

**March 13, 2022**

**VIA EMAIL**

Napa County Board of Education  
c/o Dr. Barbara Nemko, Superintendent of Schools  
Napa County Office of Education  
2121 Imola Avenue  
Napa, CA 94559

Re: Response to NCOE “Findings Regarding Mayacamas Charter Middle School, a Petition for a Charter School” dated February 28, 2022

Dear Dr. Nemko, Deputy Superintendent Schultz, and Honorable Trustees:

Petitioners for Mayacamas Charter Middle School (“MCMS”) have carefully reviewed the Napa County Office of Education’s (“NCOE”) “Findings Regarding Mayacamas Charter Middle School, a Petition for a Charter School” dated February 28, 2022 (“Staff Report”) regarding the MCMS appeal. We respectfully provide this letter to the Napa County Board of Education (“County Board”) in response.

But first, we would like to express our sincere appreciation to Superintendent Nemko and the NCOE staff for their diligent and thorough review of the MCMS charter petition. It is clear that the County staff spent a significant amount of time and effort ensuring that the charter was vetted in a thorough and fair manner. We truly appreciate your hard work.

***THE STAFF REPORT VALIDATES MCMS’ EDUCATIONAL BENEFITS TO STUDENTS AND FAMILIES IN THE NAPA COMMUNITY***

We were very excited to see that the Staff Report validates what the petitioners and many parents and community members who support MCMS have long believed, and well articulates why there is strong community support for MCMS. As we have been demonstrating since the filing of our petition with NVUSD, it is clear that our charter petition is comprehensive and detailed, our projected budget is appropriate and viable, there is tremendous need and demand for this unique program in the Napa community, and we stand ready and able to implement the program upon

charter approval. We are appreciative that County staff have explicitly recognized the merits of the charter and expressed their support for MCMS:

- “Petitioners appear capable of implementing the program set forth in the Petition.”
- “Petitioners have met all legal requirements for establishment of a charter school.”
- “Petitioners made themselves available for discussions and questions, and provided any additional information requested.”
- “Petitioners were able to answer all questions posed of them...”
- “The petition describes a highly aspirational program and Petitioners showed themselves capable of materially implementing that program.”
- “MCMS does not appear to duplicate a program that will be in operation in NVUSD next school year.”
- “MCMS would provide enrolled students with educational benefit in a program substantially similar to River Middle School, a school that has been operating for more than 20 years within NVUSD...”
- “MCMS, which seeks to continue the work of River Middle School, also has the support of parents and families in Napa County...”
- “River school historically had full enrollment with a wait list every year and consistently strong academic performance.”

(Staff Report, pp. 1-3.)

***A SLIGHT DECREASE IN DISTRICT REVENUE RESULTING FROM STUDENTS MOVING TO ANOTHER PUBLIC SCHOOL IS NOT A LEGALLY SUFFICIENT BASIS TO DENY THE MCMS CHARTER, GIVEN ALL OF THE FACTS AND CIRCUMSTANCES***

Under Education Code section 47605(c), an authorizer like the County Board “shall grant” a charter petition if it is consistent with sound educational practice and with the interests of the community. This mandate is consistent with the legislative intent that establishment of charter schools should be encouraged to “improve pupil learning”, “increase opportunities for all pupils”, “provide parents and pupils with expanded choices” in types of public educational opportunities, and “provide vigorous competition within the public school system to stimulate continual improvements in all public schools.” (Ed. Code §47601.) In contrast, an authorizer board “shall not deny” a charter petition unless that board makes written, specific factual findings in support of at least one of the statutory bases for denial. The written, specific findings

here are limited to those contained in the Staff Report, which requires publication at least 15 days prior to board action.

And notably, the Staff Report states clearly that “the Petition contains all required legal components” and is consistent with sound educational practice. According to NCOE staff, the only factual finding that could potentially support denial of the charter petition is under Education Code section 47605(c)(7); the Staff’s discussion in its Report of a single ground that could *potentially support denial* was based solely upon the projected declining financial health of the Napa Valley Unified School District (“NVUSD” or “District”) over the next five years. That’s it—there is no other basis for possible denial suggested or mentioned in the Staff Report.

***However, the statutory basis for the 47605(c)(7) finding requires a comprehensive, meaningful analysis of several factors, and therefore a denial based on this sole finding is not supported by the law.*** A finding under section 47605(c)(7) must align to the sole statutory requirement cited by the Staff Report as the only potential basis to deny the charter, that “[t]he charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate.” (Ed. Code §47605(c)(7).) However, as we explain in this letter, that finding cannot be made. A finding under that Ed. Code criterion is multi-faceted and requires consideration of all the following factors as required by the rest of that code section:

1. “The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.”
2. “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 proposed to be served within reasonable proximity to where the charter school intends to locate.”
3. “The fiscal impact of the proposed charter school.”

The sole finding of potential fiscal impact in the Staff Report does not support a denial of the petition. Factors #1 and #2 weigh heavily in favor of approval of the MCMS charter. First, River Middle School is an existing program within NVUSD, albeit in its final year, and is the only school serving middle school grades with a program that resembles that of MCMS. It is the only school that is remotely close to having substantially similar programming to the proposed charter, and in fact MCMS has a number of unique curricula that improve upon the model at River Middle School. But notably, the District is closing this popular, high-performing school effective at the end of this 2021-22 school year, despite the tremendous level of support in the community for this program to continue. So it is indisputable that the establishment of MCMS will not, and actually cannot, undermine services or offerings within NVUSD, let alone to a “substantial” degree as is necessary for a denial finding. To the contrary, MCMS is improving upon an existing program that has been a staple in this community for more than two decades. In that regard, approval of MCMS is akin to maintaining a programmatic status quo. A denial of

the petition would actually deprive the community of the much-loved successful program, resulting in a negative impact to the community. As plainly stated in the Staff Report:

“MCMS does not appear to duplicate a program that will be in operation in NVUSD next school year... In the 2022-2023 school year, NVUSD will have two New Tech Network schools – one an elementary school, and one a high school. The MCMS program seeks to provide NVUSD students with a New Tech Network middle school option in Napa County.”

(Staff Report, p. 2.)

As for factor #3, the statute does not say that a County Board must consider the fiscal impact solely and only on the local school district. To the contrary, the analysis must instead consider the fiscal impact on the “entire community in which the school is proposing to locate” generally, ***while prioritizing what is best for students***. The very existence of a charter school in a school district will always lead to a redistribution of public education funding. But the crux of the fiscal impact analysis is how that money will be spent in an efficient manner to improve student outcomes. MCMS will serve a relatively small student population with a proven successful program, components of which are already enormously popular in Napa. Our budget projections are solid and will result in a surplus each year of the charter term. The District, on the other hand, has shown its inability to operate efficiently or effectively to support popular programs in times of population changes. The District has placed itself in an allegedly precarious financial situation by utilizing unsound budgetary practices for the past several years. However, this fact alone cannot be the sole basis for denying the MCMS charter and suppressing school and parent options. “Fiscal impact” is only one piece of the complex finding under Education Code section 47605(c)(7). And as recognized in the Staff Report, every other factor and potential finding weigh heavily in support of approving the MCMS charter.

The District had the past eight years to make the appropriate plans to change the trajectory of their finances. Declining enrollment has been occurring statewide for many years, and the issue is not unique to NVUSD. As NCOE recognized in the Staff Report, the District will need to make significant changes to its operations “with or without MCMS,” and “NVUSD has acknowledged as much.” (Staff Report, p. 4.) MCMS and Napa’s families and students should not be made to bear the burden of the District’s failure to meet its financial obligations over the next five years, and MCMS cannot be blamed for such failure—the District is responsible for that position. As stated by NCOE staff: “Since 2014, the district has been deficit spending and reducing its reserves to balance its budget.” (Staff Report p. 12.) As the County noted in its letter to NVUSD dated April 15, 2019, the District was not fully implementing its plan to maintain fiscal solvency, had not implemented the recommendations from the Fiscal Crisis and Management Assistance Team (“FCMAT”), and was continuing to rely on short-term TRANs to meet its cash obligations. (Staff Report, pp. 12-13.) Denying the MCMS charter would reward the District for its lack of urgency in financial planning, and penalize the very people who have been hurt by its mismanagement—taxpayers in the Napa community who support the MCMS program.

While the NVUSD Interim Financial Report and fiscal projections upon which the fiscal impact analysis is based do not take into consideration the projected 2022-23 Governor's Budget, it would be imprudent to ignore it. The Governor's January budget proposes to spend more than \$8 billion more for K-14 education than was approved in the 2021 Budget Act. While, of course, the budget is not yet final, it is all but certain that California's allocation of funds to school districts will substantially increase over what school districts receive today when the budget is ultimately approved. For example, the Governor's Budget, when passed, is likely to result in a significant increase in per-student allocation, when accounting for all funding sources. While the NVUSD projections and the fiscal impact considerations are based upon the currently enacted budget, a consideration of what is most realistic is highly appropriate in considering fiscal impact and whether to approve or deny our MCMS petition. The Governor's budget also proposes to protect school districts from declining enrollment by amending the LCFF calculation to allow districts to "consider the greater of a school district's current year, prior year, or the average of three prior years' ADA" effectively providing further protection to NVUSD. These changes, absent any other adjustments, will have a significant positive impact on the budgetary picture for NVUSD and eliminate the fiscal impact argument altogether.

In any event, the public school revenue that would flow to MCMS when fully-enrolled in a few years would represent merely two-percent (2%) of NVUSD's current revenue estimates. In the first two years it would be less than one-percent (1%). If that is the County Board's view of a "substantially undermining" effect, then no charter school could ever be approved. Significantly, the Staff Report does not find that the reduction in revenue will have any adverse operational effect whatsoever on NVUSD. Rather, its conclusion is limited to a potential finding that in year four after MCMS approval, absent implementation of more prudent fiscal habits, or increased state K-12 revenue or the likely increased enrollment due to the expansion of the TK program, NVUSD will fail to meet its budget reserve set aside of 7.5% in 2025-26, rather than failing to meet it in 2026-27. (Staff Report p. 4.) That is the entire conclusion of the fiscal impact analysis in the Staff Report—the sole conclusion upon which the County Board would have to justify a denial of the charter petition.

***IT APPEARS THAT NVUSD REVENUE WILL ACTUALLY INCREASE IN COMING YEARS, EVEN WITH MCMS OPERATING AT FULL ENROLLMENT***

We also note that the Staff Report contains a table and a chart called "Summary What If Analysis" that appear to show the impact of MCMS on the District's budget, but it is unclear what assumptions were used to create those projections. We requested that information, but what was provided was limited to the source of demographic data and ADA analysis. Loss of ADA revenue is only one piece of the analysis. For example, the District would also see a reduction in expenses as a result of serving fewer students and an increase in oversight revenue under Education Code section 47613(b). Those should have been factored into the projections—it appears that they were not. Most importantly though, any projected loss of ADA to MCMS would be entirely negated by the expansion of TK and influx of younger students into NVUSD schools. NVUSD's own demographer estimates that the District will add 460 units of ADA for TK students by the 2025-26 school year. (Staff Report, p. 4.) That is more than the entire MCMS student population, as MCMS is only proposing to serve 336 students at full capacity.

When considering together the opening of MCMS, and the expansion of Transitional Kindergarten, the net result of those changes is an increase in ADA in the next five years. This increase in revenue will give NVUSD another opportunity to turn their finances in a positive direction. And the Staff Report recognizes that the NVUSD projected expansion and influx of TK fully mitigates any adverse finding of fiscal impact related to MCMS. (Staff Report, bottom of p. 4.) In short, no such finding of adverse fiscal impact can be made on the totality of these facts.

***WITHOUT MCMS, MANY STUDENTS WILL LEAVE NVUSD***

Finally, the fiscal analysis assumes that all students who would enroll in MCMS will remain in NVUSD if MCMS is not approved. This is a flawed assumption and is not borne out by parent actions or statements. According to the California Department of Education, Private school enrollment in Napa County has skyrocketed over the past few years whereas it has remained relatively stable across the State of California.<sup>1</sup> The data from River Middle School indicating the departure from NVUSD of 57 students upon the announcement of River's closure is a stark harbinger of what is yet to come. NVUSD decisions are accelerating the decline in enrollment by driving families out of the District to private schools, homeschooling, or leaving the area altogether. It is highly likely that a meaningful portion of students who would attend MCMS if approved will also leave NVUSD for private school, homeschooling or other districts if MCMS is not approved, impacting NVUSD's revenue for middle school, and potential future enrollment in Napa's public high schools. Notably, MCMS is a public middle school designed as a bridge to the public high schools in Napa, and specifically intended to support NVUSD high schools. Without it, it is highly likely that families that divert from NVUSD for middle school will not return to NVUSD for high school. Approving our charter prevents this divergence. MCMS will have a positive impact on the community, and in the long term improves the health of the District.

***THE FACTS AND LAW DO NOT SUPPORT A FINDING OF "DEMONSTRABLY UNLIKELY"***

The NCOE staff appear to support approval of the MCMS charter. However, although not demonstrated by complete facts and analysis, the Staff Report provides a draft finding "if justified" that could potentially support a single statutory finding, should the County Board be convinced and decide to go that route. But again, that potential finding is limited by the language of the statute, which states: "The charter school is demonstrably unlikely to serve the interests of the *entire community in which the school is proposing to locate.*" (*Emphasis added.*)


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<sup>1</sup> According to data provided by the CDE, the percent of students in private school in Napa County has skyrocketed since 2018, whereas the percent across the State has remained relatively stable, approximately 7.2-7.3%. Based on the NVUSD data and CDE data, Napa's private school enrollment in 2020-2021 was approximately 10%, significantly higher than the State average. (Enrollment Data from Staff Report page 19). This percentage is presumably even higher today, with the 57 River Students now having left to enroll in private school or to move to other districts, students from other campuses enrolling in private school, and given the NVUSD enrollment numbers for this school year.

It is essential for the County Board to recognize that the standard is not “potentially” or “possibly” or “arguably” unlikely. The legal standard is “demonstrably” unlikely. However, the Staff Report here does not demonstrate any such unlikeliness at all. To the contrary, the County Superintendent made clear that “she would enthusiastically recommend approval” if it were not for the District’s financial missteps. (Staff Report, p. 3.) We therefore respectfully submit that the County Board should not be so quick to put the District’s roughly projected finances ahead of what is best for students. As recognized by FCMAT: “If an authorizer considers denying a charter based on fiscal impact, the law requires the authorizer to consider the academic needs of students whom the charter school proposes to serve.” (FCMAT Fiscal Alert: “Fiscal Impact of New Charter Evaluation Criteria in AB 1505” August 2020.) Simply put, your decision must consider what is best for students—not just a potential one- to two-percent decrease in District revenue four or more years from now. The law favors a finding for petitioners, and we urge you to put students and families first and approve the MCMS charter.

Thank you very much for your time and consideration. We look forward to answering any questions you may have at the County Board’s meeting on March 15, 2022.

Sincerely,

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Lauren Daley

On behalf of Petitioners for Mayacamas Charter  
Middle School