

**RESOLUTION OF THE  
MT. DIABLO UNIFIED SCHOOL DISTRICT GOVERNING BOARD  
DENYING PETITION TO FORM THE  
ROCKETSHIP EDUCATION MT. DIABLO CHARTER SCHOOL**

WHEREAS, on June 17, 2015, the Governing Board of the Mt. Diablo Unified School District received a Petition to form the Rocketship Education Mt. Diablo Charter School (“Charter School”); and

WHEREAS, in compliance with Education Code §47605(b), the Board held a public hearing on July 15, 2015 to determine the level of support for the Petition; and

WHEREAS, the Board of Education, under Education Code §47605(b), is obligated to take action to grant or deny the Petition within 60 days of its submission; and

WHEREAS, District staff, in the areas of Instructional Support, Student Services, Human Resources, Fiscal and Budget, Facilities and Legal evaluated the Petition according to their area of expertise; and

WHEREAS, District staff compiled a “Charter Petition Evaluation” Rubric evaluating the Petition with reference to the criteria set forth in the Education Code, which is hereby incorporated by reference; and

WHEREAS, by enacting the Charter Schools Act (Ed. Code §§ 47600, *et seq.*), the Legislature has declared its intent to provide opportunities to teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure for the purposes specified therein; and

WHEREAS, the Legislature has declared its intent that charter schools are and should become an integral part of the California educational system and the establishment of charter schools should be encouraged, and that charter schools are part of and under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools; and

WHEREAS, although charter schools are exempt from many of the laws governing school districts, in return for that flexibility, they are accountable for complying with the terms of their charters and applicable law; and

WHEREAS, Education Code §47605(b) charges school district and governing boards and county boards of education with the responsibility of reviewing charter petitions to determine whether they meet the legal requirements for a successful charter petition; and

WHEREAS, a successful charter petition must contain reasonably comprehensive descriptions of the criteria set forth in Education Code § 47605(b)(5)(A)-(Q), as well as the affirmations and other requirements set forth in Education Code §47605; and

WHEREAS, a governing board may deny a petition to form a charter school if it makes written findings to support any of the following under Education Code § 47605(b): “(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school; (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition; (3) The petition does not contain the [required] number of signatures; (4) The petition does not contain an affirmation of each of the conditions described in subdivision [Education Code §§47605] (d); and (5) The petition does not contain reasonably comprehensive descriptions of all of the [criteria set forth in Education Code §§47605(b)(5)(A)-(Q).]”; and

NOW, THEREFORE, BE IT FURTHER RESOLVED AND ORDERED by the Mt. Diablo Unified School District Governing Board that the Petition to form the Rocketship Education Mt. Diablo Charter School is hereby DENIED.

NOW, THEREFORE, BE IT FURTHER RESOLVED AND ORDERED by the Mt. Diablo Unified School District Governing Board that the Board hereby adopts the following factual findings in support of its denial:

1. Petitioners are Demonstrably Unlikely to Successfully Implement the Program Set Forth in the Petition (Education Code § 47605(b)(2)).
2. The Petition Contains an Unsound Educational Program and Fails to Contain a Reasonably Comprehensive Description of all 16 Required Elements set forth in Education Code section 47605(b). (Education Code § 47605(b)(5)).

The following constitute the primary findings of District Staff in its evaluation of the Petition. A complete recitation of the findings of District Staff is contained in the “Charter Petition Evaluation” Rubric, which is incorporated by reference into this Resolution.

**ELEMENT 1: EDUCATIONAL PROGRAM**

Education Code section 47605(b)(5)(i) requires a charter petition to contain a reasonably comprehensive description of “the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an ‘educated person’ in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.”

Staff found that the Petition lacked reasonably comprehensive descriptions of the following required elements:

1. Education Program of the School
  - a. Proposed Curricular Offerings

The Charter School’s instructional schedule involves a rotational block in which students spend 85 minutes in a “Learning Lab.” While in the Learning Lab, students spend 50 minutes in a computer lab working on an online adaptive curriculum, 35 minutes in leveled reading, and 30

minutes in targeted/small group tutoring for qualifying students. (p. 54.) The Learning Lab also would be supervised not by certificated personnel, but by non-credentialed Instructional Learning Specialists (ILS's) (“[t]he final cohort of students are in the Learning Lab at a 29:1 ratio as well as with an Individualized Learning Specialist, a highly qualified tutor, that guides this class through online learning, tutoring, activating reading.” (p. 69, *see also*, p. 140).)

The Petition lacks a reasonably comprehensive description as to the soundness of having students spend 50 minutes on a computer engaging in an online adaptive curriculum, supervised by non-certificated personnel, as opposed to direct classroom instruction by certificated teaching personnel. The Petition develops the economic rationale for the Learning Lab more than it does the educational rationale. (*See, e.g.*, “Rocketship’s unique rotational model and approach to instruction, which includes students spending a portion of their day in the Learning Lab, allows for students to receive instruction in core academic subjects at student/teacher ratios of no more than 29:1” (Appendix B-0, p. 7); “It is through this ‘rotational model’ that RMSD will be able to ensure that student: teacher ratios remain at a level of 29:1” (Appendix B-0, p. 8).)

## 2. Actions to Achieve Annual Goals

The Petition fails to contain “[a] description, for the charter school, of annual goals, for all pupils *and for each subgroup of pupils identified pursuant to Section 52052*, to be achieved in the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school, and specific annual actions to achieve those goals.” (Emphasis Provided.) The Petition fails to identify annual goals for students in each pertinent subgroup, such as ethnicity, English Language Learners, etc. (pp. 27-32.)

## 3. Target Student Population

The Petition does not discuss the demographic profile of its anticipated student population in terms of ethnicity. Almost all of the Petition’s comparative data is referenced against schools in Santa Clara County (pp. 17-19), which is not the proposed location of the Charter School. Therefore, these comparisons are of limited utility for a proposed charter school in Contra Costa County. Moreover, the reference to selecting parent leaders who speak Vietnamese (p. 24) is not clear, unless it carried over from a charter petition previously submitted to another district. Vietnamese speakers constitute only 0.3% of the District’s enrollment (less than Farsi (.4-.5%) and Filipino (Pilipino or Tagalog) (.5-.6%).) (*See*, <http://www.ed-data.org/district/Contra-Costa/Mt.-Diablo-Unified>) Therefore, it does not appear that this section of the Petition was customized for a school to be located in Contra Costa County, and therefore does not meet the reasonably comprehensive standard in the Education Code.

## 4. Enrollment

The Petition primarily states that it will serve grades TK-5, but states on p. 34 that the Charter School “reserves the right” to add Grade 6. However, a passing reference to a charter school “reserving the right” to add a grade level essentially functions as a Trojan Horse in which the Charter School would be allowed to significantly increase its enrollment and/or curriculum

offerings without seeking what would otherwise constitute a material revision of the Charter. (Education Code section 47607(a).)

Moreover, the Petition anticipates a total enrollment of 600-700 students in TK through 5th grades. However, the Petition's budget shows the Charter School's enrollment reaching 655 only after 3 years, based upon 4 classes per grade at a 29:1 student/teacher ratio (Appendix B-0, p. 1.) Therefore, the Charter School would be on track to surpass its proposed capacity of 700 students in Year Four if it maintained the same enrollment and matriculation patterns. The Petition does not contain a reasonably comprehensive description of how it would stay within its self-described enrollment cap (*i.e.*, either by significant attrition, or deliberate disenrollment of 4<sup>th</sup> or 5<sup>th</sup> grade students in Years Four and Five.) In order to enroll the projected class of 116 in Year Four, the Charter School would have to achieve attrition of 20% after Year Three to stay under the cap.

## 5. Education of Specialized Student Populations

### a. English Language Learners

The Petition provides a general description of the process for identifying English Language Learners and the general instructional strategies for educating them. However, there is no reference in the daily class schedule attached as Appendix 30 or elsewhere to differentiated or dedicated time allotted to English Language Development instruction. English language development is only mentioned as part of the humanities blocks or community meetings. The portion of the Petition that describes support for English Learners and the daily schedule included in the appendices does not include the state-identified number of minutes for English Language development. (See, e.g., <http://www.cde.ca.gov/ci/rl/cf/elaeldfrmwrksbeadopted.asp>, Chapter 2, p. 91 *et seq.*)

The English Language Development program set forth in the Petition is defined as an English immersion program, though under California law such programs should also include a language mainstream program. The Petition also fails to contain a reasonably comprehensive description of parental waiver rights with respect to English Learner instruction. The petition states that the charter school would provide written notification to parents informing them that "they have a right to visit the program and to withdraw their student from the program through a waiver." (p. 96.) It is not clear whether the Petition refers to the parental waiver right under Education Code section 310 to a structured English immersion program under Education Code section 305 in favor of bilingual instruction, or a waiver from English Language Development instruction entirely. Since charter schools are subject to the requirements of Education Code section 313 to offer English Language Development, the failure to specify the scope of the waiver is problematic.

The Petition also only identifies teaching strategies and training in integrated ELD (*i.e.* Guided Language Acquisition Design ("GLAD") and Specially Designed Academic Instruction in English ("SDAIE")), which are designed to facilitate English Learners accessing core subject matter content. The Petition lacks a reasonably comprehensive description of the training and teaching strategies in in the State ELD Standards or designated English Language Development,

which focuses on language acquisition skills. (See, e.g., <http://www.cde.ca.gov/ci/rl/cf/elaeldfrmwrksbeadopted.asp>, Chapter 2, pp. 106-115.) Moreover, the Petition fails to identify any instructional materials specifically targeted towards language acquisition skills. The Petition mentions use of primary language as a scaffold in passing, but does not contain a reasonably comprehensive description of how this approach would be implemented.

The Petition also fails to fully integrate the new CCSS for English Language Development. For example, the Petition identifies the stages of English Language Development as Beginning, Early Intermediate, Intermediate, Early Advanced and Advanced. (p. 91.) However, under the new English Language Development framework adopted by the State Board of Education, the stages along the ELD Continuum are “Emerging,” “Expanding,” and “Bridging.” (<http://www.cde.ca.gov/ci/rl/cf/elaeldfrmwrksbeadopted.asp>, Chapter 2, p. 104-5.)

Moreover, the Petition contains some imprecise language with respect to the identification of students who are English Language Learners. The Petition makes reference to TK and Kindergarten students from another country, state, or a private school receiving CELDT testing, implying that CELDT testing is required for only new or entering students, as opposed to all students. (p. 87.) The Petition also states that “[a] student is identified as English Learner (EL) if the student’s primary language is something other than English.” (p. 87.) Technically, a student’s result on the CELDT test will determine whether he/she is an English Learner.

The Petition lacks a reasonably comprehensive description of the specific level of academic performance that will be used for reclassification when referring to teacher input. The Petition needs further clarification on how the Charter School would reclassify students not meeting reclassification criteria due to other factors, such as deficit of motivation or academic difficulty unrelated to language proficiency. Alternative criteria for reclassification are customarily used for students who have a learning disability rather than just having difficulty with the subject matter (p. 90, Section 3.A.I.)

The Petition lacks a reasonably comprehensive description of the formative assessments that the Charter School would use to measure language acquisition. The Petition is vague on the topic of assessments to monitor language development, stating such assessments as an option rather than a requirement (e.g., “...may choose to implement an interim formative assessment, such as ADEPT...”) (p. 88.)

The Petition lacks a reasonably comprehensive description of the specific legal requirements applicable to the English Learner Advisory Committee (ELAC), such as the number of parents needed to form such a committee as stated by statute.

Non-credentialed ILS’s provide significant instruction to the Charter School’s students, including Learning Lab time, Tier II Response to Intervention, and TK. However, under California law, instruction to English Learners must be delivered by a certificated employee with CLAD certification. The Petition lacks a reasonably comprehensive description of how the charter school would meet the CLAD authorization requirement with respect to the elements of its program that are delivered by non-certificated personnel.

b. Special Education

The “Affirmations” section of the Petition states that “[t]he Mount Diablo School District will provide special education services for students enrolled in the Charter School to the extent required by law. (p. 5.) However, the Petition states that “RMSD intends to operate as a Local Educational Agency (LEA) under the El Dorado County Charter Special Education Local Plan Area (SELPA) pursuant to Education Code section 47641(a.)” (p. 98.) Therefore, the Petition contains contradictory information with respect to which entity would be responsible for providing special education services to the charter school’s students.

**ELEMENT 2: MEASURABLE PUPIL OUTCOMES**

**ELEMENT 3: METHOD OF MEASURING PUPIL OUTCOMES**

Education Code section 47607(b)(5)(B) requires that a charter petition contain measurable pupil outcomes “that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in subparagraph (B) of paragraph (3) of subdivision (a) of section 47607. The pupil outcomes shall align with state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, or the nature of the program operated, by the charter school.”

The Petition fails to “address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school.” The pupil outcomes contained on pp. 81-82 are stated for “all student subgroups,” without differentiation among subgroups, as is required by law.

Although, on paper, the Petition appears to contain a comprehensive description of the Charter School’s assessment plan, there are significant questions as to whether the Rocketship charter schools are comprehensively and successfully implementing this plan. The overall API of six of the eight schools that had an API declined from 2011-2013. (See, Exhibits A, D) The current API listed for 2014 indicates an increase of three of those schools, but it must be noted that the calculations were compiled by Rocketship and an outside consultant. (Id.) In ELA, 5 of the schools had a significant decline in their overall percent proficient while it appears that math goes up and down from year to year. (See, Exhibit B.)

**ELEMENT 4: GOVERNANCE STRUCTURE**

The Petition states that “[t]he Board of Directors will meet regularly to review and act on its responsibilities” and that “[a]ll meetings shall be held in accordance with the Brown Act, and thus be held openly and easily accessible to the public.” (p. 129.) However, according to the Rocketship Education website, the Rocketship Education Board of Directors conducts all of its meetings in San Jose, while various committees meet in corporate headquarters in Redwood City or other locations in San Mateo County. Although the Board would hold a teleconference location for its Board meetings within the District, having the Charter School’s governing body meet exclusively in a location so remote from Concord creates access and equity issues for the parents and students of the Charter School.

The Petition states that the Charter School would create an English Learner Advisory Committee and School Site Council to facilitate parent involvement. (p. 131-2.) An advisory board consisting of parents, community and business leaders would also be created, though it has no binding authority over areas of jurisdiction held by the Rocketship Education Governing Board. (p. 128, Appendix D-2.) The Advisory Board would not be unique to the proposed Mt. Diablo Charter School; rather, its membership would consist of a member from each School Site Council for all 11 Rocketship Charter Schools, almost all of which are located in Santa Clara County. Therefore, the Petition lacks a reasonably comprehensive description of “evidence that parental involvement is encouraged in a variety of ways” as is required under 5 C.C.R. § 11967.5.1(f)(4)(c).

Although Rocketship Education charter schools have an ongoing governance infrastructure, the District finds that the Petition lacks a reasonably comprehensive description of an adequate governance structure, in terms of access to and representation on the charter school’s and parent organization’s central governing boards, at the local level.

#### **ELEMENT 5: QUALIFICATIONS TO BE MET BY INDIVIDUALS EMPLOYED AT THE SCHOOL**

Education Code section 47605(l) states that “[t]eachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold .... It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.”

5 C.C.R. § 11967.5.1(f)(5)(c) requires petitioners to “identify those positions that the charter school regards as key in each category and specify the additional qualifications expected of individuals assigned to those positions.”

While the Petition contains teacher evaluation instruments (Appendix A-35) and teacher compensation materials addressing employee salaries (Appendix A-36), no employee handbook or similar document was found containing other terms and conditions of employment, such as sample employment contracts, leave policies, etc.

The District is also concerned by the extensive use of non-certificated personnel to perform instructional duties. For examples, ILS’s supervise the Learning Lab (p. 69, *see also*, p. 140), as well as conducting Tier II Response to Intervention (p. 67) and rotational instructional duties for TK students. (p. 53.) Sound educational practice dictates that instruction be provided by experienced and properly credentialed teachers.

#### **ELEMENT 6: PROCEDURES FOR ENSURING HEALTH & SAFETY OF STUDENTS**

The Charter School’s Health and Safety procedures are contained under Element F, pp. 148-150. This section describes health and safety policies in the areas of Fingerprinting/Background checks, Mandated Child Abuse Reporting, TB Testing, Immunization, Administration of Medication, Vision/Hearing/Scoliosis, Emergency Preparedness, Bloodborne Pathogens, Drug/Smoke-Free Environment and Facility Safety.

The Board makes the following findings with respect to the Health and Safety portion of the Petition:

**Fingerprinting/Background Checks:** The Rocketship Education policy in Appendix F appears to apply to all schools systemwide, including those in Tennessee. Although the policy makes passing references to California Education Code sections 44237 and 45125.1, it fails to contain a reasonably comprehensive description of the Charter School's personnel policies and practices with respect to employees who are charged or convicted of crimes. Although charter schools are exempt from many Education Code provisions with respect to certificated and classified employees, they are specifically bound by some that govern potential criminal conduct by employees. (See, e.g., Education Code section 44939.5.)

**Safe Facilities:** The Rocketship Education policy in Appendix F refers to "[t]he immediate area around the schools currently run in San Jose, CA," and does not appear to be tailored to a school proposed to be located in Concord, CA.

Rocketship's facilities policy covers California Building Code requirements and other areas, such as hazardous materials, indoor air quality, maintenance/inspection of school buildings, and campus access. It does not address land use issues, such as what steps that the Charter School would take to ensure that a potential school site complies with local zoning requirements. Rocketship Education has in the past attempted to exempt itself from local zoning requirements under Government Code section 53094, and has been advised by the Santa Clara County Counsel's Office that the zoning exemption power was limited to school districts. (See, Exhibit E.) It then requested that the Santa Clara County Board of Education exempt a Rocketship Charter School from local zoning requirements, which a local Superior Court Judge found illegal. (Santa Clara County Superior Court Case No. 113CV241695, appeal pending.) Therefore, the Petition lacks a reasonably comprehensive description of whether Rocketship Education would take legally-recognized steps to ensure that its proposed site meets local land use requirements.

**Administration of Medication:** The Petition's Medication Administration Policy is attached as Exhibit A thereto. However, the policy fails to incorporate Education Code section 49414, as amended by Senate Bill 1266 in 2015, which requires public schools and charter schools to stock auto-injector epinephrine devices, as well as to provide notice and training. Rather, the policy states that "Rocketship Education schools DO NOT stock emergency Epi-Pens (emergency epinephrine auto-injectors) for general emergency use." (Appendix D, Policy #176, p. 3.)

**Drug Testing:** The drug testing policy fails to contain a reasonably comprehensive description of the potential adverse employment actions resulting from a drug test result, as well as due process considerations for employees and chain of custody issues.

**Child Abuse Reporting:** The Petition contains a Mandated Reporter Policy in Appendix D. However, the policy does not reference the mandatory child abuse reporting training recently implemented by California law. It also only identifies child abuse reporting agencies located in Santa Clara County, which would be inapplicable to a charter school located in Contra Costa County.



## **FACILITIES**

As was noted above, the Petition lacks a reasonably comprehensive description of whether Rocketship Education would take legally recognized steps to ensure that its proposed site meets local land use requirements.

## **FISCAL/BUDGET**

The Petition contains the required budget and cash flow data for its first three years of operation. As noted above (“Educational Program,”), the Charter School’s enrollment projection of 655 in Years One through Three would result in it exceeding its enrollment cap of 700 students by Year Five, unless significant attrition or disenrollment occurs. In order to enroll the projected class of 116 in Year Four, the Charter School would have to achieve attrition of 20% after Year Three to stay under the cap.

## **PETITION SIGNATURES**

The Petition projects that the Charter School would enroll 510 students in Year One. Therefore, under Education Code section 47605(a)(3), the Petition needs to be supported by 255 valid signatures. The District attempted to contact 682 signatories, and, of the 247 contacted, only 149 (60%) verified that they were meaningfully interested in enrolling their child in the Charter School.

Education Code section 47605(a)(3) requires that a petition signatory have a meaningful interest in enrolling his/her child in the Charter School. Therefore, it is not sufficient for an individual to sign the Petition only as a general show of support for the Charter School. However, at least 98 signatories contacted could not verify that they had a meaningful interest in sending their children to the school. Some individuals contacted by the District were also told by the representatives of the Petitioners that they did not need to enroll their children in the Charter School if they signed the Petition, and that they could sign the Petition for the “other children” who could attend the school.

The District therefore has significant concerns regarding the integrity of the signature process, in light of information that, contrary to the Petitioner’s representation, not all of the submitted signatures were from individuals meaningfully interested in enrolling their children in the Charter School.

NOW, THEREFORE, BE IT FURTHER RESOLVED AND ORDERED by the Mt. Diablo Unified School District Governing Board that the Board hereby denies the Petition to form the Rocketship Education Mt. Diablo Charter School under Education Code § 47605(b) on the following grounds:

- (1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school;
- (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition;

- (3) The petition does not contain the [required] number of signatures; and
- (4) The petition does not contain reasonably comprehensive descriptions of all of the required criteria set forth in Education Code §§47605(b)(5)(A)-(Q).

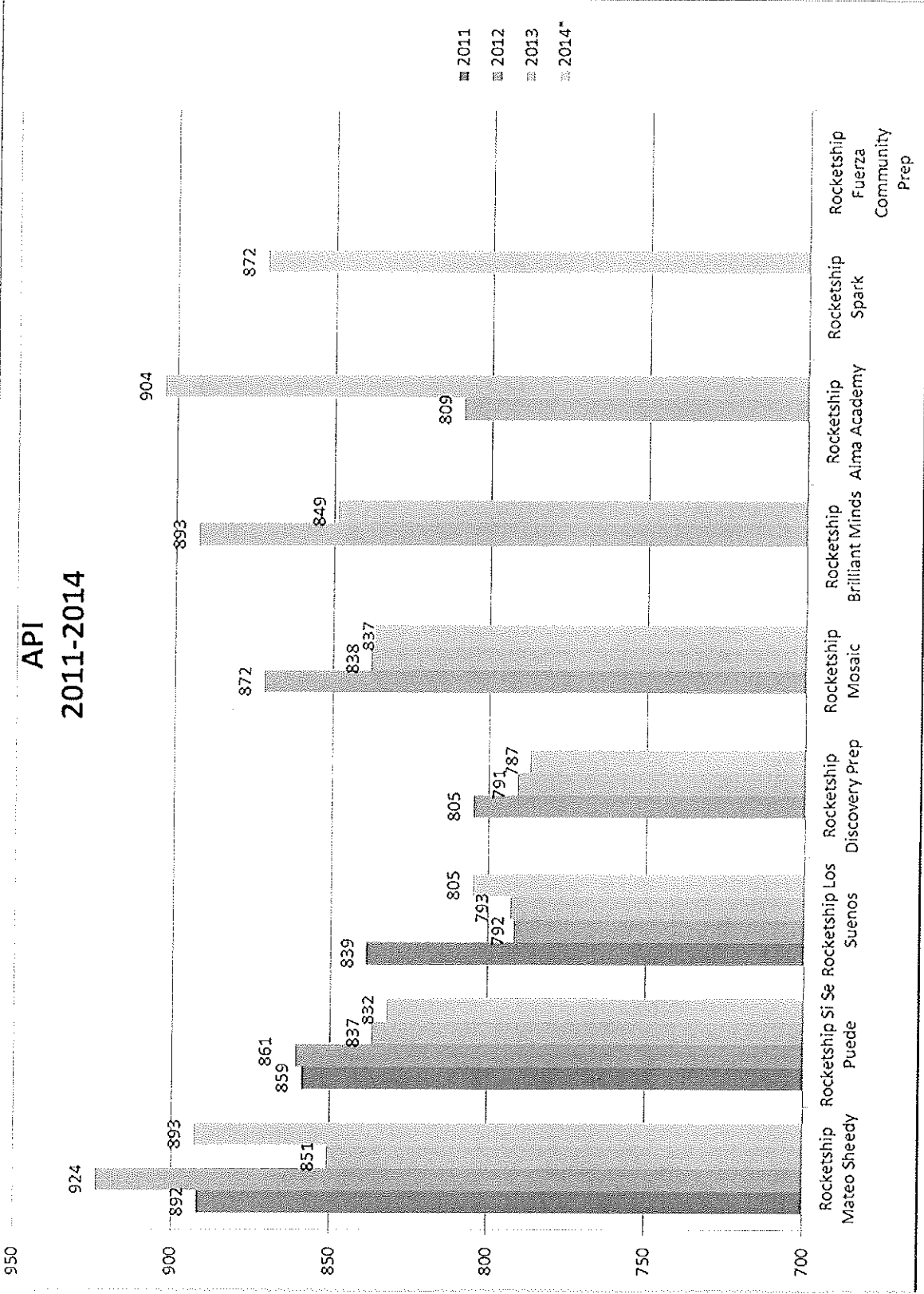
PASSED AND ADOPTED on August 10, 2015, by Mt. Diablo Unified School District Governing Board by the following vote:

AYES:  
NOES:  
ABSTENTIONS:  
ABSENCES:

I declare under penalty of perjury that the foregoing resolution was duly passed and adopted on the date and by the vote stated.

\_\_\_\_\_  
Secretary of the  
MT. DIABLO UNIFIED SCHOOL DISTRICT  
GOVERNING BOARD

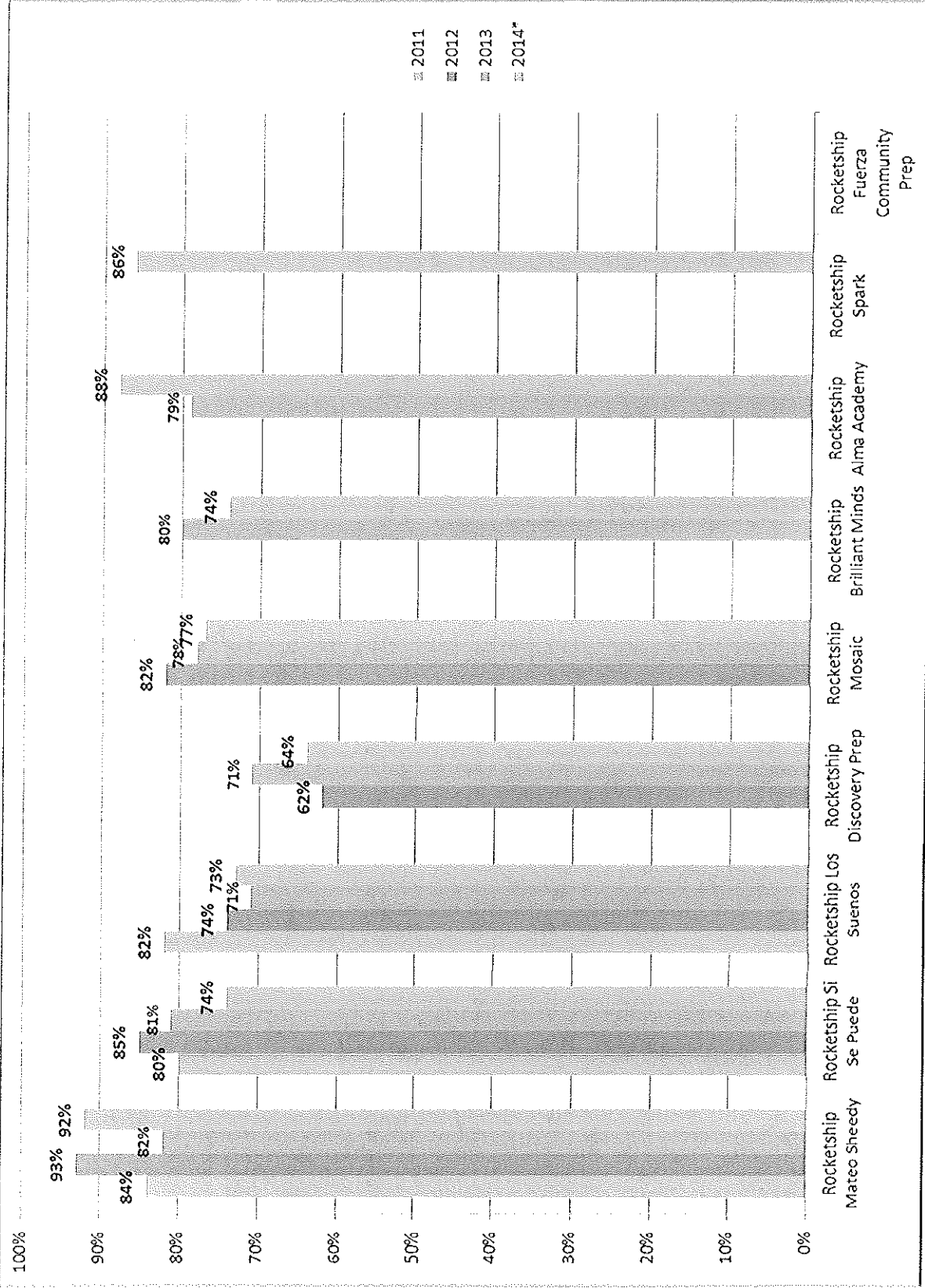
# EXHIBIT A: ROCKETSHIP API 2011-2014



# EXHIBIT B: ROCKETSHIP ELA PROFICIENT 2011-2014



# EXHIBIT C: ROCKETSHIP MATHEMATICS PROFICIENT 2011-2014



# EXHIBIT D: ROCKETSHIP RAW TEST SCORE DATA: 2011-2014

## API Scores

School Name	2011	2012	2013	2014*
Rocketship Mateo Sheedy	892	924	851	893
Rocketship Si Se Puede	859	861	837	832
Rocketship Los Suenos	839	792	793	805
Rocketship Discovery Prep		805	791	787
Rocketship Mosaic		872	838	837
Rocketship Brilliant Minds			893	849
Rocketship Alma Academy			809	904
Rocketship Spark				872

## Rocketship Fuerza Community Prep

### ELA % Proficient on the CSTs

School Name	2011	2012	2013	2014*
Rocketship Mateo Sheedy	71%	76%	57%	69%
Rocketship Si Se Puede	59%	56%	51%	53%
Rocketship Los Suenos	48%	43%	44%	47%
Rocketship Discovery Prep		54%	44%	49%
Rocketship Mosaic		66%	57%	53%
Rocketship Brilliant Minds			75%	65%
Rocketship Alma Academy			46%	74%
Rocketship Spark				68%

\*2014 As stated in the Petition, the API results for 2014 were calculated by an independent auditor.

## Rocketship Fuerza Community Prep

### Math % Proficient on the CSTs

School Name	2011	2012	2013	2014*
Rocketship Mateo Sheedy	84%	93%	82%	92%
Rocketship Si Se Puede	80%	85%	81%	74%
Rocketship Los Suenos	82%	74%	71%	73%
Rocketship Discovery Prep		62%	71%	64%
Rocketship Mosaic		82%	78%	77%
Rocketship Brilliant Minds			80%	74%
Rocketship Alma Academy			79%	88%
Rocketship Spark				86%

The CSTs were used as the assessment to calculate the 2014 API.

EXHIBIT E: LETTER FROM SANTA CLARA COUNTY COUNSEL'S OFFICE

OFFICE OF THE COUNTY COUNSEL  
COUNTY OF SANTA CLARA

70 West Hedding Street, 9<sup>th</sup> Floor  
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Miguel Márquez  
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Lori E. Pegg  
ASSISTANT COUNTY COUNSEL

December 9, 2011

VIA E-MAIL AND U.S. MAIL

E-mail: [linda@lezottelaw.com](mailto:linda@lezottelaw.com)

Linda J. LeZotte  
Law Offices of Linda J. LeZotte, LEED AP  
Ten Almaden Boulevard, Suite 1250  
San Jose, CA 95113

Re: *Rocketship Education and Rocketship Six Public School*

Dear Ms. LeZotte:

I am writing in response to your November 16, 2011 letter to Carolyn Walsh and Lizanne Reynolds regarding Rocketship Education's authority to exempt Rocketship Six Public School from County of Santa Clara ("County") zoning and building regulations pursuant to California Government Code Section 53094 because Rocketship Education is a school district.

The County has reviewed this matter and, for the reasons explained below, the County does not believe Rocketship Education may exempt Rocketship Six Public School from the County's zoning ordinance because Rocketship Education is not a "school district" for purposes of California Government Code Section 53094. For similar reasons, the County does not believe Rocketship Education can serve as a Lead Agency under the California Environmental Quality Act ("CEQA") for the Notice of Intent to Adopt a Mitigated Negative Declaration and Availability of a Mitigated Negative Declaration ("Notice")

Rocketship Education may request an exemption from the County's zoning ordinance from the appropriate school district governing board. If the exemption is granted, it would only apply with respect to the County's zoning ordinance and Rocketship Education would still need to comply with any other permitting requirements by the County and any other governmental agency. Absent the exemption, Rocketship Education must comply with the County's zoning ordinance, including applying for and receiving a use permit, to develop the proposed Rocketship Six Public School site at 379 Meadow Lane, San Jose, CA.

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Letter to Linda J. LeZotte  
Re: *Rocketship Education and Rocketship Six Public School*  
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1. Government Code §§ 53090 et seq.

With regard to local zoning and building regulations, Government Code sections 53090 through 53097.5 generally govern the application of building and zoning ordinances to local agencies, including school districts. When these sections are read as a whole, it is apparent that all local agencies are required to comply with local building and zoning ordinances, but school districts are specifically authorized, under certain circumstances, to exempt themselves from the purview of a zoning ordinance by a two-thirds vote of the district's governing board. The definition of a school district in Section 53094 has not been broadly defined to include a charter school or charter management organization. Section 53094 provides in relevant part,

Notwithstanding subdivision (a), the governing board of a school district, that has complied with the requirements of Section 65352.2 of this code and Section 21151.2 of the Public Resources Code, by a vote of two-thirds of its members, may render a city or county zoning ordinance inapplicable to a proposed use of property by the school district....If the governing board has taken such an action, the...county may commence an action in the superior court of the county whose zoning ordinance is involved..., seeking a review of the action of the governing board of the school district to determine whether it was arbitrary and capricious....If the court determines that the action was arbitrary and capricious, it shall declare it to be of no force and effect, and the zoning ordinance in question shall be applicable to the use of the property by the school district.<sup>1</sup>

Section 53097.3 provides in relevant part;

Notwithstanding any other provision of this article, no school district may render a...county ordinance inapplicable to a charter school facility pursuant to this article, unless the facility is physically located within the geographical jurisdiction of that school district.

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<sup>1</sup> Government Code Section 65352.2, cited in Section 53094, also requires the school district governing board to notify and provide copies to the relevant jurisdiction's planning commission or planning department of any relevant and available information, master plan, or other long-range plan relating to the potential expansion of existing school sites or the necessity to acquire additional school sites. Public Resources Code Section 21151.2, also cited in Section 53094, requires that before acquiring title to property for a new school site, the governing board of a school district must give the planning commission having jurisdiction notice of the proposed acquisition. The planning commission shall investigate the proposed site and within 30 days after receipt of the notice shall submit to the school district governing board a written report of the investigation and its recommendations concerning acquisition of the site. The governing board shall not acquire title to the property until the report of the planning commission has been received.

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Therefore, under Section 53097.3 the exemption authorized under Section 53094 can only be exercised by a school district to exempt charter school facilities from county zoning ordinances when those facilities are physically located within the geographical jurisdiction of the school district.

If Rocketship Education requests and is granted an exemption from the appropriate school district, the exemption will solely be applicable to the proposed Rocketship Six Public School site and the school district must comply with all other review requirements identified in Section 53094.

2. Education Code §§ 47600 et seq. (Charter Schools Act of 1992)

Your letter asserts that under Education Code Section 47612(c) a charter school is deemed a "school district." Consequently, under your analysis, Rocketship Education is a "school district" for purposes of Government Code Section 53094. The County does not agree with this conclusion.

Education Code Section 47612(c) provides in relevant part,

A charter school shall be deemed to be a "school district" for purposes of Article 1 (commencing with Section 14000) of Chapter 1 of Part 9, Section 41301, Section 41302.5, Article 10 (commencing with Section 41850) of Chapter 5 of Part 24, Section 47638, and Section 8 and 8.5 of Article XVI of the California Constitution.

The plain language of Education Code Section 47612(c) provides that a charter school is a school district for the enumerated purposes identified in Section 47612(b). Section 47612(c) does not cover the exemption from local zoning ordinances and does not deem a charter school to be a school district for purposes of Government Code Section 53094. Moreover, Government Code Section 53097.3 provides a framework for a school district to address charter school siting.

The interpretation that a charter school is only deemed a "school district" for the narrow purposes identified in Section 47612(c) is consistent with the California's Supreme Court decision in *Wells v. One2One Learning Foundation et al.* (2006) 39 Cal.4th 1164. In this case, the California Supreme Court refused to accept the argument that charter schools operated by an independent non-profit corporation are the same as a school district or any other governmental agency. Instead, the Court characterized an independent charter school as more akin to a private school, and in doing so, was unwilling to extend the public agency exemption at issue to charter schools. In reaching this holding, the Court explicitly rejected the argument that charter schools are some type of a public government entity simply because various provisions of the Charter School Act (Educ. Code §§ 47600 et seq.) describe charter schools as being part of the public school system. (*Id.* at pp. 1200-1201.)

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In conclusion, Rocketship Education cannot rely on Education Code Section 47612(c) to exempt itself from the County zoning ordinance pursuant to Government Code Section 53094. When a school district selects a school site, it is subject to rigorous public scrutiny and requirements under the Education Code, the Government Code and the California Environmental Quality Act. There is no support in the case law or statutory law to support the conclusion that the Legislature intended to give broad exemption powers to charter schools with respect to these requirements.

3. Rocketship Education CEQA Lead Agency Status

The County has also received Rocketship Education's "Notice of Intent to Adopt a Mitigated Negative Declaration and Availability of a Mitigated Negative Declaration" ("Notice"). The Notice identifies Rocketship Education as the Lead Agency for purposes of CEQA.

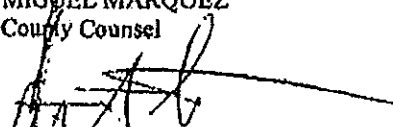
CEQA defines a "lead agency" as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." (Cal. Pub. Res. Code § 21067.) The CEQA Guidelines recognize a school district as a public agency and, thus, a school district can serve as a lead agency. (14 Cal. Code Regs. § 15368.)

Since a charter school is only deemed a "school district" for the narrow purposes specified in Education Code Section 47612(c), which does not include CEQA, the County finds no support for Rocketship Education's position that it is a "lead agency" under CEQA.

Please contact me if you would like to discuss this matter further.

Very truly yours,

MIGUEL MÁRQUEZ  
County Counsel



ELIZABETH G. PIANCA  
Deputy County Counsel

EGP:ae

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