



December 29, 2021

Napa County Board of Education
Dr. Barbara Nemko, Superintendent
2121 Imola Avenue
Napa, CA 94559

***RE: Petition to Establish Mayacamas Charter Middle School on Appeal from Denial
by Napa Valley Unified School District***

Dear Dr. Nemko and Trustees of the Board of Education:

On December 9, 2021, the Board of Education of the Napa Valley Unified School District (“District”) unanimously voted to deny a petition submitted by Napa Foundation for Options in Education (“Petitioners”) to establish a new charter school within the boundaries of the District, with the proposed name of Mayacamas Charter Middle School.

My office has been informed that according to a press release published by Petitioners the week of December 20, 2021, Petitioners submitted a petition to the Napa County Board of Education, in appeal of the District’s denial (“Petitioners’ Appeal”), on or about December 21, 2021. A copy of Petitioners’ press release (“Press Release”) is attached.

I write to bring the County Board’s attention to certain matters of concern regarding Petitioners’ Appeal and the County Board’s review thereof. First, as of the date of this letter, Petitioners have not yet provided a copy of Petitioners’ Appeal to the District as required by law, which prevents the District from determining whether Petitioners’ Appeal differs materially from the original petition or alerting the County Board to any material differences that may exist. Second, the Press Release indicates that Petitioners’ Appeal contains significant additional material that was not submitted to the District as part of the original charter petition, including additional signatures, which requires that Petitioners’ Appeal be remanded to the District for reconsideration.

The County’s review of Petitioners’ Appeal is governed by California Education Code, section 47605(k)(1), as well as Napa County Office of Education (NCOE) Board Policy 0420.44. The District expects that the County Board will follow all procedures set forth under the Education Code and its own policies in its review of Petitioners’ Appeal.

Education Code section 47605(k)(1)(A)(i) specifies in part that when a charter petition is submitted to a county board of education on appeal from denial by a local school district, “the petitioner shall also provide a copy of the petition to the school district”; and that this copy must

be provided to the school district “[a]t the same time the petition is submitted to the county board of education.” Since the Petitioners have failed to provide a copy of their appeal to the District as required by statute, Petitioners’ Appeal has not yet been validly submitted to the County Board, and the County Board is without jurisdiction to consider Petitioners’ Appeal until Petitioners have complied with this statutory requirement. The 90-day timeline for the County Board’s action on Petitioners’ Appeal should not begin until this requirement is met.

Education Code section 47605(k)(1)(A)(i), as well as NCOE Board Policy 0420.44, provide that where a charter petition is submitted to the county board of education after denial by a local school district, and the appeal petition contains new or different material terms, the county board of education shall immediately remand the petition to the governing board of the school district for reconsideration. For purposes of this provision, “material terms” is defined as “the signatures, affirmations, disclosures, documents, and descriptions described in subdivisions (a), (b), (c), and (h)” of section 47605. (Ed. Code § 47605(k)(1)(A)(iii).)

The Press Release states that Petitioners’ Appeal contains “more than 500 pages of documents supporting the MCMS appeal,” as well as signatures of “[p]arents and guardians of nearly 200 students” and “more than 230 signatures from an additional online petition.” However, the original petition submitted to the District consisted of only 328 pages, including all attachments (except for parent signatures); and contained 108 pages of parent signatures which represented only 111 confirmed District students and 121 total students.

Because Petitioners have not yet provided a copy of their appeal petition to the District, we are unable to determine exactly what additional material is included in Petitioners’ Appeal that was not part of the original petition submitted to the District. However, based on the Press Release, it appears that the parent signatures on Petitioners’ Appeal—at minimum—are new or different than what was originally submitted to the District. (The original petition submitted to the District is available at <https://www.nvusd.org/charterschools>.) If the parent signatures, or any other portion of Petitioners’ Appeal, contain new or different material terms than what was originally submitted to the District, then the County Board must immediately remand Petitioners’ Appeal to the District for reconsideration.

Further, on December 9, 2021, at 2:38 P.M., Petitioners submitted to the District a 28-page response to the District’s staff report and recommended findings regarding the Mayacamas charter petition (which had been published on November 22, 2021 at <https://www.nvusd.org/charterschools>). Petitioners’ written response was received less than two hours before the call-to-order of the board’s regular meeting; past the deadline to be placed on the board’s agenda under the Brown Act; and past the District’s deadline for written public comments on meeting agenda items. Although the District’s board members did all receive Petitioners’ written response, Petitioners’ eleventh-hour submission of this document prevented it from becoming part of the official documentary record of the District board’s action. Nonetheless, the District has published Petitioners’ written response at <https://www.nvusd.org/charterschools>.

NCOE Board Policy 0420.44 requires that charter petitions submitted on appeal from denial by a local school district include “[a]ny written factual findings from the school district governing board setting forth specific facts to support the grounds for denial.” Board Policy 0420.44 does not specify that petitioners submit a response to the school district’s written factual findings. Further, a county board of education considering a charter petition on appeal applies the review

standards set forth under subdivision (c) of Education Code section 47605; and the county board's role in a charter petition appeal is not to review the decision of the local district or the process by which the local district reached its decision. (Ed. Code § 47605(k)(1)(A)(ii).) Therefore, if Petitioners' written response to the District staff's findings and recommendations is part of the documents that Petitioners submitted on appeal to NCOE, it is not relevant to the County Board's review; but to the extent Petitioners' response outlines new or different material terms of the charter petition, it further supports remanding the petition to the District for reconsideration.

Based on the foregoing issues, the following summarizes the District's concerns regarding Petitioners' Appeal and the actions that NCOE should take before it commences its process of reviewing Petitioners' Appeal:

- First, NCOE should inform Petitioners that since the District has not received a copy of Petitioners' Appeal, it may not be considered by the County Board, and the County Board's statutory 90-day review timeline should not begin, until Petitioners have provided the District a copy of Petitioners' Appeal as required by Education Code section 47605(k)(1)(A)(i) and certified to NCOE that they have complied with this requirement.
- Second, if Petitioners' Appeal contains new or different material terms from the original petition that was submitted to the District—including but not limited to additional signatures that were not part of the original petition, or any other documents constituting new or different material terms as defined in Education Code section 47605(k)(1)(A)(iii), then NCOE must immediately remand Petitioners' Appeal to the District, so that the District may reconsider Petitioners' Appeal and take action within 30 days of remand.

Sincerely,



Dr. Rosanna Mucetti, Superintendent
Napa Valley Unified School District

cc: Board of Education
Joshua Schultz, Deputy Superintendent for Business Services

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