

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

California School Boards Association's Education Legal Alliance Plaintiff/Petitioner(s) vs. California State Board of Education, a California State Educational Agency Defendant/Respondent(s)	No. 34-2023-80004069-CU-WM-GDS Date: 06/29/2023 Time: 9:59 AM Dept: 36 Judge: Shelleyanne W.L. Chang
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ORDER re: Ruling on Submitted Matter

The Court, having taken the matter under submission on 06/27/2023, now rules as follows:

This matter came on for a hearing on the petition for writ of mandate on Tuesday, June 27, 2023. After hearing oral argument, the Court took the matter under submission. The Court now issues its ruling on submitted matter. For ease of review the Court has reproduced its tentative ruling below.

A. TENTATIVE RULING

I. Factual and Procedural Background

The Court has summarized the evidence that is relevant to its determination of whether the State Board properly determined the District Board and County Board’s decisions were the result of an abuse of discretion. The parties have included substantial argument concerning extraneous evidence, which evidence is not relevant to the Court’s determination.

In September 2021, the Napa Valley Unified School District (the “District”) received a charter school petition from Napa Foundation for Options in Education, seeking to establish a public charter school called Mayacamas Charter Middle School (the “Charter School”). (AR 523.) The Charter School petitioners sought a five-year term for the school, from July 2022 through June 2027, and indicated the school would serve students in grades six through eight. In the first year, the Charter School anticipated enrollment of 180 students, with an anticipated full capacity of 336 students by the fourth year of enrollment. (*Ibid.*)

The District established a team of 14 staff members to review the Charter School petition. Pursuant to Education Code section 47605, subdivision (c), in reviewing a petition to establish a charter school, the chartering authority, in this case the District Board, “shall grant a charter for the operation of a school...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.” Further, the District Board was required to “consider the academic needs of the pupils the school proposes to serve” and may only deny the petition if it makes written factual findings

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

setting forth specific facts to support one or more of the following:

- (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: [the statute delineates a list of requirements for the substance of the petition].
- (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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

presumption of denial.

The District held a public hearing on the Charter School Petition in November 2021. (AR 524) District staff kept a record of comments received at the November 2021 public hearing, noting 23 comments in opposition to the Charter School petition, and 17 in support. (AR 525)

In a November 22, 2021 staff report, the District noted that staff had “validated the teacher and parent signatures on the Petition through brief telephone interviews...[and] 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.” (AR 525) the District team also attempted to conduct a capacity interview with the Charter School petitioners in November 2021, at which they:”

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 [the Charter School petitioners’] conditions. (AR 526)

The staff report provides approximately 18 pages of “specific factual findings in support of recommendation” to deny the Charter School petition. (AR 530-549). The staff report summarizes these findings:

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:

- o 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.

- o 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.

- o Estimates of Title I federal funding and Food Service revenues are overstated due to faulty assumptions regarding student demographics.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

o Operational budget estimates of the anticipated revenues and expenditures necessary to operate the Charter School are unreasonable.

o Plans and budgeting for the provision of all necessary insurance are not clearly described or documented.

o The budget documents are inadequate and not prepared according to state standards.

o 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.

o 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

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

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).

(AR 528-530)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

At the December 9, 2021 District Board meeting, after staff spoke about the report, the Charter School petitioners were given time to respond. (AR 561) The Charter School petitioners spoke for approximately 20 minutes. (AR 561-568) The District Board then took a break, heard public comment, and ultimately unanimously voted to deny the Charter School petition. (AR 608) By resolution 22-16, the District Board adopted the District staff's Proposed Findings of Fact concerning the deficiencies in the Charter School petition and basis for denial. (AR 1304-1305).

In December 2021, the Charter School petitioners submitted the petition to the County Board of Education (the "County Board"). (AR 1316-1321) In early February 2022, the County Board held a public hearing on the petition. (AR 1308) On February 28, 2022, County Board staff published findings of fact and their recommendation concerning the Charter School petition. (AR 2521). Included in the factual findings are:

The Superintendent and COE staff reviewed the Petition and had a handful of questions for Petitioners about the program proposed and how they would implement said program. The Petition contains all required legal components. During meetings, Petitioners were able to answer all questions posed of them and had clearly thought through aspects of their proposed program that might be more difficult to implement. Minor concerns with MCMS's proposed budget do not render the entire budget unviable. The Petition describes a highly aspirational program and Petitioners showed themselves capable of materially implementing that program.

MCMS does not appear to duplicate a program that will be in operation in NVUSD next school year.

...

The Petition is notable for the fact that Petitioners want to continue a highly successful school that operated for more than twenty years before NVUSD took action to close the school effective this school year. River Middle School was a charter school authorized by NVUSD. River Middle School operated as a charter school for more than two decades. In May 2019, the River Charter Council voted to cease to operate as a middle school on the condition that River Middle School would continue to be operated by NVUSD, using the New Tech model of instruction. The transition was effective for the 2019-2020 school year. The following school year, in spring 2021, the NVUSD Board of Trustees voted to close River Middle School permanently, effective the 2022-2023 school year.

...

Were the Superintendent looking at the Petition in a vacuum, she would enthusiastically recommend approval. However, the NCOE is obliged by law to safeguard the fiscal health of school districts within Napa County. NCOE thus is

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

required to review NVUSD's financial condition and intervene if and when NVUSD is in fiscal distress. It is out of this obligation that NCOE expresses reservations about granting the Petition.

NVUSD has declining enrollment that is projected to reduce its student population by 17.05% over a ten-year period. (Exhs. A, B.) This declining enrollment will require significant numbers of layoffs of NVUSD staff over the next few years. With a reduction in students associated with MCMS, this situation becomes worse, with a reduction in student population of almost 19%. (*Id.*)

NVUSD's declining enrollment has been significantly impacting their revenues since at least 2014, although the district has only recently begun cutting expenditures to match declining revenues. On April 15, 2019, NCOE sent NVUSD's Board of Trustees a letter indicating significant concerns with NVUSD's fiscal future. (Exh. C.) NVUSD had been deficit spending since 2014, which required reduction of reserves to balance its budget. At the time of the letter, NVUSD's reserves were critically low. NCOE called on NVUSD to end deficit spending. Specifically, NCOE advised that NVUSD needed to implement proposed staffing reductions and close small schools with low enrollment. NVUSD agreed to cut expenses and increase revenues in the following areas: food services; transportation; small schools; facilities use fees; charter schools; extended days; class size; and district office staffing.

Currently, without making additional cuts to staffing or programming, NVUSD will not hold its required reserve in the 2026-2027 school year. (Exh. A.) With the addition of MCMS, NVUSD will not hold its required reserve in the 2025-2026 school year. (*Id.*)

When looking over NVUSD's projected budgets, it is important to note that, without the COVID-19 pandemic, NVUSD would be looking at fiscal distress several school years earlier. The influx of one-time pandemic-related funding, coupled with reduced operational costs, created a false -yet significant-increase in balances that will not continue. (Exh. D.) NVUSD is going to have to make significant cuts to staffing and programming over the next couple of years if it is going to stay financially solvent. NVUSD has acknowledged as much. (Exh. E, pages 8-9.) NVUSD likely is going to need to close more schools, with or without MCMS. The additional loss of students to MCMS only exacerbates this need.

The Superintendent points out two criteria that could change assumptions about NVUSD's future budget: assumptions about enrollment of current River Middle School students in the future and projected increase in enrollment due to Transitional Kindergarten students. First, all analyses regarding NVUSD's budget were made with the assumption that NVUSD will retain all Average Daily Attendance ("ADA") from current River Middle School students and/or students whose parents wish to attend MCMS. Parents have spoken and written

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

letters supporting that at least some parents will place their children in private schools if MCMS is not granted a charter. Second, any reduction in ADA based on MCMS would be mitigated by increased ADA due to the expansion of Transitional Kindergarten. NVUSD' s demographer estimates that NVUSD will add approximately 460 units of Average Daily Attendance by the 2025-2026 school year when Transitional Kindergarten is fully expanded.

...

Based on these findings, the Petition should be granted unless the Board finds that denial based on criterion (7), emphasized above, is justified. The Board should review whether or not the projected change in ADA and associated change in revenue, net of expenditure reductions, would change NVUSD 's budget certification based on the data in the Petition and what is known at this time. If the Board finds that the fiscal impact of MCMS would be material to NVUSD's budget certification, the Board must make findings consistent with the law, including that MCMS is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate based on specific facts and circumstances that consider whether MCMS would substantially undermine existing services, academic offerings, or programmatic offerings and whether MCMS would duplicate a program currently offered within the school district that has sufficient capacity for the potential MCMS students and is within reasonable proximity to where MCMS intends to locate.

(AR 2521-2526)

The County Board met on March 15, 2022, and after presentations from staff, the Charter School petitioners, and public comment, the County Board voted to deny the Charter School petition. (AR 2743-2744) During its April 5, 2022 meeting, the County Board ratified written findings in support of the denial. (AR 1308) The County Board specifically determined denial was appropriate under Education Code section 47605, subdivision (c)(7), the relevant factual findings include:

5. MCMS seeks to locate within the boundaries of the NVUSD and to enroll students who are residents of the NVUSD, which will have a material negative fiscal impact to the NVUSD.

6. NVUSD has declining enrollment that is projected to reduce its student population by 17.05% over a ten-year period. (Napa County Office of Education, Findings Regarding Mayacamas Charter Middle School (Feb. 28, 2022) (hereinafter "NCOE Findings").)

7. NVUSD's declining enrollment will require significant numbers of layoffs of NVUSD staff over the next few years. (NCOE Findings.)

8. With a reduction in students associated with MCMS enrollment, this situation becomes worse, with a reduction in student population of almost 19% over a

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

ten-year period. (NCOE Findings.)

9. NVUSD's declining enrollment has been significantly impacting their revenues since at least 2014, although the district has only recently begun cutting expenditures to match declining revenues. (NCOE Findings.)

10. On April 15, 2019, NCOE sent NVUSD's Board of Trustees a letter indicating significant concerns with NVUSD's fiscal future. (NCOE Findings, Exh. C.)

11. NVUSD had been deficit spending since 2014, which required reduction of reserves to balance its budget. (NCOE Findings, Exh. C.)

12. At the time of the letter, NVUSD's reserves were critically low. (NCOE Findings, Exh. C.)

13. NCOE called on NVUSD to end deficit spending, including implementing proposed staffing reductions and closing small schools with low enrollment. (NCOE Findings, Exh. C.)

14. NVUSD agreed to cut expenses and increase revenues in the following areas: food services; transportation; small schools; facilities use fees; charter schools; extended days; class size; and district office staffing. (NCOE Findings, Exh. C.)

15. NVUSD has, in fact, cut expenses as directed by the NCOE during the 2018-2019 school year.

16. Currently, without making additional cuts to staffing or programming, NVUSD will not hold its required reserve in the 2026-2027 school year. (NCOE Findings, Exh. A.)

17. With the addition of MCMS, and without making additional cuts to staffing or programming, NVUSD will not hold its required reserve in the 2025-2026 school year. (NCOE Findings, Exh. A.)

18. Without the COVID-19 pandemic, NVUSD would be looking at fiscal distress several school years earlier; the influx of one-time pandemic-related funding, coupled with reduced operational costs, created a false - yet significant - increase in balances that will not continue. (NCOE Findings, Exh. D.)

19. NVUSD is going to have to make significant cuts to staffing and programming over the next couple of years if it is going to stay financially solvent, which NVUSD has acknowledged. (NCOE Findings, Exh. E.)

20. NVUSD likely is going to need to close more schools, with or without MCMS, and the additional loss of students to MCMS only exacerbates this

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

need. (NCOE Findings.)

21. MCMS would substantially undermine existing services, academic offerings, or programmatic offerings at NVUSD.

22. Due to funding losses associated with MCMS's student enrollment, NVUSD projects that it would have to reduce its number of teachers by thirty-four over the first five years of MCMS's operation. (NVUSD, Staff Report: Proposed Findings of Fact and Recommendations Regarding Petition to Establish a New Charter School, adopted by NVUSD Board of Trustees on December 9, 2021.)

23. NVUSD anticipates having to cut staffing, close additional schools, reduce programs and services to students, and reduce expenditures on contracts in order to mitigate the loss of funding associated with the loss of students to MCMS. (Letter to Board from Rabinder (Rob) Mangelawa, Assistant Superintendent, Business Services, NVUSD (Jan. 28, 2022); Letter to Board from NVUSD Trustee Gracia (Mar. 10, 2022), including NVUSD 2021- 2022 Second Interim Financial Report Narrative.)

24. NVUSD potentially would need to eliminate its middle school sport program and elementary school music and physical education programs; counselors, intervention teachers, and electives; and/or close small elementary schools located in the City of Napa. (NVUSD 2021-2022 Second Interim Financial Report Narrative; Letter to Board from NVUSD Trustee Chu (Mar. 14, 2022).)

25. If MCMS were to be approved, NVUSD anticipates renegotiating and/or ending contracts with NCOE for programs such as afterschool programs, summer school programs, and CTE programs. (NVUSD 2021-2022 Second Interim Financial Report Narrative.)

26. MCMS would not duplicate a program currently offered within the school district and the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.

(AR 1309-1310)

In April 2022, Charter School petitioners submitted an appeal petition to Respondent State Board of Education (the "State Board"). (AR 17) The Charter School petitioners argued the County Board engaged in an abuse of discretion in that it:

- Failed to comply with the "statutorily-mandated petition approval process" because the County Board drafted its factual findings in support of denial after its March 15, 2022 hearing, and these findings were not drafted by the County Board, but were drafted by legal counsel. Charter School petitioners contended this violated Education Code section 47605, subdivision (c). (AR 20)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

- The County Board’s factual findings were not supported by substantial evidence in light of the entire record, and that “any fiscal impact on the District will be mitigated completely by the expansion of transitional kindergarten [].” (AR 21)(emphasis in original.)
- The process was not “fair and impartial” because there is “ample evidence of bias by the [District Board] in its review of the petition, the holding of its own hearings, and its denial of the petition. (AR 22)
- The factual findings adopted by the District Board are not supported by substantial evidence, and except for the section 47605, subdivision (c)(7) finding, the “County Board agreed that there is no substantial evidence that could support denial of the MCMS petition. (AR 22)(emphasis in original.)

The California Department of Education reviewed, through its staff, the documentary record and the appeal, and prepared a recommendation that the State Board affirm the District Board and County Board decisions to deny the Charter School petition. (AR 3387) In addition to a detailed review of the allegations, the Department of Education staff provided a summary of the Charter School petition appeal, summarized each District Board finding, the facts in support of the findings, the Charter School petitioner’s arguments as to how the District Board abused its discretion, and the Department of Education’s conclusion as to the specific District Board finding. The Department of Education staff provided the same summary and analysis of the County Board’s findings. (AR3396-3406) The summary of this analysis is:

- District Board finding: The petition presents an unsound educational program (§ 47605, subdivision (c)(1).)
 - o Department of Education conclusion: The Charter School petitioners failed to meet their burden to show an abuse of discretion “because [the] written submission fails to include specific citations and fails to explain how the [District Board] abused its discretion as to this finding.”
- District Board finding: Charter School petitioners are demonstrably unlikely to successfully implement the program set forth in the Charter School petition. (§ 47605, subdivision (c)(2).)
 - o Department of Education conclusion: The Charter School petitioners failed to meet their burden to show an abuse of discretion “because [the] written submission fails to include specific citations and fails to explain how the [District Board] abused its discretion as to this whole finding.”
- District Board finding: The petition does not contain reasonably comprehensive description of elements (A) through (O) of Education Code section 27605, subdivision (c)(5).
 - o Department of Education conclusion: The Charter School petitioners failed to meet their burden to show an abuse of discretion “because [the] written submission fails to include specific citations and fails to explain how the [District Board] abused its discretion as to this finding.”

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

- District Board finding: The Charter School is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. (§ 47605, subdivision (c)(7).)
 - o Department of Education conclusion: The Charter School petitioners failed to meet their burden to show an abuse of discretion “because [the] written submission fails to include specific citations and fails to explain how the [District Board] abused its discretion as to this finding.”

- County Board finding: The Charter School is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. (§ 47605, subdivision (c)(7).)
 - o Department of Education conclusion: The Charter School petitioners failed to meet their burden to show an abuse of discretion “because [the] written submission fails to include specific citations and fails to explain how the [County Board] abused its discretion as to this finding.”

- Charter School petitioners’ claim the District Board failed to proceed in the manner required by law.
 - o Department of Education conclusion: There is no evidence of procedural violations and, therefore, no abuse of discretion.
 - o

- Charter School petitioners’ claim the County Board failed to proceed in the manner required by law.
 - o Department of Education conclusion: There is no evidence of procedural violations and, therefore, no abuse of discretion.

(AR 3396-3406)

At its September 15, 2022 hearing, The State Board heard presentations from the Department of Education staff concerning their report, followed by presentations by the Charter School petitioners, the District Board, and the County Board. (Stipulation Regarding Transcript of Administrative Hearing.) A motion to affirm the decision of the District Board and the County Board failed with a vote of 5-6. (AR 3454-3455.) By a vote of 6-5, a motion to reverse the District Board and County Board determinations “based on the [State Board’s] determination that an abuse of discretion occurred at both the district and county levels” passed. (AR 3455.)

At the county level, the county did not satisfy the requirements of [section 47605, subdivision (c)(7)] and did not provide evidence in the documentary record that the proposed charter would substantially undermine existing services, offerings, or programs. Additionally, the district abused its discretion by failing to proceed in a manner required by law because it did not provide a fair and impartial hearing process. (AR 3455)

In its petition for writ of mandate and complaint for declaratory relief, the California School Boards Association’s Education Legal Alliance (“Petitioner”) now challenges the State Board’s reversal of the County Board and District Board decisions to deny the Charter School

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

petition. The State Board's *only* basis for overturning the District Board and County Board decisions were its determination that: (1) the District Board did not provide a fair and impartial hearing process; and (2) the County Board did not satisfy the requirements of section 47605, subdivision (c)(7) and did not provide evidence that the Charter School would "substantially undermine existing services, offerings or programs." As such, the Court's review consists of a determination of whether the District Board and County Board each engaged in an abuse of discretion on these bases alone.

II. Standard of Review

The petition in this matter seeks a writ of mandate pursuant to Code of Civil Procedure section 1085. An action under this provision permits judicial review of ministerial duties as well as quasi-legislative acts of public agencies. (*Carrancho v. Cal. Air Resource Board* (2003) 111 Cal.App.4th 1255, 1265.) As the Court previously determined in its ruling on the State Board's demurrer, the District Board, County Board, and State Board's determinations were quasi-legislative in nature, as they involved the potential creation of a school district for purposes of statutory and constitutional funding allocations. (See *California School Boards Association v. State Board of Education* (2015) 240 Cal.App.4th 838, 846.)

This matter provides a unique circumstance wherein the Court is not merely considering whether the State Board engaged in an abuse of discretion in making its final decision, but whether the State Board also engaged in an abuse of discretion by applying the wrong legal standard in its interpretation of the "abuse of discretion standard" required by section 47605 in overturning the District Board and County Board decisions.

Section 47605, subdivision (k)(2)(E) establishes the process for the State Board's review of charter school petitions:

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. (Emphasis added.)

The parties agree that the State Board was only vested with the authority to overturn the District Board and/or the County Board decisions upon a finding of an abuse of discretion. "Mandamus may issue to correct the exercise of discretionary legislative power, *but only* if the action taken is so palpably unreasonable and arbitrary as to show an abuse of discretion as a matter of law. This is a highly deferential test." (*Carrancho, supra*, 111 Cal.App.4th at 1265.) When reviewing a decision under the abuse of discretion standard, the reviewing agency "does not inquire whether, if it had power to act in the first instance, it would have taken the action taken" rather the authority of the reviewing agency is "limited to determining whether the decision of the agency was arbitrary, capricious, entirely lacking in evidentiary support, or

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

unlawfully or procedurally unfair.” (*Schwartz v. Pozner* (2010) 187 Cal.App.4th 592, 615-616)(citations omitted.) The reviewing tribunal “must ensure that an agency has adequately considered all relevant factors, and has demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute.” (*Carrancho, supra*, 111 Cal.App.4th at 1265.) This limited review is “out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority.” (*California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 212.)[1]

The question before the Court is not simply whether the State Board’s decision is “entirely lacking in evidentiary support.” Rather, the Court must consider whether the District Board and County Board’s decisions were “entirely lacking in evidentiary support” such that the State Board properly exercised its discretion under section 47605, subdivision (k)(2)(E) in reversing the prior determinations and approving the Charter School petition.

As such, this determination requires interpretation of applicable statutes, including section 47605 and the Court therefore exercises its independent judgment. (See, *Sacks v. City of Oakland* (2010) 190 Cal.App.4th 1070, 1082.) In exercising its independent judgment, the Court is guided by certain established principles of statutory construction, which may be summarized as follows. The primary task of the court in interpreting a statute is to ascertain and effectuate the intent of the Legislature. (See, *Hsu v. Abbara* (1995) 9 Cal.4th 863, 871.) An administrative agency’s interpretation of a statute it is charged with implementing is nonetheless entitled to “great weight.” (*O’Connor v. State Teachers’ Ret. Sys.* (1996) 43 Cal.App.4th 1610, 1620, 1623.)

III. Discussion

A. Evidentiary Objections and Requests for Judicial Notice

Petitioner has filed evidentiary objections concerning the Declaration of Lisa Constancio filed in support of the State Board’s opposition brief. The objections are **SUSTAINED** as the objected material is improper legal conclusion, lacks foundation, or is irrelevant to the Court’s determination in this matter.

Petitioner has filed a request for judicial notice of two documents constituting legislative history behind amendments to section 47605 (which amendments constituted Assembly Bill 1505). No opposition has been filed to this request. The request is **GRANTED** as to Petitioner’s two documents.

[1] This is consistent with the State Superintendent’s interpretation of “abuse of discretion” review pursuant to section 47605, subdivision (k)(2)(E). The State Board’s “review is limited to a determination whether the district governing board’s or county board’s decision to deny the charter petitioner [sic] ‘was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair’ (*California School Boards Association v. State Board of Education* (2010) 186 Cal.App.4th 1298, 1313-1314).” (State Board RJN, Exh. 3.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

The State Board has filed a request for judicial notice concerning seven documents. The District has not filed any opposition to this request. Although the existence of a document may be judicially noticeable, the truth of statements contained in the documents is not subject to judicial notice if those matters are reasonably disputable. (*Freemont Indemnity Co. v. Fremont General Corp.* (2007) 148 Cal.App.4th 97, 113.) To the extent these documents contain an individual's interpretation of the meaning of a statute, the Court takes judicial notice that this opinion exists but does not accept the truth of the matters asserted therein. The request is **GRANTED** as to the State Board's seven documents.

B. Finding of bias on the part of the District Board

The State Board did not adopt *any* factual findings to establish the factual basis for the State Board's conclusion that the District Board failed to provide a "fair and impartial hearing process." Thus, the Court must rely on the State Board's filings in this matter as the basis for its decision.

In its opposition brief, the State Board asserts that the District Board made "pretextual findings and conducted its public hearing in a biased manner." (Oppo., p. 26) In support of this assertion, the State Board cites to the fact that a capacity interview did not occur between the District and the Charter School petitioners, after which District Staff indicated a "working relationship between the Charter School and the District will not be conducive to effective Charter School oversight by the District." (Oppo., p. 27)(citing AR 1801, FN 15; AR 1805.) The State Board states that this is contrary to the County Board's finding that the Charter School petitioners were "cooperative through its review" of the petition, and therefore, the District must have been biased against the Charter School petitioners. (Oppo., p. 27)(citing AR 2521.)[2]

The State Board further identifies as evidence of bias "prepared remarks" District Board members made during the public hearing. (Oppo., p. 27.) As part of these remarks, members stated that the Charter School petitioners submitted a "phony budget" and "fraudulently" attempted to inflate their income, and that the petition was akin to a "hastily thrown-together term paper by like a freshman interested in majoring in education." (AR 584-585, 598.) Further, District administration and staff spoke out against the Charter School, which the State Board argues supports a finding of bias. (Oppo., p. 28.) The State Board contrasts these opinions with those of the County Board that the Charter School proposed a highly aspirational program that the Charter School petitioners would be capable of implementing. (Oppo, p. 28.)

The State Board concludes that "it is the totality of [the District Board's] review, rather than one single action [that] taints the process as biased." (Oppo., p. 28.)

[2] The State Board also notes the colloquy that occurred between the Charter School petitioners and the District in attempting to negotiate who would be permitted to answer questions at the capacity interview and whether questions would be provided in advance. The State Board insinuates that the District's insistence on the Charter School petitioners themselves responding to questions, without any questions being provided in advance, is further evidence of bias.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

“Procedural due process in the administrative setting requires that the hearing be conducted before a reasonably impartial, noninvolved reviewer.” (*Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, 483)(citations omitted.) “It is recognized that administrative decision makers are drawn from the community at large. Especially in a small town setting they are likely to have knowledge of and contact or dealings with parties to the proceeding. Holding them to the same standard as judges, without a showing of actual bias or the probability of actual bias, may discourage persons willing to serve and may deprive the administrative process of capable decision makers.” (*Id.*)(citations omitted.)

“Absent a financial interest, adjudicators are presumed impartial. [citation.] To show nonfinancial bias sufficient to violate due process, a party must demonstrate actual bias or circumstances ‘in which experience teaches that the probability of actual bias on the part of the judge or decisionmaker is too high to be constitutionally tolerable’ [citation.] The test is an objective one. [citation.] While the ‘degree or kind of interest...sufficient to disqualify a judge from sitting cannot be defined with precision’ [citation], due process violations generally are confined to ‘the exceptional case presenting extreme facts’ [citation.]” (*Today’s Fresh Start, Inc. v. Los Angeles County Office of Education* (2013) 57 Cal.4th 197, 219.) The party suggesting bias must “lay a specific foundation for suspecting prejudice that would render an agency unable to consider fairly the evidence presented at the adjudicative hearing; it must come forward with specific evidence demonstrating actual bias or a particular combination of circumstances creating an unacceptable risk of bias.” (*Id.*, at p. 221)(citations omitted.) Absent such a showing, the presumption that the adjudicators are “people of conscience and intellectual discipline, capable of judgment a particular controversy fairly on the basis of its own circumstances” will remain unrebutted. (*Id.*, at p. 222)(citation omitted.)

If a superintendent initiates disciplinary action against a district employee, the fact that the school district board is headed by the same superintendent, and therefore the prosecuting or investigation function has been combined with an adjudicating function does not constitute a denial of due process. (*Griggs v. Board of Trustees of Merced Union H.S. Dist.* (1964) 61 Cal.2d 93, 98.) In such a circumstance, the board members are even permitted to “presume that the recommendations of their superintendent were correct” subject to reevaluation on the basis of what appears at the hearing. (*Ibid.*) The party alleging bias must make an affirmative showing of evidence demonstrating actual bias.

In *Nasha v. City of Los Angeles*, residents of a neighborhood and a nature conservancy appealed a city planning director’s approval of a residential development project. ((2004) 125 Cal.App.4th 470, 475.) Shortly before the planning commission hearing on the appeal, a member of the commission authored an article in a neighborhood association newsletter calling the project a “threat to wildlife corridor” and that the corridor was “an absolutely crucial habitat corridor.” (*Id.*, at p. 476.) The commission member also introduced one of the appellants at a monthly neighborhood association meeting, during which the appellant spoke against the project and in support of the appeal. (*Ibid.*) At the conclusion of the planning commission hearing, the subject member made a motion to grant the appeal, which was carried by a three-to-one vote. (*Id.*, at pp. 477-478.)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

The Second District Court of Appeal found the newsletter article attacking the project gave rise to an “unacceptable probability of actual bias.” (*Id.* at p. 483.) The article was not merely information but “clearly advocated a position against the project” and was sufficient to preclude the author from serving as a “reasonably impartial, noninvolved reviewer.” (*Id.*, at p. 484)(citations omitted.)

Similarly, a city councilmember who appeals a planning commission’s decision, and then participates in the vote granting the appeal constitutes unlawful participation of a biased decisionmaker. (*Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1022.) The fact that the city councilmember had filed the notice of appeal was evidence the councilmember was “strongly opposed to the planning commission’s decision... That is, as in *Nasha*, he took a ‘position against the project.’” (*Id.*, at pp. 1022-23)(citations omitted.)

In carrying out its obligations pursuant to section 47605, a school district board of trustees is inherently wearing two hats: that of elected representative of its constituents and their interests, as well as providing a fair and impartial analysis of the propriety of a charter school petition. Not only does their role as elected representative *require* them to form opinions based on their constituents’ interests, but section 47605 *also* directs them to consider whether granting the charter petition is consistent with the “interest of the entire community in which the school is proposing to locate” and must include “consideration of the fiscal impact of the proposed charter school.” (§ 47605, subdivision (c)(7).)[3]

In contrast to those cases and their facts cited above, comments made at a public hearing in opposition to a charter school petition under consideration by the district board of trustees, when the purpose of the public hearing is to consider whether to approve the petition, are not sufficient evidence of actual bias or “an unacceptable probability of actual bias.” The fact that several District Board members made “prepared remarks” after having considered the petition itself and the detailed staff recommendation, does not establish that any board member had become so enmeshed in the subject matter as to demonstrate that they did not base their decision on the evidence presented to them as part of the official review process. The somewhat hyperbolic statements and observations do not rise to the level of actual bias. Moreover, the expressed concerns about fraudulent financial numbers represent a District Board member’s opinion after review of the evidence, as does the member’s concern that substantial portions of the petition had been copied and pasted from a petition prepared and presented to a different school district. In its own opposition, the State Board asserts that its own members are entitled to “voice their opinions without raising an inference that the proceedings before the SBE are somehow tainted based on any such opinions.” (Oppo., p. 26.) The same is true for the proceedings before the District Board.

[3] The Assembly Floor Analysis of Concurrence in Senate Amendments for Assembly Bill 1505, which amended section 47605 includes a comment that the bill was intended to give “school districts greater authority to school which charter schools are approved in their community, and to consider the fiscal impact of the charter school on the current students in the district.” (Pet. RJN, Exh. B., p. 2.) Further, the bill’s author is quoted as intending to give school districts the “flexibility to consider the community impact, including the fiscal impact to the school district...” (*Ibid.*) The specific impacts mentioned include staffing needs, the impact on district programs such as science, music, and theater, and whether layoffs may be exacerbated by the addition of a new charter school. (*Ibid.*) Clearly the Legislature intended school districts, and specifically school board members, to form opinions, albeit strong opinions, about the impacts, positive or negative, a proposed charter school would have on the district if a petition is approved.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

The State Board does not provide any evidence that any District Board member made any public statements in media or otherwise in opposition to the Charter School petition *prior* to the public hearing during which the District Board voted. The State Board does not contend there was any evidence that a District Board member participated in any organized efforts opposed to the Charter School petition *prior* to the public hearing during which the District Board voted. The fact that the District Board reviewed the petition and the staff report, and shared their opinions and concerns about the Charter School petition as part of the public hearing is *not* evidence of actual bias, nor is it evidence of an unacceptable probability of actual bias. Absent evidence cited by the State Board as evidence sufficient to constitute an unacceptable probability of actual bias on the part of the voting members of the District Board, the State Board was required to presume the District Board members were impartial. (*Today's Fresh Start, Inc., supra* (2013) 57 Cal.4th 197, 219.) The State Board *has not* cited to evidence sufficient to rebut this presumption.

The State Board also cites to the fact that the District's staff report made a negative conclusion as to the Charter School petitioner's ability to run the program with success due to their having declined to reach an agreement as to the format of a capacity interview. The State Board maintains this negative viewpoint is clearly the result of bias, because the County Board's staff found the Charter School petitioners to be very cooperative. The truth of one of these circumstances does not equal the falsity of the other. There is no evidence in the record that any County Board staff or any State Board staff participated in the communications between the District staff and the Charter School petitioners during the pendency of the proceedings before the District Board. The fact that District staff may have been discouraged or frustrated by the communications *does not* constitute evidence of actual bias, and even when combined with the District Board member comments at the hearing, these facts are not sufficient to constitute an "exceptional case presenting extreme facts" sufficient to give rise to an unacceptable probability of actual bias. (*Today's Fresh Start, Inc., supra* (2013) 57 Cal.4th 197, 221.)[4]

The State Board based its determination that the District Board's decision was an abuse of discretion *solely* on its finding that the District Board failed to "provide a fair and impartial hearing process." (AR 3455.) Thus, the Court need not consider whether the District Board's section 47605, subdivision (c) findings constitute an abuse of discretion in the first instance.

[4] The Charter School petitioners, appearing as Real Parties in Interest, proffer numerous citations to the record for alternative reasons why the State Board could have determined the District Board was biased and therefore failed to provide a fair and impartial hearing process. The Court is not persuaded by these evidentiary citations. The Court also notes that the Charter School petitioners claim the District Board trustees demonstrated their bias via their prepared remarks, and cite to AR 547-601. This citation is incredibly overbroad, and includes numerous public comments, with trustee comments not beginning until AR 583. These comments began *after* all presentations and public comments, and the Court finds that while the trustees expressed strong opinions, they do not constitute evidence of bias.

Further the consideration before the Court is whether the *actual basis* for the State Board's decision was adequate to support a finding of abuse of discretion. The State Board has cited to the evidence it contends formed the basis for its finding that the District Board failed to provide a fair and impartial hearing process.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

C. Finding of “abuse of discretion” on the part of the County Board

The State Board did not adopt *any* factual findings to establish the factual basis for the State Board’s determination that the County Board did not satisfy the requirements of section 47605, subdivision (c)(7) and did not provide evidence that the Charter School would “substantially undermine existing services, offerings or programs.” Thus, the Court must rely on the State Board’s briefing in this matter to determine the basis for the State Board’s decision.[5]

The State Board argues it “interpreted the first prong of the community interest criteria – the extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings – and determined the County Board failed to make an adequate showing.” (Oppo., p. 28.) The State Board maintains the administrative record shows that the District’s fiscal impact, as considered by the County Board was “inadequate, and limited to consideration of [the District Board’s] *own analysis* of declining enrollment and resulting staff reductions...[thus] the County Board did not make a complete inquiry into the fiscal impact...based upon its failure to consider how the fiscal impact would *substantially* undermine *existing* services, academic offerings, or programmatic offerings.” (Oppo., p. 29)(emphasis in original.)

The State Board argues the record merely establishes that planned program increases would potentially need to be eliminated, and that the District would “*likely* not meet reserve requirements in 2024-25 and *may* need to adopt a qualified budget. (AR 2998).” (Oppo., p. 29.) The State Board asserts that the District had been in difficult financial circumstances since 2014, and it was only speculation that approval of the Charter School petition would require changes that would undermine existing services. The State Board concludes the County Board abused its discretion by failing to “sufficiently inquire into whether the establishment of [the Charter School] in [the District] would ‘*substantially undermine existing* services, academic offerings, or programmatic offerings.’” (Oppo., p. 30)(citing § 47605, subd. (c)(7)(A).)[6]

[5] The Charter School petitioners argue the County Board abused its discretion by adopting factual findings after they denied the petition. The State Board did not make any such finding, and thus this issue is irrelevant to the Court’s determination in this matter. Further, even if it was, the Court finds section 47605 does not prohibit the procedure followed by the County Board in adopting its factual findings for denial. Charter School petitioners also argue about the timeliness of the factual findings, which again, was not the basis for the State Board’s decision and therefore not relevant to the Court’s analysis in this matter.

[6] The Court is troubled by the State Board’s assertion that it is permitted to consider *new evidence* at the hearing on a charter petition appeal, as it “may consider evidence in the documentary record as well as evidence outside of the record, including evidence presented at the meeting for which the appeal is a generalized such as presentations from the charter petitioner, the school district, and county board as well as public comment.” (Oppo., pp. 9-10.) This is contrary to the plain language of the statute, as well as the State Superintendent’s interpretation of the statute: “Under the abuse of discretion standard, the SBE is limited to reviewing the findings, documentary record, and written submission for evidence of an abuse of discretion by either the governing board of the school district or the county board.” (State Board RJN, Exh. 3.) While the State Board must consider the presentations and public comment made at the hearing, these items are not “evidence” but merely akin to oral argument presented at a hearing on the merits of a petition for writ of mandate. The State Board’s authority is to consider whether, given the evidence presented to the district and/or county board, their decisions were an abuse of discretion because they are “entirely lacking in evidentiary support.” It would be contrary to this limited review to allow presentations of entirely new evidence at the State Board charter petition appeal hearing.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

Petitioner argues the record is replete with evidence that the Charter School would undermine existing services, academic offerings, or programs in the District. Specifically, the County Board staff report detailed how the District's student enrollment would be reduced by 2% in addition to the already projected decline of 17.05% over a ten-year period. (AR 2524, 2530, 2730-2731.) The County Board further calculated that if the Charter School petition were approved, the District's end of year account balance for the 2026-2027 school year would be more than \$9 million less, with a negative balance of \$426,435.68. (AR 2534)

With regard to a substantial impact on District services, offerings, and programs, the evidentiary record shows that the district would need to reduced teaching staff by 34 over five years if the Charter School petition were approved. (AR 2933) Even with the reduction of expenditures from serving less students, if the Charter School petitioner were approved, "programs will need to be cut. Supplemental programs such as counselors, intervention teachers and electives will need to be reduced to balance the budget." (*Ibid.*) "Planned program increases will also need to be eliminated. For example, the District just announced that they would be adding a Middle School sports program and additional music and physical education for elementary students. Both of these programs would need to be potentially eliminated." (AR 2997)

With regard to duplication of District programs, Petitioner cites to the staff report's acknowledgment that the Charter School would use the New Tech Network program. (AR 2522) Although the District already had two New Tech Network schools, neither school was a middle school, as would be established by the Charter School petition. The County Board staff report provided that despite similarities with the now-closed River Middle School, the Charter School petition did not appear to duplicate a program that would be in existence during the following school year. The issue of duplication of programs was also discussed by the County Board during the public hearing. (AR 2920-2924)

In its adoption of factual findings, the County Board considered and agreed with the District's analysis that its financial outlook was so distressed, the further loss of funding and enrollment that would result from approval of the Charter School was sufficient to be contrary to the "interests of the entire community." (§ 47605, subdivision (c)(7).) The County Board found:

11. NVUSD had been deficit spending since 2014, which required reduction of reserves to balance its budget. (NCOE Findings, Exh. C.)

...

17. With the addition of MCMS, and without making additional cuts to staffing or programming, NVUSD will not hold its required reserve in the 2025-2026 school year. (NCOE Findings, Exh. A.)

...

20. NVUSD likely is going to need to close more schools, with or without MCMS, and the additional loss of students to MCMS only exacerbates this

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

need. (NCOE Findings.)

...

22. Due to funding losses associated with MCMS's student enrollment, NVUSD projects that it would have to reduce its number of teachers by thirty-four over the first five years of MCMS's operation. (NVUSD, Staff Report: Proposed Findings of Fact and Recommendations Regarding Petition to Establish a New Charter School, adopted by NVUSD Board of Trustees on December 9, 2021.)

23. NVUSD anticipates having to cut staffing, close additional schools, reduce programs and services to students, and reduce expenditures on contracts in order to mitigate the loss of funding associated with the loss of students to MCMS. (Letter to Board from Rabinder (Rob) Mangelawa, Assistant Superintendent, Business Services, NVUSD (Jan. 28, 2022); Letter to Board from NVUSD Trustee Gracia (Mar. 10, 2022), including NVUSD 2021- 2022 Second Interim Financial Report Narrative.)

24. NVUSD potentially would need to eliminate its middle school sport program and elementary school music and physical education programs; counselors, intervention teachers, and electives; and/or close small elementary schools located in the City of Napa. (NVUSD 2021-2022 Second Interim Financial Report Narrative; Letter to Board from NVUSD Trustee Chu (Mar. 14, 2022).)

25. If MCMS were to be approved, NVUSD anticipates renegotiating and/or ending contracts with NCOE for programs such as afterschool programs, summer school programs, and CTE programs. (NVUSD 2021-2022 Second Interim Financial Report Narrative.)

26. MCMS would not duplicate a program currently offered within the school district and the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.

The Court finds the evidentiary record is not “entirely lacking in evidentiary support” for the County Board’s determination that the Charter School was “demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate.” To the contrary, the District provided ample evidence of pre-existing financial distress. In an effort to alleviate this distress, the District made difficult decisions to decrease programming, staffing, and closed certain facilities, including River Middle School. River Middle School parents, dissatisfied with this decision, sought to establish a charter school, which would further reduce the District’s enrollment and funding. Evidence in the record supports that this increased lack of funding would cause the District to fail to meet its required financial reserves at least a year earlier than it otherwise would, and the District would need to eliminate counselors, intervention teachers, and electives; and/or close small elementary schools located in the City of Napa.

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

The fact that the District was already experiencing financial distress and *may* eventually have to make some of these difficult decisions even without approval of the Charter School, does not negate the evidence that the Charter School *will have* a negative fiscal impact on the District if approved.

The State Board argues that the County Board should have done its own analysis of declining enrollment and resulting staff reductions, but the State Board cites to *no authority* to establish that the County Board was required to discount the District's evidence and analysis. Further, the State Board does not cite to *any evidence* in the record to establish that the County Board's financial conclusions were no more than speculation, and the Court has, based on its own review of the evidentiary record, found ample evidence to support the conclusion that the proposed Charter School would substantially undermine existing services in the District.

Based upon this record, the Court finds the State Board abused its discretion in reversing the District Board's and the County Board's decision to deny the Charter School petition. The State Board erred in finding that the stated bases constituted grounds to overturn the decisions.

IV. Conclusion

The petition for writ of mandate is **GRANTED**. Given the Court's determination, it need not analyze the additional arguments raised by the parties, including Petitioner's contention that the State Board's hearing was procedurally unfair, and that the Charter School petitioners failed to adequately cite evidence in the record in support of their appeal. Petitioner's cause of action for declaratory relief is duplicative of the cause of action seeking a writ of mandate. As such, Petitioner's declaratory relief claim is **DISMISSED** as moot.

A judgment shall be issued in favor of Petitioner, and against Respondent, and a peremptory writ shall issue commanding Respondents to take action specially enjoined by law in accordance with the Court's ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondents. Respondents shall make and file a return within 60 days after issuance of the writ, setting forth what has been done to comply therewith.

B. FINAL RULING

The tentative ruling is **AFFIRMED** with the following comments and modifications.

Petitioner's evidentiary objection number 6 concerning the Declaration of Lisa Constancio is **OVERRULED**. The remainder of the objections are **SUSTAINED**.

A. Standard of Review

At the hearing on this matter, Respondent argued the Court was incorrect in its statement that it must consider whether the State Board and County Board's decisions were "entirely lacking in evidentiary support" because the State Board's reversal of the District Board's decision was on the basis of procedural unfairness in the form of bias.

The Court's tentative ruling was *not* limited to a consideration of the evidentiary support

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

for the District Board and County Board's decisions. The Court has clearly considered the determination of bias made by the State Board concerning the District Board's decision. The Court's emphasis in its standard of review discussion on the "entirely lacking in evidentiary support" standard was to emphasize that the State Board is not free to exercise its independent judgment in reviewing the evidence in the record.

Further, the State Board incorrectly characterized its reversal of the County Board's decision as having been based on "procedure" instead of a finding of a lack of evidentiary support in the record. At the conclusion of the State Board proceedings, it provided the sole written finding for overturning the District Board and County Board decisions as follows:

At the county level, the county did not satisfy the requirements of [section 47605, subdivision (c)(7)] and *did not provide evidence in the documentary record* that the proposed charter would substantially undermine existing services, offerings, or programs. Additionally, the district abused its discretion by failing to proceed in a manner required by law because it did not provide a fair and impartial hearing process. (AR 3455)(emphasis added.)

Thus, the Court must consider whether the County Board's determination was "entirely lacking in evidentiary support" and consequently an abuse of discretion.

B. The District Board's Decision

At the hearing on this matter, the State Board argued the Court's interpretation of the evidentiary standard that must be met for a finding of bias on the part of a lower tribunal is too high of a bar, and asserted that the State Board would never be able to obtain evidence sufficient to establish bias based upon this standard.

The State Board provides *no* citations to legal authority that comments made, such as those made by the District Board members at the conclusion of the public hearing during which they reviewed relevant information and staff analysis before voting on the Charter School petition, demonstrate bias sufficient to constitute procedural unfairness. The State Board quarrels with the state of the law concerning actual bias, but provides the Court with *no* authority to deviate from the framework provided by *Nasha*, *Griggs*, or *Woody's*, and the standard set by that case precedent.

The State Board also argued the Court should not follow *Today's Fresh Start, Inc.*, and should not presume the individual members of the District Board are "people of conscience and intellectual discipline, capable of judgment of a particular controversy fairly on the basis of its own circumstances." ((2013) 57 Cal.4th at 222.) The State Board provided the Court with *no* legal authority that such a presumption should not apply to the individual members of the District Board and, other than what has been discussed and rejected by the Court, cites no compelling evidence to negate this presumption.

In fact, the Legislature *chose* to give school districts "greater authority to determine which charter schools are approved in their own community" by passing Assembly Bill 1505. The Court presumes the Legislature was aware of the nature of school districts and school

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

boards, and believed school boards capable of unbiased adjudication of charter school petitions. *Every* charter school petition will require a school board to consider the financial interests of the school district, and the Court presumes the Legislature was aware of this fact, and did not believe it sufficient to disqualify or result in bias for *every* school board. In this matter, there is *no* evidence, that *any* individual District Board member had a financial interest in the outcome of the proceedings, or that any District Board member took a position against the Charter School petition outside of the comments made during the public hearing on the matter.

The State Board abused its discretion in reversing the District Board's decision to deny the Charter School petition.

C. The County Board's Decision

The State Board's oral arguments contain the hallmarks of independent judgment review. However, as emphasized repeatedly in the Court's tentative ruling, the State Board was limited to abuse of discretion review, a review that is very limited "out of deference to the separation of powers between the Legislature and the judiciary, to the legislative delegation of administrative authority to the agency, and to the presumed expertise of the agency within its scope of authority." (*California Hotel & Motel Assn. v. Industrial Welfare Com.* (1979) 25 Cal.3d 200, 212.)

As the Court already detailed in its tentative ruling, the record contains the District's Second Interim Financial Report. Neither the State Board nor the Charter School petitioners cited to any evidence to contradict the conclusions reached in the Second Interim Financial Report.[7] These conclusions include: "[b]ased on the petitioners' enrollment projections of 180 students in year 1 and increasing to 336 in year 5, the District would lose over \$1.6 million dollars in the first year and \$13 million dollars over 5 years. In response, the District will need to close additional schools, reduce programs and services for students, lay off additional employees and reduce expenditures on contracts." (AR 2988) The document provides that even with the reduction of expenditures from serving less students, if the Charter School moves forward, "programs will need to be cut. Supplemental programs such as counselors, intervention teachers and electives will need to be reduced to balance the budget." (*Ibid.*)

The State Board disagreed with these conclusions, and asserted that such reductions are not evidence that the Charter School would "substantially undermine existing services, academic offerings, or programmatic offerings." But the evidentiary record demonstrates entire programs will be eliminated, including the closure of further schools, and the reduction of counselors, intervention teachers, and electives.

[7] The Court notes that at oral argument, Charter School petitioners raised a concern that the video recordings taken during the District Board and County Board proceedings had not been included in the certified administrative record provided to the Court. At *no time* did *any party*, including Charter School petitioners, bring a motion to augment the record, or otherwise request the Court consider evidence that had been excluded from the record but was properly considered by the State Board in reaching its conclusions. As such, the Court will not further address these

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

comments.

That the State Board would, upon the same documentary record, conclude differently is not the appropriate test, however. Indeed, such argument sounds in application of the independent judgment test. The Court emphasizes, again, the limited review available pursuant to the abuse of discretion standard. “That another court might reasonably have reached a different result on this issue... does not demonstrate an abuse of discretion. An abuse of discretion may be found only if no judge could have reasonably reached the challenged result. As long as there exists a reasonable or even fairly debatable justification, under the law, for the action taken, such action will not be... set aside....” (*O’Donoghue v. Superior Court* (2013) 219 Cal.App.4th 245, 269)(citations omitted.) A decision of a lower tribunal “will not be reversed merely because reasonable people might disagree.” (*People v. Superior Court (Alvarez)* (1997) 14 Cal.4th 968, 978.)

A reasonable person can certainly conclude that a \$1.6 million loss in the first year, followed by a \$13 million loss over five years, in combination with the loss or reduction of the identified services and programs, for a district in Napa Valley Unified School District’s position, is a substantial undermining sufficient to meet the consideration required by section 47605, subdivision (c)(7). The State Board’s independent determination that such reductions and closures are insufficient to support denial of a charter petition pursuant to subdivision (c)(7) is *not* a proper decision made consistent with the abuse of discretion standard. Moreover, the argument was made that these statements were mere projections and therefore unreliable. As such, these estimates could not constitute substantial evidence. This argument is nonsensical. As the Charter School is not yet operational, and the fiscal impact is not yet known with any certainty, any analysis would necessarily be in the nature of projections using the current financial state of the school district. This analysis would not necessarily be speculative. For instance, the conclusion that approval of the Charter School would likely cause the District to not meet reserve requirements was based upon current declining enrollment within the school district. That the State Board would disagree with such a conclusion based on the evidence and find to the contrary is not sufficient to find an abuse of discretion. (*O’Donoghue, supra*, 219 Cal.App.4th at 269.)

The State Board erred in finding the County Board abused its discretion because it “did not provide evidence in the documentary record that the proposed charter would substantially undermine existing services, offerings, or programs.”

D. Legislative Intent

At the hearing on this matter, the Charter School petitioners argued[8] the Court must look to the legislative intent expressed in section 47605. This statement of intent provides that in reviewing petitions to establish a charter school, 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.

[8] The Charter School petitioners made numerous arguments that are not relevant to the Court’s determination as they concern alleged deficiencies in the State Board and District Board decisions, which alleged deficiencies *do not*

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SACRAMENTO

Gordon D. Schaber Superior Court

form the basis for the State Board's decision. The Court will not provide specific comment on these arguments.

The Court is aware of this statement of Legislative intent encouraging the formation of charter schools. However, at the same time, the Legislature went on to provide eight individual circumstances pursuant to which a chartering authority could deny a charter school petition if it was not consistent with sound educational practice and with the interests of the community in which the school is proposing to locate. The Legislature thus, recognized that the chartering authority was in the best position to make this policy decision and empowered it by setting a standard that this decision could only be set aside upon a showing of an abuse of discretion, a highly deferential standard. In this matter, the District Board and the County Board made specific findings pursuant to section 47605 that the Charter School petition should be denied. This procedure is *clearly* consistent with the Legislative intent expressed both in section 47605, as well as in the passage of Assembly Bill 1505. And this Court's decision recognizes the Legislature's intent in its entirety.

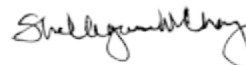
E. Conclusion

The petition for writ of mandate is **GRANTED**. As there was no proper legal basis for the State Board's decision in this matter, the State Board decision must be set aside. The Court will not opine what further steps the State Board must take, if any, or how the State Board should exercise its discretion. Petitioner's cause of action for declaratory relief is duplicative of the cause of action seeking a writ of mandate. As such, Petitioner's declaratory relief claim is **DISMISSED** as moot.

A judgment shall be issued in favor of Petitioner, and against Respondent, and a peremptory writ shall issue commanding Respondent to take action specially enjoined by law in accordance with the Court's ruling, but nothing in the writ shall limit or control in any way the discretion legally vested in Respondent. Respondent shall make and file a return within 30 days after issuance of the writ, setting forth what has been done to comply therewith.

In accordance with Local Rule 1.06, counsel for Petitioner is directed to prepare an order in compliance with the above-referenced ruling, incorporating this ruling as an exhibit to the order, and a judgment; submit them to opposing counsel for approval as to form in accordance with CRC 3.1312(a); and thereafter submit them to the Court for signature and entry in accordance with CRC 3.1312(b). The parties have raised concerns that time is of the essence in this matter, as such the parties are encouraged to complete this process with expediency and good faith.

Dated: 06/29/2023



Shelleyanne W.L. Chang / Judge