

**RESOLUTION DENYING THE APPROVAL OF THE CHARTER FOR
KIPP EAST SIDE HIGH SCHOOL CHARTER SCHOOL**

**SANTA CLARA COUNTY BOARD OF EDUCATION
RESOLUTION NO. 2212-1**

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

WHEREAS, on or about August 17, 2017, the Board of the East Side Union High School District (“ESUHSD”) denied the charter petition (“Petition” or “Charter”) for the proposed KIPP East Side High School Charter School to operate as an independent charter school; and

WHEREAS, pursuant to California Education Code Section 47605 and California Code of Regulations, Title 5, Section 11967, on or about September 5, 2017, KIPP Bay Area Schools, Inc. submitted the Petition and supporting documents proposing the establishment of KIPP East Side High School on appeal to the County Board. KIPP Bay Area Schools, Inc., a nonprofit public benefit corporation is proposing to operate KIPP East Side High School. KIPP Eastside High School and KIPP Bay Area Schools are collectively referred to herein as “KIPP” or “Charter School;” and

WHEREAS, in accordance with Education Code Section 47605(b) the Santa Clara County Board of Education (hereinafter “County Board of Education”) held a public hearing on the provisions of the Petition on September 20, 2017, at which time the County Board of Education considered the level of support for the Petition by teachers and other employees and parents/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 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 based on that review prepared a written Staff Analysis and Proposed Findings of Fact, dated November 1, 2017, (hereafter “Staff Report, Analysis & Findings”) specific to the Petition and made a recommendation to the County Board that the Charter be approved, but that such approval would require that KIPP enter into a Memorandum of Understanding (“MOU”) with SCCOE to address the issues described in the Staff Analysis and Proposed Findings of Fact and to outline the SCCOE and KIPP’s agreements governing their respective fiscal, operational, and administrative responsibilities, their legal relationship, and other matters not otherwise addressed or resolved by the terms of the Charter; and

WHEREAS the issues, concerns, and omissions noted in the Staff Report, Analysis & Findings establish that approval of the Charter is not consistent with sound educational practice and the Charter does not comply with all of the standards for approval; and

WHEREAS, the County Board of Education has taken into consideration the information and documents submitted, including the Petition, the statements presented at the public hearing, and the recommendation, analysis and proposed findings of fact of the County Office of Education Staff; and

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

WHEREAS, the County Board of Education specifically notes that this Resolution No. 2212-1 does not include findings relative to every defect in the Petition submitted and that the findings set forth herein are sufficient to support the denial of the Petition if the conditions for approval are not met.

NOW, THEREFORE, BE IT RESOLVED AND ORDERED that the County Board of Education 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 KIPP East Side High School, hereby finds granting the Petition not to be consistent with sound educational practice, based on numerous grounds and factual findings including, but not limited to, the following, and hereby denies the Petition pursuant to Education Code Section 47605:

1. The petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition unless they comply with the conditions specified in this Resolution. [Education Code Section 47605(b)(2)]
2. The Charter does not contain reasonably comprehensive descriptions of all of the required elements unless KIPP complies with the conditions specified in this Resolution. [Education Code Section 47605(b)(5)]

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

1. The County Board of Education 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 petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition.
 - a. The insurance, indemnification, defense, and hold harmless provisions in the Charter are not adequate to protect SCCOE, as well as KIPP’s stakeholders, from potential damages and liabilities.

- b. The Charter includes a provision specifying “KIPP Bay Area Schools shall not operate under KIPP High School name satellite schools, campuses, sites, resource centers or meeting spaces not identified in this charter without the prior written approval of the Superintendent of Santa Clara County Office of Education.” However, pursuant to the Charter Schools Act, after receiving charter approval a charter operator that proposes to operate at one or more additional sites may only do so if it obtains approval of a material revision to its charter through action taken at an open, public meeting. Further, it is only the County Board, not the County Superintendent, that can act on requests for material revisions to charters under its oversight.
3. The Petition does not contain reasonably comprehensive descriptions of all of the required charter elements:
- a. The Charter does not include a reasonably comprehensive description of the Governance element of the Charter because it does not commit KIPP to comply with the requirements of the Political Reform Act of 1974 and Government Code Section 1090 *et seq.* in order to ensure the transparency and public accountability that are necessary to the Charter School’s sound educational program, governance, and operation.
 - b. The Charter does not include a reasonably comprehensive description of the Dispute Resolution Procedures element. As specifically indicated in the Charter, KIPP cannot bind the County Board and SCCOE to the proposed dispute resolution procedures set forth therein, and the County Board hereby specifically declines to agree to the procedures specified in the Charter, and would require KIPP to agree to alternative dispute resolution procedures consistent with SCCOE’s usual practices and terms.
 - c. The Charter does not include a reasonably comprehensive description of the Employee Rights element because it incorrectly reflects the ESUHSD as the charter authorizer and addresses the rights of employees of ESUHSD and has not been updated to reflect the County Board as the authorizer and the County Superintendent of Schools as the employer of all employees at SCCOE.

BE IT FURTHER RESOLVED AND ORDERED by the County Board of Education that for the foregoing reasons and based on the foregoing findings, the Petition for the establishment of Promise Academy is hereby denied.

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

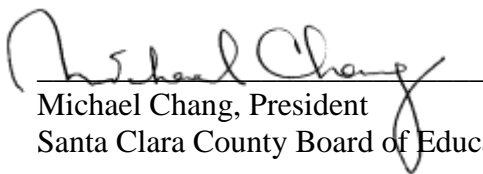
Passed and adopted by the Santa Clara County Board of Education at a meeting held on this 1st day of November 2017 by the following vote:

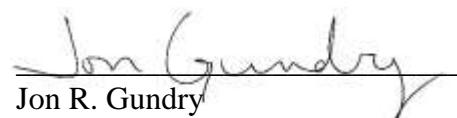
AYE: President Chang, Vice-President Kamei and members Song, Rossi, and Green

NO: members Di Salvo and Mah

ABSTENTION: --none--

ABSENT: --none--


Michael Chang, President
Santa Clara County Board of Education


Jon R. Gundry
County Superintendent of Schools
Santa Clara County Office of Education