

WHAT TO DO WHEN A CHARTER PETITION HITS YOUR DOORSTEP

THE BASICS YOU NEED TO START THE CHARTER REVIEW PROCESS

*Presentation by Bill Hornback
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I. BEFORE THE STORM

A. *HAVE A POLICY IN PLACE.*

Schools Legal Service is preparing a comprehensive charter school policy, one that addresses granting, supervision, renewal, revocation, and the appeals process for those actions. Until the policy is provided to you, some form of policy would be better than nothing. The charter school policy put out by CSBA is a good beginning, and our recommendation is to at least have something like that policy in place.

B. *IDENTIFY POSSIBLE SOURCES OF ASSISTANCE / EXPERTISE.*

Charter school petition review will involve all aspects of operating a school, from instruction, to special education, to finance and governance, as well as others. To be prepared for a charter petition, you should identify where, and if possible, who, will be available to review and comment on the petition on your behalf, in their areas of expertise. If your agency does not have in-house expertise, you should make contact with local resources available to you, such as your county office of education or local districts that do have such expertise. Your goal is to make an initial contact, and have an understanding that you can count on these resources should you ever have the need to call on them.

C. *BE AWARE OF WHAT'S GOING ON AROUND YOU.*

While your agency may be running smoothly in your mind, notice when and where there is dissension, dissatisfaction and/or resistance to change. While not all charter schools arise from these matters, a number of them do. For example, are you terminating a special program, or closing a school? Charter schools have arisen from teacher and/or parental resistance to such decisions. Have other agencies in the area received charter petitions from a group looking for a place to land? Is there any particular political movement in the community that could involve the education of students? Our recommendation is to stay as connected to the public school system, and to your community, as you can, working to build positive connections, communication and information exchange.

Another recommendation for Superintendents, or designee, is to be willing to meet with charter petitioners who contact your agency. It takes time, but the time is nothing like the amount of time it will take to meet your statutory obligations if you receive a petition in an adversarial setting. Whether you are for, or against, any particular charter petition, meeting in advance of the petition being “served” on the agency is a good idea, even if it only creates a relationship where you “agree to disagree” on the petition, creating some form of relationship with the charter petitioners will make your future easier.

D. EXTRA CREDIT — TAKING IT TO THE NEXT LEVEL

When information comes to you about dissension, dissatisfaction, or resistance, or you get any other information that indicates someone else may see a void in your agency, consider taking action to fill the perceived void. Remember, their opinion on a void in the agency, even if “wrong” in your eyes, may be what drives them to become a charter petitioner. Their view is just as valid to them as your view is to you. Taking the position they are simply “wrong,” and doing nothing more, is what may drive them to establish a charter school.

II. THE LEGAL OBLIGATIONS DURING PETITION REVIEW BY THE “POTENTIAL” CHARTERING AGENCY

A. SCHEDULE AND HOLD A PUBLIC HEARING AFTER GIVING PROPER NOTICE.

The purpose of the hearing is for the Board to “. . . consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. . .”

B. REVIEW THE PETITION, TO DETERMINE IF ANY OF THE FOLLOWING CONDITIONS EXIST:

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 number of signatures required by subdivision (a).
4. The petition does not contain an affirmation of each of the conditions described in subdivision 47605(d).
5. The petition does not contain reasonably comprehensive descriptions of all of the required elements specified in subsection 47605(b)(5):

C. VOTE ON WHETHER OR NOT TO GRANT THE CHARTER, MAKING “FINDINGS” AS NEEDED.

There are only a few possible actions when voting on whether or not to grant a charter. Those choices are: (1) grant the charter, (2) conditionally grant the charter,

(3) grant the charter with conditions to be met before commencing operations, (4) deny the charter and make findings.

The vote on whether or not to grant the charter must be taken within the timeline set forth in the Education Code, and if the vote is to deny the charter, the reviewing agency must make factual findings supporting the denial of the charter. If the decision is to conditionally grant the charter, the charter will not be recognized by the State until the conditions are met. For this reason, there is opposition to, and legal questions on, any conditional granting of a charter. The better method for “fixing” issues in the charter is to deny the charter, or grant the charter with conditions imposed on when the charter may commence operations.

Most charters require an memorandum of understanding (“M.O.U.”) to further identify and clarify the relationship between the granting agency and the charter school, including information on such issues as funding, special education, and business relationships. The M.O.U. is also a great way to list those issues that must be resolved before the charter is permitted to start educating pupils, with the corrections becoming amendments to the charter.

III. THE CLOCK STARTS TICKING

A. THINGS TO DO *NOW!*

A charter petition has come to you. It’s not a draft, and it’s not a free look. This is the real thing, and the clock is now ticking on your obligations to act. While it may be that charter petitioners will contact you in advance, and even work with you, that is not always the case. Sometimes, the first thing you hear or see is the petition in your in-basket.

Find out if a copy of the petition has been sent to your Board Members. If not, then you provide them a copy, and confirm the date on which the petition was received by the agency.

B. THINGS TO DO IN THE FIRST WEEK.

The agency representative, as set forth in your charter school policy, should appoint staff, and others, as needed, in the areas of curriculum, finance, facilities, special education and any other subject matters needed, as a committee to review the petition and provide advice on the viability of the proposed educational program as it applies to their specialty areas.¹ These are areas in which SLS may be able to provide some assistance, but it is the responsibility of the agency, and its committee, to develop a recommendation

¹ If the board organizes, appoints, or fixes the schedule of the committee, or otherwise directs its establishment, the committee will likely need to comply with all Brown Act requirements. A committee composed of non-board members organized by the superintendent without board direction, for the purpose of advising the superintendent may not be required to comply with the Brown Act.

to the Board whether or not, in your opinion, the educational program is viable, capable of implementation, and meets the requirements of the Code.

You should also be checking the petition signatures (be they signatures of teachers or parents) to determine validity. Do they represent at least half of the anticipated first-year teachers, or parents of at least half of the first-year's anticipated students?

Select a date, and give notice of a public hearing, in the fashion of noticing other public hearings, for the purpose of "ascertaining the level of support for the petition from teachers, staff, parents and others." Send a letter to the petitioners advising them of the date, time and location of the public hearing. This hearing may be set for the time of a regular Board meeting, or at any other time the Board desires to hold the hearing by calling a special meeting of the Board. Whether held at a regular meeting, or special meeting, the hearing must be held within 30 days of your receipt of the petition. If the timing requires calling a special meeting, the special meeting must be set.

Please give your legal counsel a copy of the hearing notice and letter to petitioners, and request all members of the review committee to commence their review of, and commenting on, the petition.

In addition, SELPAs have charter school provisions in their Plans. Many of the SELPA Plans require their members to timely submit a copy of any charter petition received to the SELPA for review. You should send a copy of the petition to your SELPA, and it is likely that any request for feedback on the special education provisions of the charter petition would be well-received.

C. THINGS TO BE DONE WITHIN THE FIRST 30 DAYS.

Hold the public hearing. At the public hearing, any interested individuals should be permitted to speak on the subject. You may limit the time, both for individual speakers, and for the hearing as a whole, just as you do for other public hearings. The Board does not have to answer questions at the hearing, if any are raised, and the Board is not required to ask questions or do anything else except permit others to talk. It is permissible to ask questions, if it appears advisable to do so. It is customary to permit the petitioners an opportunity to make a brief presentation to the Board, if they so desire.

D. THINGS TO BE DONE WITHIN THE FIRST 60 DAYS.

Decide whether you need more time to complete the review and, if so, negotiate more time with the charter petitioners. If more time is not needed, complete the review of the charter petition and determine what recommendation to make to the Board. There are several possible recommendations: recommend approval, recommend approval with restrictions on commencing operations, recommend denial, recommend denial unless certain conditions are met. In many instances, there will be matters where the petition does not meet what the committee sees as appropriate standards, but where these are items that could be "fixed" to remove the potential objection.

An example would be the application of the Government Code Section 1090 (Conflict of interest) rules to charter officers and employees. While most charter petitions do not automatically include such restrictions, feeling they do not apply to charter schools, many charter petitioners have accepted the restrictions in order to get their petitions granted. There may be other, “technicalities” in the petition that require revision, and if the petition is otherwise appropriate to grant, these “technicalities” can be fixed before the charter school commences operations, which limitations are expressly included as requirements. The standard method of enforcing these requirements is to mandate an MOU, and include the requirements as part of the MOU.

E. EXTRA CREDIT - TAKING IT TO THE NEXT LEVEL.

The next level involves looking into the future. It is likely that an appropriate charter petition will be granted, by someone, whether it be the County Board of Education or the State Board of Education. This gives you an opportunity to contemplate whether it would be better for an outside agency, such as the State (which provides little oversight) or your agency, or another local agency, to provide the oversight of the future charter school.

Remember, adverse impact on your agency is not a valid reason to deny a charter petition. So, creating a clear picture of, and getting a good grip on, the motivation behind the charter petition, and the potential impact of the charter school on your agency, may give you valuable information for future, proactive action by your agency to mitigate adverse impacts.

For example, If the petition is the result of some significant dissatisfaction with the educational program of your agency, then you can take some remedial action. If the petition provides a glimpse at valuable educational opportunities that are not currently available in your agency, you can take quick action to obtain and offer such opportunities. Both of these courses of action give you a head start in the upcoming competition for students. If you see something good, you can steal the idea, improve on it, and start offering it before they do. If they have a good program, you can clone it and operate it yourself. Remember, the intent of the Legislature, in adopting the charter school program, was to:

1. ***Improve pupil learning.***
2. ***Increase learning opportunities*** for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.
3. ***Encourage the use of different and innovative teaching methods.***
4. ***Create new professional opportunities*** for teachers, including the opportunity to be responsible for the learning program at the school site.

5. ***Provide parents and pupils with expanded choices*** in the types of educational opportunities that are available within the public school system.
6. Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to ***change from rule-based to performance-based accountability systems***.
7. ***Provide vigorous competition within the public school system*** to stimulate continual improvements in all public schools.