



*Willow Creek*  
**ACADEMY**

**Willow Creek Academy Response to The August 10,  
2016 FCMAT Report: Management Review of the  
Sausalito Marin City School District**

September 14, 2016



*Willow Creek*  
ACADEMY

September 14, 2016

Mr. Joel D. Montero, Chief Executive Officer  
Fiscal Crisis & Management Assistance Team  
1300 17<sup>th</sup> St. – City Centre  
Bakersfield, CA 4533

Ms. Mary Jane Burke, Superintendent  
Marin County Office of Education  
1111 Las Gallinas Ave./PO Box 4925  
San Rafael, CA 94913

Dear Mr. Montero and Superintendent Burke:

Enclosed please find Willow Creek Academy's response to the FCMAT report. Our response details that the report is fundamentally inaccurate and flawed as it relates to Willow Creek Academy.

Regrettably the report makes unsupported and incendiary charges that pit local schools – and the groups of high-need families they jointly serve – against one another, adding strife to a community already challenged by a long history of racial and economic tension. The State and County would surely do better to use their resources constructively to research the issues thoroughly, ascertain the real facts, and search for solutions, rather than perpetuate existing mistrust and misinformation. WCA would be happy to participate in such a good faith, constructive endeavor.

Our response was prepared within the Superintendent's required tight timeline, led by WCA's volunteer board. It was disappointing to have roughly 30 days to respond to a 106 page report that took over five months to prepare. Given the timing of the report - released just as the school year began - our staff had few resources to devote to this issue. Nonetheless, we have endeavored to correct many of the errors in the professionally prepared report.

Based on the details of our response, we respectfully request that FCMAT retract the report. We also respectfully request that the Superintendent reject the FCMAT report as it relates to Willow Creek Academy and withdraw the steps she has already taken - launching an investigation of WCA, asking for such an investigation from the Office for Civil Rights and requesting that the California Superintendent seek an Attorney General's opinion - on the basis of this unreliable report. Supporting the FCMAT report's inaccurate assertions and misguided recommendations paints a false picture of Willow Creek and expands unproductive divisions in the community that prevent us from identifying real issues and making meaningful changes to resolve them.

We hope that you will work with us in good faith toward the common goal of closing our achievement gap and providing an excellent education to every student in the Sausalito Marin City School District.

Sincerely,

DocuSigned by:  
*Kurt Weinsheimer*  
00A52739C703449...

Kurt Weinsheimer  
President, Board of Directors  
Willow Creek Academy

Attached:

- Willow Creek Academy Response to The August 10, 2016 FCMAT Report: Management Review of the Sausalito Marin City School District

Cc via email:

Caroline Van Alst, President, Sausalito Marin City School District Board  
Will McCoy, Superintendent, Sausalito Marin City School District  
Tara Seekins, Head of School, Willow Creek Academy  
Tom Torlakson, State Superintendent of Public Instruction  
Dr. Curtis Robinson, Member, Marin County Board of Education  
Robert Henry, Attorney  
Kristopher Carpenter, Attorney

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# **Willow Creek Academy Response to The August 10, 2016 FCMAT Report: Management Review of the Sausalito Marin City School District**

## **Introduction**

In this document, Willow Creek Academy ("WCA" or "Willow Creek"), the public charter school in the Sausalito Marin City School District ("SMCSD" or the "District"), responds to the report issued on August 10, 2016, by the Financial Crisis Assistance and Management Assistance Team ("FCMAT"). While the FCMAT report identifies some of the very real challenges facing the District, it is profoundly flawed as a matter of fact, law and analysis as it relates to WCA. Accordingly, Willow Creek respectfully requests that FCMAT retract, and the Marin County Office of Education reject, the report's discussion and recommendations pertaining to Willow Creek, as these are unreliable for any practical purpose, let alone high-stakes decision-making that could greatly affect the education of students in the District.

## **Executive Summary**

The five major flaws in the FCMAT report as it relates to WCA are summarized as follows:

### **1. The Report Employs Erroneous Assumptions And Distorted Statistics To Falsely Accuse WCA Of Seeking To "Create A Segregated School" When WCA Is Actually A Model Of Racial And Socioeconomic Diversity.**

The report suggests that WCA serves exclusively or mostly affluent white students from Sausalito and that Bayside MLK, the traditional public school in the District, serves essentially all of the Marin City and high-need students in the District. The truth is that WCA's enrollment, which represents roughly 75% of all public school students in the District, is approximately 60% African American, Hispanic, Asian and mixed race. In fact, in accordance with the law and its charter, WCA's student body reflects or over-represents every racial demographic group in the general population of the District except for whites (who are under-represented). WCA also serves more students who live in Marin City – about 150 – than the entire 143-student enrollment at Bayside MLK. Finally, far from serving primarily affluent white children, Willow Creek's 400-student enrollment is approximately 50% high-need under state law (students who are eligible for free or reduced price lunch and/or are English learners). Again, this represents a majority of the high-need students in the District. In short, WCA is one of the most diverse schools in Marin County if not the state.

### **2. FCMAT's Contention That The District Must Prioritize Outcomes For Students At The Traditional Public School Over Outcomes At The Public Charter School Runs Directly Contrary To The California Education Code And Sound Policy.**

While it is factually incorrect, as explained below, that the District has disproportionately favored WCA with financial resources, FCMAT's assertion to the contrary rests on the premise that any allocation of resources to Willow Creek above the legal minimum is

inappropriate and, indeed, illegal. But this premise directly conflicts with the plain language of governing statutes, which state that charter schools are "entitled to full and fair funding." Even more specifically, the California Education Code is explicit that funding allocations above the minimum are expressly permitted -- especially in well-funded ("basic aid") districts like SMCS D. As a policy matter, the premise that public charter school students should be minimally funded is particularly misguided in a district such as SMCS D, where a majority of high-need students attend the charter school. WCA struggles with the same achievement gap as its sister school. The notion that a high-need student is a first priority when he or she attends one of the District's two public schools, but becomes a distant second priority the moment he or she enrolls in the other school, undermines precisely the educational equity the FCMAT report purports to promote.

### **3. FCMAT's Central Theme – That The District Board Has Disproportionately "Diverted" Financial Resources To Willow Creek Academy – Is Demonstrably False.**

While the law clearly authorizes the District to fund Willow Creek above the legal minimum, the revenue Willow Creek Academy receives from the District *is* the legal minimum -- just under \$8000 per student. Equally importantly, WCA's per-student funding is at least 40% lower than the analogous funding for Bayside MLK -- which receives approximately \$13,300 per student. The report bases its allegations that WCA is inappropriately "diverting" funding from Bayside MLK almost entirely on the premise that the District should be charging WCA millions of dollars for certain services and costs. As detailed below, these figures are wildly inflated, involve factual mistakes and accounting errors (such as double-counting) and are inconsistent with both the law and the Memorandum of Understanding ("MOU") between the District and WCA.

If imposed, FCMAT's proposed charges would cut by roughly half the overall budget of a school that is serving 75% of the District's public school students, the majority of its high-need students and the majority of the students who live in Marin City. If the aim of FCMAT's recommendations is to close the achievement gap and provide equity, defunding WCA undercuts those goals. While Willow Creek does more with less, it struggles with the same achievement gap experienced at Bayside MLK.

### **4. FCMAT's Allegation Of Special Education Discrimination Is False And Very Clearly The Product Of Failure To Fact-Check Misinformation.**

One of the more incendiary allegations in the report is that Willow Creek refuses to enroll students with individualized education plans (IEPs) that require special day class (SDC) instruction. This allegation is false. Willow Creek has always been highly inclusive with respect to special education generally, and has developed a reputation for that quality -- particularly with respect to students whose IEP may provide for SDC services. Willow Creek has, in fact, successfully mainstreamed SDC students into its general education classes and activities. The suggestion that Willow Creek is discriminatory is the opposite of the truth. Unfathomably, FCMAT leveled this serious charge without speaking to either the District's Director of Special Education or the WCA

administrator responsible for special education, both of whom would have refuted the allegation.

## **5. FCMAT's Erroneous Conclusions Stem From Inadequate Research.**

Throughout, the report's errors are plainly due (at least in part) to a failure to conduct minimally necessary research relative to WCA. During its five-month investigation, FCMAT investigators interviewed no WCA Board members, faculty, or staff. Nor did they visit any classrooms. As noted, FCMAT also failed to interview the SMCS D Director of Special Education or WCA's then-Assistant Head of School, now the Head of School, who managed WCA's special education processes. Finally, Willow Creek received no opportunity to review the report in draft form to correct errors or provide insights.

FCMAT's only direct contact with Willow Creek consisted of (a) one interview with the then-Head of School, who had joined WCA less than three years earlier and left the school a few weeks after his interview; and (b) an email inquiry about Willow Creek's lottery process. FCMAT representatives have suggested that they did not interview more WCA representatives because the report was not officially directed to WCA. Clearly, however, once WCA became a central focus of FCMAT's narrative -- with nearly 30 pages dedicated to WCA -- FCMAT had a responsibility to fact-check such serious allegations as its charges of "segregation" and "discrimination." Indeed, the notion that a state agency would allege that WCA "leaders" have "admitted" to "controlling" elected officials -- an allegation for which there is no factual basis -- after having spoken to only one relatively new WCA representative is deeply troubling.

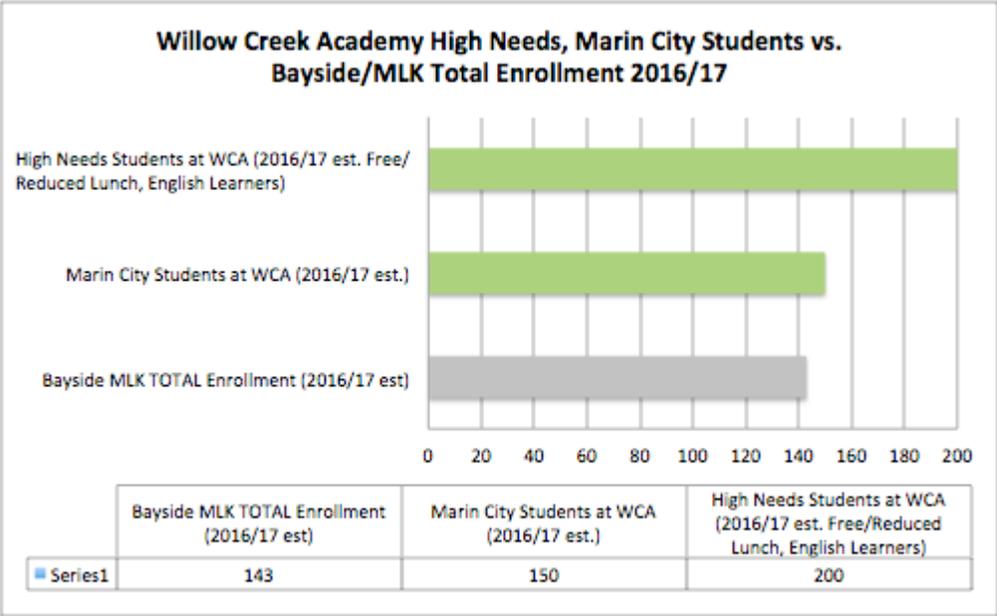
## **Discussion**

### **I. The Report Rests On False Assumptions and Statistical Distortions About Demographics At WCA And Within The District.**

Many of the FCMAT report's conclusions relating to Willow Creek Academy are based on the twin premises that WCA exclusively or primarily serves affluent white students from Sausalito and that Bayside MLK serves all of the District's Marin City students. For example, at page 54, the report refers to WCA as "the district's vehicle to address the needs of the Sausalito community," which it then notes is over 80% white with very few residents below the poverty level. The report declares that "[a]lthough the district's governing board made a historical decision to meet the needs of the Sausalito community . . . it has not yet made a similar decision to invest in the students of Marin City."

The truth could hardly be more different. In addition to representing 75% of the public school students in the District, a majority of WCA's 400 students are African American, Asian, Hispanic/Latino or mixed race. The report also fails to note that approximately 150 WCA students live in Marin City -- more than Bayside MLK's total estimated 2016-17 enrollment of 143. In other words, whites are a minority at the school, and a majority of the District's students who live in Marin City attend Willow Creek.

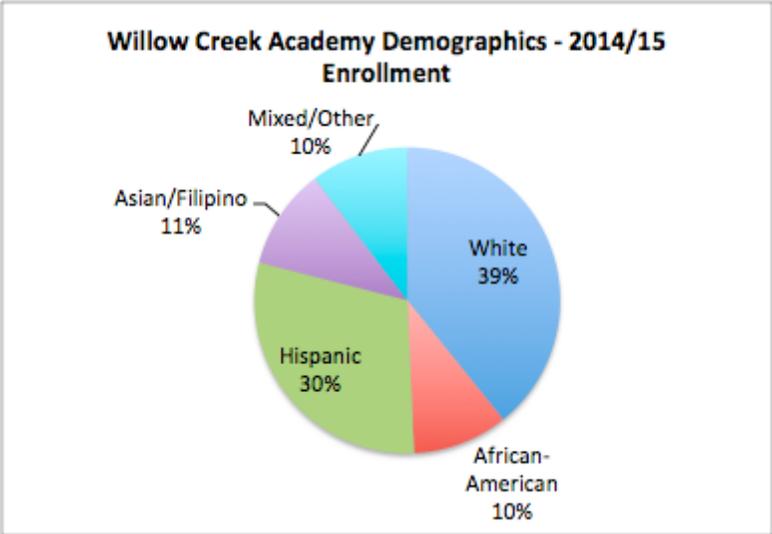
The report's implication that essentially all of the District's underprivileged students attend Bayside MLK is also false. The report uses percentages instead of student headcount to convey this impression, emphasizing Bayside MLK's higher percentage of high-need students. The truth is that nearly 50% of WCA's student body – roughly 200 students -- are high-need according to state law (that is, they qualify for free or reduced price lunch and/or are English language learners). Again, this is more than Bayside MLK's entire enrollment. These points are illustrated in the bar graph below:



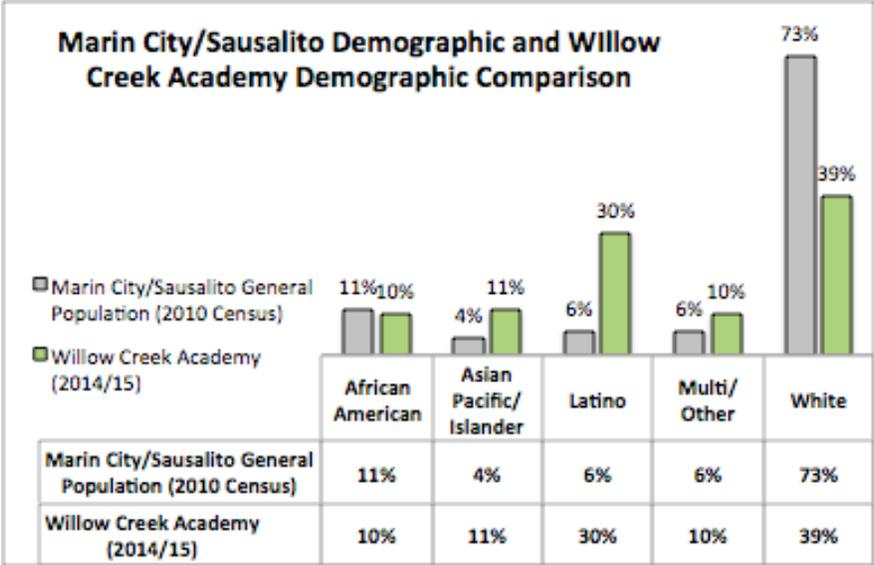
Despite these readily available facts, FCMAT levels the incendiary charge that there is a "pattern established at WCA to create a segregated school." (Report at 60.) According to FCMAT, WCA's enrollment patterns "are troubling and clearly inconsistent with California Education Code and the terms of the charter." (Report at 58.) The Education Code provision FCMAT references (and quotes) says that charter schools must articulate "[t]he means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district." Consistent with that legal mandate, WCA's charter specifies the recruitment strategies it uses "to ensure a racial and ethnic balance among students that is reflective of the District." (Report at 58.)

To arrive at the incorrect conclusion that WCA does not comply with these requirements, FCMAT compares WCA's student demographics *not* to the "general population residing within . . . the school district," as the plain language of the law requires, but rather to the demographics at **Bayside MLK**. In other words, FCMAT reads the law to say that WCA should strive for its student population to reflect the demographics not of the Sausalito Marin City School District, but to reflect the racial and ethnic composition of a sister school – regardless of whether the latter reflects the District population. This is an indisputable misapplication of the plain language of the law.

The profound errors do not stop there. To support its charge of segregation, FCMAT's highlights only the percentages of whites and African-Americans that attend the two district schools. FCMAT ignores entirely students who are Hispanic, Asian, mixed race and other students of color. The result is to erase from the picture fully half of WCA's student body – approximately 200 students. As the chart below illustrates using 100% of the data from the most recent enrollment year in the FCMAT report (2014-15), our full enrollment demonstrates Willow Creek's diverse and inclusive student body:



The truth is that WCA's vigorous diversity efforts have been extraordinarily successful: its student body faithfully reflects or over-represents all non-white demographic groups in the Sausalito Marin City School District. Using data from the most recent year in the FCMAT report, and from the 2010 federal census of Sausalito and Marin City, the bar graph below illustrates just how successful WCA has been achieving exactly the goal set out in the law and the charter:



In summary, the demographic analysis of the FCMAT report, which forms the basis not only for many of its recommendations but also for subsequent adverse action toward Willow Creek by the Marin County Office of Education, is inarguably and fundamentally wrong in its main legal and factual assertions. Such serious and destructive allegations should not have been released and acted upon without proper vetting.

## II. FCMAT Mischaracterizes The Law In Suggesting That It Prohibits Allocation Of Discretionary Public Resources To Independent Charter Schools.

In section III below, we explain how FCMAT misstates the facts in its central theme that the District Board has favored WCA over Bayside MLK in the allocation of public resources. Before doing so, however, it is important to expose the policy and legal fallacy that is the foundation for this conclusion and much of the report: FCMAT's contention that the District cannot by law, and should not as a matter of policy, allocate any discretionary revenue or services to Willow Creek runs directly contrary to the state law requiring "full and fair funding" for charter schools and expressly authorizing allocations of revenue above the legal minimum -- especially in well-funded districts like SMCS D. Nor does the law make the distinction FCMAT emphasizes: that "independent" charter schools (as opposed to so-called "dependent" charter schools) are relegated to secondary consideration in resource allocation. All charter schools have the right to "full and fair funding."

Early in FCMAT's discussion of the relationship between the District and WCA, the report emphasizes passages in the school's charter and its Memorandum of Understanding ("MOU") with the District that describe WCA as "a separate legal entity" from the District and other words to similar effect. It also cites a provision of the California Education Code, which states that the charter school law allows establishment of "schools that operate independently from the existing school district structure." (Report at 56.)

FCMAT's very first recommendation relating to WCA, which follows immediately after the discussion of these legal principles, is that "[t]he district should . . . [r]ecognize that its primary responsibility is to the students enrolled in the district's Bayside Martin Luther King, Jr. Academy." (Report at 56.) The report makes clear that this means the District should not -- indeed, it clearly contends that the District legally cannot -- allocate **any** discretionary revenue to WCA -- and that any charges that may be levied on the school must be levied.

FCMAT clearly characterizes this as a **legal** as well as a moral and policy obligation. For example, in condemning the District's failure to charge Willow Creek for various services and costs, FCMAT incorrectly states that "there is no specific entitlement or legal justification for such a diversion of funds from Bayside MLK's students." (Report at 56.)

Similarly, in the section of the report addressing "fiscal support" for WCA, FCMAT claims that the "California Education Code . . . provides protection for basic aid school

districts from charter school petitioners who might attempt to get more funding than charter schools in state-funded districts." (Report at p. 64.) That is, FCMAT characterizes the law as barring charter schools in well-funded ("basic aid") districts from getting more funding than the amount available in state-funded (i.e., minimally funded) districts.

The report states flatly that "[t]here is no obligation for or expectation that the school district will contribute funds to the charter school that exceed that amount [i.e., above the minimum]." (Report at p. 65.) It asserts that any such allocation "take[s] funds from the district's high-needs programs and students at Bayside MLK to provide WCA with a level of funding that exceeds that to which it is entitled." Perhaps no passage in the report more clearly illustrates FCMAT's extreme view than its inflammatory assertion that the failure to impose crippling charges on WCA may be a "gift of public funds." (Report at 5.) In short, FCMAT apparently views a charter school's status as "independent" to be the legal and policy equivalent of "private," and that no District can work in tandem with a charter school to provide a high-quality education to all students in the District.

This foundational premise of FCMAT's report directly conflicts with the plain language of California law. While Willow Creek has not significantly benefited from the legal provisions below, they are crystal clear that "independent" does not mean "private." More importantly, they are equally clear that allocations of revenue above the minimum – especially in well-funded districts like SMCS D – are **expressly permitted**.

First, section 47615 of the California Education Code directly refutes FCMAT's views on the relationship between the District and WCA:

- (a) The Legislature finds and declares all of the following:
  - (1) Charter schools are part of the Public School System, as defined in Article IX of the California Constitution.
  - (2) Charter schools are under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools, as provided in this part.
  - (3) **Charter schools shall be entitled to full and fair funding**, as provided in this part.
- (b) This part shall be liberally construed to effectuate the findings and declarations set forth in this section.

(emphasis added.)

Second, section 47636(a) of the California Education Code directly refutes the assertion that legal minimum for Willow Creek is also the maximum permitted. The statute states that the charter school law:

shall not prevent a charter school from negotiating with a local educational agency **for a share of operational funding** from sources not otherwise set forth in this chapter including but not limited to . . . .

(4) Ad valorem **property taxes received by a school district which exceed its local control funding formula entitlement** . . .

(5) "**Basic aid**" received by a school district pursuant to Section 6 of Article IX of the California Constitution.

(emphasis added.)

The legal characterizations in the FCMAT report regarding the appropriate prioritization of public financial resources are irreconcilable with these very clear and very specific provisions of the California Education Code. When FCMAT says that "there is no specific entitlement or legal justification" for what it calls "diversions" of funding to WCA above the legal minimum, or that the law provides "protections" against charter schools seeking more than the minimum, it is undeniably misstating the law.

FCMAT's allegation that the failure to impose seven-figure charges on Willow Creek is potentially a "gift of public funds" is simultaneously so inflammatory, derogatory and utterly baseless as to be breathtaking coming from an ostensibly objective state agency. As many may realize, a "gift of public funds" is a serious crime and unconstitutional. (Cal. Const. Art XVI Sec. 5; Cal. Penal Code Sec. 424 (misappropriation of public funds).) Thus FCMAT has implied not just that the so-called "diversion" is illegal, but criminal. California courts, however, have held that **public funding for a public purpose is not a "gift of public funds."** *County of Alameda v. Janssen* (1940) 16 Cal.2d 276 ("In determining whether an appropriation of public funds or property is to be considered a gift, the primary question is whether the funds are to be used for a 'public' or a 'private' purpose. If they are for a 'public purpose', they are not a gift within the meaning of [the law]"); see also *California Teachers Assn. v. Board of Trustees* (1978) 146 Cal.Rptr. 850, 855; *Paramount School District v. Teachers Assn.* (1994) 32 Cal.Rptr. 2d 311. To level such a serious charge under circumstances where it is completely unfounded is beyond irresponsible.<sup>1</sup>

As the statutes above make clear, the law encourages charters and districts to be partners in developing innovative and alternative educational options for students who reside within the district. But even as a matter of policy, FCMAT's position that students

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<sup>1</sup> At the presentation of the FCMAT report to the Marin County Board of Education on August 31, 2016, FCMAT backpedaled on these very clear statements that any allocation to WCA above the minimum – including the failure to impose millions of dollars in charges – is illegal or at the very least unsound policy. Referring to the report's condemnation of financial "diversion" to WCA, FCMAT's representative said this criticism does not mean allocation above the minimum "is illegal" or "even wrong" – it is just raising questions to be addressed by others. As explained above, FCMAT's belated and partial recantation of clearly false legal statements is welcome but does not go far enough.

at the traditional school have a "first right" to any available resources, up to and including extremely large charges to be levied on the charter school, is profoundly misguided, especially in a district like this one.

As explained below, WCA is operating on a fraction of the per-student budget available to Bayside MLK and yet, as noted above, serves a majority of the high-need and Marin City students. Equally important, students in exactly the same underserved demographics attend both schools -- and many of those students are underachieving at both schools. Indeed, underserved children in the *same household* sometimes attend both schools. The notion that an underserved Marin City child is a first priority so long as he or she is enrolled in one public school, but becomes a distant second priority the moment he or she enrolls in the other public school, cannot possibly make sense to any fair-minded person. This approach would result in precisely the inequity FCMAT advocates against.

### **III. FCMAT's Central Theme – That The District Board Has Disproportionately "Diverted" Financial Resources To Willow Creek Academy – Is Demonstrably False.**

The main message of the FCMAT report as it relates to WCA is summarized in the following sentence from its Executive Summary: "By their own admission, leaders associated with WCA exercise significant control over the majority of the district's governing board members, resulting in an excessively close relationship between the governance of the two entities and, more importantly, a clearly biased financial arrangement that benefits WCA while harming the students of the district's Bayside MLK school." (Report at 4.) The report proceeds to charge that the current budget "will divert to WCA, or not collect from it, between approximately \$1 million and \$1.9 million in excess of the district's legal requirement for in-lieu taxes." (Report at 4.)

As a threshold matter, the assertion that "leaders associated with WCA" have "admitted" to "controlling" the District Board is startling given that FCMAT representatives never contacted a single WCA Board member in the course of gathering information for their report. It is difficult to understand how FCMAT could conclude from a single interview with one WCA administrator who had been with the school a relatively short time that WCA's "leaders" have "admitted" to controlling elected officials. This is a clear example of an unfounded inflammatory allegation in the FCMAT report that is based on conjecture instead of evidence.

The truth is that WCA has exercised no control over the District Board. This reality is reflected in the fact, explained below, that the financial bias in the District has heavily favored Bayside MLK from WCA's founding until this day.

#### **A. As A "Basic Aid" District, SMCS D Is Well-Funded.**

To properly understand this reality, it is necessary to understand the financial context that is either missing or poorly explained in the FCMAT report. As the report notes, SMCS D is a "basic aid" or "community-funded" school district. That means the district

retains the share of the property taxes paid by District real property owners for local school purposes. In turn, that means the District enjoys higher public revenue than it would otherwise receive if it were a "revenue limit" or "state-funded" District.

State-funded districts receive the legal minimum public funding. That minimum is now determined by what is known as the "Local Control Funding Formula" or "LCFF." The LCFF establishes a minimum funding figure per-student, and then adds funding for each student who is deemed high-need. Students who are English learners and/or who are eligible for free or reduced price lunch are classified as high-need. In addition to a per-student increase for each high-need child, schools or districts may receive a "concentration grant" if their high-need group exceeds a certain percentage of the total enrollment.

As a basic aid district, SMCS D has for many years enjoyed millions of dollars more in public revenue than it would receive if it were state-funded. In 2016-17, that figure is projected to be \$2.35 million. (See SMCS D June 14, 2016 Budget Presentation.) That is, if one were to total the District's LCFF entitlement and subtract it from the District's projected revenue from property taxes, the remaining amount would exceed \$2 million.

Historically, this meant that the District has enjoyed substantial excess revenue after subtracting all "mandatory" costs. That is, after the District allocated the legal minimum per student to each school, covered District overhead (e.g., salaries of the superintendent, chief business officer, etc.), and paid the net cost of special education and facilities, there was still a great deal of money left over – for years hundreds of thousands or even millions of dollars. This left the District Board with discretion over how to allocate this "basic aid excess" funding.

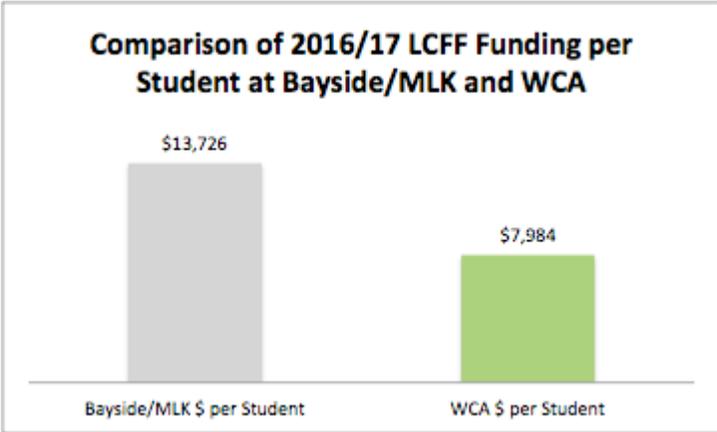
Prior to the founding of WCA in 2001, all of this excess revenue was allocated to Bayside MLK. After WCA was founded, annual budget debates became the norm. The advocates for the traditional public school argued that all the basic aid excess should go to Bayside/MLK, while the WCA leadership argued for more proportionate distribution based on need without regard to which public school students attend.

In some years, but not all, a compromise was reached in which a modest amount of the excess was allocated to WCA. This "supplemental grant" went up and down from year-to-year both in absolute terms and as a percentage of WCA's budget, ranging from roughly \$30,000 in the first year, down to zero for several years, and up to a high of \$450,000 in the 2013-14 school year (the final year of the prior MOU). Even with that "supplemental" funding, and even after subtracting all centralized costs and special education, the funding per student was always substantially higher at Bayside MLK than it was at WCA -- because the excess revenue received by the District by virtue of being a basic aid district always substantially exceeded the sum of these elements.

When the funding disparity in favor of Bayside MLK was reviewed by a Marin County Grand Jury in 2008, it strongly suggested precisely the opposite of what the FCMAT report is currently advocating. First, the Grand Jury observed that "[a]ll three schools -- Bayside, MLK and Willow Creek -- are the responsibility of the District Board." (Marin

County 2008 Grand Jury Report at 8.). The report noted the large disparity in funding between Willow Creek and Bayside/MLK -- with the former at \$9000 per student (which included the legal minimum funding from the District) and the latter computed at roughly \$31,000 per student.<sup>2</sup> Finally, the Grand Jury's concluded "that the District should assist its Willow Creek charter school to become more attractive to Marin City and Sausalito families by providing it significantly greater financial support and public acknowledgement." (Marin County Grand Jury Report at 11.) Despite this conclusion, the relative funding of the two schools sharply favoring Bayside MLK has continued to this day as explained in more detail below.

Despite the repeated claim that WCA is overfunded relative to Bayside MLK, the FCMAT report never discloses the per-student (or overall) revenue figures attributable to each school. For 2016-17, according to the SMCS D budget, Willow Creek's share of the District's property tax revenue is the *at the legal minimum*, which is \$7,984 per student. In contrast, Bayside MLK's is \$13,726 per student. Note that these figures do not include money that the District spends on special education, facilities, or District overhead, which are paid from funds other than the per-student amounts above. While apples-to-apples comparisons are notoriously difficult to perfect, these figures do provide a meaningful reference point for the relative public funding allocated to the two schools.



**B. The Current MOU Seeks To Allocate District Resources Equitably, Without Regard To Which Public School They Attend.**

As the five-year MOU between the District and WCA was expiring in 2014, Willow Creek and the District negotiated the terms of a new five-year MOU. Both sides agreed in principle on two aims: (a) to eliminate the annual budget battle by settling in advance on an equitable method for allocating the "basic aid excess;" and (b) to simplify the complex and arcane charter funding process, in which the District would first allocate money to WCA then take some of it back in the form of various charges.

<sup>2</sup> It is not clear, but the \$31,000 figure appears to include all District funding apart from the allocation to WCA, without subtracting special education or centralized costs.

The District and WCA were also in agreement that relative need should play an important part in the allocation of resources, and that need is not a function of which school a student attends. Accordingly, the MOU states the following: "It is the policy of the District to allocate resources equitably and without regard to which public school (charter or traditional) students attend, or where students live within the District."

The basic funding structure for WCA is straightforward under the MOU: for the first two years, WCA was to receive a minimum of \$7100 per student from District property tax revenue; for the third through fifth years, WCA would receive the legal minimum plus a share of the "basic aid excess" -- if any -- to be determined by reference to the need-based LCFF formula established by state law. At the presentation to the Marin County Board of Education on August 31, 2016, FCMAT expressed puzzlement over how the \$7100 figure was reached. The answer is simple (and would have been provided had FCMAT simply asked WCA): it held WCA's per-student funding flat relative to the final year of the previous MOU.

In other words, Willow Creek agreed to flat funding for two more years. This worked to **reduce** the District's allocation of discretionary revenue to WCA.

In the first year of the current MOU, WCA's \$7100 minimum per-student funding was \$848 higher than the legal minimum. This took the amount of discretionary revenue allocated to WCA from \$450,000 in the prior year to under \$300,000 -- even though enrollment had grown from one year to the next. Again, this was a fraction of the excess revenue the District enjoyed by virtue of being a basic aid district -- and per-student funding continued to be higher at Bayside MLK.

In the second year, the MOU minimum exceeded the legal minimum by \$176 per student. This reduced the "supplemental" grant to less than \$70,000 -- virtually eliminating it. Again, this occurred despite the fact that WCA's enrollment continued to grow.

When they negotiated the current MOU, the parties were aware that the legal minimum would be eclipsing the MOU minimum over the agreement's five-year term. California had already announced its target minimums, based on need, and WCA's demographics called for a substantial increase in its per-student funding as a matter of state law. But the state was phasing in the increases over time. The state minimum eclipsed the MOU minimum in the current year, the third of the MOU. Now WCA receives more than the MOU minimum specified for the first two years, but only because the law requires it, not because of favoritism from the District Board.

In short, for the first two years of the MOU, WCA agreed to flat per-student funding that it knew was less than the minimum the state had already targeted for a school with high-need students like WCA. It was also foreseeable that, as the state phased in the increased minimum, and WCA's enrollment grew, the "basic aid excess" in which WCA hoped to share in the later years could disappear when that time came. That is, WCA accepted a deal that could well mean that it would **never** equitably share in the excess

revenue the District enjoys by being a basic aid district -- which appears to be the case now.

Why did WCA accept this deal? Because it had no choice -- the District insisted and WCA had no leverage. The District did agree to do what it could to keep centralized costs down but, contrary to FCMAT's assertion, WCA no more "imposed" this requirement than it "imposed" the unfavorable revenue deal it received. To the contrary, it was very easy for the District to agree to this term because, to the extent the District was successful, it would benefit both schools: the District was simply agreeing to do its best to keep out-of-classroom spending down so that more funds would be available for in-classroom spending -- whether at WCA or Bayside MLK.

Having driven a very hard bargain on basic funding, the District agreed to modest concessions. First, during the initial two years only, the MOU allows for revenue sharing in the event actual property tax revenue exceeds projected growth. To the extent property tax revenue to the District grew by more than 2% from the prior year, any money up to the 2% would be allocated 100% to Bayside/MLK; any money above the 2% would be allocated to the two schools on a per-student basis. The value of this figure to WCA for each of the first two years should have been roughly \$150,000 (or about \$375-\$400 per student).<sup>3</sup> None of this excess revenue has actually been transferred to WCA.

Second, in order to again compensate for the flat funding, the MOU provides that the District will bear the cost of special education for all students in the District, as well as certain other services, without seeking dollar-for-dollar recoupment of those costs from WCA. Historically, the cost of special education services to WCA students had been calculated to be well under \$100,000, which would represent approximately \$200 per student at the current WCA enrollment.

The FCMAT report makes several basic errors in its reading of the MOU -- and failed entirely to ask anyone on the WCA board to confirm their interpretation or inquire how it has actually been implemented. For example, at page 67, the report asserts that, because the "basic aid excess" revenue sharing is determined from all property tax revenue and not just those below the 2% projected growth, "property tax revenues that have increased by more than 2% per year are allocated twice, to the benefit of WCA."

Under the plain language of the MOU, this is simply wrong. As the FCMAT report itself notes, the sharing of revenue in excess of 2% applies only to years 2014-15 and 2015-16. That is clear from the language of Section III.G. of the MOU. ("If the 2014-15 or 2015-16 property tax revenue . . . to the District increases by more than 2%, [then revenue sharing applies].) What FCMAT neglected to note is that the MOU is equally clear that "basic aid excess" sharing (if any) will apply only in **subsequent** years. Section III. F. states that "**[b]eginning in fiscal year 2016-2017**, any Basic Aid Excess [will be shared]." In short, the MOU is clear that sharing in excess of 2% applies to

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<sup>3</sup> FCMAT calculates the number at \$100,000. WCA lacks sufficient information to reconcile the discrepancy.

years 1 and 2, while sharing of basic aid excess (if any) applies to years 3, 4 and 5. There can be no double counting. This mistake by FCMAT could have been corrected through a conversation with WCA and could have saved money on the 3rd party experts FCMAT unfortunately relied on for their understanding.

FCMAT also erroneously asserts that just over \$100,000 has been allocated to WCA under the provision providing for sharing of revenue growth in excess of 2%. (Report at 67.) While that provision did indeed apply based on the growth in property tax revenue for the relevant year, the District has not, in fact, allocated the money to WCA. The stated reason for this is that further review is necessary to determine whether the provision relating to burden-sharing with respect to a negative "basic aid excess" also applies for that year. Had FCMAT inquired whether the funds had been allocated -- or simply reviewed the books and records of either the District or WCA -- it would have known that its assertion of a transfer is incorrect.

Another error in FCMAT's reading of the MOU is its assertion that the provision calling for sharing of any basic aid excess is "designed to share [the excess] equally (based on average daily attendance, or ADA)." Again, this contradicts the plain language of the MOU, which allocates any such excess using the state's need-based LCFF formula. The pertinent provision, Section III. F., states that any basic aid excess "will be allocated between WCA and Bayside/MLK at the prior year's Period 2 LCFF ratio," which is defined earlier in the agreement to mean the ratio of LCFF funding at the two schools. Since the LCFF is by definition need-based, and Bayside MLK has a higher percentage of high-need kids, this approach would **not** result, as the FCMAT report suggests, in equal allocation based on ADA. Rather, it would result in **greater** per-student allocation to Bayside MLK than to WCA.

The report's discussion of the \$7100 floor for the first two years of the MOU's operation is flawed by the same erroneous premise underlying much of FCMAT's discussion relating to WCA. In noting that the minimum governs "regardless of the computed LCFF entitlement," and asserting that "[t]he LCFF is not intended to be equalized across districts and charter schools [but] was designed to help achieve equity in student outcomes," the report assumes that any funding of a charter school above this legal minimum works at cross-purposes with the need-based aims of the LCFF model. As explained above, however, whatever merit this viewpoint may or may not have in minimally-funded districts (where no school receives more than the LCFF amount), it represents the opposite of equity in a well-funded district where more than half the high-need kids attend a charter school.

Yet another mistake in FCMAT's discussion of the MOU is its assertion that the District has paid for certain programs at WCA, such as world language, after school and technology support. The MOU does indeed say that the District is supposed to cover the cost of these programs -- but it has not done so. WCA has paid for world language (offered in middle school only, starting last year) and after school services out of funding it has generated from a combination of the legal minimum from the District, a pass-through after school grant to WCA is entitled and fees charged to families. The District provided technology support services -- but has charged WCA \$49,000 for that service

despite the terms of the MOU. Again, FCMAT evidently did not learn of these facts because it failed to make the relevant inquiries.

In light of these clear terms and readily available facts, various provocative statements made in the FCMAT report to the effect that District revenues are being funneled to WCA are flatly incorrect. One example is the assertion that the MOU's requirement for equitable **sharing** of basis aid excess "removes any benefit Bayside MLK students may have otherwise accrued by being in a wealthy basic aid district." (Report at 5.) The MOU is clear that any basic aid excess is allocated between the two schools using the state's need-based formula as the reference point.

Another flatly false statement in the report declares that the MOU revenue sharing provisions operate so that "WCA is allocated the majority of the funding the district receives rather than only the funding to which it is entitled." (Report at 73.) In fact, the overall public revenue anticipated by the District this year is roughly \$8 million. The **entire** amount of that revenue the District will allocate from its budget to WCA -- the legal minimum -- is under \$3 million. More to the point, **neither of the revenue sharing provisions in the MOU have resulted in any money above the minimum being transferred to Willow Creek.** It is simply incorrect -- indeed, gratuitous -- to assert that the revenue sharing provisions in the MOU have caused the District to allocate a majority of its funding to WCA.

**C. FCMAT's Assertion That Up To \$1.9 Million Is Being "Diverted" To WCA Is Inconsistent With The Law, The MOU and Sound Accounting Principles.**

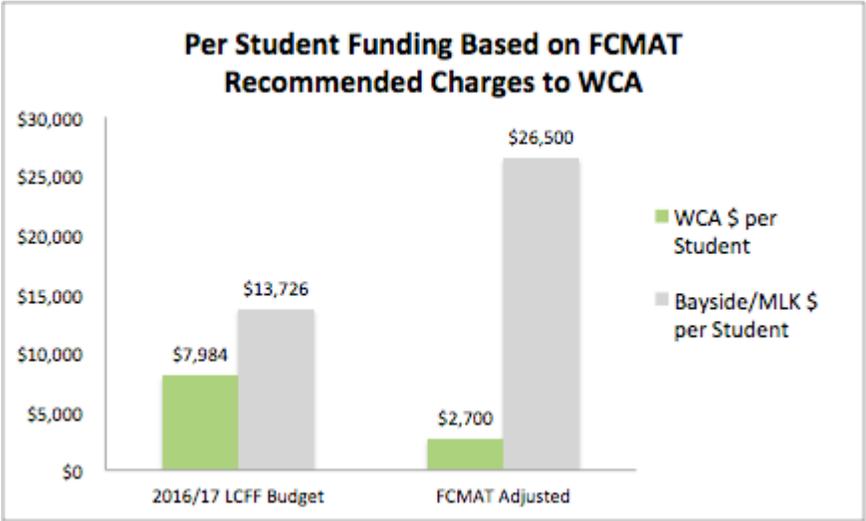
The FCMAT report's repeated use of the term "diversion" to characterize District financial support for WCA simultaneously conveys two misleading impressions: (1) that all public revenue above the minimum is intended, as a matter of law or consensus policy, to go to elsewhere; and (2) that there is a literal transfer of revenue above the minimum from the District to WCA. We explained above how the first point is wrong because it conflicts with the law. We have also explained how second point is misleading because only a trivial amount of discretionary revenue was allocated to WCA under the minimum funding provision -- and what little there was has now been phased out. Again, WCA's share of District revenue in 2016-17 is at the legal minimum of roughly \$7900 per student.

Having never disclosed the basic revenue figures, FCMAT does not contend that the "diversion" of money to WCA consists of revenue allocations above the legal minimum (except for its erroneous assertion that the District met its obligation to share \$100,000 in excess revenue growth). To arrive at its conclusion that WCA receives as much as \$1.9 million too much from the District, FCMAT therefore relies almost entirely on the assertion that the District has failed to impose certain charges on WCA that, in FCMAT's view, it should be charging.

The charges FCMAT would impose fall into four categories: (a) for special education services, which FCMAT values at \$761,874; (b) for nursing services, which FCMAT

values at \$18,000; (c) for facilities maintenance services, which FCMAT values at \$235,895; and (d) for a share of the cost of a negative "basic aid excess," which FCMAT values at \$811,305. As explained below, these purported charges are (a) inconsistent with the MOU; (b) inconsistent with governing law; (c) calculated in a manner that grossly inflates their value; and (d) profoundly inequitable even if they were legal.

Before we turn to the explanation of why this is true, it is important to understand that FCMAT's recommendation to charge WCA \$1.9 million into context. Given that WCA's share of District revenue (dictated by state law) is roughly \$3 million, FCMAT is proposing to take back from WCA, in the form of charges for services and costs, **two thirds of the entire funding WCA receives from the District**. The disparity in net per-student funding to the two schools from property taxes in the District would go from \$7984 to WCA and \$13,726 for Bayside MLK to roughly \$2700 for WCA and \$26,500 for Bayside MLK.



Even before we turn to the very significant flaws in the \$1.9 million figure, it is abundantly clear that FCMAT's recommendation is draconian and the opposite of "equity." It would clearly bankrupt the school that serves 75% of the district's students and would abandon the majority of high-need children.

**1. WCA Does Not Owe The District Reimbursement For Special Education Services.**

To support its claim that the current financial arrangement between WCA and the District with respect to special education "violates [the] California Education Code and the terms of [WCA's] charter," the FCMAT report first quotes a passage of WCA's charter stating that WCA "pays the District, a pro-rata share of the overall District encroachment [net outlay] for special education." (Report at 69.) The report then quotes the relevant section of the Education Code, which says that a charter school must contribute "an equitable share" of funding to support special education. Finally, FCMAT allocates roughly 75% of the District's overall net cost of special education to

WCA -- \$761,874 -- because approximately that fraction of the District's public school students attend WCA. (Report at 70.)<sup>4</sup>

FCMAT is wrong in its suggestion that pro-rata allocation based on ADA is mandated by law or universal practice. The statutory standard is not "pro-rata" but "equitable." As FCMAT emphasizes in other contexts, "equity" is not the same as "equality." That is, just as equal funding per student is not necessarily equitable, neither is equal cost sharing per student. Consistent with this legal standard, cost-sharing arrangements between districts and charter schools vary. While some use a pro-rata approach (and this may benefit small charters in large districts), many others use some other approach such as allocation of "actual" net cost attributable to the charter school's usage of special education services.

FCMAT is also wrong in suggesting that the cited charter provision mandates pro-rata cost sharing, because that provision has been superseded by subsequent MOUs between the District and WCA. Both the existing MOU and its immediate predecessor (and presumably any earlier iterations), contain the following language:

To the extent that any of the terms of this MOU may vary from the terms of the Charter, both Parties shall meet to achieve consistency. Pending such action, the terms of the MOU shall prevail.

MOU Sec. I. C.

Before pronouncing that WCA is violating its charter, therefore, one must consider all relevant terms of the MOU. The terms and implementation of the MOU in effect until 2014 are informative here. That agreement provided, like any number of other Districts, that "WCA will bear the true and actual costs for provision of all special education programs and/or services provided by the District to students enrolled in WCA beyond all funding received by the District that is generated by WCA." The MOU expressly noted that the Education Code provision cited by FCMAT could be interpreted as FCMAT does, and acknowledges that such an approach "would have significant fiscal impact on the operation and viability of the current WCA programming" and the parties therefore agreed to use the "true and actual cost" approach. (2009-2014 MOU Sec. VI. E. 9.)

During the course of implementing the prior MOU, the parties found the "true and actual cost" approach to present issues in practical application due to differences in how one might calculate such a figure. For example, in the final year of the prior MOU, the District and WCA disagreed on the amount of the "true and actual cost." In the scheme

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<sup>4</sup> This appears to be the first of several places where FCMAT double counts. The figure includes \$36,456 "directly attributable to special education services" at WCA. While FCMAT does not explain how it determined this figure, it is evidently intended to reflect actual cost of services delivered to WCA students. If so, it should have been deducted from the figure FCMAT used as the bases for allocating based on headcount. But FCMAT did not do so, and merely recommends charging WCA twice for the same services.

of the overall budgets, the difference was not large -- roughly \$50,000. (Notably, this circumstance appears to be the origin of FCMAT's false assertion that WCA "refused" to pay for special education services.)

In light of this experience, the overarching aims of the new MOU (to simplify and to eventually share any basic aid excess) and the concessions made by WCA to forego any equitable basic aid sharing during the first two years (and perhaps forever), the parties replaced this approach with provisions that do not involve dollar-for-dollar reimbursement of special education encroachment. Instead, the MOU reflects the parties' agreement that a District with such high revenue should pay for special education (along with many other centralized costs, even if some may benefit one school more than the other) out of the "basic aid excess" it has enjoyed for many years. On the other side of the ledger, if that excess were to be consumed and go negative -- which would to a large extent be a function of special education costs -- the MOU makes that a trigger for the parties to return to the negotiating table and determine equitable burden sharing.

When the MOU terms -- and the intent behind them -- are considered as a whole, the provisions relating to special education readily meet the statutory standard. This is reinforced by the fact that, contrary to FCMAT's pro rata approach, any fair assessment of the cost of delivering special education services to WCA students, especially when offset by special education revenue generated by WCA, is far lower than FCMAT's \$760,000 figure.

In fact, in June 2016, the District computed this amount and arrived at a figure of roughly \$15,000 -- a tiny fraction of FCMAT's suggested charge. This information is available on the SMCS D website. Even allowing for debates over methodology, a sensible actual cost figure would never begin to approach \$760,000. That is precisely the approach that the parties have explicitly rejected. Even FCMAT seems to agree that this figure is wildly out of line with the actual cost of special education services at WCA -- it offers a figure of \$36,456.

In short, contrary to FCMAT's contention, the existing arrangement on special education costs is entirely consistent with the charter, the MOU and the law. Most importantly, it is, unlike FCMAT's suggested approach, equitable.

## **2. FCMAT Overstates The Value Of Facilities Maintenance Services And Ignores The District's Failure To Meet Its Facilities Obligations.**

FCMAT also asserts that "the [D]istrict's 2016-17 adopted budget indicates that it is spending more than \$235,000 for maintenance and upkeep at WCA, excluding custodial time that WCA provides." (Report at 71.) According to FCMAT, this violates the California regulation providing that "[t]he ongoing operations and maintenance of facilities and furnishings and equipment is the responsibility of the charter school."

Although FCMAT does not detail how it arrived at this \$235,000 figure, it suggests WCA should pay the *entire* purported amount -- without any offset for the additional \$56,000

it acknowledges WCA pays in connection with facilities. FCMAT also ignores the fact that the District is charging WCA \$49,000 for technology support, which should also be offset against any assessment of the cost of operational services at WCA.

Finally, the regulation FCMAT invokes as the basis to charge WCA also "makes the [D]istrict responsible for deferred maintenance and replacement of . . . equipment" on WCA's campus, but FCMAT is silent on whether the District has met this legal obligation. In fact, it has not. There are any number of deferred maintenance items on WCA's campus that have not been addressed -- from HVAC systems, to deteriorated siding to roof leaks to window that will not close. Even worse, while the 40-year-old WCA campus has continued to deteriorate, the District expended tens of thousands of dollars, if not more than a hundred thousand dollars, from money earmarked for deferred maintenance to pay part of the cost to build new classrooms at Bayside MLK, a 7 year old facility.

When all of these factors are properly taken into account, FCMAT's \$235,000 figure -- even it is properly calculated as an initial matter -- quickly dissipates to the vanishing point. Again, FCMAT has failed to consider all relevant facts before arriving at a faulty conclusion.

### **3. FCMAT's Negative Basic Aid Calculation Clearly Violates Both The MOU and Basic Accounting Principles.**

As FCMAT correctly notes, the MOU provides not only for sharing of "basic aid excess" but also for sharing of any burden if the excess should go negative ("basic aid deficit"). MOU Sec. III. H. Invoking this provision, FCMAT projects the basic aid deficit for 2016-17 to be roughly \$1.2 million. FCMAT then asserts that "the MOU indicates WCA's portion of the negative . . . would be 72.2% or \$811,305. . . ."

FCMAT's approach is mistaken on every level. First, it flatly misstates what the MOU requires. The MOU is explicit in stating that is *not* establishing a method for determining how any basic aid deficit burden will be shared. To the contrary, it says that, in the event the basic aid excess becomes a deficit, "the District will work with WCA and Bayside MLK to determine ways to cover [the deficit] with the express understanding that both schools will contribute an amount of their respective LCFF allocations to cover these District wide expenses." (MOU Sec. III. H.) That is, they will go back to the negotiating table. It most certainly does not say that the deficit will be allocated as FCMAT does -- based on headcount ratio. Indeed, that would be fair only if the basic aid excess -- for all the years it had been positive-- had also been allocated that way.

Second, FCMAT has evidently miscalculated the starting figure of \$1.2 million -- yet again engaging in double counting. It begins the calculation with a "Total Revenue" figure of \$5,538,363. But that is not the entirety of District revenue, as the MOU requires. It does not include the \$3 million that the District as a whole receives due to WCA's enrollment. And that \$3 million already includes the \$351,000 that FCMAT deducts *again* as "State Mandated LCFF" for WCA. WCA lacks sufficient information to

know whether there are other errors in the initial calculation, but the errors that are obvious are large enough to cast significant doubt all aspects of the calculation.<sup>5</sup>

Finally, in the most remarkable instance of double-counting, FCMAT seeks to charge WCA twice for nearly \$1 million -- the combined amount of FCMAT's proposed special education charge of \$761,000 and its proposed facilities charge of \$235,000. If WCA were to pay those dollars into the District general fund, it would offset the *entire* amount of the basic aid deficit (after correction of the error above) -- and perhaps return it to an excess. FCMAT is thus counting these dollars -- and seeking to charge WCA for them -- twice.<sup>6</sup>

In short, FCMAT's projection of a basic aid deficit is replete with errors. Like the rest of its discussion and recommendations relating to WCA, it is entirely untrustworthy.

#### **IV. FCMAT's Allegation Of Special Education Discrimination Is False And Very Likely The Product Of Failure To Fact-Check Misinformation.**

The FCMAT report alleges that "WCA refuses to enroll students with IEPs [individualized education plans] that require an SDC [special day class]." (Report at p. 60.) This allegation is false. Willow Creek Academy has, and has always had, an inclusive policy and practice with respect to special education students generally and those with IEPs calling for special day class instruction specifically.

At the threshold, it is important to understand that all of Willow Creek's special education services are provided through a shared-services agreement with SMCSO, which is a common practice for charter schools that are considered "schools of the district" for purposes of special education services. Willow Creek does not operate its own SDC, resource program, speech therapy services, or occupational therapy services; instead SMCSO receives the special education funding for these students and provides any necessary services. Willow Creek does not conduct assessments to determine eligibility for special education. All of these services are provided by SMCSO personnel. Willow Creek does administer its own Student Study Team (SST) and 504 Team processes, as these are general education functions.

In 2014-15, SMCSO located its one SDC at the Willow Creek campus. There were fewer than 10 students enrolled in the SDC that year. In 2015-16, SMCSO established a second SDC at the same location. With the second class, there were between 12 and 20 students enrolled in SDCs. The classes were intended to serve any public school students in the District with a need for the program, whether they were enrolled at

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<sup>5</sup> Another potentially very large error is the \$1.2 million figure FCMAT includes for "restricted funding." This is deductible from overall revenues only to the extent the restriction dedicates the funding to a particular school. If this figure includes amounts not dedicated to Bayside MLK -- and certainly not if they are dedicated to WCA -- they should not be added to the charge FCMAT proposes to levy on WCA.

<sup>6</sup> This is, in fact, triple-counting. As noted, FCMAT double-counted the \$36,000 in special education costs it attributes to WCA. It is counting them again here -- for a third time.

Bayside/MLK or Willow Creek. For 2016-17, the District has relocated the SDCs to the Bayside/MLK campus.

Throughout this period, students with IEPs calling for SDC instruction were equally served without respect to whether their technical enrollment was at WCA or at Bayside MLK, and WCA never refused enrollment to any student based on any aspect of an IEP. To the contrary, in accordance with the principle of delivering needed services in the least restrictive environment, WCA supported and embraced decisions by IEP teams to fully mainstream SDC-eligible WCA students into the general student population, with supporting specialized academic instruction and additional services, when such was appropriate.

One reason that more students receiving SDC instruction were formally enrolled as Bayside/MLK students rather than Willow Creek students may be that SDC teachers were employees of the District, and the 180-day academic calendar observed by Bayside MLK (and the District) did not exactly align with the 176-day academic calendar observed by Willow Creek. In order to ensure that the students in the SDC came to school on the same days as their teachers, SMCS D's Special Education Director encouraged—but did not require—the SDC students to enroll at Bayside/MLK rather than WCA. Again, Willow Creek never refused to enroll a student based on the fact that they had an IEP, whether or not it included a requirement for SDC instruction. To be clear, the SDC was a District program that was housed at Willow Creek and open to any student who attended either Willow Creek or Bayside/MLK, based on the student's IEP team decision.

The FCMAT report's false allegation of exclusion implies that Willow Creek sought to separate SDC students from Willow Creek's student population. Willow Creek's active support for these students refutes any such suggestion. Willow Creek has always prioritized inclusion for all students with special needs, including students who attended the SDCs, whether or not those students were technically enrolled as Bayside/MLK students.

Over the two years that the SDCs were located on the Willow Creek campus, Willow Creek assigned all SDC students to general education "buddy classes" with whom they attended art, music, PE, and drama classes. They mainstreamed for lunch and recess regularly. In a few cases, SDC students were mainstreamed into academic classes, as well, in accordance with their IEP teams' recommendations.

In addition, Willow Creek staff regularly provided support for SDC students in various ways. For example, counselors responded when an SDC student was in crisis, and Willow Creek staff stepped up to help with coverage when SMCS D paraprofessionals were absent or in need of additional support. Willow Creek staff attended IEP meetings for students in the SDC in order to provide insight and learn more about how they could help students meet their IEP goals. Should the SMCS D opt to re-establish SDC classes at WCA and/or otherwise require support from Willow Creek, Willow Creek remains committed to support and facilitate inclusionary practices and to support the district's provision of services to students with exceptional needs.

The FCMAT report specifically and falsely alleges that out-of-district students "were [] not allowed to enroll in WCA," but that it is "unclear whether WCA's practice is simply to refuse enrollment in the charter school for out-of-district students who require an SDC, or whether they are referred to the district school and enroll there." (Report at 60.) Again, the allegation of exclusion is false and WCA's practice is not at all unclear. On the single occasion when an out-of-district student with an IEP specifying placement in an SDC applied to Willow Creek, the student was admitted. The family sought out Willow Creek based on the school's reputation for prioritizing inclusion; and the family was unhappy with the student's experience in an SDC in their home district elsewhere in Marin County. After the student enrolled at Willow Creek, the IEP team met and developed a plan to support the student using a combination of push-in and pull-out specialized academic instruction and speech therapy. The family reports that the student has flourished in this new model.

The false allegation of discrimination in the report was almost certainly the byproduct of the failure to conduct adequate research. FCMAT identifies three sources for its allegation of discrimination: (1) interviews with "multiple individuals" whose roles and knowledge are not described; (2) a purported statement by "WCA's representative" that it is "probably accurate" that SDC students were enrolled in the District program rather than WCA; and (3) a slide in a presentation that depicts an organizational chart showing no SDC students enrolled at Willow Creek.

The "multiple individuals" interviewed by FCMAT did not include either the District's Special Education Director or Willow Creek's then-Assistant Head of School, (the administrator who manages special education in collaboration with the District, according to Willow Creek's own organizational chart). With respect to the statement attributed to "the WCA representative" that it is "probably accurate" that SDC students are not enrolled at Willow Creek, FCMAT provided no context for that quotation. The fact is, however, that Willow Creek's Head of School at that time, the lone WCA representative interviewed, was not the administrator managing special education at the school, and he may have had only limited awareness of the District's practice (which WCA never sought to influence in any way) of seeking to align the schedules of SDC students with the schedules of their teachers. It is unfathomable why FCMAT failed to follow up with the Assistant Head of School or the Director of Special Education to get a more definitive answer than "probably accurate" before leveling such a grave allegation of discrimination.

Finally, the presentation slide that FCMAT relies upon as the third source for their allegation contained inaccurate information, which could have been easily corrected had the appropriate Willow Creek staff been interviewed. The fact is that there were students who were continuously enrolled at Willow Creek who did in fact attend the special day class, but who were not accounted for on the presentation slide FCMAT had relied on to make such allegation.

In short, the false allegation that Willow Creek systematically discriminates against special education students is very likely the byproduct of inadequate investigation. It is regrettable that such a serious charge was made without proper research, as it has

deeply affected the Sausalito-Marín City community and has portrayed Willow Creek in a false light. Nevertheless, Willow Creek will continue in its work of collaborating with the District to provide a high-quality, free and appropriate education to every student enrolled.

**V. FCMAT's Remaining Discussion Relating To WCA Also Contains Significant Errors And Unsupported Assertions.**

**A. FCMAT Omits Key Information From Its Discussion Out-of-District Students At WCA.**

Throughout its report, FCMAT suggests that the "diversion" of resources by WCA is exacerbated by the presence of out-of-district students at the school. The implication is that WCA is deliberately admitting out-of-district students because it increases WCA's budget: regardless of where a student lives, WCA is entitled to minimum funding for that student (currently about \$7900).

FCMAT neglects to mention, however, that, unlike traditional public schools, charter schools **are required by law to admit out-of-district students if the school has room**. Cal. Educ. Code. Sec. 47605(d). Only if there are more applications than seats can WCA favor in-district students. WCA follows the law and, as a result, approximately 22% of its students reside outside the District. Some of these students started as District residents and moved out of the Sausalito - Marin City area. Again, WCA cannot expel student because he or she changed residence location.

Despite WCA's legal obligation to admit out-of-district students, FCMAT repeatedly suggests imposing a financial penalty on WCA based on out-of-district enrollment. For example, it suggests that, while the District is obligated to provide "substantially rent-free" facilities to WCA (which is what allows the District to take back 3% of WCA's minimum funding in the form of a so-called "oversight fee"), "there is no requirement that the district provide rent-free space for the more than 25% of WCA's students who are from outside the school district's boundaries." (Report at 71.)

Like so many of FCMAT's statements, this one is again completely untethered from the relevant statute. Section 47613 of the California Education Code authorizes a 3% charge (instead of the 1% limit that would otherwise apply) only "if the charter school is able to obtain substantially rent free facilities from the chartering authority." It does not say "rent free facilities for the school's in-district students." Bear in mind that this is the same law that **requires** WCA to admit out-of-district students.

The report also implies that out-of-district students may be part of the alleged effort to "create a segregated school." Again, the facts refute any such implication. A majority WCA's out-of-district students, like the rest of the school, are people of color and nearly 40% are low income.

The fact is that WCA is a safety net for the county. As the law requires, it accepts students who live outside the district when there is room -- and many of these students are high need or special need students from other districts in Marin County. As noted,

some attend precisely because of WCA's reputation for inclusiveness. FCMAT's suggestion that WCA should be penalized for following the law and being inclusive is, again, the opposite of equity.

## **B. FCMAT's Lottery Discussion Is Misguided**

Under the law, admission to a charter school that receives more applications than available spaces "shall be determined by a public random drawing" -- that is, a lottery. (Cal Educ. Code Sec. 47605(d)(2)(B). FCMAT sought to review WCA's lottery processes because it was seeking an explanation for its conclusion, demonstrated above to be legally and factually false, that "WCA's enrollment data . . . are inconsistent with California Education Code and the terms of the charter . . ." (Report at 61.) In other words, FCMAT sought to determine whether there was something about WCA's lottery process that led to the imaginary pattern of segregation. Regrettably, FCMAT did not disclose to WCA when it made lottery inquiries via email that this error was the reason for its questions -- had it done so perhaps the destructive and false allegation would not have been made (not to mention sparing WCA staff the time spent collecting lottery data).

FCMAT did not conclude that anything in the lottery process led to the supposed racial imbalance in WCA's student population (though it did note that the lottery had not solved this non-existent problem). But it nonetheless offered two criticisms, one that is simply incorrect and one that is inconsequential -- and that it fails to note WCA has nonetheless offered to address.

First, FCMAT suggested that WCA may be out of compliance with one element the U.S. Department of Education's "Non-Regulatory Guidance handbook" for the federal Charter School Program. That handbook indicates that charter schools may give admission preference to the children of founders, teachers and staff (among others) so long as the children receiving this preference constitute "only a small percentage of the school's total enrollment." (Report at 61.) The handbook does not define "small percentage."

FCMAT indicates that WCA's preference policy "largely follows" the federal guidance, except that the students admitted under those preferences "may constitute more than a small percentage of WCA's total enrollment" because the WCA's categories are "more detailed" than the categories of other charter schools FCMAT has reviewed.<sup>7</sup>

This criticism is misguided because WCA does comply with the "small percentage" guidance: the number of students admitted through preferences is barely more than 5%.<sup>8</sup> FCMAT suggested that the percentage "may" not be small without ever inquiring

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<sup>7</sup> FCMAT also notes that these categories are more detailed in the policies on the WCA website than they are in the charter. WCA is certainly willing to work with the District to conform the charter to the policies.

<sup>8</sup> Notably, it is not clear that this guidance applies to WCA at all. The handbook's stated purpose to address questions about the federal Charter School Program, which provides start-up funding to charter schools. WCA is not participating in that program.

of WCA what the percentage actually is. While this is consistent with its approach throughout the report, it remains troubling that FCMAT bases findings or recommendations on conjecture rather than evidence.

FCMAT's second criticism is that WCA does not have a systematic method for tracking the reasons why families elect not to attend WCA after they have been offered admission. According to FCMAT, this should be done to "help ensure that the lottery . . . does not contribute to a deficiency in diversity or in services to disadvantaged students." (Report at 62.) Of course, as explained, WCA does not have such a deficiency. In any case, while FCMAT never disclosed why it sought an explanation for families' decisions not to attend WCA, it also did not acknowledge in its report that WCA expressed a willingness to track this information when FCMAT inquired. While the factual predicate for this suggestion is lacking, WCA will make reasonable efforts to keep records of this information to the extent it is reasonably available.

### **C. Discipline**

FCMAT reports "defiance suspension data for WCA shows 19 out-of-school suspensions in 2014-15" and claims that there was significantly disproportionate discipline of Latino and African American students in that year. With no additional analysis of Willow Creek's discipline data and no knowledge of Willow Creek's discipline practices or professional development related to discipline, FCMAT concludes: "Proper oversight by the district would have included review of discipline data for conformity with the charter petition, and it is likely the disproportionate rate of suspension for students of color could have been addressed. However, this did not occur." (Report at 86.)

Again, FCMAT has its data wrong. Willow Creek records show a total of 20 suspensions in 2014-15, only two of which were attributable to defiance alone -- not 19 as FCMAT reports. In fact, Willow Creek has focused significant attention on its discipline data and has made remarkable strides toward addressing students' social-emotional needs productively and proactively. Willow Creek staff members regularly engage in professional development focused on analyzing discipline data, including disproportionate discipline statistics for students of color. It is critical to understand that suspensions attributable to defiance alone are almost non-existent at Willow Creek; the school's culture has already shifted significantly toward discipline practices that are supportive rather than punitive.

In 2013-14, Willow Creek fully committed to implementing restorative practices as the touchstone for discipline school-wide. Both suspension and referral rates plummeted for the school overall as well as for each subgroup, including Latino and African American students.

This commitment included hiring two full-time staff members, called Student Support Specialists, and establishing the Maya Angelou Center for Restorative Justice, an on-campus space for reflection, family group conferencing, and affinity group meetings. Willow Creek's LCAP documents for 2015-16 and 2016-17 specifically cite disaggregated discipline data and establish goals focused on further developing the

restorative practices program. Both LCAP documents highlight the role of the Student Support Specialists and allocate funding for these critically important positions. Willow Creek has not waited for the District or any other agency to exercise oversight with regard to discipline; the school, in partnership with its community, has already taken "productive and proactive" steps to support the social-emotional needs of students.

FCMAT might have examined any of the following sources to develop a fuller and more accurate picture of discipline at Willow Creek:

- Willow Creek's longitudinal discipline data
- LCAP documents prepared with community involvement in 2014 and 2015
- Copies of discipline policies
- Family letters that explain restorative practices and the role of Student Support Specialists
- Middle school campus climate survey data
- Family survey data

Each of these sources tells a story of dramatic improvement, even as each notes areas where additional work is needed.

### **Conclusion**

As it relates to Willow Creek Academy, the FCMAT report is replete with errors. Its fundamental premises -- both factual and legal -- are demonstrably wrong. Willow Creek is an extraordinarily diverse and inclusive school that educates a majority of the high-need and Marin City students in the Sausalito Marin City School District. FCMAT's assertions to the contrary to are simply false. Similarly, FCMAT's assertion that the public school students attending Willow Creek should be a distant secondary concern to the District Board is inconsistent with California law, sound policy and principles of equity. Finally, it is simply untrue that the District Board has favored Willow Creek over Bayside MLK in the allocation of financial resources. The aspects of the report relating to Willow Creek Academy should be retracted by FCMAT and/or rejected by the Marin County Office of Education as thoroughly incorrect as matter of law and fact and therefore wholly unreliable.