

This document was provided, as is, to the California Department of Education (CDE) by the **Napa County Board of Education** for Agenda Item 2 of the Advisory Commission on Charter Schools August 2022 Meeting Agenda and is posted to the CDE website to meet the legal requirements of California *Education Code* Section 33009.5. Minor formatting changes may have occurred during document remediation.

For more information regarding the content of this material, please contact the Charter Schools Division by phone at 916-322-6029 or by email at charters@cde.ca.gov.

Attachment 8

Written Opposition from Napa County Board of Education

NAPA COUNTY BOARD OF EDUCATION
2121 Imola Avenue
Napa, CA 94559

June 1, 2022

Stephanie Farland, Director
Charter Schools Division
California Department of Education
1430 N Street, Suite 5401
Sacramento, CA 95814

VIA EMAIL ONLY
CharterAppeals@cde.ca.gov

Re: Napa County Board of Education's Opposition to Mayacamas Charter Middle School's Appeal of the Denial of its Establishment Charter Petition to the State Board of Education

Dear Director Farland:

On behalf of the Napa County Board of Education ("County Board"), I submit this Opposition to Mayacamas Charter Middle School's appeal ("MCMS Appeal") to the State Board of Education ("SBE") regarding denial of the establishment of a charter school. The County Board did not abuse its discretion in denying MCMS's petition for establishment of a charter school ("Petition").

I. INTRODUCTION

Many proposed charter schools are well-intentioned, identify an educational program that will be beneficial to their enrolled students, and identify a target group of students to serve, yet the proposed charter schools will be a detriment to the overall communities in which they seek to locate. Prior to Assembly Bill ("AB") 1505, passed in October 2019, the law required school districts to grant petitions for charter schools that might hurt their community if they were legally sound petitions otherwise. Following AB 1505, the law permits denial of a charter school because it will not serve the interests of the entire community.

MCMS, or its historical mirrors, is the type of charter school under consideration when the Legislature passed AB 1505 and added the ability for a school district to deny a charter petition if it was demonstrably unlikely to serve the interests of the entire community in which it proposes to locate. Although MCMS would serve a small number of students in centrally located Napa, the impacts of the charter would be felt throughout the Napa Valley Unified School District ("NVUSD") as MCMS's existence would cause NVUSD to have to make cuts to the arts, physical education, social/emotional supports, and intervention supports. Accordingly, the

County Board denied the MCMS Petition because it would substantially undermine the education of all students in the NVUSD.

The MCMS Appeal paints a story of a County Board that failed to comply with its procedural obligations under the law. Although untrue, MCMS relies on these arguments because it has no substantive arguments to make. It is well documented that NVUSD has been in declining enrollment since at least 2014 and has been deficit spending and making cuts to educational programs and staffing to mitigate the impacts of declining enrollment for years. (*See infra.*) Still, NVUSD faces financial insolvency in the next five years if it does not continue to make significant cuts to staffing and programming, and MCMS will push NVUSD into financial insolvency at least one year sooner.

The MCMS Appeal acknowledges these facts but wants the SBE to believe that the desire of the families of its 336 students to go to a small middle school should outweigh the needs of the 16,500 students currently enrolled in NVUSD schools. This cannot be, particularly after the adoption of AB 1505, permitting the consideration of community impact into the charter school approval process. Neither the County Board nor the NUVSD abused their discretion in denying the MCMS Petition; the SBE should accordingly uphold the LEAs' decisions.

II. RELEVANT FACTUAL BACKGROUND

On December 9, 2021, the NVUSD Board of Education denied a petition for establishment of a charter school within its boundaries, the Mayacamas Charter Middle School ("MCMS"). The MCMS Petition proposed to establish a middle school in Napa that would use "project-based learning, online learning, and other engaging strategies, [with] an emphasis on students' social-emotional development" to individualize and differentiate instruction.

On December 21, 2021, Petitioners emailed an appeal of NVUSD's denial of their Petition with the Napa County Superintendent of Schools ("County Superintendent"), but did not follow the procedure in the law. (*See infra.*) On January 5, 2022, Petitioners properly submitted their appeal to the NUVSD, which, coupled with their earlier submission to the County Superintendent, effectuated the appeal to the County Board.

The County Board held a public hearing as required by Education Code section 47605(b) on February 1, 2022. On March 15, 2022, the County Board denied MCMS's Petition based on Education Code section 47605(c)(7). The County Board directed legal counsel to work with designated Board members to draft factual findings reflective of its decision and discussion. Those findings were affirmed by the Board President and provided to Petitioners on March 22, 2022. The County Board ratified the written findings on April 5, 2022.

The County Board identified serious concerns regarding MCMS; namely, that MCMS is demonstrably unlikely to serve the interests of the entire community in which the school was proposing to locate. NVUSD already is implementing significant cuts to programming and staffing to meet budget deficits. MCMS's projected enrollment and corresponding loss of enrollment to NVUSD will compound the fiscal distress on NVUSD's horizon. With the addition of MCMS as a charter school within NVUSD, NVUSD will be forced to cut staffing, close

additional schools, reduce programs and services to students, and reduce expenditures on current contracts. Specifically, NVUSD will be faced with the elimination of elementary school music and physical education programs; the elimination of counselors, intervention teachers, and electives; and/or the closure of small elementary schools located in the City of Napa.

III. THE ABUSE OF DISCRETION STANDARD

In order for the SBE to overturn the decision of the County Board, the SBE must make a determination that the County Board abused its discretion.¹ The abuse-of-discretion standard is a high bar for appellants to prove, particularly in the school context. A decision of a Local Education Agency (“LEA”) is an abuse of discretion only if it is “arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.”² “In determining whether an abuse of discretion has occurred, an appellate body may not substitute its judgment for that of the administrative board, and if reasonable minds may disagree as to the wisdom of the board’s action, its determination must be upheld.”³

The SBE should look to caselaw regarding an ordinary writ of mandate under Section 1085 of the California Code of Civil Procedure to establish its abuse-of-discretion standard. Public agency decisions – if reviewable by a court – typically are reviewed via a writ of mandate.⁴ The County Board’s decision in this matter is subject to judicial review as an ordinary mandate under Section 1085 of the California Code of Civil Procedure, as its decision regarding establishment of MCMS is a quasi-legislative, not a quasi-judicial action.⁵

Notably, the MCMS Appeal cites standards for abuse of discretion that are inapplicable to this situation.⁶ The MCMS Appeal relies on Section 1094.5(b) of the California Civil Code of Procedure. Section 1094.5(b) governs administrative mandate proceedings, which permit a petitioner to challenge an administrative decision only after an adjudicatory hearing in which a hearing is required, evidence is required to be taken, and discretion in the determination of facts is vested in the inferior board.⁷ This is not the case here, making the administrative mandate process – and its governing caselaw – inapplicable to this appeal.

¹ Educ. Code § 47605(k)(2)(E).

² *Khan v. Los Angeles City Employees’ Retirement System* (2010) 187 Cal.App.4th 98, 106, 113 Cal.Rptr.3d 417.

³ *Manjares v. Newton* (1966) 64 Cal.2d 365, 370–371, 49 Cal.Rptr. 805, 411 P.2d 901 (internal citations omitted (reviewing an ordinary writ of mandate)).

⁴ Cal. C.C.P. § 1085.

⁵ *Id. See, e.g., Cal. Sch. Bds. Ass’n v. State Bd. of Educ.* (2010) 186 Cal.App.4th 1298, 1314, n.12 (holding that the decision to grant a charter petition is quasi-legislative as it creates a new “school district”); *Ridgecrest Charter Sch. v. Sierra Sands Unified Sch. Dist.* (2005) 130 Cal.App.4th.986; 30 CalRptr.3d 648) (reviewing a school district’s alleged inadequate response to a charter school’s request to use district facilities under Section 1085).

⁶ Appeal Packet, Exh. 6, p.9.

⁷ Cal. C.C.P. § 1094.5; *Eureka Teachers Assn. v. Bd. of Educ.* (1988) 199 Cal.App.3d 353, 361, 244 Cal.Rptr. 240.

Moreover, the cases cited by MCMS in support of its purported legal standard are not applicable to school districts. Instead, they all consider decisions of agencies that are not provided with the same substantial deference in decision making as LEAs.⁸

Since 1976, the Legislature has ceded substantial discretionary control over public education to local school districts.⁹ Prior to this date, school districts “possessed little, if any, power to act without express legislative or administrative authorization.”¹⁰ The Legislature clarified the extent of local control in 1987, enacting Section 35160.1 of the Education Code, which reads:

(a) The Legislature finds and declares that school districts, county boards of education, and county superintendents of schools have diverse needs unique to their individual communities and programs. Moreover, in addressing their needs, common as well as unique, school districts, county boards of education, and county superintendents of schools should have the flexibility to create their own unique solutions.

(b) In enacting Section 35160, it is the intent of the Legislature to give school districts, county boards of education, and county superintendents of schools broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district, the county board of education, or the county superintendent of schools are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriated. It is the intent of the Legislature that Section 35160 be liberally construed to effect this objective.

(c) The Legislature further declares that the adoption of this section is a clarification of existing law under Section 35160.¹¹

There is a correlative limitation upon the authority of courts, and, in this case, the State Board of Education, to control the actions of LEAs. “The United States Supreme Court has long recognized that school boards have broad discretion in the management of school affairs. . . . As a result, it is generally permissible and appropriate for local boards to make educational decisions based upon their personal social, political and moral views.”¹² In other words, appellate bodies “should give substantial deference to the decisions of local school districts and boards within the scope of their broad discretion, and should intervene *only in clear cases of abuse of discretion.*”¹³

⁸ See generally Appeal Packet, Exh. 6.

⁹ Cal. Const., art. IX § 14; Educ. Code § 35160 (“The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.”).

¹⁰ *Johnson v. Bd. of Educ.* (1986) 179 Cal.App.3d 593, 600–601, 224 Cal.Rptr. 885.

¹¹ Educ. Code § 35160.1; see also *id.* § 14000 (“The system of public school support should be designed to strengthen and encourage local responsibility for control of public education.”).

¹² *McCarthy v. Fletcher* (1989) 207 Cal.App.3d 130, 139, 254 Cal.Rptr. 714; cf. *Bd. of Educ. v. Pico* (1982) 457 U.S. 853, 866, 102 S.Ct. 2799, 2807–08, 73 L.Ed.2d 435.).

¹³ *Dawson v. East Side Union High Sch. Dist.* (1994) 28 Cal.App.4th 998, 1017-1018, 34 Cal.Rptr.2d 108 (italics added).

In summary, the SBE should review this appeal under the abuse-of-discretion standard applicable to an ordinary writ of mandate, not that of an administrative mandate. This is the appropriate standard applicable to LEA decisions regarding charter schools and is reflective of the significant local control granted to LEAs under the California Constitution and the Education Code.

IV. THE COUNTY BOARD DID NOT ABUSE ITS DISCRETION IN DENYING MCMS'S PETITION FOR ESTABLISHMENT OF A CHARTER SCHOOL.

The County Board's decision to deny the Petition for establishment of MCMS was not arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. Instead, the County Board followed all procedures provided for in the law, reviewed all relevant written materials, and listened to information provided by Petitioners, staff of the Napa County Office of Education ("NCOE"), and the general public. Following careful consideration and review of all information, the County Board denied SBA's petition based on legally permissible reasons and adopted supporting written findings. Accordingly, the County Board did not abuse its discretion in denying the Petition.

The MCMS Appeal tries to argue otherwise, but MCMS's arguments are either not accurate per the documentary record or misapply applicable law. Rather than address the core infirmities in its Petition – that it will not benefit the entire community in which it intends to locate - the Charter School tries to deflect attention to irrelevant and marginal issues. Each argument is discussed below.

A. The County Board complied with all procedural obligations in the law regarding the MCMS Petition.

The County Board followed all procedures outlined in Section 47605 of the Education Code with respect to consideration and denial of the Petition for establishment of MCMS.

1. *Petitioners submitted their appeal to the County Board and the NVUSD on January 5, 2022.*

In their appeal, Petitioners misstate the date of submission of their Petition to the County Board on appeal. Petitioners did email their appeal to the Napa County Superintendent of Schools on December 21, 2021. The statute, however, requires 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.¹⁴

On December 31, 2021, following direction from the County Superintendent to submit their appeal in accordance with the legal requirements, Petitioners submitted a partial version of

¹⁴ Educ. Code § 47605(k)(1)(A)(i).

their appeal to NVUSD.¹⁵ In that email, Petitioners are clear that they “did not transmit the petition itself to the District at the same time we transmitted it to the County Board with our appeal.”¹⁶ Petitioners are clear that their appeal “includes the other materials we understand are required by the County Board and by statute, such as the list noting where non-substantive changes are required to reflect the County Board as authorizer, and our responses to the District’s staff report and findings.”¹⁷ However, they also are clear that the only item provided to NVUSD in this email “is a complete copy of the petition we present to the County Board for review and consideration.”¹⁸

NVUSD informed the County Superintendent that it had not yet been properly noticed regarding MCMS’s appeal.¹⁹ Proper notice of the entirety of the appeal packet sent to the County Board was necessary, as NVUSD had concerns that MCMS had altered their Petition on appeal, which would require remand under Education Code section 47605(k)(1)(A)(i).²⁰

On January 5, 2022, Petitioners finally submitted their appeal to the NVUSD, as required by statute.²¹ Accordingly, the County Board’s timelines for consideration of the MCMS Petition began on January 5, 2022, not December 21, 2021, as indicated in the MCMS Appeal.²² It is unclear why Petitioners seek to conceal the true date of submission of their appeal from the SBE; but it is clear that, as of December 31, 2021, they were aware that the NVUSD and the County Superintendent did not believe they had properly submitted their appeal as required by statute.

2. *The County Board denied the Petition and adopted written factual findings within 90 days of January 5, 2022, which was not an abuse of discretion.*

The law requires that “the governing board . . . shall either grant or deny the charter within 90 days of receipt of the petition.”²³ The County Board held a second public hearing and denied the Petition on March 15, 2022, 69 days following the complete submission of the Petition to the County Board and NVUSD and 84 days following the improper submission of the Petition to the County Board only.²⁴ The MCMS Appeal does not try to argue otherwise; instead, it is clear that the County Board took action and denied the MCMS Petition on March 15, 2022.²⁵

¹⁵ County Opposition, Exhibit B.

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ County Opposition, Exhibit C.

²⁰ County Board Record, Exh. 5 “Remand Documentation.”

²¹ County Opposition, Exhibit D.

²² The appeal indicates that the County Board “was fully aware of the March 21 deadline,” a statement based on a date in a draft resolution. (Appeal Submission, Exh. 6 at p.11.) That draft resolution, prepared by legal counsel, should not be construed to be evidence of the County Board’s awareness of any such deadline. It was never reviewed, considered, or discussed by the County Board, and the March 21, 2022, date was included as a placeholder to be discussed as necessary. (County Opposition, Exhibit A.)

²³ Educ. Code § 47605(b).

²⁴ County Board Record, Exh. 7 “3-15-2022 Board Agenda & Packet”; Exh. 8 “3-15-2022 Board Minutes”; Exh. 9 “3-15-2022 Recording Transcript”; Exh. 10 “3-15-2022 Board Meeting – Audio Recording.”

²⁵ Appeal Packet, Exh. 6 at pp. 2, 6-12.

Instead, Petitioners attempt to argue on appeal that the law also required the County Board to adopt written factual findings at the March 15, 2022, board meeting. The law requires that any denied petition be supported by “written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings.”²⁶ However, the law does not require that the written factual findings be made concurrently with the decision to deny or even that written factual findings be made within the 90-day timeline.²⁷

Regardless, the County Board did, in fact, complete written factual findings within 90 days of the complete submission of the appeal. The County Board chose not to adopt NCOE’s factual findings as their own Board’s factual findings.²⁸ Following a vote to deny the Petition, the County Board delegated two Board members to work with legal counsel to finalize written factual findings that reflected the oral discussion regarding the specific reasons for denial.²⁹ The County Board specifically detailed what they wanted in the written factual findings.³⁰ Written factual findings, signed by the County Board President, were provided to Petitioners on March 22, 2022.³¹ Under the Napa County Board Bylaw 9121, the County Board President had the authority to certify and attest to actions taken by the Board when required and to sign any paper or document as required or authorized by action of the Board, as was the case here.³² Those same factual findings were ratified by the Board and provided to Petitioners on April 5, 2022.³³ This was, at worst, a harmless error created by the ambiguity in Education Code section 47605 as to whether written factual findings must be adopted within the 90-day timeline. The County Board provided Petitioners with written findings as soon as possible following the Board’s denial of the Petition, which it did at the public hearing at which it considered NCOE’s recommendations and Petitioners’ responses. Petitioners do not allege, nor could they, that the time between the County Board’s denial and its ratification of the written findings caused them any harm. In the 23 days between provision of the findings and the filing of the appeal, Petitioners clearly reviewed the findings, crafted arguments in opposition of those findings, and were able to timely obtain a copy of the documentary record from the County Board.

Petitioners take issue with the fact that the County Board delegated drafting of factual findings consistent with its discussion at the public meeting to its legal counsel and two County Board members, calling “[t]he entire process . . . nonsensical.”³⁴ It is unclear whether Petitioners

²⁶ Educ. Code § 47605(c).

²⁷ *Id.*

²⁸ Appeal Packet, Exh. 5 (hereinafter “County Board Record”), Exh. 10 “3-15-22 Board Meeting – Audio Recording” at minutes 43 to 47.

²⁹ County Board Record, Exh. 10 “3-15-22 Board Meeting – Audio Recording” at 5:08:12 to 5:19:57. The Board was permitted to delegate fewer than a quorum of its members to this temporary committee. (Gov’t Code § 54952(b).)

³⁰ *Id.*

³¹ County Board Record, Exh. 11 “NCBOE Findings”; County Opposition, Exhibit E. Legal counsel for the County Board provided these findings prior to ratification as Petitioners had expressed concern with the timelines and meeting the deadline for being placed on the SBE’s July 2022 meeting agenda. At no time did legal counsel for MCMS express any concerns with the timeline proposed for ratification of the factual findings.

³² County Opposition, Exhibit F.

³³ County Board Record, Exh. 11 “NCBOE Findings.”

³⁴ Appeal Packet, Exh. 6 at p.2.

have any experience with school board meetings, as it is common, customary, and habitual for LEA boards to have staff and/or legal counsel draft documents outside of meetings that reflect their oral decisions. It is unclear what Petitioners expected to occur in this situation – was the County Board supposed to draft the findings during the meeting?³⁵ Are Petitioners insinuating that the County Board was required to adopt the findings drafted by the NCOE?³⁶ Both options are demonstrably untenable; a board meeting is not an appropriate venue to draft factual and legal findings, nor does the code require that the County Board adopt staff recommendations.

Petitioners also take issue with the fact that the County Board “ratified” the factual findings at their April 5, 2022, meeting.³⁷ Because the County Board President had already used his authority to attest to the factual findings, ratification of the findings was the correct legal procedure to use in this situation.³⁸

The SBE should not get distracted by Petitioners’ uninformed interpretation of how the County Board should have operated when deciding to make independent factual findings from those proffered by the NCOE. The County Board denied the Petition and adopted written factual findings within the timeline required in the law.

3. *The 90-day timeline for County Board action on a charter petition is directory, not mandatory, so even if there was a procedural error, the County Board did not abuse its discretion.*

Even assuming that the County Board was required to adopt factual findings within the 90-day timeline, *and* that timeline started when Petitioners purport it did, that requirement is directory, not mandatory. The law requires that the County Board take action to grant or deny a charter petition within 90 days of receipt and is silent as to when factual findings must be promulgated.³⁹ Because that timeline is directory, a minor extension in time of compliance does not invalidate the County Board’s actions or evince an abuse of discretion. At most, it is a non-prejudicial harmless error, especially when balanced against the Petitioner’s many mistakes in providing a timely appeal to both the County Board and the NVUSD.

Whether a statutory requirement is “mandatory” or “directory” is determined by its effect. If failing to follow a procedural requirement does not invalidate the action taken, the

³⁵ In fact, the County Board’s President specifically acknowledged that the board meeting environment was not conducive to writing factual findings. (County Board Record, Exh. 10 “3-15-22 Board Meeting – Audio Recording” at 5:12:21.)

³⁶ This is not required in law. It is important to note that NCOE staff are staff of the County Superintendent of Schools, not the County Board of Education.

³⁷ Bizarrely, Petitioners only use the words ratify, ratified, and ratification in quotation marks, as if to call into question the County Board’s ability to ratify an act taken by the County Board President. (Appeal Submission, Exh. 6 at pp. 2, 7-8, 11.) Petitioners also describe the County Board factual findings as “purported,” as if they are refusing to acknowledge the County Board’s April 5, 2022, action. (*Id.* at pp. 2, 7-8, 13, 15.)

³⁸ Ratification is the “[c]onfirmation and acceptance of a previous act, thereby making the act valid from the moment it was done.” (Black’s Law Dictionary (11th Ed. 2019) (noting that “[t]his sense includes action taken by the Legislature to make binding a treaty negotiated by the executive.”).)

³⁹ Educ. Code § 47605(b), (c).

requirement is typically “directory.”⁴⁰ If failing to follow a procedural requirement does invalidate the action taken, the requirement is typically “mandatory.”⁴¹ As a general rule, time limits applicable to government action are deemed to be directory unless the Legislature clearly expresses a contrary intent.⁴² Typically, intent to make a time limit mandatory, instead of directory, is evidenced by a self-executing consequence.⁴³ Conversely, a time limit will be considered mandatory if there are consequences or penalties when the governmental entity does not act within the given time frame.⁴⁴

Here, the only consequence the Legislature put into place for a County Board that fails to act on an appeal of a school district’s denial of an initial charter petition occurs at 180 days of inaction. Specifically, the Education Code provides that:

If either the county board of education or the state board fails to act on a petition within 180 days of receipt, the decision of the governing board of the school district to deny the petition shall be subject to judicial review.⁴⁵

In other words, the time requirements for taking action regarding a charter petition are directory unless the County Board does not act within 180 days of receipt. Here, only 105 days elapsed from when Petitioners first attempted to submit their petition for appeal to the County Board – December 21, 2021 – to when the County Board ratified the factual findings – April 5, 2022. Even assuming these are the correct dates to use in calculating the time frames for action, the County Board did not abuse its discretion as the 90-day timeline was still directory when it ratified the factual findings.

Indeed, Petitioners make no argument that they were prejudiced by a 15-day delay, such as a less favorable outcome or unavailability of evidence.⁴⁶ Instead, Petitioners attempt to compare this matter to an irrelevant case – *Tran v. County of Los Angeles*.⁴⁷ In *Tran*, the County had a 30-day timeline in which to render a decision on a County Use Permit (“CUP”) after hearing; however, the County neither granted nor denied the CUP and instead took action to adopt a resolution of intent to approve a decision based on modified findings.⁴⁸ Here, the County Board clearly took action to deny the Petition within the 90-day timeline. Unlike in *Tran*, where

⁴⁰ *California Correctional Peace Officers Assn. v. State Personnel Bd.* (1995) 10 Cal.4th 1133, 1145 (hereinafter “CCPA”).

⁴¹ *Id.*

⁴² *Id.*

⁴³ *State Comp. Ins. Fund v. Workers’ Comp. Appeals Bd.* (2016) 248 Cal.App.4th 349, 365.

⁴⁴ *Cnty. of Sacramento v. Ins. Co. of the W.* (1983) 139 Cal.App.3d 561, 565–566.

⁴⁵ Educ. Code §47605(k)(6).

⁴⁶ *See, e.g., Alpha Nu Assn. of Theta Xi v. Univ. of Southern Cal.* (2021) 62 Cal.App.5th 383, 407 (2021) (finding that university’s hearing of a complaint regarding fraternity hazing that was submitted two months after the deadline did not prejudice the fraternity chapter, where there was “little prospect that this modest untimeliness would obstruct the investigation or prejudice Theta Xi’s defense” and the fraternity chapter did “not claim that any evidence had gone stale.” *Cf. Tran v. County of Los Angeles*, 74 Cal.App.5th 154, 173 (2022) (finding that Board’s erroneous issuance of CUP decision after 30-day deadline did result in less favorable outcome to Plaintiff, because the Board lacked jurisdiction after the deadline and therefore the more favorable decision of the Commission should have been deemed affirmed).

⁴⁷ *Tran v. Cnty. of Los Angeles* (2022) 74 Cal.App.5th 154.

⁴⁸ *Id.* at 161.

the County requested modified findings before it approved the CUP, the County Board here denied the Petition and requested factual findings drafted in support of that decision. In other words, the situations are dissimilar because the County Board denied the Petition within the required timeline, but the County in *Tran* did not approve the CUP within the required timeline. The situations are not the same, as the MCMS Appeal implies.

Moreover, in *Tran*, the County's requirement to render a decision after hearing in 30 days was found to be mandatory because the hearing decision was deemed affirmed when they did not act within 30 days.⁴⁹ Here, as discussed above, the County Board's requirement to render a decision within 90 days of receipt is directory, not mandatory.

Petitioners rely on a second case, *Austin v. Department of Motor Vehicles*⁵⁰, in support of its arguments that the County Board abused its discretion. As with *Tran*, the DMV in this case failed to take action to approve proposed findings within the required timeframe.⁵¹ Again, this is dissimilar with the actions complained of by Petitioners, where the County Board, clearly and irrevocably, denied the Petition on March 15, 2022, with written factual findings to follow. Moreover, the Court's holding in *Austin* that the statutory timeline at issue in that case was mandatory has not been followed by later courts because of the intervening decision in *CCPA*.⁵² In *CCPA*, the California Supreme Court dictated the current standard that time limits are directory unless the Legislature clearly expresses an intent otherwise.⁵³

Accordingly, the County Board's actions should be upheld as no abuse of discretion occurred.

B. The County Board properly adopted specific, written factual findings in support of its decision to deny the Petition.

The County Board adopted written factual findings that provide substantial evidence for its decision to deny the MCMS Petition. The County Board was required to "make[] written factual findings, specific to the particular petition, setting forth specific facts to support" that:

(7) The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school. A written factual finding under this paragraph shall detail specific facts and circumstances that analyze and consider the following factors:

(A) The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.

(B) Whether the proposed charter school would duplicate a program currently offered within the school district and the existing program has sufficient capacity for the pupils

⁴⁹ *Id.* at 164-67.

⁵⁰ 203 Cal.App.3d 305 (1988).

⁵¹ *Id.* at 308.

⁵² 10 Cal.4th 1133 (1995).

⁵³ *Id.* at 1145.

proposed to be served within reasonable proximity to where the charter school intends to locate.⁵⁴

It did so. The factual findings explicitly make findings, with citations to the record, that read as follows:

- MCMS is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. (Educ. Code § 47605(c)(7)).
- MCMS seeks to locate within the boundaries of the NVUSD and to enroll students who are residents of the NVUSD, which will have a material negative fiscal impact to the NVUSD.
- NVUSD has declining enrollment that is projected to reduce its student population by 17.05% over a ten-year period. (Napa County Office of Education, Findings Regarding Mayacamas Charter Middle School (Feb. 28, 2022) (hereinafter “NCOE Findings.”))
- NVUSD’s declining enrollment will require significant numbers of layoffs of NVUSD staff over the next few years. (NCOE Findings.)
- With a reduction in students associated with MCMS enrollment, this situation becomes worse, with a reduction in student population of almost 19% over a ten-year period. (NCOE Findings.)
- NVUSD’s declining enrollment has been significantly impacting their revenues since at least 2014, although the district has only recently begun cutting expenditures to match declining revenues. (NCOE Findings.)
- On April 15, 2019, NCOE sent NVUSD’s Board of Trustees a letter indicating significant concerns with NVUSD’s fiscal future. (NCOE Findings, Exh. C.)
- NVUSD had been deficit spending since 2014, which required reduction of reserves to balance its budget. (NCOE Findings, Exh. C.)
- At the time of the letter, NVUSD’s reserves were critically low. (NCOE Findings, Exh. C.)
- NCOE called on NVUSD to end deficit spending, including implementing proposed staffing reductions and closing small schools with low enrollment. (NCOE Findings, Exh. C.)
- NVUSD agreed to cut expenses and increase revenues in the following areas: food services; transportation; small schools; facilities use fees; charter schools; extended days; class size; and district office staffing. (NCOE Findings, Exh. C.)
- NVUSD has, in fact, cut expenses as directed by the NCOE during the 2018-2019 school year.
- Currently, without making additional cuts to staffing or programming, NVUSD will not hold its required reserve in the 2026-2027 school year. (NCOE Findings, Exh. A.)
- With the addition of MCMS, and without making additional cuts to staffing or programming, NVUSD will not hold its required reserve in the 2025-2026 school year. (NCOE Findings, Exh. A.)

⁵⁴ Educ. Code § 47605(c), (c)(7).

- Without the COVID-19 pandemic, NVUSD would be looking at fiscal distress several school years earlier; the influx of one-time pandemic-related funding, coupled with reduced operational costs, created a false – yet significant – increase in balances that will not continue. (NCOE Findings, Exh. D.)
- NVUSD is going to have to make significant cuts to staffing and programming over the next couple of years if it is going to stay financially solvent, which NVUSD has acknowledged. (NCOE Findings, Exh. E.)
- NVUSD likely is going to need to close more schools, with or without MCMS, and the additional loss of students to MCMS only exacerbates this need. (NCOE Findings.)
- MCMS would substantially undermine existing services, academic offerings, or programmatic offerings at NVUSD.
- Due to funding losses associated with MCMS’s student enrollment, NVUSD projects that it would have to reduce its number of teachers by thirty-four over the first five years of MCMS’s operation. (NVUSD, Staff Report: Proposed Findings of Fact and Recommendations Regarding Petition to Establish a New Charter School, adopted by NVUSD Board of Trustees on December 9, 2021.)
- NVUSD anticipates having to cut staffing, close additional schools, reduce programs and services to students, and reduce expenditures on contracts in order to mitigate the loss of funding associated with the loss of students to MCMS. (Letter to Board from Rabinder (Rob) Mangelawa, Assistant Superintendent, Business Services, NVUSD (Jan. 28, 2022); Letter to Board from NVUSD Trustee Gracia (Mar. 10, 2022), including NVUSD 2021-2022 Second Interim Financial Report Narrative.)
- NVUSD potentially would need to eliminate its middle school sport program and elementary school music and physical education programs; counselors, intervention teachers, and electives; and/or close small elementary schools located in the City of Napa. (NVUSD 2021-2022 Second Interim Financial Report Narrative; Letter to Board from NVUSD Trustee Chu (Mar. 14, 2022).)
- If MCMS were to be approved, NVUSD anticipates renegotiating and/or ending contracts with NCOE for programs such as afterschool programs, summer school programs, and CTE programs. (NVUSD 2021-2022 Second Interim Financial Report Narrative.)
- MCMS would not duplicate a program currently offered within the school district and the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.⁵⁵

The MCMS Appeal claims that “the County Board simply parroted back the language of the two factors above in the Post-Denial Declaration/Findings, without providing any supporting facts or legal conclusions.”⁵⁶ This is patently false and a clear attempt to misrepresent the record on appeal. The County Board’s findings contained three legal conclusions, supported by no

⁵⁵ County Board Record, Exh. 11 “NCBOE Findings.”

⁵⁶ Appeal Packet, Exh. 6 at p.12.

fewer than twenty supporting facts, nearly each of which cites a portion of the documentary record as evidence supporting the factual finding.⁵⁷ No abuse of discretion occurred.

C. The County Board’s factual findings are supported by substantial evidence in the documentary record.

It is well settled that an abuse-of-discretion standard precludes a reviewing body from substituting its judgment for that of the original fact finder. However, the MCMS Appeal wants the SBE to do just that – adopt MCMS’s judgment as its own and substitute it for that of the County Board. However, the fact that the reviewing body may have a different opinion is not sufficient to intervene with County Board’s denial.

When applying an abuse-of-discretion standard under traditional mandamus, the reviewing body is bound by the findings of fact of the original fact finder if those findings are supported by substantial evidence.⁵⁸ Substantial evidence is “relevant evidence that a reasonable mind might accept as adequate support for a conclusion,” and a presumption exists that an administrative action was supported by substantial evidence.⁵⁹ The burden is on the challenger to show that “there is no substantial evidence whatsoever to support the findings of the [agency.]”⁶⁰

The County Board’s findings supporting its denial of MCMS were supported by substantial evidence. The County Board enumerated 26 findings of fact and articulated the reasons it denied the Petition.⁶¹ It specifically made findings regarding the fiscal impact to the NVUSD of MCMS’s charter, MCMS’s potential to undermine NVUSD services, academic offerings, and programmatic offerings, and whether MCMS duplicated a program currently operating within the NVUSD.⁶² The County Board gave due consideration to the Petitioners’ request and, in denying the Petition, did so based on findings supported by the evidentiary record.⁶³ Furthermore, although the MCMS Appeal indicates that the County Board did not consider whether students would leave the District if unable to attend MCMS or the impact of TK expansion on projected declining enrollment, the record belies those arguments.⁶⁴ Both factors were considered and acknowledged in the NCOE Staff findings.⁶⁵

There is no evidence – nor do Petitioners argue – that the County Board’s factual findings were arbitrary, capricious, or entirely lacking in evidence support. Instead, Petitioners argue that the County Board should have considered the “other factors” as more important and relevant to their decision than the fiscal impact factor, even stating that “the County Board should not be so quick to put the District’s roughly projected finances ahead of what is best for students” and dictating that “the County Board’s decision should have considered what is best for students—

⁵⁷ County Board Record, Exh. 11 “NCBOE Findings.”

⁵⁸ *Taylor Bus Service, Inc. v. San Diego Bd. of Educ.* (1987) 195 Cal.App.3d 1331, 1340 (stating that “the trial court’s findings on foundational matters are conclusive”).

⁵⁹ *Id.* at 1340-41.

⁶⁰ *Id.* at 1341.

⁶¹ County Board Record, Exh. 11 “NCBOE Findings.”

⁶² *Id.*

⁶³ *Id.*; see also County Board Record, Exh. 10 “3-15-2022 Board Meeting – Audio Recording.”

⁶⁴ Appeal Packet, Exh. 6 at pp.14-15.

⁶⁵ County Board Record, Exh. 4.

not just a potential 1% to 2% decrease in District enrollment over a ten year period.”⁶⁶ That analysis is prohibited under the substantial-evidence standard applicable here; the SBE is not permitted to reweigh the factors and reconsider whether the County Board made the correct determination. Instead, the analysis is whether substantial evidence was provided for the County Board’s decision, a standard that is clearly met as Petitioners spend three pages of their brief discussing the evidence provided by the County Board in support of its decision. It is not the role of the SBE in this situation to consider whether the County Board should have weighed the preference for approval more strongly that it weighed the community impact of MCMS. Accordingly, the SBE must conclude that the County Board did not abuse its discretion.

D. 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.

Although not specifically raised in the issues section of their brief, in the Background section of Petitioner’s written submission, they state:

The documentary record prepared by the County Board does not include the audio, video, or transcript from the April 5 meeting, which is yet another failure to proceed in a manner required by law. That is why we have not cited to the transcript. The County Board’s failure to provide the transcript can mean one of two things: (1) the essential evidence needed to demonstrate the County Board’s abuse has been withheld, which is a prejudicial abuse of discretion that the SBE should correct by reversing the County Board’s denial; or (2) the March 15 denial is the one-and-only action (we agree), unsupported by any written factual findings, which is a prejudicial abuse of discretion that the SBE should correct by reversing the County Board’s denial.

We also note that the transcript of the March 15 meeting was haphazardly prepared by the County, with portions that are relatively unintelligible.⁶⁷

These allegations are not repeated in the section titled “THE COUNTY BOARD’S ABUSES OF DISCRETION,” but the County Board addresses these allegations in an abundance of caution.

First, the County Board was not required to provide a transcript of the April 5, 2022, meeting. The statute requires that “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.”⁶⁸ The County Board did include the transcript of the

⁶⁶ Appeal Packet, Exh. 6 pp.13-15.

⁶⁷ Appeal Packet, Exh. 6 at p.9.

⁶⁸ Educ. Code § 47605(k)(2)(A).

March 15, 2022, meeting at which it denied the charter in the documentary record provided to Petitioners.⁶⁹

Second, the transcript of the March 15, 2022, meeting was sufficient. As CDE has stated, an audio recording is a sufficient transcript of these proceedings.⁷⁰ The Zoom Webinar transcript, which is automatically created by Zoom, was also provided to Petitioners as a courtesy. The Zoom Webinar transcript, although it has errors, provides clear documentation of the speaker and the times the speaker was speaking, making for easy cross-references with the recording.


Finally, although Petitioners state that the failure to provide the April 5, 2022, transcript was withholding “essential evidence,” they did not request that information of the County Board when preparing their appeal or after.⁷¹ If Petitioners want a copy of the recording of the April 5, 2022, County Board meeting, they only need to ask. Clearly this issue, like many in the MCMS Appeal, is a red herring meant to distract from the fact that MCMS has no legally cognizable arguments on appeal. There is no argument that the decision not to include the recording of the April 5, 2022, County Board meeting in the documentary record was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.

V. CONCLUSION

The MCMS Appeal does not provide support for a finding that the County Board abused its discretion when it denied establishment of MCMS as per their Petition. Accordingly, this matter should be summarily denied.

Please contact me with any questions.

Sincerely,

DocuSigned by:

C720BAAC923D45D...

Don J. Huffman, Trustee Area 1
President, Napa County Board of Education

⁶⁹ County Board Record, Exh. 9 “3-15-22 Recording Transcript” and Exh. 10 “3-15-2022 Board Meeting – Audio Recording.”

⁷⁰ County Opposition, Exhibit G.

⁷¹ County Opposition, Exhibit A.

Exhibit A

DECLARATION OF JENNIFER NIX

I, Jennifer Nix, declare that the following facts are based upon my personal knowledge, and, if called to testify, I would so testify:

1. I am employed as the Senior Associate General Counsel by School and College Legal Services of California.
2. School and College Legal Services of California represents the Napa County Board of Education (NCBOE) and has been retained to provide legal representation related to the Mayacamas Charter Middle School (MCMS).
3. I drafted resolutions to potentially be used by the NCBOE at its March 15, 2022, Board meeting when granting or denying the petition for establishment of MCMS.
4. In one of those resolutions, I included a statement that “This written analysis must be published no later than March 21, 2022.”
5. I was fully aware at the time of drafting the resolutions for NCBOE use that Petitioners had not completely submitted their petition on appeal on December 21, 2021, but included this date as a placeholder date in the draft resolutions.
6. Neither draft resolution was adopted or even discussed, so I did not raise the issue of when the factual findings should be completed.
7. My intent in using the March 21, 2022, date as a placeholder was to avoid making an issue of MCMS’s failure to submit its Petition as required by law until January 5, 2022, unless necessary.
8. At no time have Petitioners requested a copy of the NCBOE’s April 5, 2022, board meeting, or a transcript of same.
9. Each of the documents attached to this opposition are true and correct copies of the originals, including:
 - a. Exhibit B: December 31, 2022, email from Jolene Yee to Barbara Nemko
 - b. Exhibit C: December 31, 2022, email from Rosanna Mucetti to Barbara Nemko
 - c. Exhibit D: January 5, 2022, email from Jolene Yee to Rosanna Mucetti
 - d. Exhibit E: March 22, 2022, email from Jennifer Nix to John Lemmo
 - e. Exhibit F: Napa COE Board Bylaw 9121
 - f. Exhibit G: February 11, 2022, Email from Sandi Ridge to Damara Moore

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct to the best of my knowledge. Executed on June 1, 2022, at Windsor, California.



Jennifer Nix

Exhibit B

Written Opposition from Napa County
Board of Education

✕ Fwd: Petition Submission



napawicks

[Show details](#) [Print](#) [Original](#) December 31, 2021 11:07 AM

to bнемko, rmucetti, ljdaley

Dear Superintendent Nemko:

On December 21, we submitted to the Napa County Board of Education (“County Board”) the charter petition for Mayacamas Charter Middle School (“MCMS”), which had been denied on December 9 by the Napa Valley Unified School District (“District”). Inadvertently, we did not transmit the petition itself to the District at the same time we transmitted it to the County Board with our appeal. In any event, the petition we presented to the County Board is exactly the same as the petition considered and denied by the District, and therefore does not contain any new or material terms—*it’s exactly the same*. In fact, we downloaded the final petition document *from the District’s website itself*, so there can be no question about it being the same. Our appeal includes the other materials we understand are required by the County Board and by statute, such as the list noting where non-substantive changes are required to reflect the County Board as authorizer, and our responses to the District’s staff report and findings. In any event, attached to this email message is a complete copy of the petition we present to the County Board for review and consideration. We are hereby presenting the petition to the District via Superintendent Mucetti at the very same time by copy of this e-mail. We are still well within the statutory appeal period.

We understand the District has commented that our thorough responses to its lengthy staff report are not part of the record of our appeal and therefore “irrelevant”; however, this is wrong and nonsensical. No agency -- including NVUSD -- can unilaterally reject public comment it doesn’t like and exclude it from its record. It is well-established that public comments received by an agency prior to deliberation and action is part of the record of any action. In any event, the County Board’s review is de novo here. The very same responses to the staff report presented to the District could be presented in a new letter to the County Board. That is not an avenue for “reconsideration”—because nothing new or different has been added to the petition.

Dr. Nemko, we thank you very much for your continued professionalism with this appeal. If you have any questions, please do not hesitate to contact me or Lauren Daley.

Kind Regards,

Jolene A. Yee

Napa Foundation for Options in Education

MAYACAMAS - Charter Petition (as downloaded from NVUSD website).pdf (17.8 MB) [Download](#) [View](#)

Exhibit C



Jennifer Nix <jnix@sclscal.org>

FW: Follow Up MCMS Petition Appeal Notification & Materials

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

From: Rosanna Mucetti <rmucetti@nvusd.org>
Sent: Friday, December 31, 2021 12:16 PM
To: Barbara Nemko <BNemko@napacoe.org>
Cc: Josh Schultz <jschultz@napacoe.org>; Rob Mangewala <rmangewala@nvusd.org>
Subject: Follow Up MCMS Petition Appeal Notification & Materials

CAUTION: EXTERNAL EMAIL: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello Dr. Nemko,

The latest email from Ms. Yee earlier today on 12/31/21 at 10:07 am does not meet the requirement for informing NVUSD of the charter petition appeal. Ms. Yee's email also does not confirm for NVUSD what was actually submitted to NCOE as part of the appeal for the Mayacamas Charter Petition.

Written Opposition from Napa County
Board of Education

5/31/22, 11:39 AM

School And College Legal Services Mail - FW: Follow Up MCMS Petition Appeal Notification & Materials

As the letter I sent to you yesterday states, the petitioners have violated the process laid out in the statute. NVUSD does not believe that the petitioners' latest email with an attached copy of their original petition downloaded from our own NVUSD website remedies our issues and concerns.

Their claim regarding public comment is wrong. Their response to staff findings was not a submission for public comment at the NVUSD BOE meeting on 12/9/21. It was material they provided for consideration as primary petitioners past a deadline that was clearly provided to them in writing. In addition, the petitioners failed to include their official response to staff findings as part of their presentation at the public meeting. Instead, the petitioners showed a pre-recorded video which did not include the content from their written response to NVUSD's staff findings.

You have not recognized receipt of my letter, but you have clearly been in contact with the petitioners given their latest communication that I was cc'd on. Subsequently, I am requesting a prompt response from NCOE on the concerns I highlighted in my letter yesterday on 12/30/21.

Given the petitioners' clear inability to follow procedure and protocol, I am also requesting that NCOE immediately forward me and Assistant Superintendent Rob Mangewala the electronic materials (original emails and all attachments) that were submitted to you as the appeal on 12/21/21.

Again, we look forward to your reply and receiving the materials in order to assess Ms. Yee's claims and to ensure that protocols are being followed by both NCOE and the petitioners. I thank you in advance for your time and consideration.

Regards,

Dr. Mucetti

--

Rosanna Mucetti, Ed.D

Superintendent

Napa Valley Unified School District
2425 Jefferson Street
Napa, CA 94558
707.253.3511
rmucetti@nvusd.org
www.nvusd.org
www.facebook.com/NVUSD



NVUSD

NAPA VALLEY UNIFIED SCHOOL DISTRICT

Transforming lives by instilling and inspiring lifelong learning in every student.

Exhibit D

Written Opposition from Napa County
Board of Education

accs-aug22item02
Attachment 8
Page 25 of 34

----- Forwarded message -----

From: **Jolene Yee** <napawicks@gmail.com>
Date: Wed, Jan 5, 2022 at 3:11 PM
Subject: Courtesy Copy
To: <rmucetti@nvusd.org>
Cc: Lauren Daley <ljdaley@willdaley.com>

Superintendent Mucetti,

As a courtesy, attached is a complete pdf copy of the materials we've submitted with our petition on appeal, which we previously provided to you. Regards,

Jolene A. Yee
Napa Foundation for Options in Education

--
Rosanna Mucetti, Ed.D
Superintendent
Napa Valley Unified School District
2425 Jefferson Street
Napa, CA 94558
707.253.3511
rmucetti@nvusd.org
www.nvusd.org
www.facebook.com/NVUSD



NVUSD
NAPA VALLEY UNIFIED SCHOOL DISTRICT

Transforming lives by instilling and inspiring lifelong learning in every student.

Mayacamas - Appeal of Denied Charter Petition to the County Board.pdf (13.7 MB) [Download](#) [View](#)

Exhibit E

Written Opposition from Napa County
Board of Education

School And College Legal Services Mail - MCMS - Board Findings

5/31/22, 9:49 AM



Jennifer Nix <jnix@sclscal.org>

MCMS - Board Findings

2 messages

Jennifer Nix <jnix@sclscal.org>
To: "Lemmo, John C." <john.lemmo@procopio.com>
Cc: ljdaley@willdaley.com, napawicks@gmail.com

Tue, Mar 22, 2022 at 4:50 PM

Good afternoon, John,

Attached please find the Napa Board of Education's findings related to the MCMS petition. These will be ratified at the Board's April 5 meeting, at which time minutes showing the denial also will be finalized.

Please let me know if you need anything else from the Board at this time. I am not sure if you are trying to make the March 28th appeal deadline, but we do not want to be the hold up if you are.

I copied Lauren and Jolene on this email because I am providing the findings on behalf of the Board. It is not intended to be an unauthorized communication with represented clients.

Jennifer

Jennifer E. Nix
Senior Associate General Counsel
School and College Legal Services of California
5350 Skylane Boulevard
Santa Rosa, California 95403
T: (707) 524-2690
F: (707) 578-0517
jnix@sclscal.org

 SCLS Blue Rectangle Logo

CONFIDENTIALITY NOTICE: This communication and any documents, files or previous e-mail messages attached to it, constitute an electronic communication within the scope of the Electronic Communication Privacy Act (18 U.S.C. § 2510). This communication may contain non-public, confidential, or legally privileged information intended for the sole use of the designated recipient(s). The unlawful interception, use or disclosure of such information is strictly prohibited under 18 U.S.C. § 2511 and any applicable laws. If you are not the intended recipient, or have received this communication in error, please notify the sender immediately by reply e-mail or by telephone and delete any and all electronic and hard copies of this communication, including attachments, without reading them or saving them in any form.

2 attachments

 **SCHOOL & COLLEGE LEGAL SERVICES** **image002.png**
OF CALIFORNIA 19K

 **2022-03-22 Signed Board Findings.pdf**
211K

Lemmo, John C. <john.lemmo@procopio.com>
To: Jennifer Nix <jnix@sclscal.org>
Cc: "ljdaley@willdaley.com" <ljdaley@willdaley.com>, "napawicks@gmail.com" <napawicks@gmail.com>

Tue, Mar 22, 2022 at 4:56 PM

Thank you.

[Quoted text hidden]

Tue Mar 22 2022 16:56:37

Written Opposition from Napa County

Board of Education

5/31/22, 9:49 AM

School And College Legal Services Mail - MCMS - Board Findings

This is an email from Procopio, Cory, Hargreaves & Savitch LLP, Attorneys at Law. This email and any attachments hereto may contain information that is confidential and/or protected by the attorney-client privilege and attorney work product doctrine. This email is not intended for transmission to, or receipt by, any unauthorized persons. Inadvertent disclosure of the contents of this email or its attachments to unintended recipients is not intended to and does not constitute a waiver of attorney-client privilege or attorney work product protections. If you have received this email in error, immediately notify the sender of the erroneous receipt and destroy this email, any attachments, and all copies of same, either electronic or printed. Any disclosure, copying, distribution, or use of the contents or information received in error is strictly prohibited.

Exhibit F

Napa COE | BB 9121 Board Bylaws

President

The Board of Education shall elect at its annual December organizational meeting a President and a Vice President from among its members to provide leadership on behalf of the Board and the educational community it serves.

The term of both the President and Vice President shall be one year. No President or Vice President shall serve more than two consecutive terms in office in their position.

(cf. 9000 - Role of the Board)

(cf. 9005 - Governance Standards)

(cf. 9100 - Organization)

The president shall preside at all Board meetings. He/she shall:

1. Call the meeting to order at the appointed time
2. Announce the business to come before the Board in its proper order
3. Enforce the Board's policies relating to the conduct of meetings and help ensure compliance with applicable requirements of the Brown Act
4. Certify or attest to actions taken by the Board when required
5. Maintain such other records or reports as required by law
6. Rule on issues of parliamentary procedure
7. Recognize persons who desire to speak, and protect the speaker who has the floor from disturbance or interference
8. Explain what the effect of a motion would be if it is not clear to every member
9. Restrict discussion to the question when a motion is before the Board
10. Put motions to a vote, and state clearly the results of the vote
11. Be responsible for the orderly conduct of all Board meetings

(cf. 9323 - Meeting Conduct)

The president shall perform other duties in accordance with law and Board policy including, but not limited to:

1. Signing all papers and documents as required or authorized by action of the Board
2. Consulting with the Superintendent or designee on the preparation of the Board's agendas

(cf. 9322 - Agenda/Meeting Materials)

3. Working with the Superintendent to ensure that Board members have necessary materials and information
4. Subject to Board approval, appointing and dissolving all committees

Written Opposition from Napa County
Board of Education

GAMUT Online : Napa COE : President BB 9121

5/31/22, 12:30 PM

(cf. 9130 - Board Committees)

5. Calling such meetings of the Board as he/she may deem necessary, giving notice as prescribed by law, including special meetings

(cf. 9320 - Meetings and Notices)

(cf. 9321 - Closed Session Purposes and Agendas)

6. Representing the district as governance spokesperson, in conjunction with the Superintendent

7. Appointing members of the County Board to fill the vacant seats of a school district board when a majority of those seats are vacant until the new members of the governing board are elected or appointed (Education Code 5094)

8. Subject to County Board approval, appointing County Board members to as representatives on committees on matters of concern to the County Board, the county office of education, or the districts, schools, and students within its jurisdiction

(cf. 1112 - Media Relations)

The President shall have the same rights as other members of the Board, including the right to move, second, discuss and vote on all questions before the Board.

When the president resigns or is absent or disabled, the Vice-president shall perform the President's duties. When both the President and Vice-president are absent or disabled, the Board shall choose a President Pro-Tem to perform the president's duties. The Secretary shall preside for the purpose of electing a President Pro-Tem. It shall be the duty of the President Pro-Tem to preside over the meeting and conduct the business of the Board in accordance with these Policies.

The President should notify the Superintendent or the Superintendent's designee when they are unable to perform their duties. Once notified, the Superintendent or Superintendent's designee will ensure alternative arrangements are made following the guidelines above.

(cf. 9123 - Clerk)

Legal Reference:

EDUCATION CODE

Education Code 5094 Appoints to temporarily fill district board vacancies

3143 Annual organizational meetings

35022 President of the board

35143 Annual organizational meetings; dates and notice

35250 Duty to keep certain records and reports

GOVERNMENT CODE

54950-54963 Ralph M. Brown Act

Management Resources:

Written Opposition from Napa County
Board of Education

accs-aug22item02
Attachment 8
Page 32 of 34

5/31/22, 12:30 PM

GAMUT Online : Napa COE : President BB 9121

CSBA PUBLICATIONS

Board Presidents' Handbook, revised 2002

CSBA Professional Governance Standards, 2000

Maximizing School Board Leadership: Boardsmanship, 1996

WEB SITES

CSBA: <http://www.csba.org>

Bylaw NAPA COUNTY OFFICE OF EDUCATION

adopted: January 3, 2017 Napa, California

revised: December 5, 2017

revised: January 5, 2021

revised: December 7, 2021

Exhibit G

From: Sandi Ridge [mailto:SRidge@cde.ca.gov]
Sent: Friday, February 11, 2022 3:26 PM
To: dmoore@sclscal.org
Cc: Stephanie Farland; Makenna Huey; Craig Heimbichner
Subject: RE: [EXTERNAL] Transcript of LEA Denial - Urgent

Hi Damara:

Yes, the SBE will accept videoconferences of the public meeting as a "transcript", as long as the format presented permits specific citation and review of the record by the parties, including identification of the speaker, time stamp of the precise statements or discussion being reference, and the date and time of the public hearing.

If you have any further questions, please do not hesitate to ask.

Best Regards,

Sandi Ridge

Education Programs Consultant

Charter Schools Division

1430 N Street, Suite 5401

Sacramento, CA 95814

