



ORANGE COUNTY DEPARTMENT OF EDUCATION
Staff Report for Orange County Classical Academy II
January 18, 2022

I. INTRODUCTION

In accordance with the Charter Schools Act, as set forth in Education Code section 47600, et seq., the Orange County Department of Education staff conducted a comprehensive review of the Orange County Classical Academy petition proposing to establish Orange County Classical Academy II (OCCA II) as a countywide charter school. This report summarizes findings from that review and provides recommendations for consideration by the Orange County Board of Education (the Board).

II. BACKGROUND

On November 1, 2021, the Board received a petition proposing to establish OCCA II as a countywide charter school. OCCA II would be operated by Orange County Classical Academy, a California nonprofit public benefit corporation.

On December 1, 2021, the Board held a public hearing on the provisions of the charter petition to consider the level of support for the petition by parents/guardians, teachers and school districts in which the charter school proposes to place facilities. On December 8, 2021, Orange County Department of Education staff met with charter school representatives to better understand and clarify information in the petition.

The Board is required to take action to either grant or deny the charter within ninety (90) days of receipt of the petition, unless this date is extended by up to an additional 30 days by agreement. Board action is scheduled to take place at the regular meeting of the Board on February 2, 2022.

III. LEGAL STANDARD

The overall statutory scheme of the Charter Schools Act reflects a preference for charter schools that are locally authorized by the school district in which the charter school operates. As a result, in order to approve a countywide charter petition, a county board of education must be able to make certain threshold findings in addition to determining whether the petition satisfies the legal standards and criteria under Education Code section 47605.6(b)(1)-(5). Specifically:

“A county board of education may approve a countywide charter only if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county.” Education Code §47605.6(a)(1)

Additionally, Education Code section 47605.6(b) states:

“A county board may grant a charter for the operation of a charter school under this part only if it is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Education Code section 47605.”

Should the charter school petition meet the threshold requirement for a countywide charter school, the Board must then determine whether the petition satisfies the legal standards and criteria under Education Code section 47605.6(b)(1)-(5). The Board shall deny a petition for the establishment of a charter school if it finds one or more of the following:

- (1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
- (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- (3) The petition does not contain the number of signatures required by subdivision (a).
- (4) The petition does not contain an affirmation of each of the conditions described in subdivision (e).
- (5) The petition does not contain reasonably comprehensive descriptions of the required elements under Education Code section 47605.6.
- (6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the Educational Employment Relations Act Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.
- (7) Any other basis that the county board of education finds justifies the denial of the petition.

Should the Board approve the petition, the Board would become the charter authorizer for the Charter School. Should the Board deny the petition, there is no right to appeal to the State Board of Education (5 CCR § 11966.5). However, the petitioners would have the option to submit charter petitions to the school districts in which they propose to operate under Education Code section 47605.

IV. STAFF RECOMMENDATION

Orange County Department of Education staff recommend that the Board approve with conditions the Orange County Classical Academy petition to establish Orange County Classical Academy II as a countywide charter school for a term of five years from July 1, 2022 to June 30, 2027. This report contains findings of fact reflecting areas of concern to be addressed in an Agreement by the parties should the Board approve the charter petition with conditions. Should the Board take action to deny the charter school petition, the Board may adopt this Staff Report as written findings in support of the denial.

V. SUMMARY OF FINDINGS

A. The petition does not contain reasonably comprehensive descriptions of the required elements under Education Code section 47605.6.

1. The charter petition (p. 162 Element M: Student Admission Policies and Procedures) states that for the 2022-23 school year only, students currently attending Orange County Classical Academy (OCCA I) will be deemed “existing students.” OCCA I is a charter school authorized by Orange Unified School District under Education Code 47605. While currently enrolled students of a charter school are exempt from the lottery per California Education Code, as a new countywide charter school, OCCA II, would not have “existing students.” Therefore, every student must be subject to the lottery. During the clarification meeting, charter school representatives were asked whether OCCA II is a conversion of OCCA I based on the stated enrollment exemption and page seven of the charter petition which indicates that OCCA I will cease operations effective June 30, 2022. Charter school legal counsel clarified that OCCA II is a new school, not a conversion, that all staff would apply for employment and all students would apply for enrollment to OCCA II. Additionally, the charter school provided an opinion from law firm Young, Minney & Corr, LLP (letter attached) delineating why the school is not in violation of Education Code Section 47605.6(a)(2), which prohibits an existing public school from being converted to a countywide charter school. Should the charter be approved, the charter petition should be amended to delete the footnote on page nine that states: For the 2022-23 school year only, students currently attending OCCA I shall be deemed “existing students.”
2. Per the petitioners, OCCA II does not currently have a contract/agreement with Barney Charter School Initiative (BCSI). The charter petition relies on the curriculum and training from BCSI to implement the educational program. Should the charter petition be approved, submission of a fully executed contract between BCSI and OCCA II should be addressed in an Agreement to be submitted prior to the school opening.
3. The Temporary Use Permit issued by the City of Orange for the identified school location in year one of the charter school at 4100 East Walnut Avenue, Orange, expires on June 30, 2022. Additionally, the petition does not specify the address of the second location at 4121 Warner Ave, Huntington Beach, and there is no documentation of the Conditional Use Permit, or Temporary Use Permit, for that location. Should the charter petition be approved, the submission of all applicable permits and documents allowing for the use of the facilities for educational use should be addressed in an Agreement prior to school opening and the charter petition should be revised to include all known potential school addresses.

4. Measurable Pupil Outcomes and Annual Goals

- a. Page 65 requires the addition of the percent of pupils who satisfy the UC/CSU A through G requirements. Petitioners clarified and agreed, should the charter be approved, to amend the charter petition measurement to 100%.
- b. The required goal for EL progress (p. 66) references reclassification rates, however the language related to 2% of students advancing by one EL level on page 57 must be provided. Petitioners clarified and agreed, should the charter be approved, to amend the charter petition schoolwide and subgroup goals for Priority #4C that 80% of EL students will advance by at least one EL level annually, and an increase of at least 2% of students who will advance by at least one EL level annually. Advancement rates will, thus, increase by 10% between 2022-23 and 2026-27.
- c. For annual student attendance rates, petition must specify an annual attendance rate goal rather than a 3-year average (p. 70). Petitioners clarified and agreed, should the charter be approved, to amend the charter petition that its schoolwide and subgroup goals for Priority #5A will be attainment of an annual attendance rate of 95%.
- d. For goals related to chronic absenteeism (p. 71), pupil suspension (p. 74), and pupil expulsion (p. 75), set rates are required rather than indicating it will be less than districts where charter campuses are located. Petitioners clarified and agreed, should the charter be approved, to amend the charter petition that the schoolwide and subgroup goals for Priority #5B will be attainment of a chronic absenteeism rate that is 4% or less; Priority #6A will be attainment of a pupil suspension rate that is 2.5% or less; and Priority #6B will be attainment of a pupil expulsion rate that is 0%.
- e. The petition requires comprehensive descriptions of goals related to programs and services developed and provided to unduplicated pupils and pupils with exceptional needs. OCCA II's goal is that 100% of unduplicated students and students with exceptional needs will be identified and provided with the interventions and programs stated in Element A so that they can access the broad course of study provided by OCCA II. Petitioners clarified, and agreed to amend the charter petition to state that OCCA II's goal for Priority #7 is inclusive of unduplicated pupils and pupils with exceptional needs, as noted in the heading on page 76 and that 100% of unduplicated students and students with exceptional needs will have access to an education program that maximizes their learning opportunities with multiple entry points that meets their current level of knowledge and skill level. Furthermore, 100% of students will have access to a broad course of study, including programs specifically designed to meet the needs of unduplicated pupils and individuals with exceptional needs.

- f. The actions provided for the charter’s goal for implementing state standard (p. 55), do not include ensuring that credentialed staff are provided professional development on the implementation of those state standards. Petitioners clarified, and agreed to amend the charter petition, that OCCA II will provide all staff with professional development on the implementation of state standards in order to meet the goals stated under State Priority #2.
- g. The petition is required to provide specific actions related to creating and delivering programs and services for unduplicated pupils and pupils with exceptional needs. Petitioners clarified and agreed to amend the charter petition to reflect that unduplicated pupils and pupils with exceptional needs are included in the goals and action items for Priorities #3 and #7. Additionally, the specific action items for unduplicated pupils and pupils with exceptional needs to meet the goal of access to a broad course of study is that academic content areas will be available to all students through the provision of the specific interventions articulated in Element A of the petition, including MTSS, SST, and EL-specific supports (inclusive of designated and integrated English Language Development strategies), implemented daily and tracked through logs to ensure that unduplicated pupils and pupils with exceptional needs can access and engage in the broad course of study offered by OCCA II of which Priority #7 is focused.
- h. The petition is required to provide specific actions to promote parental participation in programs for unduplicated pupils and students with exceptional needs (p. 59). Petitioners clarified and agreed to amend the charter petition, that the stated actions for Priority #3 are also intended to engage the parents of unduplicated pupils and individuals with exceptional needs, including through:
 - Opportunities for regular meetings that will allow parents to partner in their child's education through student-led conferences, which will be tailored to address the specific needs of unduplicated pupils and individuals with exceptional needs, including as applicable, by eliminating language barriers through translation, grounding conversations in IEP findings, goals and supports, and identify resources that can assist socioeconomically disadvantaged families in obtaining tools for their children, including through community organizations, resources, and training staff and teachers in understanding and communicating effectively with parents that is responsive to, and in knowledge of, the unique issues they face as parents of unduplicated pupils and individuals with exceptional needs.
 - Encouraging parents of unduplicated pupils and individuals with exceptional needs to volunteer at OCCA II, by attending school events and activities, or by supporting students at home. OCCA II will increase accessibility for parents of unduplicated pupils and individuals through the same strategies addressed

above, centered around addressing language barriers (e.g., through translation), disability-related barriers (e.g., addressing accessibility needs and making school a welcoming place for all differences), and socioeconomic barriers (e.g., providing resources for low income families, childcare during events, scheduling events at times that are sensitive to parents' work schedules).

- The holding of parent engagement events, Academic Advisory Council, and various sub- committee meetings, as well as providing ongoing parent workshops on classical education, tailored for families of unduplicated pupils and individuals with exceptional needs, and facilitating accessibility and engagement through the same strategies addressed above, that are centered around addressing language, disability-related, and socioeconomic barriers.
- Seeking input for the development of the LCAP through annual surveys and meetings explicitly targeting families of unduplicated pupils and individuals with exceptional needs, tailored for families of unduplicated pupils and individuals with exceptional needs, and by facilitating accessibility and engagement through the same strategies addressed above, centered around addressing language, disability-related, and socioeconomic barriers.

VI. CONCLUSION

The Board has three options for action regarding a countywide charter school petition:

- Option One: Approve the charter petition as written.
- Option Two: Approve the charter petition with conditions. This action would result in approval of the charter petition and require the execution of an Agreement to address the issues outlined in this Staff Report and establish appropriate timelines for the petitioners to meet the conditions as specified.
- Option Three: Deny the charter petition.

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LAW OFFICES OF YOUNG, MINNEY & CORR, LLP
THE CHARTER LAW FIRM

December 15, 2021

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SENT VIA EMAIL

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Semi Park, Lead Petitioner
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4100 E Walnut Ave,
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Re: Legal Opinion Regarding Education Code Section 47605.6(a)(2)

Dear Ms. Park:

You asked that as counsel for Orange County Classical Academy (the “Corporation”) (the non-profit public benefit corporation), we provide a legal opinion addressing whether the Corporation’s proposed establishment countywide benefit charter petition for Orange County Classical Academy II (“OCCA II”) violates Education Code Section¹ 47605.6(a)(2). That section provides that “[a]n existing public school shall not be converted to a charter school in accordance with this section.” For the reasons addressed below, we are confident that OCCA II’s petition does not present a proposal to “convert” “an existing public school” into a “charter school” as those terms are used in the Charter Schools Act (“CSA”), Education Code Sections 47600 *et seq.*, and therefore that approval of OCCA II’s charter by the Orange County Board of Education would not violate Section 47605.6(a)(2).

Principles of Statutory Construction

Our conclusion that OCCA II’s petition does not violate Section 47605.6(a)(2) is grounded in principles of statutory interpretation articulated by California courts, which we summarize below, and apply in the analysis that follows.

In interpreting the meaning of a statute, courts “begin with the fundamental premise that the objective of statutory interpretation is to ascertain and effectuate legislative intent.” (*Burden v. Snowden* (1992) 2 Cal.4th 556, 562.) “In determining intent, [courts] look first to the language of the statute, giving effect to its plain meaning.” (*Kimmel v. Goland* (1990) 51 Cal.3d 202, 208.) Critically, “[s]tatutory language is not considered in isolation. (*Mt. Hawley Ins. Co. v. Lopez* (2013) 215 Cal.App.4th 1385, 1414.) Courts “instead interpret the statute as a whole, so as to make sense of the entire statutory scheme.” Courts are also required to “interpret legislative enactments so as to avoid absurd results.” (*People v. Torres* (2013) 213 Cal.App.4th 1151, 1158.)

¹ All statutory references herein are to the Education Code.

Further, “when different words are used in contemporaneously enacted, adjoining subdivisions of a statute, the inference is compelling that a difference in meaning was intended.” (*Kleffman v. Vonage Holdings Corp.* (2010) 49 Cal.4th 334, 343.) Finally, statutes are interpreted to “presume . . . a repeated phrase or word in a statute is used in the same sense throughout.” (*People v. Jones* (1988) 46 Cal.3d 585, 595.)

OCCA I Is Not an “Existing Public School” Subject to Restrictions on Conversion

Orange County Classical Academy (“OCCA I”) cannot be considered an “existing public school” as that term is specifically used in the CSA, and thus OCCA II’s petition cannot, as a threshold matter, be subject to rules and restrictions governing conversion to “charter school” status under both Sections 47605 and 47605.6. The “conversion” concept in Section 47605(a)(2) cannot apply at all because there is no “conversion” of an “existing public school” as defined in the CSA.

Under Section 47605, the Legislature authorized “existing public schools” to convert to charter school status under Section 47605. Subsection (a)(2) provides that “[a] petition that proposes to convert an existing public school **to** a charter school . . . may be circulated by one or more persons seeking **to establish the charter school**. The petition may be submitted to the governing board of the school district for review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public school **to be converted**.” (Emphasis added.) Subsection (e)(1) requires that “an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the **former attendance area of that public school**.” (Emphasis added.)

Given these requirements, under the CSA, an “existing public school” cannot be a “charter school.” First, because the above language authorizes the conversion of an “existing public school” to “establish” a charter school, it would be an absurd interpretation that “existing public school(s)” could include a “charter school.” as a charter school cannot be converted to a charter school – it is already “established” as a charter school and there is nothing to “convert.” Second, “existing public school” must refer to traditional public schools operated by a school district, not existing charter schools, because Section 47605(e)(1) requires “existing public schools” converting to charter status to give a preference to students “who reside within the former attendance area of that public school.” Only traditional public schools operated by school districts have a “former attendance area,” not charter schools, further confirming that “existing public schools” cannot refer to “charter schools.”

Consistent with the principles of statutory interpretation described above, the Legislature’s intentional use of the different terms “existing public school” and “charter school” within the same sentences, and the statutory scheme as a whole, must be read as referring to two different concepts in juxtaposition. “Existing public school” cannot refer to a charter school because a charter school is classified as something that an “existing public school” *becomes*; it is not an “existing public school” itself. This interpretation is consistent with the California Department of Education’s



“CDE”) view as well, that “[a] conversion charter school is a pre-existing **traditional school** that converts to a charter.” (See <https://www.ed-data.org/article/Charter-Schools-in-California> [ed-data.org is a joint publication of the CDE, EdSource, and the Fiscal Crisis and Management Assistance Team.]) (Emphasis added.)

Our conclusion that “existing public school” does not include a charter school is also supported by the fact that when the CSA was enacted into law in 1992, there were no charter schools in operation; there were only “existing public schools.” The CSA as a whole, and the term “existing public schools,” must be constructed within that context—i.e., that “existing public schools” does not include charter schools, as charter schools did not exist when the Legislature used and applied the term “existing public schools.”

Importantly, these concepts, as defined in context by Section 47605, must be applied in precisely the same manner in interpreting Section 47605.6, based on the principles of statutory interpretation described above, i.e., that terms must be read consistently and given the same meaning throughout the statutory scheme. Insofar as Section 47605.6(a) prohibits an “existing public school” from converting to a “charter school,” “existing public school” cannot be read as embracing “charter school” for the same reasons addressed above: namely, that the Legislature created a distinction between those two terms, and that an “existing public school” cannot logically refer to a charter school. If the Legislature intended to preclude charter schools authorized under Section 47605 from converting to countywide benefit charter schools, the Legislature would have done so by stating, e.g., “[a]n existing public school **and charter school authorized under section 47605** shall not be converted to a charter school in accordance with this section.”

Our conclusion that there is no prohibition on the conversion of a charter petition authorized under Section 47605 into a countywide benefit charter school is also supported by parallelism between Sections 47605 and 47605.6, specifically, that Section 47605 is the mirror image of Section 47605.6: Section 47605 authorizes “existing public schools” operated by school districts to convert to charter schools, and Section 47605.6 prohibits it. This is sensible, as school districts may legally operate dependent charter schools within their boundaries under Section 47605, but have no jurisdictional authority to operate public schools outside of their boundaries, i.e., in the case where a school district were to petition to operate a countywide benefit charter school with facilities located within *other* school districts’ boundaries. The restrictions precluding school districts from converting existing public schools to operate outside of their boundaries is unique to “existing public schools” operated by school districts. These restrictions cannot bear on charter schools that were never “existing public schools” as that term is described in Section 47605. After all, Section 47605.6 expressly authorizes such charter schools that never had a “former attendance area” as an “existing public school” to operate across school district jurisdictional lines.

Even if OCCA I could be considered “converting” to OCCA II in the most generic and broad sense of the word “convert” (which, factually, is not the case for the reasons addressed in the next section), Section 47605.6(a)(2) does not restrict such “conversion” of an existing charter school authorized by one chartering authority (e.g., a school district board of education) to a charter school to be authorized by another chartering authority (e.g., a county board of education).



However, fundamentally, OCCA II's petition does not involve a "conversion" of the specific kind addressed explicitly in the CSA, i.e., a conversion of a traditional public school (an "existing public school") to a charter school.

In sum, because OCCA I cannot be considered an "existing public school" under Sections 47605 and 47605.6, OCCA I's existence is irrelevant to whether OCCA II's petition may be granted, and the restriction on conversion in Section 47605.6(a)(2) cannot apply to OCCA II's petition.

OCCA I is Not Converting to OCCA II

Even if OCCA I were considered an "existing public school" in a general sense, i.e., detached from the statutory language of the CSA addressed above, OCCA I will not legally or functionally undergo a "conversion" to OCCA II through approval of OCCA II's petition.

OCCA I is currently operating as a charter school authorized by Orange Unified School District pursuant to Section 47605. OCCA I's charter will not be merged into OCCA II's proposed charter. OCCA II submitted its own charter petition, independent of OCCA I; OCCA I and OCCA II each submitted a request for school district facilities under Proposition 39 for 2022-23; OCCA II will obtain a new and separate charter as a consequence of approval of that petition; OCCA II will apply for and obtain a new charter school number, distinct from OCCA I; OCCA II will apply for its own County-District-School ("CDS") code pursuant to the CDE's instructions ([see https://www.cde.ca.gov/ds/si/ds/charterinfo.asp](https://www.cde.ca.gov/ds/si/ds/charterinfo.asp)); and OCCA II's petition presents a different school design, a new organization chart and administrative structure, and a different program objective related to serving students throughout Orange County. Students enrolled at OCCA I desiring to enroll in OCCA II will be required to apply for admission at OCCA II and will only become newly enrolled students of OCCA II if they so choose.

Although OCCA I's charter is not set to terminate until June 30, 2027, and both OCCA I and OCCA II could co-exist as separately authorized charter schools, we understand that if OCCA II's charter petition is granted, the Corporation's Board of Directors intends to close OCCA I effective June 30, 2022, and to reallocate the Corporation's real estate interests and human resources to serve OCCA II, but there is no legal requirement that the Corporation do so if it chose to operate both charter schools. A true conversion charter school could never operate separately from the "existing public school," because the "existing public school" and the charter school must, through the act of conversion, merge into each other; there is no other option under a "conversion" of the kind addressed in the CSA. When OCCA I closes as of June 30, 2022, under current plans, OCCA I will not legally merge into OCCA II as would be the case in a conversion. And again, OCCA II will not continue the operation of the same preexisting charter school under OCCA I's CDS code or charter number. When OCCA II becomes operative on July 1, 2022, it will be a completely new startup charter school with no legal relationship to OCCA I, and there will be no existing and continuing school in operation from which OCCA II will be legally "converting" on July 1, 2022.



We also note that charter petitioners regularly petition to open new charter schools with different chartering authorities to expand their model, sometimes when other charter schools they operate are scheduled to close. In those instances, the fact that the same petitioning team non-profit public benefit corporation seek a new charter petition elsewhere, using a similar school name and a similar academic philosophy and the same staff and the same governing board, does not mean that each new charter school they operate is a “conversion” or continuation of a previous one. There is nothing in Section 47605.6 that precludes a petitioning team who previously opened a district-authorized charter school under Section 47605 from opening a new charter school under Section 47605.6, nor are there any provisions that would characterize such a new charter as a “conversion.”

Relatedly, that OCCA II will utilize facilities previously utilized by OCCA I does not mean that OCCA I is converting to become OCCA II. Public schools regularly use facilities of formerly existing public schools, including through Prop 39, and that occupancy does not make such schools “conversion schools” under Sections 47605 and 47605.6.


In sum, because OCCA I is not “converting” to OCCA II as that term is used in Section 47605.6(a)(2) or a general matter, the restriction on conversion in Section 47605.6(a)(2) cannot be applicable to OCCA II.

* * *

Thank you for your inquiry. Please let us know if you have any further questions.

Sincerely,

LAW OFFICES OF YOUNG,
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JANELLE A. RULEY
ATTORNEY AT LAW

