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Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

California School Boards Asso Plaintiff/Petitioner(s) VS. California State Board Of E Defendant/Respondent(s) (Abbreviated Title)	No. <u>RG07353566</u> Order Demurrer Sustained
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The Demurrer was set for hearing on 05/22/2008 at 01:30 PM in Department 30 before the Honorable Kenneth Mark Burr. The Tentative Ruling was published and has not been contested.

IT IS HEREBY ORDERED THAT:

The tentative ruling is affirmed as follows: The joint demurrer by Real Party in Interest Aspire Public Schools, Inc. ("Aspire") and defendant/respondent California State Board of Education ("SBE") to the First, Fourth, and Fifth Causes of Action in the Petition for Writ of Mandate and Complaint of Petitioners/Plaintiffs California School Boards Association, California Teachers Association, Association of California School Administrators, and Stockton Unified School District ("Petitioners") is ruled upon as follows:

The demurrer is **SUSTAINED WITHOUT LEAVE TO AMEND**. The judicially noticeable documents before the Court establish that the California State Board of Education ("SBE") did not act in an arbitrary or capricious manner, and did not abuse its discretion, in approving the petition by Aspire Public Schools, Inc., for operation of a state charter school.

The statutory scheme and regulations provide substantial discretion to the SBE in determining whether to approve a state charter school. Education Code sec. 47605.8 does not evidence any intent to limit state charter schools to the type of existing statewide programs allowed under Education Code sec. 47605.1(g). Nor does the overall scheme support Petitioner's interpretation that local control is strongly favored or that sec. 47605.8 is intended to provide only a narrow exception to the usual procedures for approval of local charter schools.

The evidence before the SBE at its meeting on January 11, 2007 was sufficient to support the finding that the proposed state charter school would provide instruction services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. Education Code sec. 47605.8(b). Aspire's Charter Petition, pp. 8-15, showed that Aspire's proposed educational program, and operational plan, included unique factors and circumstances that could only be accomplished as a statewide benefit charter and not as a single district- or single county-authorized charter.

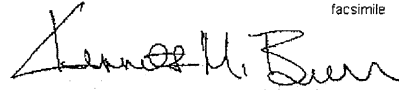
Neither the statutory scheme nor the regulations support Petitioners' contention that the SBE was required to find that Aspire's program could not continue to be provided through a series of locally-approved charters. The regulations specifically make reference to a showing that an applicant for a state charter success in operating charter schools previously approved in California. California Code of

Regulations, Title 5, sec. 11967.6(a)(7), which indicates that prior success in individual districts does not preclude approval of a statewide benefit charter, but is in fact a requirement of such approval. The statutory and regulatory scheme merely requires a showing of unique factors and circumstances related to the statewide benefit charter school's education program that can only be accomplished as a statewide benefit charter. C.C.R. Title 5, sec. 11967.6(b)(1).

The supplemental requests for judicial notice by the moving parties and by Petitioners are GRANTED. The Court has previously taken judicial notice of the documents submitted in connection with the previous demurrer.

The Fourth and Fifth Causes of Action seek declaratory relief and injunctive relief based on the substantive claims in the First, Second, and Third Causes of Action. The Second and Third Cause of Action have previously been dismissed, so the failure of the First Cause of Action to state a cause of action also results in the failure of the Fourth and Fifth Causes of Action.

Dated: 05/22/2008

 facsimile

Judge Kenneth Mark Burr

Superior Court of California, County of Alameda
Rene C. Davidson Alameda County Courthouse

Case Number: RG07353566
Order After Hearing Re: of 05/22/2008

DECLARATION OF SERVICE BY MAIL

I certify that I am not a party to this cause and that a true and correct copy of the foregoing document was mailed first class, postage prepaid, in a sealed envelope, addressed as shown on the foregoing document or on the attached, and that the mailing of the foregoing and execution of this certificate occurred at 1225 Fallon Street, Oakland, California.

Executed on 05/27/2008.

Executive Officer / Clerk of the Superior Court

By *Cynthia S. Boyle*^{digital} Deputy Clerk

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SHORT TITLE: California School Boards Asso VS California State Board Of E	CASE NUMBER: RG07353566
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