

West Contra Costa Unified School District
1108 Bissell Avenue
Richmond, California 94801
Office of the Superintendent

ITEM REQUIRING ATTENTION----BOARD OF EDUCATION

To: Board of Education **Meeting Date:** November 12, 2014

From: Dr. Bruce Harter **Agenda Item:** F.1 Amended
Superintendent

Subject: Resolution No. 37-1415: Resolution Directing Superintendent and Staff to Seek a Waiver of Education Code section 47605(b) from the State Board of Education

Background Information: In the 2014-2015 school year, there are eight charter schools operating within the boundaries of the West Contra Costa Unified School District (“District”) with a combined enrollment of approximately 2,700 students. Three charter school petitions from Aspire Richmond California College Preparatory Academy, Aspire Richmond Technology Academy, and Amethod Public Schools: John Henry High School are currently pending before the Board, with a combined projected enrollment of approximately 1,132 students. Education Code section 47605(b) requires the District to grant or deny each pending petition within 60 days of the District’s receipt of it.

Several studies regarding charter schools have demonstrated that charter schools disproportionately inhabit school districts in areas concentrated with both students of color and students of lower socioeconomic status, such as the District. The combination of those two factors has led to a saturation of charter schools operating within the boundaries of the District, which in turn has produced adverse and discriminatory impacts on both the District and the students attending District operated schools. These impacts include significant costs incurred from compliance with the facilities obligations of California Education Code section 47614 (“Prop 39”), disproportionate financial responsibility imposed on the District due to charter schools’ inadequate placement opportunities for students with disabilities, and constitutional violations stemming from charter schools’ inadequate placement opportunities for students with disciplinary histories.

The District relies upon the following information in review and consideration of these concerns:

Several studies regarding charter schools, including a 2013 study by Richard Buddin for the CATO Institute entitled The Impact of Charter Schools on Public and Private School Enrollments, have concluded that charter schools disproportionately operate in school districts in areas concentrated with both students of color and students of lower socioeconomic status, such as the District.

Prop 39

The impacts to the District include significant costs incurred from compliance with facilities obligations. California Education Code section 47614 (“Prop 39”) mandates that school districts provide charter schools with district owned facilities. Pursuant to California Code of Regulations, title 5, section 11969.3, the provided facilities must be at least “reasonably equivalent” to facilities provided to a school district’s own students. The District’s efforts to comply with Prop 39 have caused it to incur significant costs, administrative burdens, and have appreciably impacted the District’s ability to provide quality facilities for the students attending District operated schools.

The District incurs additional costs to house charter schools that were not part of the District’s long term facilities plans. For example, the District’s obligation to temporarily house Caliber: Beta Academy for one year, at one of its District facilities during the 2014-2015 school year, will cost the District approximately \$600,000.00. Most of those costs are incurred by the District’s general fund, taking money away from classroom funding for District operated schools.

Prop 39 fails to recognize economies of scale, particularly when a school district must provide facilities to a number of charter schools. This is particularly true if the charter schools have a smaller enrollment than the district’s traditional school sites.

Students With Disabilities

The impacts to the District further include financial harm resulting from a disparity in the enrollment of students with disabilities. Pursuant to California Education Code sections 220 and 235, Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794), California Education Code section 47605(d)(1), California Government Code section 11135, and the Americans with Disabilities Act (42 U.S.C. §§ 12101 et seq.), California public schools, including charter schools, are prohibited from discriminating against students on the basis of disability, therefore requiring that public schools’ admission criteria be nondiscriminatory on its face and applied in a nondiscriminatory manner.

Numerous charter school studies demonstrate that charter schools do not meet their obligation to recruit and enroll students with disabilities, particularly students who qualify for moderate and severe interventions, including a 2012 study of charter schools by the United States Government Accountability Office, which found that, nationwide, only 8 percent of charter schools’ enrollment consisted of students with disabilities compared to 11 percent of traditional public schools’ enrollment.

Dr. Thomas Hehir, former director of the Office of Special Education Programs under President Clinton and Professor at the Harvard Graduate School of Education, has studied charter and traditional public schools within large urban school districts in California, including the San Diego Unified School District and the Los Angeles Unified School District, and found that most charter schools served very few students with disabilities and were completely devoid of students with significant disabilities such as autism and intellectual disability. Dr. Hehir’s 2007 study of the San Diego Unified School District found that of the students with disabilities that were

enrolled at the district's charter schools, 60 percent of them were students with a specific learning disability, which are significantly less demanding financially than students with disabilities who require moderate to severe interventions. In 2010, Dr. Hehir testified before the Education and Labor Committee of the U.S. House of Representatives that, in general, charter schools serve far fewer students with significant or complicated disabilities than traditional public schools, which raises civil rights concerns. Dr. Hehir further testified that the failure of charter schools to enroll representative populations of students from special education populations can disadvantage traditional public schools financially, as the responsibility to educate students with complex disabilities, the population least represented in charter schools and the most expensive to educate, frequently falls on traditional public schools.

Students with disabilities presently make up 13.49 percent of District operated schools' enrollment. The percentage of students with disabilities currently enrolled at charter schools providing special education services through the District's Special Education Local Plan Areas ("SELPA") is significantly lower, ranging from four to nine percent. The charter schools providing special education services through the District's SELPA have a disproportionate enrollment of students with specific learning disabilities and a significant under-enrollment of students with disabilities who require moderate to severe interventions. Charter schools operating within District boundaries do not provide adequate placement opportunities for students with disabilities who may qualify for moderate or severe interventions, leaving the District to provide services to those students.

Only five of the eight charter schools currently operating within District boundaries provide special education services through the District's SELPA. The three charter school petitions presently pending before the Board also contemplate to provide special education services outside of the District's SELPA. Due to the growth of charter enrollment outside of the District's SELPA, the students in District operated schools become responsible for a greater contribution to funding special education programs from the District's general fund because the District has a greater percentage of students with disabilities, particularly students with disabilities requiring moderate to severe interventions, and less total students to pay for these obligations.

Students With Disciplinary Histories

The impacts to the District also include constitutional violations stemming from a disparity in the enrollment of students with disciplinary histories. Charter schools do not provide adequate placement opportunities for students with disciplinary histories. Students who are enrolled in charter schools and subsequently present behavioral and/or disciplinary issues are asked to leave the schools, commonly known as "counseling out".

All of the foregoing has led to two separate and unequal public school systems operating within the boundaries of the District. The Board places a high priority on providing a quality education to all of the students attending public schools within the District. Education is a fundamental interest guaranteed by Article I, section 7, of the California Constitution, commonly known as the Equal Protection Clause. Article IX, section 1, of the California Constitution declares that a general diffusion of knowledge and intelligence is essential to the preservation of the rights and liberties of the people. Article IX, section 5, of the California Constitution, declares that "the

Legislature shall provide for a system of common schools” that must provide a uniform education for all public school students of the State of California.

The failure to limit the number of charter schools that may reside within one school district under the Charter Schools Act has a real and appreciable impact on students’ fundamental right to basic educational equality. The adverse impacts and discrimination created by both the current status of the Charter Schools Act, and the recruitment and enrollment practices of charter schools, negatively impacts the District’s ability to provide an equal and quality education to all District public school students.

The following studies are cited to support the basis for these prior referenced concerns:

1. Richard Buddin, The CATO Institute, The Impact of Charter Schools on Public and Private School Enrollments (August 28, 2012).
2. United States Government Accountability Office, Charter Schools: Additional Federal Attention Needed to Help Protect Access for Students with Disabilities (June 2012).
3. Dr. Thomas Hehir and Dr. Eduardo Mosequeda, San Diego Unified School District Special Education Issues Document Final Report (September 19, 2007).
4. Los Angeles Unified School District Office of the Independent Monitor, Pilot Study of Charter Schools’ Compliance with the Modified Consent Decree and the LAUSD Special Education Policies and Procedures (June 5, 2009).

The Board of Education finds that charter schools are having a disparate impact on the operation of the District. Therefore, the Board has proposed a resolution directing the Superintendent of the District and his staff to commence the process to seek a waiver (pursuant to Education Code section 33050) from Education Code section 47605(b) for five (5) years so that the Board is not required to grant or deny the pending charter school petitions, including direction to publish notice of a public hearing regarding the waiver. The hearing will occur at a special meeting on December 3, 2014.

Recommendation:

That the Board adopt Resolution No. 37-1415: Resolution Directing Superintendent and Staff to Seek a Waiver of Education Code section 47605(b) from the State Board of Education.

Fiscal Impact:

To Be Determined

DISPOSITION BY BOARD OF EDUCATION		
Motion by: _____	Seconded by: _____	
Approved _____	Not Approved _____	Tabled _____