

NAPA COUNTY OFFICE OF EDUCATION
Barbara Nemko, Ph.D., Superintendent

The Napa County Board of Education will hold a Special Meeting on Tuesday, January 18, 2022 at 5:00 p.m. *Agenda revised January 17, 2022*

This meeting is continued from the Special Meeting held January 14, 2022.

This meeting will be conducted as a Teleconference. Chambers will be closed.

Board Member will be participating remotely from 565 Sunset Drive, Angwin, CA 94508
Board Member will be participating remotely from 2480 Third Avenue North, Napa, CA 94558
Board Member will be participating remotely from 133 Cherryview Drive, Napa, CA 94558
Board Member will be participating remotely from 1225 Division Street, Napa, CA 94559
Board Member will be participating remotely from 3 Rita Court, American Canyon, CA 94503
Board Member will be participating remotely from 4008 Tokay Drive, Napa, CA 94558
Board Member will be participating remotely from 10 Exeter Court, Napa, CA 94558

1. ORGANIZATION

- A. Call to Order
- B. Flag Salute
- C. Public Participation

Members of the public are invited to participate by computer, tablet, smartphone, or telephone. Remote access can be achieved by following the instructions below:

Join from PC, Mac, Linux, iOS or Android:

You are invited to a Zoom webinar.

When: Jan 18, 2022 05:00 PM Pacific Time (US and Canada)

Topic: Special Board Meeting

Please click the link below to join the webinar:

<https://napacoe.zoom.us/j/83309379278>

Or One tap mobile :

US: +16699006833,,83309379278# or +12532158782,,83309379278#

Or Telephone:

Dial(for higher quality, dial a number based on your current location):

US: +1 669 900 6833 or +1 253 215 8782 or +1 346 248 7799 or +1 312 626 6799 or
+1 646 558 8656 or +1 301 715 8592

Webinar ID: 833 0937 9278

International numbers available: <https://napacoe.zoom.us/u/kyx3As9hH>

- D. Public Comment

Members of the public wishing to provide public comment must request to be called upon. Members wishing to comment remotely can request to be called upon using one of the following options:

- i.** using the chat feature on the web conference to send a request to meeting hosts Josh Schultz or Justin Hefley, or

- ii. using the hand raising feature in the participant panel on the web conference, or,
- iii. emailing a request to jschultz@napacoe.org or jhefley@napacoe.org. Requests to provide public comments should include the name of the commenter, the phone number or username of the commenter used to join the conference, and an indication if the comment is regarding items that ARE or ARE NOT on the Board's January 18, 2022 agenda.

E. Welcome to Visitors

F. Approval of Agenda

G. Public Comment – Agenda and Non-Agenda Items: This time is reserved for any person to address the Board on any item(s) of interest, provided the subject relates to the subject-matter jurisdiction of the Napa County Board of Education (Government Code § 54954.3(a)). Normally, the Board will take no action on any topic not on the agenda. Anyone may provide public comment to the Board in support of or in opposition to any item being presented to the Board for consideration on the posted agenda, either before or during the Board's consideration of the item as directed by the Board. Individuals may be limited to three minutes for their presentations.

2. ADJOURN TO CLOSED SESSION (5:00 p.m.)

The Board will enter closed session for discussion and possible action as follows:

Conference with Legal Counsel Regarding Significant Exposure to Litigation: multiple threats of litigation resulting from Mayacamas Charter School's appeal of Napa Valley Unified's denial of their petition for establishment of a charter school

Government Code Section 54956.9(d)(2), (e)(2), two potential lawsuits

3. RETURN TO OPEN SESSION (5:45 p.m.)

4. REPORT FROM CLOSED SESSION

The Board will report in open session any action, or lack thereof, taken in closed session.

5. PRESENTATION

Presentation regarding charter school appeals process. (Jennifer Nix, Senior Associate General Counsel, School and College Legal Services of California)

6. CONSIDER VIRTUAL BOARD MEETINGS

The board will discuss and consider whether conditions exist to permit video conference/telecommute of board meetings, pursuant to Educational Code section Government Code Section 54953(e)(1), which permits virtual meetings

To comply with the law, if the board must determine the need to continue with virtual or hybrid meetings every 30 days.

As of September 27, 2021, the Napa County Public Health Office has recommended remote attendance at Brown Act meetings.

7. **ADJOURNMENT**

In compliance with the American with Disabilities Act, if special assistance is needed to participate in this meeting, contact the Napa County Office of Education (NCOE) at 253-6810. Notification forty-eight hours prior to the meeting will enable the NCOE to make reasonable arrangements to ensure accessibility to this meeting. I HEREBY CERTIFY THE AGENDA FOR THE STATED MEETING WAS POSTED ON THE NCOE WEBSITE AND IN NCOE'S DISPLAY CASE AT 2121 IMOLA AVENUE, NAPA, CA 94559, Monday, January 17, 2022. Informational material is available for review at the NCOE.

Ellen Sitter, Recording Secretary



SCHOOL & COLLEGE LEGAL SERVICES
OF CALIFORNIA

Charter School

Appeals

January 14, 2022

Presented by:

**Jennifer E. Nix, Senior Associate General Counsel
School & College Legal Services of California**

Charter Schools

- Charter schools can be authorized by a two sources:
 - Local school district
 - Local school district, but approved by the county board of education or the state board of education
 - County board of education
 - Charter school that serves students for whom the county office of education would otherwise be responsible for providing direct education and related services
 - Countywide charter school that provides educational services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county
- Option also exists for a school district to convert all of its schools to charter schools. (Educ. Code § 47606)

Procedure – Initial Petition

- Petitioners submit their petition to the school district in which the proposed charter school would be located.
- Following review of the petition and a public hearing, the school district board must grant or deny the petition within 90 days of receipt.
 - This date may be extended to 30 days if both parties agree to the extension.
 - At the public hearing at which the board grants or denies the petition, the petitioners are entitled to equivalent time and procedures to present evidence and testimony to respond to staff recommendations and findings.

Educ. Code § 47605(b)

Charter School Appeals

- Petitioners can appeal denials to the county board of education.
 - Petition must be submitted within 30 days of a denial by the school district.
 - Appeal petition must be simultaneously submitted to the school district and the county board.
 - The county board “shall review the petition pursuant to subdivisions (b) and (c)” of Section 47605.
 - Subdivision (b) provides the timelines for public hearing and granting/denying a petition.
 - Subdivision (c) provides the requirements for granting/denying a petition.
 - The county board of education must remand to the school district any petition submitted on appeal that contains new or different material terms.
 - Reconsideration must occur within 30 days of remand.
 - If the petition is again denied, the petitioners may resubmit to the county board.

Educ. Code § 47605(k)

Charter School Appeals

- If the county board denies an appeal, petitioners may appeal that denial to the SBE.
 - Petitioners must show how the school district and/or county board “abused their discretion.”
- A charter school granted a petition by the county or state board is limited to the geographic location of the chartering authority that originally denied its petition.
- If the county board or SBE fail to act on the petition within 180 days of receipt, the decision of the school district is subject to judicial review.

Educ. Code § 47605(k)

Timelines – Appeals

- Within 60 days of receipt of a petition, the BOE must hold a public hearing on the petition.
 - The public hearing must consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents.
 - A petition is deemed “received” by the BOE when it is submitted to the COE with a signed certification that the petitioner deems the petition to be complete.
- At least 15 days prior to the public hearing at which the BOE will grant or deny the charter, the BOE must publish “all staff recommendations, including the recommended findings.”
 - Must also publish any required county superintendent certification.

Educ. Code § 47605(b)

Timelines – Appeals

- Following review of the petition and a public hearing, the BOE must grant or deny the petition within 90 days of receipt.
 - This date may be extended to 30 days if both parties agree to the extension.
 - At the public hearing at which the BOE grants or denies the petition, the petitioners are entitled to equivalent time and procedures to present evidence and testimony to respond to staff recommendations and findings.

Educ. Code § 47605(b)

Petition Review

- The petition will be reviewed by a COE team in addition to the BOE. Team is looking for:
 - Sufficient information that the petitioners are likely to succeed.
 - Information about the proposed facility.
 - Detailed/sound budget, fiscal management processes in place, insurance, cash flow requirements.
 - Adherence to conflict-of-interest standards.
- One individual will review the entire petition to ensure it is compliant with board policy and the law.

Petition Review

- COE team is looking to establish whether:
 - The charter school presents a sound educational program for the pupils to be enrolled; and
 - The petitioners are demonstrably likely to successfully implement the program set forth in the petition.
- Petitions are often hundreds of pages long, but do not contain the information needed to know if granting the charter is consistent with sound educational practice.
 - COE team will discuss the petition with petitioners and get answers to questions that arise from review of the petition.

Petition Review

- Financial review:
 - Charter should provide a proposed first-year budget, including start-up costs, and cash flow and financial projections for the first three years of operation.
 - What assumptions are being made?
 - Is the budget complete, reasonable, based on documented assumptions, and presented according to generally accepted accounting principles?
 - Is the business and operations strategy clear and acceptable?
 - Are the risks and any mitigating strategies clearly identified?

Charter School Petitions

- The petition must contain:
 - Identification of a single charter school that will operate within the geographic boundaries of the school district to which it is submitting the petition
 - Signatures of parents/guardians and/or teachers
 - Reasonably comprehensive descriptions of the “A-O elements” (A-P for countywide charters)
 - Affirmation of required conditions
 - Proposed first-year operational budget, three-year financial projections

Educ. Code § 47605

A-O Elements

- A. Educational Program
- B. Measurable Pupil Outcomes
- C. Measurement of Pupil Outcomes
- D. Governance Structure
- E. Employee Qualifications
- F. Health & Safety Procedures
- G. Means of Achieving Pupil Balance
- H. Admissions Policies and Procedures
- I. Manner for Audits

A-O Elements

- J. Suspension/Expulsion Procedures
- K. Staff Retirement Plan
- L. Public School Alternatives
- M. Related Rights of School District Employees
- N. Dispute Procedures
- O. Closure Procedures

Denying a Petition

- The BOE “shall not” deny a petition unless it makes written factual findings that support a finding that:
 1. The charter school presents an unsound educational program for the students 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 required signatures.
 4. The petition does not contain the Four Conditions.
 5. The petition does not contain “reasonably comprehensive descriptions” of the A-O elements.
 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.
 7. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate.
 8. The school district is not positioned to absorb the fiscal impact of the proposed charter school.

Denying a Petition – Community Interest

- “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.”

Educ. Code § 47605(c)(7)

Denying a Petition – Fiscal Impact

- “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.*”

Educ. Code § 47605(c)(8)

Denying a Petition

- Granting or denying a charter petition is not discretionary.
- A petition cannot be denied based on the actual or potential costs of serving students with disabilities. (Educ. Code § 47605.7)

Oversight

- Authorizers have five duties under the law:
 1. Identify at least one staff member as a contact person for the charter school.
 2. Visit the charter school at least once per year.
 3. Ensure that the charter school under its authority complies with all reports required of charter schools by law.
 4. Monitor the fiscal condition of the charter school.
 5. Notify the CDE if:
 - A renewal of the charter is granted or denied;
 - A charter is revoked; and/or
 - A charter will cease operation for any reason.

Educ. Code § 47604.32(a)

Oversight

- The authorizing agency should ensure that the charter school is living up to its MOU obligations and meeting its accountability goals.
 - Someone should be proactively monitoring the school's pupil performance, fiscal accountability, and legal compliance.
 - Examine the annual, independent financial audits of the charter school.
 - Periodic site visits.
- Sign a Memorandum of Understanding (MOU) with each charter school.
 - This should be unique to each school, not a boilerplate agreement.
 - Should be approved at the same time as the charter.
- Publish application timelines and materials.
- Establish renewal and revocation criteria.

Oversight Fee

- Authorizing entity can charge an “oversight fee” for the actual costs of supervision, not to exceed 1% of the charter school’s applicable revenues.
 - Authorizing entity can charge up to 3% if the charter school obtains substantially rent-free facilities from the authorizer (cannot exceed actual costs)
- 1% and 3% limits are based on the revenue of the charter school, defined as the amount received in the current fiscal year from the Local Control Funding Formula (LCFF) (base grant + supplemental grant + concentration grant + Targeted Instructional Improvement Grant + Home-to-School Transportation) (Educ. Code § 47613)

Charter School MOU

- Should outline financial and operational terms.
- Usually negotiated during the petition approval process, approved by the board after the petition is approved.
- Should be reviewed annually, and adjusted based on need.
- Can negotiate anything not in the charter petition.
 - Expand on the legal charter school requirements.
 - Provide more detail on the petition.
 - Fix an inconsistent or vague language in the petition.
- Separate MOUs might be needed for business operations, facilities plan, administrative/support services, special education, student assessment/access/data reporting plan.

Other Support Services

- Some charter schools contract for LEA services such as:
 - Accounting
 - Accounts Payable
 - Attendance Accounting
 - Audits
 - Budgeting
 - Payroll
 - Personnel/Human Resources
 - Health Services
 - Purchasing
 - Staff Development
 - Legal Services

Appeal – Remand

- “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.”
 - “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.”

Educ. Code § 47605(k)(1)(A)

Questions?



Information in this presentation, including but not limited to PowerPoint handouts and presenters' comments, is summary only and not legal advice. We advise you consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

Jennifer E. Nix, Senior Associate General Counsel
jnix@sclscal.org

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Napa County Office of Education
Barbara Nemko, Ph.D., Superintendent

Item: 5
January 18, 2022
Board Meeting

TITLE:

Adoption of Resolution 2022-2 – Brown Act Resolution to Permit Videoconferenced County Board of Education Meetings

HISTORY:

Executive Order N-08-21 issued by Governor Newsom allowed legislative bodies to hold meetings via teleconference and make meetings accessible electronically through September 30, 2021, without violating the Brown Act. Effective October 1, 2021, AB 361 allows local legislative bodies to continue to allow remote meetings during a proclaimed state of emergency, if “state or local officials have imposed or recommended measures to promote social distancing.”

Because the State of California has continued to permit remote attendance at boards and commission meetings, the Napa County Executive Officer and Public Health Officer jointly recommend that this practice be permitted by all boards and commissions that may prefer to continue meeting remotely, in whole or in part, in order to help minimize the spread and transmission of COVID-19.

CURRENT PROPOSAL:

Approve Resolution 2022-2 to Permit Videoconferenced Board of Education Meetings.

FUNDING SOURCE: NA

SPECIFIC RECOMMENDATION: Approve Resolution 2022-2.

PREPARED BY: Joshua Schultz, Deputy Superintendent



A Tradition of Stewardship
A Commitment to Service

County Executive Office

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Minh C. Tran
County Executive Officer

MEMORANDUM

To: Board of Supervisors Other Boards and Commissions	From: Minh C. Tran, County Executive Officer Karen Relucio, M.D., Public Health Officer
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Date: September 27, 2021	Re: Recommendation for Continued Remote Attendance at Brown Act Meetings
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Executive Order N-08-21 issued by Governor Newsom allows legislative bodies to hold meetings via teleconference and make meetings accessible electronically through September 30, 2021, without violating the Brown Act. Effective, October 1, 2021, AB 361 will allow local legislative bodies to continue to allow remote meetings during a proclaimed state of emergency, if “state or local officials have imposed or recommended measures to promote social distancing.”

Because the State of California has continued to permit remote attendance at boards and commission meetings, the Napa County Executive Officer and Public Health Officer jointly recommend that this practice be permitted by all boards and commissions that may prefer to continue meeting remotely, in whole or in part, in order to help minimize the spread and transmission of COVID-19. According to 8 CCR 3205(c)(5)(D) of the Cal/OSHA regulations, “the fact that particles containing the virus can travel more than six feet, especially indoors, so physical distancing, face coverings, increased ventilation indoors, and respiratory protection decrease the spread of COVID-19 but are most effective when used in combination.”

RESOLUTION NO. 2022 - 2

WHEREAS, on March 4, 2020, Governor Gavin Newsom declared a state of emergency related to COVID-19, pursuant to Government Code Section 8625, and such declaration remains in place.

See <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf>; and

WHEREAS, the Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, the CDC recommends that people who live with unvaccinated people avoid activities that make physical distancing hard. See <https://www.cdc.gov/coronavirus/2019-ncov/your-health/about-covid-19/caring-for-children/families.html>; and

WHEREAS, the CDC recommends that older adults limit in-person interactions as much as possible, particularly when indoors. See <https://www.cdc.gov/aging/covid19/covid19-older-adults.html>; and

WHEREAS, on September 27, 2021, the Napa County Executive Officer and the Napa County Public Health Officer recommended that continued remote attendance at Brown Act meetings be permitted “in order to help minimize the spread and transmission of COVID-19,” see <https://www.countyofnapa.org/DocumentCenter/View/22572/Memorandum-re-PH-Recommendation-Per-AB-361>; and

WHEREAS, persons without symptoms may be able to spread the COVID-19 virus. See <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>; and

WHEREAS, fully vaccinated persons who become infected with the COVID-19 Delta variant can spread the virus to others. See <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/fully-vaccinated.html>; and

WHEREAS, on June 17, 2021, Cal/OSHA issued revised regulations related to emergency temporary standards for COVID-19 Prevention, which require training of employees that, among other items, include, “The conditions under which face coverings must be worn at the workplace and that face coverings are additionally recommended outdoors for people who are not fully vaccinated if six feet of distance between people cannot be maintained,” and “[t]he fact that particles containing the virus can travel more than six feet, especially indoors, so physical distancing, face coverings, increased ventilation indoors, and respiratory protection decrease the

spread of COVID-19, but are most effective when used in combination,” see Cal. Code of Regs., tit. 8, sections 3205(c)(5)(D) and (E); and

WHEREAS, the County Board of Education’s meeting facilities are indoor facilities that are not designed to ensure circulation of fresh/outdoor air, and were not designed to ensure that attendees can remain six (6) feet apart; now therefore be it; and

WHEREAS, holding in-person meetings would encourage community members to come to the County Board of Education’s Board meeting facilities to participate in local government, and some of them would be at high risk of getting very sick from COVID-19 and/or live with someone who is at high risk; and

WHEREAS, in-person meetings would tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to physically come to County Office of Education facilities to participate in local government; and

WHEREAS, attendees may use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households; and

WHEREAS, effective October 1, 2021, the Government Code provides that after September 30, 2021, a local agency may use teleconferencing [audio, video or both] in any of the following circumstances:

(A) The legislative body holds a meeting during a proclaimed state of emergency, and state or local officials have imposed or recommended measures to promote social distancing.

(B) The legislative body holds a meeting during a proclaimed state of emergency for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

(C) The legislative body holds a meeting during a proclaimed state of emergency and has determined, by majority vote, pursuant to subparagraph (B) that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees. See Cal Gov. Code § 54953(e)(1).

NOW, THEREFORE, BE IT RESOLVED: that the Napa County Board of Education finds and determines that the foregoing recitals are true and correct and hereby adopts and incorporates them into this Resolution; and

BE IT FURTHER RESOLVED: that, based on these determinations and consistent with federal, state and local health guidance, the Napa County Board of

Education determines that conducting in-person meetings would pose imminent risks to the health of attendees; and

BE IT FURTHER RESOLVED: that the Napa County Board of Education firmly believes that the community's health and safety and the community's right to participate in local government are both critically important, and is committed to balancing the two by continuing to use teleconferencing to conduct public meetings, in accordance with California Government Code Section 54953(e); and

FURTHER RESOLVED: that the Napa County Board of Education will renew these (or similar) findings at least every thirty (30) days in accordance with California Government Code section 54953(e) until the state of emergency related to COVID-19 has been lifted, or the Napa County Board of Education finds that in-person meetings no longer pose imminent risks to the health of attendees, whichever is occurs first.

ADOPTED ON THIS _ DAY OF _____ , 2022.