

# ROSS VALLEY SCHOOL DISTRICT

## ROSS VALLEY CHARTER SCHOOL PETITION STAFF REPORT

November 4, 2014

### I. BACKGROUND

On or about September 12, 2014, the Ross Valley School District ("District") received the Ross Valley Charter School ("RVCS" or "Charter School") Charter Petition ("Petition"). The Petition was submitted on behalf of Ross Valley Charter School, a California nonprofit public benefit corporation bearing the same name as the school itself.

In 1996, the District created the Multi-Age Program ("MAP"), which was then known as the Innovative Learning Community, as a K-5 program of choice. Based upon its philosophy that children acquire knowledge and skills at different rates and with different learning styles, MAP assigns two grade levels for each classroom, and students typically remain with the same teacher for two years. Teachers are viewed as facilitators, and curriculum is flexible and open-ended to address the wide range of interests, developmental abilities, and learning styles of students. In addition to academic development, the program focuses upon the emotional, social, and physical growth of each student. MAP has since expanded and currently serves 130 K-5 students in six (6) classes at Manor Elementary School.

By submitting the Petition, Petitioners seek to convert MAP into a self-governing K-5 charter school. Lead Petitioners are Chris Lyons, a current 4th/5th grade MAP teacher, and Jason Morrison, a program director at a non-profit policy research center, and have gathered the signatures of all six (6) MAP teachers at Manor Elementary School to support their charter proposal. In essence, Petitioners seek the conversion of MAP into a charter school because of their desire to grow the program and to formalize their self-governance in the form of a charter school. Like MAP, Petitioners seek to implement multi-age classes, allow teachers to develop curriculum, and focus upon the academic, emotional, social, and physical growth of students.

Within 30 days of receiving a petition, the District Board of Trustees ("Board") must "hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents." (Ed. Code, § 47605(b).) A public hearing was held on October 7, 2014. The Board must "either grant or deny the charter within 60 days of receipt of the petition." (Ed. Code, § 47605, subd. (b).) Accordingly, the Board will act on the Petition during its **November 4, 2014** meeting.

The Charter Schools Act of 1992 ("Act") permits school districts to grant charter petitions, authorizing the operation of charter schools within their geographic boundaries. (Ed. Code, § 47600, et seq.) In enacting the Act, the California Legislature intended for teachers, parents, and community members to establish charter schools in order to, among other things, increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving, encourage the use of different and innovative teaching methods and programs, and provide new professional opportunities for teachers as well as expanded choice in the types of educational opportunities for parents and students. (Ed. Code, § 47601.)

Charter schools are established through submission of a petition by proponents of the charter school to the governing board of a public educational agency, usually a school district, and approval of the petition by the school district. The governing board must grant a charter "if it is satisfied that granting the charter is consistent with sound educational practice." (Ed. Code, § 47605, subd. (b).) Nevertheless, a governing board may deny a petition for the establishment of a charter school if it finds that the particular petition fails to meet enumerated statutory criteria and it adopts written findings in support of its decision to deny the charter. (*Ibid.*) Once authorized, charter schools "are part of the public school system," but "operate independently from the existing school district structure." (Ed. Code, §§ 47615(a)(1) and 47601.)

If the Board grants the Petition, RVCS will become a separate legal entity. Under Education Code section 47605, subdivision (j)(1), if the Board denies the Petition, then Petitioners may appeal that denial to the Marin County Board of Education ("MCBOE"). If MCBOE grants the charter, it becomes the supervisory agency over the charter school. If the county denies the petition, then Petitioners may appeal to the State Board of Education ("SBE"). (Ed. Code, §47605(j)(1).)

## **II. REVIEW OF THE PETITION**

A team of District staff conducted a full review of the Petition. The team was comprised of the following individuals, and was assisted by District's legal counsel:

- Rick E. Bagley, Ed.D., Superintendent
- Marci Trahan, Assistant Superintendent
- Teri Louer, M.Ed., Director of Student Services
- Midge Hoffman, Chief Business Official
- Terri Ryland, financial consultant, Ryland School Business Consulting

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

- The chartering authority shall be guided by the intent of the Legislature that charter schools are, and should become an integral part of the California educational system and that establishment of charter schools should be encouraged.
- A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice.
- The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:
  - (1) *The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.*
  - (2) *The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.*

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

In addition to the above, staff's review and analysis of the Petition was guided by the legislative intent set forth in Education Code section 47601 and by the regulations promulgated for SBE's evaluation of its own charter petition submissions (Cal. Code Regs., tit. 5, section 11967.5.1) ("Regulations"). Although these Regulations are not binding on a school district's review of charter petitions, they are helpful guidance. Where relevant, the content of the Education Code and Regulations is stated or paraphrased with respect to each area in which staff has identified deficiencies.

### **III. STAFF RECOMMENDATION**

Based upon its comprehensive review and analysis of the Petition, staff recommends that the Petition be **denied**. This Staff Report contains staff's analysis of the Petition, and the written findings supporting staff's recommendation. Accordingly, staff also recommends that the Board adopt this Staff Report as its written findings in support of its denial.

The following reasons justify denial of the Petition prior to the commencement of the school's operations:

- **The Petition does not contain the number of signatures required by Education Code section 47605, subdivision (a); and**
- **The Petitioners are demonstrably unlikely to successfully implement the program presented in the Petition; and**
- **The Petition fails to provide a reasonably comprehensive description of all required elements of a charter petition.**

More specific findings with regard to each basis for denial are described under Section IV in the enumerated paragraphs below.

### **IV. FINDINGS IN SUPPORT OF DENIAL**

Staff's evaluation and analysis of the Petition have resulted in the following findings:

#### **A. The Petition Does Not Contain The Number Of Signatures Pursuant To Education Code Section 47605(b)(3)**

Education Code section 47605, subdivision (a)(2) sets forth the signature requirement for petitions proposing to convert an existing public school into a charter school. Specifically, section 47605, subdivision (a)(2) states: "The petition may be submitted to the governing board of the school district for review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public *school* to be converted." (Emphasis added.)

Staff finds that Petitioners failed to meet the signature requirement. According to the Petition, Petitioners seek “approval of the charter pursuant to Education Code section 47605(a)(2) to enable the partial conversion of Manor Elementary School by transitioning the Program (pursuant to Education Code section 47605(d)(1)) into Ross Valley Charter School.” (p. 9.) The Petition includes signatures from six (6) Manor Elementary School teachers, who also happen to teach in the MAP program. Manor Elementary School currently has 23 permanent status teachers employed, which includes the 6 teachers who signed the Petition to express their meaningful interest in teaching at the Charter School. Fifty percent of the “permanent status teachers currently employed at the public *school* to be converted” is 11.5. Because the Petition only contains signatures from 6 permanent teachers from Manor Elementary School, the Petition is not supported by the number of signatures required by law.

Petitioners’ premise that the Charter School fulfilled the signature requirement by obtaining the signatures from only the teachers who teach MAP is not supported by law. Education Code section 47605(a) makes no reference to or distinction for “partial” conversions. The statute only references “[a] petition that proposes to *convert* an existing public *school* to a charter school.” (Emphasis added.) To the degree the law provides for “partial” conversion of a school, the Education Code nonetheless requires Petitioners to obtain no less than 50 percent of the permanent status teachers currently employed at the school. This requirement serves an important purpose. The conversion of a public school, whether partial or complete, impacts the entire school site, including all of the teachers employed at the site, as well as the school’s students, staffing, budgeting, and operations. Therefore, the statute ensures that all the teachers who may be impacted by a potential conversion are part of the conversion decision-making process by including all teachers at the school in determining the required number of signatures. Therefore, the statute intends, as it states, to require Petitioners to obtain the signatures of at least 50% of the permanent status teachers currently employed at Manor Elementary. RVCS did not meet this requirement.

**B. Petitioners Are Demonstrably Unlikely To Successfully Implement The Program Pursuant To Education Code Section 47605(b)(2)**

The Education Code requires Petitioners to show they are demonstrably likely to successfully implement the program set forth in the Petition. (Ed. Code, § 47605, subd. (b)(2).) The Regulations also require consideration of whether a petition has presented a realistic financial and operational plan, including the areas of administrative services, financial administration, insurance and facilities. (Regulations, § 11967.5.1, subds. (c)(1) and (c)(3).) In the area of administrative services, the charter or supporting documents must adequately describe: the structure for providing administrative services, accounting and payroll that reflects an understanding of school business practices and expertise to carry out the necessary administrative services, or a reasonable plan and time line to develop and assemble such practices and expertise. (Regulations, § 11967.5.1, subds. (c)(3)(A)(1).) For any contract services, the Regulations require a description of the criteria for the selection of a contractor or contractors that demonstrate necessary expertise and the procedure for selection of the contractor or contractors. (Regulations, § 11967.5.1, subds. (c)(3)(A)(2).)

Under section 11967.5.1(c)(3)(B), an unrealistic financial and operational plan for the proposed charter exists when the charter or supporting documents do not adequately include: a) At a minimum, the first year operational budget, start-up costs, and cash flow, and financial projections for the first three years; b) include in the operational budget reasonable estimates of all anticipated revenues and expenditures necessary to operate the school including, but not limited to, special education, based, when possible, on historical

data from schools or school districts of similar type, size, and location; c) include budget notes that clearly describe assumptions on revenue estimates, including, but not limited to, the basis for average daily attendance estimates and staffing levels; and d) present a budget that in its totality appears viable and over a period of no less than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school. Education Code section 47605, subdivision (g), and Regulations, section 11967.5.1(c)(3)(B) also require Petitioners "to provide financial statements that include a proposed first year operational budget, including start-up costs, and cash flow, and financial projections for the first three years of operation."

Under section 11967.5.1, subdivision (c)(3)(C), the Regulations require, in the area of insurance, for the charter and supporting documents to adequately provide for the acquisition of and budgeting for general liability, workers compensation, and other necessary insurance of the type and in the amounts required for an enterprise of similar purpose and circumstance.

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

Based on the following enumerated findings, staff concludes Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition:

### **1. Unsupported Growth Projection**

According to the Petition, RVCS seeks to expand its projected enrollment of 172 students during its first year of operation in 2015-2016 to a total enrollment of 222 students by its sixth year of operation in 2021-22. (p. 30-31.) The Charter School plans to accomplish this expansion by increasing the number of classroom teachers employed, culminating in 9 classrooms by its sixth year of operation.

Although the Charter School expresses confidence in meeting its enrollment projection for its first year of operation, it is uncertain whether RVCS will be able to grow and to sustain the level of growth as expected by Petitioners in the out years. During a meeting held with District officials, Petitioners have expressed their expectation for the Charter School to grow based upon its hopeful placement at the District's Red Hill campus, a proposal that is inconsistent with the proposed charter school's status as a conversion charter. As a conversion charter program, the school is tied to the Manor Elementary School site. Therefore, the Charter School's projected enrollment increases, and its basis for growth, during the out years are not based upon appropriate assessment of location and are speculative. Moreover, aside from collecting Intent-to-Enroll forms for the 2015-2016 school year, Petitioners do not provide any other documentation or the basis for calculations to substantiate the Charter School's projected growth. Accordingly, it is indefinite whether Petitioners may attract sufficient students to adequately support their program during their proposed charter term, as the loss of only a few Average Daily Attendance ("ADA") will significantly impact the Charter School's budget and operations due to the school's small size. According to the District's analysis, if the unsubstantiated enrollment is removed from

the budget, along with the related revenue and operating costs, the resulting budget reflects an operation that is fiscally unviable. Accordingly, the Charter School's unsupported growth projection renders the program unlikely to be successfully implemented during the proposed charter term.

## **2. Unsupported Revenue**

The Budget Narrative states that the proposed budget includes revenue from fundraising and donations. Specifically, "[i]t is estimated at \$15,000 from charter approval date to June 30, 2015, and then \$25,000 per year for the first two years of operation, \$27,000 in the third, \$28,000 in the fourth and then back to \$25,000 in the fifth year." (Appendix A, p. 3.) This assumed level of donations is sizeable, aggressive, and unsubstantiated. Although the Petition states that "RVCS is committed to being fully included in YES Foundation fundraising and educational services" (p. 192), the YES Foundation Board has not authorized or recognized such support. The YES Foundation is expressly tied to the District, not to an independent charter school. Petitioners reference their "successful experience with raising money for charter development expenses and their experience fundraising for elementary school parent groups." (Appendix A, p. 3.) However, Petitioners do not provide any evidence to substantiate Petitioners' successful fundraising efforts or any documentation to substantiate any donations received or their donation estimates for the future.

The Charter School also relies upon funding from the Public Charter Schools Grant Program ("PCSGP"), which, according to the Petition, will be used to support various start up and implementation expenses. For example, the Petition states that "[p]urchase of computers and set up of support arrangements will be funded with a Public Charter Schools Grant Program (PCSGP) that is being applied for or by private funding [*sic*] raising if the grant is not received and are not included in the budget." (Appendix A, p.5.)

The PCSGP is a federal grant that is administered by the California Department of Education ("CDE") to assist in the development of charter schools. These funds are restricted for use in planning, program design, and initial implementation of the school, and cannot be used for operational expenses. All expenditures must be approved and must demonstrate that they support achievement of the approved grant work plan, or else the funding must be returned. The current PCSGP has a 5-year grant cycle ending in July 2015. The CDE plans to apply for a one-year extension, but there is uncertainty surrounding the on-going funding of this grant beyond 2015. CDE has indicated that there is funding available that can be disseminated to authorized charters through the end of this fiscal year, provided that all grant requirements have been met, and the awards dispersed by year-end would not exceed the year-one allocation on the grant award letter.

However, the District has learned that, according to the CDE, charter schools with term dates beginning on or after July 1, 2015, which is the charter term start date submitted by RVCS, will not be eligible for the PCSGP grant. Significantly, if PCSGP funding is not received, the proposed budget assumes that additional fundraising will be required to purchase all computers and equipment needed in the first several years of operation. Thus, in connection with the unsubstantiated donations discussed above, the reliance upon fundraising may prove untenable if RVCS does not receive its PCSGP funding. Additionally, if funding is not received to support the Charter School's provision of adequate computers, RVCS will be unable to meet its obligations for testing for the new Smarter Balanced Assessment Consortium ("SBAC"), which requires adequate computers for students to take these assessments.

The Petition also states that "RVCS will apply for the California School Finance Authority Charter School Revolving Loan Fund to support cash flow needs." (Appendix A, p. 7.) Relying upon the receipt of funds from the revolving loan, RVCS has forecasted the receipt of \$250,000 in principal in July 2015, assumed a four-year payback period, and budgeted interest expense for the loan. However, conversion charter schools are not eligible for funding from the revolving loan fund. (Ed. Code § 47605, subd. (a)(2); § 41365, subd. (c) ["Loans may be made from moneys in the Charter School Revolving Loan Fund to a chartering authority for charter schools that are not a conversion of an existing school, or directly to a charter school that qualifies to receive funding pursuant to Chapter 6 (commencing with Section 47630) of Part 26.8 of Division 4 that is not a conversion of an existing school."].) Because Petitioners seek to establish RVCS as a conversion charter school, RVCS cannot rely upon the revolving loan fund as a source for revenue or as a means of servicing its cash flow needs. Based upon these unrealistic and unsubstantiated estimates of revenue, Petitioners are demonstrably unlikely to successfully implement their proposed program.

### **3. Understated Expenses**

The proposed budget reflects unrealistic estimates of expenses. For example, the proposed budget accounts for \$1,500 in legal fees for its first year in operation, which appears unrealistically modest. Health screenings and health training for staff is budgeted at \$15 per student, or \$2,580 for a year's worth of services, which does not appear adequate for an entire school year. The budget accounts for zero money for professional development during its first year of operation, despite the fact that the Petition promises "to allow teachers to attend professional development workshops or site visits to other multi-age schools with similar goals." (p. 76.) Even for the second year of operation, the budget only accounts for \$1,500 total for professional development, which is very low and amounts to approximately \$215 per teacher. The proposed budget also reflects a reserve of only 2% of the Charter School's expenses, which is understated and dangerously low for a charter school whose small size leaves little room for fiscal error. The budget also assumes that the teachers who currently opt-out of health and welfare benefits will continue doing so, which may not be a realistic assumption and would materially alter the budget's expenses should the teachers change their health and welfare benefits selection. Moreover, the Petition states that up to six (6) weeks of sick leave accumulated at the District will be credited and provided to the six MAP teachers seeking to work at RVCS. (p. 185.) However, it is unclear from the budget whether the Charter School has accounted for this accumulated sick leave.

The Petition also reflects understated expenses in the area of employee compensation. The Petition states that "[e]mployees of RVCS shall receive compensation packages which are competitive with local charter schools and the District." (p. 183.) However, according to the budget, RVCS plans on compensating the School Director at a rate of \$75,000 per year. This amount is understated, especially in light of the wide range of responsibilities expected to be performed in this position. (pp. 143-145.) In fact, RVCS proposes to compensate its director at approximately \$20,000 below what the District pays its first year K-5 principals, which is \$97,634 at Step 1 of the District's certificated management salary schedule. The salary rate is not competitive when compared to the District's offer of compensation for an equivalent position, and raises significant concerns about the Charter School's ability to recruit, attract, and retain a qualified individual as a long-term employee in this important position.

Additionally, the expenses for classified instructional aide salaries are also understated. The budget reflects that the Charter School will hire a Physical Education ("PE") instructor (14 hours/week) and a librarian (13 hours/week), which collectively will constitute a 0.5 full

time equivalent ("FTE") at only \$11,970 per year. Moreover, the Charter School has accounted for a counselor (2 hours/week), a Spanish-speaking Parent Outreach/Support Coordinator (8 hours/week), and two (2) lunch supervision personnel (2 hours/day), which collectively will constitute 0.93 FTE at only \$19,760 per year. Accordingly, the District has concerns about the Charter School's ability to attract and retain personnel who are qualified. The unrealistic estimate of expenses overstates the fiscal health of the Charter School, and may have a significant negative effect upon the quality of staff.

The estimates used to calculate facilities are also understated. The Petition states that Petitioners "have conservatively estimated the pro rata cost of [] facilities to be \$1.20 per square foot." (p. 192.) However, the District has not entered into any agreement with Petitioners as to which facilities, and how much square footage of space, are to be rented by the Charter School. Moreover, the proposed budget assumes expenses for utilities, custodial, and lease costs for only 10 months, despite the fact that Petitioners expect the allocation of a dedicated space, which would require Petitioners to hold a 12-month lease of space.

#### **4. Cash Flow Deficiencies**

In addition to the unsupported revenue sources and understated expense estimates, the Charter School is at high risk of experiencing significant cash flow deficiencies. The Charter School's cash flow projection for the 2016-17 school year will show negative cash balances every month of the year, under a flat enrollment scenario, which is reasonable considering the unsubstantiated enrollment projections. Additionally, although Petitioners estimate that the Charter School will have positive ending cash balance during its first year of operation, Petitioners have assumed in their calculations the receipt of a \$250,000 revolving loan fund. As explained above, the Charter School's status as a conversion charter school renders RVCS ineligible to receive funds from the revolving loan fund. Without receipt of this funding, the Charter School's projections reflect significant negative cash flow balances going forward. Moreover, the Charter School's cash flow projections leave very little room for fiscal error, including unexpected impacts that have significant negative repercussions upon the Charter School. For example, the Charter School's cash flow would be at severe risk should the State reintroduce the practice of payment deferrals.

#### **5. Contracting-Out of Services**

The Petition does not reflect an adequate plan for assigning or contracting-out essential administrative and other services, most of which are vital to the day-to-day operations of the Charter School. Although the Petition reflects that the Charter School anticipates providing or procuring most of its own administrative services, Petitioners are open to discussing the possibility of purchasing administrative services from the District, although there are no dollars budgeted for any services. Petitioners expressed their hope to partner with the District for such services such as the District's substitute teacher pool, music, art, and Physical Education. Upon further discussion with Petitioners, however, RVCS could not specifically identify the various services the Charter School intended to contract out. Moreover, Petitioners indicated that the RVCS School Director and Administrative Assistant would hold responsibility for such services as attendance accounting, yard duty, and substitute calling, which reflects that the Administrative Assistant and Director served as "catch-all" positions for all miscellaneous duties for which RVCS could not procure services.



## 6. Parent Participation Requirement

The Charter School's expectation for parent participation amounts, in substance, to an impermissible parent participation requirement. The Petition states: "We encourage and rely upon parent participation...It is our hope that many families volunteer two to eight hours per month...[¶] Some parents volunteer regularly in the classroom...We acknowledge that some parents will not be able, or will choose not, to participate as much as others. The RVCS Leadership Council will offer assistance as needed or requested to parents in determining how best to support the Charter School." (p.42-43.) The Petition continues to state: "RVCS asks that each family to volunteer in support of RVCS...While in-classroom parent volunteers are an essential component in the success of the RVCS, RVCS recognizes that volunteering during the school day is not feasible for all parents. There are many ways of contributing parent support...The Leadership Council will include a Parent Volunteer Coordinator who will help identify valuable volunteer opportunities..., including working parents or other parents for whom volunteering in the classroom is not feasible." (p. 148.) Additionally, according to a handbook attached as Appendix D to the Petition, parents must sign an Acknowledgement of Parent Expectations form as part of the application process.

The Petition makes clear that the Charter School will rely upon the services of parent volunteers in the classroom and up to eight hours per month. For example, as a strategy to assist low-achieving students, the Petition indicates that it will use parent volunteers, stating that "[i]n the lower grades parents read with individual children, which gives them more opportunity to read with support. Volunteers also support students at all grade levels during math, writing, and other subjects." (p. 78.) For EL instruction, the Petition states that teachers may incorporate the home language of the students in the classroom by, among other things, using "parents or other volunteers." (p. 82-83.) The Petition expressly quantifies parent participation by striving to have "[a]t least 70% of parents volunteer during the school year" as a measurable outcome. (p. 119.)

The Charter School's reliance upon parent volunteers as an "essential component" to its educational program, including in its own classrooms, renders the program unlikely to be successfully implemented. The Petition contemplates the use of parent volunteers to assist low-achieving students in "math, writing, and other subjects" and also students with limited English proficiency in the classroom. However, the Petition does not account for the requisite training for parents to act in this role or describe any credentialing or certification requirements to ensure that parent volunteers are indeed qualified to serve these student populations.

Even though the Petition recognizes the fact that volunteering may not be feasible for some parents, such recognition is rendered meaningless as the Charter School plans to have the RVCS Leadership Council and Parent Volunteer Coordinator to ensure that 70% or more of all parents contribute to the charter school one way or another, even if those parents are working parents or others for whom volunteering in the classroom is not possible. The parent participation requirement, therefore, constitutes an impermissible form of tuition, contravenes the requirement that public education be provided free of charge, and violates state law. Specifically, Education Code section 49011 prohibits all public schools, including charter schools, from providing privileges relating to educational activities in exchange for services from a pupil's parents or guardians, removing privileges relating to educational activities, or otherwise discriminating against a pupil if the pupil's parents or guardians do not provide services to the school. (Ed. Code, § 49011, subd. (b); CDE Fiscal Management Advisory 12-02, April 24, 2013.)

The Petition does not realistically account for the possibility that not all parents/families have the time and resources to volunteer their services. Many parents of lower socio-economic status are unable to provide the level of participation desired by the Petitioners, which may effectively act as a barrier to entry for those students whose parents cannot afford to volunteer their time. The parent participation requirement calls into question the Charter School's ability to successfully implement key elements of its educational program and may also have a discriminatory impact by serving as a barrier to meeting the racial and ethnic balance RVCS is required to achieve. (Ed. Code, § 47605, subd. (b)(5)(G).)

## **7. Qualifications**

The Charter School does not require the School Director to possess any credential (p. 149), resulting in a classified director supervising and evaluating certificated personnel. Although RVCS intends on hiring the six current teachers of the MAP program to initially implement the Charter School's program, the three additional teachers to be hired in the out years will not have the benefit of the institutional knowledge and memory of the original MAP teachers and will require supervision and evaluation from a credentialed individual. The lack of a credentialing requirement will also have a negative impact upon overall instruction and, ultimately, students.

Among the responsibilities required to be performed by the School Director and which can only be properly administered by a credentialed individual include overseeing the special education program and attending Individualized Educational Program ("IEP") meetings, attending Student Success Team ("SST") meetings, attending 504 meetings and ensuring 504 compliance, supervising and evaluating certificated personnel, providing meaningful feedback to teachers, making hiring recommendations, evaluating student data analysis, leading professional development for teachers, and coordinating the administration of California Assessment of Student Performance and Progress ("CAASP") testing, among other things. (pp. 143-145.) Therefore, Petitioners will be unlikely to successfully implement their educational program without a properly credentialed school director.

## **8. Academically Low/High Achieving Students**

The Petition does not appear to reflect a plan that offers meaningful differentiated instruction between low- and high achieving students. The Petition states that "low achieving students are fully integrated into the RVCS student body." (p. 78.) One of the practices identified in the Petition to assist low achieving students is the use of parent volunteers in the classroom. Specifically, "[s]ome parents volunteer in the classroom" and "[i]n the lower grades, parents read with individual children, which gives them more opportunity to read with support. Volunteers also support students at all grade levels during math, writing, and other subjects." (p. 42-43, 78.) The plan does not appear adequate to support low-achieving students, which may be in most need of assistance by qualified and certificated personnel, as the Petition plans to assign students to work with an unqualified parent volunteer while the classroom teacher focuses their attention to the remainder of the students in the classroom.

For high-achieving students, the Petition states that "[t]he process for developing and monitoring these interventions [for high achieving students] will be similar to the process for low-achieving students." (p. 79.) The Petition's plan for high achieving students is also general and vague, and lacks specificity. For example, high achievers will be provided with "extra opportunities for enrichment," "encouragement to pursue an area of interest," "extra opportunities for leadership," and individual and small group projects," but the Petition does not specifically define or identify what those opportunities or projects entail. Significantly,

the Petition states that “[t]he engaging, personalized curriculum at RVCS is designed to meet students where they are academically and to allow them to be challenged appropriately,” which reflects Petitioners’ belief that the general RVCS curriculum itself should be sufficient to meet the needs of high achievers. Moreover, the Petition does not describe whether teachers require Gifted and Talented Education (“GATE”) certification, which would be critical in serving the needs of high achievers. The Petition simply does not reflect exactly how high-achievers will be treated differently than the general population, including the low-achieving population, or to what degree the curriculum will be adjusted to meet the needs of these distinct student groups.

According to the Petition, the MAP program’s ELA scores of “Advanced or Proficient” are lower than those of the District’s. However, the MAP program’s math scores of “Advanced or Proficient” are higher than the District’s. According to the Petition, for mathematics, “in the middle and upper grades, students are grouped by grade level for math,” and not multi-age classes. (p. 61.) These figures give cause for concern regarding Petitioners’ proposed multi-age class approach.

## **9. English Learner**

The Petition does not reflect an adequate plan for serving English Learner (“EL”) students that is operational. The Charter School anticipates enrolling approximately 12 EL students during its first year of operation. However, Petitioners plan on hiring only 1 part-time English Language Development (“ELD”) instructor. (p. 80.) In fact, the Petition appears to have up to 20 EL students receive support by only 1 ELD instructor on a part-time basis, and only upon reaching 21 EL students will the Charter School create an English Learner Advisory Committee. (p. 81.) However, it is unclear from the Petition what responsibilities, duties, or role that this committee will have in the educational program.

The Petition also reflects that the Charter School does not have an actual plan to serve the needs of EL students. The Petition states that “EL students will be fully integrated into the regular classroom setting.” (p. 82.) Moreover, “[t]eachers also strive to incorporate the home language(s) of the students in the classroom. This may happen through printed materials, audiovisual resources, spoken language, and parents or other volunteers.” (p. 82-83.) The use of the term “strive” reflects a lack of solid commitment by the Charter School in applying these strategies. With respect to using “parents or other volunteers,” the Petition indicates that the Charter School will rely upon parents to assist in the education of EL students, which reflects that EL students may be receiving instruction from unqualified and uncertificated volunteers while the classroom teacher focuses his/her attention to the other students in the class. This is made all the more concerning given that the Petition does not make clear that the Charter School requires its teachers to hold Crosscultural, Language and Academic Development (“CLAD”) or Bilingual, Crosscultural, Language and Academic Development (“BCLAD”) certificates, notwithstanding the fact that the 6 current MAP teachers possess CLAD certificates. The Petition again reflects noncommittal language by stating the Charter School “will *prioritize* the hiring of teachers who have already obtained a [CLAD] certificate or a [BCLAD] certificate.” (p. 82.) If new teachers do not have CLAD certification at the time of hire, the Petition states that these teachers are expected to acquire CLAD certification within three years of employment. However, this requirement is not as rigorous as that of the District, which requires its teachers to obtain CLAD certification within two years of employment.

Moreover, the expectations for the sole part-time ELD teacher are enormous, especially in light of the significant responsibilities that the Petitioners expect to be performed for EL students identified in the Petition. Such responsibilities include, but are not limited to, using

strategies from the Center of Childhood Creativity, using Specially Designed Academic Instruction in English (“SDAIE”), applying GLAD strategies, monitoring EL student performance, spending extra time working individually with EL students, overseeing the use of volunteers, implementing small group projects, providing ample opportunities for students to practice language through performances and songs, and implementing independent reading, literature circles, close reading, word work, writer’s workshop and shared writing. (p. 84.) The EL program appears to be understaffed and does not demonstrate that the Charter School has an actual and operational plan to serve EL students that is likely to be successfully implemented.

## **10. Special Education**

The Petition raises significant concerns regarding the Charter School’s ability to meet its obligations with respect to special education. The Petition states that “[t]he School Director, working in close conjunction with the Ross Valley School District Student Services Director and Special Education Staff, as long as RVCS is functioning as a school within RVSD for special education purposes, will be responsible for overseeing special education and 504s at RVCS.” (p. 92.) The Petition reflects that the administration of the Charter School’s special education and 504 responsibilities will be delegated to the School Director; however, as reflected in the Petition, the School Director is not a certificated employee and the position does not require any credentials to serve in that role. Accordingly, crucial functions to be performed by the School Director, such as attending IEP meetings, will be performed by under-qualified personnel and will likely result in the unsuccessful implementation of the Charter School’s special education program. Further, the language of the Petition appears to suggest that the School Director will no longer be responsible for overseeing special education if the Charter School is no longer a school of the District for special education purposes, and the Petition does not otherwise identify another individual to administer the Charter School’s special education program.

The Petition also states that “[t]he School Director, general and special education teaching staff, as well as other appropriate faculty and staff members, will attend professional development and/or training meetings necessary to comply with state and federal special education laws.” (p. 96.) However, the budget accounts for no money for professional development during its first year of operation. Even for the second year of operation, the budget only accounts for \$1,500 total for professional development, which is very low and amounts to approximately \$215 per teacher.

Generally, the Petition does not focus on improved student achievement or identify how operating the MAP program as a charter school would improve the educational opportunity currently offered to students. In light of the fiscal and related issues identified, the Petition does not reflect that Petitioners are able to offer the level of program currently offered.

### **C. The Petition Fails To Provide A Reasonably Comprehensive Description Of All Required Elements Of A Charter Petition**

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

- 1) Is substantive and is not, for example, a listing of topics with little elaboration.
- 2) For elements that have multiple aspects, addresses essentially all aspects of the elements, not just selected aspects.

- 3) Is specific to the charter petition being proposed, not to charter schools or charter petitions generally.
- 4) Describes, as applicable among the different elements, how the charter school will:
  - a. Improve pupil learning.
  - b. Increase learning opportunities for its pupils, particularly pupils who have been identified as academically low achieving.
  - c. Provide parents, guardians, and pupils with expanded educational opportunities.
  - d. Hold itself accountable for measurable, performance-based pupil outcomes.
  - e. Provide vigorous competition with other public school options available to parents, guardians, and students.

(Regulations, § 11967.5.1, subd. (g).) Staff finds that the Petition does not provide reasonably comprehensive descriptions of many of the required elements as described below.

**Element 1 – Educational Program**

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

Staff finds that the Petition requires further comprehensive description of the Charter School's educational program for the following reasons:

1. **Program Offering:** Although the Charter Schools Act intended for charter schools to "encourage the use of different and innovative teaching methods" and "provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system," the RVCS program does not differ substantially from the program already offered by the District in MAP and instead Petitioners seek to convert the District's already-existing MAP program into a charter school. Numerous references to MAP and the adoption and replication of MAP's policies, philosophy, and operations are evident throughout the Petition. Hallmarks of the MAP program such as multi-age classes, integrated thematic curriculum, and focus on educating the whole child are adopted by the Charter School. (p. 35-50.)

For example, although “MAP teachers currently use the Toolbox Project, a social-emotional learning curriculum that fosters the development of resilience, self-mastery, and empathy in K-5 students and beyond,” the Petition states that “RVCS will continue implementation of the Toolbox.” (p. 66.) Additionally, “[o]ur students have had the opportunity each year to work on a project to help other people, animals, or the earth...We plan to continue these types of projects. (p. 50.) Significantly, the Petition also attaches MAP’s Program Handbook and other MAP documents as attachments to the Petition in support of the educational program. (Exhibit D.) The Petition also states that “[f]or the first year of Charter School enrollment, students who are enrolled in the Multi-Age Program for the 2014-2015 school year are deemed to be existing students” for the purpose of the public random drawing. (p. 161.) The preferential treatment granted towards existing MAP students simply transfers existing District students into the RVCS program and is consistent with the Petitioners’ intent on replicating the MAP program into a charter school. Accordingly, the Petition lacks adequate description of new program offerings or methods of teaching different than what the District already provides and fails to identify a means of improving pupil learning, increasing learning opportunities for its pupils, or expanding educational opportunities for parents, guardians, and pupils as intended by the Charter Schools Act.

Additionally, although the Petition states that the “Charter School uses the Reggio Emilia approach” (p. 149) and references an academic article describing this educational philosophy (Appendix E), the article focuses upon early childhood education only, and the Petition does not further describe how the philosophy and approach is used for grades K through 5. Moreover, upon review of the ELA program, the Charter School plans to use mostly fiction text and materials, and the Petition does not describe how it will balance the use of fiction and nonfiction text.

2. English Language Program: The Petition states that the Charter School has “three primary goals for our EL students. These goals are based on the overarching goals described in the ESL Standards for Pre-K-12 Students.” However, the Petition then references TESOL 1997 for its ESL Standards for Pre-K-12 Students, and no reference is made to the new Common Core ELD standards in the Charter School’s EL plan. (p. 82.) Therefore, the Petition does not adequately describe the standards for implementing the RVCS EL program.

The Petition also does not adequately describe its strategies for reclassifying EL students as fluent English proficient. The Petition states that “reasonable performance on baseline and benchmark assessments” may serve as a criterion to reclassify an EL student. (p. 82.) However, the Petition does not further define what “reasonable performance” means. Education Code section 313(f) requires the Charter School to consider “[c]omparison of the performance of the pupil in basic skills against an empirically established range of performance in basic skills based upon the performance of English proficient pupils of the same age, that demonstrates whether the pupil is sufficiently proficient in English to participate effectively in a curriculum designed for pupils of the same age whose native language is English.” (Ed. Code, § 313(f)(4).) However, this specific criterion is not identified in the Petition. Accordingly, the reclassification plan omits criterion specifically-defined by law for English reclassification while at the same time incorporating a criterion that is not adequately described.

### 3. Special Education:

#### a. Provision of Services

The Charter School only plans to enroll students with special needs under a “full inclusion model.” However, the Petition does not adequately describe how students will receive Free Appropriate Public Education (“FAPE”) if there are no Specialized Academic Instruction and Related Services and does not reflect an understanding of the individualized nature of a special needs student’s educational program. Accordingly, the Petition does not adequately describe the full continuum of services for special education students.

The Petition also indicates that RVCS will implement all aspects of the IEP, including appropriate specialized instructions, and that the Charter School will operate a comprehensive inclusion program that includes specialized instruction. (p. 95.) However, the Charter School’s proposed staffing plan does not reflect the employment or provision of any additional staff for special education instruction, such as a special education teacher and/or related service providers. The Petition merely states that “the instruction outlined in each student’s IEP will be delivered by personnel qualified to do so” without adequately describing or planning for the operational specifics to do so. (p. 95.) Additionally, as a school of the district for special education purposes, staffing is a District/SELPA function in compliance with District and the Marin County SELPA policies and procedures.

Although the Petition sets forth the procedures for Search and Serve, the Petition does not adequately describe how students who do not currently have an IEP but may be in need of a pre-referral intervention plan will be served or provided services. (p. 87.) The Petition sets forth general and vague strategies such as “appropriate individual tutoring schedule, classroom modifications, strategies and techniques to enhance that student’s ability to be successful.” The lack of operational specifics reflects that the Charter School does not have an adequate plan in providing pre-referral interventions. The Petition also does not reflect the role and relationship of the District and the Marin County SELPA to provision of special education services to students of a charter school that is a school of the district rather than its own LEA. The Petition is not tailored to the District and SELPA and does not incorporate District and/or SELPA policies, instead using what is referred to as “industry standard” arrangement between a school district and charter school....”

The Petition incorrectly states that the Charter School’s change to an LEA “shall not” require a material revision to the charter. (p. 85.) A change of special education status from a school of the district to LEA is a material revision to the terms of the charter subject to authorizer approval. In accordance with CDE directives, a charter school is to provide at least one year of notice together with the legally required assurances to the authorizer to ensure proper transition and provision of services to special needs students.

Use of correct terminology throughout the proposal is inconsistent and indicates a general lack of understanding of special education. For example, despite the Petition’s use of the term “Individual Education Plan, the proper term for IEP is Individualized Education Program. Upon review of the Petition, District staff finds that the Petition reflects planning only for a mild general learning disability population, and does not consider adequate support for students with greater needs and for students with low-incidence disabilities.

#### b. Procedures in Special Education

The timelines for interim parallel placements is inappropriate as it may impact the District’s ability to identify appropriate placement and services in a timely manner. (p. 87.)

Moreover, the procedures for Interim parallel placements do not accurately describe practices of a student transfers outside the SELPA or outside of California. (p. 87.)

The Petition does not provide procedures for Prior Written Notice if the Student Success Team (“SST”) does not suspect a disability and will not be assessing the student. The Petition states that an IEP meeting will be held when an Individual Transition Plan (“ITP”) is required. (p. 91) However, an ITP is not the same as a Transition Plan when a student changes schools as part of an IEP, which is required between elementary and middle school. An ITP is used for adults to transition to work, living, and recreation, and the use of the ITP term reflects Petitioners’ lack of understanding of their special education responsibilities as the Charter School will be serving elementary students.

Other important details are missing from the special education plan. For example, the timeline for notification to the District if a student with an existing IEP enrolls at the Charter School, and the timeline for referrals for assessments are unspecified as to whether business, calendar, or school days will be used. (p. 97-88.)

#### c. Staffing

As reflected in the Petition, the School Director is not required to be credentialed. Accordingly, he/she should not act as an LEA designee for special education purposes. (p. 92.) Additionally, the Petition states that “[a]s long as RVCS operates as a public school of the authorizer, solely for purposes of providing special education and related services under IDEA..., Ross Valley School District will provide special education services for students enrolled in RVCS to the extent required by law.” (p. 85.) However, the Petition also states that the Charter School “reserves the right to contract with service providers outside of the district when appropriate.” (p. 92.) If RVCS enters into an MOU with the District regarding special education as Petitioners intend, the Charter School cannot also contract with outside providers for services. These conflicting provisions reflect a lack of understanding of the Charter School’s responsibilities with respect to the provision of special education services.

#### d. Reporting

The Petition states that the Charter School will collect and maintain information regarding the number of students provided with test modifications and the types of modifications. (p. 92.) However, with the passage of Assembly Bill 484, the Smarter Balanced Assessment Consortium (“SBAC”) no longer allows for modifications for testing. Additionally, the Petition states that the Charter School will collect information regarding the types and number of students exempted from District assessments; however, the Petition does not further explain the reason why students will be exempt from assessments in the first place. (p. 92.) Moreover, the Petition does not adequately describe how all California Special Education Management Information System (“CASEMIS”) fields will be reported.

The Petition also states that it will collect and maintain information regarding “the basis of exit of students with disabilities (i.e., declassified, moved, etc.).” (p. 93.) However, the Petition does not define what the term “declassified” means, as such term does not have a special meaning in the context of special education.

#### e. Procedural Safeguards

This section does not adequately describe the procedural safeguards against the removal of students with disabilities, which occurs if the removal is for more than 10 consecutive days, or if the child has been subjected to a series of removals that constitute a pattern because,



for example, the series of removals total more than 10 school days in a school year. Although the section describing the Suspension/Expulsion Procedures describes the process manifestation determinations, such processes are not described here.

#### 4. Parent Participation:

As further explained above, the Petition makes clear that the Charter School will rely upon the services of parent volunteers in the classroom and up to eight hours per month and that the Charter School's expectation for parent participation amounts to an impermissible parent participation requirement. The Petition contemplates the use of parent volunteers to assist low-achieving students in "math, writing, and other subjects" as well as students with limited English proficiency in the classroom. However, the Petition does not account for the requisite training for parents to act in this role or describe any credentialing or certification requirements to ensure that parent volunteers are indeed qualified to serve these student populations.

Even though the Petition recognizes the fact that volunteering may not be feasible for some parents, such recognition is rendered meaningless as the Charter School plans to have the RVCS Leadership Council and Parent Volunteer Coordinator to ensure that 70% or more of all parents contribute to the charter school one way or another, even if those parents are working parents or others for whom volunteering in the classroom is not possible. The Petition does not realistically account for the possibility that not all parents/families have the time and resources to volunteer their services or otherwise do not wish to do so. Accordingly, the educational program is not adequately described to the extent that it does not take into consideration the successful operation of its program without the parent participation requirement.

#### 5. Educational Program Data

Contrary to what the Petition states, MAP does not have a higher percentage of EL students, free and reduced price lunch students, or special education students than the District. (p. 51.)

#### 6. Common Core:

The Petition does not identify specific instructional materials and textbooks consistent with the implementation of the Common Core State Standards or adequately describe how they will implement Common Core requirements. Generally, the Petition does not focus on improved student achievement or identify how operating the MAP program as a charter would improve the educational opportunity offered to students.

### **Element 2/3 – Measurable Student Outcomes and Methods of Measurement**

The Education Code and Regulations provide for a charter petition to identify the specific skills, knowledge and attitudes that reflect the school's educational objectives and that can be assessed frequently and sufficiently by objective means to determine satisfactory progress and provide for the frequency of the objective means for measuring outcomes to vary by factors such as grade level, subject matter, and previous outcomes. (Ed. Code, § 47605, subd. (b)(5)(B); Regulations, § 11967.5.1, subd. (f)(2).) Pupil outcomes must include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school. (Ed. Code, § 47605, subd. (b)(5)(B).) To be sufficiently detailed, objective means of measuring pupil outcomes must be capable of being used readily to evaluate the effectiveness of, and to modify, instruction

for individual students and for groups of students during the school year. (Regulations, § 11967.5.1, subd. (f)(2)(A).)

The Education Code and Regulations also require a charter petition to identify the methods by which pupil progress in meeting pupil outcomes is to be measured. To be sufficiently described, a petition must include a variety of assessment tools appropriate to the skills, knowledge, or attitudes being assessed, include the annual assessment results from the Statewide Testing and Reporting ("STAR") program, and outline a plan for collecting, analyzing, and reporting data on pupil achievement to school staff and to parents and guardians, and for utilizing the data continuously to monitor and improve the charter school. (Ed. Code, § 47605, subd. (b)(5)(C); Regulations, § 11967.5.1, subd. (f)(3).)

Staff finds that the Petition requires further comprehensive description of the Charter School's measurable student outcomes and methods of measurement for the following reasons:

1. Objective Measures: The Petition does not provide meaningful means of measuring pupil outcomes, and many of the measurable pupil outcomes are not objectively measurable or vague. For example, to the extent the Petition seeks to obtain a pupil outcome of "proficient," such term is not defined. To the degree the term is tied to Adequate Yearly Progress ("AYP") scores, the Charter School has no means of measuring what is "proficient" because there is no AYP for RVCS. If Petitioners rely upon on Smarter Balanced Assessment Consortium ("SBAC") to measure pupil outcomes, these tests are inapplicable to grades K-2. Accordingly, the Petition does not adequately describe what it means to be "proficient" or how proficiency will be measured.

The Petition states that all RVCS students will "perform academically at or above grade-level in all subject areas." However, this statement does not take into consideration the fact that certain student populations, such as students with disabilities, may not perform at or above grade level. (p. 113.)

Additionally, some of the stated outcomes do not necessarily result in the stated goal. For example, the Petition states as a goal that "all students become proficient in mathematical skills and content." (p. 127.) To achieve that goal, the Petition states that 80% or more of all students must demonstrate one year of growth on the SBAC. However, merely because a student has demonstrated one year of growth does not mean that the student is actually proficient in math skills and content.

Other outcomes do not appear rigorous enough. The goal that 66% of EL students will increase their CELDT level each year is not rigorous enough to ensure that EL students are being reclassified at an appropriate rate. (p. 122.)

Moreover, there are confusing references to goals under the Local Control Accountability Plan ("LCAP") (p. 98-110) that are inconsistent with the goals identified as measurable pupil outcomes (p. 114-129).

2. Assessments: According to the Petition, "[t]he Charter School's assessment plan includes multiple measures designed to monitor student progress over time," which includes baseline, formative, and summative assessments. (p. 132.) Although the Petition states that "[f]ormative assessments will be frequent," the Petition does not provide any specific timetable to demonstrate that this assessment plan will be followed as described. Also, the assessments identified do not otherwise define what

it means to be proficient, which renders any promise that students will achieve “proficiency” to be meaningless. (p 132-333.)

3. English Learners: The measurable outcomes and methods of measurement for EL proficiency rates are inadequately described. According to the Petition, the Charter School will not use reclassifications of EL students to measure EL proficiency rates. Moreover, the Petition uses two different standards to measure EL proficiency: (1) increases in CELDT scores; and (2) increases in CELDT levels. The State focuses upon CELDT levels, and, based upon current information, the CELDT will no longer be used next school year. (p. 122.)
4. Absenteeism: With respect to student absenteeism rates, the Petition does not mention or describe School Attendance Review Team (“SART”) or School Attendance Review Board (“Board”) processes. (p. 123.)
5. Suspension/Expulsion: With respect to pupil suspension and expulsion rates, the Petition indicates that RVCS will minimize these rates by “implementing various methods to help students who are struggling.” (p. 124.) This description is vague and does not specifically identify which methods are to be used or what evaluation is done to determine a student is “struggling.” Moreover, the actions to achieve this goal do not discuss any other alternatives other than general “counseling.” Even if counseling was acceptable as the only method for reducing pupil suspension and expulsion rates, counseling by a trainee or intern requires supervision, and the Petition does not adequately describe who will provide the counseling. (p. 124.)
6. Parent Participation: The Petition sets forth as a measurable outcome that “[a]t least 70% of parents volunteer during the school year.” (p. 119.) As explained above, the measurable outcome raises concerns whether the educational program can successfully be implemented without required parent participation.

#### **Element 4 – Governance**

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

Staff finds that the Petition requires further comprehensive description of the Charter School’s proposed governance for the following reasons:

1. Conflict of Interest: The Petition does not identify the potential conflict of interest on its own governing board or any further description regarding how to address or cure potential conflicts. Specifically, the Petition allows one board member position to be reserved for a teacher employed by the Charter School. (p. 139.) Conflicts of interests are prohibited by various laws and regulated to ensure that board members act in the best interests of the organizations over which the board governs. For example, the Political Reform Act of 1974 prohibits public officials at any level of state or local government from participating in or in any way seeking to influence a

governmental decision in which he/she has a financial interest and Government Code section 1090 invalidates contracts made where a member of the board has a financial interest in the contract. Common law strictly requires public officers to avoid placing themselves in a position in which personal interest may come into conflict with their duty to the public. Thus, governing board members should perform their duties in an impartial manner, free from bias caused by their own interests.

As structured by the charter proposal, an RVCS teacher serving on the RVCS governing board would have a financial interest in the Charter School as he/she would be receiving her salary and benefits from his/her employment with the school. As a member of the Charter School's governing board, the teacher owes a fiduciary duty to act in the best interest of the Charter School and is also responsible for the Charter School's operational and fiscal affairs, including "approving and monitoring the implementation of general policies of RVCS," which includes "compensation of the staff," "approving and monitoring the annual budget," and approving the hiring and termination of all employees. (p. 140.) Because the teacher has a financial interest in the Charter School, a conflict of interest would arise when the governing board renders decisions on such issues as, for example, modifying teacher compensation and benefits, as the teacher's financial interest in her salary may not coincide with what is best for the Charter School. Significant operational decisions, such as employee compensation, would have a material financial effect upon the teacher's salary, and should be free from biases from governing board members.

The Petition does include a Conflict of Interest Code, however it limits its application to Political Reform Act and does not account for Government Code section 1090 or the common law requirement to refrain from participating in decisions where an appearance of impropriety may exist. Additionally, the Conflict of Interest Code applies only to the board of directors and the School Director and does not apply to the members of the Leadership Council, made up of all Charter School teachers, despite their extensive decision making authority in "day-to-day management" of the Charter School, responsibilities in allocating financial resources, and apparent autonomy from the board of directors. In light of the fact that all of the teachers are to serve on the Leadership Council, there are extensive opportunities for conflicts other than those of a strictly financial nature to arise. For example, a conflict may arise with regard to student discipline issues and parent and/or student complaints regarding performance. These types of conflicts are not addressed by the Petition.

2. Board Member Election: The Petition and the Bylaws also reflect inconsistency with respect to governance. The Petition reflects that "elections are held for two parent Board of Director member nominees, to be confirmed by the then-existing Board of Directors." (p. 102.) However, both the Petition and the Bylaws also reflect that new Board members will be appointed by the existing Board, not elected. (p. 139; Bylaws, p. 3.) Whether Board members will be elected is made further unclear under the Petition's description of the Board duties, which include "select[ing] individuals to serve on the Board, taking into account recommendations from the Leadership Council." (p. 140.)

Additionally, the Petition states that "[s]ubsequent to the composition of the initial Board, new Board members will be appointed by the existing Board, with input from the Leadership Council." (p. 139.) The election, rather than the appointment, of board members ensures that the Charter School's best interests are being represented and holds governing board members accountable. However, the appointment process, as described, does not provide for the election of board

members or otherwise ensure parent participation in choosing the charter school governing body. Moreover, it is unclear whether the board contemplates having parent representatives on the board on an ongoing basis after their initial selection.

3. **Leadership Council:** The Petition states that “[t]he day-to-day management of RVCS will be overseen by the Leadership Council.” However, the Petition does not adequately describe how this will be accomplished. The Petition describes the Leadership Council to comprise of eight voting members, with all RVCS teachers holding membership on the Leadership Council. The Petition then describes a complicated voting structure whereby the teachers have three votes for council purposes and the four voting parent members having one vote each. (p. 141.) The rigid structure of the Leadership Council does not appear to allow for the flexibility that is required for day-to-day operation purposes, especially when the Leadership Council is charged with developing calendars, participating in personnel selection processes, and monitoring RVCS’s progress and performance. While the Petition states the Leadership Council meetings will be open to the public, they do not commit to compliance with the Brown Act to ensure transparency and participation. The Petition states that the Leadership Council will enact its own bylaws and decide the different positions and roles of the elected parents and other non-voting members of the Council as it deems appropriate. (p. 141) However, because the Leadership Council plays a key role in governance and manages day-to-day operations, these bylaws, positions, and roles are to be set forth in the Petition.

The role of the governing board and Leadership Council overlap and are confusing as to which body has responsibility over specific duties. According to the Petition, both bodies have responsibilities in allocating financial resources, developing an annual calendar, monitoring the charter school’s progress, and appointing new board members. (p. 140-142.) Also, according to the organizational chart, the RVCS Leadership Council appears to operate independently of the governing board, and potentially the Charter School, as the chart does not make clear what relationship the RVCS Leadership Council has with the Charter School governing board. (p. 146.)

4. **Training:** The Petition also states that “[a]ll Board members will receive training at least once a year on various matters regarding charter school law and governance.” (p. 141.) However, the proposed budget does not account or budget for this expense.

#### **Element 5 – Employee Qualifications**

<p>The Education Code and Regulations provide for a charter petition to identify general qualifications for various categories of employees the school anticipates, identify those positions that the charter school regards as key in each category and specify the additional qualifications expected of individuals assigned to those positions, and specify that all employment requirements set forth in applicable provisions of law will be met, including but not limited to credentials as necessary. (Ed. Code, § 47605, subd. (b)(5)(E); Regulations, § 11967.5.1, subd. (f)(5).)</p>
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Staff finds that the Petition requires further comprehensive description of the Charter School's employee qualifications for the following reasons:

The Petition only describes the qualifications for School Director and Teacher, and does not describe any qualifications for non-certificated staff. (p. 149.) Moreover, the School Director is not required to hold a credential which can cause problems for teacher evaluation, compliance with 504, and his/her the obligation to "[o]versee Special Education program and attend IEP meetings..." Moreover, the Petition only provides the job qualifications, and does not provide a clear statement of the job responsibilities for each position. (p. 149.)

### **Element 6 – Health and Safety**

The Education Code and Regulations provide for a charter petition to include the procedures that the school will follow to ensure the health and safety of pupils and staff, including but not limited to requiring that each employee of the school furnish the school with a criminal record summary, including the examination of faculty and staff for tuberculosis, requiring immunization of pupils as a condition of school attendance to the same extent as would apply if the pupils attended a non-charter public school, and providing for the screening of pupils' vision and hearing and the screening of pupils for scoliosis to the same extent as would be required if the pupils attended a non-charter public school. (Ed. Code, § 47605, subd. (b)(5)(F); Regulations, § 11967.5.1, subd. (f)(6).)

The Petition does not require volunteers to obtain background checks. Moreover, the Petition states that "[t]he Board and School Director will consider the creation of a policy for background checks or other safety criteria for volunteers that may work with students without the direct supervision of a credentialed employee." (p. 152.) The "will consider" language is noncommittal and allows RVCS to not require fingerprint/background checks for volunteers.

In addition, the Petition does not provide any description regarding disaster training, including for earthquakes, or a description of a Wellness Policy. The Petition does not attach as an appendix any comprehensive school safety plan or disaster policies, which is concerning in light of the fact that Charter School seeks to convert the already-existing MAP program. The Petition also references comprehensive discrimination and harassment policies and procedures (p. 155). However, such policies are not provided, nor is there evidence that the board of directors has adopted such policies.

### **Element 7 – Racial and Ethnic Balance**

The Education Code provides for the charter petition to identify the means by which the charter school will achieve a racial and ethnic balance among its students that is reflective of the authorizing district's general population. (Ed. Code, § 47605, subd. (b)(5)(G).)

Staff finds that the Petition requires further comprehensive description of the Charter School's plan to achieve an appropriate racial and ethnic balance for the following reasons:

The Charter School does not commit to achieving the appropriate racial and ethnic balance. The Petition states that "RVCS will *attempt* to attract students with a similar racial and ethnic diversity." (p. 33; emphasis added.) The Petition also states that it will reach out to EL students and students eligible for free and reduced price lunch. (p. 156.) Though petition delineates specific strategies, petition states that "the outreach plan *may* include the following [strategies]." (p. 158l emphasis added.) Such permissive and noncommittal

language does not commit RVCS to pursuing these strategies, and raises concerns about the Charter School's ability to meet its racial and ethnic balance.

### **Element 8 – Admission Requirements**

The Education Code and Regulations require the charter petition to identify admission requirements that are in compliance with applicable law. (Ed. Code, § 47605, subd. (b)(5)(H); Regulations, § 11967.5.1, subd. (f)(8).)

Staff finds that the Petition requires further comprehensive description of the Charter School's admission requirements for the following reasons:

1. Parent Participation: The Petition states that “[t]he Charter School will also strongly encourage the parents of potential applicants to attend one of our non-mandatory information sessions prior to submitting an application, to learn more about RVCS’s program.” (p. 160.) The Petition does not adequately describe the information session to ensure that the meeting is, in fact, non-mandatory. For example, the Petition does not describe how enrollment applications will be distributed. If the applications are to be distributed only at the information session, then attendance at the meeting may constitute a prerequisite to admission. In fact, according to a handbook attached as Appendix D to the Petition, parents must attend a MAP Orientation meeting in January as part of the enrollment process and must sign an Acknowledgement of Parent Expectations form as part of the application process.

As explained above, the Petition depends upon 70% parent participation with significant dependence upon parents working in the classroom including with low achieving students. These participation requirements are inconsistent with the free public education guarantee and are likely to serve as a barrier to families of low socio-economic status, that do not speak English, or that are otherwise unable or unwilling to participate. A student’s right to enroll in a public education program may not be conditioned upon or tied to a parent’s willingness to participate in school activities.

2. Public Random Drawing: Additionally, residents of the District are 5 out of 6 on the lottery admission priority list. Preferential treatment for the lottery is as follows: (1) children of charter school teachers, staff, and founders, not to exceed 10% of total enrollment; (2) siblings of current students; (3) students on the MAP waiting list as of September 15, 2014; (4) residents of the Manor school attendance area; (5) residents of the District; and (6) all others. (p. 161.) Although Education Code section 47605(d) requires lottery preference to pupils who reside within the attendance area of the converted school site, residents of the District should nonetheless be higher on the priority list and take priority over students on the MAP waiting list as of September 15, 2014 and over siblings of current students, as there are no current students since the Charter School has not opened yet. Contrary to what the Petition states, the District does not "agree" that the Charter School's proposed preference is consistent with Education Code section 47605(d)(2). Statutory lottery preferences dictate over other preferences not specified in law. Although the Petition states that the waiting list will be “re-created each year for each grade level,” the Petition does not indicate when the waiting list expires. (p. 162.)
3. Pre-requisites to admission: Although the Petition states that admission is not based upon requirements, the Handbook states that parents must attend a MAP Orientation

meeting in January as part of the enrollment process, must sign an Acknowledgement of Parent Expectations form as part of the application process, and must also attend a parent/teacher consultation prior to admission. Admission to public school may not be conditioned upon parent involvement whether it be for an orientation meeting, a parent/teacher consultation, parent involvement in the school.

4. Handbook: The Handbook attached as Exhibit D states that “the primary goal for enrollment is to maintain gender balance.” (Appendix D.) However, gender balance is not a legitimate basis to deny admission as it fundamentally denies enrollment based upon sex and conflicts with the Charter School’s assurance that RVCS will not discriminate on the basis of gender. (p. 7.) The Handbook is also inadequately described to the extent that it is not tailored to the Charter School’s unique program and is not consistent with the Petition with respect to the enrollment process. The lottery admission preferences as described in the Handbook are not the same as identified in the Petition.

### **Element 10 – Suspension and Expulsion Procedures**

The Education Code and Regulations require a charter petition to specify procedures by which students can be suspended or expelled that provides due process for all pupils. These shall include, at a minimum, identification of a preliminary list of offenses for which students must and may be disciplined, the procedures for suspending and expelling pupils who have committed such offenses, and how parents, guardians and students will be informed of the grounds and their due process rights. (Regulations, tit. 5, § 11967.5.1, subd. (f)(10).) A petition must also provide evidence that in preparing the list of offenses and the procedures, the petitioners reviewed the lists of offenses and procedures that apply to students attending non-charter public schools, as well as evidence that petitioners have reviewed their list and believe it provides for adequate safety for students, staff and visitors. (Ibid.) The charter petition must also include a description of due process for and understanding of the rights of students with disabilities with regard to suspensions and expulsion and how discipline policies and procedures will be periodically reviewed and modified. Finally, the petition must outline how detailed policies and procedures regarding suspension and expulsion will be developed and periodically reviewed, including, but not limited to, periodic review and (as necessary) modification of the lists of offenses for which students are subject to suspension or expulsion. (Ed. Code, § 47605, subd. (b)(5)(J); Regulations, § 11967.5.1, subd. (f)(10).)

Staff finds that the Petition requires further comprehensive description of the Charter School’s suspension and expulsion procedures for the following reasons:

1. Manifestation Determination: The Petition provides that “[i]f the Charter School, the parent, and relevant members of the IEP/504 Team determine that either of the above is applicable [caused by or direct result of child's disability] for the child, the conduct shall be determined to be a manifestation of the child's disability.” (p. 180.) This procedural safeguard description is inadequately described as the language suggests that the Charter School, parent, and members of the IEP/504 team must agree that conduct was caused by a child’s disability. However, manifestation determinations are not made by agreement but rather by evaluation of whether the facts establish the conduct is a manifestation of the disability. Manifestation determinations are not optional and the Petition requires more specificity to reflect this requirement.



2. Discretionary Offenses: The Petition states that “the Charter School has reviewed Education Code section 48900 et seq. which describes the noncharter schools’ list of offenses” and that the list of offenses “closely mirrors the language of Education Code section 48900 et seq.” (p. 164.) However, the Petition does not accurately reflect Education Code requirements and is not appropriate for the grade levels that the Charter School seeks to serve. For example, Assembly Bill 420, which was signed September 27, 2014, amends Education Code section 48900(k) and limits the use of school discipline for the catch-all category known as “willful defiance.” Specifically, a K-3 student cannot be suspended, and a K-12 student cannot be recommended for expulsion, for having “disrupted school activities or otherwise willfully defied the valid authority of supervisors, teachers, administrators, school officials, or other school personnel engaged in the performance of their duties.” However, the Petition identifies “willful defiance” as grounds for suspension or expulsion and does not contemplate exempting K-3 student from suspension or K-12 students from an expulsion recommendation consistent with law.
3. Appeal Rights: The suspension and expulsion procedures do not provide for appealing an expulsion or suspension, which may infringe upon students’ due process rights.
4. Special Education: The Petition appears to place more stringent criteria for special education students than the general student population with regard to expulsion. The only mandatory area for expulsion for general education students is the possession of firearms (p. 173) whereas expulsion is mandatory for special education students for possession of firearms, possession of drugs, and the infliction of bodily injury (p. 181).

#### **Element 14 – Dispute Resolution**

The Education Code and Regulations require a charter petition to specify the procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter. Such procedures should include how the costs of the dispute resolution process, if needed, would be funded, and recognize that if the substance of a dispute is a matter that could result in the taking of appropriate action, including, but not limited to, revocation of the charter, the matter will be addressed at the District’s discretion. (Ed. Code, § 47605, subd. (b)(5)(N); Regulations, § 11967.5.1, subd. (f)(14).)

Staff finds that the Petition requires further comprehensive description of the Charter School’s dispute resolution procedures for the following reasons:

The Petition is inadequately described to the extent that it includes parties beyond the Charter School and the District. The dispute resolution procedures state that “[i]n the event of a dispute between the Charter School and the District, Charter School *staff, employees and Board members* of the Charter School and the District agree to first frame the issue in a letter (dispute statement).” (p. 186.) Accordingly, the scope of the dispute resolution procedure is vague and the Petition fails to otherwise define the scope of the agreement to participate in the dispute resolution process.

#### **Miscellaneous**

The Petition states that the Charter School “shall acquire and finance general liability, workers compensation, and other necessary insurance of the types and in the amount required for an enterprise of similar purpose and circumstances.” (p. 191.) However, the

Petition does not specifically define all the insurance policies that it will obtain, nor does it identify the coverage limits and specifics of each type of insurance policy.

With regard to facilities, the Petition reflects the intent to seek housing from the District at the Red Hill School. However, as a conversion charter school, the Charter School is tied to the Manor Elementary School site and is not eligible to be housed at Red Hill School. The Charter School's use of District facilities is governed by Education Code section 47614 and the supporting regulations, not as expressed in the Petition.

**V. CONCLUSION**

Petitioners' proposed program and Budget reflect that they cannot sustain the MAP program as it currently exists or as promised in the Petition. It is inconsistent with sound educational practice to dismantle a successful District program and would serve to undermine the educational opportunities for all students of the District. The proposed Charter School does not increase learning opportunities, promote innovative teaching methods nor does it seek to expand learning experiences for pupils who are identified as academically low achieving. While the Petition may provide for some new opportunities for teachers and parents, a sound educational program is designed to serve students, not to promote the interests of adults.

For the reasons stated above, staff finds that the Petition does not contain the requisite number of signatures required by law; the Petition fails to provide a reasonably comprehensive description of all required elements of a charter petition; and the Petitioners are demonstrably unlikely to successfully implement the program as presented in the Petition and its supporting documents. Accordingly, staff recommends that the Petition be denied and that the Board adopt this Staff Report as its written findings in support of its denial.