John R. Yeh (SBN 154576)
E-mail: jyeh@bwslaw.com
Jaime L. Bodiford (SBN 267818)
E-mail: jbodiford@bwslaw.com
BURKE, WILLIAMS & SORENSEN, LLP
1503 Grant Road, Suite 200
Mountain View, CA 94040
Tel: 650.327.2672 Fax: 650.688.8333
Attorneys for Petitioner
MORGAN HILL UNIFIED SCHOOL DISTRICT

ENDORSED
FILED
JUN - 8 2015
David H. Yamasaki, Clerk of the Superior Court
County of Santa Clara, California
By _____ Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SANTA CLARA

MORGAN HILL UNIFIED SCHOOL DISTRICT,

Petitioner,

v.

SANTA CLARA COUNTY BOARD OF EDUCATION, SANTA CLARA COUNTY OFFICE OF EDUCATION; and DOES 1-100 inclusive,

Respondents,

VOICES COLLEGE-BOUND LANGUAGE ACADEMY AT MORGAN HILL SCHOOL,

Real Party In Interest.

Case No. 115CV281545

MORGAN HILL UNIFIED SCHOOL DISTRICT'S PETITION FOR ALTERNATIVE AND/OR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY RELIEF

[Filed Concurrently with Memorandum of Points and Authorities, Request for Judicial Notice and Declaration of Steve Betando]

Exempt from Filing Fees
Government Code § 6103

Petition Filed: June 8, 2015
Hearing Date: TBD
Dept: TBD
Time: TBD

Comes now Petitioner MORGAN HILL UNIFIED SCHOOL DISTRICT ("DISTRICT") and alleges against Respondents SANTA CLARA COUNTY BOARD OF EDUCATION ("SCCBOE") and SANTA CLARA COUNTY OFFICE OF EDUCATION ("SCCOE") and DOES 1 through 100, inclusive, as follows:

INTRODUCTION

1. The Charter Schools Act of 1992 (Education Code § 47600 *et seq.*) was enacted "to establish and maintain schools that operate independently from the existing school district structure, as a method to accomplish all of the following: [¶] (a) Improve pupil learning. [¶] (b) Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving. [¶] (c) Encourage the use of different and innovative teaching methods. [¶] (d) Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the schoolsite. [¶] (e) Provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system. [¶] (f) 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. [¶] (g) Provide vigorous competition within the public school system to stimulate continual improvements in all public schools."

2. A petition to form a charter school may be submitted to the governing board of a school district once the petitioners have met the signature requirements of Education Code § 47605(a). The governing board of the school district shall grant or deny the petition within 60 days of receiving it under Education Code § 47605(b).

3. Under Education Code § 47605(b), "in reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by 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."

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

4. Under Education Code § 47605(b), "[t]he governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless 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. (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 (d). (5) The petition does not contain reasonably comprehensive descriptions of [the 16 required elements set forth in the statute.]"

5. Education Code § 47605(g) provides that "[t]he governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be used by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation."

6. As the authorizer of the charter school, the SCCOE and SCCBOE are charged with the responsibility under the Education Code to monitor the charter school's fiscal condition. Education Code § 47604.32 provides that "[e]ach chartering authority, in addition to any other duties imposed by this part, shall do all of the following with respect to each charter school under its authority: ... (d) [m]onitor the fiscal condition of each charter school under its authority." Education Code § 47604.33 also requires charter schools to submit financial reports to their authorizer several times a year: [¶] (a) Each charter school shall annually prepare and submit the

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

following reports to its chartering authority and the county superintendent of schools, or only to the county superintendent of schools if the county board of education is the chartering authority: [¶] (1) On or before July 1, a preliminary budget. For a charter school in its first year of operation, the information submitted pursuant to subdivision (g) of Section 47605 satisfies this requirement. [¶] (2) On or before July 1, an annual update required pursuant to Section 47606.5. [¶] (3) On or before December 15, an interim financial report. This report shall reflect changes through October 31. [¶] (4) On or before March 15, a second interim financial report. This report shall reflect changes through January 31. [¶] (5) On or before September 15, a final unaudited report for the full prior year. [¶] (b) The chartering authority shall use any financial information it obtains from the charter school, including, but not limited to, the reports required by this section, to assess the fiscal condition of the charter school pursuant to sub-division (d) of Section 47604.32 ..." Education Code § 47607(c)(1) provides that "[a] charter may be revoked by the authority that granted the charter under this chapter if the authority finds, through a showing of substantial evidence, that the charter school did any of the following: ... (C) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement."

7. The State Board of Education implemented regulations to define the term "demonstrably unlikely to successfully implement the program set forth in the petition" for its reference in reviewing charter petitioners. 5 C.C.R. § 11967.5.1(c)(3)(B) contains the criteria for whether petitioners are demonstrably unlikely to successfully implement the program set forth in the petition in the area of fiscal matters, including, in pertinent part: "[i]n the area of financial administration: [¶] (a) include, at a minimum, the first-year operational budget, start-up costs and cash flow, and financial projections for the first 3 years; [¶] (b) include estimates in the operational budget of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based when possible on historical data from schools or school districts of similar type, size and location; [¶] (c) include budget notes that clearly describe assumptions on revenue estimates, including but not limited to, the basis for ADA estimates and staffing levels; [¶] (d) present a budget that in its totality appears viable and

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

over a period of no more than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size; and [¶] (e) demonstrate an understanding of the timing of the receipt of revenues and their relative relationship to the timing of expenditures, based when possible on historical data from schools or school districts of similar type, size and location."

8. The DISTRICT is, and at all times mentioned herein was, a public entity duly existing under and by virtue of the laws of the State of California and operating as a public school district providing educational services in the County of Santa Clara, State of California, under the California Education Code.

9. The DISTRICT is informed and believes, and thereon alleges, that Respondent SCCBOE is, and at all times mentioned herein was, the governing board of the SCCOE duly existing under and by virtue of the laws of the State of California and operating in the County of Santa Clara, State of California.

THE PARTIES

10. The true names and capacities of Respondents named herein as DOES 1 through 100, inclusive, are unknown to the DISTRICT at this time, and therefore the DISTRICT sues said Respondents by such fictitious names. The DISTRICT will seek leave of this Court to amend its Petition and set forth their true names and capacities when such have been ascertained. DISTRICT is informed and believes, and on that basis alleges, that each such fictitiously-named Respondent is in some manner responsible for the events and harms herein alleged, and for the damages occasioned thereby.

11. The DISTRICT is informed and believes, and thereon alleges, that each of the Respondents herein was the agent, servant, and employee of each of the other Respondents, and in performing the acts herein alleged, was acting within the course and scope of such agency and employment, with the full knowledge, ratification, active assistance, and encouragement, and/or consent, express or implied, of each of the other Respondents.

///

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

12. Real Party in Interest VOICES COLLEGE-BOUND LANGUAGE ACADEMY AT MORGAN HILL SCHOOL is a charter school under a charter authorized by the SCCBOE under Education Code § 47605(j) as its charter-granting agency, and is potentially affected by the outcome of this action.

THE SUBJECT OF THE LITIGATION

13. On or about June 26, 2014, the DISTRICT received a petition to form the VOICES COLLEGE-BOUND LANGUAGE ACADEMY Charter School.

14. On or about September 23, 2014, the DISTRICT's Governing Board, by a vote of 6-1, denied the petition to form the VOICES COLLEGE-BOUND LANGUAGE ACADEMY CHARTER SCHOOL, under Education Code § 47605(b), on the grounds that the charter petitioners were: 1) unlikely to successfully implement the program set forth in the petition pursuant to Education Code § 47605(b)(2); and that the petition 2) lacked reasonably comprehensive descriptions of the 16 required elements for a charter petition under Education Code § 47605(b)(5). The DISTRICT's Governing Board also voted 6-1 to adopt a written resolution containing findings in support of its denial of the petition.

15. Under the conclusion that the petitioners were demonstrably unlikely to successfully implement the program set forth in the petition, the findings of the DISTRICT's Governing Board included findings that the charter school would be unlikely to achieve a student population containing the estimated 72% of unduplicated pupils (English Learners, Free and Reduced Lunch-eligible and foster children) that would generate additional funding under the Local Control Funding Formula ("LCFF"); the petitioners miscalculated their State funding under the LCFF; the petitioners underbudgeted expenses in several areas, including special education; and the petitioners failed to identify how supplemental funds received under LCFF would be used to improve or increase services for students constituting the unduplicated pupil count.

16. Under the conclusion that the petition did not contain reasonably comprehensive descriptions of the 16 required elements under Education Code, the findings of the DISTRICT's Governing Board included findings that the petition lacked reasonably comprehensive

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

descriptions of the following required elements under Education Code § 47605(b)(5): Educational Program, Governance Structure, Employee Qualifications, Means to Achieve Racial/Ethnic Balance, Admission Requirement, Suspension and Expulsion, and Dispute Resolution.

17. On or about September 26, 2014, Real Party in Interest submitted an appeal from the DISTRICT's denial of the petition to Respondent SCCBOE under Education Code § 47605(j).

18. The SCCOE Office of Innovative Schools ("OIS") issued a written staff evaluation of the petition, dated November 19, 2014 ("SCCOE Staff Report"), in which it stated that "[s]taff found facts that demonstrates petitioners are unlikely to implement the program."

19. The SCCOE Staff Report states that SCCOE "[s]taff recommends that the Board review staff's analysis with respect to these criteria and make a finding regarding whether each criterion for approval has been satisfied."

20. The SCCOE Staff Report states that "[t]here are several concerns regarding the Petitioners[']] ability to successfully implement the program."

21. Under the heading of "Financial," the concerns listed in the SCCOE Staff Report included the following:

- "With regard to the financials, the petition does not include the total amount of square footage required for Prop 39 facilities. The budgets were developed with the assumption that the district would charge the higher 3% oversight fee rather than a pro-rata share of the facilities costs. Supplemental information provided by the petitioner was insufficient to calculate the estimated rent expense, as it only included the square footage required for classrooms and did not provide an estimated cost per square foot."

- "Although the petition identifies the anticipated revenue from the PCSGP [Public Charter Schools Grant Program] of $575K, one-time PCSGP grant expenditures totaling $283,732 (or 50 percent of the grant) were not identified in the petition budgets. The petitioner states that the Charter School Management Organization (CMO) fees, which are typically used to pay for the school's support functions, will be waived for the first and second years of operations in order to pay the grant expenditures. Even after reallocating the CMO fee budget to PCSGP expenses, there are $44K additional grant expenditure that have been omitted and must be added to the petition budgets, resulting in a higher negative beginning fund balance of -$85K in the first year of operations."

- "Voices is planning significant growth in the next year with the opening of Voices-Morgan Hill, Voices-Mt. Pleasant, and building out the CMO. (In their long range plans, they anticipate opening a total of five schools.) The expenditures that the CMO is likely to incur will be substantial. According to the Petition, the CMO is expected to hire seven (7) positions in 2014-2015, seven (7) positions in 2015-2016, and two (2) positions in 2016-2017; 10 of those 16 positions are executive or director level positions. The CMO will also pay the schools' legal and auditing fees. The level of anticipated growth and the

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

CMO's ability to financially support the two new schools and a new CMO is a concern, particularly when the CMO fees will have to [be] waived for at least one, and possibly two, of its schools for the next two years."

22. Under the heading "Recruiting and Enrollment," the concerns listed in the SCCOE Staff Report included the following:

- "Two non-profit Charter Management Organizations (CMOs) have submitted charter petition appeals to the County Office of Education for TK/K-8 charter schools in the Morgan Hill Unified School District. Both petitioners seek to open their schools in the west side of Morgan Hill in the fall of 2015."
- "Both charter schools seem to be targeting the same community and population, and it raises some questions about the reliability of their enrollment targets."
- "By Year 8, the combined enrollment of the two schools is projected to be 1,044, 38% of the total K-8 enrolment of the five targeted schools."
- "Two schools opening at the same time, in the same community and targeting the same population could be problematic and raises questions about how they will meet the enrollment targets and about their ability [to] succeed."

23. The SCCOE Staff Report states that SCCOE "[s]taff reviewed the petition utilizing the criteria for approval set forth in Education Code § 47605. Based upon its comprehensive review and analysis of the Petition, staff finds that … the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition. Accordingly, staff recommends that the Board adopt the Resolution to Approve with noted requirements or conversely adopt the Resolution to Deny with the identified finding."

24. The SCCOE Staff Report also contained a recommended "Resolution Approving the Charter Petition of Voices College-Bound Language Academy at Morgan Hill School" ("Recommended Resolution"). The Recommended Resolution contains the following recommended stipulations in the event that the SCCBOE approved the petition:

"I. By January 1, 2015, the Charter School must provide the following information:

a. State Priority #4 (page 75) Pupil Achievement (Annual Goals and Actions) – This State priority needs to be amended to include a metric (percentage vs. the word 'all') in the subcategories: (D) Percentage of ELs who will make progress toward English language proficiency as measured by the CELDT and in (E) needs to include an EL reclassification rating.

b. For each numerically significant subgroup identified on page 76 (ELs, FRPM-eligible, foster youth and students with exceptional needs) charter needs to amend language and provide 'specific annual actions to achieve these goals for each

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

subgroup' by replacing the word 'all students' with each subgroup identified (and list the specific annual goals an actions for each subgroup) in each of the State Priorities that apply for grade levels served on the nature of the program operated by the charter school.

c. State Priority #4 – page 84 Student Achievement, the charter needs to amend language to include an 'exit outcome for the goal with a percentage' for ELs who make progress toward English language proficiency as measured by the CELDT and for EL reclassification rating.

d. State Priority #5 – page 85 Student Engagement. The charter needs to amend language to include Middle School dropout rates [EC 2052.1(a)(3)].

II. Voices College-Bound Language Academy at Morgan Hill School and the County Office of Education shall enter into a Memorandum of Understanding that will govern the County Office of Education's oversight of Voices College-Bound Language Academy at Morgan Hill School operations (hereafter "MOU"). Failure to successfully negotiate and execute the Contract by January 1, 2015, shall be grounds for revocation of the charter. To the extent that there are any inconsistencies between the MOU and the approved charter, the MOU controls."

25. At its meeting of November 19, 2014, by a vote of 6-1, the SCCBOE approved the petition to form the VOICES COLLEGE-BOUND LANGUAGE ACADEMY AT MORGAN HIGH SCHOOL for a term of three years, from July 1, 2015 through June 30, 2018. The motion to approve the petition included adoption of a resolution containing the terms stated above, and added two more requirements: that the charter school achieve a student enrollment of 112 by April 1, 2015, and secure a designated school site by July 1, 2015 ("Adopted Resolution").

26. The DISTRICT is informed and believes, and alleges upon such information and belief, that the charter school did not negotiate and execute an MOU with the SCCOE by January 1, 2015.

FIRST CAUSE OF ACTION
(Writ of Mandate – Code of Civil Procedure § 1085)

27. The DISTRICT re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1-26, inclusive.

28. In approving the Adopted Resolution, as amended with the requirements that the charter school achieve a student enrollment of 112 by April 1, 2015, and secure a designated school site by July 1, 2015, the SCCBOE considered the conclusions in the SCCOE Staff Report with respect to the charter school's likelihood of success in enrolling the projected 112 students

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

for its first year, and obtaining a school facility. However, the SCCBOE's Adopted Resolution failed to consider the conclusion in the SCCOE Staff Report that "the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition" in the area of fiscal concerns, including but not limited to the following:

- "Supplemental information provided by the petition was insufficient to calculate the estimated rent expense, as it only included the square footage required for classrooms and did not provide an estimated cost per square foot."
- "Although the petition identifies the anticipated revenue from the PCSGP [Public Charter Schools Grant Program] of $575K, one-time PCSGP grant expenditures totaling $283,732 (or 50 percent of the grant) were not identified in the petition budgets ... Even after reallocating the CMO fee budget to PCSGP expenses, there are $44K additional grant expenditure that have been omitted and must be added to the petition budgets, resulting in a higher negative beginning fund balance of -$85K in the first year of operations."
- "Voices is planning significant growth in the next year with the opening of Voice-Morgan Hill, Voices-Mt. Pleasant, and building out the CMO. (In their long range plans, they anticipate opening a total of five schools.) The expenditures that the CMO is likely to incur will be substantial. According to the Petition, the CMO is expected to hire seven (7) positions in 2014-2015, seven (7) positions in 2015-2016, and two (2) positions in 2016-2017; 10 of those 16 positions are executive or director level positions. The CMO will also pay the schools' legal and auditing fees. The level of anticipated growth and the CMO's ability to financially support the two new schools and a new CMO is a concern, particularly when the CMO fees will have to [be] waived for at least one, and possibly two, of its schools for the next two years."

29. The SCCBOE, under Code of Civil Procedure § 1085 *et seq.*, had a clear, present and ministerial duty to evaluate and vote to grant or deny the charter petition under the requirements of Education Code § 47605(b), including considering whether "... [t]he petitioners are demonstrably unlikely to successfully implement the program set forth in the petition" with respect to the area of financial administration, and under 5 C.C.R. § 11967.5.1(c)(3)(B), which required the SCCBOE to proceed as follows:

> "For purposes of Education Code section 47605(b)(2), the State Board of Education shall take the following factors into consideration in determining whether charter petitioners are "demonstrably unlikely to successfully implement the program.
>
> ... (3) The petitioners have presented an unrealistic financial and operational plan for the proposed charter school. An unrealistic financial and operational plan is one to which any or all of the following applies:
>
> ... In the area of financial administration:
> (a) include[d], at a minimum, the first-year operational budget, start-up costs and cash flow, and financial projections for the first 3 years;

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

(b) include[d] estimates in the operational budget of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based when possible on historical data from schools or school districts of similar type, size and location;

(c) include[d] budget notes that clearly describe assumptions on revenue estimates, including but not limited to, the basis for ADA estimates and staffing levels;

(d) present[ed] a budget that in its totality appears viable and over a period of no more than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size;

(e) demonstrate an understanding of the timing of the receipt of revenues and their relative relationship to the timing of expenditures, based when possible on historical data from schools or school districts of similar type, size and location."

30. The SCCBOE committed a prejudicial abuse of discretion under Code of Civil Procedure § 1085 *et seq.* by approving the petition to form the VOICES COLLEGE-BOUND LANGUAGE ACADEMY without substantial evidence that the petition met all of the legal requirements for approval.

31. The SCCOE had the ministerial duty to recommend, and the SCCBOE had a clear and ministerial duty to revoke, the charter of the VOICES COLLEGE-BOUND LANGUAGE ACADEMY AT MORGAN HILL SCHOOL after it failed "to successfully negotiate and execute the Contract by January 1, 2015, [which] shall be grounds for revocation of the charter," under Section II of the Adopted Resolution. Alternatively, the SCCOE had the ministerial duty to initiate the revocation procedure set forth in Education Code § 47607(c), including but not limited to issuing a Notice of Violation, before January 1, 2015, to determine whether grounds existed to revoke the charter, since the granting of the Petition was explicitly conditioned upon the following: "Voices College-Bound Language Academy at Morgan Hill School and the County Office of Education shall enter into a Memorandum of Understanding that will govern the County Office of Education's oversight of Voices College-Bound Language Academy at Morgan Hill School operations (hereafter "MOU"). Failure to successfully negotiate and execute the Contract by January 1, 2015, shall be grounds for revocation of the charter."

32. The SCCOE and SCCBOE had the ministerial duty to prohibit the charter school from revising its budget when submitting its appeal to the SCCBOE under Cal. Admin. Code tit.

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

5, § 11967(b), which states as follows: … "[w]hen filing a petition with the county board of education or State Board of Education for the establishment of a charter school, petitioner(s) shall provide the following: (1) A complete copy of the charter petition as denied, including the signatures required by Education Code section 47605."

33. The DISTRICT has standing to enforce a public right to ensure that the SCCBOE performs its ministerial duties in considering the petition under the requirements set forth in Education Code § 47605(b), does not abuse its discretion by approving the petition without substantial evidence that it met the requirements of Education Code § 47605(b), and revoke the charter, or, alternatively, initiate revocation proceedings under Education Code § 47607(c), under Section II of the Adopted Resolution, because it was the initial public agency that denied the charter petition and because the proposed charter school would be located within the boundaries of the DISTRICT and would enroll students currently enrolled in the DISTRICT.

34. The DISTRICT has no plain, speedy, and/or adequate remedy in the ordinary course of law.

35. Wherefore, the DISTRICT seeks a writ of mandate prohibiting the SCCBOE from abusing its discretion, failing to perform its ministerial duty to consider whether, under Education Code § 47605(b), "[t]he petitioners are demonstrably unlikely to successfully implement the program set forth in the petition," compelling the SCCBOE to perform its ministerial duty to revoke the charter under Section II of the Adopted Resolution.

SECOND CAUSE OF ACTION
(Declaratory Relief)

36. The DISTRICT re-alleges and incorporates by reference each and every allegation contained in Paragraphs 1-35, inclusive.

37. An actual, present controversy exists between the DISTRICT and the SCCBOE with respect to the SCCBOE's failure to comply with its legal duty to evaluate and vote to grant or deny the charter petition under the requirements of Education Code § 47605(b), including considering whether under Education Code § 47605(b), "[t]he petitioners are demonstrably

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

unlikely to successfully implement the program set forth in the petition," and under 5 C.C.R. § 11967.5.1(c)(3)(B), which requires the SCCBOE to consider whether the petitioners, "[i]n the area of financial administration: ... (a) include[d], at a minimum, the first-year operational budget, start-up costs and cash flow, and financial projections for the first 3 years; [¶] (b) include[d] estimates in the operational budget of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based when possible on historical data from schools or school districts of similar type, size and location; [¶] (c) include[d] budget notes that clearly describe assumptions on revenue estimates, including but not limited to, the basis for ADA estimates and staffing levels; [¶] (d) present[ed] a budget that in its totality appears viable and over a period of no more than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size ..."

38. Wherefore, the DISTRICT seeks a declaration that the SCCBOE failed to evaluate and vote to grant or deny the charter petition using the criteria set forth in Education Code § 47605(b), including considering whether under Education Code § 47605(b), "[t]he petitioners are demonstrably unlikely to successfully implement the program set forth in the petition" and under 5 C.C.R. § 11967.5.1(c)(3)(B), which requires the SCCBOE to consider whether the petitioners, "[i]n the area of financial administration: ... (a) include[d], at a minimum, the first-year operational budget, start-up costs and cash flow, and financial projections for the first 3 years; [¶] (b) include[d] estimates in the operational budget of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based when possible on historical data from schools or school districts of similar type, size and location; [¶] (c) include[d] budget notes that clearly describe assumptions on revenue estimates, including but not limited to, the basis for ADA estimates and staffing levels; [¶] (d) present[ed] a budget that in its totality appears viable and over a period of no more than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size ..."

39. Wherefore, the DISTRICT seeks a declaration that the SCCBOE and SCCOE are obligated to revoke the charter of the VOICES COLLEGE-BOUND LANGUAGE ACADEMY AT MORGAN HILL SCHOOL, or, in the alternative, initiate revocation proceedings under Education Code § 47607(c), after it failed "to successfully negotiate and execute the Contract by January 1, 2015, [which] shall be grounds for revocation of the charter," under Section II of the Adopted Resolution; and to prohibit the charter school from revising its budget when submitting its appeal to the SCCBOE under Cal. Admin. Code tit. 5, § 11967(b).

PRAYER FOR RELIEF

Based on the foregoing allegations, the DISTRICT prays for judgment as follows:

a. An alternative writ of mandate pursuant to Code of Civil Procedure § 1087 compelling Respondent SCCBOE to:

(i) Evaluate and vote to grant or deny the charter petition under the requirements of Education Code § 47605(b), including considering whether under Education Code § 47605(b), "[t]he petitioners are demonstrably unlikely to successfully implement the program set forth in the petition," and under 5 C.C.R. § 11967.5.1(c)(3)(B), which requires the SCCBOE to consider whether the petitioners, "[i]n the area of financial administration: … (a) include[d], at a minimum, the first-year operational budget, start-up costs and cash flow, and financial projections for the first 3 years; [¶] (b) include[d] estimates in the operational budget of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based when possible on historical data from schools or school districts of similar type, size and location; [¶] (c) include[d] budget notes that clearly describe assumptions on revenue estimates, including but not limited to, the basis for ADA estimates and staffing levels; [¶] (d) present[ed] a budget that in its totality appears viable and over a period of no more than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size;"

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

(ii) Prohibit the charter school from revising its budget when submitting its appeal to the SCCBOE under Cal. Admin. Code tit. 5, § 11967(b); and

(iii) Revoke the charter, or, alternatively, initiate revocation proceedings under Education Code § 47607(c), against the VOICES COLLEGE-BOUND LANGUAGE ACADEMY AT MORGAN HILL SCHOOL after it failed "to successfully negotiate and execute the Contract by January 1, 2015, [which] shall be grounds for revocation of the charter," under Section II of the Adopted Resolution; to alternatively show cause why they have not done so at the time and date specified by this Court.

b. Alternatively, a peremptory writ of mandate prohibiting the SCCBOE from abusing its discretion by failing to evaluate the charter petition as required under 5 C.C.R. § 11967.5.1(c)(3)(B) and Education Code § 47605(b), which requires it to:

(i) Determine whether "[t]he petitioners are demonstrably unlikely to successfully implement the program set forth in the petition," as well as approving the charter petition without substantial evidence that it considered the petition under the requirements of Education Code § 47605(b) and 5 C.C.R. § 11967.5.1(c)(3)(B); or, in the alternative, a writ of mandate enforcing the ministerial duty to evaluate and vote to grant or deny the charter petition under the requirements of under 5 C.C.R. § 11967.5.1(c)(3)(B) and Education Code §47605(b), including considering whether substantial evidence exists to override the findings in the SCCOE Staff Report that the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition in the area of financial administration;

(ii) Prohibit the charter school from revising its budget when submitting its appeal to the SCCBOE under Cal. Admin. Code tit. 5, § 11967(b); and

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

(iii) To revoke the charter, or, alternatively, initiate revocation proceedings under Education Code § 47607(c), against the VOICES COLLEGE-BOUND LANGUAGE ACADEMY AT MORGAN HILL SCHOOL after it failed "to successfully negotiate and execute the Contract by January 1, 2015, [which] shall be grounds for revocation of the charter," under Section II of the Adopted Resolution.

c. A judicial declaration that:

(1) The SCCBOE failed to evaluate and vote to grant or deny the charter petition using the criteria set forth in Education Code § 47605(b), including considering whether under Education Code § 47605(b), "[t]he petitioners are demonstrably unlikely to successfully implement the program set forth in the petition," and under 5 C.C.R. § 11967.5.1(c)(3)(B);

(2) The SCCOE and SCCBOE are obligated to revoke the charter, or, alternatively, initiate revocation under Education Code § 47607(c), against the VOICES COLLEGE-BOUND LANGUAGE ACADEMY AT MORGAN HILL SCHOOL after it failed "to successfully negotiate and execute the Contract by January 1, 2015, [which] shall be grounds for revocation of the charter," under Section II of the Adopted Resolution; and

(3) The SCCOE and SCCBOE had the ministerial duty to prohibit the charter school from revising its budget when submitting its appeal to the SCCBOE under Cal. Admin. Code tit. 5, § 11967(b), which states as follows: … "[w]hen filing a petition with the county board of education or State Board of Education for the establishment of a charter school, petitioner(s) shall provide the following: (1) A complete copy of the charter petition as denied, including the signatures required by Education Code section 47605."

d. Rescission of the SCCBOE's November 19, 2014 action approving the appeal to form the VOICES COLLEGE-BOUND LANGUAGE ACADEMY CHARTER SCHOOL.

e. Payment of attorneys' fees under Code of Civil Procedure § 1021.5.

BURKE, WILLIAMS & SORENSEN, LLP
ATTORNEYS AT LAW
MOUNTAIN VIEW

f. For any other relief that may be appropriate or available, as this Court may deem proper.

Dated: June 5, 2015

BURKE, WILLIAMS & SORENSEN, LLP

By: _____
John R. Yeh
Attorneys for Petitioner
MORGAN UNIFIED SCHOOL DISTRICT