

**STAFF REPORT:  
PROPOSED FINDINGS OF FACT AND RECOMMENDATIONS  
REGARDING PETITION TO ESTABLISH A NEW CHARTER SCHOOL  
(MAYACAMAS CHARTER MIDDLE SCHOOL)**

**Napa Valley Unified School District  
Meeting of Board of Trustees: December 9, 2021**

**I. INTRODUCTION**

**A. Background**

On September 15, 2021, the Napa Valley Unified School District (“NVUSD” or “District”) received a charter petition (“Petition”) from Napa Foundation for Options in Education (“Petitioners”), a California nonprofit public benefit corporation, seeking to establish a new public charter school, to be called Mayacamas Charter Middle School (“Charter School”).

Petitioners request a five-year term for the Charter School from July 1, 2022 through June 30, 2027. Petitioners anticipate that the Charter School would serve students in grades 6 through 8 and would commence operations in the 2022-2023 school year with a Year 1 enrollment of 180 students in grades 6-8. Starting in Year 2, the Charter School would add 52 students each year, as it grows to a full capacity of 336 students by Year 4. (Petition, p. 21, “Enrollment Plan.”)

Petitioners do not currently operate any other charter schools.

**B. Summary of Staff Findings and Recommendation to Board**

Based on its comprehensive evaluation of the Petition, District staff’s recommendation to the District Board of Trustees is that the Petition be denied. The primary reasons for this recommendation are as follows:

- The financial and operational plan for the Charter School is not viable, is based on unsupported and unrealistic revenue and expense assumptions, and will result in the Charter School not meeting the minimum financial reserve specified under the applicable state regulations in all years of operation.
- The Petition describes admissions criteria that violate state law and may have discriminatory effects, by conditioning an admissions preference on parent volunteer hours. The inclusion of this unlawful admissions preference demonstrates an unfamiliarity with the laws governing charter schools on the part of Petitioners.
- Petitioners lack the knowledge and experience to successfully implement the program set forth in the Petition, and have not articulated a clear plan to obtain the services of individuals who have the required knowledge and experience.
- The educational program set forth in the Petition is not reasonably comprehensively described; is unlikely to meet the needs of all subgroups of pupils (particularly English learners and students with disabilities); and is unlikely to be successfully implemented.
- The Charter School is unlikely to serve the interests of the entire community in which it proposes to locate, because it duplicates programs that the District already offers with sufficient capacity and because it would undermine existing District services, academic offerings, or programmatic offerings due to its fiscal impact.

- Additionally, community interest in the Charter School does not appear strong, based on (1) public comments at the November 4 public hearing on the Petition, and (2) an apparent 24% decrease in interest in the Charter School by parents who signed the Petition, as evidenced by responses to November 2021 parent signature validation calls.
- The Petition appears to have large portions simply cut-and-pasted from another charter petition that was submitted last year to Compton Unified School District, rather than having been prepared specifically with the needs of NVUSD students and the NVUSD community in mind.

The specific statutory grounds for this recommendation, and detailed findings of fact in support of those grounds, are set forth in detail below at Parts III and IV of this Report.

## **II. REVIEW OF PETITION**

### **A. Timeline for Board Action**

Pursuant to California Education Code section 47605(b),<sup>1</sup> District must hold a public hearing on the Petition within 60 days of receipt, and the District’s governing board of trustees (“Board”) must vote on whether to grant or deny the Petition within 90 days of receipt. District staff findings and recommendations regarding approval or denial of the Petition must be published at least 15 days prior to the Board meeting at which the Board will take final action.

Petitioners submitted the Petition on September 15, 2021. The District formally announced its receipt of the Petition and the timeline for review and action on the Petition at its regular meeting on October 14, 2021, and additionally published a copy of the full Petition on the District’s Web site for public viewing.

The District held the required public hearing at a special Board meeting held on November 4, 2021, so that the Board could consider the level of support for the Petition among teachers employed by the District, other employees of the District, community members and parents. The matter is scheduled for the Board to take final action regarding approval or denial of the Petition at its regular meeting to be held on December 9, 2021. This staff report will be published on or before November 24, 2021.

### **B. The District’s Petition Review Process**

Upon receipt of the Petition, the District convened a team of District staff to conduct a comprehensive review of the Petition, with guidance from District legal counsel. The team consisted of personnel from the following departments: Data & Assessment Services; Business Services; Enrollment; Human Resources; Instructional Support Services; Operations, Facilities & Maintenance; Special Education; Student Services; and Technology (“Review Team”).

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<sup>1</sup> California Education Code section 47605 is part of the Charter Schools Act of 1992, as amended (Ed. Code Tit. 2, Div. 4, Part 26.8; sections 47600-47663). This report will hereafter refer to Education Code section 47605 as “Section 47605” for brevity. A copy of Section 47605 is attached to this report as Appendix A.

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Individual members of the Review Team were assigned specific areas of the Petition to evaluate based on their areas of expertise and responsibility. The Petition review was organized according to the standards set forth in Section 47605, with guidance on interpreting those standards based on 5 CCR § 11967.5.1 (see Part II.C below and Appendix B to this report) and a review rubric published by the California Charter Authorizing Professionals organization (“CCAP”) in its *Initial Charter Petition Toolkit*.<sup>2</sup>

District staff kept a record of comments received at the November 4, 2021 public hearing on the Petition. During public comment on November 4, 2021, there were 23 comments against the charter and 17 in support. (The full public hearing may be viewed at <https://youtu.be/AU6wcfGS6Y?t=3004> (starting at timestamp 50:04).) Each comment was then categorized based on speaker role and common theme. The tables below summarize each.

<b>Speaker Roles</b>	<b>Total</b>
NVUSD Principal	5
Petitioner	1
Parent	23
NVUSD Teacher	11
Union Leader	5
Vallejo Teacher	1
NVUSD Clerical	2
NVUSD Employee	1
Student	1
CTA	1

<b>Common Themes</b>	<b>Total</b>
Loss of Resources	12
Duplicate Program	15
Needed by the Community	18
Families Leaving the District	6
Leads to NVUSD Layoffs	3
Fails to Support EL/SWD	4
Harm to Students	5
SEL Program	6
New Tech Pathway	4
Facilities Concerns	1
Likely to Fail	4

District staff additionally validated the teacher and parent signatures on the Petition through brief telephone interviews of signatories, in which they were asked to confirm their signatures, their ability to review the petition before signing, and their understanding that a signature reflected their meaningful interest in either teaching at the Charter School or enrolling their children in the Charter School. Following validation, District staff found that the Petition met the required number of signatures for both teachers and parents under Section 47605(a)(1), although only 76 percent of the parents contacted stated that they were still meaningfully interested in enrolling their children at the time of the validation survey.

In addition to its review of the Petition, the Review Team attempted to conduct a capacity interview with Petitioners on November 15, 2021, to ask questions about the program set forth in the Petition, the budget for the Charter School, and Petitioners’ knowledge of the Petition and

<sup>2</sup> The *Initial Charter Petition Toolkit* is published online at <https://calauthorizers.org/initial-charter-petition-toolkit/>.

plans for implementation of the Petition. A capacity interview is described in the CCAP *Initial Charter Petition Toolkit* as a “best practice” which both “provide[s] district/county office staff the opportunity to meet the charter leaders and clarify any concerns raised during the evaluation of the petition” and “afford[s] petitioners the opportunity to demonstrate their experience and expertise and highlight elements in the petition.”<sup>3</sup>

Lead Petitioners at first stated that they were available at the time scheduled for the capacity interview. However, Lead Petitioners then attempted to impose their own conditions on the conduct of the interview in advance (including conducting the interview by written questions only and including the members of the District Board as part of the exchange of written questions and answers); and ultimately refused to attend the capacity interview after District staff declined to agree to Lead Petitioners’ conditions.

During the Petition review process, staff found that upon opening the Excel file containing the Charter School’s proposed budget, the file displays a link to another file (not included with the Petition) named “Bridges Prep Academy 21-22 Budget 3.26.21.xls.” District staff found that a petition to establish a new charter school named Bridges Preparatory Charter Academy (“Bridges”) was submitted to Compton Unified School District (“CUSD”), which denied Bridges’s petition on October 13, 2020.<sup>4</sup> When comparing the Bridges petition<sup>5</sup> and the current Petition for Mayacamas Charter Middle School, staff found numerous similarities. In fact, entire sections of the Bridges petition appear to have been copied to the Mayacamas Charter Middle School Petition. This went above and beyond “boilerplate” language that is included in all charter petitions. For example, the section of the Petition related to the educational program for English Learners appears almost identical to the same section in the Bridges petition. A software comparison of the two petitions found that 30.4% of the content was identical, 7.5% included minor changes, and 2.8% was paraphrased.

The Review Team’s analysis, along with input from District counsel, have been incorporated into this report.

### **C. Standards for Evaluation of a Charter Petition**

Although the Charter School Act reflects legislative policy that “charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged” (Ed. Code § 47605(c); *see also* Ed. Code § 47601), a charter

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<sup>3</sup> See CCAP, *Initial Charter Petition Toolkit - Overview*, available at <https://calauthorizers.org/resource/initial-charter-petition-toolkit-overview-of-initial-petition-review/>.

<sup>4</sup> See Minutes, Oct. 13, 2020 meeting of the Compton Unified School District Board of Trustees, available at <https://bit.ly/3oD6mqy> (p. 3 of PDF file). CUSD’s full staff report recommending denial of Bridges’s charter petition and stating reasons for the recommendation of denial is available at <https://www.compton.k12.ca.us/media/6403/final-posted-09-28-20-bridges-staff-report-10-13-20.pdf>.

<sup>5</sup> A copy of the original Bridges petition that was submitted to CUSD in 2020 was retrieved from the records of the Superior Court for Los Angeles County, attached to a filing in a lawsuit between CUSD and the Los Angeles County Office of Education. That litigation is still pending. *Compton Unified School District v. Los Angeles County Office of Education et al.*, case no. 21STCP00922 (filed March 22, 2021).

authorizing entity has a responsibility—both to the students within its jurisdiction and to the taxpayers of the State of California, who will ultimately fund the charter school—to carefully review charter petitions prior to granting a new petition or renewing an existing petition, in order to ensure that the proposed charter school will be fiscally sound and of educational benefit to all students who attend. Accordingly, the Legislature has imposed stringent standards for evaluation of new charter school petitions, as codified in Section 47605. A copy of the full text of Section 47605 is attached to this report as **Appendix A**.

Regulations promulgated by the California Department of Education provide helpful guidance in interpreting the standards set forth in Section 47605. (*See* Cal. Code of Regulations, Title 5, Division 1, Chapter 11, Subchapter 9, Section 11967.5.1, “Criteria for the Review and Approval of Charter School Petitions and Charter School Renewal Petitions by the State Board of Education (SBE)” (“5 CCR § 11967.5.1” or “Regulations”).)<sup>6</sup> A copy of the full text of 5 CCR § 11967.5.1 is attached to this report as **Appendix B**.

A local educational agency (LEA) should approve a charter petition “if it is satisfied that granting the charter is consistent with sound educational practice and with the interests of the community in which the school is proposing to locate.” (Ed. Code § 47605(c).) A local educational agency may not deny the approval of a charter petition unless it makes written factual findings, specific to the particular petition, that one of the following conditions is true:

- The charter school presents an unsound educational program. (Section 47605(c)(1).) The Regulations further define an “unsound educational program” at 5 CCR § 11967.5.1(b).
- The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition. (Section 47605(c)(2).) The Regulations specify factors to consider in determining whether charter petitioners are “demonstrably unlikely to successfully implement the program” at 5 CCR § 11967.5.1(c).
- The petition does not contain the required number of signatures specified in Section 47605(c)(3).
- The petition does not contain an affirmation of each of the conditions described in Education Code section 47605(e).
- The petition does not contain reasonably comprehensive descriptions of all of the 15 required elements of the petition that are set forth in Section 47605(c)(5)(A)-(O). The Regulations include specific guidance on evaluating whether each required element under Section 47605(c) is reasonably comprehensively described at 5 CCR § 11967.5.1, subdivisions (f) and (g).

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<sup>6</sup> 5 CCR § 11967.5.1 governs review of charter petitions by the State Board of Education, and a local school district is not required to employ the standards in this regulation. However, local school districts commonly follow the guidance provided by this regulation in applying the standards in Section 47605 to their review of a charter petition.

- The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of collective bargaining. (Section 47605(c)(6).)
- The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. (Section 47605(c)(7).)
  - Analysis of this finding includes consideration of the fiscal impact of the proposed charter school on the district, as well as: (A) the extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings; and (B) whether the proposed charter school would duplicate a program currently offered within the school district with sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.
- The school district is not positioned to absorb the fiscal impact of the proposed charter school. (Section 47605(c)(8).) This criterion is primarily only applicable where the authorizing school district has a qualified negative certification, a negative interim certification, or is under state receivership.

### **III. SUMMARY AND RECOMMENDATION FOR DENIAL OF PETITION**

District staff believes significant deficiencies in the Petition warrant denial by the Board, and on that basis recommend that the Board vote to deny the Petition. These deficiencies include the following:

- The financial and operational plan for the Charter School is not viable, is based on unsupported and unrealistic assumptions, and will result in the Charter School not meeting its minimum 5% financial reserve in any of the first 5 years of operation. For example:
  - The petition states that the reserve is only equal to 5% in year 1. This is the minimum reserve for a charter school with an Average Daily Attendance (ADA) of 0 to 300. Therefore, any overstatement of revenues or underestimate of costs will render the financial and operational plan not viable. Staff found very significant overstatements of revenues and understatement of costs.
  - Enrollment projections, especially the Petition's projections regarding the Unduplicated student rate, are unrealistic, resulting in dramatic overestimation of Charter School revenues from state funding under the Local Control Funding Formula.
  - Estimates of Title I federal funding and Food Service revenues are overstated due to faulty assumptions regarding student demographics.
  - Operational budget estimates of the anticipated revenues and expenditures necessary to operate the Charter School are unreasonable.
  - Plans and budgeting for the provision of all necessary insurance are not clearly described or documented.
  - The budget documents are inadequate and not prepared according to state standards.

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- The budget assumes a donation of \$250,000 for start-up costs. However, no documentation of these funds has been provided, and the District is concerned that these funds may be sourced from funds previously collected by a school-related organization as donations from NVUSD community members to provide educational and enrichment experiences to current and future District middle school students.

These fatal deficiencies in the Petition budget demonstrate that the educational program set forth in the Petition is unlikely to be successfully implemented.

- The Petition describes admissions criteria that violate state law and may have discriminatory effects, by conditioning an admissions preference on parent volunteer hours. The inclusion of this unlawful admissions preference demonstrates an unfamiliarity with the laws governing charter schools on the part of Petitioners.
- The educational program set forth in the Petition is unlikely to meet the needs of all subgroups of pupils, particularly English learners and students with disabilities.
  - Additionally, the facility where the Charter School intends to locate appears to contain significant physical accessibility barriers for students with disabilities in its current condition, and the Petition states no plan for mitigating these issues.
- The educational program set forth in the Petition is not described in a reasonably comprehensive manner. In particular, the Petition's description of how the Charter School will provide services to English learners and students with disabilities is not sufficiently comprehensive to support a conclusion that the Charter School is likely to adequately support these students. Additionally, the Petition does not comprehensively describe the Charter School's proposed curriculum and professional development plan, or its annual goals and strategies to achieve those goals.
- The educational program set forth in the Petition is unlikely to be successfully implemented, because Petitioners lack the knowledge and experience to successfully implement the program set forth in the Petition, and have not articulated a clear plan to obtain the services of individuals who have the required knowledge and experience in school administration, curriculum, instruction, assessments, English learner and special education services, or fiscal operations.
- The Charter School is unlikely to serve the interests of the entire community in which it proposes to locate, because it duplicates programs that the District already offers with sufficient capacity and because it would undermine existing District services, academic offerings, or programmatic offerings due to its fiscal impact.

The foregoing deficiencies support District staff's recommendation of denial based on at least the following statutory grounds, pursuant to Section 47605(c):

1. The Charter School presents an unsound educational program. (Section 47605(c)(1).)
2. Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition. (Section 47605(c)(2).)

3. The Petition does not contain reasonably comprehensive descriptions of at least the following elements required under Section 47605(c)(5):
  - Educational program;
  - Measurable student outcomes;
  - Means by which the charter school will achieve a balance of racial and ethnic pupils, special education pupils, and English learner pupils that is reflective of the general population residing within the District.(Section 47605(c)(5), subdivisions (A), (B), (G).)
4. The Charter School is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. (Section 47605(c)(7).)

The detailed factual findings supporting the above conclusions are set forth below in Part IV of this report.

With respect to the other statutory grounds for denial under Section 47605(c) which are not listed above, District staff found that they were not applicable to the Petition, including the following: subdivisions (3) (petition does not contain the required number of signatures); (4) (petition does not contain an affirmation of each of the conditions described in Section 47605(e)); (6) (petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer for collective bargaining), and (8) (school district is not positioned to absorb the fiscal impact of the Charter School).

#### **IV. SPECIFIC FACTUAL FINDINGS IN SUPPORT OF RECOMMENDATION**

##### **A. The Petition Presents an Unsound Educational Program (Ed. Code § 47605(c)(1))**

The educational program set forth in the Petition is deficient in at least the following areas: English Learner education; education of students with disabilities; annual goals and strategies to achieve those goals; and implementation of the core curriculum.

Although the program may be of educational benefit to some subgroups of the pupils who attend the Charter School, these deficiencies support a finding that it is not likely to be of educational benefit to all subgroups of the pupils who attend.

Additional concerns relevant to the soundness of the Petition's educational program are discussed below in Part IV.B, addressing whether Petitioners are likely to successfully implement the program set forth in the Petition, and Part IV.C, addressing whether the Petition provides a "reasonably comprehensive" description of the educational program under Section 47605(c)(5)(A).

## **1. The Program for English Learner Students Is Inadequate**

The Petition describes an unsound educational program for English Learner (EL) students.

The District serves a relatively high proportion of EL students—22.6 percent for all grades, and 22.3 percent for grades 6-8, in the 2020-21 school year, compared with 17.7 percent for all grades statewide in the same year. (Source: California Dept. of Education, *Dataquest*.) This means that if the Charter School’s demographics reflect those of the overall District,<sup>7</sup> out of the 180 students to be enrolled in the Charter School’s first year of operation, approximately 40 would be likely to be classified as requiring English Language Development (ELD) instruction—growing to approximately 75 students in the 2026-27 school year. The Charter School would need a robust English Learner program to adequately support these students.

The Petition acknowledges the probability that the school will enroll “a significant number of English learners,” the majority of whom will be Long-Term English Learners (LTELs). The Petition promises to provide a comprehensive program of designated and integrated ELD for all sub-categories of EL students, and to use the state “ELA/ELD standards “ to support and assess their progress. However, there are significant deficiencies with respect to coordination responsibilities in Years 1-2, professional development, monitoring, reclassification, and periodic assessment of the EL program.

Responsibility for coordinating and providing direct EL instruction is delegated to an EL Coordinator starting in Year 3 of operation. (Petition, p. 63.) The Petition does not contain a list of qualifications for the EL Coordinator. For Years 1 and 2, the Head of School or a qualified teacher-designee is responsible for coordinating ELD and either providing direct instruction or designating some responsibilities to qualified teachers. (Petition, pp. 85-86, fn. 158-159.) The job qualifications and responsibilities for the Head of School do not contain this essential duty, nor knowledge of ELD instruction, nor a requirement to have a teaching credential that qualifies this person to teach ELD. (Petition, pp. 122-124.)

While there is no legal requirement that a school employ a full time EL coordinator (and many districts give a classroom teacher release periods for part of the day to fulfill that function), the Petition identifies multiple essential responsibilities for the EL Coordinator who will not be hired until Year 3. (Petition, pp. 63, 84, 88-89, 93, 95-97, 117). It seems unlikely as a practical matter that the Head of School will be available to take on these responsibilities during the first years of a new school, given the numerous other responsibilities for this job position (Petition, pp. 122-124). The Petition does not provide specific information on how the responsibilities of the EL Coordinator will be carried out during Years 1 and 2.

The main strategy for supporting English Learners is Guided Language Acquisition Design (GLAD), which is a specific program requiring extensive teacher training. However, the professional development program does not address a plan for training all staff on the core components of GLAD, which are foundational to the plan for supporting integrated English

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<sup>7</sup> It is not clear, based on an analysis of parents who signed the Petition indicating their interest in enrollment and the Petition’s plans for student outreach, that the Charter School’s demographics will in fact reflect those of the overall District, as discussed below in Part IV.C.2.

Language Development (*See* Petition, pp. 82-84). The Petition states that teachers will receive ten days of summer training, which will address 16 topics, including designated and integrated ELD—but neither the summer training plan nor the school-year training calendar mention GLAD, despite the proposed use of GLAD strategies to make curriculum accessible. (Petition, pp. 82-84.) Teachers will receive limited additional training during one minimum day PD session in December on Integrated ELD strategies, reclassification, and meeting the needs of LTELs. (Petition, p. 84). This professional development is not sufficient to ensure that teachers are able to implement the program set forth in the Petition for EL students.

The reclassification and monitoring process for EL students set forth in the Petition is not sufficiently thorough to constitute a sound educational program for those students.

The Petition identifies that the EL coordinator / Head of School will be responsible for monitoring, but does not detail how the process will work. The petition does not go into detail about the assessment tools that will be used for monitoring, the specific data points that will be analyzed by site staff, or the frequency at which monitoring will occur within the four year period. (Petition, p. 95.)

There is some specificity with regards to programs for monitoring Long Term English Learners (LTELs) (*e.g.*, Achieve 3000, Accelerated Reader, Brain Pop), and the Petition provides that LTELs will be monitored quarterly (Petition, p. 96); however, other English Learners do not appear to be included in this process.

The Petition references that “[a]n alternate assessment for English language proficiency will be administered to students who are unable to participate in the ELPAC, according to the guidelines set forth in the student’s IEP.” The Petition does not specify whether the Charter School will use the Alternate ELPAC, developed for students with more severe disabilities, or how an alternative assessment will be selected.

The District’s reclassification criteria can be accessed from the District’s English Learner Services Web page, at <https://www.nvusd.org/2ndlanguage>. The Petition diverges from the District’s robust EL reclassification standards in multiple ways:

- Criterion 1 is the score of “4” or better on the summative ELPAC assessment. The Petition references an alternate assessment as required by the student's IEP or 504 plan. The state has developed an alternate ELPAC for students with more severe disabilities, but District staff are not aware of Local Educational Agencies (LEAs) being allowed to substitute other alternate assessments, and there is not one available to students with 504s. However, LEAs are allowed to alternatively reclassify students based on specific criteria, as thoroughly outlined in the District’s standards.
- Criterion 2 is teacher input. Districts have flexibility in this, and NVUSD uses the Student Oral Language Observation Matrix (SOLOM). The whole state will begin to use the Observation Protocol for Teachers of English Learners (OPTTEL) tool once it is approved. The Petition indicates that students will need to have earned a “C” or better in the most recent trimester (Petition, p. 95); but does not specify which course that grade needs to be in.

- Criterion 3 is parent recommendation. NVUSD has a process whereby someone from the school site meets with the parent either in person or via phone, gets approval, and then documents approval in ELlevation, its online EL management tool. The District has talking points to help guide this conversation. The Petition references parent approval, but does not provide any additional details for how that process will work.
- Criterion 4 is what the CDE calls “Basic Skills Relative to English Proficient Students”, essentially a locally determined assessment. LEAs typically look at CAASPP data or another local assessment: for NVUSD, this is Star Reading. The Petition indicates that students scoring at level 3 or 4 (standard met or exceeded, respectively) meet the reclassification criteria on the CAASPP, but allow students with disabilities to score at a level 2 (standard nearly met) or level 3. It is not clear whether CDE allows for blanket differentiation in that way. The Petition specifies the Northwest Evaluation Association (NWEA) reading assessment for the local assessment, and chooses the 50th percentile mark, but it is unclear what data-driven process determines that cutoff. Blanket criteria for reclassifying students with disabilities are not appropriate, since to the extent such students are subject to different approaches to any instructional programs or requirements, this decision should be made on an individual basis.

Federal law requires school districts to modify their programs for EL students if, after a reasonable trial, the programs are not successful in ensuring that students learn English and are achieving academically. (*Castaneda v. Pickard*, 648 F.2d 989, 1009-1010 (5th Cir. 1981).) The Charter School proposes to evaluate the effectiveness of its program for EL students by examining several kinds of data for EL students, including reclassification rate, and EL and RFEP (Reclassified Fluent - English Proficient) performance in core subjects relative to their English-only peers. There is no indication that this information will be disaggregated by proficiency level or students’ time in the program, or that students’ achievement will be assessed longitudinally, so that their progress can be evaluated. Without such information, it will be impossible to determine whether the program is effective or what specific program modifications are required. This omission is especially concerning in light of the Charter School’s decision not to set differential progress goals for subgroups, on the theory that they expect all subgroups to achieve at grade level (*see* Petition, p.108.) Given that the school will be measuring achievement entirely through assessments administered in English, it is highly unlikely that EL students who are not yet proficient in English will score at a proficient level. The failure to identify benchmarks for progress that are specific to EL students undermines MCMS’s ability to evaluate the effectiveness of its EL program.

Additional deficiencies with the comprehensiveness of the Petition’s description of services for English learner students are addressed below in Part IV.C.1.a.

## **2. The Petition Lacks an Adequate Plan to Meet the Needs of Students with Disabilities**

As set forth below in Part IV.C.1.b, the Petition’s plan for providing services for students with disabilities is not reasonably comprehensively described. However, the information that is contained in the Petition indicates that the Charter School will not be prepared to meet the needs

of students with disabilities, including students with disabilities who are also classified as English Learners, and that specialized academic instruction is not adequately planned for.

Within the course structure of the Petition, there is no course allocation for students who require specialized academic instruction (SAI)—whether provided within a special day class setting, or by resource specialists inside and outside the regular classroom setting. Additionally, in the class schedule, 180 minutes weekly are set aside for all intervention services—including services identified within a student’s Individual Education Plan and required services for English Learners. (Petition, p. viii.) Given that 28.28% of students in the District who are eligible for Special Education services are also identified as English Learners, this is not a sufficient allocation to meet both mandated supports.

As further discussed below in Part IV.C.1.b of this report, all statements in the Petition regarding services for students with disabilities are subject to Special Education Local Plan Area (SELPA) approval and availability, and the Petition is not clear with respect to the Charter School’s plans for SELPA membership.

Additionally, District staff has inspected the facility that the Petition identifies as the likely site of the Charter School, and found significant physical accessibility issues in its current condition. These include restrooms that do not appear to meet current accessibility standards (*e.g.*, narrow stalls, lack of grab rails); lack of accessible paths of entry (all persons entering the building must climb a set of stairs, access to second floor only by staircase); and doors that present barriers to access (*e.g.*, lack of automatic openers for doors; door closers requiring excessive force to open; high doorway thresholds). The Petition fails to address how the Charter School will be made accessible to students with physical disabilities, and the startup budget does not specifically designate any funds for facility improvements to reduce or eliminate physical barriers to accessibility.<sup>8</sup> Although charter school facilities are exempt from compliance with the Field Act, they must still comply with the Building Code (*see* Ed. Code § 47610(d)), and with federal requirements such as Title II of the Americans with Disabilities Act.

Additional deficiencies with the comprehensiveness of the Petition’s description of services for students with disabilities are addressed below in Part IV.C.1.b.

### **3. Annual Goals and Strategies to Achieve Those Goals**

The annual goals set forth in the Petition (Petition, pp. 30-34) are not cohesive and aligned to the strategies and methodologies described in Element 1 of the Petition. The theoretical foundations for New Tech Network (“NTN”) are addressed in the Petition (pg. 34-37); however, the practical implementation of the educational methodologies is not well described in the program. Furthermore, it is unclear how the comprehensive model will be integrated with the other methodologies (Understanding By Design, Marzano’s Classroom Assessment and Grading That Work, GLAD, Culturally Responsive Teaching (CRT), and blended learning) in a cohesive manner to support students (Petition, pp. 46-53).

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<sup>8</sup> The budget contains a start-up cost of \$50,000 for “Facility Consultants & TI,” but there is no notation indicating whether any of the expenditures under this line item will be for accessibility improvements to the facility.

Additionally, the goals set forth in the Petition do not appear reasonable, given the inadequate baseline data to ensure that “all students will meet or exceed statewide averages” as referenced in Element 1 of the Petition (pp. 32-33). For example, it is unclear from the descriptions in the Petition how Individualized Learning Plans (ILPs) will be implemented to support student growth and achievement. The description of serving students through blended learning programs and the learning lab model is also unclear as to how students will be assigned to the learning hub, criteria for learning hub assignments, and monitoring of progress in the curriculum, given the lack of professional development articulated for core curriculum in the professional development model, *see* Part IV.A.4 below (Petition, pp. 2, 54, 82-84).

#### **4. Implementation of Core Curriculum**

Although the New Tech Network’s five learning outcomes are research-based, 21st century skills, the educational program description is ambiguous and at times contradictory with respect to how these skills and qualities will be embedded and/or integrated in the curriculum, instruction, and assessment process. The Petition states that the core instructional model and master schedule is grounded in collaboratively planned interdisciplinary projects (p. 2), and later states that the NTN project-based work will be supplemental to the core curriculum in science (Amplify) (p. 68). The examples given for “Integrated Curriculum” units are high-school specific (p. 36).

The Petition states that there will be learning intention assessment of each outcome (p. 36); yet these are not included in Element III: Methods of Measurement (pp. 113-114). Both grading and the portfolio assessments do not appear aligned to the NTN’s five learning outcomes. (Petition, pp. 113-114.)

The professional development plan fails to address core curriculum support. The petitioners do not include a plan for training staff on core materials such as Amplify, CPM, History Alive and Study Sync and supplemental materials such as Achieve 3000, Duolingo, etc. (Petition, pp. 77-79, 82-84).

Honors Math 7 and Honors Math 8 do not adequately articulate how these align to the Common Core State Standards allowing students to learn three years’ worth of math in two years and demonstrate completion of Math 1 (Petition, pp. 63-66).

The instructional designs are research-based; however, the cohesive implementation of these models is not clearly articulated nor reasonable to implement (Petition, pg. 30-34). The Petition does not demonstrate how the Charter School will address the needs of students with IEPs; nor does the professional development support the implementation of GLAD strategies for English Learners in this model (Petition, pg. 82-84). For example, the curriculum does allow for individualized support, but the professional development plan does not address training staff on the implementation of the core and/or supplemental curriculum, which makes it challenging to implement with fidelity (Petition, pg. 82-84) Furthermore, the use of problem- and project-based learning through NTN is not adequately outlined nor aligned to the stated instructional design.

**B. Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition (Ed. Code § 47605(c)(2))**

As set forth above in Part II.C and in Appendix B to this report, the Regulations identify the following factors in determining whether charter petitioners are “demonstrably unlikely to successfully implement the program”: (1) the petitioners have a past history of involvement with unsuccessful educational programs (e.g., a charter school whose petition was revoked, or ceased operation for reasons within their control); (2) the petitioners are unfamiliar with the content of the petition or charter school legal requirements; (3) the petition presents an unrealistic financial or operational plan; or (4) the petitioners personally lack the necessary background in curriculum, instruction, and assessment, or finance and business management, or do not have a plan to secure the services of individuals who have the necessary background in these areas. (5 C.C.R. § 11967.5.1(c).)

Using these Guidelines, District staff have identified issues regarding viability of the financial and operational plan; Petitioners’ familiarity with charter school legal requirements and the content of the Petition; and the Petitioners’ backgrounds, experience, and plans for assembling a leadership team capable of operating the Charter School. The foregoing concerns support a finding that Petitioners are demonstrably unlikely to successfully implement the program set forth in the Petition.

**1. Financial and Operational Plan: The Proposed Budget Is Unclear, Reflects Dubious Assumptions, and Demonstrates that the Financial and Operational Plan is Not Viable**

A sound financial and operational plan is critical for a charter school’s success.<sup>9</sup> Unsound fiscal plans or practices may lead to charter revocation, waste of taxpayer funds, and detrimental effects on the education of students. Accordingly, close scrutiny of the financial and operational plan set forth in a new charter petition is an important component of a thorough review by the authorizer.<sup>10</sup> District staff’s analysis of the fiscal and budget documents submitted by Petitioners leads to the conclusion that the Petition presents an unsound fiscal and operational plan.

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<sup>9</sup> See, e.g., FCMAT, *Charter School Accounting and Best Practices Manual* (2017, updated 2019), available at <https://www.fcmat.org/PublicationsReports/2017-Charter-School-Manual-corrected-links-11-8-2019.pdf>, pp. 1-2: “In FCMAT’s experience, when charter schools fail it is often because of one or more of the following: lack of knowledge about school finance and business; lack of appropriate accounting practices; lack of financial management; uncontrolled spending. Charter operators often focus their energies on the mission, vision and educational program and provide less attention to a school’s fiscal management. Sound financial management, including understanding, establishing, implementing and monitoring proper internal controls and accounting policies and procedures, is essential to a charter school’s ability to achieve its mission.”

<sup>10</sup> See, e.g., FCMAT, *The Importance of Charter School Oversight* (presentation, 4th Annual Charter School Authorizing Conference (Sep. 20, 2018), available at <https://www.fcmat.org/PublicationsReports/September%202020%202018%20Charter%20Oversight%20CARSNET.pdf>, Slide 36: “Charter school failure is more likely because of financial reasons; therefore, the budget, start-up costs, and cash flow should become more of a focus in the petition process and review process.”

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The Petition's fiscal and operational plan is unrealistic. Staff analysis found that the budget is not viable for 2 years of operations, and does not meet the reserve requirements as required by law for a school district of similar size to the proposed charter school.<sup>11</sup> The required reserve for the Charter School, based on its assumed Average Daily Attendance (ADA), is 5%.<sup>12</sup> While the documents submitted with the Petition state that the Charter School will have a 5% reserve, a number of incorrect assumptions and mistakes were made which result in overstating revenues and understating expenses, which will lead to reserves below 5% for all years. A sampling of these items includes:

- Enrollment projections are potentially overstated. Enrollment is at 180 in Year 1, even though only 121 signatures were included for families that were meaningfully interested in enrolling their children in the proposed Charter School. District staff was able to speak with 96 of the 121 parents that signed the petition. Of those 96 parents, only 74 indicated that they were still meaningfully interested in attending the charter school next year. The remaining 22 parents stated that they were not meaningfully interested in attending next year or were unsure.

Although a charter petition is not required by Section 47605 to be substantiated by signatures representing full Year 1 estimated enrollment, and while the signatures at the time of Petition submission met the 50% of first-year enrollment threshold under Section 47605(a)(1)(A), the reality is that NVUSD has been experiencing a steady decline in overall enrollment since 2015, which trend has necessitated multiple school closures in the District in recent years, including at the middle school level. This decline is expected to continue at least through the 2027-28 school year.<sup>13</sup> Petitioners' plan for meeting their enrollment goals is not clear, and overstating enrollment projections will cause a substantial overstatement of revenues.

- Enrollment projections also assume that 6th grade enrollment will increase from 60 in Year 1 to 112 in Year 2. This represents an 86% increase, and is not realistic given District-wide enrollment trends.
- Local Control Funding Formula (LCFF)<sup>14</sup> revenues are based on average daily attendance ("ADA"), which is usually estimated at 95% of enrollment and Unduplicated count of

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<sup>11</sup> Under the Regulations, an "unrealistic financial and operational plan" that supports a finding that petitioners are "demonstrably unlikely to successfully implement the program" is found where the budget does not provide for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school over a period of no less than two years of operations. (5 CCR § 11967.5.1(c)(3)(B)(4).)

<sup>12</sup> Minimum reserves for school districts are defined at 5 CCR § 15450; *see also* Cal. Dept. of Education, *School District Budgets 2021–22*, available at <https://www.cde.ca.gov/fg/fi/ss/distbudgetcsfy2122.asp>.

<sup>13</sup> *See, e.g., Demographic Analysis & Facility Capacity Study* (March 25, 2021), prepared by King Consulting for NVUSD, available at <https://www.agendaonline.net/public/Meeting/Attachments/DisplayAttachment.aspx?AttachmentID=1285358&IsArchive=0>

<sup>14</sup> An overview of LCFF is available at the California Department of Education Web site at <https://www.cde.ca.gov/fg/aa/lc/lcffoverview.asp>. Further information on LCFF is available at <https://www.cde.ca.gov/fg/aa/lc/>.

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pupils. The Unduplicated count of pupils is equal to students who (1) are English learners, (2) meet income or categorical eligibility requirements for free or reduced-price meals under the National School Lunch Program, or (3) are foster youth. “Unduplicated count” means that each pupil is counted only once even if the pupil meets more than one of these criteria (Ed. Code §§ 2574(b)(2), 42238.02(b)(1)).

- The Petition drastically overstates revenues, based on the assumed Unduplicated pupil percentage of 60%. Based on an analysis of the Petition signatories who indicated meaningful interest in enrolling their children the Charter School, less than 25% of the signatures represent Unduplicated pupils, which is less than half the overall District percentage. This will substantially decrease federal and state revenues from the Petitioners’ assumptions.
- LCFF revenues for a charter school are funded at the lower of the actual Unduplicated count of the charter or the LEA. Given that the Unduplicated percentage for the LEA has never been above 57%, the charter cannot be funded at a 60% Unduplicated student count. Therefore, the assumption of being funded at 60% is unrealistic, and shows a misunderstanding of the basic funding rules for charter schools.
- Revenues for Title I federal funding are also drastically overstated as a result of incorrect assumptions regarding the students who qualify for free- or reduced-price lunch. The petition assumes a free and reduced lunch rate of 60%, even though that rate for families who signed the petition is less than 25%.
- Revenues for Food Services are overstated and incorrectly calculated, based on the incorrect assumption that 90 students will qualify for reduced-price meals and 90 students will qualify for free meals (for a total of 180 students and 100% of proposed enrollment).
- The Charter School’s projected facilities costs are based on Petitioner’s estimated rental and utility rate of \$220,140 in year one. Petitioners did not include any supporting information to substantiate this assumption, such as a draft rental / lease agreement, or a breakdown of utility costs to substantiate the facilities, utilities, and other assumed operating costs included in the budget.

District staff also found that the Petition contained unreasonable operational budget estimates of the anticipated revenues and expenditures necessary to operate the Charter School. (*See* 5 CCR § 11967.5(c)(3)(B)(2)).

- The assumption of \$250,000 start-up cash described as “Foundation Fundraising” is unsubstantiated by a Letter of Intent, a fundraising plan, or documentation of the funds currently in hand. District staff infers that this \$250,000 start-up cash is capital that was obtained from the school-related organization that previously identified as the River Family Foundation (RFF), which included donations from many NVUSD parents and community members that had been solicited for the purpose of providing educational and enrichment experiences to current and future District middle school students. The two Lead Petitioners previously served on the board of RFF, which has failed to follow protocols and procedures to dissolve itself as an official school-related organization. Lead Petitioners, in their capacity as RFF board members and leaders, have failed to respond to the District’s requests for documentation and records related to these funds in alignment

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with NVUSD Board Policy 1321, which provides guidance for oversight of school-related organizations.<sup>15</sup>

- Lottery funding is calculated based on prior year Annual ADA. Petitioners failed to recognize that charter schools are not entitled to, and do not receive, lottery funding in the first year of operation. This creates an overstatement of revenue in Year 1 by \$38,988.
- Startup cash flow includes \$18,833 in certificated supervisors' and administrators' salaries, in addition to \$5,417 for classified supervisors' and administrators' salaries. However, no statutory employee benefits are included for the startup year (*e.g.*, Social Security, Medicare, SUI, workers' compensation insurance).
- Substitute teacher costs are reflected under contracted services as opposed to a salary account line, which is incorrect per CSAM. Additionally, there is no inclusion of statutory benefit costs for substitute teachers (*e.g.*, Social Security, Medicare, state unemployment insurance, workers' compensation insurance). (Petition budget, Schedule D Expenses tab).
- Year 2 cash flow excludes lease and utility expenses, which are included in the Year 2 budget in the amount of \$253,161. The projected Year 2 cash flow shows a cash balance of \$122,188 at the end of fiscal year 2023-2024. However, if the lease and utility costs had been included in the Year 2 cash flow, the Charter School would be projected to have a negative cash balance as early as November 2023 and continuing through June 2024, likely accumulating to a cash deficit of about **\$128,000**.
- The amount budgeted for core and student instructional materials is insufficient to purchase materials for every content area for their projected enrollment of 180 students. For example, NVUSD's recent adoption of Amplify Science cost an average of \$190 per student, including student materials, teacher's guides, and lab kits).
- There is continuous reference to "ending cash balance" and "net income" in the Petition budget, but inadequate identification of the ending fund balance, which is used to calculate the reserve.

The Petition and supporting documents do not adequately provide for the acquisition of and budgeting for general liability, workers' compensation, and other necessary insurance of the type and in the amounts required for an enterprise of similar purpose and circumstance. (*See* 5 CCR § 11967.5(c)(3)(C).)

- Petitioners claim that general liability insurance and workers' compensation insurance will be obtained, but there is no documentation substantiating details such as the estimated per-claim or aggregate coverage amounts, which would ultimately determine the cost. Therefore, the District is unable to determine, based on the information in the Petition and supporting documents, whether the budgeted expenditures are realistic.

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<sup>15</sup> Lead Petitioners' history with RFF, and their direct involvement with the posture taken by RFF toward District inquiries regarding these funds, provides additional support for the finding in Part IV.B.5 below that there is a likelihood, if the Petition is granted, of a working relationship between the Charter School and the District that will not be conducive to effective Charter School oversight by the District.

- There is no mention of additional types of insurance that may be needed, such as student accident insurance.

Finally, although the Petition provide a budget for the proposed Charter School (including the proposed first year operational budget (with budget assumptions), startup cost, and cash flow and financial projections for the first three years of operation (Section 47605(h))), the budget documents are inadequate and not prepared according to state standards. The budget documents do not differentiate between unrestricted and restricted revenues and expenses, as outlined in the California School Accounting Manual (CSAM). California Code of Regulations, Title 5, section 15071 (5 CCR § 15071). 5 CCR § 15071 requires charter schools to follow the CSAM. The Charter School Oversight Checklist published by the state Fiscal Crisis and Management Assistance Team (FCMAT) (published at <https://www.fcmat.org/charter-school-oversight-checklist>) outlines how separate accounts must be maintained for unrestricted and restricted revenues and expenditures.

## **2. Petitioners Are Unfamiliar with the Content of the Petition and the Requirements of Law That Would Apply to the Proposed Charter School**

As set forth above in Part IV.B.1, erroneous assumptions in the Petition budget reflect an unfamiliarity on Petitioners' part regarding the requirements of law that would apply to the Charter School (*e.g.*, lottery funding, LCFE funding rates for Unduplicated pupils). Petitioners' unfamiliarity with charter school legal requirements is also evidenced by the inclusion in the Petition of an admissions preference that violates the Education Code.

### **(a) Admissions Criteria Are Unlawful and Potentially Discriminatory**

The "Admissions Criteria" portion of the Petition (Element VIII) violates the Education Code by conditioning admissions preferences on parent volunteer hours. This unlawful preference may also have a disparate impact on certain student subgroups by limiting enrollment access for students whose parents are unable to contribute the volunteer time required to qualify for this preference.

The Petition provides that in the event enrollment demand exceeds capacity, admissions preferences in a random drawing may be extended to various categories of students, including:

1. Students residing in the Napa Valley Unified School District
2. Siblings of admitted students
3. Children of teachers, staff and Founding Parents of MCMS (up to 10% of enrollment)
4. Foster Youth and/or Homeless Youth
5. Students who are currently enrolled in or reside in the attendance area of Shearer Elementary School.

(Petition, p. 145.) However, a "Founding Parent" (referenced in preference #3) is defined on page 143, footnote 176, as being "required to volunteer a significant number of hours (at least 75) prior to the opening of MCMS in August 2022, towards MCMS' planning, design and initial implementation." Granting admissions preferences based on volunteer hours is not allowed under

Section 47605(e)(2)(B)(iv) (“In accordance with Section 49011,<sup>16</sup> preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.”).

In addition to violating Section 47605(e)(2)(B)(iv), this provision may also violate Section 47605(e)(2)(B)(iii), which prohibits enrollment preferences that may “result in limiting enrollment access for pupils with disabilities, academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program, foster youth, or pupils based on nationality, race, ethnicity, or sexual orientation.”

Requiring parental volunteer hours as a condition of granting an enrollment preference may result in limiting enrollment access for families who are: (a) unable to contribute a “significant number of [volunteer] hours” due to economic circumstances or having to attend to the needs of a child with disabilities; or (b) are parents of English Learner students who may be discouraged from volunteering due to language barriers.

### **3. Petitioners Lack Necessary Background in Areas Critical to the Charter School's Success and Do Not have a Viable Plan to Secure the Services of Individuals with the Necessary Background**

Based on the Board of Directors résumés in Appendix F of the Petition, at least some have backgrounds in finance and/or business management. However, none of the proposed directors appear to have any background in the highly-specialized area of school finance. Nor do any of the proposed directors appear to have backgrounds in curriculum, instruction, and assessment, or as the head administrator of a school, and none has school administrative experience of any kind.

Lead Petitioners have admitted that they are parents, that they will not be operating the Charter School themselves on a day-to-day basis, and that they have not identified or hired a leadership team yet. (*See* Parts IV.B.4 and IV.B.5 below.) The Petition sets forth a goal of hiring a well-qualified Head of School, and lists job duties and qualifications for that individual. (Petition, pp. 4, 122-124.) However, having a goal is not the same thing as having a plan. As described in the Petition, the key elements of the Search Plan that will be implemented to meet that goal *are still to be determined*. (Petition, p. 4.) The Petition states that a search committee will “outline the process for the search, including a complete timeline and milestones,” at some point in the future. (*Id.*) If the Petition is granted in December of 2021, the Search Committee will need to have its Search Plan completed immediately thereafter, if it is not yet completed, in order to find well-qualified candidates in the midst of an extremely difficult hiring environment for school staff and administration. The lack of detail provided in the Petition offers little confidence that the Search Plan that is ultimately developed will have a strong chance of resulting in hiring a Head of School with the necessary experience and competence.

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<sup>16</sup> *See* Ed. Code § 49011(b)(4): “A school district or school shall not offer course credit or privileges related to educational activities in exchange for money or donations of goods or services from a pupil or a pupil’s parents or guardians, and a school district or school shall not remove course credit or privileges related to educational activities, or otherwise discriminate against a pupil, because the pupil or the pupil’s parents or guardians did not or will not provide money or donations of goods or services to the school district or school.”

The Petition also fails to articulate a clear plan for selection of individuals or entities contracted to provide services (including administrative and special education) to the Charter School. Again, although the Petition states goals for the selection of its contractors (*see* Petition, pp. 102 (special education), 171-172 (administrative services)), it does not explain how the Charter School plans to ensure that those goals are met. Budget allocation for special education services is also incomplete and/or inadequate.

The Petition is also deficient with regards to plans for recruiting qualified staff in the current hiring environment. The list of “meaningfully interested” teachers who signed the Petition does not include a credentialed math or special education teacher. Both of these are historically difficult-to-fill positions, and the Petition lacks a clear plan for recruitment.

Finally, Petitioners do not offer a competitive salary and benefits package. For example, NVUSD schools and existing NVUSD charter schools all offer a defined benefit retirement program through State Teachers Retirement System (STRS) or Public Employee Retirement System (PERS). The Petition does not offer these retirement options, and instead offers Social Security and a 3% contribution to a 403(b) plan. Current teachers who signed the Petition participate in a STRS plan, and would no longer be able to participate going forward. Average current salary and benefits of teachers currently employed by the District who signed the petition is approximately \$115,000. These teachers would need to take a significant reduction in salary and benefits, of approximately \$26,550. These factors will further complicate recruiting and impede the Charter School from attracting well-qualified staff in the current hiring environment.

#### **4. Lead Petitioners’ Refusal of the District’s Capacity Interview Supports an Inference that They Are Unfamiliar with the Petition**

When District staff attempted to schedule a capacity interview with Petitioners, including Lead Petitioners and members of their leadership team, to ask questions regarding Petitioners’ plan for starting up and operating the Charter School—including questions regarding the budget set forth in the Petition—Lead Petitioners requested that all questions regarding budget be directed to their consultant; and further informed the District that since they were parent petitioners, they should not be expected to answer questions regarding budgeting or school operations, and requested that any questions about the Petition be directed to them in writing.

When District staff stated that it was expected that questions about the Petition be directed to the persons who will actually lead the Charter School rather than a consultant, Lead Petitioners characterized this request as unreasonable, given that they had not yet hired a leadership team. However, it is the Petitioners—not an outside consultant—who would be ultimately responsible for establishing and operating the Charter School if the Petition is granted. Lead Petitioners’ unwillingness to answer in-person questions regarding the Petition, and their insistence on questions being presented in writing, raises an inference that Petitioners themselves are unfamiliar with the content of the Petition, and further that they are unprepared to provide clarification regarding how they expect to implement the program set forth in the Petition (including their plans to engage the services of individuals with the knowledge and experience that Lead Petitioners tacitly admit they lack).

**5. Lead Petitioners’ Refusal of the District’s Capacity Interview Raises Concerns Regarding an Effective Charter Oversight Relationship if the Petition is Granted**

As set forth above in Part II.B and Part IV.B.4, during the District’s review of the Petition, District staff scheduled a capacity interview with Petitioners on November 15, 2021, to enable Petitioners to respond to questions about the Petition prior to the Review Team issuing its final findings of fact and recommendation to the Board. Lead Petitioners at first stated that they were available at the scheduled interview time, but then attempted to impose their own conditions on the conduct of the interview in advance and ultimately refused to attend the capacity interview.

If the Petition is granted, the District, as the authorizing entity, would have oversight responsibilities with respect to the Charter School, including monitoring the charter school’s fiscal condition and its compliance with the terms of the charter and all requirements imposed by state law. (See, e.g., Ed. Code § 47604.32.) The charter school would also be responsible for promptly responding to all reasonable inquiries from the authorizing entity, including inquiries regarding its financial records, and for consulting with the authorizing entity with respect to any such inquiries. (Ed. Code § 47604.3.) Thus, a cooperative and collaborative working relationship between a charter school and its authorizing entity is important to ensure efficient and effective charter school oversight by the authorizer and the ultimate success of the charter school.<sup>17</sup>

District staff finds that the conduct of Lead Petitioners—both of whom will be members of the Charter School’s board—with respect to the capacity interview indicates a likelihood that if the Petition is granted, the Charter School will adopt a non-collaborative and non-cooperative posture towards its authorizer from the onset of the charter-authorizer relationship, which could impede effective oversight. This likelihood provides additional support, in addition to the findings listed above in this section, for the finding that Petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

**C. The Petition Does Not Contain Reasonably Comprehensive Descriptions of Elements (A) through (O) of Section 47605(c)(5)**

**1. Educational Program (Section 47605(c)(5)(A))**

The Regulations provide several factors to consider in determining whether a charter petition’s educational program meets the minimum standards for a “reasonably comprehensive” description. (See 5 CCR § 11967.5.1(f)(1).) Under those standards, the Petition’s description of the Charter School’s educational program is not reasonably comprehensive.

First, as set forth above in Parts IV.A.1 and IV.A.2, the Petition does not describe the Charter School’s proposed curriculum and professional development plan, or its annual goals and

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<sup>17</sup> See, e.g., FCMAT, *The Importance of Charter School Oversight* (presentation, 4th Annual Charter School Authorizing Conference (Sep. 20, 2018), available at <https://www.fcmat.org/PublicationsReports/September%20202018%20Charter%20Oversight%20CARSNET.pdf>, Slide 3 (“Collaborative efforts between charter schools and their authorizers are in the best interest of all students”; “Open communication is important every step of the way”).

strategies to achieve those goals, comprehensively enough to warrant a finding that these components support a sound educational program. There are many mentions of professional development related to instructional approaches and pedagogy (*see* Petition, pp. 82-84), but no specific descriptions of professional development needed to support the various curricula proposed—for example, the Petition does not describe professional development in the tiered interventions that “all teachers and instructional aides will provide” (Petition, p. 54) during the proposed Learning Lab.

More specifically, the Petition’s description of how the Charter School will provide services to English learners and students with disabilities is not sufficiently comprehensive to support a conclusion that the Charter School is likely to adequately support these vulnerable subgroups of students, as follows:

**(a) Students Identified as English Learners**

As explained above in Part IV.A.1, the description of English learner (EL) services in the Petition is inadequate for District staff to determine whether the Charter School will adequately support EL students. In addition to the deficiencies outlined there, the Petition does not comprehensively describe the strategy for Designated English Language Development (ELD) instruction.

The Petition gives inconsistent specifications of the amount of designated ELD that will be provided differently on different pages: “at least three days per week for 45 minutes per session” (p. 89), in “30-45 minute mini-classes based on student needs” (p. 54), or four days per week for an unspecified period of time (p.63).

Designated ELD will be offered during a Learning Lab. The Learning Lab is described as a 45-minute period built into the schedule of all students, for personalized practice, individual and group instruction, designated ELD, and special education services. (see, e.g. Petition, p. 54) The Petition does not explain how students will be assigned to Learning Lab classes (for example, whether EL students will be clustered by proficiency level in order to facilitate designated ELD instruction at their proficiency level). In one place, it states that “during these focused designated ELD sessions, students will be grouped homogeneously according to their ELD level, including across grade levels” (p. 89), but there is no indication whether this will be achieved by configuring EL-only Learning Lab classes, by groupings within a heterogeneous class, or by other means.

The petition does not describe the specific content of designated ELD instruction, but it does state that students will be assigned to ELD I, ELD II, or ELD III, and taught English skills using a specified curriculum. The English Language Proficiency Assessments for California (ELPAC) scores described as the basis of this grouping (*i.e.*, “beginner”, “early intermediate”, “intermediate”, and “early advanced”) correspond to scores on the former California English Language Development Test (CELDT), which was replaced by the ELPAC in spring 2018. Thus, the ELD instructional program may be based on outdated assessments or standards.

Additionally, both special education services and ELD are supposed to take place during the Learning Lab period. (Petition, p. viii.) Under federal law, EL students with disabilities are

entitled to services that address both their disability and their language needs. (See U.S. Department of Justice, Office of Civil Rights: “Dear Colleague” letter regarding guidance to ensure equal access to high-quality education for EL students (January 7, 2015), p. 25, available at <https://www2.ed.gov/about/offices/list/ocr/letters/colleague-el-201501.pdf>.) The Petition does not explain how these students will receive all of the services they require.

### **(b) Students With Disabilities**

As explained above in Part IV.A.2, the Petition’s description of how it will meet the needs of students with disabilities who are also classified as English Learners, or of students who require specialized academic instruction (SAI) or related services, is inadequate. The Petition also fails to reasonably comprehensively describe how the Charter School’s proposed facility will be rendered accessible to students with disabilities. (See Part IV.A.2 above.) In addition, the Petition states that the Charter School will comply with the Individuals with Disabilities Act (IDEA) and Section 504, but offers little specificity on its plan for compliance. (Petition, pp. 99-100.)

All statements in the Petition regarding services for students with disabilities are subject to Special Education Local Plan Area (SELPA) approval and availability. The Petition describes what the charter “may” do to attain resources for students, but also states that all resources and services are subject to SELPA availability. (Petition, p. 97.) The Petition states that the Charter School will apply for membership in the Los Angeles County Office of Education Charter SELPA, El Dorado County Charter SELPA, or another SELPA approved by the California State Board of Education. There is no letter of support in Appendix H from the Los Angeles County Charter SELPA, contrary to the statement on page 97 of the Petition; the Petition does not set forth a clear plan for SELPA membership application; and the budget does not substantiate the Petition’s estimates and assumptions regarding costs of special education services sufficiently for the District to validate the soundness of those assumptions.

While the Petition specifies that the Charter School will be “solely responsible for compliance with Section 504” (Petition, p. 98), it does not demonstrate the same level of detail with regards to compliance with IDEA. The Petition states that the Charter School would be its own Local Educational Agency (LEA) for IDEA purposes, but lacks a detailed description of the identification of students who would meet eligibility under the IDEA. (Petition, pp. 99-102.) The Petition refers to “assessments” (p. 100), but does not identify specifically the assessments to be used.

There is no reference to how the Charter School intends to absorb or mitigate the costs of providing services for students with exceptional needs. There is no specificity in the charter budget regarding the provision of necessary related services. There is also no provision in the budget that demonstrates charter’s responsibilities to provide various forms of SAI, whether through a special day class model or a resource specialist model. A vague special education expense item of \$41,000 for the 2022-2023 academic year does not adequately explain how required specific services will be sufficiently delivered. There also is no specific special education budget item for supplies, indicating a lack of specificity for how the charter will adequately provide assistive technology or services for low incidence disability eligible students. The budget allocation for instructional aides also is silent as to the needs of special education

students, and likely in any event fails to provide sufficient resources for the unique needs of special education students.

The Petition does not address the needs of English Learners with disabilities. In addition, the Charter School schedule has the same period—the learning lab—as both designated ELD time and time for Specialized Academic Instruction. Although in NVUSD these two categories are often overlapped, there is not a provision within the Petition to address services for students with both needs: 180 minutes weekly (Petition, p. viii) is not sufficient. There is also a lack of discussion regarding assessments of students in their primary language, other than the intent to contract with the SELPA.

The Petition does not address low-incidence disabilities, and how services for students in that population will be served. NVUSD currently serves 61 students who are hard of hearing, which is 2.7% of its special education population. There is no provision for students with this disability in the Petition. The Petition states that it will modify curriculum and that it will provide students education in the least restrictive environment, but is vague as to how these objectives will be attained.

The only special-education job classification addressed in Staff Qualifications is the special education teacher (no Speech-Language Pathologist, Occupational Therapist, Teacher of Students with Visual Impairments, Behaviorist, etc.). There is no designation for the Data Manager for the special education data and student information system. There is also no designation in the Staff Qualifications portion of the Petition for administrative oversight of special education. While the Charter School may contract for some or all of these services, there is no substantiation in the budget for the estimated costs of contracted special education services.

The lack of specificity regarding services for students with disabilities in the Petition raises a concern regarding the Charter School’s potential exposure to liability as a sole LEA.

## **2. Means to Achieve a Balance of Student Population Reflective of District General Population (Section 47605(c)(5)(G))**

The Regulations specify that a “reasonably comprehensive” description of Element (G) of Section 47605 is presumed to have been met, in recognizing the limitations on admissions to charter schools imposed by Education Code section 47605(e) (*see* Part IV.B.2 above), absent specific information to the contrary. (5 CCR § 11967.5.1(f)(7).) However, an analysis of the students whose parents signed the Petition indicating meaningful interest in enrollment shows that the initial class of Charter School students is not likely to reflect the ethnic, racial, special education and English learner general population of the District.

For instance, the Unduplicated<sup>18</sup> rate of students whose parents indicated interest in the Charter School is only 24.5% (in contrast with Petitioners’ “conservative[.]” estimate of Unduplicated students at 60%) (Petition, p. 139) whereas general District Unduplicated rate is 55%. This

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<sup>18</sup> *See* Part III above for definition of Unduplicated students.

disparity between the initially interested families and District general population overcomes the presumption set forth in the Regulations.

The Petition does not describe student outreach practices that are likely to reduce this demographic disparity. Although Petitioners claim they “can not predict enrollment demographics,” initial enrollment projections are based upon the geographically closest elementary (Shearer) and middle (Redwood) schools. However, both those schools are “residential schools” with geocoded dwellings assigned to attendance boundary areas; whereas the Charter School would be an “open enrollment school” without a residential boundary, thus rendering those demographic enrollment projections unreliable.

The Petition describes outreach efforts on page 140, yet none of those efforts appear to be specifically targeted toward English learners, students with disabilities, or racially/ethnically diverse students. Although Petitioners plan to offer outreach communications in both Spanish and English, the Petition does not describe any plans to specifically emphasize the benefits of the Charter School to English learners, students with disabilities, or racially/ethnically diverse students as part of those outreach efforts, or to specifically reach out to those populations (*e.g.*, through postings to forums or publications that are mainly in languages other than English, presentations to site-level English Learner Advisory Committees, or to organizations that serve students with disabilities).

### **3. Measurable Student Outcomes (Section 47605(c)(5)(B))**

The Regulations provide that a “reasonably comprehensive” description of measurable student outcomes should “specify skills, knowledge, and attitudes that reflect the school's educational objectives and can be assessed, at a minimum, by objective means that are frequent and sufficiently detailed enough to determine whether pupils are making satisfactory progress. It is intended that the frequency of objective means of measuring pupil outcomes vary according to such factors as grade level, subject matter, the outcome of previous objective measurements, and information that may be collected from anecdotal sources. To be sufficiently detailed, objective means of measuring pupil outcomes must be capable of being used readily to evaluate the effectiveness of and to modify instruction for individual students and for groups of students.” (5 CCR § 11967.5.1(f)(2)(A).)

The Petition lacks careful consideration of subgroups when establishing its measurable student learning outcomes. The Petition admits that “MCMS is not setting disparate goals for our schoolwide learner outcomes and specific subgroup learner outcomes” (p. 108), and continues on to say that “all students will be able to meet our high expectations for achievement” (*Id.*) and that the Charter School may adjust its goals based on results after Year 1. Stronger goals in the Petition would have considered the achievement levels of English Learners, students with disabilities, and statistically significant ethnic subgroups, and established goals based on current District baseline data. It is not clear that the measurable student outcomes and goals outlined in the Petition are “capable of being used readily to evaluate the effectiveness of and to modify instruction for individual students and for groups of students.” (5 CCR § 11967.5.1(f)(2)(A).)

**D. The Proposed Charter School is Demonstrably Unlikely to Serve the Interests of the Entire Community in which the School is Proposing to Locate**

District staff finds that the Charter School is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate, on the grounds that:

- The Charter School duplicates programs that the District already offers and which have sufficient capacity;
- The Charter School would undermine existing District services, academic offerings, or programmatic offerings due to its fiscal impact.
- Additionally, community interest in the Charter School does not appear strong, based on: (1) comments at the November 4 public hearing on the Petition, where 17 persons spoke in support of the Charter School but 23 spoke in opposition to the Charter School; and (2) responses to the District's November 2021 parent signature validation calls, in which only 76 percent of the parents whom the District was able to contact stated that they were still meaningfully interested in enrolling their children in the Charter School.
- The Charter School also appears unlikely to serve the interests of the entire NVUSD community, because the Petition appears to have large portions simply cut and pasted from another charter petition that was submitted last year to Compton Unified School District, rather than having been prepared specifically with the needs of NVUSD students and the NVUSD community in mind.

District programs that would be duplicated by the Charter School include the following:

**New Tech Network Program**

This program was founded in Napa. Not only does the District already have schools that are official New Tech Network Schools, but District schools already use core components of this program, including having 1-to-1 technology access and Project Based Learning.

**Multi-Tiered System of Support (MTSS)**

NVUSD developed the MTSS in an effort to bring equity and consistency to the way students qualify for and receive academic, behavioral and social emotional interventions. The Administrator and Site Teams Reference Guide is a comprehensive document that outlines the indicators that are used to identify the level of intervention students in grades TK-12 should receive within a multi-tiered support system. It also describes the supports that should be utilized in the various tiers of intervention. The MTSS Maps are a corresponding tool to this guide. MTSS Maps are designed by grade bands across two areas: Academic and Social Emotional Behavioral. The Maps are a guide used by site teams in order to identify the resources and supports available to all students in the NVUSD.

### **Blended Learning Software**

NVUSD utilizes a full suite of blended learning software, including online assessments. A small sampling of these includes Amplify, Imagine Language and Literacy, Study Sync, Star Renaissance, and Rosetta Stone (for ELD).

### **Positive Behavioral Intervention Supports (PBIS)**

The MTSS for PBIS is designed to support students with ongoing appropriate and positive behaviors by increasing tiers of interventions and levels of integrated academic and behavioral support based on need. As separate tools working on parallel tracks, the MTSS and the discipline response toolkit create a systemic framework for intervention and discipline, to best support students when they are facing challenges, in a consistent and equitable manner across the district. Both rely on a commitment to building positive school and classroom climates, as well as consistent implementation of Tier I behavioral interventions in classrooms and common areas.

The Charter School would significantly undermine existing District programs by diverting the revenues received by the District. For example, the proposed budget lists estimated Local Control Funding Formula (LCFF) revenues of a total of \$13 million dollars over 5 years (\$1,644,135; \$2,175,388; \$2,764,075; \$3,341,947; and \$3,409,163). As a result, the District would need to reduce its number of teachers as follows:

- A loss of 16 teachers in Year 1
- An additional loss of 5 NVUSD teachers in Year 2 for a total loss of 21 teachers
- An additional loss of 6 NVUSD teachers in Year 3 for a total loss of 27 teachers
- An additional loss of 6 NVUSD teachers in Year 4 for a total loss of 33 teachers
- An additional loss of 1 NVUSD teacher in Year 5 for a total loss of 34 teachers

### **V. Conclusion**

Based on the foregoing reasons, District Staff recommends that the Mayacamas Charter Middle School Petition be denied.

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### **APPENDICES FOLLOW**

**Appendix A:** California Education Code § 47605

**Appendix B:** Title 5, California Code of Regulations, § 11967.5.1: *Criteria for the Review and Approval of Charter School Petitions and Charter School Renewal Petitions by the State Board of Education (SBE)*

# APPENDIX

## A

Code: Section: [Up^<< Previous](#) [Next >>](#)[cross-reference chaptered bills](#)[PDF](#) | [Add To My Favorites](#)Search Phrase: **EDUCATION CODE - EDC****TITLE 2. ELEMENTARY AND SECONDARY EDUCATION [33000 - 65001]** (*Title 2 enacted by Stats. 1976, Ch. 1010.*)**DIVISION 4. INSTRUCTION AND SERVICES [46000 - 65001]** (*Division 4 enacted by Stats. 1976, Ch. 1010.*)**PART 26.8. CHARTER SCHOOLS [47600 - 47663]** (*Part 26.8 added by Stats. 1992, Ch. 781, Sec. 1.*)**CHAPTER 2. Establishment of Charter Schools [47605 - 47608]** (*Chapter 2 added by Stats. 1992, Ch. 781, Sec. 1.*)

**47605.** (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within a school district may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district if each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions is met:

(A) The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation.

(B) The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.

(2) A petition that proposes to convert an existing public school to a charter school that would not be eligible for a loan pursuant to subdivision (c) of Section 41365 may be circulated by one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after the petition is signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having their child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to expand operations to one or more additional sites or grade levels shall request a material revision to its charter and shall notify the chartering authority of those additional locations or grade levels. The chartering authority shall consider whether to approve those additional locations or grade levels at an open, public meeting. If the additional locations or grade levels are approved pursuant to the standards and criteria described in subdivision (c), they shall be a material revision to the charter school's charter.

(5) (A) A charter school that established one site outside the boundaries of the school district, but within the county in which that school district is located before January 1, 2020, may continue to operate that site until the charter school submits a request for the renewal of its charter petition. To continue operating the site, the charter school shall do either of the following:

(i) First, before submitting the request for the renewal of the charter petition, obtain approval in writing from the school district where the site is operating.

(ii) Submit a request for the renewal of the charter petition pursuant to Section 47607 to the school district in which the charter school is located.

(B) If a Presidential declaration of a major disaster or emergency is issued in accordance with the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Sec. 5121 et seq.) for an area in which a charter school site is located and operating, the charter school, for not more than five years, may relocate that site outside

the area subject to the Presidential declaration if the charter school first obtains the written approval of the school district where the site is being relocated to.

(C) Notwithstanding subparagraph (A), if a charter school was relocated from December 31, 2016, to December 31, 2019, inclusive, due to a Presidential declaration of a major disaster or emergency in accordance with the federal Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Sec. 5121 et seq.), that charter school shall be allowed to return to its original campus location in perpetuity.

(D) (i) A charter school in operation and providing educational services to pupils before October 1, 2019, located on a federally recognized California Indian reservation or rancheria or operated by a federally recognized California Indian tribe shall be exempt from the geographic restrictions of paragraph (1) and subparagraph (A) of this paragraph and the geographic restrictions of subdivision (a) of Section 47605.1.

(ii) The exemption to the geographic restrictions of subdivision (a) of 47605.1 in clause (i) does not apply to nonclassroom-based charter schools operating pursuant to Section 47612.5.

(E) The department shall regard as a continuing charter school for all purposes a charter school that was granted approval of its petition, that was providing educational services to pupils before October 1, 2019, and is authorized by a different chartering authority due to changes to this paragraph that took effect January 1, 2020. This paragraph shall be implemented only to the extent it does not conflict with federal law. In order to prevent any potential conflict with federal law, this paragraph does not apply to covered programs as identified in Section 8101(11) of the federal Elementary and Secondary Education Act of 1965 (20 U.S.C. Sec. 7801) to the extent the affected charter school is the restructured portion of a divided charter school pursuant to Section 47654.

(6) Commencing January 1, 2003, a petition to establish a charter school shall not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 60 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 90 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. A petition is deemed received by the governing board of the school district for purposes of commencing the timelines described in this subdivision on the day the petitioner submits a petition to the district office, along with a signed certification that the petitioner deems the petition to be complete. The governing board of the school district shall publish all staff recommendations, including the recommended findings and, if applicable, the certification from the county superintendent of schools prepared pursuant to paragraph (8) of subdivision (c), regarding the petition at least 15 days before the public hearing at which the governing board of the school district will either grant or deny the charter. At the public hearing at which the governing board of the school district will either grant or deny the charter, petitioners shall have equivalent time and procedures to present evidence and testimony to respond to the staff recommendations and findings.

(c) In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged. The governing board of the school district shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice and with the interests of the community in which the school is proposing to locate. The governing board of the school district shall consider the academic needs of the pupils the school proposes to serve. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (e).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) The educational program of the charter school, designed, among other things, to identify those whom the charter school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) The annual goals for the charter school for all pupils and for each subgroup of pupils identified pursuant to Section 52052, to be achieved in the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served, and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals.

(iii) If the proposed charter school will serve high school pupils, the manner in which the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A to G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the charter school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the charter school's educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all pupil subgroups served by the charter school, as that term is defined in subdivision (a) of Section 52052. The pupil outcomes shall align with the state priorities, as described in subdivision (d) of Section 52060, that apply for the grade levels served by the charter school.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured. To the extent practicable, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

(D) The governance structure of the charter school, including, but not limited to, the process to be followed by the charter school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the charter school.

(F) The procedures that the charter school will follow to ensure the health and safety of pupils and staff. These procedures shall require all of the following:

(i) That each employee of the charter school furnish the charter school with a criminal record summary as described in Section 44237.

(ii) The development of a school safety plan, which shall include the safety topics listed in subparagraphs (A) to (J), inclusive, of paragraph (2) of subdivision (a) of Section 32282.

(iii) That the school safety plan be reviewed and updated by March 1 of every year by the charter school.

(G) The means by which the charter school will achieve a balance of racial and ethnic pupils, special education pupils, and English learner pupils, including redesignated fluent English proficient pupils, as defined by the evaluation rubrics in Section 52064.5, that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted. Upon renewal, for a charter school not deemed to be a local educational agency for purposes of special education pursuant to Section 47641, the chartering authority may consider the effect of school placements made by the chartering authority in providing a free and appropriate public education as required by the federal Individuals with Disabilities Education Act (Public Law 101-476), on the balance of pupils with disabilities at the charter school.

(H) Admission policies and procedures, consistent with subdivision (e).

(I) The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled from the charter school for disciplinary reasons or otherwise involuntarily removed from the charter school for any reason. These procedures, at a minimum, shall include an explanation of how the charter school will comply with federal and state constitutional procedural and substantive due process requirements that is consistent with all of the following:

(i) For suspensions of fewer than 10 days, provide oral or written notice of the charges against the pupil and, if the pupil denies the charges, an explanation of the evidence that supports the charges and an opportunity for the pupil to present the pupil's side of the story.

(ii) For suspensions of 10 days or more and all other expulsions for disciplinary reasons, both of the following:

(I) Provide timely, written notice of the charges against the pupil and an explanation of the pupil's basic rights.

(II) Provide a hearing adjudicated by a neutral officer within a reasonable number of days at which the pupil has a fair opportunity to present testimony, evidence, and witnesses and confront and cross-examine adverse witnesses,

and at which the pupil has the right to bring legal counsel or an advocate.

(iii) Contain a clear statement that no pupil shall be involuntarily removed by the charter school for any reason unless the parent or guardian of the pupil has been provided written notice of intent to remove the pupil no less than five schooldays before the effective date of the action. The written notice shall be in the native language of the pupil or the pupil's parent or guardian or, if the pupil is a foster child or youth or a homeless child or youth, the pupil's educational rights holder, and shall inform the pupil, the pupil's parent or guardian, or the pupil's educational rights holder of the right to initiate the procedures specified in clause (ii) before the effective date of the action. If the pupil's parent, guardian, or educational rights holder initiates the procedures specified in clause (ii), the pupil shall remain enrolled and shall not be removed until the charter school issues a final decision. For purposes of this clause, "involuntarily removed" includes disenrolled, dismissed, transferred, or terminated, but does not include suspensions specified in clauses (i) and (ii).

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) The rights of an employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the chartering authority to resolve disputes relating to provisions of the charter.

(O) The procedures to be used if the charter school closes. The procedures shall ensure a final audit of the charter school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(6) The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.

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

(8) The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has a qualified interim certification pursuant to Section 42131 and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Section 42131, has a negative interim certification pursuant to Section 42131, or is under state receivership. Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

(d) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents, legal guardians, and teachers regarding the charter school's educational programs.

(e) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against a pupil on the basis of the characteristics listed in Section 220. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of that pupil's parent or legal guardian, within this state, except that an existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the charter school.

(B) If the number of pupils who wish to attend the charter school exceeds the charter school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the school district except as provided for in Section 47614.5. Preferences, including, but not limited to, siblings of pupils admitted or attending the charter school and children of the charter school's teachers, staff, and founders identified in the initial charter, may also be permitted by the chartering authority on an individual charter school basis. Priority order for any preference shall be determined in the charter petition in accordance with all of the following:

(i) Each type of preference shall be approved by the chartering authority at a public hearing.

(ii) Preferences shall be consistent with federal law, the California Constitution, and Section 200.

(iii) Preferences shall not result in limiting enrollment access for pupils with disabilities, academically low-achieving pupils, English learners, neglected or delinquent pupils, homeless pupils, or pupils who are economically disadvantaged, as determined by eligibility for any free or reduced-price meal program, foster youth, or pupils based on nationality, race, ethnicity, or sexual orientation.

(iv) In accordance with Section 49011, preferences shall not require mandatory parental volunteer hours as a criterion for admission or continued enrollment.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and shall not take any action to impede the charter school from expanding enrollment to meet pupil demand.

(3) If a pupil is expelled or leaves the charter school without graduating or completing the school year for any reason, the charter school shall notify the superintendent of the school district of the pupil's last known address within 30 days, and shall, upon request, provide that school district with a copy of the cumulative record of the pupil, including report cards or a transcript of grades, and health information. If the pupil is subsequently expelled or leaves the school district without graduating or completing the school year for any reason, the school district shall provide this information to the charter school within 30 days if the charter school demonstrates that the pupil had been enrolled in the charter school. This paragraph applies only to pupils subject to compulsory full-time education pursuant to Section 48200.

(4) (A) A charter school shall not discourage a pupil from enrolling or seeking to enroll in the charter school for any reason, including, but not limited to, academic performance of the pupil or because the pupil exhibits any of the characteristics described in clause (iii) of subparagraph (B) of paragraph (2).

(B) A charter school shall not request a pupil's records or require a parent, guardian, or pupil to submit the pupil's records to the charter school before enrollment.

(C) A charter school shall not encourage a pupil currently attending the charter school to disenroll from the charter school or transfer to another school for any reason, including, but not limited to, academic performance of the pupil or because the pupil exhibits any of the characteristics described in clause (iii) of subparagraph (B) of paragraph (2). This subparagraph shall not apply to actions taken by a charter school pursuant to the procedures described in subparagraph (J) of paragraph (5) of subdivision (c).

(D) The department shall develop a notice of the requirements of this paragraph. This notice shall be posted on a charter school's internet website. A charter school shall provide a parent or guardian, or a pupil if the pupil is 18 years of age or older, a copy of this notice at all of the following times:

(i) When a parent, guardian, or pupil inquires about enrollment.

(ii) Before conducting an enrollment lottery.

(iii) Before disenrollment of a pupil.

(E) (i) A person who suspects that a charter school has violated this paragraph may file a complaint with the chartering authority.

(ii) The department shall develop a template to be used for filing complaints pursuant to clause (i).

(5) Notwithstanding any other law, a charter school in operation as of July 1, 2019, that operates in partnership with the California National Guard may dismiss a pupil from the charter school for failing to maintain the minimum standards of conduct required by the Military Department.

(f) The governing board of a school district shall not require an employee of the school district to be employed in a charter school.

(g) The governing board of a school district shall not require a pupil enrolled in the school district to attend a charter school.

(h) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be used by the charter school, the manner in which administrative services of the charter school are to be provided, and potential civil liability effects, if any, upon the charter school and upon the school district. The description of the facilities to be used by the charter school shall specify where the charter school intends to locate. The petitioner or petitioners also shall be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation. If the school is to be operated by, or as, a nonprofit public benefit corporation, the petitioner shall provide the names and relevant qualifications of all persons whom the petitioner nominates to serve on the governing body of the charter school.

(i) In reviewing petitions for the establishment of charter schools within the school district, the governing board of the school district shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the department under Section 54032, as that section read before July 19, 2006.

(j) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the department, and the state board.

(k) (1) (A) (i) 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. The county board of education shall review the petition pursuant to subdivisions (b) and (c). If the petition submitted on appeal 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, which shall grant or deny the petition within 30 days. If the governing board of the school district denies a petition after reconsideration, the petitioner may elect to resubmit the petition for the establishment of a charter school to the county board of education.

(ii) The county board of education shall review the appeal petition pursuant to subdivision (c). If the denial of the petition was made pursuant to paragraph (8) of subdivision (c), the county board of education shall also review the school district's findings pursuant to paragraph (8) of subdivision (c).

(iii) As used in this subdivision, "material terms" of the petition means the signatures, affirmations, disclosures, documents, and descriptions described in subdivisions (a), (b), (c), and (h), but shall not include minor administrative updates to the petition or related documents due to changes in circumstances based on the passage of time related to fiscal affairs, facilities arrangements, or state law, or to reflect the county board of education as the chartering authority.

(B) If the governing board of a school district denies a petition and the county board of education has jurisdiction over a single school district, the petitioner may elect to submit the petition for the establishment of a charter school to the state board. The state board shall review a petition submitted pursuant to this subparagraph pursuant to subdivision (c). If the denial of a charter petition is reversed by the state board pursuant to this subparagraph, the state board shall designate the governing board of the school district in which the charter school is located as the chartering authority.

(2) If the county board of education denies a petition, the petitioner may appeal that denial to the state board.

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

(B) If the appeal contains new or different material terms, as defined in clause (iii) of subparagraph (A) of paragraph (1), the state board shall immediately remand the petition to the governing board of the school district to which the petition was submitted for reconsideration. The governing board of the school district shall grant or

deny the petition within 30 days. If the governing board of the school district denies a petition after reconsideration, the petitioner may elect to resubmit the petition to the state board.

(C) Within 30 days of receipt of the appeal submitted to the state board, the governing board of the school district or county board of education may submit a written opposition to the state board detailing, with specific citations to the documentary record, how the governing board of the school district or the county board of education did not abuse its discretion in denying the petition. The governing board of the school district or the county board of education may submit supporting documentation or evidence from the documentary record that was considered by the governing board of the school district or the county board of education.

(D) The state board's Advisory Commission on Charter Schools shall hold a public hearing to review the appeal and documentary record. Based on its review, the Advisory Commission on Charter Schools shall submit a recommendation to the state board whether there is sufficient evidence to hear the appeal or to summarily deny review of the appeal based on the documentary record. If the Advisory Commission on Charter Schools does not submit a recommendation to the state board, the state board shall consider the appeal, and shall either hear the appeal or summarily deny review of the appeal based on the documentary record at a regular public meeting of the state board.

(E) The state board shall either hear the appeal or summarily deny review of the appeal based on the documentary record. If the state board hears the appeal, the state board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion. If the denial of a charter petition is reversed by the state board, the state board shall designate, in consultation with the petitioner, either the governing board of the school district or the county board of education in which the charter school is located as the chartering authority.

(3) A charter school for which a charter is granted by either the county board of education or the state board based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) A charter school that receives approval of its petition from a county board of education or from the state board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the chartering authority to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the state board shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(5) Upon the approval of the petition by the county board of education, the petition or petitioners shall provide written notice of that approval, including a copy of the petition, to the governing board of the school district in which the charter school is located, the department, and the state board.

(6) 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.

(l) (1) Teachers in charter schools shall hold the Commission on Teacher Credentialing certificate, permit, or other document required for the teacher's certificated assignment. These documents shall be maintained on file at the charter school and are subject to periodic inspection by the chartering authority. A governing body of a direct-funded charter school may use local assignment options authorized in statute and regulations for the purpose of legally assigning certificated teachers, in accordance with all of the requirements of the applicable statutes or regulations in the same manner as a governing board of a school district. A charter school shall have authority to request an emergency permit or a waiver from the Commission on Teacher Credentialing for individuals in the same manner as a school district.

(2) By July 1, 2020, all teachers in charter schools shall obtain a certificate of clearance and satisfy the requirements for professional fitness pursuant to Sections 44339, 44340, and 44341.

(3) The Commission on Teacher Credentialing shall include in the bulletins it issues pursuant to subdivision (k) of Section 44237 to provide notification to local educational agencies of any adverse actions taken against the holders of any commission documents, notice of any adverse actions taken against teachers employed by charter schools and shall make this bulletin available to all chartering authorities and charter schools in the same manner in which it is made available to local educational agencies.

(m) A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (c), to its chartering authority, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering authority, and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering authority pursuant to Section 41020.

(n) A charter school may encourage parental involvement, but shall notify the parents and guardians of applicant pupils and currently enrolled pupils that parental involvement is not a requirement for acceptance to, or continued enrollment at, the charter school.

(o) The requirements of this section shall not be waived by the state board pursuant to Section 33050 or any other law.

*(Amended (as amended by Stats. 2019, Ch. 543, Sec. 3.3) by Stats. 2020, Ch. 24, Sec. 43. (SB 98) Effective June 29, 2020.)*

# **APPENDIX**

# **B**

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BARCLAYS OFFICIAL CALIFORNIA CODE OF REGULATIONS

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Title 5. Education

Division 1. California Department of Education

Chapter 11. Special Programs

Subchapter 19. Charter Schools

Article 2. General Provisions

5 CCR § 11967.5.1

**§ 11967.5.1. Criteria for the Review and Approval of Charter School Petitions and Charter School Renewal Petitions by the State Board of Education (SBE).**

(a) For purposes of Education Code section 47605(c), a charter petition shall be "consistent with sound educational practice" if, in the SBE's judgment, it is likely to be of educational benefit to pupils who attend. A charter school need not be designed or intended to meet the educational needs of every student who might possibly seek to enroll in order for the charter to be granted by the SBE.

(b) For purposes of Education Code section 47605(c)(1), a charter petition shall be "an unsound educational program" if it is any of the following:

- (1) A program that involves activities that the SBE determines would present the likelihood of physical, educational, or psychological harm to the affected pupils.
- (2) A program that the SBE determines not to be likely to be of educational benefit to the pupils who attend.

(c) For purposes of Education Code section 47605(c)(2), the SBE shall take the following factors into consideration in determining whether charter petitioners are "demonstrably unlikely to successfully implement the program."

(1) If the petitioners have a past history of involvement in charter schools or other education agencies (public or private), the history is one that the SBE regards as unsuccessful, e.g., the petitioners have been associated with a charter school of which the charter has been revoked or a private school that has ceased operation for reasons within the petitioners' control.

(2) The petitioners are unfamiliar in the SBE's judgment with the content of the petition or the requirements of law that would apply to the proposed charter school.

(3) The petitioners have presented an unrealistic financial and operational plan for the proposed charter school. An unrealistic financial and operational plan is one to which any or all of the following applies:

(A) In the area of administrative services, the charter or supporting documents do not adequately:

1. Describe the structure for providing administrative services, including, at a minimum, personnel transactions, accounting and payroll that reflects an understanding of school business practices and expertise to carry out the necessary administrative services, or a reasonable plan and time line to develop and assemble such practices and expertise.
2. For any contract services, describe criteria for the selection of a contractor or contractors that demonstrate necessary expertise and the procedure for selection of the contractor or contractors.

(B) In the area of financial administration, the charter or supporting documents do not adequately:

1. Include, at a minimum, the first-year operational budget, start-up costs, and cash flow, and financial projections for the first three years.
2. Include in the operational budget reasonable estimates of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based, when possible, on historical data from schools or school districts of similar type, size, and location.

3. Include budget notes that clearly describe assumptions on revenue estimates, including, but not limited to, the basis for average daily attendance estimates and staffing levels.

4. Present a budget that in its totality appears viable and over a period of no less than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school.

5. Demonstrate an understanding of the timing of the receipt of various revenues and their relative relationship to timing of expenditures that are within reasonable parameters, based, when possible, on historical data from schools or school districts of similar type, size, and location.

(C) In the area of insurance, the charter and supporting documents do not adequately provide for the acquisition of and budgeting for general liability, workers compensations, and other necessary insurance of the type and in the amounts required for an enterprise of similar purpose and circumstance.

(D) In the area of facilities, the charter and supporting documents do not adequately:

1. Describe the types and potential location of facilities needed to operate the size and scope of educational program proposed in the charter.

2. In the event a specific facility has not been secured, provide evidence of the type and projected cost of the facilities that may be available in the location of the proposed charter school.

3. Reflect reasonable costs for the acquisition or leasing of facilities to house the charter school, taking into account the facilities the charter school may be allocated under the provisions of Education Code section 47614.

(4) The petitioners personally lack the necessary background in the following areas critical to the charter school's success, and the petitioners do not have a plan to secure the services of individuals who have the necessary background in these areas:

(A) Curriculum, instruction, and assessment.

(B) Finance and business management.

(d) For purposes of Education Code section 47605(c)(3), a charter petition that "does not contain the number of signatures required by subdivision (a)" of Education Code section 47605 shall be a petition that did not contain the requisite number of signatures at the time of the submission of the original charter to a school district governing board pursuant to Education Code section 47605(a). The SBE shall not disregard signatures that may be purported to have been withdrawn or to have been determined to be invalid after the petition was denied by the school district. The signature requirement set forth in Education Code section 47605(a) is not applicable to a petition for renewal.

(e) For purposes of Education Code section 47605(c)(4), a charter petition that "does not contain an affirmation of each of the conditions described in subdivision (e)" of Education Code section 47605 shall be a petition that fails to include a clear, unequivocal affirmation of each such condition, not a general statement of intention to comply. Neither the charter nor any of the supporting documents shall include any evidence that the charter will fail to comply with the conditions described in Education Code section 47605(e).

(f) For purposes of Education Code section 47605(c)(5), the SBE shall take the following factors into consideration in determining whether a charter petition does not contain a "reasonably comprehensive" description of each of the specified elements.

(1) The description of the educational program of the school, as required by Education Code section 47605(c)(5)(A), at a minimum:

(A) Indicates the proposed charter school's target student population, including, at a minimum, grade levels, approximate numbers of pupils, and specific educational interests, backgrounds, or challenges.

(B) Specifies a clear, concise school mission statement with which all elements and programs of the school are in alignment and which conveys the petitioners' definition of an "educated person" in the 21st century, belief of how learning best occurs, and goals consistent with enabling pupils to become or remain self-motivated, competent, and lifelong learners.

(C) Includes a framework for instructional design that is aligned with the needs of the pupils that the charter school has identified as its target student population.

(D) Indicates the basic learning environment or environments (e.g., site-based matriculation, independent study, community-based education, or technology-based education).

(E) Indicates the instructional approach or approaches the charter school will utilize, including, but not limited to, the curriculum and teaching methods (or a process for developing the curriculum and teaching methods) that will enable the school's pupils to master the content standards for the four core curriculum areas adopted by the SBE pursuant to Education Code section 60605 and to achieve the objectives specified in the charter.

(F) Indicates how the charter school will identify and respond to the needs of pupils who are not achieving at or above expected levels.

(G) Indicates how the charter school will meet the needs of students with disabilities, English learners, students achieving substantially above or below grade level expectations, and other special student populations.

(H) Specifies the charter school's special education plan, including, but not limited to, the means by which the charter school will comply with the provisions of Education Code section 47641, the process to be used to identify students who qualify for special education programs and services, how the school will provide or access special education programs and services, the school's understanding of its responsibilities under law for special education pupils, and how the school intends to meet those responsibilities.

(2) Measurable pupil outcomes, as required by Education Code section 47605(c)(5)(B), at a minimum:

(A) Specify skills, knowledge, and attitudes that reflect the school's educational objectives and can be assessed, at a minimum, by objective means that are frequent and sufficiently detailed enough to determine whether pupils are making satisfactory progress. It is intended that the frequency of objective means of measuring pupil outcomes vary according to such factors as grade level, subject matter, the outcome of previous objective measurements, and information that may be collected from anecdotal sources. To be sufficiently detailed, objective means of measuring pupil outcomes must be capable of being used readily to evaluate the effectiveness of and to modify instruction for individual students and for groups of students.

(B) Include the school's Academic Performance Index growth target, if applicable.

(3) The method by which pupil progress is to be measured, as required by Education Code section 47605(c)(5)(C), at a minimum:

(A) Utilizes a variety of assessment tools that are appropriate to the skills, knowledge, or attitudes being assessed, including, at a minimum, tools that employ objective means of assessment consistent with paragraph (2)(A) of subdivision (f) of this section.

(B) Includes the annual assessment results from the Statewide Testing and Reporting (STAR) program.

(C) Outlines a plan for collecting, analyzing, and reporting data on pupil achievement to school staff and to pupils' parents and guardians, and for utilizing the data continuously to monitor and improve the charter school's educational program.

(4) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement in supporting the school's effort on behalf of the school's pupils, as required by Education Code section 47605(c)(5)(D), at a minimum:

(A) Includes evidence of the charter school's incorporation as a non-profit public benefit corporation, if applicable.

(B) Includes evidence that the organizational and technical designs of the governance structure reflect a seriousness of purpose necessary to ensure that:

1. The charter school will become and remain a viable enterprise.
2. There will be active and effective representation of interested parties, including, but not limited to parents (guardians).
3. The educational program will be successful.

(5) The qualifications to be met by individuals to be employed by the school, as required by Education Code section 47605(c)(5)(E), at a minimum:

(A) Identify general qualifications for the various categories of employees the school anticipates (e.g., administrative, instructional, instructional support, non-instructional support). The qualifications shall be sufficient to ensure the health, and safety of the school's faculty, staff, and pupils.

(B) Identify those positions that the charter school regards as key in each category and specify the additional qualifications expected of individuals assigned to those positions.

(C) Specify that the requirements for employment set forth in applicable provisions of law will be met, including, but not limited to credentials as necessary.

(6) The procedures that the school will follow to ensure the health and safety of pupils and staff, as required by Education Code section 47605(c)(5)(F), at a minimum:

(A) Require that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.

(B) Include the examination of faculty and staff for tuberculosis as described in Education Code section 49406.

(C) Require immunization of pupils as a condition of school attendance to the same extent as would apply if the pupils attended a non-charter public school.

(D) Provide for the screening of pupils' vision and hearing and the screening of pupils for scoliosis to the same extent as would be required if the pupils attended a non-charter public school.

(7) Recognizing the limitations on admissions to charter schools imposed by Education Code section 47605(e), the means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted, as required by Education Code section 47605(c)(5)(G), shall be presumed to have been met, absent specific information to the contrary.

(8) To the extent admission requirements are included in keeping with Education Code section 47605(c)(5)(H), the requirements shall be in compliance with the requirements of Education Code section 47605(e) and any other applicable provision of law.

(9) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority, as required by Education Code section 47605(c)(5)(I), at a minimum:

(A) Specify who is responsible for contracting and overseeing the independent audit.

(B) Specify that the auditor will have experience in education finance.

(C) Outline the process of providing audit reports to the SBE, California Department of Education, or other agency as the SBE may direct, and specifying the time line in which audit exceptions will typically be addressed.

(D) Indicate the process that the charter school will follow to address any audit findings and/or resolve any audit exceptions.

(10) The procedures by which pupils can be suspended or expelled, as required by Education Code section 47605(c)(5)(J), at a minimum:

(A) Identify a preliminary list, subject to later revision pursuant to subparagraph (E), of the offenses for which students in the charter school must (where non-discretionary) and may (where discretionary) be suspended and, separately, the offenses for which students in the charter school must (where non-discretionary) or may (where discretionary) be expelled, providing evidence that the petitioners' reviewed the offenses for which students must or may be suspended or expelled in non-charter public schools.

(B) Identify the procedures by which pupils can be suspended or expelled.

(C) Identify the procedures by which parents, guardians, and pupils will be informed about reasons for suspension or expulsion and of their due process rights in regard to suspension or expulsion.

(D) Provide evidence that in preparing the lists of offenses specified in subparagraph (A) and the procedures specified in subparagraphs (B) and (C), the petitioners reviewed the lists of offenses and procedures that apply to students attending non-charter public schools, and provide evidence that the charter petitioners believe their proposed lists of offenses and procedures provide adequate safety for students, staff, and visitors to the school and serve the best interests the school's pupils and their parents (guardians).

(E) If not otherwise covered under subparagraphs (A), (B), (C), and (D):

1. Provide for due process for all pupils and demonstrate an understanding of the rights of pupils with disabilities in regard to suspension and expulsion.

2. Outline how detailed policies and procedures regarding suspension and expulsion will be developed and periodically reviewed, including, but not limited to, periodic review and (as necessary) modification of the lists of offenses for which students are subject to suspension or expulsion.

(11) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security, as required by Education Code section 47605(c)(5)(K), at a minimum, specifies the positions to be covered under each system and the staff who will be responsible for ensuring that appropriate arrangements for that coverage have been made.

(12) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools, as required by Education Code section 47605(c)(5)(L), at a minimum, specify that the parent or guardian of each pupil enrolled in the charter school shall be informed that the pupils has no right to admission in a particular school of any local educational agency (LEA) (or program of any LEA) as a consequence of enrollment in the charter school, except to the extent that such a right is extended by the LEA.

(13) The description of the rights of any employees of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school, as required by Education Code section 47605(c)(5)(M), at a minimum, specifies that an employee of the charter school shall have the following rights:

(A) Any rights upon leaving the employment of an LEA to work in the charter school that the LEA may specify.

(B) Any rights of return to employment in an LEA after employment in the charter school as the LEA may specify.

(C) Any other rights upon leaving employment to work in the charter school and any rights to return to a previous employer after working in the charter school that the SBE determines to be reasonable and not in conflict with any provisions of law that apply

to the charter school or to the employer from which the employee comes to the charter school or to which the employee returns from the charter school.

(14) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter, as required by Education Code section 47605(c)(5)(N), at a minimum:

(A) Include any specific provisions relating to dispute resolution that the SBE determines necessary and appropriate in recognition of the fact that the SBE is not an LEA.

(B) Describe how the costs of the dispute resolution process, if needed, would be funded.

(C) Recognize that, because it is not an LEA, the SBE may choose to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter, provided that if the SBE intends to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter, it must first hold a public hearing to consider arguments for and against the direct resolution of the dispute instead of pursuing the dispute resolution process specified in the charter.

(D) Recognize that if the substance of a dispute is a matter that could result in the taking of appropriate action, including, but not limited to, revocation of the charter in accordance with Education Code section 47604.5, the matter will be addressed at the SBE's discretion in accordance with that provision of law and any regulations pertaining thereto.

(15) The declaration of whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act. Education Code section 47605(c)(6) recognizes that the SBE is not an exclusive public school employer. Therefore, the charter school must be the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (commencing with Government Code section 3540).

(g) A "reasonably comprehensive" description, within the meaning subdivision (f) of this section and Education Code section 47605(c)(5) shall include, but not be limited to, information that:

(1) Is substantive and is not, for example, a listing of topics with little elaboration.

(2) For elements that have multiple aspects, addresses essentially all aspects the elements, not just selected aspects.

(3) Is specific to the charter petition being proposed, not to charter schools or charter petitions generally.

(4) Describes, as applicable among the different elements, how the charter school will:

(A) Improve pupil learning.

(B) Increase learning opportunities for its pupils, particularly pupils who have been identified as academically low achieving.

(C) Provide parents, guardians, and pupils with expanded educational opportunities.

(D) Hold itself accountable for measurable, performance-based pupil outcomes.

(E) Provide vigorous competition with other public school options available to parents, guardians, and students.

Note: Authority cited: Sections 33031 and 47605, Education Code. Reference: Section 47605, Education Code.

#### HISTORY

1. New section filed 3-1-2002; operative 3-31-2002 (Register 2002, No. 9).

2. Amendment of section heading, section and Note filed 10-24-2011; operative 11-23-2011 (Register 2011, No. 43).

3. Editorial correction of History 2 (Register 2011, No. 44).

4. Change without regulatory effect amending subsections (a) and (b), repealing subsection (b)(3), amending subsections (c), (d), (e), (f)-(f)(1), (f)(3), (f)(4), (f)(5), (f)(6), (f)(7)-(9), (f)(10), (f)(11)-(13), (f)(14) and (f)(15)-(g) filed 9-28-2020 pursuant to section 100, title 1, California Code of Regulations (Register 2020, No. 40).

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5 CCR § 11967.5.1, 5 CA ADC § 11967.5.1

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