

**MOUNTAIN VIEW WHISMAN SCHOOL DISTRICT
BOARD OF TRUSTEES**

RESOLUTION NO. 050613

**RESOLUTION OF THE BOARD OF TRUSTEES OF THE MOUNTAIN VIEW WHISMAN
SCHOOL DISTRICT REVOKING THE CHARTER OF BULLIS MOUNTAIN VIEW AND
MAKING WRITTEN FINDINGS IN SUPPORT OF REVOCATION**

WHEREAS, the California Legislature has charged local school district governing boards with overseeing the charter schools under their authorization and ensuring that they are operating in a fiscally responsible manner, following all applicable laws and provisions of their charters, and meeting and/or pursuing pupil outcomes;

WHEREAS, on or about November 1, 2018, the Board of Trustees ("Board") of the District received a charter petition ("Petition") for the establishment of Bullis Mountain View ("BMV" or "Charter School") pursuant to Education Code section 47605;

WHEREAS, the Petition proposed to open a charter school in Mountain View for the purpose of serving an intentionally diverse student demographic that mirrors the demographics of the Mountain View community both ethnically and socioeconomically, and to serve historically underserved student communities;

WHEREAS, on or about December 6, 2018, pursuant to Education Code section 47605(b), a public hearing was held on the Petition, at which time the Board considered the level of support for the Petition by teachers employed by the District, other employees of the District, and parents;

WHEREAS, on or about December 20, 2018, the Board voted to approve the Petition to establish BMV for a three (3) year charter term beginning July 1, 2019, through June 30, 2022, and also to approve the recommendations set forth in the District's December 20, 2018 Staff Report ("Charter"). The recommendations addressed several deficiencies in the Petition that were identified during the petition review process and ensured that BMV would be held accountable to its promise to serve Mountain View's underserved and diverse student population, as further detailed below under Section 2(E)(i)(b). Upon approval, the District became the authorizing and oversight agency for BMV, and the recommendations became requirements, or "conditions, standards, or procedures," of the Charter;

WHEREAS, Education Code section 47607, subdivisions (c) through (e), provide:

(c)(1) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds, through a showing of substantial evidence, that the charter school did any of the following:

- (A) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.
- (B) Failed to meet or pursue any of the pupil outcomes identified in the charter.
- (C) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.
- (D) Violated any provision of law.

(2) The authority that granted the charter shall consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to revoke a charter.

(d) Before revocation, the authority that granted the charter shall notify the charter school of any violation of this section and give the school a reasonable opportunity to remedy the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

(e) Before revoking a charter for failure to remedy a violation pursuant to subdivision (d), and after expiration of the school's reasonable opportunity to remedy without successfully remedying the violation, the chartering authority shall provide a written notice of intent to revoke and notice of facts in support of revocation to the charter school. No later than 30 days after providing the notice of intent to revoke a charter, the chartering authority shall hold a public hearing, in the normal course of business, on the issue of whether evidence exists to revoke the charter. No later than 30 days after the public hearing, the chartering authority shall issue a final decision to revoke or decline to revoke the charter, unless the chartering authority and the charter school agree to extend the issuance of the decision by an additional 30 days. The chartering authority shall not revoke a charter, unless it makes written factual findings supported by substantial evidence, specific to the charter school, that support its findings;

WHEREAS, beginning January 2019, the District grew concerned upon learning that BMV had taken actions that violated and/or demonstrated an intent to violate and/or disavow its Charter, including but not limited to seeking "authorization" of its already-existing Charter from the Santa Clara County Office of Education ("SCCOE"), as further detailed below under Section 2(E)(i)(c);

WHEREAS, because of those concerns, on or about April 4, 2019, the Board took action to issue a Notice of Violation and all documentation in support thereof (collectively, "NOV") to BMV in compliance with Education Code section 47607, subdivision (d), and Title 5, section 11968.5.2 of the California Code of Regulations;

WHEREAS, the NOV demonstrated that BMV committed material violations of and/or has taken actions demonstrating an intent to disavow the conditions, standards, or procedures set forth in its Charter by presenting information to parents of admissions preferences inconsistent with the Board-approved requirements of its Charter; repeatedly failing and/or demonstrating an unwillingness to confirm its understanding of and otherwise assure the District that it will comply with the requirements; illegally seeking "authorization" of its already-existing Charter from the SCCOE; failing to provide information regarding its board member composition, including their cities of residence; representing to the District that its Charter was never approved by the District in the first place; and expressing intent to not open in fall 2019. The NOV also identified violations of the petition approval procedures and information request provisions of the Charter Schools Act ("CSA");

WHEREAS, the Board provided BMV with a reasonable opportunity to remedy the violations identified in the NOV by May 5, 2019, and placed BMV on notice of its intent to revoke the Charter if BMV failed to refute to the District's satisfaction or remedy the violations;

WHEREAS, on or about April 4, 2019, BMV responded to the NOV in a one (1) page letter ("Response"), asserting that the Board "denied" the Petition on December 20, 2018, and therefore "[t]here is no approved charter here." Aside from the Response, the District has not received any other written correspondence or communication from BMV addressing its violations;

WHEREAS, the District evaluated the Response, which demonstrates that BMV has failed to refute to the District's satisfaction, or to remedy, the violations identified in the NOV; and

WHEREAS, on or about May 16, 2019, after consideration of the NOV and the Response, the Board voted unanimously to issue a Notice of Intent to Revoke and Notice of Facts in Support of Revocation ("NIR") to the Charter School on the grounds that BMV has: (1) committed a material violation of the conditions, standards, or procedures set forth in the charter (Ed. Code, § 47607(c)(1)(A)); and (2) violated provisions of law (Ed. Code, § 47607(c)(1)(D)). On or about May 17, 2019, the District issued BMV a copy of the NIR;

WHEREAS, the NIR provided the Charter School with notice that the Board will hold a public hearing, in the normal course of business, on the issue of whether substantial evidence exists to revoke the Charter at its meeting on May 30, 2019, pursuant to Education Code section 47607, subdivision (e);

WHEREAS, on or about May 30, 2019, the Board held a public hearing, in the normal course of business, and received information from District staff and a representative from the Charter School, on the issue of whether substantial evidence exists to revoke the Charter based upon the facts and conclusions contained in the NIR and substantial evidence submitted in support thereof;

WHEREAS, at the public hearing, the Charter School representative reiterated BMV's contentions contained in its Response but failed to identify evidence to support its contentions or to refute the substantial evidence presented by the District to support the facts and conclusions in the NIR;

WHEREAS, the Board has before it on this date the NOV, the Response, the NIR, as well as the information offered at the public hearing, all of which has been considered by the Board in connection with this Resolution;

WHEREAS, pursuant to Education Code section 47607, subdivision (e), the chartering authority shall not revoke a charter, unless it makes written factual findings supported by substantial evidence, specific to the charter school, that support its findings; and

WHEREAS, substantial evidence has been defined as "relevant evidence that a reasonable mind might accept as adequate to support a conclusion..." (*Hosford v. State Personnel Bd.* (1977) 74 Cal.App.3d 302, 307, quoting *Gubser v. Department of Employment* (1969) 271 Cal.App.2d 240, 245), and case law states "[e]vidence is substantial if any reasonable trier of fact could have considered it reasonable, credible and of solid value." (*Kearl v. Board of Medical Quality Assurance* (1986) 189 Cal.App.3d 1040.)

NOW, THEREFORE, BE IT RESOLVED by the Board of Trustees of the Mountain View Whisman School District, as follows:

1. Recitals. The foregoing recitals are true and correct and incorporated herein.
2. Written Findings. The Board adopts the facts, findings, and conclusions contained in the NIR and as stated herein as its written findings, supported by the substantial evidence identified in support thereof, to support the revocation of the Charter School, and it incorporates the NIR into this Resolution as though fully set forth herein. Also incorporated herein are the NOV, and all accompanying documents, and the Response. The Board summarizes its findings as follows:

(A) That substantial evidence in the form of documents and testimony shows that the violations identified in the NIR have in fact occurred, as initially set forth in the NOV and demonstrated by substantial evidence in the NIR and as stated herein;

(B) That the evidence cited in the NIR and as stated herein is reasonable, credible, and of solid value, and adequate to support the conclusions contained herein;

(C) That the information provided by the Charter School in its Response and the testimony offered on behalf of the Charter School at the public hearing failed to refute or remedy all of the violations described in the NIR;

(D) That the Charter School did not refute to the District's satisfaction the violations identified in the NIR, or demonstrate remedy of the violations contained therein;

(E) That the following violations, set forth in the NOV, and demonstrated by a showing of substantial evidence in the NIR and as stated herein, were not successfully remedied by the Charter School within the reasonable remedy period prescribed or at all:

(i) BMV has committed material violations of the conditions, standards, or procedures set forth in the Charter within the meaning of Education Code section 47607, subdivision (c)(1)(A), as set forth in the NIR, which is incorporated herein as if fully set forth, and as set forth below:

(a) On or about December 20, 2018, the Board voted to approve the charter petition to establish BMV for a three (3) year charter term beginning July 1, 2019, through June 30, 2022, and also to approve the recommendations set forth in the District's December 20, 2018 Staff Report. The recommendations addressed several deficiencies in the petition that were identified during the petition review process and ensured that BMV would be held accountable to its promise to serve Mountain View's underserved and diverse student population. (Petition, p. 6 [BMV "will serve an intentionally diverse student demographic that mirrors the demographics of the Mountain View community both ethnically and socioeconomically"].) Upon approval, the District became the authorizing and oversight agency for BMV, and the recommendations became requirements, or "conditions, standards, or procedures," of the Charter. (NOV, Ex. A, B.)

(b) Accordingly, the following requirements/standards were made part of the Charter:

(1) Governance: To address potential conflicts of interest, governance concerns, and ensure local participation in BMV's governance, the Charter requires at least the majority of BMV's Board members reside within the boundaries of Mountain View and/or the Mountain View Whisman School District.

(2) Assessments: To address the lack of defined measures to enable the District to compare performance with the Charter School, the Charter requires BMV to utilize the same benchmark and reading assessments used by the District each school year, conduct such assessments on a trimester basis, and meet assessment reporting deadlines as designated by the District. The Charter

requires that the Charter School exceed Districtwide assessment results for all pupil subgroups by not less than five (5) percent.

- (3) Budget Estimates: To address the potential fiscal impacts of the inaccurate estimates, the Charter must revise its budget assumptions by utilizing the revised assumptions reflecting a Free and Reduced-Price Lunch ("FRPL") rate of 42%; English Language Learner ("ELL") rate of 24%; and Socioeconomically Disadvantaged ("SED") rate of 35%. Furthermore, the Charter must indicate that BMV's enrollment rates of FRPL, ELL, and SED students shall be at least equal to those of the District. Title I estimates must be revised and the Charter School must submit a revised budget containing the corrected assumptions to the District no later than July 1, 2019.
- (4) Admissions Preferences: To effectuate BMV's enrollment goals and purpose of serving the families residing within the attendance boundaries of Castro, Theuerkauf, and Monta Loma Elementary Schools: (1) students who are eligible for Free and Reduced-Price Meals ("FRPM") and who reside within the attendance boundaries of Castro, Theuerkauf, and Monta Loma Elementary Schools shall be afforded first enrollment preference; and (2) students who are eligible for FRPM and who reside within the Mountain View Whisman School District shall be afforded second enrollment preference.
- (5) MOU: To outline their specific obligations, operational responsibilities, and legal relationship, BMV must enter into a memorandum of understanding ("MOU") with the District.

(c) Since the Board's December 20th approval of the Charter, BMV has violated and/or taken actions demonstrating its intent to disavow the above requirements/standards and also the entirety of its Charter. Such actions include but are not limited to the following:

- (1) On or about January 23, 2019, upon learning BMV started its student registration process and planned to hold informational meetings for interested parents, the District asked BMV to provide information regarding its application, enrollment and lottery procedures, registration and informational meeting materials, and documents demonstrating compliance with the Board-approved admissions preference requirements of the Charter. (NOV, Ex. C.)
- (2) On or about January 23, 2019, to ensure BMV satisfies the requirement that at least the majority of BMV's board members reside within the boundaries of Mountain View and/or the District, the District asked

BMV to provide information "regarding the composition of the BPCS Board of Directors, including but not limited to member names and cities of residence." Although BMV responded to the letter, BMV did not provide the requested information and has not provided said information to date. (NOV, Ex. D, E.)

- (3) On or about January 30, 2019, BMV responded that it is still in the process of developing enrollment materials. While BMV provided a copy of a "Lottery Interest Form," contrary to its Charter, the form states that first enrollment preference shall be given to "siblings of admitted students who are eligible for [FRPM] and reside in the attendance areas of Castro, Theuerkauf, or Montaloma schools." (NOV, Ex. F, G.)
- (4) In February 2019, the District learned that BMV held a parent enrollment meeting on January 24, 2019, during which time information was presented regarding BMV's lottery that was inconsistent with the admissions preference requirements. Specifically, BMV represented that admissions preference, "once finalized," would be provided to prospective pupils in the following order: Students qualifying for FRPM who reside in MVWSD; Siblings; Founding board members; Staff up to 10%; Residents within boundaries of MVWSD; Siblings outside of MVWSD boundaries; Students qualifying for FRPM who reside outside of MVWSD; and all others who reside outside of MVWSD boundaries." Not only does this information violate the preference requirements but they also reflect that the preferences have not been "finalized," despite the fact that such requirements were approved by the Board one (1) month earlier. Accordingly, by letter dated February 15, 2019, the District informed BMV that it expected all information presented to the public moving forward to be consistent with the approved admissions preference requirements. (NOV, Ex. H.)
- (5) BMV did not respond to the District or otherwise confirm its understanding of the District's expectation for it to comply with the approved admissions preference requirement. Accordingly, on or about March 1, 2019, the District asked BMV to confirm its intent to comply with the preference requirements. (NOV, Ex. I.)
- (6) BMV was asked to present to the Board, on or about March 7, 2018, at a regular Board meeting, information regarding, among other things, its admissions and enrollment procedures. BMV did not make a meaningful presentation and failed to confirm its intent to effectuate the admissions preference requirements.

- (7) The following day, BMV stated its intent to not comply with the Board-approved admissions preference requirements. On or about March 8, 2019, BMV asked the District to "confirm that the district agrees that BMV's enrollment preferences at this time are those as explicitly listed in our charter petition, and not those that the district attempted to impose in its December 20, 2018 action on the charter petition." (NOV, Ex. J.)
- (8) On or about March 11, 2019, the District responded by again reiterating BMV's obligation to comply with its Charter to provide enrollment preferences for pupils eligible for FRPM who reside within the attendance boundaries of Castro, Theuerkauf, and Monta Loma Elementary Schools, and who reside within the boundaries of the District. The District informed BMV that its Charter "requires the above stated preferences and the expectation is that BMV will comply." (NOV, Ex. K.)
- (9) On or about March 19, 2019, the District learned from the SCCOE that BMV representatives met directly with SCCOE officials and/or staff – without District knowledge or advance notification – to request that SCCOE "approve" BMV's already-existing Charter and to operate under SCCOE's oversight.

The District informed BMV that its actions reflect BMV's intention to disavow its obligations under its Charter and raised questions whether BMV intends to serve District students, to serve a diverse population, or to engage the Mountain View Whisman community, as promised in its Charter. The District informed BMV that its attempt to "swap" authorizers, or otherwise seek the "approval" of an already-existing district-approved charter from the county office of education, or any other agency for that matter, absent the exhaustion of statutory procedures for petition denial or nonrenewal, violates the law.

Concerned about BMV's attempt to bypass its obligations under the Charter, the District asked BMV to provide a written response to the District to explain its actions. Furthermore, the District asked that, if BMV does not have any intention of operating in compliance with its Charter, BMV must immediately communicate such intention. (NOV, Ex. L.)

- (10) In response, on or about March 21, 2019, BMV asserted to the District – for the first time – that the Board never approved its petition in the first place. BMV asserts that, by not approving the charter petition "as presented," the District "denied" the petition and that, "we consider our petition denied, and will proceed accordingly." (NOV, Ex. M.)

- (11) That same day, on or about March 21, 2019, BMV informed interested families that “we will not be opening this Fall as we’d hoped. For the 218 families that were eager to participate in the lottery, we are sorry to inform you that we will not be holding a lottery and we thank you for your trust and support through the entire process.” (NOV, Ex. N.)
- (12) The full-day meeting that was scheduled between the District and BMV for March 22, 2019, for the purpose of communicating regarding the status of the school’s planned opening, was canceled by BMV at the last minute.

(d) The District finds BMV’s actions as described above reflect the Charter School’s violation of its Charter and intent to disavow its entire program.

(e) The District finds the presentation of information to parents of admissions preferences inconsistent with the Board-approved requirements of its Charter, BMV’s repeated failure and/or unwillingness to confirm its understanding of and otherwise assure the District that it will comply with the requirements, BMV’s attempt to illegally seek “authorization” of its already-existing Charter from the SCCOE, and also its representation that its Charter was never approved by the District in the first place constitutes a violation of, and an intent to disavow, not only the admissions preference requirements of its Charter but also all of its Charter requirements.

(f) The District finds BMV’s failure to provide information regarding its board member composition, including their cities of residence, combined with the fact that BMV represented that its Charter was never approved, further violates, and constitutes an intent to continue violating, the governance requirement of its Charter.

(g) The District finds BMV’s stated intent not to open in fall 2019 also violates its Charter, which was not only approved for a term beginning July 1, 2019, but which also anticipated commencing the first day of instruction on August 14, 2019. (Petition, p. 23; Petition Appendix 1, “School Calendar 2019-20.”) Indeed, the District finds BMV’s failure to open in fall 2019 constitutes a wholesale failure to implement the entirety of its educational program and operations set forth in its Charter.

(h) In its Response, rather than demonstrating and/or providing information, documents, or assurances to remedy the above violations, BMV stated its position that the Board “denied” its petition on December 20, 2018, and therefore “[t]here is no approved charter here.” BMV further asserted that the District “cannot ‘revoke’ a nonexistent charter.” BMV did not otherwise dispute any of the violations stated in the NOV. BMV’s position is clear – its refusal to open in fall 2019 constitutes a wholesale failure not only to implement the above-referenced Charter requirements but also the entirety of its educational program.

(i) The District finds that, having failed to cure and/or demonstrate any intent to remedy the above violations and/or implement its program, BMV is in violation of the conditions, standards, or procedures of its Charter.

(ii) BMV has violated provisions of law within the meaning of Education Code section 47607, subdivision (c)(1)(D), as set forth in the NIR, which is incorporated herein as if fully set forth, and as set forth below:

(a) The CSA does not permit a charter school with an already-existing charter approved by a local school district to seek "authorization" of its charter from the county office of education, or any other agency for that matter. Approval of a petition by a local school district precludes the charter school from seeking oversight elsewhere from another agency as a matter of law. The only way in which a charter school petitioner may seek authorization of its charter from the county office of education is if its charter petition is denied by the local school district and the charter school seeks approval on appeal.

(b) Specifically, Education Code section 47605(j)(1) states:

If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the state board, and the state board may approve the petition, in accordance with subdivision (b). A charter school that receives approval of its petition from a county board of education or from the state board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the entity to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the state board shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate. (Emphasis added.)

(c) These appeal procedures underpin the Constitutional principle embedded within the CSA that provides preference for local control of charter schools. (Cal. Const., art. IX, §§ 5, 14; Ed. Code, § 47605(b) ["the governing board of the school district shall hold a public hearing on the provisions of the charter" and "[f]ollowing review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter"]; *Wilson v. State Bd. of Educ.* (1999) 75 Cal.App.4th 1125, 1136, 1139 ["it bears underscoring that charter schools are strictly creatures of statute" and "under the control of officers of the public schools"]; *Mendoza v. State* (2007) 149 Cal.App.4th 1034, 1041 ["under the Constitution, the public schools themselves exist at the district level and are governed by school districts"]; *Cal. Sch. Bds. Assn v. State Bd. of Educ.* (2010) 186 Cal.App.4th 1298, 1320 ["the statutory scheme reflects an intent to promote district chartered schools and local oversight while allowing for limited exceptions"].)

(d) The Board officially voted to approve the BMV petition, as reflected in the December 20, 2018 Board meeting minutes, and therefore it is without question that the District is the oversight agency over the Charter School. (Ed Code, § 35163 [“Every official action taken by the governing board of every school district shall be affirmed by a formal vote of the members of the board, and the governing board of every school district shall keep minutes of its meetings”], § 47604 [“An authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authority has complied with all oversight responsibilities required by law”], § 47604.3, and § 47604.32.) The law regulates the specific circumstances for which a petition may be denied and failure to approve a petition “as presented” is not a valid basis. (Ed. Code, § 47605(b).) The law also supports an authorizing agency’s ability to modify a proposed charter when deciding whether to grant a petition, and the expectation that charter schools will comply with their charters and the conditions imposed upon them through official action taken at a public hearing.

(e) There is no statutory language in Education Code section 47605 or legislative history demonstrating an intent to limit an agency in its ability to modify a proposed charter when deciding whether to grant or deny the petition. In fact, the language suggests broad authority to establish charter schools, which authority should only be limited by express statutory or regulatory language.

(f) Moreover, even to use the term “conditions” as articulated by the Charter School, the court has expressly acknowledged “[l]ocal school districts and county boards of education, as well as parents and teachers, have a right to expect that charter schools will hew not just to the law, *but to their charters and the conditions imposed upon them through official action taken at a public hearing.*” (*California School Boards Association v. State Board of Education* (2010) 186 Cal.App.4th 1298, 1326; emphasis added.)

(g) The District finds BMV’s representation that the District “denied” its petition on December 20, 2018, and any actions taken by BMV that are consistent with that representation, constitutes an attempt to operate outside the District’s constitutionally and statutorily-mandated oversight authority in violation of Education Code sections 35163, 47604, 47605, 47604.3, and 47604.32.

(h) The District finds BMV’s ad-hoc characterization of the Board’s December 20th approval of the BMV petition as a “denial” – combined with the fact that BMV representatives met with SCCOE officials in an effort to seek SCCOE’s “approval” of its already-existing Charter – reflects BMV’s violation and/or intent to violate Education Code section 47605(j)(1). Specifically, in violation of law, BMV seeks to bypass the appeal procedures set forth under Section 47605(j)(1) by seeking approval of its Charter from the SCCOE without satisfying the requisite condition precedent – denial of its petition by the District.

(i) The District finds BMV’s assertion that the District “denied” its petition is also contradicted by countless actions undertaken by BMV following

the Board's approval, which reflect BMV's clear understanding that its petition was in fact approved on December 20, 2018. For example, according to the California Department of Education ("CDE"), BMV applied for a charter school number which is necessary to operate a school, to qualify for funding, and which may only be done upon charter approval. BMV also accepted the District's facilities offer under Proposition 39 to be housed where the District's offices are currently housed. The District and BMV began negotiating specific provisions of the operational MOU. On or about January 4, 2019, BMV sent a letter to the District thanking staff "for the significant amount of time it dedicated to the charter petition review process [and]...extend[ing] our appreciation to the District trustees," and to "address next steps *in our mutual service of Mountain View students and families.*" (Emphasis added.) BMV applied for admission to the El Dorado Charter Special Education Local Plan Area ("SELPA") and, on or about January 23, 2019, BMV's application was approved. In January 2019, BMV began holding public student registration and information meetings for parents interested in enrolling their children in the Charter School. BMV further sought to hire teachers by posting advertisements in EdJoin and on the BMV website. These advertisements were posted February 12, 2019, and offered salaries between \$60,000 and \$110,000. Hiring is only consistent with a charter school operating under an approved charter and the funds necessary for hiring are only available to a charter school with an approved charter. There is no question that BMV understood the Board's action on December 20th to be an approval of its Charter. (NOV, Ex. O-U.)

(j) Despite these undisputed facts, in its Response, BMV reaffirmed its position that the Board "denied" its petition on December 20, 2018, and therefore "[t]here is no approved charter here." Furthermore, in its one (1) page Response, BMV did not provide any information or assurances that it would refrain from bypassing the appeal procedures set forth under the law by seeking approval of its Charter from the SCCOE or otherwise address this violation at all.

(k) The District finds that, having failed to cure and/or demonstrate any intent to remedy the above violations and/or implement its program, BMV is in violation of the CSA's petition approval procedures.

(l) The District is entitled to information and documentation regarding the Charter School in order to meet its oversight obligations. The failure to timely provide such information interferes with the District's oversight duties. Furthermore, such failure by the Charter School to comply with its statutory duty to promptly respond to requests for information subjects the Charter School to notice to remedy and potential revocation. (Ed. Code, §§ 47604.3 and 47607(c)(1).) Education Code section 47604.3 provides:

A charter school shall promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority, the county office of education that has jurisdiction over the school's chartering authority, or from the Superintendent of Public Instruction and shall consult with the chartering authority, the county office of education, or the Superintendent of Public Instruction regarding any inquiries.

Education Code section 47604.32 provides:

Each chartering authority, in addition to any other duties imposed by this part, shall do all of the following with respect to each charter school under its authority: (a) Identify at least one staff member as a contact person for the charter school. (b) Visit each charter school at least annually. (c) Ensure that each charter school under its authority complies with all reports required of charter schools by law. (d) Monitor the fiscal condition of each charter school under its authority. (e) Provide timely notification to the department if any of the following circumstances occur or will occur with regard to a charter school for which it is the chartering authority: (1) A renewal of the charter is granted or denied. (2) The charter is revoked. (3) The charter school will cease operation for any reason. (f) The cost of performing the duties required by this section shall be funded with supervisory oversight fees collected pursuant to Section 47613.

(m) The District finds BMV's failure to provide information regarding its board member composition, including but not limited to their cities of residence, and its failure to provide information regarding the application/lottery/admission process impairs the District's oversight obligations, including its ability to determine the Charter School's compliance with the board-approved requirement that at least the majority of BMV's board members reside within the boundaries of Mountain View and/or the District and that BMV properly sought enrollment, had generated necessary enrollment interest, and was prepared to comply with the admissions requirements.

(n) In its Response, BMV reaffirmed its position that the Board "denied" its petition on December 20, 2018, and therefore "[t]here is no approved charter here." In its one (1) page Response, BMV failed to address this violation and did not provide the requested information.

(o) The District finds that, having failed to cure and/or demonstrate any intent to remedy the above violations and/or implement its program, BMV is in violation of the CSA's information request provisions.

(F) That the District could not consider the Charter School's increases in pupil academic achievement for all groups of pupils served by the Charter School as the most important factor in determining whether to revoke the Charter, in accordance with Education Code section 47607(c)(2), because the violations of charter and law as described herein occurred prior to the Charter School commencing operations;

(G) The Board further finds that the information and documentation offered by BMV failed to refute the substantial evidence demonstrating violations and failure to remedy as set forth in the NIR and set forth herein, and further finds that such information and documentation, as well as public comment, offered by BMV was neither credible nor the kind of evidence that a reasonable trier of fact could have considered reasonable, credible, and of solid value, particularly in light of the extensive documentation and evidence submitted by the District; and

(H) The Board further finds that the revocation proceedings have been in full compliance with Education Code section 47607 and Title 5, section 11968.5.2 of the California Code of Regulations.

3. Revocation of Charter. Pursuant to Education Code section 47607(e), the Board hereby revokes the BMV Charter, effective immediately. Because the revocation proceedings are based, in part, upon violations of law within the meaning of Education Code section 47607(c)(1)(D), BMV shall not continue to qualify as a charter school for funding and for all other purposes, during the pendency of any appeal that may be filed. (Ed. Code, § 47607(i).)

PASSED AND ADOPTED this 13th day of June, 2019, by the Mountain View Whisman School District Board of Trustees by the following votes:

AYES: _____

NOES: _____

ABSENT: _____

ABSTAIN: _____

Tamara Wilson, President
Board of Trustees
Mountain View, CA

Ayindé Rudolph, Ed.D., Superintendent
Mountain View Whisman School District
Mountain View, CA