

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

lab-csd-nov23item01

# California State Board of Education November 2023 Agenda Item #17

## 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): Consideration of Evidence to Hear or Summarily Deny the Appeal of New Pacific School - Yuba City, which was denied by the Yuba City Unified School District and the Sutter County Board of Education.

## Type of Action

Action, Information

## Background

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

* 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. 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 hear the NPSYC appeal. This recommendation is based upon the CDE’s review of NPSYC’s written submission and the documentary record, which set out sufficient evidence to hear the appeal.

## Advisory Commission on Charter Schools Recommendation

At its June 13, 2023, meeting, the Advisory Commission on Charter Schools (ACCS) accepted the CDE recommendation and moved to recommend that the SBE hear the NPSYC appeal. The motion passed unanimously.

The notice for the June 13, 2023, ACCS meeting, NPSYC’s appeal submission, and the documentary record are located on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice061323.asp>.

**Role of the California State Board of Education**

Pursuant to *EC* Section 47605(k)(2)(E), the role of the SBE is as follows:

The SBE shall either hear the appeal or summarily deny review of the appeal based on the documentary record. If the SBE hears the appeal, the 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.

In this item, the SBE will determine whether to hear NPSYC’s appeal or summarily deny review of the appeal. If the SBE decides to hear the appeal, then, at its November 8–9, 2023, meeting, the SBE will review the appeal pursuant to *EC* Section 47605(k)(2)(E). If the SBE determines that there are no grounds to hear the appeal, then it may summarily deny the appeal and the decisions of the district and county board of education will stand.

**Appeal Submission**

NPSYC submitted the following items to the SBE on February 7, 2023, pursuant to *EC* Section 47605(k)(2)(A):

* A written submission of NPSYC’s appeal, which includes allegations of abuse of discretion by governing boards of the YCUSD and the SCBOE (Appeal Document 1)
* NPSYC’s charter petition (Appeal Document 2)
* The documentary record from the YCUSD (Appeal Document 3)
* The documentary record from the SCBOE (Appeal Document 4)
* Supporting documentation from NPSYC (Appeal Document 5)

**Summary of Appeal**

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

* 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 SCBOE’s denial of its petition, NPSYC states 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).

## Conclusion

NPSYC has submitted all required documents and met all timelines, pursuant to *EC* Section 47605(k)(2)(A).

Based on the CDE’s review of NPSYC’s written submission, and the findings and documentary record from YCUSD and SCBOE, the CDE finds that the appeal presents sufficient evidence for the SBE to hear the appeal, pursuant to *EC* Section 47605(k)(2)(E).

## 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 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 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>

## Attachment

None.