

**RESOLUTION CONDITIONALLY APPROVING THE CHARTER RENEWAL FOR
ACE EMPOWER ACADEMY CHARTER SCHOOL, AND, ALTERNATIVELY,
MAKING WRITTEN FACTUAL FINDINGS SUPPORTING DENIAL & DENYING
THE ACE EMPOWER ACADEMY CHARTER SCHOOL CHARTER RENEWAL
IF THE CONDITIONS ARE NOT MET**

**SANTA CLARA COUNTY BOARD OF EDUCATION
RESOLUTION NO. 2273-2**

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

WHEREAS, pursuant to the procedures set forth in Education Code Sections 47605, 47607, and 47607.2, on September 18, 2020, petitioners for the ACE Empower Academy (“ACE Empower” or “Charter School”) presented to the Santa Clara County Office of Education (hereinafter “County Office of Education” or “SCCOE”) a charter (“Charter”) to renew a Santa Clara County Board of Education (“County Board”) authorized, district appeal charter school, to be governed by ACE Charter School, Inc., charter management organization (“ACE CMO”); and

WHEREAS, in accordance with Education Code Sections 47605, 47607, and 47607.2, the County Board held a public hearing on the provisions of the renewal Charter on October 7, 2020, at which time the County Board considered the level of support for the Charter by teachers, parents or guardians, and the school district where the Charter School facilities are located; and

WHEREAS, pursuant to the California Department of Education’s (“CDE”) list of Charter School Performance Categories, determined in accordance with Education Code Sections 47607(c) and 47607.2(a) and (b), the Charter School is a “middle” performance level charter school and shall be considered for renewal in accordance with Education Code Section 47607.2(b); and

WHEREAS, the County Board has considered the Charter School’s Dashboard and measurable increases in academic achievement in accordance with Education Code Section 47607.2(b); and

WHEREAS, with the addition of and compliance with the conditions specified herein, giving greater weight to academic achievement measures for all groups of pupils and considering increases in academic achievement, the Charter School’s achievement data supports renewal; and

WHEREAS, in accordance with Education Code Section 47607(d), SCCOE requested, received from CDE, and reviewed aggregate data reflecting pupil enrollment patterns at Charter School; and

WHEREAS, the County Office of Education, ACE Empower, and ACE CMO have developed a Memorandum of Understanding (MOU), which was signed by ACE CMO/ACE Empower on November 9, 2020, that outlines agreements among the SCCOE, ACE CMO and

ACE Empower, governing their respective fiscal, operational, and administrative responsibilities, their legal relationship, and other matters not otherwise addressed or resolved by the terms of the renewal Charter; and

WHEREAS, the SCCOE Staff (“Staff”) has reviewed and analyzed the information received with respect to the renewal Charter and information related to the operation and potential effects of the proposed Charter School, and, based on that review, has made a recommendation to the County Board of Education that the Charter be renewed on the conditions set forth below, and Staff prepared a written Staff Analysis and Proposed Findings of Fact, dated December 1, 2020, (hereafter collectively “Staff Report, Analysis & Findings,” attached hereto as Exhibit “A”) setting forth that recommendation and proposed findings of fact addressing issues in need of remediation or supporting denial; and

WHEREAS, all of the issues and concerns noted in the Staff Report, Analysis & Findings must be remediated in order for renewal 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 renewal Charter, the statements and information presented at the public hearing, performance data, and the Staff Report, Analysis & Findings; and

WHEREAS, the County Board reviewed and deliberated on the renewal Charter, pursuant to the standards and procedures set forth in California Education Code Sections 47605, 47607, and 47607.2; and

WHEREAS, the County Board specifically notes that this Resolution No. 2273-2 does not necessarily include findings relative to every defect in the renewal Charter submitted, and that the findings set forth herein are sufficient to support denial of the renewal Charter if the requirements on approval are not met, and it is the findings set forth and adopted herein on which the denial findings are based.

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 County Board of Education hereby adopts and incorporates herein by this reference as though set forth in full herein the written factual findings and specific facts supporting those findings as contained in the Staff Report, Analysis & Findings.

BE IT FURTHER RESOLVED AND ORDERED that the County Board, having fully considered and evaluated the ACE Empower renewal Charter, including the performance information and data pursuant to Education Code Section 47607.2, hereby finds that compliance with each of the conditions set forth below is necessary to the sound operation of ACE Empower and that approval of the ACE Empower renewal Charter is consistent with sound educational practice only if ACE Empower complies fully with each of these conditions.

BE IT FURTHER RESOLVED AND ORDERED that the County Board of Education hereby conditionally approves the Charter for the renewal of ACE Empower Charter School, for a period of five years of school operation, commencing on July 1, 2021, and continuing through and including June 30, 2026. The ACE Empower renewal Charter that the Governing Board is hereby conditionally approving is attached hereto as Exhibit “B.” This approval is conditional on ACE Empower complying with all the following conditions:

1. On or before April 1, 2021, or such later deadline as agreed to in writing by the County Superintendent or designee, ACE CMO, ACE Empower, and the SCCOE shall enter into and execute an Addendum to the 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 ACE Empower, and clarify and provide greater specificity regarding ACE Empower’s operations pursuant to the renewal Charter, and that will address all of Staff’s concerns with the renewal Charter, including but not limited to those specified in the Staff Report, Analysis & Findings, and any additional concerns and requirements as noted by the County Board. The MOU and Addendum to the MOU shall remain in full force and effect throughout the renewal term of the Charter, which runs through June 30, 2026, unless revised by the parties in accordance with applicable law and provisions of the MOU. Further, the term of the MOU and Addendum to the MOU shall continue in full force and effect during the period of any renewal granted by the County Board or during the pendency of an appeal of a denial of a renewal request unless and until such time as SCCOE, ACE CMO, and ACE Empower enter into a replacement MOU that incorporates and replaces the Addendum to the MOU, revise the MOU and/or Addendum to the MOU, or specifically agree in writing that the MOU and/or 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 MOU or the Addendum to 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.
2. On or before June 30, 2021, ACE Empower shall go through the statutory process to update its 2021-22 Local Control and Accountability Plan to include how it will address its past declines in academic performance.
3. Within 45 days of execution of the Addendum to the MOU, ACE CMO shall revise its corporate bylaws as necessary to make the bylaws consistent with the MOU and the Addendum to the MOU and provide a copy of the revised bylaws to SCCOE.

4. Within 90 days of execution of the Addendum to the MOU, Charter School shall revise its Student/Parent Handbook, the School Site Safety and Crisis Response Plan, any employee handbook, and any other policies and procedures to ensure consistency with the terms of the renewal, including the Charter, MOU, the Addendum to the MOU, and the law.

BE IT FURTHER RESOLVED AND ORDERED that the Santa Clara County Board of Education finds that if the conditions described above are not satisfied to the satisfaction of the County Superintendent or designee, approval of the renewal 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(c)(1)]
2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition. [Education Code Section 47605(c)(2)]
3. The Charter does not contain reasonably comprehensive descriptions of all of the required elements. [Education Code Section 47605(c)(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 Charter School presents an unsound educational program for the pupils to be enrolled in the Charter School.**

The concerns and deficiencies regarding the ACE Empower educational program set forth in the adopted and incorporated Staff Report, Analysis & Findings establishing that the Charter School presents an unsound educational program unless it complies with all of the conditions imposed by the County Board are incorporated herein by this reference. These concerns and deficiencies include, but are not necessarily limited to, the fact that implementation of the program to date has had mixed academic results in English Language Arts, Math, English Language Development and English Learner progress for ACE Empower students, specifically including the medium English Learner progress indicator on the RRS California Dashboard where only 49% of English Learners are making progress toward English Language Proficiency and to address the 22.2% of English Learners who decreased at least one language proficiency level during the 2018-19 school year.

2. **The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.**

Staff have noted a number of issues and concerns with the ACE Empower renewal Charter, as specified in the Staff Report, Analysis & Findings. These concerns include, but are not limited to, the medium English Learner progress indicator on the ACE Empower California Dashboard where only 49% of English Learners are making progress toward English Language Proficiency, to address the 22.2% of English Learners who decreased at least one language proficiency level during the 2018-19 school year, and inconsistencies between the renewal Charter and/or its implementing documents and the law and/or best practices for operating charter schools. Without compliance with the conditions specified herein, Charter School would be demonstrably unlikely to successfully implement the program set forth in the renewal Charter as it would be operating in violation of law, best practices, and/or would put at risk the academic achievement of its pupils, including specific student groups.

3. The petition does not contain reasonably comprehensive descriptions of all the required charter elements:

The concerns and deficiencies set forth in the adopted and incorporated Staff Report, Analysis & Findings related to the need to provide clarifications and corrections via the Addendum to establish reasonably comprehensive descriptions of each of the required charter elements are incorporated herein by this reference. Without compliance with the conditions, the Charter does not include a reasonably comprehensive description of the educational program and measurable student outcomes insofar as it fails to address the progress concerns for English learners. Additionally, without compliance with the requirements, the Charter does not include reasonably comprehensive descriptions of a number of other elements, including but not limited to, its measurable student outcomes, academic program, and employee qualifications, as set forth in the adopted and incorporated Staff Report, Analysis & Findings.

BE IT FURTHER RESOLVED AND ORDERED that ACE Empower shall comply with the 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 ACE Empower to respond to and/or remediate any particular issue(s) regarding the renewal Charter.

BE IT FURTHER RESOLVED AND ORDERED that should ACE Empower not comply with all of the requirements 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 ACE Empower renewal Charter is terminated and withdrawn and the renewal Charter is denied based on the written factual findings set forth above and adopted hereby, unless the County Board, in its sole discretion, deletes the requirement 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 of the renewal, 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.

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

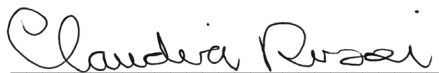
Passed and adopted by the Santa Clara County Board of Education at a meeting held on this 16th day of December 2020 by the following vote:

AYES: Vice President King, Trustees Mah, Di Salvo, and Kamei

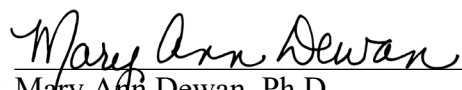
NOES: President Rossi, Trustees Ortiz and Chon

ABSTENTION: none

ABSENT: none



Claudia Rossi, Board 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: [ACE EMPOWER RENEWAL STAFF ANALYSIS](#)

EXHIBIT B

ACE EMPOWER CHARTER

LINK: [ACE EMPOWER CHARTER](#)