

**RESOLUTION CONDITIONALLY APPROVING THE CHARTER FOR
THE EUREKA! INCLUSIVE CHARTER SCHOOL
AND, ALTERNATIVELY, MAKING WRITTEN FACTUAL FINDINGS SUPPORTING
DENIAL & DENYING THE EUREKA! INCLUSIVE CHARTER SCHOOL CHARTER
IF THE CONDITIONS ARE NOT MET**

**SANTA CLARA COUNTY BOARD OF EDUCATION
RESOLUTION NO. 2247-2**

RESOLVED by the Santa Clara County Board of Education, County of Santa Clara, State of California, that:

WHEREAS, on or about June 27, 2019, the Board of the San Jose Unified School District (“SJUSD”) denied, for the second time, the charter petition (“Petition” or “Charter”) for the proposed Eureka! Inclusive Charter School to be operated by or as Eureka! Inclusive Charter School, Inc. (the school and corporation are collectively referred to herein as “EICS” or “Charter School”) to operate as an independent charter school; and

WHEREAS, pursuant to the procedures set forth in California Education Code Section 47605 (“CSA”) and California Code of Regulations, Title 5, Section 11967, on or about July 5, 2019, Eureka! Inclusive Charter School delivered the Petition and supporting documents on appeal to the Santa Clara County Board of Education (“County Board”); and

WHEREAS, in accordance with Education Code Section 47605(b) the County Board held a public hearing on the Petition on July 17, 2019, at which time the County Board considered the level of support for the Petition by teachers, other employees, and parents or guardians; and

WHEREAS, in reviewing the Petition, the County Board has been cognizant of 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; and

WHEREAS, the Santa Clara County Office of Education (“SCCOE”) Staff (“Staff”) has reviewed and analyzed all information received with respect to the Charter and information related to the operation and potential effects of the proposed Charter School, and prepared a written Staff Analysis and Proposed Findings of Fact, dated August 7, 2019, (hereafter collectively “Staff Report, Analysis & Findings,” attached hereto as Exhibit “A”) setting forth proposed findings of fact supporting denial or in need of remediation; and

WHEREAS all of the issues and concerns noted in the Staff Report, Analysis & Findings must be remediated in order for approval of the Charter to be consistent with sound educational practice; and

WHEREAS, the County Board has taken into consideration the information and documents submitted, including the Petition, the statements and information presented at the public hearing, and the Staff Report, Analysis & Findings; and

WHEREAS, the County Board reviewed and deliberated on the Petition, pursuant to the procedures set forth in California Education Code Section 47605; and

WHEREAS, the County Board specifically notes that this Resolution No. 2247-2 does not include findings relative to every defect in the Petition submitted, and that the findings set forth herein are sufficient to support denial of the Petition if the conditions for approval are not met.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the County Board finds the above listed recitals to be true and correct and incorporates them herein by this reference.

BE IT FURTHER RESOLVED AND ORDERED that the Santa Clara County Board of Education, having fully considered and evaluated the Petition for the establishment of EICS, hereby finds granting the Petition to be consistent with sound educational practice only if certain conditions, based on the Staff Report, Analysis & Findings and specified in this Resolution No. 2247-2 are met. If the conditions are not satisfied to the satisfaction of the SCCBOE, approval of the Charter is not consistent with sound educational practice, based upon numerous grounds and factual findings including, but not limited to, the following

1. The Charter School presents an unsound educational program for the pupils to be enrolled in the Charter School. [Education Code Section 47605(b)(1)]
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition. [Education Code Section 47605(b)(2)]
3. The Charter does not contain reasonably comprehensive descriptions of all of the required elements. [Education Code Section 47605(b)(5)]

BE IT FURTHER RESOLVED AND ORDERED that the County Board hereby determines that the foregoing findings are supported by specific facts, including the following facts and findings:

1. The County Board hereby adopts and incorporates herein by this reference as though set forth in full herein the analysis and written factual findings and specific facts supporting those findings as contained in the Staff Report, Analysis & Findings.
2. **The Charter School presents an unsound educational program for the pupils to be enrolled in the Charter School:**

The concerns and deficiencies regarding the EICS educational program set forth in the adopted and incorporated Staff Report, Analysis & Findings establish that the Charter School presents an unsound educational program. These concerns and deficiencies

include, but are not limited to, lack of development of the scope and sequence of instruction for each of the grade levels – deficiencies in the plan for English Language Learners, and deficiencies in the plan for compliance with the Individuals with Disabilities Education Improvement Act (“IDEIA”).

3. The petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition:

The concerns and deficiencies regarding the Petition’s unrealistic operational plan for professional development; unrealistic financial plan for at least the first two years of operation; and inaccurate calculation of instructional minutes as set forth in the adopted and incorporated Staff Report, Analysis & Findings are incorporated herein by this reference. Each of those deficiencies serves to establish that the petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition.

4. The Petition does not contain reasonably comprehensive descriptions of all of the required charter elements:

The Petition does not include a reasonably comprehensive description of its educational program at least insofar as it lacks an instructional framework aligned with the needs of EICS’s target student population of low-performing students, students with disabilities, and English Learners. The Petition also does not include reasonably comprehensive descriptions of measurable student outcomes; methods by which to measure pupil progress; employee qualifications; means to achieve an appropriate racial and ethnic balance; and employee retirement systems as set forth in the adopted and incorporated Staff Report, Analysis & Findings, which discussions are not repeated in full here.

BE IT FURTHER RESOLVED AND ORDERED that the County Board, having fully considered and evaluated the Petition for EICS, hereby finds that compliance with each of the conditions set forth below is necessary to the sound operation of the proposed EICS and that approval of the EICS Petition is consistent with sound educational practice only if EICS complies fully with each of these conditions.

BE IT FURTHER RESOLVED AND ORDERED that the County Board hereby conditionally approves the Petition for a term from July 1, 2019, through June 30, 2024, with the period July 1, 2019 – June 30, 2020, to serve as a planning year only, during which time EICS shall not commence providing education to any students. The EICS Charter Petition that the Governing Board is hereby conditionally approving is attached hereto as Exhibit “B.” This approval is conditional on EICS complying with all of the following requirements:

1. On or before August 14, 2019, at 12:00 p.m., EICS shall submit to SCCOE an approved and executed Voluntary Relinquishment Agreement in the form attached hereto as Exhibit “C,” which will go into effect should EICS fail to perform any of

the other conditions placed on EICS. By approving and executing the Voluntary Relinquishment Agreement, EICS explicitly agrees that its failure to comply fully with any or all of the conditions set forth in this Resolution No. 2247-2 within the timelines specified herein shall serve as a voluntary and irrevocable relinquishment of its Charter and EICS will immediately cease to be a charter school authorized by the County Board. The executed Voluntary Relinquishment Agreement will be attached hereto as Exhibit “D”.

2. If determined by the Superintendent or Designee as necessary, on or before October 15, 2019, EICS shall submit to SCCOE a request for material revision revising the Charter to correct and remediate all of the SCCOE Staff’s concerns with the Charter Petition, including but not limited to those detailed in the Staff Report, Analysis & Findings.
3. On or before October 1, 2019, Eureka! Inclusive Charter School, Eureka! Inclusive Charter School, Inc., and the SCCOE shall enter into and execute an Addendum to the Memorandum of Understanding (“MOU”) in the form and including the terms satisfactory to the County Superintendent or designee, in her sole discretion, that will govern the SCCOE’s oversight of EICS and clarify and provide greater specificity regarding EICS’s operations pursuant to the Charter, and that will address all of SCCOE Staff’s concerns with the Charter, including but not limited to those concerns raised in the Staff Report, Analysis & Findings. The Addendum to the MOU shall specifically include clarification of and agreement regarding EICS’s responsibilities and obligations and EICS and SCCOE’s respective roles, rights, and duties relative to EICS’s provision of services pursuant to the Individuals with Disabilities Education Act. The Addendum to the MOU shall remain in full force and effect throughout the current term of the Charter, which runs through June 30, 2024, unless revised by the parties in accordance with applicable law and provisions of the MOU. Further, the term of the Addendum of the MOU shall continue in full force and effect during the period of any renewal granted by the SCCBOE or during the pendency of an appeal of a denial of a renewal request unless and until such time as SCCOE and EICS enter into a replacement MOU, revise the Addendum to the MOU, or specifically agree in writing that the Addendum to the MOU is terminated. The MOU and Addendum to the MOU shall be incorporated into the Charter and made a part thereof as if set forth in full in the Charter itself. A violation of the Addendum to the MOU and/or the MOU shall constitute a violation of the Charter, including for purposes of Education Code Section 47607 controlling charter revocation. In the event of a conflict between the law and the terms of the Addendum to the MOU or the MOU, the law shall prevail, and any such conflicting terms shall be revised by mutual agreement of the parties. To the extent that there are any inconsistencies or conflicts between the Addendum to the MOU, the MOU, and the approved Charter, the terms of the Addendum to the MOU shall take precedence over the MOU and the Addendum to the MOU and the MOU terms shall control and shall be interpreted and deemed to be updates and clarifications to the Charter.

4. On or about October 1, EICS and Eureka! Inclusive Charter School, Inc. shall agree to the insurance and indemnification, defense, and hold harmless provisions required by SCCOE's risk manager.
5. On or before January 1, 2020, Eureka! Inclusive Charter School shall provide SCCOE with evidence that it has \$650,000 unencumbered cash in the bank. This amount is exclusive of any PCSGP grant funds.
6. On or before May 1, 2020, Eureka! Inclusive Charter School shall provide evidence that it has secured a site/facility which is ADA compliant and complies with all applicable building code and/or California Code of Regulations, Title 24 and occupancy requirements for the intended purpose, is ready to inhabit, and fulfills the specific needs of the Eureka! Inclusive Charter School program. At the same time the Charter School must also provide evidence satisfactory to the County Superintendent or designee that the Charter School has properly budgeted and secured funding for all costs associated with acquiring and maintaining the facility. On or before June 30, 2020, the Charter School must obtain/create and provide to SCCOE all necessary use and occupancy permits, a site safety plan that complies with Education Code Section 47605(b)(5)(F)(ii), procedures for conducting tactical responses to criminal incidents, and proof of insurance covering the facility.

BE IT FURTHER RESOLVED AND ORDERED that EICS shall comply with these conditions by the dates and times specified above. The County Board hereby delegates to the County Superintendent or her designee authority to extend in writing the deadline for compliance with a condition or conditions should the County Superintendent or designee determine that an extension of the timelines is consistent with sound educational practice. The County Superintendent or designee may also set shorter timelines within that overall time limit for EICS to respond to and/or remediate any particular issue(s) regarding the Petition.

BE IT FURTHER RESOLVED AND ORDERED that should EICS not comply with all of the conditions to the County Superintendent or designee's sole satisfaction, on or before the dates and times specified above, or such later deadline as agreed to in writing by the County Superintendent or designee, the conditional approval of the EICS Charter Petition is terminated and withdrawn and the Petition is denied based on the written factual findings set forth above and adopted hereby, unless the County Board, in its sole discretion, deletes the condition or extends the deadline for compliance therewith.

BE IT FURTHER RESOLVED AND ORDERED that the terms of this Resolution, and incorporated Staff Report, Analysis & Findings, setting forth the factual findings supporting denial are severable. Should it be determined that one or more of the findings is invalid, the remaining findings, and the conditional approval or denial for failure to comply with the conditions, shall remain in full force and effect. In this regard, the County Board specifically finds that each factual finding is, in and of itself, a sufficient basis for denial.

Santa Clara County  Office of Education

BE IT FURTHER RESOLVED AND ORDERED that approval is explicitly and necessarily based on EICS's compliance with the conditions imposed by this Resolution, and should it be determined that a conditional approval of the Petition is not permissible pursuant to the Charter Schools Act of 1992, the approval is withdrawn and the Petition is denied based on the factual findings specific to the Petition set forth and adopted by the County Board herein.

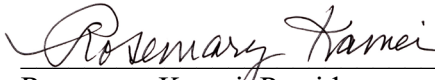
Passed and adopted by the Santa Clara County Board of Education at a meeting held on this 7th day of August 2019 by the following vote:

AYE: Trustees Rossi, Mah, King and Di Salvo

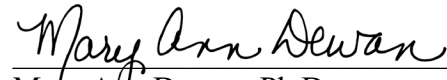
NO: President Kamei, Vice President Song and trustee Ortiz

ABSTENTION: none

ABSENT: none



Rosemary Kamei, President
Santa Clara County Board of Education



Mary Ann Dewan, Ph.D.
County Superintendent of Schools
Santa Clara County Office of Education

EXHIBIT A

STAFF REPORT, ANALYSIS & FINDINGS

LINK: [STAFF REPORT, ANALYSIS & FINDINGS](#)

EXHIBIT B

EICS CHARTER

LINK: [EICS CHARTER](#)

EXHIBIT C

**FORM OF
VOLUNTARY RELINQUISHMENT AGREEMENT**

Eureka! Inclusive Charter School/Eureka! Inclusive Charter School, Inc. (“EICS”) has submitted to the Santa Clara County Board of Education (“County Board”) its charter petition (“Charter”) on appeal following denial of the Charter by the San Jose Unified School District. As part of the County Board’s consideration of EICS’s appeal, the Santa Clara County Office of Education Staff has fully analyzed the Charter and noted a number of issues and areas of concern which Staff and the County Board have determined must necessarily be remediated by EICS in order for approval of the EICS Charter to be consistent with sound educational practice.

EICS hereby explicitly acknowledges and agrees that its failure to comply fully with any or all of the conditions set forth in the SCCBOE’s Resolution No. 2247-2 within the timelines specified in that Resolution shall serve as a voluntary and irrevocable relinquishment by EICS of its Charter and EICS will immediately cease to be a charter school authorized by the County Board. In the event of any such voluntary relinquishment of the Charter, EICS shall comply with any closure procedures required by law, regulation or the Charter.

EICS hereby expressly agrees that this irrevocable relinquishment is submitted voluntarily and in consideration for the County Board’s conditional approval of the EICS Charter and EICS acknowledges that it had the option to decline to agree to submit this irrevocable, voluntary relinquishment, and had other options, including the option to appeal its Charter to the State Board of Education and/or to revise and resubmit a charter to the San Jose Unified School District or another potential charter authorizer. EICS hereby further expressly agrees that by its execution of this voluntary relinquishment, EICS voluntarily gives up any right to appeal to the State Board of Education the relinquishment and/or the denial of the Charter appeal by the County Board.

EICS hereby expressly agrees that this is a voluntary, negotiated, and irrevocable relinquishment by EICS of the EICS Charter. EICS hereby expressly waives all rights related to the processes and procedures set forth in Education Code Section 47607 and its implementing regulations related to revocation of a charter, and any and all other legal rights and remedies that might otherwise be available to EICS, including but not limited to, injunctive relief, declaratory relief, appellate relief, writ of mandate and/or civil request for damages of any kind.

Date: _____

By: _____

Tiffany Maciel
Lead Petitioner
Executive Board President
Eureka! Inclusive Charter School

EXHIBIT D

VOLUNTARY RELINQUISHMENT AGREEMENT

Eureka! Inclusive Charter School ("EICS") has submitted to the Santa Clara County Board of Education ("County Board") its charter petition ("Charter") on appeal following denial of the Charter by the San Jose Unified School District. As part of the County Board's consideration of EICS's appeal, the Santa Clara County Office of Education Staff has fully analyzed the Charter and noted a number of issues and areas of concern which Staff and the County Board have determined must necessarily be remediated by EICS in order for approval of the EICS Charter to be consistent with sound educational practice.

EICS hereby explicitly acknowledges and agrees that its failure to comply fully with any or all of the conditions set forth in the SCCBOE's Resolution No. 2249-2 within the timelines specified in that Resolution shall serve as a voluntary and irrevocable relinquishment by EICS of its Charter and EICS will immediately cease to be a charter school authorized by the County Board. In the event of any such voluntary relinquishment of the Charter, EICS shall comply with any closure procedures required by law, regulation or the Charter.

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Date: 08/12/2019

By: Tiffany Maciel

Tiffany Maciel
Lead Petitioner

Executive Board President

Eureka! Inclusive Charter School