

Commentary from Valley Oak Charter School Organizers appears in blue.

DAVIS JOINT UNIFIED SCHOOL DISTRICT

RESOLUTION NO. 33-08

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE
DAVIS JOINT UNIFIED SCHOOL DISTRICT DENYING THE PETITION FOR
VALLEY OAK CHARTER SCHOOL**

WHEREAS, a petition for the grant of a charter school is governed by the standards and criteria set forth in Education Code section 47605; and

WHEREAS, the Founding Group, identified in the petition, submitted a petition and supporting documentation for grant of a Charter for the Valley Oak Charter School on or about November 5, 2007; and

WHEREAS, a public hearing was held on or about November 15, 2007, to determine the level of support for the petition by teachers, other employees of the District and parents/guardians in accordance with Education Code section 47605(b); and

WHEREAS, in reviewing the petition for the Charter, the Board of Trustees of the Davis Joint Unified School District is cognizant of 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; and

WHEREAS, the Superintendent and/or his designees have reviewed and analyzed the petition, proposed Charter, and supporting documentation submitted by petitioner.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the Board of Trustees of the Davis Joint Unified School District, having fully considered and evaluated the record in connection with the petition for grant of a Charter for the Valley Oak Charter School, hereby finds the petition to not be consistent with a sound educational practice, as follows:

- A. The petition does not contain the number of signatures required by law. [Ed. Code § 47605(b)(3).]
- B. The petition does not contain reasonably comprehensive descriptions of all of the elements prescribed by law. [Ed. Code § 47605(b)(5).]
- C. The petitioner is demonstrably unlikely to successfully implement the program set forth in the petition. [Ed. Code § 47605(b)(2).]

BE IT FURTHER RESOLVED AND ORDERED that the Board of Trustees of the Davis Joint Unified School District hereby determines the foregoing findings are supported by the following specific facts:

- A. **The petition does not contain the number of signatures required by law.** [Ed. Code § 47605(b)(3).]

1. The petitions submitted fail to affirm that the Charter was attached to the petition at the time of execution of the petition by the signatory as required by Education Code section 47605(a)(3).

47605(a)(3) provides that

A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

In fact, the signature pages were attached, and the signature page included a statement that it was attached to the petition.

B. The petition does not contain an affirmation of each of the conditions required by law. [Ed. Code § 47605(b)(4).]

1. The proposed Charter does not contain an affirmation of each of the conditions required by Education Code section 47605(d)(1). The Charter does not contain an affirmation that the charter school shall be nonsectarian in its programs, employment practices, and all other operations, and not discriminate against any pupil on the basis of sexual orientation.

This “finding” is a misstatement of the law and is factually untrue. The sections of the Charter School Act that are cited specifically require that the charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. VOCS Charter, page 60, DOES make those assurances and specifically references the relevant code sections. The Charter School Act does not anywhere mention the issue of discrimination against pupils on the basis of sexual orientation. By raising this issue, the drafters of the resolution apparently seek to imply that the school will discriminate against pupils on that basis. Such an implication is shameful.

C. The petition does not contain reasonably comprehensive descriptions of all of the elements prescribed by law. [Ed. Code § 47605(b)(5).]

1. The proposed Charter does not contain a reasonably comprehensive description of the charter school’s educational program. The Charter’s description does not indicate how it will improve pupil learning beyond that presently available in existing District programs. The proposed Charter does not describe increased learning opportunities for pupils or expanded learning experiences for pupils who are academically low achieving. The Charter does not describe or encourage the use of different or innovative teaching methods. The Charter does not provide parents and pupils with expanded choices in the types of educational opportunities that are available within the existing public school system.

Presented finding is not factual. Requirements as stated in the paragraph are not required by law.

2. The proposed Charter does not contain a reasonably comprehensive description of measurable pupil outcomes. The Charter does not identify specific pupil outcome goals in the subject matter areas of Reading and Language Arts, Mathematics, History and Social Science, Science, or Health and Nutrition.

Presented finding is not factual. The VOCS document employs district assessment protocols. For the district to say the charter does not contain a “reasonably comprehensive description of measurable pupil outcomes” is an indictment of its own practice. “Specific pupil outcome goals” in the content areas specified are indeed detailed in the VOCS Charter, pages 40 to 41, thus this finding has no basis in fact.

3. The proposed Charter does not contain a reasonably comprehensive description of the charter school’s methods to assess pupil progress. The Charter does not identify which assessment instruments will be used in all core areas, except English language acquisition. The Charter does not describe specific interventions for any core areas, except English language acquisition, or identify the criteria for placing students in an intervention program.

Presented finding is not factual. Each item the resolution says is deficient is indeed detailed in the charter. Refer to pages 40 and 41 in the charter. Specific interventions are detailed in the VOCS Charter, pages 29 through 32. Assessments (STAR, BEAR, salmon/blue cards, etc) are identified in both primary and intermediate grade level sections as well as in the MSO portion. Specific assessments in each content area will be dictated by the publisher's tests for each textbook adoption. Present adoptions are listed by publisher's name in the grade level sections.

4. The proposed Charter does not contain a reasonably comprehensive description of the charter school’s governance structure. The Charter contemplates the charter school will actually be operated and managed by corporations that are not legally constituted. The petition lacks evidence of proposed corporations’ governing bylaws. The Charter does not comprehensively describe the operating relationship of the proposed corporations or ensure public access and accountability by requiring both corporations to comply with the Brown Act, Public Records Act, Political Reform Act, and/or conflict of interest laws applicable to public agencies. The Charter purports to grant authority to the charter school that is not permitted by law. A charter school may not be organized as or operated by a corporation organized pursuant to the California Cooperative Corporations Law. The Charter does not adequately describe processes to ensure the active and effective involvement of parents in the governance of the school.

Presented finding is not factual and misstates applicable law. The charter describes on pages 42-47 the governance of the school. It additionally states that upon approval of the charter, Articles of Incorporation for Valley Oak Neighbors, a California Nonprofit Public Benefit Corporation shall be filed. On page 60, the charter also declares that it “Will follow any and all other federal, state, and local laws and regulations that pertain to the applicant or the operation of the charter school.” While the Charter Schools Act states that charter schools ‘may elect to operate as, or be operated by, a nonprofit public benefit corporation, it is not a requirement.

Nowhere in the law is there a prohibition against corporations organized under the California Cooperative Corporations Law. In fact, charter schools may be and are currently operated by a wide variety of entities in California.

5. The proposed Charter does not contain a reasonably comprehensive description of employee qualifications. The Charter description does not identify the various categories of employees the school anticipates or the general job qualifications for such positions. The Charter does not identify key positions in the organizational structure of the school or any additional qualifications for those positions. The Charter does not specify requirements for employment of any position other than for teachers. The Charter unlawfully proposes to employ non-certificated instructional staff in non-core, non-college preparatory courses.

Presented finding is not factual. The charter in fact is quite specific in its description of employee qualifications, particularly in regard to credentials and required certifications. The final sentence is specifically erroneous, in that the employment of non-certificated instructional staff in non-core, non-college preparatory courses is specifically lawful.

6. The proposed Charter does not contain a reasonably comprehensive description of the means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the District. The Charter does not identify any methods or time periods for monitoring, assessing, or evaluating its progress toward that goal. The Charter does not obligate the school to consider, devise, or implement remedial measures of any kind in the event the school's recruitment strategies do not satisfactorily achieve racial and ethnic balance among pupils that is reflective of the general population within the District.

Presented finding is not factual. The charter provides the following on pages 54-55

“NON-DISCRIMINATION

Valley Oak Charter School will strive to achieve a racial and ethnic balance amongst its student population that is reflective of population of the territorial jurisdiction of the District. As such, Valley Oak Charter School shall implement a student recruitment strategy, which shall include, but is not necessarily limited to, the following elements:

- An enrollment process that is scheduled and adopted to include a timeline that allows for a broad-based recruiting and application process.*
- The development of promotional and informational material that appeals to all of the various racial and ethnic groups represented in the District.*
- The appropriate development of promotional and informational materials in languages other than English to appeal to limited English proficient populations.*
- Outreach meetings in several areas of the District to reach prospective students and parents.*
- The distribution of promotional and informational materials to a broad variety of community groups and agencies that serve the various racial, ethnic, and interest groups represented in the District.”*

The charter school specifically draws from a diverse community, and the diversity of the neighborhood assures that any goals of maintaining diversity will be met upon the charter's inception.

7. The proposed Charter does not contain a reasonably comprehensive description of admissions criteria. The proposed Charter fails to provide a preference of District resident pupils immediately after pupils currently attending the charter school and unlawfully grants priority preferences to: students residing within the Valley Oak attendance area, children of Valley Oak School employees, and siblings of students enrolled in the District or the charter school. The description of the public random drawing process in the event of over enrollment is ambiguous, incomplete, and fails to admit students entitled to an attendance preference ahead of other students.

Presented finding is not factual. Ed Code specifically permits enrollment preferences to neighborhood students in charter schools. Refer to Section 47605 (d)(2). Also, the paragraph is internally contradictory. It initially says preferences are unlawful, and then later says we fail to admit students from a preferred attendance area. If the district is not happy with how we state how preference will be designated and how the attendance lottery will be run, those issues are easily negotiated

8. The proposed Charter does not contain a reasonably comprehensive description of the method for conducting annual audits. The Charter permits disputes regarding resolution of audit exceptions and deficiencies to be referred to the dispute resolution process referenced within the Charter, rather than be resolved to the satisfaction of the District, as required by law.

Presented finding is not factual. The charter is specifically clear regarding the means by which audits will be conducted as required by law. Refer to the VOCS Charter, page 57, which provides the following:

“The Valley Oak Charter School will resolve any audit exceptions and deficiencies (if any) to the satisfaction of the Davis Joint Unified School District by having the Audit Committee review any audit exceptions or deficiencies and report to the Board of Directors with recommendations. The Board of Directors will submit a report to the District describing how the exceptions and deficiencies have been or will be resolved. Such audit exceptions and deficiencies will be resolved within a reasonable time.”

9. The proposed Charter does not contain a reasonably comprehensive description of the procedures by which pupils may be suspended or expelled from the charter school. The Charter incorporates by reference the suspension/expulsion procedures in the Education Code without amending those procedures to describe the role of the charter school board, the method of selecting administrative panel members or other hearing procedures.

Presented finding is not factual. These ‘amendments’ are neither customary in charter documents nor are they required by charter law.

10. The proposed Charter does not contain a reasonably comprehensive description of employee rights. The District cannot be compelled through the charter granting

process to relinquish its rights as the employer to select, hire, assign, supervise, direct, evaluate and discipline employees. The proposed Charter fails to describe a manner or means by which the District may exercise its employer prerogatives or responsibilities.

Presented finding is not factual. The charter does not ask the district to relinquish its rights as they claim. All matters involving DTA personnel that differ from current employment practice in the district are subject to negotiation with DTA and memoranda of understanding with district human resources. The final sentence is not factual. Please refer to the description in the VOCS Charter, page 49

11. The proposed Charter does not contain a reasonably comprehensive description of dispute resolution procedures. The proposed dispute resolution process fails to expressly exempt revocation proceedings from the dispute resolution process. The District cannot be compelled through the charter granting process to submit to disputes to binding arbitration or relinquish its right to seek resolution of disputes through legal process. The proposal that the District pay the costs of arbitration is unsound by removing financial incentives for the charter school to resolve disputes without recourse to arbitration.

Presented finding is not factual. There is no requirement that the charter contain any notice that revocation proceedings be exempt from a dispute resolution process. The dispute resolution mechanism provides arbitration before a neutral third party arbitrator. By raising this issue it is grasping at straws.

12. The proposed Charter does not contain a reasonably comprehensive declaration of the public school employer. The Charter declares that the District will be the exclusive public school employer for employees at the charter school but fails to describe a manner or means by which the District may conduct its employer-employee relations responsibilities.

Presented finding is not factual. The charter school clearly declares that employer-employee relations are subject to the terms negotiated through collective bargaining as employees of the district. VOCS Charter, page 49, makes the unequivocal declaration that “The Davis joint Unified School District shall be deemed the exclusive employer of the employees of Valley Oak Charter School for the purposes of the Education Employment Relations Act.”

13. The proposed Charter does not contain a reasonably comprehensive description of the charter school closing procedures. The Charter closing procedures fail to describe whether assets acquired with Charter School Block grant funds based on average daily attendance will be distributed to the District. The Charter closing procedures fail to comprehensively describe the procedure for distribution of other assets.

Presented finding is not factual. The charter provides that

“Should the Valley Oak Charter School cease operation, all assets secured for the appropriations of public funds shall be returned to the Davis Joint Unified School District.”

14. The proposed Charter does not reasonably address the manner in which administrative services are to be provided. The charter school’s option to contract with a third-

party vendor for personnel transactions, accounting, payroll, human resource services, fingerprint checks, and health and welfare benefits is inconsistent with provisions in the Charter that purport to make the District the employer of all charter school personnel. The Charter lacks any description of a charter school structure for providing administrative services, such as personnel transactions, accounting, or payroll. The Charter document does not contain evidence of an understanding of school business practices or the expertise necessary to carry out the administrative services, or a reasonable plan and time line to develop and assemble such practices and expertise. The Charter omits any description of the criteria for contracting for services, the selection of a contractor with the requisite expertise, or procedures for requesting or awarding vendor contracts.

We will happily discuss this topic with the District, should they ever ask.

15. The proposed Charter does not reasonably address the potential civil liability effects on the District. The charter school proposes to organize as a non-profit public benefit corporation but has neither initiated nor completed the process of incorporation. The Charter states the school will obtain general liability, workers compensation, and other necessary insurance coverage but does not name the District as an additional insured. The charter school's organization as a non-profit corporation and the District as the employer of all charter school personnel are incompatible because the District's liability insurance coverage does not extend to non-profit corporations.

Presented finding is not factual. The Charter Schools Act provides

47604(a) Charter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1) of the Corporations Code).

(b) The governing board of a school district that grants a charter for the establishment of a charter school formed and organized pursuant to this section shall be entitled to a single representative on the board of directors of the nonprofit public benefit corporation.

(c) An authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authority has complied with all oversight responsibilities required by law, including, but not limited to, those required by Section 47604.32 and subdivision (m) of Section 47605.

We will be happy to discuss and resolve the concerns raised by the District through a memorandum of understanding or other document.

16. The proposed Charter is not supported by reasonably comprehensive financial statements. The financial statements and budgets contain insufficient detail to show the charter school is fiscally viable. The projections of total ADA during the first year of operation are not supported by a description of the methodology used for the projections. The total ADA projection does not distinguish between in-district and out-of-district ADA. The total ADA projection substantially exceeds the total student count for the existing attendance area. Budget assumptions erroneously include an inflation increase for Federal revenues. Cash-flow and financial projections for the first three years of operation were not provided. A District cash-flow analysis indicates the charter school budget would likely be negative at the end of the first year of operation if enrollment is less than projected by the charter school. The proposed first

year operating budget understates expenditures. The cost of the Director is budgeted at the average teacher salary cost. The average teacher salary cost understates the actual salary costs of the teachers to be employed and does not take into consideration the proposed increases in salary and health benefits. Start-up costs for text and library books are low. Budgeted bookkeeping and legal fees are low. The budget does not include fees for administrative service support. The budget erroneously estimates a three percent (3%) of revenues oversight fee for facilities instead of pro rata facilities costs prescribed by state law and regulations.

The financial documents provided are what is required by law and are typical of the documents attached to many other charters. Many of the additional 'requirements' or 'deficiencies' cited by the resolution are either not specifically required in the charter or are petty quibbles. The assertion that the three percent (3%) oversight fee instead of pro rata facilities cost is erroneous, is in error. This pro rata facilities cost may be charged only for those facilities the District paid for out of unrestricted general fund revenues. To the best of our knowledge DJUSD does not do this. Facilities generally are paid for through bond or other special funds.

D. The petitioner is demonstrably unlikely to successfully implement the program set forth in the petition. [Ed. Code § 47605(b)(2).]

1. The specific findings of fact set forth in paragraphs A.1, B.1, and C.1 through C.16, above, are restated and incorporated herein by reference. Said specific facts evidence that petitioner is demonstrably unlikely to successfully implement the program set forth in the petition.

See above.

PASSED AND ADOPTED on December 6, 2007 by the Board of Trustees of the Davis Joint Unified School District by the following vote:

AYES:
NOES:
ABSTENTION:
ABSENT:

I declare under penalty of perjury that the foregoing Resolution was duly passed and adopted on the date and by the vote stated.

Clerk of the Board of Trustees

CERTIFICATION

State of California)
) ss.
County of Yolo)

I, James Hammond, Superintendent and Secretary to the Board of Trustees of the Davis Joint Unified School District, do hereby certify and declare that the foregoing is a full, true and

complete copy of a resolution duly adopted by the Davis Joint Unified School District on the 6th day of December 2007.

JAMES HAMMOND
Superintendent and Secretary to the Board
of Trustees of Davis Joint Unified School
District