



ORANGE COUNTY DEPARTMENT OF EDUCATION

Staff Report for Explore Academy

September 21, 2021

I. INTRODUCTION

In accordance with the Charter Schools Act, as set forth in Education Code section 47600, et seq., the Orange County of Education (OCDE) staff conducted a comprehensive review of the ExploreK12 petition proposing to establish Explore Academy as a countywide charter school (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 June 21, 2021, the Board received a petition proposing to establish Explore Academy as a countywide charter school. The Charter School would be operated by ExploreK12, a California nonprofit public benefit corporation.

On August 4, 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 August 25, 2021, OCDE 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 October 6, 2021.

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. SUMMARY OF FINDINGS

A. Countywide Justification

The Explore Academy charter petition states multiple reasons to satisfy the countywide justification requirement, specifically: (1) ability for students to enroll in courses at other Explore Academy campuses virtually from their home campus while under the supervision of a credentialed teacher, (2) ability of teachers to transfer to other Explore Academy campuses, (3) ability to implement educational model with fidelity to the plan, (4) ability to secure financing for multiple permanent facilities because lenders will attribute a greater value to a countywide benefit schools, and (5) ability to not give preference to students residing within the boundaries of the school district where each campus is located.

In order to determine whether the Charter School’s justification satisfies the threshold requirement for a countywide charter school, we look at whether the Charter School must operate under a countywide charter rather than one or more locally approved charters under Education Code section 47605.

1. Multiple School Campuses

Page 23 of the charter petition states:

“One of the keys to success of this program is the ability to offer differentiated classes, or seminars, each with their own theme, or ‘flavor’ affording students a nearly endless

number of course options. Each school site will have a significant number of courses available onsite. However, each student will also be able to enroll in courses (flavors) at other sites across the Orange County network, accessing them virtually from their home campus and while under the supervision of a credentialed teacher. This sort of “cross-pollination” is a significant differentiator and uniquely requires multiple school sites across the County in order to function at its highest level.”

The charter states that each school will have a “significant” number of courses, making the need for multiple campuses unnecessary. Additionally, if to “function at its highest level” the school needs to operate multiple campuses, the charter provides a misleading description of the educational model students enrolled in the first five years of the charter will experience. During the first charter term, the charter school intends to operate grades TK-6 in year one and grow to TK-10 by its fifth year. For most of its first charter term, only elementary grades will have the option to take courses at other school sites virtually, and that is only if the school is able to open additional campuses. If the school opens the three projected campuses, it is not until the fifth year that students in grades 6-8 will have the choice of one other campus. The two high school grades (grades 9-10) will not have the option of courses on another campus during the entire first charter term.

Additionally, California Education Code section 47612.7 provides that from January 1, 2020, to January 1, 2025, inclusive, the approval of the petition for the establishment of a new charter school offering nonclassroom-based instruction, as defined by Education Code section 47612.5, is prohibited. Pursuant to Education Code section 47612.5, nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education.

Although the Charter School model will require students who attend other campuses virtually to come to their home campus to be supervised by a credentialed teacher, petitioners could not identify whether the teacher providing instruction virtually or the teacher who is physically present would be considered the teacher of record and who would be responsible for issuing grades. Simply having a credentialed teacher present while students receive instruction virtually would not prevent the charter school’s educational model from being considered a nonclassroom-based charter school if the teacher of record is the teacher providing instruction virtually. As described, such a classroom would be considered a permissible service and resource for independent study as a “designated learning center or study area staffed by appropriately trained personnel” under Education Code section 51746(a).

- If the teacher who is providing instruction virtually is the teacher of record, each student would be required to have a signed independent study agreement, and the Charter School should be designated as a nonclassroom-based charter school.
- If the teacher who is physically present is the teacher of record, Petitioners would need to provide further justification for a countywide charter school.

The charter petition states that the ability for students to take courses virtually is an integral part of the charter model. Petitioners stated during the clarification meeting that there is no “cap” on the number of students or the number of sessions that a student would be able to take virtually from their home campus. Due to the scheduling format of the charter model, elementary courses are split into two half-days between STEM and Humanities, which means students in the elementary grades who opt to take only one course at a different campus could potentially be on a computer learning virtually for half of the school day. During

the clarification meeting, counsel for the charter school stated that the school would need to carefully monitor that no more than 20 percent of instruction is nonclassroom-based in order to not trigger a funding determination. However, the charter petition fails to adequately describe how the school will maintain the 80% threshold to qualify as a classroom-based charter school, while administering the program in an equitable manner for all students. Consequently, based on the model described by the Charter School, the Board may be prohibited from authorizing the Charter School given that it may operate as a nonclassroom-based charter school.

2. Teacher Mobility Across School Locations

Page eight of the charter petition states:

“Additionally, teachers will have the opportunity to move across the multiple school campus locations and teach specialized courses at each campus. Staffing assignments and requests will be reviewed and considered annually. This flexibility will provide teachers with additional opportunities for professional growth and allow the Charter School to retain teachers that it might otherwise lose due to practical and geographic considerations i.e., moving to another part of the County. The ability of teachers to transfer to other Explore Academy campuses will facilitate more opportunities for students at all campuses and enable the school culture to develop across the larger organization. This “cross-pollination” of teachers is unique to the Explore model and, by definition, cannot be offered at one charter school operating in one school district because geographic restrictions in law prohibit school sites outside of school district-authorizer boundaries.”

Charter school representatives clarified that teachers would have the option to change school campuses, as space permits, on an annual basis. Teachers would not be rotating among campuses throughout the school year. Assigning teachers to a school site on an annual basis is currently offered by charter schools with multiple district authorized locations, and is not contingent on having a countywide charter school or only one authorizer.

3. Fidelity to the Instructional Model

Page 10 of the charter petition states:

“It is critically important that these school sites are administered under a single chartering authority as educational models are successful only to the extent that they are implemented with fidelity. Operating under a countywide benefit charter petition will ensure that the Charter School’s educational model is implemented with fidelity to the plan described herein, and not diluted or distorted according to the idiosyncrasies of various school district authorizers. A common, shared understanding of the Charter School’s model by the internal stakeholders—parents, students, teachers, staff, and governing board—will be best communicated with a single chartering authority as a partner in service of educational equity.”

Delivery and communication of the instructional model as described in the school’s charter is the responsibility of school leadership and the school’s governing board, and is not dependent on which entity authorizes the charter school or on having a single chartering authority. Historically, charter schools have

demonstrated the ability to successfully implement and communicate their intended educational model with fidelity when authorized by multiple entities, including both district and county office authorizers.

4. Consistent Oversight and Operational Efficiency

The charter petition states (pages 11-12) that operating multiple school sites under different authorizers would be “untenable,” would negatively affect the charter school operating its model with fidelity, and would “place an undue burden on a district authorizer to provide appropriate oversight of a charter school offering grade levels outside of the grades offered by that district.” Additionally, the charter states that operating with one authorizer would increase operational efficiency, renewal, facilities and finance. Finally, the petition claims that:

“The ability to secure financing for multiple permanent facilities will be greatly enhanced by the Charter School’s status as a countywide benefit school. Simply put, lenders will attribute a greater value to a countywide benefit school given the rigorous criteria to achieve such authorization, as well as the respected oversight by the County.”

The oversight practices of a district authorizer, including judging the burden of providing oversight to a charter school by an authorizer, is beyond the scope of evaluation by Orange County Department of Education staff for the purposes of providing a recommendation to the Board. Education Code section 47605 specifically provides for a school district to be able to approve a charter school that serves pupils in a grade level that is not served by the school district, so long as the petition proposes to serve pupils in all of the grade levels served by that school district. As stated above, there is historic precedent in Orange County, and across California, of successful charter operators with schools authorized by multiple school districts. In fact, at least half of the charter schools authorized by the Board also successfully operate schools under additional charter authorizers. It is unclear how the charter petitioners determined the burden of charter authorizing on any of the districts in which they propose to locate. Additionally, the petition does not include any discussion or evidence regarding the inability to secure financing without a countywide charter authorization.

5. Enrollment Preferences

The charter petition states that the school will recruit students from throughout Orange County and wishes to do so without the “limitation of preference given to students residing within the boundaries of the school district where each campus is located.”

Education Code section 47605.6 specifies that admission to a charter school shall not be determined according to the place of residence of the pupil or the pupil’s parent or guardian within this state,” and “A charter school shall admit all pupils who wish to attend the charter school.” For any charter school, recruitment is not limited to only students that reside within district boundaries. Additionally, the charter school operators indicated that they would be securing facilities where there is a concentration of their target student population (Hispanic, English learner, socioeconomically disadvantaged students, and students with disabilities). Therefore, denying that enrollment preference has the potential to negatively affect the enrollment of students in the stated demographics the charter deems to serve. In fact, one could argue that by providing that enrollment preference, the Charter School would be better equipped to provide the equity and access that it seeks to promote.

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

1. The charter petition fails to provide a reasonably comprehensive description of the non-classroom-based component of the instructional program. The charter petition does not contain legally compliant independent study program descriptions and fails to explain how the classrooms would be structured or staffed for students taking classes virtually. Although the petition states that students would learn remotely in a classroom under the supervision of a credentialed teacher, during the clarification meeting petitioners were unable to articulate how students would be grouped, which teacher would be the teacher of record, whether grade levels would be combined in the same working space, and how this would affect the workload of the teaching staff in this scenario.
2. The charter petition does not comply with Education Code section 47605.6(1), regarding teacher credentialing. The charter petition (page 104) states that teachers “must possess, or be in the process of completing, a current California teaching credential.” Language regarding working toward a credential does not apply to new charter schools. As of July 1, 2020, all teachers must hold a Commission on Teacher Credentialing certificate, permit, or other document required for the teacher’s certificated assignment.

C. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

Charter petitioners point to the success of the Explore Academy model in New Mexico with a similar target demographic. When implemented as intended, it appears that the Explore educational model has had success in New Mexico. However, the educational model executed in New Mexico differs significantly from what is being presented for Orange County. Unlike the New Mexico charter school, the Orange County model proposes to offer remote instruction for all grade levels across multiple school facilities. During the clarification meeting, the developers of the Explore educational model reiterated that the model was not created to be delivered virtually across different school sites. In fact, the model developers stated that they would not recommend implementing a virtual model, particularly at the elementary grade levels. Additionally, the charter petition does not adequately describe how the target student population (Hispanic, English learner, and socioeconomically disadvantaged students, and students with disabilities), principally in the lower grade levels, would benefit from taking classes virtually.

V. STAFF RECOMMENDATION

Orange County Department of Education staff recommend that the Orange County Board of Education deny the ExploreK12 petition to establish Explore Academy as a countywide charter school and recommend that petitioners revise the charter petition, as appropriate, and submit directly to school districts for authorization.

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 the charter petition being approved and require the charter school to address concerns based on the Board's findings at the public hearings.
- Option Three: Deny the charter petition.

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