

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

lab-csd-sep22item03

# California State Board of Education September 2022 Agenda Item #12

## 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 the Allegations of Abuse of Discretion made by 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, Public Hearing

## 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 affirm the NVUSD and NCBOE decisions to deny the petition to establish MCMS, pursuant to *EC* Section 47605(k)(2)(E), based on the CDE’s review of the documentary record and MCMS’ appeal, which fails to show an abuse of discretion by either NVUSD or NCBOE in their determinations to deny the MCMS petition.

**Standard of Hearing on Abuse of Discretion**

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 hear the appeal and thereafter 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.

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

In its written submission, MCMS states 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 states 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 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 Petitioners’ Appeal Submission

Based on the CDE’s review of the appeal and the documentary record, MCMS has not met its burden of detailing, with specific citations to the documentary record, how NVUSD or NCBOE abused their discretion in the denial of the charter petition, pursuant to *EC* Section 47605(k)(2)(A), which states the following:

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**.

In order to support petitioners in meeting this requirement, the CDE website provides an optional template for petitioners to use to detail alleged abuses of discretion for each of a district’s or county’s findings, along with corresponding citations to evidence that support claims against each finding. MCMS submitted the CDE’s template, but the template merely referenced MCMS’ own written submission and did not provide any further specific facts, details, or information (MCMS Written Submission, pp. 31–32).

MCMS’ written submission lacks detail and does not contain specific citations to the documentary record that support its appeal as required by statute. Although the petitioners did provide 63 references to the documentary record, the references do not establish the evidentiary support necessary to show how the District and County abused their discretion in their decisions to deny the charter petition.

For example, in its written submission, MCMS claims that NVUSD’s findings are not supported by substantial evidence (MCMS Written Submission, pp. 21–22). It is important to note that “substantial evidence” is not the legal standard to be applied in this instance and is not required by *EC*. Further, this section of the written submission contains seven endnotes with citations to the documentary record; however, MCMS has not detailed how any of these citations support or establish MCMS’ claim that NVUSD’s findings lack evidentiary support. In particular, one of the endnotes in this section refers to MCMS’ entire 28-page response to the NVUSD staff report; however, the written submission fails to include specific citations within MCMS’ response to the NVUSD staff report to support MCMS’ appeal, and fails to explain how its response to the NVUSD staff report supports its claim that NVUSD abused its discretion in denying the MCMS petition (MCMS Written Submission, p. 22). NVUSD’s denial was based on four findings under *EC* Section 47605(c), but MCMS’ written submission includes only limited detail relating to a portion of one finding and does not specifically address each finding.

MCMS also claims that NCBOE’s findings are not supported by evidence in the documentary record (MCMS Written Submission, pp.18–20). While this section contains nine citations to the documentary record, MCMS does not explain how NCBOE’s findings lack evidentiary support. MCMS’ written submission details MCMS’ disagreement with NCBOE’s conclusions but does not explain how any of the citations specifically support MCMS’ claim that NCBOE abused its discretion in denying the MCMS petition.

The above examples demonstrate some of the deficiencies in MCMS’ written submission, which fails to provide the argument or evidence necessary for the SBE to be able to evaluate or find an abuse of discretion in the District’s and County’s decisions to deny to the charter petition.

A comprehensive summary of NVUSD's and NCBOE’s findings regarding the MCMS petition, including MCMS' allegations of abuse of discretion, and NVUSD's and NCBOE’s written oppositions, is provided as Attachment 1.

## California Department of Education Review of Claims Regarding the District’s and County’s Findings

MCMS states the following claims regarding the NVUSD’s and NCBOE’s findings:

* The factual findings adopted by the District Board on December 9, 2021, are not supported by substantial evidence in the record (MCMS Written Submission, p. 21).
* 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 (MCMS Written Submission, p. 17).
* The County Board’s post-denial factual findings are not supported by evidence in the documentary record (MCMS Written Submission, p. 18).

As detailed above, due to the lack of specific citations in MCMS’ challenges to the NVUSD’s and NCBOE’s findings, and lack of detail to support MCMS’ allegations that NVUSD’s or NCBOE’s decisions to deny the MCMS petition constitute an abuse of discretion, there is insufficient evidence for the SBE to consider and ultimately find an abuse of discretion related to NVUSD’s or NCBOE’s findings in support of denying MCMS’ petition.

## California Department of Education Review of Procedural Allegations Against the District

MCMS states the following claim of procedural violation by the NVUSD:

The District Board failed to proceed in the manner required by law because the District did not provide a fair and impartial petitioning process (MCMS Written Submission, p. 20).

MCMS makes the following specific assertions in support of the above claim:

* Petitioners were permitted to communicate only with the District’s legal counsel (MCMS Written Submission, p. 21).
* The District demanded petitioners attend a capacity interview, which focused on the two parent lead petitioners’ lack of experience to themselves operate and run the school—which is not what is proposed in the petition. The meeting never happened, which the District cited as support for denial (MCMS Written Submission, p. 21).
* The District Staff Report is self-serving and one-sided (MCMS Written Submission, p. 21).
* There was no discussion amongst the District Board members at the meeting on December 9, 2021 where the MCMS petition was denied, and the video feed of the virtual meeting went blank for nearly 10 minutes during a break right in the middle of the Board’s deliberations (MCMS Written Submission, p. 21).
* The Superintendent and each District Board member prejudged the facts before the December 9 meeting, and came prepared with written statements in opposition to the MCMS petition (MCMS Written Submission, p. 21).

Each of the statements above includes a citation to the documentary record; however, the evidence referenced in the citations does not demonstrate how NVUSD’s process for reviewing MCMS’ petition was unfair. For example, two of the citations refer to documents that MCMS prepared, which make similar allegations but do not specify how or why the “act” complained of is procedurally unfair. An additional citation references a public comment made by a parent in the District but does not say why the comment is evidence that the NVUSD’s actions were procedurally unfair. In another instance, the citations refer to 28 pages of the transcript from the NVUSD Board’s December 9, 2022, meeting; however, this citation lacks specificity and undermines MCMS’ claim that there was no discussion among NVUSD Board members at that meeting.

Additionally, the fact that the Board members had prepared statements, which they read into the record, does not demonstrate that NVUSD did not consider the petition, the staff recommendations, or the MCMS’ responses to the staff recommendations.

## California Department of Education Review of Procedural Allegations Against the County

MCMS states the following claim of procedural violation by the NCBOE:

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 (MCMS Written Submission, p. 14).

Pursuant to *EC* Section 47605(b), the governing board of the school district and/or county board of education shall either grant or deny the charter within 90 days of receipt of the petition. MCMS asserts that its submission of its petition to NCBOE on   
December 21, 2022, required NCBOE to grant MCMS’s petition or adopt written findings to deny by March 21, 2022 (MCMS Written Submission, p. 15). The documentary record shows, and all parties agree, that NCBOE voted to deny MCMS’s petition on March 15, 2022, and adopted written findings on April 5, 2022 (MCMS Written Submission, p. 15; Findings by NCBOE, p. 2; Written Opposition from NVUSD, pp. 2-3; Written Opposition from NCBOE, p. 3).

Both NCBOE and NVUSD state that, while MCMS initially submitted its petition to NCBOE on December 21, 2022, MCMS failed, at that time, to fulfill the requirements of *EC* Section 47605(k)(1)(A), which states the following:

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. The petitioner shall submit the petition to the county board of education within 30 days of a denial by the governing board of the school district. **At the same time the petition is submitted to the county board of education, the petitioner shall also provide a copy of the petition to the school district**.

NVUSD and NCBOE provided evidence along with their written oppositions, which establish that MCMS did not submit its complete appeal to both NVUSD and NCBOE, pursuant to *EC* 47605(k)(1)(A)(i), until January 5, 2022 (Written Opposition from NVUSD, pp. 14 and 72, Written Opposition from NCBOE, pp. 6 and 25). As the MCMS petition was not properly submitted in accordance with statute until January 5, 2022, NCBOE’s 90-day statutory timeline, pursuant to *EC* Section 47605(b), began on that date. NCBOE denied the MCMS petition on March 15, 2022, and adopted written findings supporting the denial on April 5, 2022, which is within the 90-day timeline required in in statute.

## Conclusion

After reviewing the complete documentary record and supporting documentation submitted by the parties to this appeal, the CDE has determined that neither the NVUSD nor NCBOE abused its discretion in reaching their decisions to deny MCMS’ charter petition. Therefore, the CDE recommends the SBE affirm NVUSD’s and NCBOE’s decisions to deny MCMS’ charter petition.

## 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> .

## Attachment

* **Attachment 1:** California Department of Education Summary of Mayacamas Charter Middle School Appeal (12 Pages)