

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

lab-csd-nov23item02

# California State Board of Education November 2023 Agenda Item #18

## Subject

Appeal of the Denial of a Petition for the Establishment of a Classroom-Based Charter School Pursuant to California *Education Code* Section 47605(k)(2): Review of the Appeal and Documentary Record, and Decision to Affirm or Reverse the Yuba City Unified School District’s and the Sutter County Board of Education’s Determinations of the New Pacific School - Yuba City Petition.

## Type of Action

Action, Information, Public Hearing

## Background

Pursuant to California *Education Code* (*EC*) Section 47605(a), New Pacific School - Yuba City (NPSYC or Petitioner) submitted its petition, which proposes a new transitional kindergarten through grade twelve charter school, to the Yuba City Unified School District (YCUSD or District). The YCUSD denied the petition on August 23, 2022, by a vote of five to zero, citing the following findings (Appeal Document 3, pp. 15–31):

* “The petition presents an unsound educational program” (*EC* Section 47605[c][1]).
* “The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition” (*EC* Section 47605[c][2]).
* “The petition does not contain the number of signatures required by *EC* Section 47605(a)” (*EC* Section 47605[c][3]).
* “The petition does not contain reasonably comprehensive descriptions of Elements (A) through (O) of *EC* Section 47605(c)(5).”

NPSYC appealed the District’s denial to the Sutter County Board of Education (SCBOE or County), pursuant to *EC* Section 47605(k)(1)(A)(i), which states that 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 SCBOE voted to deny the petition on January 18, 2023, which passed by a vote of three to zero.

Pursuant to *EC* Section 47605(k)(2), if the county board of education denies a petition to establish a charter school, the petitioner may appeal that denial to the California State Board of Education (SBE). NPSYC submitted its petition to the SBE on   
February 17, 2023.

## Recommendation

The California Department of Education (CDE) recommends that the SBE affirm the determination of the YCUSD to deny the petition to establish NPSYC, pursuant to *EC* Section 47605(k)(2)(E), as the District’s findings for denial were made pursuant to *EC* Section 47605(c) and are supported by evidence in the documentary record, and thus were not an abuse of discretion that would support reversal of the District’s determination to deny the NPSYC petition.

**Legislative Update to Charter School Appeals**

Senate Bill 114 (Chapter 48, Statutes of 2023) clarifies that, consistent with the CDE’s, SBE’s, the Department of Finance, and the Legislature’s interpretation of the law,[[1]](#footnote-1) the role of the SBE under *EC* Section 47605(k)(2)(E), is as follows:

If the state board hears the appeal, the state board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion **by each of the governing board of the school district and the county board of education**. (emphasis added)

SB 114 also clarifies the SBE’s standard of review:

Abuse of discretion is the most deferential standard of review, under which the state board must give deference to the decisions of the governing board of the school district and the county board of education to deny the petition.

SB 114’s update to *EC* Section 47605(k)(2)(E) does not represent a change in how charter school appeal law is applied. On July 5, 2023, the California State Senate, via unanimous consent, printed a letter in its journal that states “the changes in *EC* Section 47605(k)(2)(E) are clarifying in nature and declarative of current law.”[[2]](#footnote-2)

**Summary of Appeal**

Pertaining to the YCUSD’s denial of its petition, NPSYC alleges the following in its written submission (Appeal Document 1):

* “The District Board adopted findings of fact for denial that were unlawful” (Appeal Document 1, pp. 28–30).
* “The District Board adopted findings of fact for denial that were entirely lacking in evidentiary support” (Appeal Document 1, pp. 30–33).

Pertaining to the SCBOE’s denial of its petition, NPSYC alleges the following in its written submission:

* “The County Board’s action to deny the charter petition appeal without any written findings was unlawful on its face” (Appeal Document 1, pp. 9–12).
* “The County Board’s unapproved post hoc written findings do not match the verbal findings from the board meeting and do not form legal bases for denial, further cementing this unlawful action” (Appeal Document 1, pp. 12–21).
* “The County Board’s denial of the charter petition appeal was procedurally unfair” (Appeal Document 1, pp. 21–22).
* “The County Board’s unapproved, post hoc reasons for denial were entirely lacking in evidentiary support” (Appeal Document 1, pp. 22–28).
* “The County Board meeting was unlawful because it did not provide a fair and impartial hearing process on the charter petition” (Appeal Document 1, pp. 33–34).

**Written Opposition**

Pursuant to *EC* Section 47605(k)(2)(C), the YCUSD submitted a written opposition to NPSYC’s appeal with specific citations to the documentary record detailing how the YCUSD did not abuse its discretion in denying the petition (Appeal Document 6). The District’s opposition argues the following in response to NPSYC’s allegations:

* “The District’s adopted findings were lawful” (Appeal Document 6, pp. 5–6).
* “The District’s adopted findings are supported by the evidence” (Appeal Document 6, pp. 7–8).

The SCBOE did not submit a written opposition to NPSYC’s appeal.

## California Department of Education’s Review

Under *EC* Section 47605(k)(2)(E) if the SBE hears an appeal, it (1) may affirm the determination of the governing board of the school district or county board of education, or both, or (2) may reverse **only** upon a determination that there was an abuse of discretion by each of the governing board of the school district and the county board of education.

After reviewing the documentary record and supporting documentation submitted by the parties to this appeal, the CDE has determined that the District made written factual findings in accordance with *EC* Section 47605(c) and that the District’s findings are supported by evidence in the record.

For example, the District’s finding that the NPSYC petition presents an unsound educational program is supported by specific facts found in the NPSYC petition, including, but not limited to, the petition’s lack of detail related to daily instructional schedules, the inadequacy of the staffing plan proposed for the projected student enrollment, and the petition’s lack of information related to meeting state requirements for transitional kindergarten (Appeal Document 3, pp. 18–19). The District’s finding that the petitioners are demonstrably unlikely to successfully implement the program is supported by specific facts found in the NPSYC petition, including, but not limited to, the petition’s lack of information and assumptions related to projected facilities costs, the petition’s projection of attendance percentage higher than the district average, and the proposed budget’s reliance on significant grant funding from the charter management organization (Appeal Document 3, pp. 23–25).

While NPSYC challenged the conclusions made by the YCUSD in its appeal, NPSYC has not refuted the evidence relied on by the District in their findings for denial.

A comprehensive review of the NPSYC appeal, including the District’s written oppositions, and the District’s findings regarding the NPSYC petition, is provided as Attachment 1.

Because the SCBOE did not make written factual findings setting forth specific facts to support one or more of the findings as required by *EC* Section 47605(c), the CDE does not recommend the SBE affirm the decision of the SCBOE. The SCBOE’s resolution to deny the NPSYC charter petition is accompanied by an attached exhibit that includes written findings; however, the documentary record does not indicate that these written findings were a part of any action taken by the SCBOE. Pursuant to *EC* sections 47605(c) and 47605(k)(1)(A)(ii), the county board of education must make written factual findings to deny the petition. The SCBOE did not comply with this requirement. Accordingly, consideration of the documentary record submitted in support of the SCBOE’s denial of the NPSYC charter petition has been excluded from the CDE’s analysis in this item.

## Conclusion

Based on its analysis of the documentary record, the CDE has determined that the YCUSD made written factual findings in accordance with *EC* Section 47605(c) and that the District’s findings to deny the NPSYC petition are supported by evidence in the record. Therefore, the CDE recommends that the SBE affirm the District’s determination to deny the NPSYC petition.

As the SCBOE did not make written factual findings, the CDE recommends the SBE not affirm its decision to deny the NPSYC petition.

As set forth above, there is evidence to support the District’s findings. Therefore, the CDE could not find an abuse of discretion by the District. Under *EC* Section 47605(k)(2)(e), notwithstanding the actions of the SCBOE, the lack of an abuse of discretion by the District means that there is no basis to support a recommendation of reversal of the YCUSD’s determination to deny the NPSYC petition.

## Appeal Documents

The following documents were submitted as a part of the NPSYC appeal:

* **Appeal Document 1:** NPSYC written submission, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a1.pdf>
* **Appeal Document 2:** NPSYC petition, as denied by the YCUSD and the SCBOE, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a2.pdf>
* **Appeal Document 3:** Documentary record from the YCUSD, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a3.pdf>
* **Appeal Document 4:** Documentary record from the SCBOE, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a4.pdf>
* **Appeal Document 5:** NPSYC supporting documentation, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a6.pdf>
* **Appeal Document 6:** Written opposition from the YCUSD, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a5.pdf>

## Attachment

* **Attachment 1:** California Department of Education Summary of New Pacific School - Yuba City Appeal (11 Pages)

1. Department of Finance, 2023–24 State Budget Enacted on June 27, 2023, “Enacted Budget Summary: K-12 Education,” at p. 17 (“Abuse of Discretion Clarification—**Consistent with State Board of Education implementation of current law**, the Budget includes statute clarifying and confirming that the State Board of Education may reverse the decisions of a school district governing board and county board of education to deny a charter petition only upon a determination that there was an abuse of discretion by each of the school district governing board and the county board of education.”] (emphasis added)); (Sen. Nancy Skinner, letter to Sect. of the Sen. (July 5, 2023) 101 Sen. J. (2023-2024 Reg. Sess.) p. 1889 [“Senator Skinner asked for, and was granted, unanimous consent that the following letter be printed in the Journal. ‘I am providing this letter to the journal to clarify the Legislative intent of Section 41 of SB 114 (Committee on Budget and Fiscal Review) related to the State Board of Education’s abuse of discretion determinations. **The changes in EC 47605(k)(2)(E) are clarifying in nature and declarative of current law.**’”] (emphasis added).) [↑](#footnote-ref-1)
2. Ibid. [↑](#footnote-ref-2)