

Last Minute Memorandum

To: STATE BOARD MEMBERS

Date: 11/5/03

From: William J. Ellerbee, Jr., Deputy Superintendent
School and District Operations Branch

Re: ITEM # 29

Subject REQUEST BY THE LEADERSHIP PUBLIC SCHOOLS - SAN RAFAEL TO APPROVE A PETITION TO BECOME A CHARTER SCHOOL UNDER THE OVERSIGHT OF THE STATE BOARD OF EDUCATION

On October 6, 2003, the CDE received a request from the petitioners of the Leadership Public Schools-San Rafael (LPSSR) to authorize a charter school proposed to be located in the city of San Rafael in Marin County. The petition to establish the charter school was denied by the San Rafael City School District on August 11, 2003. The petition was submitted to the Marin County Office of Education on August 12, 2003. The Marin County Office of Education denied the petition on October 14, 2003.

The Advisory Commission on Charter Schools (ACCS) considered the LPSSR petition at its October 16, 2003 meeting at which time the Commission voted unanimously to recommend to the State Board that it approve the petition subject to the conditions of operation recommended by CDE staff. At the time of the ACCS meeting, CDE staff had not had an opportunity to review the petition in great detail. We have now completed the review. The CDE analysis and recommended conditions are included as Attachment 1.

If the charter is not approved and numbered by the State Board at the November meeting, the petitioners will forfeit the \$400,000 federal implementation grant they have been awarded, although they would be eligible to reapply and compete again for an implementation grant if chartered at a subsequent time.

The charter petition, if approved by the State Board, should be assigned charter #609 if the charter petition in Item 28 on the November agenda is approved. If the petition in Item 28 is not approved, the LPSSR petition should be assigned charter #608.

[Attachment 1](#): State Board of Education Charter School Appeal Findings (Pages 1-12)

State Board of Education Charter School Appeal Findings

School Name: Leadership Public Schools- San Rafael	
Denying District: San Rafael City Schools	Date Denied: 8/11/03
Denying County: Marin	Date Denied: 10/14/03
Date Received by SBE: 10/6/03	

SUMMARY OF FINDINGS	Concerns*
1. The Charter School presents an unsound educational program for pupils to be enrolled in the charter school.	<input checked="" type="checkbox"/>
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.	<input checked="" type="checkbox"/>
3. The petition does not contain the number of required signatures.	<input type="checkbox"/>
4. The petition does not contain an affirmation that the school shall be nonsectarian, shall not charge tuition and shall not discriminate.	<input type="checkbox"/>
5. The petition does not contain reasonably comprehensive descriptions of the required elements.	<input checked="" type="checkbox"/>
*See detail regarding concerns on findings 1, 2, and 5 on the following pages.	

GENERAL COMMENTS AND AFFIRMATIONS	Included	
	Yes	No
Evidence of local governing board denial per <i>Education Code</i> (EC) Section 47605 (j)(1) and 5 CCR 11967(a)(2)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Reason for denial included (5 CCR 1967(a)(2))	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Full charter included (EC 47605(b)(5)).	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Signed certification of Compliance with applicable law (5 CCR 11967(b)(3))	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Written verification of SELPA participation or district delegation to accept charter in the LEA for Special Education (EC 47641© and (d))	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Serves pupils in grade levels that are served by the school district of the governing board that considered the petition (EC 47605(a)(6))	<input checked="" type="checkbox"/>	<input type="checkbox"/>

FINDING #1	Concerns
<p>The charter school presents an unsound educational program for pupils to be enrolled in the charter school.</p> <ul style="list-style-type: none"> • Program presents the likelihood of physical, educational, or psychological harm; • Program is not likely to be of educational benefit to the pupils who attend. 	
<p>Comments: The LPSSR petition contains a great deal of information about the general educational program proposed for the school. However, CDE staff has identified the description of the special education program as a particular weakness in this petition:</p> <p>The petition fails to specify a special education plan that describes a process for the identification of students who may qualify for special education services. Nor does the petition indicate that LPSSR has a clear and complete understanding of its responsibilities under law with respect to special education students. The application includes vague statements that it “agrees to work with the California State Board of Education to ensure that students with exceptional needs are served.”</p> <p>Further, the petition contains no description of how the school will assess and serve students who are determined eligible for special education services. The petition indicates that the school intends to function as a public school within the San Rafael City High School District. However, the petition also states that LPSSR may hire its own special education staff and obtain reimbursement for its special education positions from the CDE, which indicates an incomplete understanding of how special education funding is provided through the SELPAs. Further, there is no statement in the petition that the school intends to offer a continuum of service options.</p> <p>The petition indicates that LPSSR has “...already begun conversations with the SELPA although most details need to still be worked out. We agree to condition the commencement of instruction in our charter school on participation in the SELPA”. CDE staff has had conversations with the Marin County SELPA Director who has indicated that the petitioners have not, to date, met with the SELPA regarding SELPA policies and application procedures. Further, as mentioned previously, the school states that it intends to function as a school within the district for special education purposes. However, it is unclear as to whether the denying school district (San Rafael City Schools) would be willing to enter into an MOU with the school that would essentially treat LPSSR as a school within the district for purposes of providing special education services.</p> <p>The petition also contains inappropriate and technically incorrect references to CDE and SBE regarding the implementation of the special education program (pages 24-25), which need to be corrected if the petition is approved.</p>	

FINDING #2	Concerns
<p>The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.</p> <ul style="list-style-type: none"> • Petitioners have a past history of involvement with charter schools or other education agencies that are regarded as unsuccessful; • Petitioners are unfamiliar with the contents of petition or requirements of law; • Petitioners have presented an unrealistic financial and operational plan for the charter school; • Petitioners lack the necessary background in curriculum, instruction and assessment, and finance and business management, and have no plan for securing individuals with the necessary background. 	
<p>Comments: The petition includes a budget, cash flow projections and an operations plan that seems substantially complete and realistic. In addition, the petitioners have a track record of opening other successful charter schools. There are a few areas in which CDE staff have identified concerns:</p> <p>Facilities: LPSSR has not identified or secured a facility for the school but has identified criteria for site selection and some possible alternatives for its facilities. The petition notes that: “Once a site is secured, LPSSR will provide a projected cost of the facility to SBE/CDE.” Further, LPSSR will notify parents of the facility site within 60 days of the commencement of classes. Petitioners also indicate they may request Proposition 39 facilities from the San Rafael City School District. However, the district must provide the school with a final facilities proposal by April 1, 2004, which does not leave much time for the school to find alternative facilities for a fall 2004 opening, should the district proposal prove unsatisfactory.</p> <p>Governance: The governing board of LPS is the same board that will govern the school. LPS is a non-profit corporation and the school is essentially a “project” of the corporation. The principal of the school reports to the LPS governing board. This structure makes it difficult to determine which entity has ultimate authority for the school’s operations. The petitioners have indicated verbally that LPS has ultimate responsibility for the school. However, the petition does not clearly differentiate responsibilities of the corporate governing board and the school. At a minimum, we would recommend the charter more clearly identify the roles and responsibilities of each entity.</p> <p>Beginning Year of Operation: The petition is unclear whether the school intends to open in 2004 or 2005. The petitioners have indicated verbally they would like to open in 2004, but would like to reserve the option of opening in 2005. In the CDE recommended conditions of operation, we have recommended due dates for meeting the conditions that assume a fall 2004 opening date for the school. If the petitioners later decide to open in 2005, CDE would bring this matter back before the State Board with new recommended dates for meeting the conditions.</p>	

FINDING #3	No Concerns
The petition does not contain the number of signatures required by law.	
Comments:	

FINDING #4	No Concerns
The petition does not contain an affirmation of each of the following: <ul style="list-style-type: none"> • Shall be nonsectarian • Shall not charge tuition • Shall not discriminate 	
Comments:	

FINDING #5	Reasonably Comprehensive	Not Reasonably Comprehensive
The petition contains reasonably comprehensive descriptions of the following:		
(A) A description of the educational program, including how information will be provided to parents on transferability of courses and eligibility of courses to meet college entrance requirements.	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: None		
(B) The measurable pupil outcomes	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: None		
(C) The method by which pupil progress is to be measured (compliance with statewide assessments and standards)	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: None		
(D) Governance structure, including the process to ensure parental involvement	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: See comments under Finding #2		

(E) Qualifications to be met by those employed	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comment: None		
(F) Procedures to ensure health and safety of pupils and staff, including criminal records summary (per EC Section 44237)	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: Petition states that employees not possessing a California Teaching Credential will be fingerprinted for purposes of the criminal record summary. We recommend all employees be fingerprinted.		
(G) The means by which the school will achieve racial and ethnic balance reflective of the district population	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: None		
(H) Admission requirements, if applicable (District priority or lottery per EC 47605 (d)(2))	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: None		
(I) The manner in which an independent annual financial audit is to be conducted	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Comments: The petition does not indicate that the auditor will have education finance experience, nor does it specify a timeline for resolution of audit findings/exceptions. The petition indicates that a copy of the audit will be provided to the SBE. A copy of the audit must be forwarded to CDE, the State Controller, and the Marin County Office of Education.		
(J) The procedures by which pupils can be suspended or expelled	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: None		
(K) The manner by which staff will be covered by STRS, PERS, or Social Security	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Comments: We note that the school intends to use CASA for its retirement program instead of PERS/STRS. This is the same organization that is being audited by the Sacramento City Unified School District for possible violations of law regarding the provision of excessive retirement benefits.		

<p>(L) The public school attendance alternatives for pupils residing in the school district who choose not to attend charter schools (No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school)</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: None</p>		
<p>(M) A description of the rights of any employee of the district, upon leaving the employment of the district to work in the charter, and of any rights of return to the school district after employment at the charter school (No governing board of a school district shall require any employee of the school district to be employed in a charter school (EC 47605(e))</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments: If approved, the petition needs to be amended to include the standard language from the Criteria for the Review and Approval of Charter School Petitions related to this element.</p>		
<p>(N) Process for resolution of disputes with chartering entity</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments: If approved, the petition needs to be amended to include the standard language from the Criteria for the Review and Approval of Charter School Petitions related to this element.</p>		
<p>(O) Declaration whether or not the charter school shall be deemed the exclusive public employer for the purposes of EERA</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
<p>Comments: Leadership Public Schools rather than the school will be the exclusive public employer.</p>		
<p>(P) A description of the procedures to be used if the charter school closes</p>	<input type="checkbox"/>	<input checked="" type="checkbox"/>
<p>Comments: The petition contains inappropriate references to the SBE such that the closeout procedures do not make sense with the SBE as the chartering entity.</p>		

Recommended Conditions of Operation for State Board Charter Appeals

Condition	Recommended	Not Recommended	Alternative Date
<p>1. Insurance Coverage- not later than June 1, 2004, (or such earlier time as school may employ individuals or acquire or lease property or facilities for which insurance would be customary), submit documentation of adequate insurance coverage, including liability insurance, which shall be based on the type and amount of insurance coverage maintained in similar settings.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<p>2. Oversight Agreement-not later than January 1, 2004, either (a) accept an agreement with the State Board of Education (administered through the California Department of Education) to be the direct oversight entity for the school, specifying the scope of oversight and reporting activities, including, but not limited to, adequacy and safety of facilities; or (b) enter into an appropriate agreement between the charter school, the State Board of Education (as represented by the Executive Director of the State Board), and an oversight entity (pursuant to EC Section 47605(k)(1)) regarding the scope of oversight and reporting activities, including, but not limited, adequacy and safety of facilities.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Condition	Recommended	Not Recommended	Alternative Date
<p>3. SELPA Membership- no later than February 2, 2004, submit written verification of having applied to a special education local plan area (SELPA) for membership as a local education agency and, not later than June 1, 2004, submit either written verification that the school is (or will be at the time students are being served) participating in the SELPA, or an agreement between a SELPA, a school district that is a member of the SELPA, and the school that describes the roles and responsibilities of each party and that explicitly states that the SELPA and the district consider the school's students to be students of the school district in which the school is physically located for purposes of special education programs and services (which is the equivalent of participation in the SELPA). Satisfaction of this condition should be determined by the Executive director of the State Board of Education based primarily on the advice of the State Director of Special Education based on a review of either the school's written plan for membership in the SELPA, including any proposed contracts with service providers or the agreement between a SELPA, a school district and the school, including any proposed contracts with service providers.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Condition	Recommended	Not Recommended	Alternative Date
<p>4. Educational Program- not later than January 1, 2004, submit a description of the curriculum development process the school will use and the scope and sequence for the grades envisioned by the school; and, not later than June 1, 2004, submit the complete educational program for students to be served in the first year including, but not limited to, a description of the curriculum and identification of the basic instructional materials to be used, plans for professional development of instructional personnel to deliver the curriculum and use the instructional materials, identification of specific assessments that will be used in addition to the results of the Standardized Testing and Reporting (STAR) program in evaluating student progress, and a budget which clearly identifies the core program from enrichment activities and reflects only those loans, grants, and lines of credit (if any) that have been secured by the school. Approval of this condition shall be determined by the Executive Director of the State Board of Education based primarily on the advice of the Deputy Superintendent for Curriculum and Instructional Leadership.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Condition	Recommended	Not Recommended	Alternative Date
<p>5. Student Attendance Accounting- not later than May 3, 2004, submit for approval the specific means to be used for student attendance accounting and reporting that will be satisfactory to support state average daily attendance claims and satisfy any audits related to attendance that may be conducted. Satisfaction of this condition should be determined by the Executive Director of the State Board of Education based primarily on the advice of the Director of the School Fiscal Services Division.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<p>6. Facilities Agreement-not later than January 1, present a written agreement (a lease or similar document) indicating the school's right to use the principal school site identified by the petitioners for at least the first year of the school's operation and evidence that the facility will be adequate for the school's needs. Not later than June 1, present a written agreement (or agreements) indicating the school's right to use any ancillary facilities planned for use in the first year of operation. Satisfaction of these conditions should be determined by the Executive Director of the State Board of Education based primarily on the advice of the Director of the School Facilities Planning Division.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<p>May 3, 2004 for lease for principal site, June 1, 2004 for ancillary site agreements</p>
<p>7. Zoning and Occupancy-not less than 30 days prior to the school's opening, present evidence that the facility is located in an area properly zoned for operation of a school and has been cleared for student occupancy by all appropriate local authorities. For good cause, the Executive Director of the State Board of Education may reduce this requirement to fewer than 30 days, but may not reduce the requirement to fewer than 10 days. Satisfaction of this condition should be determined by the Executive Director of the State Board of Education based primarily on the advice of the Director of the School Facilities Planning Division.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	

Condition	Recommended	Not Recommended	Alternative Date
<p>8. Final Charter- not later than January 1, 2004, present a final charter that includes all provisions and/or modifications of provisions that reflect appropriately the State Board of Education as the chartering authority and otherwise address all concerns identified by California Department of Education staff, and that includes a specification that the school will not operate satellite schools, campuses, sites, resource centers or meeting spaces not identified in the charter without the prior written approval of the Executive Director of the State Board of Education based primarily on the advice of appropriate CDE staff.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<p>9. Legal Issues-in the final charter presented pursuant to condition (8), resolve any provisions related to legal issues that may be identified by the State Board’s Chief Counsel.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<p>10. Processing of Employment Contributions-prior to the employment of any individuals by the school, present evidence that the school has made appropriate arrangements for the processing of the employees’ retirement contributions to the Public Employees’ Retirement System (PERS) and the State Teachers’ Retirement System (STRS).</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	
<p>11. Operational Date- if any deadline specified in these conditions is not met, approval of the charter is terminated, unless the State Board of Education deletes or extends the deadline not met. If the school is not in operation by September 30, 2005, approval of the charter is terminated.</p>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	