</b>	<b>Difference between % of Special Education Students Served in the District and % Served at charter school</b>
Benito Juarez Elementary	5.42 %	-8.07 %
Richmond Charter Academy	4.68 %	-8.63 %

While the Petition states that the Charter School “seeks to enroll a student body in grades ninth through twelve whose diversity represents the general population residing within the geographical boundaries of the district and community where the Charter School is to be located,” it is silent with regard to outreach strategies for the recruitment of students with disabilities. (Petition, page 18.) Further, the Petition does

not describe any student outcomes for the potentially significant subgroup of pupils with disabilities. (Petition, pages 62-64.)

According to the U.S. Department of Education, Office for Civil Rights, charter schools should “recruit [students] from all segments of the community served by the school, including *students with disabilities* and students of all races, colors and national origins.” (United States Department of Education’s Office for Civil Rights, Applying Federal Civil Rights Laws to Public Charter Schools (May 2000), <<https://www2.ed.gov/offices/OCR/archives/pdf/charter.pdf>> [as of Oct. 21, 2014]; emphasis added.)

Petitioners’ demonstrated trend of low special education student enrollment that is significantly less than the percentage of special education students served by the District, along with the Charter School’s lack of recruitment strategies for students with disabilities, raises concerns about the Charter School’s ability to seek, serve, and retain special education students in accordance with the law and the program for special education that is outlined in the Petition.

C. The Petition Presents an Inadequate Financial Plan for the Proposed Charter School.

A charter petition should, at a minimum, include a first-year operational budget, start-up costs and cash flow, and financial projections for the first three years. (Ed. Code, § 47605, subd. (g).) Among other things, the operational budget must: (1) include “reasonable estimates of all anticipated revenues and expenditures necessary to operate the school;” (2) “demonstrate an understanding of the timing of the receipt of various revenues and their relationship to [the] timing of expenditures;” and (3) “appear[ ] viable and over a period of no less than two years of operations provide[ ] for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school.” (5 CCR § 11967.5.1, subd. (c)(3)(B).)

Although the Petition provides the basic financial information for the Charter School, as outlined below, a number of concerns were noted regarding the financial documents the Charter School provided to the District.

i. Some Budget Assumptions Conflict with Information in the Petition and/or are Without Appropriate Explanation.

The number of FTEs assumed in the budget for the first five years of the Charter School’s operation as set forth on page 144 of the Appendix conflicts with the number of FTEs described in the Petition on page 126. Specifically:

- In 2016-17, the budget assumes 23 FTEs, yet the Petition states there will be 25 FTEs.
- In 2018-19, the budget assumes 30 FTEs, yet the Petition states there will be 32 FTEs.
- In 2019-20, the budget assumes 32 FTEs, yet the Petition states there will be 33 FTEs.

Similarly, there are discrepancies between the total number of teachers listed in the budget set forth on page 144 of the Appendix and with the number of teachers set forth in the Petition on page 126. Specifically:

- In 2017-18, the budget assumes 25 teachers, yet the Petition states there will be 22 teachers.
- In 2018-19, the budget assumes 23 teachers, yet the Petition states there will be 22 teachers.
- In 2019-20, the budget assumes 25 teachers, yet the Petition states there will be 23 teachers.

If the numbers stated in the budget are correct, it is noted that the budget assumes 25 teachers in 2017-18 and 23 teachers in 2018-19. There is no explanation provided regarding this reduction in FTE, which is odd, because the student population is projected to grow.

ii. There Are Concerns Regarding the Charter School’s Proposed Three Year Budget.

Concern exists with regard to some of the Charter School’s revenue projections. For example, the budget projects revenues for the SB740 facility grant. This facility grant is provided to schools that demonstrate eligibility of 70% of students for the Free and Reduced Meal Program. However, the Petition does not provide sufficient supporting data or documentation to support its projection for at least 70% Free and Reduced Meal Program students. Additionally, revenues for the Education Protection Account (“EPA”) increase from \$36,000 in 2015-16 to \$324,237 in 2016-17. There is no explanation provided for this large \$288,237 increase. Moreover, in 2015-16, Petitioners calculate EPA revenues at \$200/ADA. However, in 2016-17, Petitioners switched their methodology to calculate EPA revenue to be approximately 21% of the Charter School’s state aid. There is no explanation as to why the Petitioners switched their methodology in calculating this revenue.

In addition, rent costs are understated by \$60,000 in the Charter School’s first two years of operation. Rent costs in the budget have been increased on a per student basis. However, adding additional facility space for the increase in enrollment is not possible, and the Charter School will be required to lease a facility that is sufficient for 400 students (500 students if the Charter School achieves its 2020 enrollment target of 500 students). Thus, the estimate for rental costs should be based on the going rate for facilities that suit the capacity of the school, not on a per student basis.

iii. There is No Free and Reduced Lunch Program Noted in the Budget.

The Charter School assumes that 70% of its students will qualify for the Free and Reduced Lunch Program. (Petition, page 124.) However, the Petition states that the Charter School is not planning to offer a Free and Reduced Lunch Program at its school. (Petition, page 125.) There is an expectation that students are to bring their own lunch to school each day. While implementation of the Free and Reduced Lunch Program is not required by law, based on the demographics of the District, not offering the program could work to the detriment of children who cannot afford to bring healthy lunches with them to school each day. Further, failure to offer the Free and Reduced Lunch Program could impact the application pool and diversity of the Charter School. This would contradict Petitioner’s stated goal “to enroll a student body in grades ninth through twelve whose diversity represents the general population residing within the geographical boundaries of the district and community where the Charter School is to be located.” (Petition, page 18.)

iv. Accounts Payable Transactions Listed in the Budget Appear Incomplete.

There are no account payables included in the budget beyond June. However, the Petition contemplates providing programs over the summer months. Thus, it is unclear why the Charter School would not have to pay any staff during the months of July and August.

**Finding 2: The Petition Does Not Contain Reasonably Comprehensive Descriptions of Certain Required Elements**

The Petition serves as Petitioners' 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)(A-P). As set forth below, the Petition does not contain reasonably comprehensive descriptions of certain elements required by law.

A. The Petition Lacks a Reasonably Comprehensive Description of the Educational Program of the Charter School.

While the Petition mentions that the Charter School's curriculum will align with Common Core, the Petition does not specifically define or identify any specific curriculum that the Charter School will use for the core subjects of reading, writing, mathematics, history/social science, and science. (Petition, page 17.)

B. The Educational Program Set Forth in the Petition Does Not Include a Description of the Annual Goals For Each Required Subgroup of Pupils.

As a part of the new Local Control Funding Formula, the Petition must describe how the Charter School will achieve each of the eight state priorities listed in Education Code section 52060, subdivision (d), including how achievement will be met by each subgroup identified in Education Code section 52052, subdivision (a)(2). (Ed. Code § 47605, subd. (b)(5)(B).) The subgroups identified in Education Code section 52052, subdivision (a)(2) are as follows: (A) Ethnic subgroups; (B) Socioeconomically disadvantaged pupils; (C) English learners; (D) Pupils with disabilities; and (E) Foster youth.

While the Petition contains a description of how the Charter School intends to meet annual goals for all pupils, with specific activities that address state and local priorities identified in Education Code section 52060, subdivision (d), the Petition fails to include a description of how achievement will be met by each subgroup identified above. Further, the Petition fails to make any mention of foster youth, whatsoever.

C. The Petition Does Not Provide a Reasonably Comprehensive Description of the Governance Structure of the Charter School.

According to Education Code section 47605, subdivision (b)(5)(D), a charter petition must include a reasonably comprehensive description of, "the governance structure of the school..." However, the governance structure proposed in the Petition poses questions regarding the ability of the Board to make sound business decisions. Further, the applicability of the Brown Act to committees mentioned in the Petition to ensure that their recommendations and decision making is transparent to parents and the public is unclear.

Neither the Petition nor the Conflict of Interest policy adopted by the AMPS Governing Board ("Board") contains an assurance that the Board will comply with Government Code section 1090. While the applicability of Government Code Section 1090 to Charter Schools is debatable, Charter School adherence to Government Code Section 1090 is, at the very least, a recommended best practice for Charter School governance. One concern related to the Board's failure to comply with Government Code section 1090 is that the Board Bylaws allow for the Chief Executive Officer of AMPS to be a director on the Board. (Appendix, page 482.) The Conflict of Interest policy states that a "voting member of the governing board who receives compensation, directly or indirectly, from the

Organization for services is precluded from voting on matters pertaining to that member's compensation." While a Board member is precluded from voting on matters related to his or her compensation, the rest of the Board is not. This practice is prohibited by school districts pursuant to Government Code section 1090.

In addition, the Board Bylaws allow for the Board to create committees to consider and make recommendations upon matters referred to them by the Board. (Appendix, page 489.) The Bylaws do not contain any assurance that the committees will comply with the Brown Act. Similarly, there is no assurance that the Family-Staff-Team ("FST") Advisory Committee will be subject to the Brown Act. (Petition, page 84.)

D. The Petition Does Not Provide a Reasonably Comprehensive Description of the Qualifications to be Met by Individuals to be Employed by the Charter School.

Education Code section 47605, subdivision (b)(5)(E) requires a charter petition to include a reasonably comprehensive description of the qualifications to be met by individuals to be employed by the school. The Regulations clarify that a petition should: identify the general qualifications for the various categories of employees that the charter school intends to hire; identify key positions and their specific qualifications; and specify requirements for employment. (5 CCR § 11967.5.1, subd. (f)(5).) The Petition fails to meet all of these requirements, and, in some cases, includes contradictory and/or vague information regarding Charter School employees. Specifically, the deficiencies noted in the Petition with regard to teacher qualifications include the following:

- The Petition includes a limited teacher job description. (Petition, pages 90-91). The job description provided reads more like a list of requirements, and does not provide a clear and comprehensive description of teacher job responsibilities. Further, the Employee Handbook states that "Job supervisor(s) will explain job responsibilities." (Appendix, page 305.) The Employee Handbook also states "your job responsibilities may change at any time during your employment" and that AMPS "reserves the right, at any time, with or without notice, to alter or change job responsibilities, reassign or transfer job positions or assign additional job responsibilities." (Id.)
- The Petition contains no information as to how the Charter School identifies, hires, and screens substitute teachers.
- The Petition lists a "mix of intervention services" that will be provided to students who are not meeting outcomes. (Petition, page 39.) It is unclear if these intervention services are included in the budget. It is also unclear which employees will be providing these intervention services. For example, the Petition states that intervention services may include "before-or after-school instructional support provided by non-classroom educators in a one-on-one setting or in small groups." (Petition, page 39.) However, these "non-classroom" educators are never identified, nor are their qualifications discussed in the Petition.
- The Charter School's Family Care and Medical Leave ("FMLA") policy, as set forth in the Employee Handbook, states "an employee on FMLA leave remains an employee and the leave will not create a break in service." (Appendix, page 324.) The Employee Handbook states that employees are "at-will," unless otherwise stated in a written agreement, it is unclear why any employee would have seniority. (Appendix, page 301.) Thus, the Petition contains contradictory information regarding employee classification and status.

Based on the deficiencies noted above, the Petition does not provide a clear description of the individuals to be employed by the Charter School.

E. The Petition Does Not Provide a Reasonably Comprehensive Description of the Procedures that the Charter School Will Follow to Ensure the Health and Safety of Pupils and Staff.

Petitioners are required to provide a comprehensive description of “procedures that the school will follow to ensure the health and safety of pupils and staff.” (Ed. Code § 47605, subd. (b)(5)(F).) While the Petition contains the Charter School’s health and safety policies and procedures, its policy with regard to “Medication in School” fails to provide a reasonably comprehensive description of how the Charter School will implement and oversee medication usage by students. (Petition, page 94). Specifically, the “Medication in School” policy does not address the administration of non-oral medications, such as insulin and diastat, or the administration of student health plans.

F. The Petition Does Not Include a Reasonably Comprehensive Description of the Procedures by Which Pupils Can Be Suspended or Expelled.

Charter petitions must include a description of the “procedures by which pupils can be suspended or expelled.” (Ed. Code § 47605, subd. (b)(5)(h).) The Charter School’s proposed student discipline policy sets forth the grounds upon which students may be suspended or expelled. (Petition, pages 103-111.) However, there is no discussion of the standard the Charter School Board or Administrative Panel would apply in evaluating a student’s discretionary expulsion. Although not required to adhere to the Education Code’s disciplinary procedures, constitutional due process requires that the Charter School make clear the circumstances under which a student may be eligible for expulsion, as opposed to simply suspension. Further, this fails to provide guidance to administrators with standards in meting out discipline.

Recommendation:

District staff recommends approval of the Petition for a five year term without conditions, commencing with the 2015-2016 school year and expiring on June 30, 2020. In the event the Board approves the Petition, staff recommends that a separate memorandum of understanding that addresses the concerns regarding the Petition, as noted herein, be negotiated between the Petitioners and the Superintendent and/or his designee, for consideration by the Board at its meeting scheduled for January 21, 2015.

Notwithstanding the above, should the Board decide that the concerns raised herein warrant a denial of the Petition, the Board could base its denial 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).

Should the Board decide to deny the Petition, District Staff recommends that the Board adopt these final findings of fact as its own.



Fiscal Impact:  
None at this time.

\* **F.6 Contracts**

Comment:  
Permission is requested of the Board of Education to approve contracts as detailed, dated December 3, 2014.

Recommendation:  
Recommend Approval

Fiscal Impact:  
As noted per contracts summary

\* **F.7 Approval of Additional Architectural Services**

Comment:  
The District has retained WLC Architects (WLC) as the Architect of Record for the Pinole Valley High School Project. Pursuant to Facilities Subcommittee recommendation on November 18, 2014, staff recommends additional services for Board approval. The services include 1.) adjustments for project program, square footage, and scope increases, and 2.) fees for extended project duration for multiple phases of the overall project.

Recommendation:  
Approve additional Architectural Services for WLC Architects, Inc.

Fiscal Impact:  
Total for this action: \$7,538,881. Funding sources is Bond Fund.

**B. OPENING PROCEDURES - CONTINUED**

\* **B.6 Minutes:** November 6, 2014; November 12, 2014

\* **B.7 WCCUSD Public Comment**

Members of the public are invited to speak to the Board about any matter that is not otherwise on the agenda and is related to issues affecting public education in the WCCUSD. **Approximately 30 minutes will be allocated for this item.** If there are more requests to speak than can be heard within this time limit, “WCCUSD Public Comment” will continue after Item G. Individuals wishing to speak must submit a “WCCUSD Public Comment” form prior to the beginning of this item on the agenda.

Depending on the number of persons who wish to speak, from one to three minutes will be allocated to each speaker at the discretion of the President of the Board in order to accommodate as many speakers as possible. The Board cannot dialogue on any issues brought before it by the public that have not been previously agendized, but may refer these to staff for response and/or placement on future agendas.

**C. BUSINESS ITEMS**

**CONSENT ITEMS (Routine Matters)**

Consent Calendar Items designated by “CI” are considered routine and will be enacted, approved and adopted by one motion, unless a request for removal, discussion or explanation is received from any Board member or member of the public in attendance. Items the Board pulls for discussion or explanation will be addressed following Section E.

**\*CI C.1 Grants/Awards/Agreements**

Comment:

Formal acceptance is requested from the Board of Education to accept the grants/awards/agreements, as detailed, dated December 3, 2014.

Recommendation:

Recommend Approval

Fiscal Impact:

As noted per grants summary

**\*CI C.2 Acceptance of Donations**

Comment:

The District has received donations as summarized, dated December 3, 2014.

Recommendation:

Recommend Approval

Fiscal Impact:

As noted per grants summary

**\*CI C.3 Approval of Fund-Raising Activities**

Comment:

The planned fund-raising events for the 2014-15 school year are summarized, dated December 3, 2014.

Recommendation:

Recommend Approval

Fiscal Impact:

Additional revenue for schools

**\*CI C.4 Adoption of Resolution No. 44-1415: Replacement of Outdated Warrant**

Comment:

Government Code Section 298029(c) allows the governing board, by resolution, to order a replacement check be issued for a warrant that is stale dated. This resolution authorizes the issuance of a check to

replace the outdated warrant for Lee Matteucci. Staff recommends replacement of the stale dated warrant.

Recommendation:

Recommend approval to replace the outdated warrant

Fiscal Impact:

None

**\*CI C.5 Routine Personnel Changes – Classified**

Comment:

Routine personnel changes include actions to hire, promote, or terminate classified employees in accordance with appropriate laws, established policies and procedures.

Recommendation:

Ratify and Approve Classified Personnel Changes

Fiscal Impact:

None

**\*CI C.6 Approval of District Local Control Accountability Plan Parent Committee Nominees**

Comment:

On January 29, 2014 the Board approved the guidelines for the selection of the members of the District Local Control Accountability Plan Parent Committee. Letters seeking recommendations for nominees were sent to the heads of organizations. Principals solicited parent participants through flyers, phone calls and at School Site Councils and other meetings. The application was also posted on the District's web site. Each high school attendance area family of principals met to review the applications received at their individual schools and agreed by consensus on the nominees presented below. High school principals also nominated sophomore and junior level students to serve as ex officio members.

At the March 12, 2014 meeting the Board approved 33 members for the community. Since that time Raquel Donoso has been nominated by Concilio Latino to replace Alma Gomez.

Recommendation:

That the Board approve the additional member to the District Local Control Accountability Plan Parent Committee for 2014 and 2015.

Fiscal Impact:

None

**E. COMMITTEE COMMUNICATIONS**

(Education Code 35145.5; Government Code 54950 et seq.)

\* **E.1 In Memory of Members of the School Community**

Comment:

The District would like to take time to recognize the contributions of members of our school community who have passed away. The District requests the community to submit names to be reported as a regular part of each agenda.

Richmond High School junior Rodney Frazier, Jr. was tragically killed. He was an energetic student and well thought of by his peers and teachers. He was an integral player on the school's basketball team at the position of point guard. He touched the lives of many people.

Our thoughts go out to the family and friends in the loss of their loved one.

Recommendation:

For Information Only

Fiscal Impact:

None

**F. ACTION ITEMS - CONTINUED**

\* **F.8 Presentation of the Initial Bargaining Proposal from West Contra Costa Unified School District to the United Teachers of Richmond (UTR)**

Comment:

Pursuant to the Educational Employment Relations Act, the initial proposal for negotiations by school districts and labor unions must be submitted at a public meeting of the governing board. The initial proposal of the West Contra Costa Unified School District to the United Teachers of Richmond is presented tonight as an information item. At the next regularly scheduled board meeting this item will come back for public hearing and adoption by the Board of Education.

Negotiations proposal:

The current duration for the bargaining unit agreement between the two parties concludes on June 30, 2015. The District shall meet and bargain on all contractual Articles 1-52 with UTR to produce a successor agreement to the current contract.

Recommendation:

The Board of Education receive the initial bargaining proposal to the United Teachers of Richmond (UTR) as an information item.

Fiscal Impact:

To Be Determined

\* **F.9 Initial Bargaining Proposal from United Teachers of Richmond (UTR) to the West Contra Costa Unified School District**

Comment:

Pursuant to the Educational Employment Relations Act, the initial proposal for negotiations by school districts and labor unions must be submitted at a public meeting of the governing board. The initial proposal from the United Teachers of Richmond (UTR) to the West Contra Costa Unified School District is presented tonight as an information item. At the next regularly scheduled board meeting this item will come back for public hearing and adoption by the Board of Education.

Negotiations proposal:

The United Teachers of Richmond would like to sunshine the agreement between West Contra Costa Unified School District and the United Teachers of Richmond's CBA Contractual Bargaining Agreement for July 1, 2015 through June 30, 2018 in its' entirety, to meet and negotiate a good faith successor agreement.

Recommendation:

The Board of Education receive the initial bargaining proposal for labor negotiations with the United Teachers of Richmond.

Fiscal Impact:

To Be Determined

\* **F.10 Joint Initial Bargaining Proposal – with West Contra Costa Unified School District and West Contra Costa Administrators Association (WCCAA)**

Comment:

Pursuant to the Educational Employment Relations Act, the initial proposal for negotiations by school districts and labor unions must be submitted at a public meeting of the governing board. The joint initial proposal of West Contra Costa Administrators Associate (WCCAA) and West Contra Costa Unified School District is presented tonight as an information item. At the next regularly scheduled board meeting this item will come back for public hearing and adoption by the Board of Education.

Negotiations Proposal:

The current duration for the bargaining unit agreement between the two parties concludes on June 30, 2015. The parties through the interest based process agree to negotiate on the following Articles:

- Article 1: Agreement
- Article 2: Recognition
- Article 3: Salary
- Article 8: Leaves
- Article 11: Filling Bargaining Unit Vacancies
- Article 12: Benefits
- Article 13: Transfer
- Article 15: Evaluation
- Article 16: Reduced Work Year
- Article 20: Discipline
- Article 21: Safety

- Article 22: Work Days/Years
- Article 23: End of Year Release/Reassignments of Certificated Administrators
- New Articles
- Article 25: Professional Development
- Article 26: Threshold to Determine Need for Additional Support

Recommendation:

The Board of Education receive the joint initial bargaining proposal for labor negotiations with the West Contra Costa Administrators Association.

Fiscal Impact:

To Be Determined

\* **F.11 Resolution 42-1415: In Support of Richmond Plan to Keep Doctors Medical Center Open**

Comment:

The City of Richmond is seeking support for a plan that would help keep Doctors Medical Center open.

Recommendation:

That the Board consider the resolution

Fiscal Impact:

No Financial Impact for the District

**D. AWARDS, RECOGNITIONS, AND REPORTS**

\* **D.1 Resolution No. 41-1415: Resolution of Commendation to Elaine Merriweather for Dedicated Service to Students, Staff and the Community, December 3, 2014**

Comment:

A resolution of commendation will be presented to Elaine Merriweather for four years of service on the Board of Education and to the Students, Staff, and Community of the West Contra Costa Unified School District.

Elaine Merriweather was instrumental in the development of Transitional Kindergarten and other early childhood education programs to serve families of the West Contra Costa area. She has provided leadership for the Board Safety Climate Subcommittee implementing numerous improvements to provide safer schools facilities and more positive school climates. She has also been a strong advocate for Full Services Community Schools and School Based Health Centers, ensuring that students, their families, and our communities have access to resources they need to impact educational outcomes.

Recommendation:

Recognition and Resolution Honoring Board Member Elaine Merriweather

Fiscal Impact:

None

\* **D.2 Resolution No. 39-1415: Resolution of Commendation to Charles Ramsey for Dedicated Service to Students, Staff and the Community, December 3, 2014**

Comment:

A resolution of commendation will be presented to Charles Ramsey for twenty-one years of service on the Board of Education and to the Students, Staff, and Community of the West Contra Costa Unified School District.

Charles Ramsey has provided leadership for improving student learning, building new schools and renovation of others to enhance the daily lives of students and staff, providing critical links to the community, and supporting the district through a very difficult period for school finance. With Mr. Ramsey's leadership and commitment the District emerged from state receivership in June 2012.

Recommendation:

Recognition and Resolution Honoring Board Member Charles Ramsey

Fiscal Impact:

None

**G. DISCUSSION ITEMS**

**H. UNFINISHED REQUESTS TO ADDRESS THE BOARD** (continued from Item E)

**I. COMMENTS OF THE BOARD OF EDUCATION AND SUPERINTENDENT**

**J. THE NEXT SCHEDULED BOARD OF EDUCATION MEETING**

Lovonya DeJean Middle School – December 10, 2014

**K. ADJOURNMENT**

At 10:00 PM, any items remaining on the agenda that require immediate attention will be moved to this time. All other items will be tabled to another or the following Board meeting in order to make fair and attentive decisions. The meeting will adjourn at 10:30 PM. The meeting may be extended by a majority vote of the Board of Education.

The public may address items which are marked with an asterisk (\*).

**A. CLOSED SESSION**

**A.1 CALL TO ORDER**

**A.2 DISCLOSURE OF ITEMS TO BE DISCUSSED IN CLOSED SESSION**  
(Government Code 54957.7)

**A.3 RECESS TO CLOSED SESSION AS SCHEDULED**

**See Exhibit A**

(Government Code Section 54954.5)

The **Open Session** will resume at the end of the **Closed Session** in the Multi-Purpose Room at approximately 6:30 PM.

**EXHIBIT A**

(Government Code Section 54954.5)

**CLOSED SESSION AGENDA**

**December 3, 2014**

**1. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

**2. CONFERENCE WITH LEGAL COUNSEL—EXISTING LITIGATION**

[Government Code Section 54956.9(d)(1)]

- a. Palmer and Pollack v. WCCUSD
- b. California Charter School Association v. WCCUSD

**3. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION/SIGNIFICANT EXPOSURE TO LITIGATION**

[Government Code Section 54956.9(d)(2) or (d)(3)]

Two cases

**4. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION/INITIATION OF LITIGATION**

[Government Code Section 54956.9(d)(4)]

One case

**5. LIABILITY CLAIMS (Government Code Section 54956.95)**

**6. CONFERENCE WITH LABOR NEGOTIATORS**

- a. Superintendent/Dr. Bruce Harter



- b. Employee Organizations
  - UTR
  - Local One
  - School Supervisors Association
  - WCCAA
  
- c. Unrepresented Employees
  - Confidential and Management

**7. PUBLIC EMPLOYEE APPOINTMENT**

**8. PUBLIC EMPLOYEE PERFORMANCE EVALUATION (Government Code Section 54957)**

**9. STUDENT DISCIPLINE (Education Code Section 35146)**

Expulsions

**10. PUBLIC EMPLOYEE DISCIPLINE/DISMISSAL/RELEASE/COMPLAINT  
(Government Code Section 54957)**

**11. REPORT OF CLOSED SESSION ACTIONS**