

SEQUOIA UNION HIGH SCHOOL DISTRICT

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November 19, 2008

Board of Trustees
San Mateo County Board of Education
101 Twin Dolphin Drive
Redwood City, CA 94065-1064

Dear Trustees:

SUBJECT: Appeal of Everest Charter High School Petition

Thank you for consideration of the Sequoia Union High School District Response and Recommended Findings of Fact Regarding the Everest Charter School Petition. The Sequoia district report fully documents the areas in which the Everest petition fails to meet legislative requirements and the numerous findings to support denial of the Everest petition. Since release of the Sequoia district report, we are aware that the petitioner has made a number of public statements and developed a report in rebuttal to the Sequoia district report.

Before you can make a sound, informed decision about the Everest appeal, we believe it is imperative to set the record straight on a number of key findings of fact contained in the Sequoia district report, which have been rebutted by the petitioner. Additionally, we believe consideration of the legislative intent of the Charter School Act is crucial to consider as you make the important decision before you. This letter also addresses misinformation that continues to be promulgated, such as the notion that the Sequoia district would not be negatively impacted financially if the Everest petition is approved.

Unlikelihood of Successful Implementation

The petition shall be denied "if petitioners are demonstrably unlikely to successfully implement the program set forth in the petition." Clearly, the petition contains basis for denial.

Financial Viability

The petitioner's rebuttal to the independent financial analysis of the Everest budget is unsubstantiated and unconvincing. Financial viability of Everest remains a serious concern for three primary reasons, which are:

1. understated personnel costs,
2. lack of encroachment fee estimates for special education services, and
3. reliance on "soft" money.

Regarding special education services specifically, there are a number of serious concerns. If not admitted to the Special Education Local Plan Area (SELPA), Everest will be required to pay an encroachment fee to the Sequoia district. The independent financial analyst estimates a rate of as much as \$833 per student in 2009-10. The petitioner, however, relies on its established rate of \$350-\$650 per Average Daily Attendance (ADA). Even at the high end – \$650 – the Everest budget does not account for the significantly increased cost.

If the Everest charter is approved and Everest is allowed to join the SELPA, it is possible that Everest will receive less funding per special education student than has been budgeted. Currently, Summit receives more money per student than any like-size Local Education Agency (LEA) – \$10,761 as compared with \$4,840 for Portola Valley in 2006-07, for example. The SELPA governing board is currently discussing this inequity in the funding formula and, thus, the petitioner should not expect that Everest would be funded based on a formula that is likely to change. Even more critical to meeting budget projections, the petitioner is dependent on admission to the San Mateo County SELPA – admission that may or may not be granted.

Also of concern is the petitioner's reliance on "soft money." The Everest budget is based on the assumption that fundraising of private dollars will increase revenue by \$250,000 in Years 0 and 1 and by \$150,000 in Years 2 and 3. This is clearly "soft" money, and it would be imprudent to build a budget dependent on such an uncertain income stream.

Enrollment Projections

The petitioner maintains that there are currently 125 families interested in enrolling their ninth graders in Everest in the first year of operation. This raises several concerns. First, there is no evidence that these families actually have a ninth grader with genuine interest in enrolling in Everest in its first year of operation. Second, when parent signatures were gathered on Oct. 2, 2008 at an open house event promoting both Summit and Everest charter schools, parents were instructed to indicate interest in both schools. Thus, the signatures gathered that evening were clearly not specific to interest solely in Everest. Third, we know that some parents will indicate interest in a number of schools simultaneously. For example, parents might indicate interest in a charter school or two, a private school and one of the District's four comprehensive high schools, all at the same time. In the end, these parents will choose a single school to enroll their children, and, thus, not all parents who indicate initial interest in Everest will eventually choose Everest. Finally, it remains uncertain how many of those families who have indicated interest in Everest actually reside within the Sequoia district boundaries.

Adequate Facilities

On Aug. 30, 2008, the Sequoia district received the petitioner's Proposition 39 facility demands for Everest for 2009-10. If the Everest petition is approved, the Sequoia district will be required to respond to the petitioner's demands on or before Feb. 1, 2009. Following review of the petitioner's demands, it is clear that the Sequoia district will not be able to provide all that is being demanded. If Everest is not placed in a facility similar to that currently provided to the Summit charter school, the viability of Everest is tenuous.

Leadership Preparation

The petitioner often states publicly and in writing that Everest is being modeled after the existing Summit charter school. Currently, no administrators at Summit have earned an administrative

credential. If Everest follows suit, there is concern that administrators at Everest will, too, rely on their own experiences in education and on-the-job training rather than knowledge and training gained through an approved university program that includes a comprehensive curriculum in budget and finance, credentialing under No Child Left Behind, innovations in closing the achievement gap, strategic instructional methodologies for special education students and English-language learners (EL), and other critical subject areas. The California Education Code mandates a credential in school administration for principals and others who supervise the work of teachers. We recognize that charter schools are not required to adhere to the same mandate as our schools but concern remains about the lack of importance the petitioner seems to place on formal and advanced preparation of its administrators. It is also important to note that the state *will* consider administrative preparation and competence when it evaluates a charter petition.

Lack of Affirmations of Education Code Conditions

The petition shall be denied if “the petition does not contain an affirmation of each of the conditions described in Education Code section 47605(d).” Clearly, the petition contains basis for denial.

Governance Structure

The Everest petition states that “the day to day management of the School shall be by the Executive Director, and overseen by a governance council, whose chairman will be a member of the board.” In addition, the petition states that “the Board and Governance Council will meet on a regular basis. The responsibilities of the Board and Governance Council include, but are not limited to: oversee the implementation of the charter, approve contracts, oversee and evaluate the Executive Director, hire employees and approve policies.”

The petitioner maintains that the governance structure of Everest is unambiguous and clear. The Sequoia district continues to contend otherwise. Additionally, the Everest charter does not state that the Governance Council is merely an advisory board, as the petitioner maintains. The petitioner also states that the Board *and* the Governance Council will share all authority, including entering into legal contracts, hiring employees and approving policies. The critical lines of the authority between the two bodies are far from clear. Without clear lines of authority, an oversight agency risks financial and legal liability for failure to provide proper oversight to the school.

Also of serious concern is the petitioner’s plans for the Everest Executive Director to sit on the Governance Council. The petitioner maintains that this is “identical to that of a District Superintendent or staff member.” This is an inaccurate comparison and simply untrue. No district superintendent sits on a school board or any governance council that is charged with recommending, hiring and/or evaluating the superintendent. In the Everest petition, there is no separation of powers between the school’s chief administrative official and the board/council that hires and evaluates the chief administrative official.

Admission Requirements

Everest and the Sequoia district have a significantly different interpretation of state law governing admission preferences. The petitioner maintains that it is legally permissible to provide priority preferences to (1) children of board members and employees, and (2) siblings of

current students or graduates of Everest, followed by the general population of students residing in the Sequoia district.

Education Code section 47605(d)(2)(B) states that “[p]reference shall be extended to pupils currently attending the charter school and pupils who reside in the district . . . Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with state law.” Although the charter movement continues to ignore the statutory language, it is widely held that the Education Code requires that the first two preferences be for (1) students already attending the charter and (2) residents of the district. It is only after the first two requirements are met that the charter school may extend other preferences, “if consistent with the law.” The Everest priority ranking is inconsistent with state law and, therefore, is additional basis for denial of the charter.

This illegal priority system continues to be of serious concern, particularly to those who would not fall into the top preference categories. If preference is guaranteed for the children of staff and board members, and for siblings of current students and alumni, it wouldn't be long before those given preference would represent a disproportionately high number of students admitted in each incoming class before a Sequoia district resident is even considered.

Suspensions and Expulsions

Education Code requires that a charter school petition contain a reasonably comprehensive description of the procedures by which pupils can be suspended or expelled. Interestingly, the petitioner adopts the Education Code relating to suspension and expulsion in all material respects except one. Unlike regular public schools, the petitioner provides no alternative educational program for expelled students. In addition, the petitioner does not provide a process for counseling or assisting students who are expelled and in need of alternative placement. (Perhaps the petitioner lacks concern for fundamental due process and human dignity of these students because the petitioner can safely assume that the district-of-residence will always be there to bail out the charter school. If that is the case, it is greatly disappointing.)

In its rebuttal, the petitioner proposes some amended language that would require Everest to “assist” expelled pupils in finding an alternative placement. First it should be noted that petitions are not amended at each level of review; if they are, it would be viewed as a new petition and not properly reviewed as an appeal. Even more importantly, even if the County board were to accept the amended language, it clearly does not go nearly far enough in addressing this serious concern.

The petitioner is correct in asserting that, unlike regular public schools, there is no provision in charter school law mandating the provision of an alternative education program for expelled students. However, the petitioner is ignoring a higher legal authority: the state and federal constitutions. Knowing the County Board of Education shares the Sequoia district's commitment to safeguarding the procedural due process rights of expelled students, we are confident you will also share the District's concern about the petitioner's unconstitutional policy for addressing the continued education of students they expel.

Dispute Resolution

There is serious concern that the petitioner's process for dispute resolution oversteps state law. The charter would require and compel the Sequoia district to engage in dispute resolution as a condition to charter revocation, which is clearly contrary to state law. In an apparent attempt to justify why the language was originally included, the petitioner ultimately agrees to remove the requirement from the petition. Again, this would represent a substantive change to the original charter and would require resubmission of the petition to the original reviewing agency.

Unsound Charter Education Program

The petition shall be denied if "the charter school presents an unsound charter education program for the pupils to be enrolled in the charter school." Clearly, the petition contains basis for denial.

Legislative Intent

In oral and written statements and rebuttals, the petitioner has consistently ignored the importance of fulfilling the seven intents of California's charter school legislation. The petitioner asserts that the legislative goals are only "outcome" expectations that apply to the "entire system" of charter schools, not individual charter school petitions.

To the extent that the petitioner is correct, that the goals are "outcome" expectations, the Sequoia district has been clear that our findings of fact and concerns are based on the outcomes of Summit. Summit does *not* serve well all populations, and particularly not low-achieving students, as demonstrated in the District's original response document.

Furthermore, the petitioner's argument that the legislative intents apply only to the "entire system" of charter schools is a reflection of a distorted, misguided analysis. Consider a scenario in which all charter schools ignored the legislative goals. Under this scenario, no individual charter school would need to provide learning opportunities for low-achieving students since each school would assume that the other schools were addressing this goal. This disrespects the California Legislature and the spirit in which the Charter School Act was passed.

The importance of the legislative goals in evaluating the soundness of a proposed educational program is supported by the state regulations governing how petitioners must present information as a condition for charter approval. Title 5 section 11967.5.1(f) states that "*for purposes of Education Code section 47605(b)(5)(A), the State Board of Education shall take the following factors into consideration in determining whether a charter petition does not contain a 'reasonably comprehensive' description of each of the specified elements.*" One of the elements, (F), requires that the charter "*indicate how [it] will identify and respond to the needs of pupils who are not achieving at or above expected levels.*" The state Board of Education adopted this regulation based on the legislative intent cited by the Sequoia district and used by the District as a basis for determining that the Everest petition is unsound. The goals of the legislation can, and should, be related to the education program. It is disconcerting that the petitioner would ignore the importance of the legislative goals to the Everest petition and would instead argue that the language has only system-wide applicability.

Moreover, in its regulations, the state Board considers "the past history of involvement of charter schools," particularly if "the history is one that the State Board regards as unsuccessful." (Ref:

Title 5 section 11967.5.1) The experience of the District with Summit, and whether they meet the goals of the legislation, is precisely the analysis the state Board would undertake if it were to evaluate the petition.

Finally, it must be noted that the petitioner has proposed creation of an exclusively college preparatory curriculum in a school district that already does an exceptional job in this regard, as evidenced by the rate of graduates of the Sequoia district's four comprehensive high schools who go on to college following graduation: over 95 percent in 2007-08. Clearly, the Everest petition provides the Sequoia district community with an unnecessary and costly solution to a problem that does not exist. This, of course, raises the question of why families in the Sequoia district would be attracted to Everest. It is our belief that Everest attracts parents who are less interested in public education and more interested in an exclusive private school-like setting. Clearly, in passing the Charter School Act, the California Legislature did not intend to provide tuition-free alternatives to private schools. Charter schools are intended to provide alternatives to substandard public schools, of which there are none in the Sequoia district.

Special Education and EL Students

Concern about Everest's plan to meet the needs of special education students and EL learners remains. The petitioner maintains, for example, that "*the* legally compliant and pedagogically sound" method for EL instruction is to mainstream EL students. While we recognize this is one approach, it is certainly not the sole approach or even necessarily the optimal one. In the Sequoia district, we also address English-language development, as required by federal law – a key component that the petitioner has failed to address.

The petitioner also rebutted the Sequoia district's findings in relation to EL program evaluation. The petitioner maintains that data will be analyzed. The program evaluation requirement is generally understood to mean that the LEA has established criteria by which it measures the effectiveness of its EL program. Review of data alone does not ensure compliance. In fact, specific performance objectives must be set and measured by recognized standardized assessments. EL students must be scientifically compared to English-proficient peers, and these comparisons must be used to improve the instructional programs for EL students. This process is not included in the Everest petition or petitioner's rebuttal document.

Increasing Opportunities for All Students

The petitioner has failed to provide any evidence that alters the District's original findings that there is inadequate emphasis at Summit on special education and EL students and that Everest is likely to mirror the student demographics at Summit.

In the petitioner's rebuttal document, the petitioner acknowledges ongoing "struggles" with providing accurate data. Unfortunately, the Sequoia district has been victim of an ongoing pattern of ever-changing data from Summit officials. In numerous other instances, requests for data have gone unanswered altogether. (However, the District recognizes and applauds Summit's new Executive Director for recent attempts to improve upon this past pattern.)

In the chart on Attachment #1, for example, there are discrepancies in the self-reported data and data reported on the California Department of Education's DataQuest website:

- Summit self reports 13.9% EL students as compared with 3.5% reported in DataQuest
- Summit self reports 8.3% special education students as compared with 0% reported in DataQuest

There are stark contrasts in the Sequoia district's EL and special education student populations as compared with what DataQuest reports for Summit:

- 18.5% Sequoia district EL students as compared with 3.5% for Summit
- 11.8% Sequoia district special education students as compared with 0% for Summit

In addition, it should be noted that the SELPA data, which the District believes is most accurate, show Summit with 16 special education students in 2007-08, or 4.2%. It should also be noted that, even with accepting Summit's self-reported numbers, there are contrasts between the Sequoia district and Summit EL and special education populations.

Additional contrasts exist in two other key areas:

- 34.2% of Sequoia district students receive free and reduced lunch as compared with Summit's self-reported 24.5%
- 20.6% of Sequoia district students have parents who are not high school graduates as compared with Summit's self-reported 6.2%

Additional data demonstrate that the Sequoia district serves a disproportionate share of low-achieving students as compared with Summit. For example, a key measure of the academic level of incoming ninth graders is seventh-grade California Standards Test (CST) performance:

- The chart on Attachment #2, showing the English Language Arts (ELA) portion of the CST comparison, demonstrates that the Sequoia district enrolled a higher number of "Far Below Basic" and "Below Basic" students than Summit in 2007-08: 21.1% as compared with 13.5%
- The chart on Attachment #3, showing the math portion of the CST comparison, demonstrates that the Sequoia district enrolled a higher number of "Far Below Basic" and "Below Basic" students than Summit in 2007-08: 23.8% as compared with 17.1%

Financial Impact to the Sequoia District

Without question, another charter school in the Sequoia district would erode the financial base and resources of the District – a critical concern, particularly in this time of serious, far-reaching economic turmoil and uncertainty. While misinformation and misperceptions persist, it is a fact that any charter school under the authorization of the Sequoia district represents a financial loss to the District. We acknowledge charter school law does not allow denial of a petition due to negative financial impact; however, your board, local taxpayers and the community-at-large are entitled to accurate information about the financial impact to the Sequoia district of an additional charter school.

Experience with Summit

To demonstrate the potential financial impact, the Sequoia district can utilize its current experience with Summit. The Sequoia district paid Summit just over \$2.5 million in per-pupil funding in 2007-08 for the school's 400 students. In addition, the District provided the school with an \$8 million facility rent-free (as required by Proposition 39 legislation), and provided free use of fields and gym space at the District's comprehensive high schools (and no charge for administrative time associated with scheduling and coordination).

Had Summit not existed in 2007-08, the Sequoia district would have incurred none of the costs listed above. Although there would have been some costs incurred had some of the 400 students enrolled in other District schools, the District would not have incurred any increased costs for facilities or administration. Certainly, some additional teachers would have been hired. However, it should be noted that approximately 25 percent of every freshman class at Summit were in private schools in the eighth grade, and another group of students live outside the District's boundaries (45 in 2007-08). Thus, it is fair to estimate that approximately 100 of the 400 students enrolled in Summit in 2007-08 would not have enrolled in other Sequoia district schools if Summit had not existed.

The District estimates that it would have incurred an additional \$880,000 in costs to have educated an additional 300 students in 2007-08. Since schools are staffed with a basic student-to-teacher ratio of 27.5-to-1, it is reasonable to assume that the District would have needed to hire approximately 11 new teachers. Total compensation (salary plus benefits) of a new teacher in 2007-08 was approximately \$80,000, which multiplied by 11 totals \$880,000.

Therefore, the *cost* to the Sequoia district of approximately \$900,000 to *save* the Sequoia district well over \$2.5 million would have represented a net gain of approximately \$1.6 million to the District's general fund in 2007-08. A similar financial impact is reasonably estimated should another charter school of approximately 400 students be authorized. The petitioner's repeated contention that there is no negative financial impact to the Sequoia district of another charter school is inaccurate and misleading.

In conclusion, there are clearly several statutory reasons to deny the appeal of the Everest petition. Equally important, there are strong values of fairness and equity that demand the appeal be denied. Thank you for your time and attention.

Sincerely,



Patrick R. Gemma, Ed.D.
Superintendent

c: Jean Holbrook, Ed.D.
County Superintendent of Schools

Attachment #1 2007-08 Enrollment Counts

Source: Summit Charter Director and CA Dept. of Education DataQuest Website
Data Acquired: November 2008

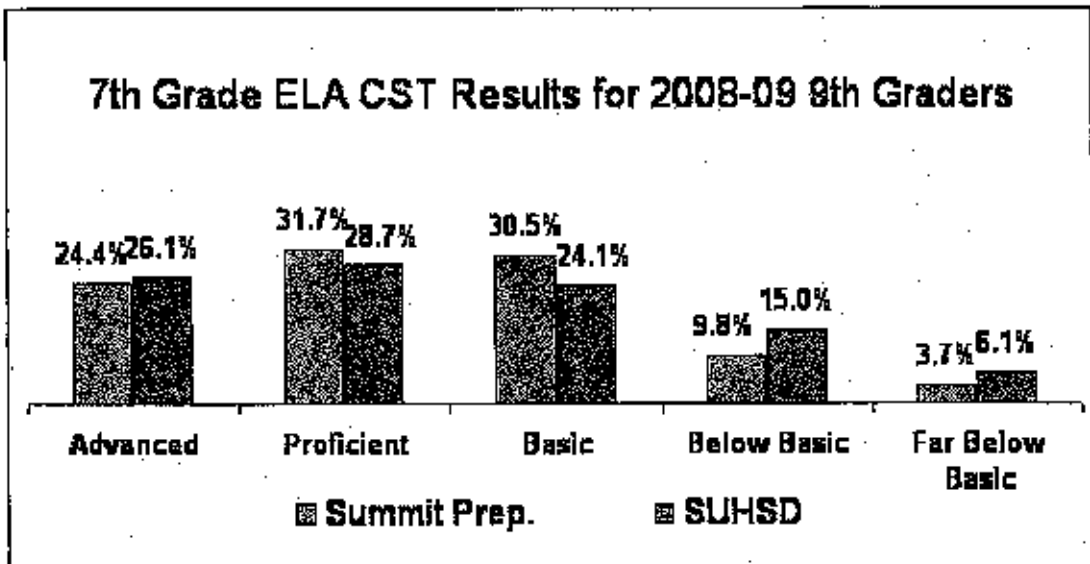
	Summit Prep. Charter				Sequoia Union High School District*	
	#		%		#	
	Reported by Summit		Reported by CDE**		Reported by CDE**	
All Students	401		401		8521	
Ethnic Sub-Groups						
American Indian	1	0.2%	1	0.2%	10	0.1%
Asian	28	7.0%	28	7.0%	441	5.2%
Pacific Islander	3	0.7%	3	0.7%	303	3.6%
Filipino	6	1.5%	6	1.5%	134	1.6%
Hispanic	127	31.7%	127	31.7%	3579	42.0%
African American	11	2.7%	11	2.7%	438	5.1%
White/Non-Hisp	216	53.9%	216	53.9%	3418	40.1%
Other/Multiple	9	2.2%	9	2.2%	188	2.0%
Non-Ethnic Sub-Groups						
Free & Reduced Lunch		24.5%	0	0.0%	2916	34.2%
English Learners		13.9%	14	3.5%	1575	18.5%
Special Education		8.3%	0	0.0%	1003	11.8%
Parents Not High School Grads***	25	6.2%	N/A	N/A	1753	20.6%

* Includes students from Non-Public Schools and Redwood Continuation HS
 ** California Department of Education DataQuest website
 *** Internal Estimates

Attachment #2
7th Grade ELA CST Results for 2008-09 9th Graders

Source: Internal Estimates
 Data Acquired: November 2008

		Summit Prep. Charter		Sequoia Union High School District	
		#	%	#	%
All Students		108		2088	
Proficiency Level	Advanced	20	24.4%	403	26.1%
	Proficient	26	31.7%	444	28.7%
	Basic	25	30.5%	373	24.1%
	Below Basic	8	9.8%	231	15.0%
	Far Below Basic	3	3.7%	94	6.1%
	Total Students w/Scores	82	100.0%	1545	100.0%
	Total Students w/o Scores	26	24.1%	438	21.0%
	Average Scale Score	359.6		357.3	



**Attachment #3
7th Grade Math CST Results for 2008-09 9th Graders**

Source: Internal Estimates
Data Acquired: November 2008

		Summit Prep. Charter		Sequoia Union High School District	
		#	%	#	%
All Students		108		2088	
Proficiency Level	Advanced	14	17.1%	398	25.8%
	Proficient	23	28.0%	415	26.9%
	Basic	31	37.8%	364	23.6%
	Below Basic	9	11.0%	254	16.5%
	Far Below Basic	5	6.1%	112	7.3%
	Total Students w/Scores	82	100.0%	1543	100.0%
	Total Students w/o Scores	26	24.1%	545	26.1%
	Average Scale Score	350.0		357.3	

