



April 10, 2017

Alameda County Office of Education
Attention: David Patterson, Director
313 West Winton Avenue
Hayward, California 94544

Response of the Oakland Unified School District to Aurum Preparatory Academy Charter School's Appeal to the Alameda County Office of Education

Dear Alameda County Board of Directors:

The Oakland Unified School District ("District") submits its Response to Aurum Preparatory Academy Charter School's ("Aurum" or "Petitioner") Appeal of the District's denial of the Aurum Charter Petition.

I. Introduction

Aurum's appeal to the Alameda County Board of Education ("ACOE") should be denied for three reasons:

- (1) The appeal is improper because Aurum failed to comply with Title 5 of the California Code of Regulations section 11967(b)(1) and submit "a complete copy of the charter petition *as denied...*" [Emphasis added]. Rather, Aurum submitted a complete copy of the charter petition as later materially revised by Aurum. Thus, Aurum is asking ACOE to usurp the governing regulations and approve a charter petition that is materially different from the charter petition that was denied by the District.
- (2) The petition submitted to ACOE is different than the petition denied by the District; however, the petition submitted should be denied because it presents an unsound educational program; the Petitioner is demonstrably unlikely to successfully implement the program set forth in the petition; and the petition does not contain reasonably comprehensive descriptions of all of the 15 elements required by the California Charter Schools Act. Thus, ACOE should properly deny the submitted petition because it fails to satisfy the statutory requirements set forth by the California Education Code.
- (3) The District properly denied the charter petition submitted by Aurum under Education Code section 47605. Specifically, the District denied the charter because Aurum presented an unsound educational program; the petitioner was demonstrably unlikely to successfully implement the program set forth in the petition; and the petition did not contain reasonably comprehensive descriptions of all of the 15 elements required by the California



Charter Schools Act. Thus, the District properly denied a charter petition that failed to satisfy the statutory requirements set forth by the California Education Code.

II. Background

On September 14, 2016, Aurum submitted a new charter petition ("Original Petition") to the District. The Original Petition proposed opening a middle school program designed to serve 132 students residing in "East and Deep East Oakland" in Fall of 2017. The Original Petition failed to contain a sufficient number of interested parent signatures. Specifically, the Original Petition failed to satisfy Education Code section 47605(a)(1) subsection (A). The Original Petition contained a mere 26 signatures of meaningfully interested families eligible to enroll a sixth grade student in Fall of 2017. (See Meaningfully Interested Families Signature Comparison included herein as Exhibit A.) Under the applicable statute, Aurum would have needed to provide at least 66 signatures.

On October 24, 2016, Aurum elected to withdraw the Original Petition.

On October 26, 2016, Aurum submitted a second charter petition ("Second Petition") to the District. (See Second Petition included herein as Exhibit B.) The Second Petition proposed opening a middle school program designed to serve 132 students residing in "East and Deep East Oakland" in Fall of 2017. The Second Petition contained a mere 41 signatures of meaningfully interested families eligible to enroll a sixth grade student in Fall of 2017, but qualified for review since they added "meaningfully interested" teacher statements/signatures to this Second Petition.

On December 14, 2016, the District Board of Education adopted Resolution 1617-0007 denying the Second Petition and the written findings in support thereof. (See Resolution 1617-0007 and Written Findings of Support included herein as Exhibit C.) The Second Petition was denied because it failed to satisfy the statutory requirements set forth in Education Code section 47605(b). Specifically, the Second Petition contained the following deficits:

- Aurum presented an unsound educational program for the pupils to be enrolled in the charter school;
- Aurum was demonstrably unlikely to successfully implement the program set forth in the Second Petition; and
- Did not contain reasonably comprehensive description of the statutorily required 15 charter petition elements.

On or around February 21, 2017, Aurum appealed the District's denial of the Second Petition.¹ However, Aurum did not include the Second Petition "as denied" in its submission to ACOE.

¹ It is unclear exactly when Petitioner submitted complete appeal materials. A letter included in the submitted materials rebutting the District's written findings is dated February 21, 2017. The District received confirmation of the complete Aurum appeal submission on or around March 17, 2017 and secured the documents submitted by Petitioner on March 24, 2017.



Rather, Aurum submitted a third charter petition (“Third Petition”) proposing to operate a middle school that is designed to serve 132 students residing in “East and Deep East Oakland” in Fall of 2018. (Third Petition was included with Petitioner’s appeal materials as a materially revised Second Petition.) The Third Petition contains multiple revisions and one substantial material revision to the Second Petition, a new start date of Fall 2018. Despite the revisions, the Third Petition contains deficits similar to those that resulted in proper and just denial of the Second Petition.

III. Standard of Review

The California Code of Regulations Title 5 section 11967 set forth the standard of review of appeals on petitions for the establishment of a charter school that have been denied. Specifically, Section 11967 subsection (b) provides that:

- When filing a petition with the county board of education or the SBE for the establishment of a charter school, petitioner(s) shall provide the following:
- (1) A complete copy of the charter petition as denied, including the signatures required by Education Code section 47605.
 - (2) Evidence of the governing board's action to deny the petition (e.g. meeting minutes) and the governing board's written factual findings specific to the particular petition, when available, setting forth specific facts to support one or more of the grounds for denial set forth in Education Code section 47605(b).
 - (3) A signed certification stating that petitioner(s) will comply with all applicable law.
 - (4) A description of any changes to the petition necessary to reflect the county board of education or the SBE as the chartering entity, as applicable.

Here, the Petitioner, Aurum, has failed to comply with the applicable sections of the California Code of Regulations in presenting a revised Third Petition to ACOE on appeal.

Additionally, the California Code of Regulations Title 5 section 11967 set forth that “[i]n considering charter petitions that have been previously denied, the county board of education or SBE are not limited to a review based solely on the reasons for denial stated by the school district, but must review the charter school petition pursuant to Education Code section 47605(b).” Here, a copious review of both the Second Petition and Third Petition substantiates an independent finding by ACOE that the Second Petition and Third Petition fail to satisfy the requirements of Education Code section 47605(b).

IV. District’s Position

1. Petitioner’s Appeal is Improper.

When filing a petition with the county board of education or the SBE for the establishment of a charter school, petitioner(s) shall provide the following:



(1) A complete copy of the charter petition *as denied*, including the signatures required by Education Code section 47605. [Emphasis Added.] (5 C.C.R. §11967(b).)

Here, Aurum has submitted a Third Petition to ACOE that contains multiple revisions and one substantial material revision to the Second Petition that was denied by the District. (See Narrative Description of Changes included herein as Exhibit D.) Petitioner submitted a Third Petition proposing to open a middle school with 132 sixth grade students in the Fall of 2018. The opening date contained in the Second Petition was Fall 2017 not Fall 2018. Material revisions can be a change to any aspect of a petition.² The date on which a new charter school opens is a material revision of the petition as the date on which a school opens impacts every aspect of the educational program, including interest and availability of staff and student enrollment. Here, Petitioner failed to comply with the procedural requirements for a proper appeal submission. Thus, Aurum is bypassing the clear regulatory requirement to submit their Second Petition "*as denied*" by instead submitting a Third Petition, which includes revised provisions.

2. Denial of Petitioner's Third Petition is Proper.

It is important to note that although the Third Petition contains multiple revisions and a material revision to the Second Petition, the Third Petition still fails to satisfy the requirements of Education Code section 47605. Specifically, the Third Petition meets the following conditions for denial under Education Code section 47605:

- The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
- The petitioner is demonstrably unlikely to successfully implement the program set forth in the petition.
- The petition does not contain reasonably comprehensive descriptions of the 15 required charter elements.

An Unsound Educational Program

The Third Petition presents an unsound educational program. The Third Petition lacks evidence demonstrating how the resources, daily schedule, and particularly teacher staffing, will support effective implementation of the education program. Allegedly the educational program will not require students to move from class to class. However, based upon the course options this assertion seems programmatically inaccurate. Students not moving would only be possible if tracking was used and students remained with the same group of students throughout the day. However, to the contrary, the Third Petition provides that courses will be individualized (regular/intensive accelerated), advisory classes may loop, and students would be choosing between electives (i.e. VAPA or Design Thinking). Thus, the description of the educational program leads to a logical

² <http://www.cde.ca.gov/sp/cs/as/authguidance2.asp>



conclusion that the described program would look completely different in practice. This type of inconsistency or lack of clarity raises serious concerns regarding whether the Petitioner has the practical experience necessary to recognize the conflict between the educational program description on paper and what the proposed educational program looks like day-to-day with our students in practice.

Unlikely to Successfully Implement the Program

The Third Petition indicates that additional signatures are allegedly included with the Third Petition. However, no corresponding document was found in the submitted materials. Of the 144 meaningfully interested signatures forms submitted, which match those contained in the Second Petition, only 14 are eligible sixth graders for the 2018-19 school year. (See Exhibit A.) Accordingly, Aurum has not provided sufficient evidence of families “meaningfully interested in having his or her child attend the charter school” in Fall 2018. This absence of meaningfully interested student/family signatures contributes to concerns regarding Petitioner’s ability to implement the proposed educational program as Petitioner does not appear to have roots in this community that would support the feasibility of such a robust projected enrollment.

It is also worth noting that the Third Petition lacks a clear and compelling student recruitment plan likely to attract the projected enrollment. Other charter schools that were better situated to develop and run successful programs have been unsuccessful in this community, the Third Petition does not provide clear or well-developed plan to attain first year enrollment of 132 sixth graders. For example, Youth Uprising had a very strong community presence in East Oakland and despite its 20 year presence within the community, Youth Uprising was only able to enroll 32 sixth grade students in its first year of operation and the middle school was forced to close at the end of its first year of operation due to this low enrollment. However, Petitioner is anticipating enrollment of almost quadruple of what was achieved by Youth Uprising when Aurum does not have an established presence in this community like Youth Uprising. Thus, the projected enrollment of 132 is statistically unlikely. Additionally, Petitioner’s inability to demonstrate meaningful interest on the part of at least 66 families creates reasonable concerns regarding Petitioner’s budget assumptions as they are incorrectly based on a projected enrollment of 132 sixth grade students. It is also concerning that Petitioner’s proposed Executive Director served as the school leader of the elementary school operated by Youth Uprising, which closed mid school year (February 2017) and caused the mid-year displacement of students.

Does not Contain 15 Required Charter Elements

The Third Petition fails to contain reasonably comprehensive descriptions of all of the 15 elements required by the California Charter Schools Act. Specifically, the Third Petition contains inadequate descriptions of the following:

- Description of the educational program of the school, including what it means to be an “educated person” in the 21st century and how learning best occurs;



- Measurable pupil outcomes;
- Qualifications to be met by individuals employed at the school;
- Means for achieving racial and ethnic balance;
- Proposed first year operational budget; and
- Cash flow and financial projections for 3 years.

Thus, the Third Petition meets the statutory conditions for denial under the Education Code.

3. Denial of Petitioner's Second Petition was Proper.

The District Board of Education adopted Resolution 1617-0007 denying the Second Petition and the written findings in support thereof. (See Exhibit C.)³ The Second Petition was denied because it failed to satisfy multiple statutory requirements set forth in Education Code section 47605(b). The Second Petition contained the following deficits:

- Aurum presented an unsound educational program for the pupils to be enrolled in the charter school;
- Aurum was demonstrably unlikely to successfully implement the program set forth in the Second Petition; and
- Did not contain reasonably comprehensive description of the statutorily required 15 charter petition elements.

The Second Petition lacked a clear and compelling student recruitment plan likely to attract projected enrollment, particularly as it relates to the African American student population. As recent as two years ago, Youth Uprising opened a new middle school that closed by the end of the first year. Unlike Aurum, Youth Uprising had a very strong community presence in East Oakland of close to 20 years. Despite its 20 year presence within the community, Youth Uprising was only able to enroll 32 sixth graders in its first year of operation. Thus, enrollment of almost quadruple of what was achieved by Youth Uprising is statistically unlikely. Additionally, Petitioner's inability to demonstrate meaningful interest on the part of 66 families creates reasonable concerns regarding Petitioner's budget assumptions as they are incorrectly based on projected enrollment of 132 sixth grade students. (See Meaningfully Interested Families Signature Comparison included herein as Exhibit A.)

In addition to the budgetary concerns associated with inflated enrollment projections, the Petitioner listed No Child Left Behind as an assumed revenue though this funding source does not exist. Thus, there were serious concerns regarding the feasibility of the budget projections identified in the Second Petition.

Based on the demographics of interested students listed and the schools these students were then attending, it appeared likely the Petitioner's program would serve a large number of English

³ In an effort not to be unnecessarily duplicative, this Response will not restate every deficit identified in the District's written findings. Please review Exhibit C in detail.



Language Learners. Despite the need to anticipate the specialized educational needs of these students, the Second Petition contained insufficient consideration for: 1) ongoing (not just the annual CELDT) assessments of language acquisition; and 2) the delivery of English Language Development to students. Answers provided by Petitioner during the capacity interviews were incomplete and did not demonstrate the expertise or capacity needed to implement a sound education program that can effectively serve the target population.

The Second Petition failed to contain reasonably comprehensive descriptions of all of the 15 elements required by the California Charter Schools Act. Specifically, the Second Petition contained inadequate descriptions of six (6) of the required fifteen (15) elements. Thus, nearly half of the required elements were not even properly described.

The Second Petition contained a myriad of deficits that highlighted the programmatic, fiscal, and procedural weaknesses of an educational program designed to support traditionally underserved, at-risk student populations. These weaknesses, and the Petitioner's failure to satisfy basic statutory requirements in the Original and Second Petition submissions, raised serious questions regarding the proposed educational program and the likelihood of Petitioner's ability to successfully implement the program. Accordingly, the Second Petition met the statutory conditions for denial under the Education Code and was properly denied by the District.

V. Conclusion

The Aurum Preparatory Academy Charter School Petition should be denied by ACOE for three reasons:

1. Aurum failed to comply with the applicable statutory requirements for submission of a proper appeal to ACOE.
2. Assuming *arguendo* that Aurum's failure to comply with the statutory requirements is permissible, the Third Petition submitted to ACOE fails to satisfy the requirements of Education Code section 47605 and therefore, denial of this Third Petition by ACOE is proper.
3. The Second Petition failed to satisfy the requirements of Education Code section 47605 and denial of the Second Petition was proper and based upon written factual findings specific to the Petition.

Based on the foregoing, the District respectfully requests that ACOE deny Aurum's appeal and Third Petition.



Exhibit A

Meaningfully Interested Families Signature Comparison

Aurum submitted parent signature forms and a spreadsheet listing meaningfully interested student names as an appendix to all three petitions. However, incomplete parent signature forms and inaccurate information on the spreadsheet made it difficult to determine the precise number of meaningfully interested students that would be eligible to enroll in sixth grade in the Fall of 2017 (for the Original and Second Petitions) or 2018 (for the Third Petition). For example, the 2015-16 student grade levels listed on Aurum's spreadsheet differed from the information found on several of the parent signature forms, including for 16 students that were added as part of the Second Petition. Furthermore, as indicated in the table below, many of the parent signature forms were missing key information that was needed in order to clearly determine each student's 2017-18 grade level.

Meaningfully Interested Student Eligibility Status for 6th Grade in Proposed First Year of Operation (in parentheses)	Original Petition (2017-18)	Second Petition (2017-18)	Third Petition (2018-19)
Eligible	19	32	11
Unclear if Eligible: June/July Signature Date (Parent signed form in June/July, did not specify 17-18 grade level, and did not specify whether "current grade" referred to 15-16 or 16-17 school year)	9	9	3
Unclear if Eligible: No Signature Date (Form did not specify 17-18 grade level and no signature date to determine whether "current grade" referred to 15-16 or 16-17 school year)	7	8	4
Total Potentially Eligible	35	49	18**
Considered Eligible by OCS (Excluded "Unclear if Eligible: No Signature Date")	26*	41	14

* 2 additional ineligible students were previously counted as eligible by mistake in our denial report, due to incorrect grade levels being listed on Aurum's spreadsheet.

** 20 students were listed as being in 3rd grade in 2015-16 on Aurum's spreadsheet. However, 2 of these students' grade levels did not match information provided on their respective parent signature forms.



Exhibit B

Second Petition

To view Aurum Preparatory Academy's Second Charter Petition, please visit:

<https://ousd.legistar.com/View.ashx?M=F&ID=4824564&GUID=20A542DE-20D3-4773-9F5D-97C6242006CC>



Exhibit C

Resolution 1617-0007 and Written Findings of Support

To view Resolution 1617-0007 and Written Findings of Support denying Aurum Preparatory Academy's Second Charter Petition, please visit:

http://www.ousdcharters.net/uploads/4/1/6/1/41611/final_aurum_denial_staff_report_12.14.16.pdf



Exhibit D

Narrative Description of Changes



Narrative Description of Changes

Page Number Range	Description of Changes
Table of Contents	Page number changes and an added table for supplemental information
vii	Date changes to the start date for the enrollment table and in subsequent paragraphs
viii - x	Updated the Founding Board of Directors table and biographies to reflect current membership and expertise
xiv	Summary budget deleted and changed to reflect a 2018 start date
4 - 5	Changes to start date to 2018 in paragraph and enrollment table projections
41	Addition of the description of what a core course is i.e. English, Math, Social Studies, Science
67	Deletion of the date 2024 as the date is no longer relevant given a 2018 start
72	Change of calendar date to reflect a 2018 start date
73 - 74	Change of calendar to a 2018 - 2019 start
94 - 95	Changes to the date of the recruitment strategy table and to dates in the student recruitment narrative
100	Addition of a commitment to be a LEA member of a SELPA
103 - 104	Deletion of language as it pertains to having OUSD Special Education services
105 - 107	Deletion of language as it pertains to OUSD
109 - 111	Addition of language to reflect more information about our SELPA application for membership and deletion of language about special education services through OUSD. Addition of figure 1.52
112	Figure number changes
115	Figure number changes
117	Figure number changes
120	Figure number changes
123	Deletion of language as it pertains to OUSD and addition of language as it pertains to ACOE
124 - 135	Changes to the dates of the State Priorities table to reflect a 2018 start
140 - 142	Deletion of language as it pertains to OUSD and addition of language as it pertains to ACOE



146 - 150	Updated the Founding Board of Directors table and biographies to reflect current membership and expertise
152	Changes to start date and updated COLA adjustments
156	Deletion of language as it pertains to OUSD and addition of language as it pertains to ACOE
169	Addition of language of ACOE's policies regarding dispute resolution
176 - 190	Change of dates in start-up plan to reflect 2018 start
191	Changes to staffing model to reflect the 2018 start
204	Changes to staffing model to reflect the 2018 start
223	Change of start date to 2018
230	Change of language reflecting OUSD to ACOE
247	Change of language reflecting OUSD to ACOE
249 - 250	Change of language reflecting OUSD to ACOE
251 - 263	Change of language reflecting OUSD to ACOE
264 - 265	Change of language reflecting OUSD to ACOE
267	Change of language reflecting OUSD to ACOE
269	Change of language reflecting OUSD to ACOE
273 - 274	Page number changes
283 - 294	Change of start date to 2018
296	Addition of more meaningfully interested signatures
343	Addition of Supplemental Information Table
344 - 358	Addition of Supplemental Appendices