

## **EXHIBIT A-**

### **STAFF REPORT**

#### **SAN DIEGO COUNTY OFFICE OF EDUCATION**

**TO:** San Diego County Board of Education

**FROM:** Dr. Paul Gothold, Superintendent  
Kristin Armatis, Business Advisory Consultant

**TITLE:** Staff Report in Support of the Recommendation to Deny the Countywide Charter Petition to Establish Julian Charter School – Cedar Creek

**DATE OF MEETING:** June 20, 2018

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### **BACKGROUND**

On or about January 23, 2018, the Petitioners, Julian Charter Schools, Inc., delivered a charter petition (“Petition”) for a proposed countywide charter school, Julian Charter School – Cedar Creek (“JCS-Cedar Creek” and/or “Charter School”) to the San Diego County Board of Education (“County Board”); at which time it was received by the County Board, thereby commencing the timelines for County Board action thereon.

In accordance with Education Code section 47605.6(b), the County Board held a public hearing on the Petition on March 14, 2018, at which time the County Board considered the level of support for the Petition by teachers, parents or guardians, and the school district where the charter school petitioners propose to place school facilities.

Pursuant to Education Code Section 47605.6(b), a countywide charter may only be approved if it provides educational services to a pupil population that will benefit from those services and cannot be served as well by a charter school that operates in only one school district in a county, and may only be granted if the charter school has reasonable justification for why it could not be established by a local school district.

Additionally, a county board of education shall not deny a petition for the establishment of a charter school, unless it is not satisfied that granting the charter is consistent with sound educational practice, and it makes written factual findings specific to the particular petition setting forth specific facts to support one or more of the following findings:

1. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school [Education Code § 47605.6(b)(1)];
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition [Education Code § 47605.6(b)(2)];

3. The petition does not contain the required number of signatures [Education Code § 47605.6(b)(4)];
4. The petition does not contain an affirmation of each of the conditions described in Section 47605.6(e) [Education Code § 47605.6(b)(4)];
5. The petition does not contain reasonably comprehensive descriptions of all of the required charter school elements [Education Code § 47605.6(b)(5)];
6. The petition does not include a declaration of whether the charter school shall be deemed the exclusive public school employer of the employees under EERA. [Education Code § 47605.6(b)(6)]; and
7. Any other basis that the county board of education finds justifies the denial of the petition. [Education Code § 47605.6(b)(7)].

Working as a collaborative professional team, San Diego County Office of Education (“SDCOE”) staff and legal counsel from the law firm of Atkinson, Andelson, Loya, Ruud and Romo submit that the recommendation to the San Diego County Board of Education is well documented and based upon solid criteria. Analysis of the Petition does not demonstrate that the proposed Charter School meets the legal criteria and standards for establishment of a countywide charter school under Education Code section 47605.6 and that approval of the Petition would not be consistent with sound educational practice. The SDCOE staff has noted the following issues and concerns supporting the written factual findings specific to the Petition as set forth in the proposed Resolution of Denial (attached):

**I. The Petitioners failed to demonstrate that the proposed Charter School meets the legal criteria and standards for establishment of a countywide charter school under Education Code section 47605.6. As such, the SDCOE staff recommends that the County Board does not make the findings necessary for approval of a countywide charter petition.**

Education Code section 47605.6(a)(1) provides:

In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may approve a countywide charter **only if** it finds, in addition to the other requirements of this section, that the **educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services that cannot be served as well by a charter school that operates in only one school district in the county.**

(Emphasis added.)

Additionally, Education Code section 47605.6(b) provides, in relevant part:

A county board of education may grant a charter for the operation of a charter school under this part **only if** it is satisfied that granting the charter is consistent with sound educational practice and that the charter school has **reasonable justification for why it could not be established by petition to a school district pursuant to Section 47605.**

(Emphasis added.)

Collectively, these mandatory findings to support approval of a countywide charter are referred to herein as the “Countywide Charter Threshold Findings.”

Thus, pursuant to Education Code section 47605.6, a countywide charter may only be approved if it provides educational services to a pupil population that will benefit from those services and cannot be served as well by a charter school that operates in only one school district in a county, and may only be granted if the charter school has reasonable justification for why it could not be established by a local school district.

**First**, the Petition fails to provide a reasonable justification as to why the proposed educational program must operate under a countywide charter, and cannot be established or serve students as well under one or more locally approved charters. During the petition review process, after reviewing the initial justification set forth in the Petition, the SDCOE staff notified the Petitioners that the information provided was not sufficient to meet the standards for countywide approval. Thereafter, Petitioners were allowed the opportunity to submit additional information and justification. Although an additional response was provided on May 10, 2018, that response, while addressing some of the County’s concerns regarding other aspects of the Petition, advanced, in effect, the same arguments originally submitted by the Petitioners supporting JCS-Cedar Creek’s countywide benefit charter justification albeit slightly reorganized and with additional details about the programs offered by JCS-Cedar Creek. Notably, the response maintains that, following the *Anderson Union High School District v. Shasta Secondary Home School* (which affirmed that the geographical limitations on the location of charter schools applied to both non-classroom based and classroom based charter schools), only countywide charter schools “can lawfully and adequately provide independent study educational services.”

**Moreover**, at or around the same time that the Petitioners submitted the Petition to the County Board, the Petitioners also submitted the following petitions for the establishment of **district-approved charter schools**, which schools appear to be very similar or identical to the countywide school being proposed by the JCS-Cedar Creek petition including one that was approved by a district in San Diego County:

- On February 14, 2018, the Julian Union Elementary School District approved the petition for Julian Charter School – Mountain Oaks (“JCS-Mountain Oaks), a

district-approved charter school that will have locations in Encinitas and Riverside County.

- On February 6, 2018, Julian Charter School submitted the JCS-Pine Hills (“JCS-Pine Hill”) charter petition to the Temecula Valley Unified School District, a second petition for a district-approved charter school that would have served K-12 students in Riverside, Imperial, Orange, San Bernardino, and San Diego Counties.

As such, having submitted two charter petitions for district-approved charter schools proposing essentially similar educational programs and receiving approval around the same time that the Petitioners submitted the JCS-Cedar Creek petition for a countywide charter school, it is clear that the Petitioners cannot meet their burden to establish why this school could not operate as a district-approved, rather than a county-approved, charter school.

**Furthermore**, the Petitioners propose to operate an educational program consisting of both independent study and home study programs. As part of its countywide justification, the Petition states that, following the *Anderson* decision, JCS-Cedar Creek can only be established as a countywide program due to its independent and home-study structure. However, as stated above, more than a year after the *Anderson* decision, the Petitioners submitted petitions for district-approved charters with similar educational programs to that of JCS-Cedar Creek to Julian Union Elementary School District and Temecula Valley Unified School District. For example, like JCS-Cedar Creek, JCS-Pine Hill proposed an educational program that also consisted of Home Study and Academy Programs that also would have served K-12 students in Riverside, Imperial, Orange, San Bernardino, and San Diego Counties.

Also, numerous charter schools currently operate educationally sound and successful independent and home study programs that are authorized by school districts, so the mere fact that the proposed school is not an in-seat program is not an adequate justification for countywide approval. The statutory geographic limitations for the location of charter schools may be a reason that a charter operator *prefers* a countywide approval – so that it has more freedom regarding location. However, the purpose of the countywide charter statute is not to circumvent the general geographic limitations on charter schools, but instead, is for special circumstances in which countywide status is necessary in order to serve students’ needs.

Regardless, neither independent study programs nor home study programs require a countywide charter to serve students throughout the County. In fact, as noted above, San Diego County has many local-district authorized charter schools offering similar types of programs that serve students throughout the County.

Based on the foregoing findings, the SDCOE staff finds that the charter school has not provided reasonable justification as to why it could not be established by petition to a school district pursuant to Section 47605 and recommends that the County Board does not make the findings necessary for approval of a countywide charter petition.

## **II. The County Board's denial of the JCS-Cedar Creek Petition does not impact the operations of the Julian Charter School.**

As a practical matter, the County Board's denial of the Petition will not impact the ability of students within San Diego County to access the Julian Charter School educational program, should they so desire. Indeed, this denial of the JCS-Cedar Creek Petition does not impact the ongoing operations of JCS-Mountain Oaks Charter School. The County Board's decision will not affect JCS-Mountain Oak's ability to remain in operation or its students' ability to continue attending JCS-Mountain Oaks.

Nor will the County Board's denial impact the Petitioner's ability to submit the JCS-Cedar Creek Petition to a local school district(s) seeking approval as a district-approved charter school for the start of the 2018-2019 school year. The County Board's action is strictly related to reasons that JCS-Cedar Creek cannot operate as a countywide charter school, but that does not prevent the petitioner from submitting the proposal to a local school district in an effort to obtain district-level approval of the school to commence operation at the start of the 2018-2019 school year.

Notably, Education Code section 47652 provides, in relevant part:

(c) A charter school in its first year of operation may only commence instruction within the first three months of the fiscal year beginning July 1 of that year. A charter school shall not be eligible for an apportionment pursuant to subdivision (a), or any other apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year.

As such, should the Petitioners wish to submit the JCS-Cedar Creek Petition to a local school district as a district-approved charter school, it may have sufficient time to receive approval for the start of the 2018-2019 school year and receive its full funding apportionment.

### **RECOMMENDATION**

Having fully considered and extensively reviewed the elements of the JCS-Cedar Creek Charter Petition, especially emphasizing the Petition's countywide charter justification, the SDCOE staff recommends that the San Diego County Board of Education take action to adopt the attached Board Resolution denying the JCS-Cedar Creek Charter Petition.