

VIA E-MAIL AND HAND DELIVERY

May 11, 2008

Board of Trustees
San Diego Unified School District
Eugene Brucker Education Center
4100 Normal Street
San Diego, CA 92103

Dear Members of the Board of Trustees:

The vision of the Urban Discovery Academy (referred to as “UDA”) is to help “America’s Finest City” create a downtown village that is not only physically beautiful but also a beautiful place to raise and educate children. Parents in the downtown community are looking for quality public educational options for their children. We believe that Urban Discovery Academy will attract involved families who are interested in alternatives to a traditional public school, or who might enroll their children in schools outside the downtown community. It is the recruitment and retention of such families that are the key to creating and maintaining a vibrant educational environment that fosters all aspects of a child’s development. UDA will be a school that is interconnected with the community at large, with the support of civic leaders, businesses and resident organizations who believe that this charter school would enhance and enrich the downtown community. With the current growth plans of the Center City Development Corporation anticipating a projected population of 90,000 downtown residents in the next 10 years, the need for viable downtown education options for residents becomes increasingly urgent. We propose the Urban Discovery Academy as a family centered program, culturally responsive to the city’s urban core, which can help fulfill these needs now and for years to come.

The charter petition was submitted on February 29, 2008 to the Office of School Choice, San Diego Unified School District (referred to as “OSC” and “SDUSD”) with a formal receipt date of March 4, 2008. [For a copy of the charter petition and corresponding budget submitted, please see **Exhibit Tab A**]. Following a public hearing on April 8, 2008 before the Board of Trustees of the SDUSD, the charter petition was reviewed by the OSC. Following numerous attempts by the lead petitioner to obtain updates on the status of the UDA charter petition, an OSC representative finally contacted the lead petitioner on April 29, 2008, to set up a meeting. The lead petitioner met with OSC representatives at the representatives’ earliest convenience on May 6, 2008. One day prior to the May 6 meeting, the OSC expressed that they had “serious concerns” about the charter, although no details were given. At the May 6 meeting, the representatives verbally presented reasons for their recommendation to the Board of Trustees to deny the charter petition. A written account of these comments was not presented to the lead petitioner at the time. Furthermore, during the meeting, the OSC representatives stated that they would not accept any rebuttal and the only recourse was to withdraw the charter petition and resubmit.

According to the accounts shared with us by other petitioners, the common experience of similar charter petitions brought forth before the SDUSD has involved a dialogue between the OSC and the petitioner to address and correct any concerns and/or deficiencies raised by the reviewers. While this practice of open dialogue between the two parties is not specifically addressed by California Education Code, it is, at the very least, in fundamental agreement with E.C. 47605(b), which states that “In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged.”

Under a set of circumstances that were, at best, a significant departure from the usual treatment of other charter petitions brought forth before the SDUSD, the UDA petitioner was not allowed to address the comments and concerns prior to the OSC’s decision to recommend denial of the charter petition. Furthermore, the lack of willingness of the OSC to accept any rebuttal *a priori* is troubling and prejudicial. Regardless of the underlying reasons, it is apparent that the behavior of the OSC towards the UDA petition is neither consistent with what similar charter petitioners have experienced, nor does it represent a good faith effort to follow the intent of the Legislature towards the establishment of charter schools.

Although we do not agree with their recommendation because the major reasons supporting denial are based on assumption and incorrect information, we thank the OSC for their review of the New Charter School Petition for the Urban Discovery Academy Charter School. As we were not afforded the opportunity to respond to, much less correct, the issues and concerns raised by the OSC prior to the public issuance of their recommendation, we provide here our point-by-point responses to the Board of Trustees regarding these issues and concerns detailed in the Report that is to be presented at the Board meeting on May 13, 2008, so that the Trustees can make a truly informed decision with all of the facts at hand. [For a copy of the OSC’s Report on UDA, please see **Exhibit Tab B**].

There were several overarching concerns with the Charter Petition as detailed by the executive summary. In response to these concerns, we have included pertinent sections of the report verbatim, which have been italicized, with particularly relevant statements highlighted in bold:

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.

1) Petitioners are demonstrably unlikely to successfully implement the program set forth in the petition [E.C. 47605(b)(2)]

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.

The petitioners believe they have the ability to successfully implement the program set forth in its charter application. The petitioners **do not** have a past history of managing, directing or operating an unsuccessful educational entity. UDA's governing board members are successful, respected community members, educators, and business professionals.

UDA was incorporated under the laws of California as a nonprofit corporation in February 2008. UDA is not Harborside School, Inc. Harborside School ceased operations in June 2007. Harborside School liquidated its assets and vacated its rented premises in June 2007. Harborside School is no longer in operation.

UDA's proposed faculty and meaningfully interested families include some, but not all, former Harborside School customers and staff. UDA's board of trustees and proposed faculty **do not** include Harborside School management and governance board members. Neither the board of trustees nor the proposed teaching staff participated in the management of Harborside School, let alone materially participated in the management of Harborside School.

The lead petitioner, MaeLin Levine, was a parent of a preschool child at Harborside School. Ms. Levine was not involved in management in any way at Harborside School. Proposed Education Director Cynthia Moser worked on a part-time basis during the 2006/2007 academic school year as a substitute teacher at Harborside School. Ms. Moser was not involved in the management of Harborside School. In fact, as referenced in her resume that was attached to the charter petition at pages 50 and 51, Ms. Moser worked on a part-time basis for several schools during the 2006/2007 academic year.

UDA's board of trustees includes community members, professionals and parents of prospective students. One board member is a CPA who specializes in insolvency and restructuring matters. Other board members include a veteran fundraising professional, a downtown business owner,

educators, a judge, and a lawyer. Each of these board members have proven track records in their professions and have experience in successful day-to-day operations of institutions, local businesses, associations, etc. In fact, one of these educators offers direct, relevant experience as a well respected independent charter school operator and principal/CEO of a successful educational entity. [For a copy of a letter of support from Dr. Tim Wolf of the King/Chavez Academies, please see **Exhibit Tab C**].

Each of these board members are successful, respected members of the San Diego community and are volunteering their time and efforts to shepherd this new school into existence, and none of them had anything to do with the closing of Harborside School.

[For further discussion regarding Harborside School, please see discussion under issue #3 below].

Therefore, we respectfully request that the District reconsider its position on this issue.

2) The budget presented by petitioners would make the school insolvent

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.

The cash flow analysis submitted with the charter petition did not project a negative cash flow; in fact, the submitted cash flow analysis projected a cash flow surplus of approximately \$29,000 in the first year. The District, however, believes that expenses will exceed those projected in the charter petition, and as such the District has calculated a projected cash flow deficit of approximately \$60,000 in the first year.

The submitted projection was fiscally conservative and did not include any provisions for anticipated fundraising and grant writing opportunities. During the first year of operation, in order to assist with the startup expenses associated with UDA, we anticipate applying for and receiving approximately \$200,000 in grant funds from the Public Charter School Grant Program¹. As of the date of this letter, we have over \$4,600 in cash on hand derived from

¹ It is our understanding that the current round of funding for the Public Charter School Grant Program is now driven by the approval of the charter petition. In previous funding cycles, schools could be funded prior to charter approval, and the awarding of the grants was based on the grant application narrative. The current program relies on

donations, and we have received pledges for donations contingent upon the approval of UDA's charter of over \$66,000, for a total of received and pledged donations as of the date of this letter of \$70,600. Additionally, we anticipate raising at least another \$65,000 through school fundraising activities, corporate donations, etc. [For copies of our pledges as well as a letter from our fundraising chair, please see enclosures in **Exhibit Tabs D and E**].

Moreover, the submitted projection also provided for initial enrollment of 100 students, despite the fact that community support and parent interest now suggests initial enrollment could be at least 200 students. Interest and support by potential families grows every day, and these families are anxiously awaiting the arrival of UDA. [For copies of our lists of meaningfully interested parents, including those recently referred to UDA and not included in our original submission, please see **Exhibit Tab F**. In addition to these families, we receive phone calls and referrals for potential families often].

Unfortunately, we were not provided with information from the OSC that specifically identifies and addresses their assumptions in calculating the District's projected cash flow deficit for UDA's first year of operation. We believe, however, that the fundraising commitments and grant writing opportunities as outlined above indicate UDA can support additional expenses in excess of the District's projected deficit.

While we believe UDA is financially viable as originally presented (especially, as described above, in light of the donations received and pledges made to date and the Public Charter School Grant Program), if requested, we would be happy to provide a new budget reflecting additional funding as well as enrollment of 200 students, in case the SDUSD Board of Trustees would prefer UDA to target an enrollment of 200 students in year one of operation.

Therefore, UDA respectfully requests the District's reconsideration of this issue.

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)].

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

the charter petition being approved and is then read against a simple rubric for which the charter petition has been prepared. Therefore, we anticipate qualifying and receiving these grant funds upon charter petition approval.

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.*

We believe that the charter petition of UDA does not violate the Education Code as a private school conversion.

By way of background, and as noted above under our response to issue #1, UDA was incorporated under the laws of California as a nonprofit corporation in February 2008. UDA is not Harborside School, Inc. Harborside School ceased operations in June 2007. Harborside School liquidated its assets and vacated its rented premises in June 2007. Harborside School is no longer in operation. It is our understanding that Harborside School is in the process of winding down and being ultimately legally dissolved.

[For further legal analysis, please refer to correspondence from UDA's legal counsel, Greg Moser, Esq., of Procopio Cory at **Exhibit Tab G.**]

[For additional information regarding Harborside School, Inc.'s current status, please see correspondence from its corporate secretary, Cate Bell at **Exhibit Tab H.**]

Additionally, there appears to be concern that UDA might be located at the former (rented) premises of Harborside School because UDA has not expressly stated in its charter petition its exact physical location downtown. It is our understanding that the Education Code does not require a physical address be contained within the charter petition; here, however, the lack of precise location is being used as some kind of alleged link to Harborside School because both the former private school and the proposed charter school are "downtown" schools. UDA is working with real estate brokers to secure a facilities downtown and is in negotiations for three potential facilities, none of which are the old Harborside School rented facilities. Among these three facilities options under consideration by UDA, the current leading contender is located in East Village (approximately 1.8 miles from the old Harborside School rented facilities). [For information related to UDA's facilities search, please see enclosed correspondence from UDA's real estate broker at **Exhibit Tab I.**]

UDA's proposed faculty and meaningfully interested families include some, but not all, former Harborside School customers and staff. UDA's board of trustees and proposed faculty **do not** include Harborside School management and governance board members.

The lead petitioner, MaeLin Levine, was a parent of a preschool child at Harborside School. This child is currently enrolled as a kindergarten student at Washington Elementary School [SDUSD]. Ms. Levine was not involved in management in any way at Harborside School. Proposed Education Director Cynthia Moser worked on a part-time basis during the 2006/2007 academic school year as a substitute teacher at Harborside School as well as other schools, including those within the La Mesa – Spring Valley School District. Ms. Moser was not involved in the management of Harborside School. In fact, as referenced in her resume that was attached to the charter petition at pages 50 and 51, Ms. Moser worked on a part-time basis for several schools during the 2006/2007 academic year.

The fact that there are former Harborside School families and staff involved in the creation of UDA should not preclude UDA from receiving charter approval. The former Harborside School families and teachers should not be forever tainted by their previous association with the former school given that these participants were not responsible for the management of Harborside School.

Furthermore, more than half of the meaningfully interested families of UDA were never associated with Harborside School. UDA anticipates hiring additional teachers and employees who were not previously associated in any capacity with Harborside School. UDA's educational philosophies are based on those of many excellent educational models and schools from across the United States, rather than being a replication of Harborside School.

UDA is being supported by the local downtown community – businesses, residents, working professionals. This still-developing group is gathering new volunteers and interested parties every day, many of whom were never involved in any way with Harborside School. [For letters of support from the community, including San Diego City Councilman Kevin Faulkner of District #2, please see **Exhibit Tabs J and K**].

In summary, we assert that the charter petition of UDA does not constitute the conversion of a private school to a charter school on the following fundamental bases:

- **No transfer of assets** – there has not been a transfer of assets (i.e., cash, PP&E, etc) between Harborside School, Inc. and UDA.
- **Different legal entities** – UDA is a separate legal entity from that of Harborside School, Inc.
- **Different governance and management teams** – UDA's board of trustees and proposed management were not involved in the management of Harborside School, Inc.
- **Different participants** – UDA's student body is expected to include only a fraction of the former Harborside School student body. UDA's student body is expected to draw many more “non-Harborside School” students, as is demonstrated in our ever-growing

list of meaningfully interested families. Likewise, UDA expects to hire additional teachers and staff that were never involved in Harborside School.

Therefore, we respectfully request this issue be reconsidered by the District.

4) The academic program does not indicate a comprehensive scope regarding the curriculum and educational program that the school would implement.

Responses to comments in Element 1: Education and Philosophy of Program

The reviewers raised the following points in Element 1:

1) The petition provides limited information regarding intended educational program and does not provide developed curriculum for any single grade level or course area.

- Urban Discovery Academy will use the California State Approved Curricula as stated on page 10 of the charter school petition.

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.

- The Urban Discovery Academy curriculum will be based on the California State Frameworks and Academic Content Standards and will increase the integration and depth of subject matter through cross-disciplinary teaching teams or learning clusters. We will map our curriculum to meet all state standards. We will use standards management software to align curriculum and assessments. Please refer to pages 7, 9 and 10 in the charter school petition.

3) The petition did not include recognition that Special Education is a shared obligation of the School and the District.

- Urban Discovery Academy believes that providing an appropriate education for students with Special Needs is a shared obligation between the Academy and the district. Please refer to pages 14 – 15 in the charter petition.

4) Petition does not indicate a comprehensive understanding of the SPED requirements and notifications if they will join another SELPA.

- Urban Discovery Academy reserves the right to become an LEA for special education in another SELPA while the District may exercise any rights it has not to serve as the SELPA (Special Education Local Plan Area) for Urban Discovery Academy LEA. Urban Discovery Academy also reserves the right to join another SELPA as provided by law. Any change in the manner in which special education services are delivered, including a

change to act as its own LEA or join another SELPA is subject to guidelines. Please refer to pages 14 - 15 in the charter school petition.

5) Petitioners do not adequately acknowledge and provide compliance procedures regarding discipline of SPED students discussed in suspensions and expulsions.

- Urban Discovery Academy will regard suspension and expulsion as a last resort. Criteria for suspension and expulsion of students shall be consistent with all applicable federal statutes and state constitutional provisions and state law. All related hearings will conform to the applicable state and federal laws regarding discipline, special education, confidentiality, and access to records. Please refer to page 37 in the charter school petition.

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.

- If independent study is provided, the Academy will comply with state laws relating to independent study as set forth in Education Code section 47612.5. Please refer to page 25 in the charter school petition.

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).

- The demographics of the school will reflect the district's demographics. We are happy to make this change on page 5 of the charter school petition.

Responses to comments in Element 2: Measurable Student Outcomes

The reviewers raised the following points in Element 2:

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.

- Urban Discovery Academy will aim to achieve scores on the Academic Performance Index (API) at or above those targeted by the State and No Child Left Behind (federal) Adequate Yearly Progress (AYP) and above those API scores of District schools that Urban Discovery Academy compares itself to. Please refer to page 26 in the charter petition.

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.

- Urban Discovery Academy will aim to achieve scores on the Academic Performance Index (API) at or above those targeted by the State and No Child Left Behind (federal) Adequate Yearly Progress (AYP) and above those API scores of District schools that Urban Discovery Academy compares itself to. Please refer to page 26 in the charter petition.
- The charter petition also states “Urban Discovery Academy will implement a standards management system, e.g. Edusoft, to perform regular formative assessments of all students’ mastery of State Standards. Additionally, further local assessment systems may be developed to measure student progress. The results of these assessments will drive intervention groups, professional development and instructional practice and the informing of stakeholders.” Please refer to page 28 in the charter petition.

3) Outcomes related to accountability process (API) and Federal Adequate Yearly Progress (AYP) were not specified.

- Urban Discovery Academy will aim to achieve scores on the Academic Performance Index (API) at or above those targeted by the State and No Child Left Behind (federal) Adequate Yearly Progress (AYP) and above those API scores of District schools that Urban Discovery Academy compares itself to. Please refer to page 26 in the charter petition.
- Additionally, the charter petition states, “In assessing progress the Academy will use data from its first year of operation (2008-9) to set specific metric targets with regards to API, AYP, Student Discipline, and Drop out Rates. The measurable objectives will be based on state and federal guidance and high standard as compared to demographically similar schools. Please refer to page 28 in the charter petition.

4) Petition failed to provide quantified achievement goals or means to assess student progress.

- Urban Discovery Academy will use (AYP) and standardized tests as two forms of quantified achievement goals and means to assess student progress. The academy will also implement EduSoft to assist in this progress. This issue is addressed throughout our charter petition; please refer to pages 22 – 27 in the charter petition.

5) Petition failed to contained more detailed and qualitative goals, it does not meet requirement.

- Urban Discovery Academy is willing to provide more detailed goals to meet all requirements.

Responses to comments in Element 3: Method Used to Measure Student Outcomes

The reviewers raised the following points in Element 3:

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

- Urban Discovery Academy will comply with all state assessment and accountability requirements applicable to charter schools. The Academy will certify that its pupils have participated in the state testing program in the same manner as other District students. Please refer to page 27 in the charter petition. If the District would like a matrix of what tests will administered when, we are happy to provide one.

Responses to comments in Element 4: School Governance Structure

The reviewers raised the following points in Element 4:

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.

- Urban Discovery Academy and its Governing Board do not intend to delegate without limitation. This is not our intent and we believe it is not in our charter petition document.

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.

- This process is consistent with the Corporations Code and with the practice of most nonprofit corporations, including charter schools. The selection process must take place in public, as there is no provision in the Brown Act for it to occur in closed session.

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.

- We are willing to make necessary adjustments according to mandates in regards to "Place of Meetings." We will hold all meetings 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.*

- It is understood that whenever the bylaws conflict with the Brown Act, after approval of the charter, the corporation (which now exists), will be required to comply. We are committed to compliance and making necessary adjustments and changes to the bylaws to be in accordance with the transparency and open notice requirements for public agencies following approval.

5) *Bylaws include a section regarding, “actions without meeting” and telephonic/electronic meetings that violate the Brown Act.*

- We are willing to make adjustments to align with the Brown Act in all capacities including the “actions without meeting” section of the charter petition once the charter petition has been approved. That law does not yet apply to the corporation.

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.*

- We are willing to change this language in our by-laws, but we believe that the Corporations Code applies today, and the Political Reform Act will apply once the charter is approved. In fact, we have already provisionally adopted a conflict of interest code that is in compliance with the Political Reform Act.

Responses to comments in Element 5: Employee Qualifications

The reviewers raised the following points in Element 5:

1) *Petition does not describe guidelines for credentialing requirements.*

- Urban Discovery Academy will require all teachers in the Academy to hold a Commission of Teaching Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. Urban Discovery Academy will comply with “Highly Qualified” provisions of NCLB. Teachers will meet the requirements of NCLB for any core academic subject. Please refer to pages 30 - 31 in the charter school petition. We are happy to restate these guidelines.

2) *The petition does not include safeguards, including background checks and compliance with NCLB HTQ requirements for instructional assistants.*

- Urban Discovery Academy will comply with all applicable safety laws. Urban Discovery Academy will require all applicants for employment, even those certificated employees

that have a valid teaching credential, to submit fingerprints to the California Department of Justice for the purpose of obtaining a criminal record summary in pursuance of Education Code sections 44237 and 44830.1. The Academy Director will be the contact person and responsible for Department of Justice Reports. Please refer to pages 32 - 33 in the charter school petition.

3) Qualifications for the School director are very general and lack specific experience requirements; it does not appear to have significant administrative experience guidelines.

- The Principal/Director, or any other administrator (including potential Vice Principals) at Urban Discovery Academy, must have leadership abilities and a comprehensive educational vision that is consistent with the Academy's mission and educational program. In addition, the Principal/Director will possess skills in hiring and supervising and motivating excellent teachers, technological and data-analysis experience, and if possible, business experience. Please refer to page 31 and pages 50 – 51 in the charter school petition.

In addition to the above guidelines the school has an exceptionally well qualified board to recruit and retain the School Director for this unique school.

4) Petition needs more qualifications for non-certificated personnel.

- Paraprofessionals and non-certificated personnel will also comply with the Highly Qualified provisions of NCLB pursuant to section 1119(c) – (e) of the NCLB. The Academy will maintain a highly qualified plan for all applicable staff. Urban Discovery Academy may employ qualified adults to assist credentialed teachers in student instruction. Please refer to pages 30 – 31 in the charter school petition.

Responses to comments in Element 6: Health and Safety

The reviewers raised the following points in Element 6:

1) Petition did not include comprehensive policies or sufficient detail to ensure health and safety of the staff and students.

- Urban Discovery Academy will comply with all health and safety procedures and all applicable safety laws. The Academy will conduct initial and on-going tuberculosis screenings of employee candidates as well as screenings of all adults assigned to classrooms on an on-going unsupervised basis, all as required by law. Urban Discovery Academy will provide health screenings of pupils' vision and hearing and the screening of pupils for scoliosis to the same extent as would be required if the pupils attended a traditional Public School. Please refer to pages 32 – 33 in the charter school petition.

Urban Discovery is willing to submit a copy of the health and safety policies prior to beginning operations.

2) *Petition did not contain provisions for compliance with seismic standards (per Education Code section 47610.5).*

- Urban Discovery Academy will comply and adjust the provisions and compliances needed to meet seismic standards per Education Code section 47610.5.

Responses to comments in Element 7: Achieving Racial and Ethnic Balance

The reviewers raised the following points in Element 7:

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.*

- Urban Discovery Academy will provide for outreach efforts as per our charter on pages 33 – 34 to obtain racial balance that reflects that of the District. We believe our student population will reflect the demographics of the District. We will achieve the racial and ethnic balance to reflect the diversity of the District.

Responses to comments in Element 8: Admissions Policy

The reviewers raised the following points in Element 8:

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 [sic].*

- Urban Discovery Academy will amend their admissions policy to adhere to Education Code 47605(d)(1) and 47605(d)(2)(A) to ensure an open admissions policy. Urban Discovery Academy will admit any student who has successfully completed the prior grade, consistent with district standards. We will make necessary changes to page 34 in the charter school petition. Our intent in this section is to avoid social promotion in regard to grade placement not to limit open admissions.

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.*

- Urban Discovery Academy will submit a copy of the Student Handbook to the district legal counsel for review and comment prior to distribution to students and parents.

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).

- Urban Discovery Academy does provide for a lottery process and admission preference. We will adhere to Education Code section 47605 (d)(2)(B) and provide a preference to District residents, as required.

Responses to comments in Element 9: Financial Audits

The reviewers raised the following points in Element 9:

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.

- Urban Discovery Academy will report all audit exceptions.

Responses to comments in Element 10: Schools Suspension/Expulsion Policy

The reviewers raised the following points in Element 10:

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.

- Detailed information regarding suspension and expulsion procedures is provided in Element 10 pages 37 – 38 of the charter school petition.

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.

- We have changed the language in Element 10 on page 37 in the charter petition to say, “Grounds for suspension or expulsion includes, but is not limited to, the following:

- Assault and battery
- Weapons
- Alcohol/Intoxicants/Controlled Substances
- Substance in Lieu of Alcohol/Intoxicants/Controlled Substance
- Robbery/Extortion
- Damage to Property
- Theft to Property
- Tobacco or Nicotine Products
- Obscenity/Profanity/Vulgarity
- Drug Paraphernalia
- Disruption/Defiance
- Hate Violence
- Harassment
- Hazing

3) Petitioners provide for a right of appeal of any suspension or expulsion. The student's status is unclear during the appeal timeframe.

- Urban Discovery Academy will add the following language to page 37 – 38 in the charter school petition. “A student must serve their suspension or expulsion, but may file an appeal that, if granted would result in removal of the suspension or expulsion from their record.”

4) Petitioners do not provide for a maximum length of suspension.

- Urban Discovery Academy will add the following amendment to the charter petition: The principal or designee may suspend a student from school for a maximum of five consecutive school days for any single cause listed, but not limited to the grounds for suspension listed in Element 10 in the charter school petition.

5) Petitioners do not provide adequately developed notice and hearing procedures to ensure due process.

Urban Discovery Academy will amend Element 10 to include the following:

- Student or parent/guardian may initiate the appeal process by contacting the Placement and Appeal Office in writing within three (3) weeks of the information school conference with the principal or designee. The Placement and Appeal Office will mail to the student or parent/guardian the “Request for Suspension Appeal” with instruction that this form must be completed and returned so that it is received no later than three (3) weeks after the date of the principal’s decision. The Placement and Appeal Legal Specialist/Program Manager will determine from the information provided whether or not the principal or designee suspended the student properly and followed all applicable procedures in regard to the suspension. The Placement and Appeal Legal Specialist/Program Manager will also consider the reasons the student/parent/guardian feel that the suspension was incorrect or inappropriate. The Placement and Appeal Legal Specialist/Program Manager, as he/she may deem necessary, may contact either of the parties for the purpose of clarifying information provided. Based on the information submitted or requested, the Placement and Appeal Legal Specialist/Program Manager has the authority as the superintendent's designee to make the decision regarding the suspension.

6) Petition only briefly references requirements for the discipline of special education students.

- Urban Discovery Academy will add the following section under Element 10 of the charter school petition: A student with previously identified exceptional needs or eligible for services under Section 504 of the Rehabilitation Act of 1973 may be suspended for not more than ten (10) consecutive school days. A special education pupil may be suspended again in the same school year, with each suspension period limited to ten (10)

consecutive days or less, as long as the suspension does not constitute a change of placement. A change of placement occurs if (a) the removal is for more than 10 consecutive school days, or (b) the student has been subjected to a series of removals that constitute a pattern. A pattern occurs if (a) the series of removals total more than 10 school days in a school year; (b) the student's behavior is substantially similar to the behavior in the incidents that resulted in the series of suspensions, taken cumulatively, is determined to be a manifestation of the student's disability; and (c) because of additional factors such as the length of each removal, the total amount of time the student has been removed, and the proximity of the removals to one another. An individualized education program team (IEP) or instructional study team (IST) should be convened when a student's cumulative days of suspension in a school year approaches ten (10) school days to determine the relationship of the behavior to the disability. The team must consider (a) whether the conduct in question was caused by, or had a direct and substantial relationship to, the student's disability; or (b) if the conduct in question was the direct result of the District's failure to implement the IEP or ISP. If the team determines the behavior was not related to the disability, discipline is applied as with any other student. If the team determines the behavior was caused by the disability or was the direct result of the District's failure to implement the IEP, a Functional Behavioral Assessment must be conducted and a Behavioral Intervention Plan must be developed. If a special education pupil is suspended more than once in a school year, the total number of days that the pupil is suspended can be more than ten (10) days. However, if the total number of days of suspension in a school year is more than ten (10) days, services must be provided to enable the child to continue to participate in the general curriculum, although in another setting, and to progress toward meeting the goals in the IEP. School personnel must consult with at least one of the student's teachers to determine the extent to which services are needed during the time of removal and ensure that the services are provided.

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.*

- Urban Discovery Academy will notify the District within 30 days of students being disenrolled.

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.*

- The uniform requirement will be submitted to the district for review prior to implementation. In principle, the school follows state and federal constitutional provisions regarding students' right of free speech and due process.

Responses to comments in Element 11: Staff Retirement and Benefits

The reviewers raised the following points in Element 11:

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.

- In the future, if UDA offers 401(k) or 403(b) plans to employees, such plans will be administered in compliance with all federal and state regulations, including ERISA guidelines and requirements, if applicable. We anticipate utilizing the services of a reputable third party administrator and custodian for any retirement plans, such as, but not limited to, Fidelity (for a 401(k) plan) or TIAA-CREF (for a 403(b) plan).

Responses to comments in Element 12: Public School Attendance Alternatives

The reviewers raised no concerns with this element.

Responses to comments in Element 13: District Employee Rights

The reviewers raised the following points in Element 13:

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

- Urban Discovery Academy agrees that the charter school cannot enter into an agreement that would grant rights to bargaining unit work represented by San Diego Education Association. On page 39 in the charter school petition we state that, “all employees of Urban Discovery Academy will be considered the exclusive employees of Urban Discovery Academy and not SDUSD unless otherwise mutually agreed in writing. Urban Discovery Academy will be the employer for collective bargaining purposes.”

Responses to comments in Element 14: Dispute Resolution Policy

The reviewers raised the following point in Element 14:

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

- Urban Discovery Academy agrees with the staff and will change the confusion in regards to arbitration and mediation under Element 14.

Responses to comments in Element 15: Collective Bargaining

The reviewers raised no concerns with this element.

Responses to comments in Element 16: School Closure

The reviewers raised the following point in Element 16:

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

- Urban Discovery Academy agrees with the staff to amend the closure procedure to include the disposition of personnel files.

Responses to comments on OTHER CHARTER ELEMENTS (17-28)

The reviewers raised the following points:

1) The petition does not identify a specific facility, as required by Education Code, section 47605(g).

- Education Code section 47605(g) does not require the petition to “identify a specific facility” but states, “the charter school shall specify where the school intends to locate.” Upon charter approval we will secure a school site in downtown San Diego. We are currently in negotiations with three locations.

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).

- Urban Discovery Academy respectfully disagrees, but we are willing to discuss this point further.

3) Disclosure of Records: The section, “unless prohibited by law” should be removed.

- Urban Discovery Academy respectfully cannot be asked to break the law on the District’s behalf.

4) Internal Disputes: Section restricts District intervention unless a condition for revocation exists should be deleted.

- We would appreciate further explanation of the above request.

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.

- Urban Discovery Academy will provide a proposed management agreement with CSMC to the District.

In this document, we have substantively addressed each of the reasons provided by the OSC to support their position on the UDA charter petition, either by providing evidence that demonstrates that the underlying premise is invalid or by including clarifications to concerns that were raised by the reviewers.

At the heart of the OCS's argument to recommend denial is the past connection of the UDA petitioner and other individuals to the now-defunct Harborside School. We have provided strong evidence that demonstrates that the individuals with past involvement with Harborside School were either "customers" (i.e., those who paid tuition for educational services rendered) or employees who were not responsible for the management decisions that led to the school's demise. Similarly, the current affiliation of some of these individuals with the SDUSD as participants in the Harborside program at Washington Elementary also is outside the scope of the UDA petition. While the establishment of this program has been alleged to be improper, the decision to implement this program was the responsibility of the SDUSD, not the responsibility of individuals who have children enrolled in the program or even the individuals hired as employees. Allowing these factors to influence the outcome of the UDA charter petition borders on the discriminatory.

Let us not lose sight of the most important issue: parents want and deserve quality public schooling options for their children, whether they are traditional public schools or charter schools. The mission of the Urban Discovery Academy is to provide a rigorous education that develops the whole child as a scholar, athlete, artist, and democratic member of society. The Urban Discovery Academy has the support of civic leaders, educators, downtown businesses, community groups, and downtown residents.

Board of Trustees
San Diego Unified School District
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Finally, the Urban Discovery Academy already has the most important charter element in place: a dedicated community of parents and teachers who are equally invested in their children's development and who will foster an environment of educational success that will continue to grow.

Sincerely,
URBAN DISCOVERY ACADEMY

MaeLin Levine, AIGA
President, Board of Trustees

Stacy Elledge Chiang, CPA, CIRA
Secretary/Treasurer, Board of Trustees

Enclosures

cc: Mr. Robert Stein, Office of School Choice (with enclosures)