



Analysis of Revised Golden Charter Academy Petition and Additional Material Submissions

January 28, 2021

After Fresno Unified School District Board members raised multiple concerns regarding the Golden Charter Academy (GCA) petition in the public hearing on January 13, 2021, and the district and petitioner agreed to extend the timeline for action on the petition, additional materials were submitted by GCA, including a draft lease agreement. Many of the issues raised at the January 13 meeting continue to be significant concerns with GCA's petition, as well as additional issues based on analysis of the additional materials submitted. Based on these issues, there continue to be numerous bases for denial of this petition. The multiple concerns raise serious red flags that the petitioners are unlikely to successfully implement the proposed program.

Meaningful Interested Teacher Signatures

The California Charter Schools Act requires a petitioner for a new charter school to present a charter school petition that reflects meaningful interest from *either* the parents/guardians of pupils equivalent to at least one-half of the number of students the charter school estimates will enroll in its first year of operation, or teachers equivalent to at least one-half of the number of teachers that the charter school estimates will be employed in the first year of operation.

From Education Code Section 47605:

(a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions is met:

(A) The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation.

(B) The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.

...

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having their child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

This section of the Charter School Act was intended to establish that there is meaningful interest in the community from parents to send their children to the school or teachers to teach at the school to establish the viability of, and community desire for, the school.

Most school districts have interpreted this section of the Education Code to mean that the petition signers must either have a child who would be eligible to attend the school in its first year (based on age) or would be eligible to teach (based on credential) at the charter school in its first year.

Even the California Charter Schools Association (CCSA) acknowledges that this is an element considered by some authorizers:

People Who Sign Must Be "Meaningfully Interested"

Parents who sign the petition must be "meaningfully interested" in attending the school and teachers who sign must be "meaningfully interested" in teaching at the school [Education Code § 47605](#). In some cases, districts have interpreted this to mean that the children of parents who sign the petition must be the appropriate age to be able to attend the school and that teachers must be appropriately credentialed to be eligible to teach at the school. Districts have been known to contact parents and teachers to verify their interest in the school, and to look up teachers to verify that they hold the appropriate credentials.

Source: <http://library.ccsa.org/starting/petition/#tab-signatures>

Requiring that teachers who sign charter school petitions have the required credential to teach in the school when it opens is especially important given new requirements in AB1505, passed in 2019, which requires charter school teachers to have the same credentials required of district teachers.¹

In the January 13th Board meeting, Mr. Castillo said that "all credentials were checked and all had a valid California credential." Our objection was not that any of the teachers did not have a credential, it was that one of them did not have an appropriate credential to teach in the first four year of operation of the school.

In the meeting Ms. Hatmaker incorrectly defined what "meaningfully interested" means when she said that teachers who sign the petition "just have to say 'hey, ... the charter school looks great, its K-8, I have a credential, I'd be interested in teaching at that school.'" Being just "interested" in teaching at the school is not what the law says. The law says the teachers must be *meaningfully* interested – which means that if the school is approved, the teacher is seriously interested in teaching at the school. Or to put it differently – if the school is approved, that teacher is probably going to apply to teach there.

¹ Education Code Section 47605(l)

Ms. Hatmaker is correct that the law does not *require* the teachers who sign to teach at the school. That would be an impossible standard for a school that is not even approved to operate yet. However, being *meaningfully* interested in teaching at the school in the first year would require that a teacher *could* teach at the school in the first year, and a teacher without the proper credential could not.

Further, Ms. Hatmaker's insistence that teachers who signed the petition without the required credential could just get an "emergency credential" makes a mockery of both the credentialing process, the seriousness of AB1505, and the intent of the petition signature requirements in the charter school law. How can you be meaningfully interested in teaching at the school and also ineligible to teach at the school?

While it is unclear what "emergency credential" Ms. Hatmaker is referring to, we assume she is referring to a General Education Limited Assignment Teaching Permit (GELAP).² GELAP permits are available to teachers at already established public schools: the applicant must already be an employee of the school where he/she is applying for the GELAP, the LEA must have a formal "declaration of need for fully qualified educators" on file with the CA Commission on Teacher Credentialing, and the educator's application must be submitted *through their employer*. In short, the GELAP is designed for existing schools, not start-up schools. Mr. Knott likely would *not* be able to "apply for an emergency credential" to teach at GCA as Ms. Hatmaker stated in the January 13th meeting.

Finally, it might be a useful theoretical exercise to consider what would happen if GCA had chosen to show meaningful interest by using parent signatures, rather than teacher signatures. Would the board find it appropriate to accept parent signatures from parents with rising 7th graders to show that a school that will not have 7th graders for its first four years of operations is viable? Most districts would not.

Conflict of Interest and Self-Dealing

Government Code Section 1090 prohibits self-dealing in government contracts. GCA has embedded prohibited self-dealing in two parts of its business plan:

- 1) Longer-Term Facility Purchase: According to the 12/29/20 staff report (Page 16), Mr. Golden intends to purchase a permanent facility and lease it to GCA. While staff rightfully flags that such a transaction would need to be monitored to avoid conflicts of interest, that is not the whole picture.

To avoid a conflict of interest under the Political Reform Act of 1974 (Gov Code 87100), Mr. Golden would be required to recuse himself from decision-making regarding such an arrangement. However, under Government Code 1090, such an arrangement would be entirely prohibited because it is self-dealing, as defined under the law. Government Code 1090 prohibits a public official from being financially interested in a contract in both the official's public and private capacities.

² https://www.ctc.ca.gov/docs/default-source/leaflets/cl828.pdf?sfvrsn=8ef3bef4_4

While Ms. Hatmaker was correct in the January 13th Board meeting that the lease does not become a conflict of interest or self-dealing until it is executed, GCA has included this conflict in its plan for long-term viability.

A transaction that would constitute both a potential conflict of interest and actual illegal self-dealing *is* the school's business plan when it comes to facilities, making the business plan illegal and the petitioners demonstrably unlikely to successfully implement the program, *a reason for denial of the petition.*

- 2) Start-Up Costs: According to the 12/29/20 staff report (p. 12), "The charter school expects to borrow/access funding in the first three months of operation from ... Golden Charter Academy School Corp." Golden Charter Academy School Corp. (GCASC) is registered with the state as a General Stock Corporation. The only officer listed for this corporation, which filed in September of 2020, is Robert D. Golden, who is listed as the CEO, Secretary and CFO of the corporation. The only other directors listed appear to be Mr. Golden's wife, Lechet (Trustee Thomas' daughter), and his preschool-aged son, Robert D. Golden, Jr.

The same concerns exist for this gift or loan of start-up costs from Mr. Golden's company to the school as exist for Mr. Golden's intent to purchase a long-term facility for the school: it is both a potential conflict of interest *and* self-dealing under the Government Code. This illegal gift or loan is baked into GCA's business plan, making the business plan unviable as written and the petitioners demonstrably unlikely to successfully implement the program, a reason for denial.

In 2019, the California legislature passed SB126, which required charter schools to follow California's public records, open meetings, conflict of interest and self-dealing laws. For multiple years prior to the California legislature's passage of SB126, bills were proposed that would require charter schools to follow Government Code 1090. Frequently, the California Charter Schools Association (CCSA) argued that requiring charter schools to follow this law "would harm the financial health of charter schools that sometimes rely on generous loans or property leases from their board members."³ With the passage of SB126 in 2019, the legislature and the governor rejected that argument, and the Fresno Unified Board should reject the GCA petition.

Changes to the Petition After Submission

The petitioner submitted a petition with no budget for a principal until the fourth year of operation. Fresno Unified staff has apparently allowed the petitioner to submit a revised budget.

The petitioner submitted a petition with an admissions policy that was not acceptable to district staff. District staff has apparently written a new admissions policy for the petitioner.

There are multiple other examples of staff allowing the petitioner to change the petition after submission and public hearing.

³ <https://edsource.org/2017/california-bill-that-critics-say-could-cripple-charter-schools-back-in-the-spotlight/580529>

High quality charter school authorizing would treat these multiple deficiencies in the petition as indications that the petitioner is unlikely to be successful and recommend denial. Instead, Fresno Unified staff appears to be going to great lengths to help this petition succeed.

Fiscal and Community Impact

As district staff said in the January 13 hearing, AB1505 changed the charter law to allow districts to consider the impact of the charter school on the entire community. However, district staff decided not to consider this important aspect of the petition. Ms. Hatmaker said in the January 13th meeting that the school is “unique” and “not duplicative” of any district programs, but this is only one aspect of the new Education Code 47605(c)(7), which allows the district to deny a petition if:

(7) The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school. A written factual finding under this paragraph shall detail specific facts and circumstances that analyze and consider the following factors:

(A) The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.

(B) Whether the proposed charter school would duplicate a program currently offered within the school district and the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.

As is explained in our January 12 memo, there would be a substantial undermining of Fresno Unified students, services, academic offerings and programs due to a fiscal impact of over \$8 million during the charter term. Therefore, the charter school should be denied.

Concerns with the Facilities Lease with the Catholic Diocese

The lease provided to Fresno Unified by GCA is for a space that is intended for 198 students. While we believe their enrollment projects are unrealistic (as outlined in our earlier memo), should they meet their enrollment projections, they would need to have space available for 224 students by year two. It is unclear how they would manage this gap between the space currently rented, their need to raise sufficient funds to be solvent, and whether they have secured an appropriate space to move to by year two. This again also highlights the lack of moving expenses calculated in the budget.

“(B.) The Premises shall be used exclusively by the Tenant, except as described in Section 6 below, for the purpose of operating a Pre-Kindergarten through Eighth (8th) Grade Charter School under the chartering provisions and authority of its authorizing agency, to serve an approximate average daily attendance of One Hundred Ninety Eight (198) students.”

The rent as stated in the lease is \$10,800 per month for 9 classrooms plus 3 additional spaces (Office, cafeteria, library). It is unclear if the facility has more than 9 classroom spaces, however, the charter petition lists 11 classes by year two. It is unclear if the facility can accommodate the additional classes needed by the second year of operation. If they are to rent two additional classrooms and they do in fact exist, this would add \$20,400 to the lease cost in the school’s second year of operation, and an additional \$20,400 in each subsequent year as they add two more classes per grade level (\$40,800 additionally in year 3, \$61,200 in year 4, etc.).

There are restrictions in the lease related to Catholic doctrine that appear to cross the clear line established in the charter law that says, “a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations” (Education Code Section 47605(e)).

Here is the language in the lease:

“(C.) Instructional Program

(i) Tenant acknowledges that the facility is owned by the Diocese of Fresno Education Corporation (DOFEC), which is part of the Roman Catholic Diocese of Fresno (RCDOF), and that the use of DOFEC facilities (and corporation sole property) by Tenant must not be in conflict with the teachings of the Roman Catholic Church. A material condition of this lease is that Tenant's curriculum and advocacy (including by way of example, any of Tenant's sponsored, endorsed, or allowed extracurricular activities on the Premise) will not be in conflict with the teachings and beliefs of the Roman Catholic Church. Tenant acknowledges that teaching or advocating abortion, artificial means of contraception, and homosexuality as a lifestyle would be in conflict to the teachings and beliefs of the Roman Catholic Church and would be a violation of this material covenant of this lease.

(ii) Landlord acknowledges that the Tenant will use the facilities to house a public charter school and the Tenant is obligated to follow all State and Federal laws and implement the mandated State Curriculum.

(iii) The parties observe that DOFEC and Tenant have discussed the need for consistency and have agreed that currently there is no State or Federal mandated curriculum that is in conflict with the teachings of the Catholic Church. Tenant has no curriculum content or advocacy that it believes violates the teachings of the Roman Catholic Church. In the event that the State or Federal law changes to require curriculum contrary to the teachings of the Roman Catholic Church or the school teaches or advocates for abortion, artificial means of contraception or homosexuality as a lifestyle in ways not anticipated by State and or Federal law, the Tenant would be in violation of this material covenant of this lease.

(iv) To ensure the consistency of the implementation of this covenant of this lease, the Landlord and Tenant agree to work together in a cooperative manner to fairly identify and resolve any disagreements arising from this covenant of this lease. In the event that the parties cannot resolve a disagreement regarding conflict with the material covenant, the Bishop of the Roman Catholic Diocese of Fresno or the Bishop's delegate may, at his sole discretion, declare a violation of this material covenant of this lease

(v) In the event of a mandated violation of this material covenant of this lease, the DOFEC's only remedy will be to terminate the lease provided that the DOFEC has given tenants reasonable time to vacate the premises and to find an alternative school site. A minimum of one year's notice prior to being compelled to move off the site is required.

While there is a provision stating that the parties appear to believe that there is no current violation of Catholic Doctrine in State or Federal curriculum mandates, it appears that any dispute over this would

be decided by the Catholic Bishop, a wholly inappropriate lease provision for a public school to sign. Further, it feels hard to believe that the state curriculum mandates, which require comprehensive sexual education in middle school that must affirmatively recognize different sexual orientations, be inclusive of same-sex relationships, and teach about gender and gender-expression would really pass the Church's muster.

This provision raises so many questions and concerns about not just the curriculum at the school, but potential culture, climate, and potential for outright discrimination at the school. For example:

- The school plans to allow extracurricular activities after school hours. If an LGBTQ-affirming student organization wanted to form, would this be prohibited by the lease?
- How will LGBTQ students and families feel welcome and accepted at this proposed public school with a lease that prohibits teaching about their families?

Enrollment and Budget Concerns

As outlined in our previous letter, we believe that, based on surrounding charter enrollment, the projected enrollment for this school is unrealistic. Based on the most recent budget submission, if they are to fall even 4 students short of their ADA projection of 178 students, their budget would be in a deficit. In year 2, if they are only 12 students short of their ADA projection of 224 students, their budget would be in a deficit. The only information presented to support enrollment projections was a statement from Mr. Golden at the hearing on January 13th that the school has a long waitlist, however, no specific information was presented and waitlists have been found to be an unreliable indicator of actual enrollment for a number of reasons, as outlined in a policy memo by the National Education Policy Center⁴.

Looking at the last four years of enrollment at the Aspen Meadow school by comparison, they have fallen short of their enrollment goals for three consecutive years, and enrolled only 74 students in the first year for which enrollment data is available. In the 19-20 school year, year 4 of operation, they have only reached an enrollment of 232 students. If GCA were able to enroll a similar number of students, their budget would be over \$950,000 short in year 4, more than 25% of their annual budget.

year	LCFF revenue in budget (minus EPA & After School)*	LCFF revenue per pupil	GCA Stated Budget Surplus	Student enrollment shortfall to cause budget deficit	Budget deficit if GCA has same enrollment as Aspen Meadow (annual not cumulative)
21-22	\$ 2,053,382.00	\$ 11,535.85	\$ 44,519.77	4	\$ (1,155,209.04)
22-23	\$ 2,555,179.00	\$ 11,407.05	\$ 131,391.45	12	\$ (1,237,454.44)
23-24	\$ 3,059,191.00	\$ 11,330.34	\$ 332,782.95	29	\$ (1,684,017.04)
24-25	\$ 3,535,592.00	\$ 11,188.58	\$ 365,086.64	33	\$ (2,595,718.46)
25-26	\$ 4,352,735.00	\$ 12,057.44	\$ 563,694.63	47	

⁴ https://nepc.colorado.edu/sites/default/files/nepc-policymemo_waitlists.pdf

**NOTE: Educational Protection Account Funds may be double-counted in the GCA budget – see more information below. County After School Funds also appear to not be properly counted as LCFF revenue in the GCA budget.*

Further, we believe that GCA's budget projections do not reflect a school or school leadership that is likely to succeed because of errors and irregularities in the budget documents:

- GCA does not project any COLA increases to its LCFF revenues, yet the Governor has already proposed a 3.84% increase in 2021/22, and a 2.98% increase in 2022/23. Neither of these increases would make a substantial difference in the razor-thin margin in GCA's budget, but GCA's failure to factor these COLA increases into the budget reflect a lack of understanding of how public school budgeting works. Perhaps a charter school could choose to shape their budget without projecting COLA increases in order to be conservative in their budgeting practices (although this would be highly irregular), yet GCA's narrative lists other ways it is being conservative in its budgeting and does not include zeroing-out the COLA.
- GCA appears to have added Educational Protection Account Funds to its LCFF revenue figures in the budget narrative, yet those funds are already rolled-up in the LCFF Base Grant. What this means is that GCA may have counted those funds twice (\$35,600 in year one, for example).