

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education September 2022 Agenda Item #11

## Subject

Appeal of the Denial of a Petition for the Establishment of a Classroom-Based Charter School Pursuant to California *Education Code* Section 47605(k)(2): Consideration of Evidence to Hear or Summarily Deny the Appeal of Mayacamas Charter Middle School, which was denied by the Napa Valley Unified School District and the Napa County Board of Education.

## Type of Action

Action, Information

## Background

Pursuant to California *Education Code* (*EC*) Section 47605(a), Mayacamas Charter Middle School (MCMS) submitted its petition, which proposes a new grade six through eight charter school, to the Napa Valley Unified School District (NVUSD or District). NVUSD denied the petition on December 9, 2021, by a vote of seven to zero.

MCMS appealed the District’s denial to the Napa County Board of Education (NCBOE or County), pursuant to *EC* Section 47605(k)(1)(A)(i), which states that if the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. NCBOE voted to deny the petition on March 15, 2022, which passed by a vote of five to two, and adopted written factual findings supporting the denial on April 5, 2022.

Pursuant to *EC* Section 47605(k)(2), if the county board of education denies a petition to establish a charter school, the petitioner may appeal that denial to the California State Board of Education (SBE). MCMS submitted its petition to the SBE on April 14, 2022.

## Recommendation

The California Department of Education (CDE) recommends that the SBE hear the MCMS appeal. This recommendation is based upon the CDE’s review of MCMS’ written submission and the documentary record, which set out sufficient evidence to hear the appeal.

## Advisory Commission on Charter Schools Recommendation

At its August 11, 2022, meeting, the Advisory Commission on Charter Schools (ACCS) accepted the CDE recommendation and moved to recommend that the SBE hear the MCMS appeal. The motion passed by a vote of seven to one.

The notice for the August 11, 2022, ACCS meeting, MCMS’ appeal submission, and the documentary record are located on the SBE August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice081122.asp>.

**Legislative Changes to the Appeal Process**

Assembly Bill 1505 [Chapter 486, Statutes of 2019] modified *EC* Section 47605 and changed the manner in which the SBE hears charter school appeals as well as codified the role of the ACCS in the appeal process.

Prior to AB 1505, the SBE reviewed all charter petitions that had been denied at the local level under the same standards applicable to review by the governing board of the school district and county board of education. The SBE could approve the petition in accordance with subdivision (b) (formerly *EC* Section 47605[j][1]) or deny it. Under this review standard, the completeness and quality of the charter petition were weighed by the ACCS and the SBE.

However, the passage of AB 1505 modified *EC* Section 47605 and updated the appeal requirements of the petitioner, codified the role of the ACCS, and changed the role of the SBE. Specifically, *EC* Section 47605(k)(2)(A) states the following regarding the appeal requirements of the petitioner:

The petitioner shall submit the petition to the SBE within 30 days of a denial by the county board of education. The petitioner shall include the findings and documentary record from the governing board of the school district and the county board of education and a written submission detailing, with specific citations to the documentary record, how the governing board of the school district or the county board of education, or both, abused their discretion. The governing board of the school district and county board of education shall prepare the documentary record, including transcripts of the public hearing at which the governing board of the school district and county board of education denied the charter, at the request of the petitioner. The documentary record shall be prepared by the governing board of the school district and county board of education no later than 10 business days after the request of the petitioner is made. At the same time the petition and supporting documentation is submitted to the SBE, the petitioner shall also provide a copy of the petition and supporting documentation to the school district and the county board of education.

Pursuant to *EC* Section 47605(k)(2)(D), the role of the ACCS is as follows:

The ACCS will hold a public hearing to review the appeal and documentary record. Based on its review, the ACCS shall submit a recommendation to the SBE whether there is sufficient evidence to hear the appeal or to summarily deny review of the appeal based on the documentary record. If the ACCS does not submit a recommendation to the SBE, the SBE shall consider the appeal, and shall either hear the appeal or summarily deny review of the appeal based on the documentary record at a regular public meeting of the SBE.

Pursuant to *EC* Section 47605(k)(2)(E), the role of the SBE is as follows:

The SBE shall either hear the appeal or summarily deny review of the appeal based on the documentary record. If the SBE hears the appeal, the board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion.

In this item, the SBE will determine whether to hear MCMS’ appeal or summarily deny review of the appeal. If the SBE decides to hear the appeal, then, in a separate item, the SBE will hear the appeal, and thereafter may affirm the determination to deny the petition of the governing board of the school district or the county board of education or both, or may reverse the determination to deny the petition but only upon a determination that there was an abuse of discretion, pursuant to *EC* Section 47605(k)(2)(E). If the SBE determines that there are no grounds to hear the appeal, then it may summarily deny the appeal and the decisions of the district and county board of education will stand.

**Mayacamas Charter Middle School’s Appeal Submission**

Following the NCBOE’s denial of the MCMS petition on March 15, 2022, MCMS submitted the following items to the SBE on April 14, 2022, pursuant to *EC* Section 47605(k)(2)(A):

* A written submission of MCMS’ appeal, which includes allegations of abuse of discretion by governing boards of the NVUSD and NCBOE
* MCMS’ charter petition
* Findings by NVUSD governing board
* The documentary record from NVUSD governing board
* Findings by NCBOE
* The documentary record from NCBOE

**Mayacamas Charter Middle School’s Allegations of Abuse of Discretion**

In its written submission, MCMS stated the following allegations of abuse of discretion by the NVUSD to the SBE:

* The factual findings adopted by the District Board on December 9, 2021, are not supported by substantial evidence in the record.
* The District Board failed to proceed in the manner required by law because the District did not provide a fair and impartial petitioning process.

In its written submission, MCMS stated the following allegations of abuse of discretion by the NCBOE to the SBE:

* The County Board’s March 15, 2022, decision to deny the MCMS petition is not supported by the purported factual findings in the County’s post-denial declaration/findings ratified on April 5, 2022.
* The County Board’s post-denial factual findings are not supported by evidence in the documentary record.
* The County Board failed to proceed in the manner required by law when it failed to either grant the charter petition or timely adopt specific, written factual findings to deny.

**District’s Opposition to Mayacamas Charter Middle School’s Appeal**

At its December 9, 2021, governing board meeting, NVUSD denied the MCMS charter petition based on the following findings:

* The petition presents an unsound educational program (*EC* Section 47605[c][1]).
* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition (*EC* Section 47605[c][2]).
* The petition does not contain reasonably comprehensive descriptions of Elements (A) through (O) of *EC* Section 47605(c)(5).
* The proposed charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate (*EC* Section 47605[c][7]).

On May 12, 2022, pursuant to *EC* Section 47605(k)(2)(C), NVUSD submitted to the SBE a written opposition to MCMS’ appeal with specific citations to the documentary record detailing how it did not abuse its discretion in denying the petition. NVUSD’s written opposition was submitted within 30 days of NVUSD’s receipt of the appeal.

NVUSD’s opposition argues the following in response to MCMS’ allegations:

* NVUSD’s review process was fair and compliant with *EC*.
* NVUSD’s findings in support of denial were supported by the evidence in the record.

**County’s Opposition to Mayacamas Charter Middle School’s Appeal**

At its December 9, 2021, meeting, NCBOE denied the MCMS charter petition based on the following finding:

* MCMS is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate (*EC* Section 47605[c][7]).

On June 2, 2022, pursuant to *EC* Section 47605(k)(2)(C), NCBOE submitted to the SBE a written opposition to MCMS’ appeal with specific citations to the documentary record detailing how it did not abuse its discretion in denying the petition. NCBOE’s written opposition was submitted within 30 days of NCBOE’s receipt of the appeal.

NCBOE’s opposition argues the following in response to MCMS’ allegations:

* The County Board complied with all procedural obligations in the law regarding the MCMS petition.
* The County Board properly adopted specific, written factual findings in support of its decision to deny the petition.
* The County Board’s factual findings are supported by substantial evidence in the documentary record.
* The County Board provided petitioners with all transcripts required by law, and did not abuse its discretion by not providing a transcript of the April 5, 2022, board meeting.

## California Department of Education Review of Mayacamas Charter Middle School’s Appeal

MCMS has met all appeal timelines, and submitted a record of the findings from NVUSD and NCBOE, and a written submission with citations to the documentary record, pursuant to *EC* Section 47605(k)(2)(A).

MCMS appeals both NVUSD’s and NCBOE’s decisions, and alleges that both decisions were the result of abuses of discretion. The appeal was accompanied by the suggested template provided by the CDE to assist petitioners in submitting a complete appeal. In the space to list the facts to support the appeal, supported by specific citations to the documentary record, MCMS did not list any facts but instead referenced an attached exhibit, prepared by MCMS, which outlines the alleged abuses of discretion.

NVUSD made four findings in support of its decision to deny the MCMS petition (Findings by NVUSD). MCMS’ appeal challenges a portion of one of the four NVUSD’s findings (“Petitioners are unlikely to successfully implement the program”) but does not challenge other evidence relied upon by NVUSD (MCMS Written Submission, pp. 21–22). In its attached exhibit, MCMS’ treatment of the NVUSD’s decision is limited, and consists primarily of an allegation that the process was unfair and biased (MCMS Written Submission, pp. 20–21), but does not list any specific facts to support the alleged abuse of discretion.

NCBOE had one finding for denial of the MCMS petition (“MCMS is demonstrably unlikely to serve the interests of the entire community,” Findings by NCBOE). MCMS’ appeal provides limited detail challenging NCBOE’s finding and does not challenge specific evidence relied upon by NCBOE (MCMS Written Submission, pp.17–20). In its attached exhibit, MCMS asserts that NCBOE did not issue a decision and adopt findings in a timely manner (MCMS Written Submission, pp. 14–16). In their written oppositions, both NVUSD and NCBOE, respectively, state that NCBOE’s actions were within the timeline required by statute (Written Opposition from NVUSD, p. 14 and 72, Written Opposition from NCBOE, p. 6 and 25).

## Conclusion

MCMS has submitted all required documents and met all timelines, pursuant to *EC* Section 47605(k)(2)(A).

In MCMS’ claims against NVUSD’s and NCBOE’s findings, and in its procedural allegation against NVUSD, MCMS’ written submission contains limited detail of how NVUSD or NCBOE abused their discretion in the denial of the charter petition, pursuant to *EC* Section 47605(k)(2)(A).

However, the appeal and written oppositions demonstrate that there is a factual dispute concerning the procedural history of NCBOE’s denial of MCMS’ petition; therefore, the CDE recommends that the SBE hear the appeal.

**Mayacamas Charter Middle School’s Appeal Documents**

The following documents were considered by the CDE in its review of the MCMS appeal:

* MCMS Written Submission with Citations, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a1.pdf>
* MCMS Petition, as denied by the NVUSD and the NCBOE, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a2.pdf>
* Findings by NVUSD, which are available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a3.pdf>
* Documentary Record from NVUSD, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a4.pdf>
* Findings by NCBOE, which are available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a5.pdf>
* Documentary Record from NCBOE, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a6.pdf>
* Written Opposition from NVUSD, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a7.pdf>
* Written Opposition from NCBOE, which is available on the August 2022 ACCS Meeting Agenda web page at [https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a8.pdf](https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item02a8.pdf" \o "August 2022 ACCS Meeting Agenda web page)

## Attachment

None.