

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

lab-csd-sep23item02

# California State Board of EducationSeptember 2023 AgendaItem #10

## 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 Los Angeles Unified School District’s and the Los Angeles County Board of Education’s Determinations of the Vista Legacy Global Academy Petition.

## Type of Action

Action, Information, Public Hearing

## Background

Pursuant to California *Education Code* (*EC*) Section 47605(a), Vista Legacy Global Academy (VLGA or Petitioner) submitted its petition, which proposes a new grade nine through grade twelve charter school, to the Los Angeles Unified School District (LAUSD or District). The LAUSD denied the petition on November 15, 2022, by a vote of five to one, citing the following findings (Appeal Document 3, pp. 1123–1138):

* Petitioners are demonstrably unlikely to successfully implement the program set forth in the petition (*EC* Section 47605[c][2]).
* The petition does not contain reasonably comprehensive descriptions of all of the required elements set forth in *EC* (*EC* Section 47605[c][5]).
* The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate (*EC* Section 47605[c][7]).

VLGA appealed the District’s denial to the Los Angeles County Board of Education (LACBOE 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 LACBOE denied the petition on March 14, 2023, by a vote of four to three, citing the following findings (Appeal Document 4, pp. 8–21):

* Petitioners are demonstrably unlikely to successfully implement the program set forth in the petition (*EC* Section 47605[c][2]).
* The petition does not contain reasonably comprehensive descriptions of all of the required elements (*EC* Section 47605[c][5]).
* The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate (*EC* Section 47605[c][7]).

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). VLGA submitted its petition to the SBE on April 13, 2023.

## Recommendation

The California Department of Education (CDE) recommends that the SBE affirm the determinations of the LAUSD and the LACBOE to deny the petition to establish VLGA, pursuant to *EC* Section 47605(k)(2)(E). Both the District’s and the County’s determinations were made pursuant to *EC* Section 47605(c) and are supported by evidence in the documentary record, and thus there was no abuse of discretion.

**Legislative Update for Charter School Appeals**

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

**Summary of Appeal**

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

* “The factual findings adopted by the district board are not supported by substantial evidence in light of the entire record” (Appeal Document 1, pp. 15–16).
* “The District abused its discretion by acting unlawfully and in a procedurally unfair manner, by using an unlawfully burdensome definition of “community impact,” and by imposing requirements found nowhere in the Charter Schools Act” (Appeal Document 1, pp. 16–17).

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

* “Statutory finding (c)(2) was arbitrary and capricious, in that the factual findings are not supported by evidence in the record. The county board erroneously concluded, without substantial evidence, that Vista is unlikely to successfully implement the program. The evidence that the county board appears to have relied upon was demonstrably incorrect, and/or not contained in or supported by the record, including incorrect conclusions about the board of directors, financial impact to LAUSD, and curriculum” (Appeal Document 1, pp. 8–11).
* “The county board acted in an arbitrary manner without evidentiary support when it adopted statutory finding (c)(5). Evidence in the record shows that the petition does contain reasonably comprehensive descriptions of all required elements” (Appeal Document 1, pp. 11–14).
* “The county board acted unlawfully when it failed to provide a de novo review and relied on undue deference to LAUSD in adopting statutory finding (c)(7). The county board did not adopt independent findings on community impact and has certified a record without evidence supporting this statutory finding” (Appeal Document 1, pp. 14–15).
* “LACBOE’s hearing was procedurally infirm and unfair. The county board failed to proceed in a manner required by law when it did not allow a board member to obtain action on her effort to amend the motion to deny the petition” (Appeal Document 1, pp. 14–15).

**Written Oppositions from the District and County**

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

* “Petitioner failed to demonstrate LAUSD abused its discretion—the LAUSD Board denied the petition consistent with the [Charter Schools] Act” (Appeal Document 6, pp. 7–14).
* “Petitioner failed to adequately cite to the documentary record” (Appeal Document 6, pp. 14–15).
* “The SBE must affirm the LAUSD Board’s decision and deny the petition, regardless of whether it affirms or denies the County Board’s decision” (Appeal Document 6, pp. 15–16).

Pursuant to *EC* Section 47605(k)(2)(C), LACBOE submitted a written opposition to VLGA’s appeal with specific citations to the documentary record detailing how LACBOE did not abuse its discretion in denying the petition (Attachment 3). LACBOE’s opposition argues the following in response to VLGA’s allegations:

* “LACBOE’s finding that Vista was unlikely to successfully implement its program was based on its review of the evidence, and does not constitute an abuse of discretion” (Appeal Document 7, pp. 4–7).
* “LACBOE’s finding that the petition did not contain reasonably comprehensive descriptions of required elements was based on its review and analysis of the petition, and did not constitute an abuse of discretion” (Appeal Document 7, pp. 7–8).
* “Vista’s appeal fails to demonstrate any abuse of discretion in LACBOE’s findings regarding community impact” (Appeal Document 7, pp. 8–10).
* “Vista’s position that LACBOE was unable to act on a motion that had been moved and seconded without first voting on a conflicting motion is entirely without legal support, and would lead to absurd results” (Appeal Document 7, pp. 10–12).

## 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 both the District and the County made written factual findings in accordance with *EC* Section 47605(c) and that the District’s and the County’s findings are supported by evidence in the record.

For example, the District’s finding that the VLGA petitioners are demonstrably unlikely to successfully implement the program set forth in the petition is supported by specific facts found in the documentary record, including, but not limited to, details of the proposed English Language Development program, factual omissions pertaining to the petitioner’s existing charter schools and governance structure, and the performance and operational demands of the petitioner’s existing charter schools (Appeal Document 3, pp. 1126–1129).

Additionally, the County’s finding that the charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate is supported by specific facts found in the VLGA petition, including, but not limited to, enrollment data from and programs available at nearby districts and charter schools (Appeal Document 3, pp. 19–20).

In its written submission, VLGA challenges the conclusions made by the District and the County in its appeal; however, VLGA has not refuted the evidence relied on by the District or the County in their findings for denial. Rather, VLGA argues for the SBE to exercise its independent judgment in reviewing the evidence in the record, which is not permitted under the abuse of discretion standard.

VLGA’s written submission also includes procedural allegations against both the District and the County. VLGA alleges that LAUSD’s requirement that charter petitioners submit a Community Impact Assessment with their petition constitutes an abuse of discretion. In its review of the documentary record, the CDE did not find any procedural violations related to the District’s determination to deny the VLGA charter.

VLGA also alleges that the LACBOE abused its discretion in denying a board member’s request to amend the motion to deny and approve the VLGA charter. In its review of the documentary record, the CDE did not find any procedural violations related to the County’s determination to deny the VLGA charter.

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

## Conclusion

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

Both the District’s and the County’s determinations to deny the VLGA petition were made pursuant to *EC* Section 47605(c) and are supported by evidence in the documentary record, and thus there was no abuse of discretion by the District or the County. Under *EC* Section 47605(k)(2)(e), the lack of an abuse of discretion by both the District and the County means that there is no basis to support a recommendation of reversal of the LAUSD’s and LACBOE’s determinations to deny the VLGA petition.

**Appeal Documents**

The following documents were reviewed by CDE staff as a part of the VLGA appeal:

* **Appeal Document 1:** Vista Legacy Global Academy Written Submission, which is available on the August 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug23item01a1.pdf>
* **Appeal Document 2:** Vista Legacy Global Academy Petition, as denied by the Los Angeles Unified School District and the Los Angeles County Board of Education, which is available on the August 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug23item01a2.pdf>
* **Appeal Document 3:** Documentary Record from the Los Angeles Unified School District, which is available on the August 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug23item01a3.pdf>
* **Appeal Document 4:** Documentary Record from the Los Angeles County Board of Education, which is available on the August 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug23item01a4.pdf>
* **Appeal Document 5:** Vista Legacy Global Academy Supporting Documentation, which is available on the August 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug23item01a5.pdf>
* **Appeal Document 6:** Written Opposition from the Los Angeles Unified School District, which is available on the August 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug23item01a6.pdf>
* **Appeal Document 7:** Written Opposition from the Los Angeles County Board of Education, which is available on the August 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug23item01a7.pdf>

## Attachment

* **Attachment 1:** California Department of Education Summary of Vista Legacy Global Academy Appeal (18 Pages)
1. As set forth in the State Superintendent of Public Instruction’s June 30, 2022, Information Memoranda “Charter School Appeals to the California State Board of Education: Abuse of Discretion Review Standard,” at p. 2. [↑](#footnote-ref-1)