

SAN DIEGO UNIFIED SCHOOL DISTRICT
Office of the Deputy Superintendent
Office of School Choice

NEW CHARTER SCHOOL PETITION REPORT:
URBAN DISCOVERY ACADEMY CHARTER SCHOOL

Board Date: May 13, 2008

EXECUTIVE SUMMARY

Recommendation for Board Action on Charter Petition: The Office of School Choice recommends the Board of Education deny the charter petition for Urban Discovery Academy (UDA). The Office of School Choice recommends the adoption of this staff report as findings in support of the Board's decision to deny the charter petition. Urban Discovery petitioners submitted their petition for review to the Office of School Choice on March 4, 2008. A public hearing for the petition was held on April 8, 2008. Based on a departmental and legal staff review the petitioners were informed that staff would recommend denial of this petition based on outstanding concerns. The Urban Discovery Academy petition contains the following flaws, which support denial: 1) Petitioners are demonstrably unlikely to successfully implement the program set forth in the petition [E.C. 47605(b)(2)]; 2) The budget presented by petitioners would make the school insolvent, and 3) This petition would be an indirect conversion of a private school, Harborside, to a charter school, which is not allowed by law [E.C. 47602(b)]. The academic program does not indicate a comprehensive scope regarding the curriculum and educational program that the school would implement. The potential fiscal impact to San Diego Unified School District (District) is an estimated loss of \$840,021 generated in average daily attendance in the first year because the District does not receive any average daily attendance funds for students enrolled at charter schools. The fiscal consequence of an improper conversion under E.C. 47602(b) is a forfeiture of all state allocation. Should the charter school be unable to return the funds, California Department of Education may look to the District as the oversight agency for reimbursement. The denial of this petition shall become effective immediately.

Charter Petition Review Summary: Based on a departmental staff and legal review of the original charter petition submitted on March 4, 2008 deficiencies and concerns were identified. Based on the deficiencies identified in 14 out of 16 charter elements, the recommendation is to deny the approval of this charter petition.

Conversion of Private School to Public School

Education Code section 47602, subdivision (b), prohibits any charter from being granted that "authorizes the conversion of any private school to a charter school." There are no regulations interpreting this provision or any case law to assist in understanding when a private school is considered to "convert" to a charter school. A question has arisen whether granting the UDA petition would result in the improper conversion of the Harborside School ("Harborside"), a non profit public benefit corporation that operated a private school serving students in preschool

through 8th grade, to a charter school. Harborside was located at 1329 Kettner Boulevard, San Diego, California. Harborside experienced serious fiscal issues and in May 2007, its governing board decided to close the school. According to published reports, the school had a deficit of about \$400,000, could not pay its teachers, and had not paid its rent in several months. In the wake of its closure, the District encouraged displaced parents and students to enroll at Washington Elementary and the District gave Harborside the opportunity to recreate its program at the Washington school site.

In a charter school audit commissioned by California Department of Education, the auditors determined that a charter school had overclaimed average daily attendance funds by operating school sites that were formerly private schools in violation of Education Code section 47602(b). In each situation, the charter school was operating at the same address from which the private school had previously operated. Here, Urban Discovery has not set forth an a specific location as required by Education Code section 47605(g), stating only that it plans to operate in San Diego's downtown area and "will seek permanent facilities prior to its first year of operation" Harborside was also located in the downtown area. Additional factors that reflect a conversion of a private school include the same or similar educational program and the same or similar administration. The proposed Principal of UDA, Cynthia Moser, was employed at Harborside and five of the six teachers identified to work at Urban Discovery were previously employed at Harborside. Additionally, Harborside School, Inc., remains a active non-profit public benefit corporation. Although it cannot be stated unequivocally that the granting of the petition would violate Education Code section 47602(b), there is serious concern. Moreover, the consequence of an improper conversion is a forfeiture of average daily attendance funds. Should the charter school not be able to reimburse the state, the state may look to the District as the oversight agency responsible for approving the charter petition.

Financial Analysis Summary: The budget and cash flow projection submitted with the charter petition have not met the requirement for fiscal information. Based on the projected enrollment, revenue rates and expenses, Urban Discovery Academy does not appear to be financially viable. The projected enrollment is inadequate to provide sufficient revenue to allow the school to become financially viable in the first years of operation. The projected enrollment starts with 100 K-6 grade students and increases by 30 in the second school year. According to our revenue projections, this level of enrollment would result in a projected fiscal year deficit of approximately \$60,000 in the first year based on the school's budgeted expenses.

The cash flow projection is inaccurate for a newly operational charter school and does not reflect the legal and procedural funding cycles required by California Education Code. The cash flow projection by the District projects a negative cash balance for the fiscal year based on budgeted revenue and expenses. The cash flow projection proposed by the school would indicate that it would be insolvent.

In determining whether petitioners are demonstrably unlikely to successfully implement the program within the meaning of Education Code section 47605(b)(2), the Board properly considers whether the proposed charter complies with law and, in accordance with Cal. Admin. Code tit. 5, § 11967.5.1, whether the petitioners have a past history of involvement in charter schools or other education agencies (public or private), that the District regards as unsuccessful.

As discussed above, the proposed administration of UDA was formerly employed with Harborside which experienced serious fiscal issues. According to published reports, the school had a deficit of about \$400,000, could not pay its teachers, and had not paid its rent in several months. District regards this past history of involvement in a private school as unsuccessful and on that basis determines that petitioners of UDA are demonstrably unlikely to successfully implement the program.

More detailed results of the District analysis regarding this petition are included below.

CHARTER PETITION REVIEW RESULTS

The petition was analyzed according to the criteria established in the Education Code. The following analysis includes the criteria that were applied to all 16 elements of the petition examined, as well as to additional charter elements included by the petitioners. The petitioners were asked to address the concerns numbered below and responses to the concerns raised by District staff have been provided in bullet format.

Element 1: Education and Philosophy of Program

Urban Discovery Academy (UDA) petition was reviewed according to the following standards required in this element: a complete description of the education program; identification of who the school is attempting to educate; a description of what it means to be an educated person in the 21st century; an identification of how learning best occurs; and an identification of how the program will enable students to become self-motivated, competent, life long learners. UDA petition was found to not meet standards in the following:

- 1) The petition provides limited information regarding intended educational program and does not provide developed curriculum for any single grade level or course area.
- 2) Petition includes a general instructional strategies and general commitment to following California Standards Tests (CST's) but not do not align curriculum to CST's.
- 3) The petition did not include recognition that Special Education is a shared obligation of the School and the District.
- 4) Petition does not indicate a comprehensive understanding of the SPED requirements and notifications if they will join another SELPA.
- 5) Petitioners do not adequately acknowledge and provide compliance procedures regarding discipline of SPED students discussed in suspensions and expulsions.
- 6) Regarding Independent Study, the petition refers to the possibility of offering an independent study program, due to legal requirements involved, petition needs to be modified their charter if they offer independent study.
- 7) The petition indicates that the school will have two target demographics: 1) similar to the District's demographics (appropriate under Education Code), and 2) demographics of Downtown (inappropriate under Education Code).

Element 2: Measurable Student Outcomes

UDA petition was reviewed according to the following standards required in this element: identification of student measurable outcomes that the school will use and examples of student outcomes. The reviewers found the petition to be deficient in the following areas:

- 1) Petition does not explicitly state what outcomes they expect for student performance, other than, “improvement on standardized tests that compare favorably with District schools that have similar student demographics.” It would be appropriate to identify outcomes on the CST’s.
- 2) This section does not mention assessments that will be used to monitor and document the progress of students in various ethnic groups, English Language Learners, or students with special needs.
- 3) Outcomes related to accountability process (API) and Federal Adequate Yearly Progress (AYP) were not specified.
- 4) Petition failed to provide quantified achievement goals or means to assess student progress.
- 5) Petition failed to contained more detailed and qualitative goals, it does not meet requirement.

Element 3: Method Used to Measure Student Outcomes

UDA petition was reviewed according to the following standards required in this element: a description of the methods used by the school to measure student outcomes; and an explanation of the school’s participation in the State mandated testing program. The reviewers found the petition to be deficient in the following areas:

- 1) Section lacked a comprehensive description of the student testing services that the school intends to implement.

Element 4: School Governance Structure

UDA petition was reviewed according to the following standards required in this element: an explanation of the school’s governing board structure; an explanation of how the school will ensure parental involvement; identification of the school as a nonprofit corporation; and an explanation of the school’s conflict of interest policies. The petition did not meet the following:

- 1) Governance section allows the Board to delegate any function to a third party essentially without limitation. This raises accountability concerns, since delegation of the Board’s roles to a third party creates an intermediary between the District and the charter school.
- 2) Successor trustees are selected by current members. This potentially closes off the board member selection process to the public and interferes with the ability of parents to participate in the governance.
- 3) The “Place of Meeting” section does not limit where the board can meet. However, under the Brown Act, they must meet within the jurisdiction of the District.
- 4) Bylaws allow Board members to waive notice of meetings. This runs counter to the transparency and open notice requirements for public agencies.
- 5) Bylaws include a section regarding, “actions without meeting” and telephonic/electronic meetings that violate the Brown Act.
- 6) The bylaw section allowing self-dealing transactions is inconsistent with the Political Reform Act and Government Code section 1090 and invalidates sections 24 (p. 9) and 25 (p. 10) of the petition.

Element 5: Employee Qualifications

UDA petition was reviewed according to the following standards required in this element: guidelines to ensure that all teachers will meet State and Federal requirements; an explanation of

the qualifications the school director must meet; and guidelines to ensure that all on-site personnel will meet State requirements to be employed at the school. The following deficiencies were identified:

- 1) Petition does not describe guidelines for credentialing requirements.
- 2) The petition does not include safeguards, including background checks and compliance with NCLB HTQ requirements for instructional assistants.
- 3) Qualifications for the School director are very general and lack specific experience requirements; it does not appear to have significant administrative experience guidelines.
- 4) Petition needs more qualifications for non-certificated personnel.

Element 6: Health and Safety

UDA petition was reviewed according to the following standards required in this element: a full description of the procedures used by the school to ensure the health and safety of students and the staff; a full description of the procedures in place that require any employee at the school to provide a criminal record summary; a full description of procedures that ensure all employees will be fingerprinted before beginning employment; and a full description of procedures that ensure all employees will be TB tested before beginning employment. UDA petition was found lacking in the following areas:

- 1) Petition did not include comprehensive policies or sufficient detail to ensure health and safety of the staff and students.
- 2) Petition did not contain provisions for compliance with seismic standards (per Education Code section 47610.5).

Element 7: Achieving Racial and Ethnic Balance

UDA petition was reviewed according to the following standards required in this element: a description of the school's policy to achieve a racial/ethnic balance similar to the District's student population; an explanation on the school's openness to all students and desire to reflect the diversity of the District; and an explanation of the outreach activities of the school.

Reviewers found the petition lacking in the following:

- 1) Petitioners provide for outreach efforts on pages 33 and 34 to obtain racial balance that reflects that District; however, petitioners also provide that it believes its student population will reflect the demography of downtown San Diego. These two sections are contradictory.

Element 8: Admissions Policy

UDA's petition was reviewed according to the following standards required in this element: an explanation of the school's admission policies and an explanation of the school's lottery process to be used if student demand exceeded student space. The petition was found to not meet requirements in:

- 1) The petition provide and admissions policy that would require student qualifying for admissions to have successfully promoted from their prior grade, this clause violates the open admissions requirements of Education Code section 47605(d)(1) and 47605(d)(2)(A) and my unlawfully discriminate based on student ability.
- 2) Student handbook is not included in petition, and since petitioners indicate that parent or guardian sign a statement that they are familiar with and agree to abide by policies and

procedures included in the handbook, District cannot evaluate for compliance with the law.

- 3) Petitioners provide for a lottery process and admissions preference; petition did not provide for a preference to District residents, as required by Education Code section 47605(d)(2)(B).

Element 9: Financial Audits

UDA's petition was reviewed according to the following standards required in this element: 1) an explanation of how the school will comply with yearly financial audits, 2) a description of how the school will provide financial information to the oversight agency. The petition did not meet following standards:

- 1) Petition only states that it will report all audit exceptions that the school, "disputes or believes it has already corrected," (p. 36). The school should report all exceptions.

Element 10: Schools Suspension/Expulsion Policy

UDA petition was reviewed according to the following standards required in this element: an explanation of the school's suspension policy and an explanation of the school's expulsion policy. The petition did not meet requirements in the following:

- 1) Petition does not provide adequate information regarding the procedures by which students may be suspended or expelled to meet requirements of Education Code section 47605(b)(5)(J) and due process.
- 2) Petition indicates that their criteria shall be consistent with all applicable federal and state law, but then provide a list of grounds for suspension and/or expulsion that only partially represent provisions of Education Code.
- 3) Petitioners provide for a right of appeal of any suspension or expulsion. The student's status is unclear during the appeal timeframe.
- 4) Petitioners do not provide for a maximum length of suspension.
- 5) Petitioners do not provide adequately developed notice and hearing procedures to ensure due process.
- 6) Petition only briefly references requirements for the discipline of special education students.
- 7) Petitioners do not fully reference the notice requirement of Education Code section 47605(d)(3) in event that a pupil is expelled or leaves the charter school for any reason.
- 8) Petition indicates that uniforms will be required, but does not indicate how the school will follow state and federal constitutional provision regarding students' right of free speech and due process. Additionally, the specific uniform requirement should be submitted for additional review of its provisions.

Element 11: Staff Retirement and Benefits

UDA petition was reviewed according to the following standard required in this element: a description in the manner in which employees will be covered by STRS, PERS, or social security. UDA petition was deficient in the following:

- 1) Petition indicated that it, "may" (p. 38) provide STRS/PERS without committing; if the charter school plans to offer a 401K or 403B plan, it would need to provide more detail regarding administration of such plans.

Element 12: Public School Attendance Alternatives

UDA petition was reviewed according to the following standard required in this element: an explanation that no student is obligated to attend a charter school and a description of how they will notify parents of options. The reviewers found the petition to satisfy these requirements on page 39.

Element 13: District Employee Rights

Petition reviewers reviewed the petition for: 1) a description of the rights of any employee of the school district upon leaving the employment of the school district to work in the charter school and 2) an acknowledgement that any rights of return to the school district after employment at a charter school must be district approved. The reviewers found the petition to need satisfy the following:

- 1) The charter school cannot enter into an agreement that would grant rights to bargaining unit work represented by San Diego Education Association.

Element 14: Dispute Resolution Policy

UDA petition was reviewed according to the following standard required in this element: an explanation of the policies and procedures to be used when the charter school and the authorizer have a dispute relating to a provision of the charter. UDA petition was found lacking in:

- 1) Petition correctly defers to Education Code section 47607 for disputes that could lead to revocation, but it confuses mediation with arbitration. The procedure included is consistent with mediation, but refers to an arbitrator's binding final decision. Arbitration is a different process by which an arbitrator adjudicates a dispute and renders a decision

Element 15: Collective Bargaining

UDA petition was reviewed according to the following standard required in this element: a declaration whether the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act. The reviewers found the petition to satisfy this requirement.

Element 16: School Closure

UDA petition was reviewed according to the following standard required in this element: a description of the procedures to be used if the charter school closes. UDA petition did not meet the following requirement:

- 1) The school closure procedure needs to indicate that the closure procedure will also cover the disposition of personnel files.

OTHER CHARTER ELEMENTS- These are additional elements provided by the petitioner that were numbered 17 through 28.

- 1) The petition does not identify a specific facility, as required by Education Code, section 47605(g).
- 2) Information Exchange: District should not have to pay for the preparation costs for a report in response to Public Records Act Request (p. 4).
- 3) Disclosure of Records: The section, "unless prohibited by law" should be removed.
- 4) Internal Disputes: Section restricts District intervention unless a condition for revocation exists should be deleted.

- 5) Administrative Services: petition contemplates a management agreement with CSMC, the petitioners should disclose a copy of the proposed management agreement, as well as the principals and owners of CSMC, for Conflict of Interest purposes.

FINANCIAL ANALYSIS RESULTS

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Recommendation for Board Action on Charter Petition

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