

**RESOLUTION NO. 3636
BEFORE THE GOVERNING BOARD
OF THE CLOVIS UNIFIED SCHOOL DISTRICT
FRESNO COUNTY, CALIFORNIA**

**RESOLUTION OF THE GOVERNING BOARD
OF THE CLOVIS UNIFIED SCHOOL DISTRICT
DENYING THE PETITION TO ESTABLISH
THE ONE & ONLY ACADEMY CHARTER SCHOOL**

WHEREAS, on January 2, 2018, the Clovis Unified School District (“District”) received a charter petition (“Petition”) from One & Only Academy Inc., a California public benefit nonprofit corporation (“Petitioner”), proposing the formation of One & Only Academy (“Charter School”); and

WHEREAS, consistent with Education Code section 47605, subdivision (b), at a meeting on January 17, 2018, the District’s Governing Board (“Board”) held a Public Hearing on the Petition, at which time the Board considered the level of support for the Petition by teachers, employees and parents and guardians of the District; and

WHEREAS, consistent with Education Code section 47605, subdivision (d)(2), at a meeting on March 7, 2018, the Board held a Public Hearing on the proposed Charter School’s admissions policies and procedures; and

WHEREAS, the Board has convened on March 21, 2018, to consider whether to grant or deny the Petition; and

WHEREAS, District staff and legal counsel have reviewed and analyzed the Petition and supporting documents for legal, programmatic and fiscal sufficiency, and have identified significant deficiencies in the Petition, as set forth in the *Staff Report and Proposed Findings of Fact Regarding One & Only Academy Charter Petition* attached hereto as Exhibit A (“*Findings of Fact*”); and

WHEREAS, based on the *Findings of Fact*, (1) it is demonstrably unlikely that Petitioner will successfully implement the program set forth in the Petition; and (2) the Petition does not contain reasonably comprehensive descriptions of a number of the elements required by Education Code section 47605, subdivisions (b)(5)(A)-(O), and therefore the *Findings of Fact* support a denial of the Petition.

THEREFORE BE IT RESOLVED, that the Governing Board of the Clovis Unified School District hereby adopts the *Findings of Fact* attached hereto as Exhibit A as the findings of the Board; and

BE IT FURTHER RESOLVED, that, based on the *Findings of Fact* set forth as Exhibit A, the Petitioner is demonstrably unlikely to successfully implement the program set forth in the Petition; and

BE IT FURTHER RESOLVED, that, based on the *Findings of Fact* set forth as Exhibit A, the Petition does not contain reasonably comprehensive descriptions of certain elements of the Petition required by Education Code section 47605, subdivisions (b)(5)(A)-(O); and

BE IT FURTHER RESOLVED, that for the reasons given above, the Petition is hereby denied.

THE FOREGOING RESOLUTION was adopted at a regular meeting of the Governing Board of the Clovis Unified School District held this 21st day of March, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

Jim Van Volkinburg, D.D.S., President
Governing Board
Clovis Unified School District
Fresno County, California

I, Ginny L. Hovsepian, Clerk of the Governing Board of the Clovis Unified School District, County of Fresno, State of California, do hereby certify that the foregoing is a true copy of the resolution adopted by said Board at a regular meeting thereof, at the time and by the vote therein stated, which original resolution is on file in the office of said Board.

Ginny L. Hovsepian, Clerk
Governing Board
Clovis Unified School District
Fresno County, California

EXHIBIT A

STAFF REPORT AND PROPOSED FINDINGS OF FACT

(ATTACHED)

**STAFF REPORT AND PROPOSED FINDINGS OF FACT
REGARDING ONE & ONLY ACADEMY
CHARTER PETITION**

I. Introduction

A. Background

On January 2, 2018, the Clovis Unified School District (“District”) received a charter petition (“Petition”) from One & Only Academy, Inc. (“Petitioner”), a California nonprofit public benefit corporation, seeking to establish a public charter school to be called One & Only Academy (“Charter School”).

Petitioner requests a five year term for the Charter School from July 1, 2018 through June 30, 2023. Petitioner anticipates that the Charter School would serve students in transitional kindergarten (“TK”) through eighth grade and would commence operations in the 2018-2019 school year with a Year 1 enrollment of 175 students in grades TK through 5. Starting in Year 2, the Charter School would add one grade level each year, as it grows to full capacity of 410 students by Year 5. (Petition, p. 23.) Petitioner does not currently operate any other charter schools.

B. Timeline for Board Action

Petitioner submitted its Petition on January 2, 2018. Pursuant to the Education Code, the District held a public hearing on January 17, 2018, so that the District’s Governing Board (“Board”) could consider the “level of support for the Petition by teachers employed by the district, other employees of the district and parents.” (Ed. Code, § 47605, subd. (b).) A public hearing on the Charter School’s proposed admission preferences was held on March 7, 2018. Following an extension, as mutually agreed by the Charter School and the District, the Board intends to take action regarding approval or denial of the Petition on March 21, 2018.

District staff members and legal counsel read and carefully analyzed the Petition and provided feedback for this Staff Report and Findings of Fact on all elements, including the proposed educational program, fiscal and governance issues, racial and ethnic balance requirements, student admissions, discipline, labor and personnel issues, facilities, and legal concerns.

II. Legal Standard for Petition Review

The Charter Schools Act of 1992 (“Act”) governs the creation of charter schools in the State of California. The Act includes Education Code section 47605, subdivision (b), which sets forth the standards and criteria for petition review. The Act provides that a school district governing board considering whether to grant a charter petition “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.” (Ed. Code, § 47605, subd. (b).) Specifically, the Board may not deny a petition unless it makes written factual findings setting forth specific facts to support one, or more of six findings:

1. The charter school presents an unsound educational program for the students to be enrolled in the charter school;
2. The petitioner is demonstrably unlikely to successfully implement the program set forth in the petition;
3. The petition does not contain the number of signatures prescribed by Education Code section 47605, subdivisions (a)(1)(A) or (a)(1)(B);
4. The petition does not contain an affirmation of each of the conditions set forth in Education Code section 47605, subdivision (d), including that the charter school: (1) will be nonsectarian in its admission policies, employment practices and all other operations; (2) will not charge tuition; and (3) will not discriminate against any student on the basis of the characteristics set forth in Education Code section 220;
5. The petition does not contain reasonably comprehensive descriptions of certain elements in its program and operations as set forth in Education Code section 47605, subdivisions (b)(5) (A-O), which describes the fifteen elements that must be addressed in every petition to establish a charter school. These elements include a description of the school’s governance structure, admissions policy, health and safety and student discipline policies; or
6. The petition does not contain a declaration of whether the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 of Division 4 of Title 1 of the Government Code.

Charter school petitions are also required to include discussion of the impact on the chartering district, including the facilities to be utilized by a proposed charter school, the manner in which administrative services will be provided, potential civil liabilities for the school district, and a three-year projected operational budget and cash flow. (Ed. Code § 47605, subd. (g).)

III. Summary & Recommendation to Deny Petition

During the public hearing on January 17, 2018, Petitioner and a number of parents from the wider Fresno area and other locations outside of Clovis identified bullying of children from Punjabi, and more specifically, Sikh families and students—as a reason for supporting establishment of the Charter School. However compelling the testimony of Petitioner and these parents, Petitioner’s solution—establishment of a charter school intended to shelter these children from bullying that targets their religious and ethnic identities—will ultimately result in re-segregation of our schools.

The Board is encouraged to consider whether the better course of action is to ensure that bullying in District schools—including bullying of Punjabi students based on their religion and ethnic background—is appropriately addressed. As the Board is aware, the District already has robust policies in place that make clear that bullying is not tolerated in Clovis Unified schools. In fact, and as the Board knows, on October 30, 2017, the Board adopted a resolution reaffirming the commitment and expectation of the Governing Board that the principles and values articulated in the District’s Strategic Plan and core values, and Governing Board policies are carried out across the District so that District students are treated with dignity and respect.

Further, while appreciating Petitioner’s good intentions with regard to the desire to establish the Charter School, District staff has identified a number of deficiencies and concerns within the Petition, including but not limited to: the Charter School’s plan for recruiting a racially and ethnically diverse student population; its admissions procedures; its curriculum and teaching methods; its plans for serving special education, Section 504, English Learner, low-achieving, and socioeconomically disadvantaged students, and its budget and financial plans. Review of the Petition has also raised concerns and questions as to whether operation of the proposed Charter School may violate prohibitions against sectarian schools in state law, as well as the Establishment Clauses of the United States and California constitutions.

As a result of these deficiencies and concerns, District staff recommends denial of the Petition on the following grounds, pursuant to Education Code section 47605:

1. The Petitioner is demonstrably unlikely to successfully implement the program set forth in the Petition. (Ed. Code, § 47605, subd. (b)(2).)
2. The Petition does not contain reasonably comprehensive descriptions of certain required elements set forth in Education Code section 47605, subdivisions (b)(5)(A-O).

In order to deny a petition on the grounds set forth above, Education Code section 47605, subdivision (b), requires the Board to make “written factual findings, specific to the particular petition, setting forth specific facts to support one or more” of the grounds for denying the charter. Therefore, if the Board determines it will deny this Petition, District staff recommends that the Board adopt the proposed Findings of Fact, set forth below, as its own findings.

In the event the Board votes to approve the Petition, Staff anticipates that rigorous oversight by the District will be required in order to address the unique concerns identified in this Report and ensure that the Charter School is operated in accordance with the law. Staff further recommends that approval of the Petition be conditioned upon Petitioner’s agreement that an MOU setting out other terms and conditions governing operation of the Charter School will be executed within thirty (30) days of the Board’s approval of the Petition.

Please note that the following Findings of Fact have been grouped for convenience under the aforementioned grounds for denial of a charter petition. However, certain Findings of Fact may support more than one ground for denial.

IV. Results of Petition Review (Findings of Fact Determination)

Finding 1: There are Facts in the Petition to Support a Finding That Petitioner Is Demonstrably Unlikely to Successfully Implement the Program Set Forth in the Petition.

In order to successfully implement the program described in the Petition, Petitioner must demonstrate familiarity with the content of the Petition and the requirements of laws applicable to the proposed school; present a realistic financial and operational plan; have the necessary background in areas critical to the Charter School's success; or have a plan for securing the services of individuals with the necessary background, including curriculum, instruction, assessment, finance and business management. As discussed below, there is concern whether the Charter School will successfully implement its program, as currently described in the Petition.

A. The Charter School is Unlikely to Attract a Racially & Ethnically Diverse Student Body

The Petition raises serious concerns that the Charter School will not be able to “achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.” (Ed. Code, § 47605, subd. (b)(5)(G).)

Specifically, there is concern that the student population of the proposed Charter School will consist primarily, or almost entirely, of students of Punjabi descent. In describing the “community need” for the Charter School, the Petition states: “While the Charter School will be open to children from all backgrounds, background information regarding Americans of Punjabi descent explains the need for this school.” (Petition, p. 16.) The Petition goes on to note that the Central Valley has a large concentration of Americans of Punjabi descent, “of which the majority are Sikhs” and that Petitioner’s own “internal research indicates that there are over 500 Punjabi families” residing in Clovis. (Petition, pp. 16, 24.) While the Charter School “serves students from diverse backgrounds who live in the Central Valley”, Petitioner acknowledges that “[m]any students will come from families who speak Punjabi at home.” (Petition, p. 23.)

According to Petitioner, while the Charter School will provide a “protected space to Sikh children” it will also “educate and create culturally diverse and aware students from all ethnicities.” (Petition, p. 17.) However, concerns regarding Petitioner’s ability to fulfill its obligation to recruit a racially and ethnically diverse student population are compounded by the recruitment strategies, admissions preferences, and lottery procedures described in the Petition.

As an initial matter, there may be a misunderstanding on Petitioner’s part as to the legal requirement that the Petition describe the means by which the Charter School will recruit a student body reflective of the general population residing within the territorial jurisdiction of the District. (Ed. Code, § 47605, subd. (b)(5)(G).) While the statute contemplates residents

of the community as a whole, enrollment in District schools in 2016-2017 included, among other groups, 36.7% Hispanic/Latino students, 13.5% Asian students, 3.1% African American students, and 40.5% White students. Hmong students represent a significant subgroup of the 13.5% of Asian students enrolled in District schools.

The Petition includes a graph of student ethnicities by school, district, county, and state but does not address how the Charter School intends to recruit representative percentages of those racial and ethnic populations residing within the District's territorial boundaries. Instead, the Petition simply notes, without any specific detail, that "the Charter School will be culturally rich as families choose this type of holistic education for their children" regardless of their racial or ethnic identity. (Petition, pp. 24, 28.)

The brief recruitment strategy described in the Petition lists "international Fests, Pre-Open Houses, Community Fun Run/Walks and other similar promotional activities", as well as the Clovis Farmers Market, Big Hat Day, Clovis Rodeo Parade, and the Clovis Trail Fest as general opportunities for "establishing visibility in the community." However, Petitioner does not describe any specific outreach, venues, or events sponsored by the Charter School, or community resources the Charter School has, or will use to target and recruit a student body that reflects the District's population.¹ (Petition, pp. 109-110.)

Of particular concern, marketing materials for the Charter School are to be developed in English and Punjabi only. (Petition, p. 109.) This means that families belonging to some of the largest racial and ethnic groups residing within District boundaries—including Spanish and Hmong speaking families—will not have access to information about the Charter School.

Also missing from the Petition is a process for monitoring and correcting ethnic and racial imbalances in the Charter School in subsequent years. Instead, the Petition generally states that the Charter School "will maintain an accurate accounting of the ethnic and racial balance of students enrolled in the Charter School and will use this information to determine where additional outreach efforts are needed." (*Id.*) Without a substantive process for monitoring, evaluating, and correcting racial and ethnic imbalances, Petitioner is unlikely to successfully implement the program in the Petition. This recruitment process becomes even more difficult once the school begins operations and has accepted its first group of families for admission.

The admissions preferences and lottery procedures listed in the Petition also indicate a strong likelihood that most of the Charter School's student body will be composed of students of Punjabi descent. In particular, the first three admission preferences for the public random drawing include: (1) siblings of students to or attending the Charter School; (2) children of Founding Families of the Charter School; and (3) children of Charter School teachers and staff. (Petition, pp. 111-112.) Based on review of the Petition, it appears likely that many, if not all, of the founding families, Charter School teachers and Charter School staff will be of Punjabi descent. Providing admissions preference for these categories of students is likely to result in an extremely large percentage of Punjabi students at the Charter School, and is

¹ Staff does note that the website for the proposed Charter School features several photos captioned: "Outreach at Holistic Cultural and Education Wellness Center: Informing the Hispanic Community about our project and spreading awareness about our philosophy."

likely to decrease the Charter School's ability to recruit for diversity. The Petition also gives admissions preference to students enrolled in Virginia Boris Elementary School or who are residing in its attendance area. (Petition, p. 112.) Of the 33 elementary schools within the District, Virginia Boris Elementary has the highest number of Punjabi students. Again, providing such a preference category, along with the previous preference categories, is likely to result in an extremely large percentage of Punjabi students at the Charter School, decreasing the likelihood of attracting and/or achieving a diverse student body in the school. In addition, Virginia Boris Elementary is not a Title 1 school, further reducing the likelihood that socioeconomically disadvantaged students will have the opportunity to enroll in the proposed Charter School.

Of further concern, scheduling of the first lottery for April 18, 2018, will significantly shorten the Charter School's recruitment deadline and further limit the potential for attracting students from outside of the Punjabi community.

B. Proposed Charter School Raises Religious Entanglement Concerns

Federal and state constitutional provisions and statutes establish the limitations for religiously affiliated programs in public schools, which include charter schools.

The First Amendment's Establishment Clause prohibits the government from making any law "respecting an establishment of religion."² To determine whether a school action violates the Establishment Clause, courts have developed the *Lemon* test. The *Lemon* test contains three prongs, which examine whether the school's practices or policies: 1) have a secular purpose; 2) neither advance or inhibit religion; or 3) create an excessive government entanglement with religion.³

It is important to note that, when applying the *Lemon* test, courts will look at the totality of the circumstances to determine if a violation of the Establishment Clause has occurred.⁴ Courts will also consider the more vulnerable nature of younger children when analyzing the primary effect of state actions.⁵ Thus, when reviewing the Charter School's program in its entirety, taking the age of the students into consideration, the court will determine whether the program has a primary effect that advances or inhibits religion.⁶

Similar to federal law, the California Constitution prohibits the establishment of a religion. Article I, Section 4 of the California Constitution states, "The Legislature shall make no law respecting an establishment of religion." Article IX, Section 8 of the California Constitution further states, "No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the

² U.S. Const. Amend. I.

³ *Lemon v. Kurtzman*, 403 U.S. 602 (1971).

⁴ *Lemon*, 403 U.S. at 614 (stressing that courts should examine "the cumulative impact of the entire relationship").

⁵ See *Brown v. Woodland Joint Unified School Dist.* (9th Cir.1994) 27 F.3d 1373, 1378.

⁶ *Nurre v. Whitehead* (9th Cir.2009) 580 F.3d 1087, 1097.

public schools; nor shall any sectarian or denominational doctrine be taught, or instruction thereon be permitted, directly or indirectly, in any of the common schools of this State.”

Additionally, the Education Code specifically requires charter schools to operate nonsectarian educational programs. Education Code section 47605, subd. (d)(1) states, in part, “a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations.”

Education Code section 51511 allows the use of religious references in schools only “when such references do not constitute instruction in religious principles or aid to any religious sect, church, creed, or sectarian purpose and when such references or uses are incidental or illustrative of matters properly included in the course of study.” Consistent with Section 51511, the U. S. Supreme Court has held that “study of the Bible or of religions, when presented objectively as part of a secular program of education, may not be effected consistently with the First Amendment.”⁷

While Petitioner states that the Charter School will abide by these laws, information contained in the Petition has raised concerns that the Charter School’s instructional program may—even inadvertently—be sectarian in nature, and that its operation could violate federal and state laws applicable to charter schools and religious affiliation. Moreover, scrutiny of the proposed Charter School’s leadership and affiliations raises additional concerns that the proposed Charter School may not be sufficiently separate from religious institutions and nonsectarian.

As an initial matter, Petitioner states that the purpose of opening the Charter School is, in large part, a response to bullying of Punjabi students. (Petition, pp. 16-17.) However, when citing bullying statistics at the public hearing, Petitioner cited the bullying of Sikh students, specifically. Other concerns related to the instructional program, the facilities to be used by the Charter School, the proposed name and logo of the Charter School, and connections between the Charter School’s founders and religious organizations are summarized below.

1. Facilities

Charter School students will attend classes on property owned by the Darbar Shri Guru Granth Sahib Ji gurudwara (“temple”) located at 2630 North Locan Avenue in Fresno, California. The Charter School will use modular buildings to create seven classrooms and other necessary facilities for the Charter School site. However, “students will have access to the 3000 square foot temple for indoor meals and recreation, assemblies and performances.” (Petition, p. 150; Appendix I.)

In general, a charter school leasing facilities from a religious institution is not, in and of itself, a violation of the Establishment Clause.⁸ However, some cases involving charter schools have been found to present Establishment Clause issues. In those cases, the charter schools comingled school funds with church funds, paid significantly more or less than fair

⁷ *Sch. Dist. of Abington Township, Penn. v. Schempp*, 374 U.S. 203 (1963).

⁸ See *Porta v. Klagholz*, 19 F. Supp. 2d 290, 303 (D.N.J. 1998).

market value for the use of the facilities, and posted religious symbols and prayers in the facilities during the school day.⁹

In this case, there are a number of questions that need to be answered, in order to determine with more certainty whether or not Petitioner's use of the temple facilities might present an Establishment Clause violation. For example, it is important to understand the amount being paid for the facilities. Is this amount consistent with what other charter schools pay for facilities, or, is the temple subsidizing the lease?¹⁰ Also, when students use the temple space for meals or activities, how will the Charter School ensure that students are not exposed to religious items (i.e., prayers, symbols, imagery, or the temple display of the Guru Granth Sahib, the religious scripture of Sikhism)? Another concern is the proximity between the portables and the temple. Will students and parents enter and exit through the temple each day when attending the school, or does the Charter School have a separate entrance so that students and parents feel that there is a separation between the temple and the Charter School? A review of the Petition does not address these issues.

2. Name and Logo of Charter School

It appears that the Charter School's proposed use of the name "One & Only Academy" may be related to the core beliefs of the Sikh religion. The *Mool Mantar*, a key Sikh scripture contained in the Guru Granth Sahib, is an explanation and amplification of the single phrase – Ik Onkar. Ik Onkar translates to "There is One and Only One God." Given the close relationship between the Charter School's name and this core tenet of the Sikh religion, the Charter School's name could be found to be problematic. Because the name of the Charter School reflects this core tenet of the Sikh religion—the One and Only God—it is reasonable to conclude that the community, including Sikhs in the community, would interpret the name as religious in nature. Thus, the religious connotation of the name is problematic because, objectively, it creates an impression that the school is non-secular.

Petitioner claims a secular purpose for the Charter School's name; however, anyone familiar with Sikhism's core belief of "One and Only One God," and who drives by the temple/Charter School site or sees the signage for the Charter School, would likely assume that the Charter School is religious in nature. Thus, in looking at the name in light of other potential sectarian issues raised by the Petition, a court could find that the name is no longer being used for a secular purpose due to the totality of the circumstances involved. This could constitute a violation of the Establishment Clause.

The logo for the proposed Charter School, which features a stylized lotus flower, also raises concerns regarding its association with Sikh religious imagery. In the Sikh holy scripture, the Guru Granth Sahib Ji, the lotus is referenced more than 400 times as symbolic of the human

⁹ See *Pocono Mountain Charter School v. Pocono Mountain School District*, No. 1308, WL 717951 (Pa. Commw. Ct. Feb. 24, 2016); See also *Am. Civil Liberties Union of Minn. v. Tarek Ibn Ziyad Acad.*, WL 1840301 (D. Minn. May, 7, 2010). Both cases resulted in long legal battles and the ultimate closure of the charter schools due to financial hardships.

¹⁰ As noted in Section IV.I.1 (Facilities) of this Report, the \$ 0.75 per square foot charged to the Charter School monthly appears to be very low.

soul.¹¹ The lotus has long been a traditional element of Sikh art and architecture, and the dome of every gurudwara (temple) represents a closed lotus flower.¹² The lotus imagery in the logo for the proposed Charter School is also incorporated in the logo for another Sikh religious school, Gobind Sarvar Calgary, Alberta. Other similarities between the proposed Charter School and Sikh religious schools are discussed in greater detail, below.

3. *Connection between Charter School Founders and Other Religiously-Affiliated Organizations*

According to its Petition, the Charter School intends to “provide a rigorous, standards-based instruction assuring individualized attention, service learning, project based learning, mindfulness, and Punjabi language instruction.” (Petition, p. 16.) The nonprofit public benefit corporation that is to operate the proposed Charter School was registered with the California Secretary of State by Lead Petitioner Harmit Singh Juneja on December 13, 2017. Based on records available online, its state charity registration and federal nonprofit status appear to be pending.

A Sikh religious school, Gobind Sarvar Gurmat School Fresno, operates at 4927 East McKinley Avenue under the guidance of a separate nonprofit, the Gobind Marg Charitable Trust Society, according to the school’s website. Instruction takes place during evenings and weekends. The school is one of several operated under the auspices of the Gobind Marg Charitable Trust Society or an arm of it, including schools in Canada and the U.S. (the original school was founded in 1999 in India). Most of these schools appear to provide religious instruction on nights and weekends only. But according to timelines provided on the schools’ websites, the success of the religious schools prompted the creation of full-time private schools that integrate a Sikh religious curriculum with a traditional one. Full-day private schools opened in three locations in Canada, in 2015, 2016, and 2017, as an outgrowth of the gurudwara and the religious schools.

The website for the Fresno Sikh religious school raises the question of whether the Charter School is intended to operate similarly to a Gobind Sarvar school. In the March 9, 2018, meeting with District staff, Mr. Juneja denied any connection. The religious school’s website notes that “[w]e have been gifted with 23.5 acres of land to build a Gobind Sarvar Elementary School” and seeks donations for that school, which, according to a parcel map contained on the web page for donations, is at 7546 East Clinton Avenue in Fresno (nearby to the North Locan Avenue property) and appears to have been owned by the gurudwara where the Charter School intends to be sited, until November 28, 2017, when the deed was granted to Ravinder Singh and Davinder Singh, according to property records available online.¹³

¹¹ *The Lotus—Sikh Forum Wolverhampton* (<http://www.sikhforumwolverhampton.com/the-lotus/>)

¹² *Id.*

¹³ After the March 9, 2018, meeting with District staff, it appears that the information concerning the gift of land for the purpose of building a Gobind Sarvar Elementary School was removed from the Gobind Sarvar Gurmat School Fresno website.

According to articles of incorporation submitted to the California Secretary of State, the Gobind Marg Society of California was incorporated in 2013 for the purpose of “form[ing] a place of congregation/worship for sikh (sic) religion.”

Records show that Mr. Juneja, and another Charter School founding member, Sohinder Singh, have both served as officers of the Darbar Shri Guru Granth Sahib Ji gurudwara and the Gobind Marg Society of California. At the March 9, 2018, meeting with Petitioner, Mr. Juneja affirmed his role with the Gobind Marg Society of California, but stated that his affiliation with the Gobind Marg Society would not have an influence on the Charter School. While these affiliations may not necessarily be in and of themselves proof of intent to create a religious school, they do prompt questions about whether the Charter School’s instruction will be purely non-sectarian in nature, particularly given the fact that these affiliations were not disclosed in the Petition.

Further facts suggest a connection between the proposed Charter School and the entities that operate the private, religious based schools:

1) The Petition lists the Charter School’s “core values” as: integrity, self-awareness, gratitude, resilience, unity, humility, respect and creativity, and notes that the Charter School’s educational philosophy and program are “reflective of our core values.” (Petition, pp. 18-20.) The three-year plan for Gobind Sarvar School Calgary similarly identifies these as its core values, but additionally identifies them as the “Eight Core Values of Sikhi.” Moreover, the descriptions of these core values in the Petition are nearly identical to those of the Calgary religious school. At the March 9, 2018, meeting with District staff, Mr. Juneja acknowledged that the Charter School’s “core values” were borrowed directly from the Gobind Sarvar School Calgary. In fact, he admitted that the Petition uses the same description of each of the eight core values as is used by the Calgary school because the words they used were so beautifully written that he felt there was nothing wrong in using the same language in the Petition.

2) During the March 9, 2018 meeting, Mr. Juneja stated that the Charter School intends to allow the new Gobind Sarvar Elementary School (to be constructed on the adjacent 23.5 acres) to use the Charter School’s facilities during non-school hours, but that this would be done “all above board” and using appropriate paperwork.

3) Mr. Singh, who is listed in the Petition as a founding member of the proposed Charter School and in its Bylaws as a member of its Board of Directors, was listed as Darbar Shri Guru Granth Sahib Ji’s (Fresno) incorporator and also, in a June 5, 2017 filing, as its chief executive officer (though a September 18, 2017 filing does not list Mr. Singh as an officer). The incorporation document lists the gurudwara’s corporate addresses as Mr. Singh’s home address in Clovis and the gurudwara address on North Locan Avenue. Property records from Fresno County’s online database appear to show that the deed to the North Locan Avenue property was recorded in Mr. Singh’s name on October 6, 2017.

Mr. Singh is also listed in articles of incorporation filed with the California Secretary of State on July 25, 2013, as the incorporator of the Gobind Marg Society of California.¹⁴ Corporate statements of information filed in 2014 and 2015 list Mr. Singh as the chief executive officer of the Gobind Marg Society of California and Mr. Juneja as its secretary. Whether the Fresno religious school is under the direction of the Gobind Marg Society of California or the Gobind Marg Charitable Trust Society is unclear.

These facts present apparent connections between the Charter School and the Gobind Sarvar schools.

4. Instructional Program, Generally

As discussed above, the U.S. Supreme Court, consistent with Education Code section 51511, has ruled that while a school may not teach religion with the intent to indoctrinate students, a school may permissibly teach about a religion or religions in a secular context. In this regard, there may be a fine line between what is permissible and what is impermissible. However, teaching from religious scriptures or reciting prayers would likely be deemed impermissible.

For example, in the case of the proposed Charter School, if its mindfulness course integrates religious teachings, the program would likely be found to violate the Establishment Clause. On its face, the educational program proposed in the Petition appears to be a secularized version of the one offered by the Gobind Sarvar day schools in Canada (which are separate from the evening and weekend schools, such as the Fresno Gurmat, which offer religious instruction only).

As noted above, the Gobind Sarvar schools are operated under the umbrella of the Gobind Marg Charitable Trust. The Gobind Marg Society of California appears to be linked to the Gobind Sarvar schools and the Gobind Marg Charitable Trust. For example, Mr. Juneja has conceded that the Charter School's eight "core values" were borrowed in their entirety from the Gobind Sarvar School Calgary. The connections between the Charter School and the Gobind Sarvar School, as well as Mr. Singh's and Mr. Juneja's affiliations with the Charter School and the Gobind Marg Society of California raise concerns about the Charter School's operation.

Also of concern are the similarities in educational programming between the Charter School and the Gobind Sarvar School Calgary. For example, both the Petition and a three-year plan for Gobind Sarvar School Calgary (Alberta) offer a standardized school curriculum and Punjabi language instruction, while the Gobind Sarvar School additionally offers hymns and scripture. However, a comparison of the Petition and the Calgary school programming, as described on its website, shows that the philosophy and teachings of both schools are strongly rooted in the Sikh faith.

The Petition discusses its proposed classroom-based mindfulness practice in purely secular terms. The Calgary school's mindfulness/meditation practice occurs at the Sikh temple; in

¹⁴ According to records, the Gobind Marg Society of California's nonprofit status was suspended due to failure to file taxes over a three-year period.

addition to improving concentration, it “helps students to connect with Waheguru je (God).” Petitioner proposes between 25-35 minutes of “mindfulness” instruction daily. While the Petition does not directly identify religious teaching as part of its mindfulness practice, District staff note some concern regarding the proposed mindfulness practice in light of the clearly religious nature of the mindfulness/meditation practice in the Calgary school; this concern is amplified with the stated connections and modeling of the Charter School on the Gobind Sarvar School in Calgary. Petitioner acknowledges that they “cannot force students to practice mindfulness,” and also states: “It is our intention that student will want to practice mindfulness once exposed to it and having observed their classmates participating in the program.” (Petition, p. 23.) However, Petitioner’s hope that students will participate when they see everyone else in the class participating, suggests that they are aware that this practice may be viewed as religious teaching.

Like the proposed Charter School, the Calgary school also requires students to participate in service learning projects, though its three-year plan additionally notes that “[s]eva (Selfless service) is a huge aspect of Sikhi.” Separately, the Calgary school’s three-year plan discusses challenges that include integrating religious teachings into standardized curriculum and increasing parental involvement.

The information provided by Petitioner during the March 9, 2018, meeting did not allay concerns by District staff that the Charter School appears to be too entangled with Sikhism and is providing a non-secular school program.

In sum, similarities in the educational programming and philosophy between the proposed Charter School and private schools operated by religious nonprofits through the same network of temples that will be leasing facilities to the Charter School are cause for concern, as are the apparent connections between at least two founders of the proposed Charter School and religiously-affiliated institutions.

In addition, the Charter School’s programs will need to be implemented with appropriate safeguards to ensure that the Charter School’s practices do not violate the Establishment Clauses of the United States and California Constitutions. Necessary safeguards would include ensuring that the school is only teaching Punjabi language and culture, not the Sikh religion, and a guarantee that the Charter School’s facilities are separate and distinct from the temple and the religious symbols contained therein.

C. The Charter School’s Founding Team Has Limited Experience Operating a Charter School

The biographies presented in the Petition indicate that several of the founders of the proposed Charter School are highly educated individuals with advanced degrees and extensive experience in a wide range of fields, including education. However, it does not appear that any of the founding members have any significant experience in establishing or operating a public charter school. Mr. Juneja, the Charter School’s Lead Petitioner, is a high school teacher. Dr. Amrit Singh, another founding member, is currently serving as Principal of Sacramento Valley Charter School, a position he has held only since June 2017. Ms. Ravinder Kaur Badhesha serves as a school counselor for West Park Charter Academy. The

prospective Executive Director presented during the March 9, 2018, meeting appears to be qualified for the position, but that position will be supported by only one other part-time administrator. Overall, the Charter School does not have a deep bench of relevant charter school experience. (Appendix G: Budget.)

Finding 2: There are Facts that Support a Finding that the Petition Does Not Contain Reasonably Comprehensive Descriptions of Certain Required Elements

The Petition serves as Petitioner’s proposal for the Charter School’s establishment and operation. Therefore, the Petition must provide reasonably comprehensive descriptions of certain elements in its program and operations as required in Education Code section 47605, subdivision (b)(5). The Petition does include reasonably comprehensive descriptions of some required elements, including measurable student outcomes and methods for measuring student progress, as well as elements related to retirement, attendance alternatives, and employee return rights. However, as set forth below, the Petition does not contain reasonably comprehensive descriptions of certain other elements required by law.

A. Element 1: Instructional Program and Curriculum

The Petition does not include a reasonably comprehensive description of the Charter School’s proposed instructional program. Areas of deficiency noted by District staff include the Charter School’s curriculum and teaching methods, its annual goals for all pupils and pupil subgroups, its plans for serving its low-achieving and socioeconomically disadvantaged students, special education and Section 504 students, and English Learners, and its lack of a plan for transitional kindergarten.

1. Curriculum and teaching methods

Generally, the description of the Charter School’s educational program should, at a minimum, include the instructional approach that the Charter School will utilize including, but not limited to the curriculum and teaching methods, or a process for developing the curriculum and teaching methods, that will enable students to master the State’s content standards and achieve the Charter School’s stated objectives. (Ed. Code § 47605(b)(5); 5 CCR § 11967.5.1(f).) The Petition should also describe the staffing plan, identify the proposed teaching materials, and include an outline of the curriculum for each core academic subject area at each grade level. However, the educational program described in the Petition fails to meet a number of these benchmarks.

The instructional program described in the Petition is undefined and appears to center on the practice of mindfulness, bilingual development, project-based learning and a garden program. However, a coherent educational program including these components is not described. No course descriptions are provided and no scope and sequence or specific grade level standards are identified in the Petition. Petitioner does not include any lesson plans for any grade level and does not provide any description or sample “Day in the Life of a Charter

School Student” that might help clarify the instructional program.¹⁵ Instead, the Petition generally states, without additional detail, “One & Only Academy will provide a rigorous, standards-based 21st century education including exposure to Punjabi language instruction.” (Petition, p. 16.)

The Petition states that the Charter School’s TK-8 curriculum “will be aligned with California State Standards including but not limited to, the Common Core State Standards (“CCSS”), Next Generation Science Standards (“NGSS”), and English Language Development (“ELD”) Standards.” (Petition, p. 16.) Despite this assurance, the Petition does not identify a standards-aligned curriculum for all of the core subject areas. Nor does the Charter School describe a process by which the curriculum, instruction, and assessments will be aligned. (See Petition, pp. 32-36.)

The Petition identifies state-approved textbooks for English Language Arts in grades K-8, as well as state-approved Mathematics curriculum for grades K-5. However, this is not the case for the identified Mathematics curriculum for grades 6-8. (Petition, p. 33-34.) In addition, the intermediate school Science curriculum identified in the Petition does not align to NGSS. Instead, it appears to align with the 1998 California Science Standards. A cornerstone of the Charter School’s proposed instructional program is gardening. However, California Gardens for Learning—Life Lab curriculum is designed for K-5 grade students. The Petition does not identify any garden-related curricular resource that is to be utilized for grades 6-8.

One of the most significant additions to the History Social-Science Framework was the integration of both the Common Core (adopted in 2010) and English Language Development Standards (developed in 2012). It appears that the Charter School has not adopted a History-Social Science curriculum for grades K-8 which aligns to the requirements of Education Code Section 51204.5, as described in the 2016 California History-Social Science Framework.

Petitioner does not explain how the identified curricular materials will be used at each grade level to develop or strengthen foundational skills or how teachers will implement use of these curricular materials to ensure that the various sub-groups of students to be served by the Charter School will be able to master content standards adopted by the State Board of Education and to meet the learning objectives identified in the Petition. Students will not be able to master State content standards without an aligned and articulated curriculum. (Petition, pp. 33-34.)

Petitioner states that Project-Based Learning (“PBL”) will be implemented in all subject areas. Moreover, PBL is a key tenet of the proposed Charter School. Petitioner provides examples of how “PBL looks different for each unit or lesson.” However, the Petition does not describe a process for aligning PBL to content standards for each grade level. In order for PBL to be an appropriate instructional strategy, it must be purposefully planned and deployed. The described professional development does not appear to be adequate to accomplish this task. (Petition, pp. 38-40.)

¹⁵ Although it was not included in the Petition, an attachment describing “A Day in the Life” of a Charter School student was later submitted to the District.

In order for the Board to evaluate the strengths of the proposed educational program, the Petition should clearly indicate the standards taught at each grade level and each subject during the school year. This is usually provided in a scope and sequence and/or curriculum guide, which were not provided for evaluation.

2. Annual Goals for All Pupils and Subgroups

The Petition should also describe annual goals for all pupils and each subgroup of pupils, to be achieved in the 8 state priorities listed in Ed. Code section 52060, subdivision (d), that apply for the grade levels served or the nature of the program operated. Subgroups include: ethnic subgroups, socio-economic disadvantaged pupils, English learners, pupils with disabilities, and foster youth. (Ed. Code § 52052 (a)(2)(A-E) as referenced in Ed. Code § 47607). The Petition should also describe specific annual actions to achieve the above-mentioned goals.

However, Petition does not provide specific goals for socioeconomically disadvantaged pupils, English Learners, pupils with disabilities, or foster youth. (Petition, pp. 71-83.)

3. Plan for Serving Academically Low-Achieving Students & Socioeconomically Disadvantaged Students

Petitioner asserts that all students enrolled in the Charter School “will participate in and benefit from an academically rigorous and standards-based curriculum” and that the Charter School “takes a systematic approach to closing the achievement gap by allocating multiple resources to academically low-performing students.” (Petition, p. 48.) The Petition includes a discussion of a three-tiered intervention program. Students identified as low-performing will receive “strategic interventions for 30 minutes during the instructional day” in a small group setting at Tier 2; while students identified as needing Tier 3 supports will receive “intensive intervention for at least 30 minutes during the instructional day” in very small groups or one-on-one settings. Students who do not make adequate progress at Tier 3, will be referred to the Student Study Team (“SST”) process. (Petition, pp. 48-49.)

Unfortunately, other than these generalized discussions of the instructional strategies which the Charter School intends to utilize at each tier, the Petition does not identify specific targeted interventions and learning strategies that the Charter School plans to make available to low-achieving and at-risk students. (*Id.*) The Petition provides no additional information regarding how differentiated instruction, types of learning materials, pre-teaching, re-teaching, or any of the other standard learning strategies will be used to address the needs of low performing students. (*Id.*) Petitioner also indicates that students who are behind grade level will receive “additional interventions beyond the regular school day.” However, the Petition does not indicate who will provide such instruction, how it will be financed, or how often or where it will be provided. (Petition, p. 46.) Furthermore, the Petition does not describe an intervention system for students needing behavioral or social-emotional support. (Petition, p. 49.)

Petitioner also indicates that they will adopt strategies to serve socioeconomically disadvantaged students; however, they do not describe any of those strategies in the Petition. (Petition, p. 53.) Without additional specific information, the Board cannot be assured that low-achieving and socioeconomically disadvantaged students will receive the services necessary to ensure they can be successful in the rigorous academic program proposed by Petitioner.

4. Foreign Language Instruction

Petition proposes to include Punjabi language instruction as an integral part of the academic program. (Petition, p. 35.) The Petition states: “Students master a foreign language if they start learning in elementary grades. Punjabi families learn conversational Punjabi from their parents, but they do not become proficient in reading and writing and they do not develop academic vocabulary at home.” (*Id.*) However, unless the student is designated as an English Learner, Punjabi is not a foreign language, but rather, a student’s primary language. During language instruction, students will be grouped by proficiency. This language grouping will result in segregating the non-Punjabi students from the Punjabi student populations, because it is highly likely that the Punjabi students will enter the Charter School at a higher proficiency level.

5. Plan for Serving English Learners

At a minimum, a charter petition should identify a consistent English Language Development (“ELD”) curriculum, specific assessments, and a schedule for monitoring student progress in reaching English proficiency. The Charter School’s plan for serving English Learners lacks clarity, purpose and goals regarding language acquisition. Without a reasonably comprehensive plan for serving its English Learners, the District cannot be assured that the Charter School understands its obligations under federal and state law with regarding to serving English Learners.

As an initial matter, the Petition states that every English Learner will receive ELD for 30 minutes per day. (Petition, pp. 46, 56.) However, a designated ELD time is not provided for grades 7-8 on the sample daily schedule. (Petition, p. 44.) Other than that, there is very limited information as to how and when ELD will be delivered during the regular school day. The Petition lacks any discussion of the 2014 ELA/ELD Framework as applicable to English Learners. (Petition, pp. 33-34.) The concepts of Integrated and Designated ELD are not defined and the Petition does not indicate how and where ELD will be implemented as aligned to core curriculum standards. (Petition, pp. 46-47.) English Learners must have access to grade level core curriculum. A plan to provide grade level curriculum when English Learners are underperforming is not provided, and no annual measurable goals for English Learner subgroup achievement are included in the Petition.

The Petition does not offer an adequate explanation of core instructional practices for English Learners. The strategies for English Learner instruction and intervention listed in the Petition appear to be general classroom supports that are used with all students, rather than specific strategies and supports for English Learners. (Petition, pp. 56-57.) Other than “small group”

and SDAIE, language supports for overcoming low performance with regard to English Language acquisition are not discussed. SDAIE is useful as a strategy to access grade level content, but is not sufficient for the teaching of the full scope of the California ELD Standards and the full acquisition of English. In addition, the Petition does not describe how small group instruction will specifically address the needs of English Learners

Also missing from the Petition are discussions of an English Learner progress monitoring process, Long Term English Learner progress monitoring, and Reclassified Fluent English Proficient students' progress monitoring. (Petition, pp. 54-55.) Petitioner appears to misunderstand the difference between the Initial ELPAC Assessment and the Summative ELPAC Assessment. (Petition, pp. 54-55.) ELPAC proficiency levels provided in the Petition are incorrect and there is no explanation of the four domains being assessed on the ELPAC. The Petition does not indicate what happens to students who are determined to be English Learners after taking the Initial ELPAC Assessment. Additionally, Petitioner does not seem to be aware that ELPAC results do not come from the publisher, but rather from the CDE. (*Id.*)

Lastly, the Petition does not discuss the development of an English Learner Master Plan.

6. Plan for Special Education and Section 504

As a whole, the Petition generally addresses how the Charter School will serve special education and Section 504 students. Specifically, the Petition addresses certain substantive issues, including child find ("Search and Serve"), assessment, required content in an IEP, membership of an IEP team, IEP team meetings, and implementation of IEPs. However, it is missing other elements essential to a reasonably comprehensive plan for serving special education and Section 504 students, most notably, discussion of placement of students in the least restrictive environment ("LRE").

The IDEA requires that, to the maximum extent appropriate, individuals with exceptional needs shall be educated in the least restrictive environment. (Ed. Code § 56040.1.) However, while a general education placement with modifications and/or accommodations may be the LRE for one student, another student may require a more restrictive placement or educational setting to receive a FAPE. Special education services must be individualized to meet each student's unique educational needs, and must comport with each student's IEP. Thus, a service model that is limited to a general education setting does not comply with the mandates of federal and state special education law. Failure to provide an appropriate placement for a special education student could expose the Charter School, and the District, as its chartering authority, to liability for a failure to provide a FAPE. The lack of discussion in the Petition of the Charter School's obligation to provide each eligible student with an individualized placement and services, suggests that that Petitioner is unaware of its responsibilities under the law, or, that the Charter School may intend to serve only those students who can be fully mainstreamed in a general education classroom and that students requiring other services or placements may be directed back to the District.

Petitioner intends that District special education trainings will be made available to Charter School staff; however, this arrangement has not been agreed upon by the District. (Petition, p. 62.) The Professional Development calendar in the Petition lists only one “Special Education Presentation” and two “Special Education Inclusion” presentations as professional development topics during the 2018 2019 school year, and does not include any substantive professional development related to Section 504. (Petition, pp. 38-39.)

7. Transitional Kindergarten (TK)

Petitioner proposes to operate a TK program with an estimated enrollment of 10 students in Year 1 and 20 students each year thereafter. (Petition, p. 23.) Other than this information, the Petition fails to provide a comprehensive description of the TK program it proposes to operate. For example, the Petition does not describe how the Charter School will identify students eligible for TK, does not describe the targeted curriculum and resources that will be used to teach these TK students and how they differ from those used for kindergarten.

B. Element 4: Governance Structure

A charter petition must include a reasonably comprehensive description of, “the governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.” (Ed. Code, § 47605, subd. (b)(5)(D).)

1. Parental Involvement

A review of the Petition raises concerns as to the Charter School’s lack of opportunity for true parental involvement. Petitioner indicates that parents will receive a weekly newsletter, that the Charter School will hold parent meetings to answer any questions, and that teachers will provide parents guidance with regard to helping their children succeed at home with their studies. (Petition, p. 96.) However, Petitioner does not appear to provide for truly meaningful parent participation in the operation and governance of the Charter School.

Of particular concern, the Petition and Bylaws do not describe a process by which parents can vote for Board members and do not provide for a designated parent on the Board. Instead, the Bylaws state that a nominating committee appointed by the Board will designate qualified candidates for election to the Board. Said differently, a parent who wants to be involved in the Charter School at the Board level could not independently nominate his or herself for such a position. (Petition, pp. 91-92; Appendix D: Bylaws, Art. VII; § 6.) The Bylaws do allow for some possible parent participation through advisory committees. (Appendix D: Bylaws, Art. VII, § 23.)

The Petition briefly mentions a Parent-Teacher Organization that will serve as an advisory body to the Board, but there are no details regarding membership, elections, terms, duties, or terms of office. The Petition also describes a School Site Council (“SSC”), which would include a 10 member council, 5 of which are parents, and an English Learner Advisory Committee (“ELAC”), but leave the actual establishment of an SSC and/or ELAC to the discretion of the Board of Directors.

2. Board Meeting Schedule

The Petition requires the Board to “meet regularly, at least once a month (except during the summer).” (Petition, p. 91.) For purposes of conducting school business, a monthly meeting schedule is preferable to the quarterly meeting schedule utilized by many nonprofits. However, most school district boards hold regular monthly or bi-weekly board meetings throughout the year, with the possible exception of a recess during one summer month (usually, July.) Summer is the time that school districts use to plan for the following year and summer board meetings are an essential part of moving through plans that require board approval.

3. Compliance with Applicable Laws/Board Training

The Petition states that the Charter School will comply with the California Public Records Act (“PRA”), the Family Educational Rights and Privacy Act (“FERPA”), and the Ralph M. Brown Act (“Brown Act”).

The Petition provides that the Board will hold an annual in-service for the purpose of training Board members with regard to topics, “including at a minimum, conflicts of interest and the Brown Act.” (Petition, p. 93) However, the Petition does not mention any required training for the Board or administrators with regard to the PRA or FERPA. The PRA is a highly complex area of law, and without appropriate training, the Charter School may not be familiar with its requirements regarding what documents constitute public records under the law and the public’s right to inspect such documents. Likewise, it is essential that the Charter School Board and administrators become familiar with the provisions in FERPA governing privacy and disclosure of pupil records. At least initially, it is likely that Board members will require more training than can be provided in a single annual in-service.

C. Element 5: Employee Qualifications

Education Code section 47605(b)(5)(E) requires a charter petition to include a reasonably comprehensive description of the qualifications to be met by individuals to be employed by the school.

As an initial matter, the qualifications for teachers listed in the Petition do not require any previous teaching experience, either in traditional or charter school settings. (Petition, pp. 102-103.) This raises some concern about the quality of the teaching staff at the proposed Charter School, and the availability of qualified teacher mentors to provide support to novice teachers. The low salaries proposed in the Charter School’s budget, particularly given the need for teachers with credentials and skills to teach the Punjabi language and culture, also raise concerns about the Charter School’s ability to attract and retain high quality teachers. (See additional discussion, below at Section IV.I.2 (Budget); Petition, Appendix G.)

Moreover, according to the Petition, it appears that average salary for teaching staff will be \$45,000.00 yearly and is only adjusted annually by a 1.6% COLA. With such a range, it is likely that the Charter School will not attract experienced and highly qualified teachers.

Also, the Petition lacks a salary schedule for teachers which would provide some manner of service credit for veteran/highly qualified teachers; this will likely impede the Charter School from attracting and retaining experienced teaching staff.

Except for a broad list of general qualifications, information regarding the job duties and qualifications for specific clerical or other classified staff is also missing. The Petition does not include job descriptions for instructional aides, or non-certificated specialists teaching non-core classes. (*Id.*)

Without a reasonably comprehensive description of the qualifications for all of specific positions the Charter School intends to fill, the Board cannot be assured that Charter School employees will have sufficient subject matter expertise and professional experience and that will be required to successfully implement the proposed educational program.

D. Element 6: Health and Safety

Pursuant to Education Code section 47605(b)(5)(F), the Petition must include the procedures that the school will follow to ensure the health and safety of students and staff. The Petition states that the “Charter School will adopt and implement full health and safety policies and procedures and risk management policies at its school site in consultation with its insurance carriers and risk management experts.” (Petition, p. 104.)

A brief summary of the health and safety procedures is provided, but no copies of the actual policies and procedures are included in the Petition. According to Petition, drafts of the policies and procedures will be provided at least 30 days prior to commencing operations. (*Id.*) However, the Charter School intends to commence operations in August 2018. Given the shortened timeline, the Charter School, should have completed drafts of all health and safety policies ready to submit to the District for review.

Also missing from the Petition are copies of a comprehensive sexual harassment prevention policy, child abuse reporting policy, emergency plans, and a Comprehensive School Safety Plan. Without a complete set of the Charter School’s health and safety policies and procedures, the District cannot confirm that the proposed Charter School will be able to ensure the health and safety of students and staff.

E. Element 7: Means to Achieve Racial/Ethnic Balance Reflective of the District

Concerns regarding the Charter School’s proposed plan for achieving a racial and ethnic balance reflective of the population residing within the District are discussed in detail above, at Finding 1.

In addition to those concerns, the Petition does not include any information or details as to how the Charter School intends to target and recruit English Learners, students who are socioeconomically disadvantaged, students with special needs, and vulnerable student populations including, but not limited to, foster youth.

F. Element 8: Admissions Policies and Procedures

Concerns regarding the Charter School's proposed admissions policies and procedures are discussed in detail above, at Finding 1.

G. Element 10: Suspension and Expulsion Policies

Petitioner provides a list of grounds for suspension and expulsion. (Petition, p. 118.) However, the Petition fails to provide guidance detailing how the Petitioner's governing board will differentiate between a suspendable offense and an expellable offense. For example, if the board determines that a student "willfully used force or violence upon the person of another, except self-defense," (Petition, p. 119) how will the board determine whether suspension of the student or expulsion of the student is the proper punishment? In order to differentiate between a suspendable and expellable offense (other than a mandatory expulsion offense under Education Code section 48915 (c)), District-operated schools look to see whether: (1) Other means of correction are not feasible or have repeatedly failed to bring about proper conduct; or (2) Due to the nature of the violation, the presence of the pupil causes a continuing danger to the physical safety of the pupil or others. While charter schools are not required to meet these standards, the Petition provides no standard, at all.

H. Element 14: Dispute Resolution

Education Code section 47605(b)(5)(N) requires a petition to include "the procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter." The Petition includes a process for resolving internal disputes as well as dispute resolution procedures related to disputes between the Charter School and the District. (Petition, pp. 143-144.) The Petition also references the Charter School's intent to adopt Uniform Complaint Procedures ("UCP"). However, the UCP was not provided for review. Also missing is a policy and procedures regarding complaints against employees.

I. Other Concerns

1. Facilities

As discussed in this Report, the Charter School intends to locate in modular buildings to be placed on property owned by the Darbar Shri Guru Granth Sahib Ji gurudwara ("temple") located at 2630 North Locan Avenue in Fresno. (Petition, p. 150; Appendix I.) To date, it does not appear that portables have been secured by the Charter School or property owner and moved to the temple property. District staff also note that the monthly \$0.75 per square foot that the temple intends to charge the Charter School for facilities appears to be on the very low side of the market rate, particularly in light of the fact that the property will need significant improvements in order for the Charter School to operate at that site, which includes but is not limited to, permits, an impact fee and significant water supply development fees. Moreover, it appears that the cost of all improvements will be paid for by the Darbar Shri Guru Granth Sahib Ji. (Petition, Appendix I.)

As an additional concern, it became apparent during the March 9, 2018, meeting that Petitioner was not aware of local regulations requiring surface water fees and approvals for any new development in Growth Area 2. The Charter School believes that it will be able to get authorization to develop a school in Growth Area 2 and will be able to hook up to main water lines. However, the process to obtain water in Growth Area 2 is much more complicated; a water supply development fee and impact fee is required. At this time, it is our understanding that the City of Fresno is not aware of the development of the proposed property for use as a school and no water fees or impact fees have been paid. Without City of Fresno approval to provide access for a school in Growth Area 2, the District cannot be assured that the Charter School will have access to water in the coming school year. Additionally, and as stated above, the significant costs related to obtaining water does not seem to be calculated in the very low per square foot lease price or in the Charter School budget

2. Budget

Based on District staff review of the budget and financial projections in the Petition, as well as the Charter School's responses to questions during the March 9, 2018, meeting, staff believes that Petitioner does not have a firm understanding of the financial projections presented in the Petition. Among other things, District staff note the following:

- a. Start Up Costs. Petitioner has budgeted only \$10,000 as start-up costs for the Charter School. This amount seems very low, given the proposed program.
- b. AB 602 Funding. During the March 9, 2018, meeting, the Charter School's proposed back office consultant stated: "AB 602 dollars go to the District, not the Charter." However, this is inconsistent with the financial plan set out in the Petition, in which it appears Petitioner has not factored in the full transfer of special education revenues (AB 602) back to Clovis Unified. The amount of transfer should be double what it is projected. As a result, the Charter School has over-budgeted revenues by \$83,125 in Year 1, an amount that increases to annual over-budgeted revenues of \$194,750 by Year 5. Over the full five year budget, this results in a total of \$712,500 over-budgeted revenues.
- c. Staffing & Salaries. Staffing salaries for certificated and non-certificated personnel appear to be low and do not increase sufficiently over the projected five year period. During the March 9, 2018 meeting, the Charter School acknowledged that staffing for aides and an office administrator remains at the same level from Year 1 through Year 5. It appears that Petitioner may be unaware of the increased classified staffing needs that will occur when the Charter School grows by more than 230% from Year 1 to Year 5. This raises concerns that the Charter School has not staffed its office with sufficient support and are not providing a sufficient number of aides to serve the school site. District staff are also concerned that the Charter School will not be able to hire and retain a highly qualified teaching staff, as mentioned above. The Charter School has budgeted for an average salary of \$45,000 in Year 1 and that amount is only adjusted annually by 1.6% COLA. (Appendix G.) The Petition also fails to

demonstrate how the Charter School will provide additional pay to teachers who earn additional credits or certifications.

- d. Utilities & Housekeeping. The Charter School budget proposes a utilities and housekeeping budget in Year 1 of \$65,000, which equates to a total cost per square foot of \$6.78. However, by Year 5, this cost has decreased to less than \$0.37 per square foot. It is not reasonable to assume that the cost of electricity, water, sewer, and other utilities and housekeeping items are going to decrease, given an expanding facility and increases in the costs of services over the five year projected budget.
- e. Insurance Costs. There is no information as to how Petitioner arrived at amounts allocated for general liability, workers' compensation and other types of insurance.
- f. Encroachment Costs. The per-student expenditure allocated for the Charter School's contribution to the District's unfunded special education costs (encroachment) should be \$679, rather than \$600.
- g. Grant Timelines. The timeline for charter school grant applications to be submitted and funded does not appear to be sufficient if the Charter School intends to commence operations in 2018-2019.
- h. Uniform Costs. The Petition indicates that the Charter School intends to require students to wear school uniforms "as a way to reduce distractions and build a sense of community. (Petition, p. 20.) However, the Petition does not explain how the Charter School will cover the costs of uniforms for students who cannot afford them and the budget does not appear to include a line item for covering those costs.
- i. Technology. Petitioner indicates that teachers will all be given laptops and projectors, and that computers will be set up in every classroom. (Petition, p. 36.) As presented, it is unclear whether the Petitioner has adequately budgeted for these technology expenditures.
- j. Calculation of ADA. In the Budget Narrative, Petitioner mistakenly list their ADA at 66, instead of the 166 they project in other parts of the Petition. (Appendix G.) This appears to simply be a typo.

In sum, District staff have significant concerns with the financial projections presented in the Petition and, due to these concerns, do not believe that Petitioner has the financial expertise to operate the proposed Charter School. Also, it appears that there will not be any staff with the necessary financial expertise at the Charter School on a regular basis to manage and oversee its day-to-day operations.

3. Insurance

The Petition provides conflicting information regarding the Charter School's plan to add the District as an additional insured on Petitioner's insurance policies. For example, in one place

in the Petition, Petitioner indicates that “the District Board of Education shall be named as an additional insured on all policies of the Charter School.” (Petition, p. 149.) The Petition further indicates that the Charter School will “acquire and finance general liability insurance, workers compensation insurance, and other necessary insurance “of the types and in the amounts required for an enterprise of similar purpose and circumstance.” (*Id.*) However, in another place in the Petition, Petitioner indicates that the District will be named as an additional insured only on the general liability policy of the Charter School. (Petition, p. 152.)

V. Recommendation

Based on its review of the Petition, District staff recommends that the Board deny the Petition based on the following grounds:

1. Petitioner is demonstrably unlikely to successfully implement the program set forth in the Petition. (Ed. Code, § 47605, subd. (b)(2).)
2. The Petition does not contain reasonably comprehensive descriptions of certain required elements set forth in Education Code section 47605, subdivisions (b)(5)(A-O).

In order to deny a petition on the grounds set forth above, Education Code section 47605, subdivision (b), requires the Board to make “written factual findings, specific to the particular petition, setting forth specific facts to support one or more” of the grounds for denying the charter. Therefore, if the Board determines it will deny this Petition, District staff recommends that the Board adopt the proposed Findings of Fact, set forth below, as its own findings.

In the event the Board votes to approve the Petition, Staff notes that the Board should expect that rigorous oversight by the District will be required in order to address the unique concerns identified in this Report. Staff further recommends that approval of the Petition be conditioned upon Petitioner’s agreement that an MOU setting other terms and conditions governing operation of the Charter School will be executed within thirty (30) days of the Board’s approval of the Petition.