

California Department of Education  
Executive Office  
SBE-003 (REV. 11/2017)  
ssb-csd-jan18item02

# California State Board of Education January Year Agenda Item #23

## Subject

Petition for the Establishment of a Charter School Under the Oversight of the State Board of Education: Consideration of Perseverance Preparatory School, which was denied by the San Jose Unified School District and the Santa Clara County Board of Education.

## Type of Action

Action, Information, Public Hearing

## Summary of the Issue

On May 18, 2017, the San Jose Unified School District (SJUSD) voted to deny the petition for Perseverance Preparatory School (PPS) by a unanimous vote of five to zero.

On August 16, 2017, the Santa Clara County Board of Education (SCCBOE) voted to deny the petition of PPS by a vote of four to two with one member absent.

Pursuant to California *Education Code* (*EC*) Section 47605(j), petitioners for a charter school that have been denied at the local level may petition the State Board of Education (SBE) for approval of the charter, subject to certain conditions. The PPS petitioner submitted an appeal to the SBE on September 28, 2017.

## California Department of Education Recommendation

The California Department of Education (CDE) proposes to recommend that the SBE hold a public hearing to approve the request to establish PPS, a grade five through grade eight charter school, for a five-year term effective July 1, 2018, through June 30, 2023. Upon fulfilling all specified conditions within the established timelines, PPS shall be considered a charter authorized under the oversight of the SBE based on the CDE’s findings pursuant to *EC* sections47605(b)(1), 47605(b)(2), 47605(b)(3), 47605(b)(4), 47605(b)(5), 47605(b)(6), and *California Code of Regulations*, Title 5 Section 11967.5.1. The meeting notice for the December 7, 2017, Advisory Commission on Charter Schools (ACCS) meeting is located on the SBE ACCS Web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice120717.asp>.

The CDE recommends the following conditions to be met as outlined and prior to PPS opening for operation in 2018–19:

* **By January 30, 2018,** provide evidence that the PPS Board has accepted the SBE conditions of authorization.
* **By February 15, 2018,** the PPS Board will provide the CDE with a revised charter petition containing the necessary changes needed to reflect the SBE as the authorizing entity.
* **By May 15, 2018,** the PPS Board will provide the CDE with verifiable and substantive evidence that PPS has received the funding anticipated from Silicon Schools Fund.
* **By May 15, 2018,** the PPS Board will provide the CDE with a fully executed facility lease agreement.
* **By June 15, 2018,** the PPS Board will provide the CDE with a revised 2018–19 budget, with complete narrative and assumptions.

## Advisory Commission on Charter Schools Recommendation

The ACCS considered the PPS petition for establishment at its December 7, 2017, meeting. The ACCS moved staff recommendation to approve the PPS petition for establishment with conditions. The motion passed unanimously.

## Brief History of Key Issues

The CDE received a petition for establishment from PPS on September 28, 2017.

PPS plans to operate a grade five through grade eight charter school. The mission of PPS is to prepare scholars through rigorous academics, targeted instruction, and service learning for a life of ethical leadership and scholarly success. PPS will ensure that its graduates are equipped with twenty-first century skills and knowledge to ensure every pupil can succeed in a post-secondary school and go forth to become leaders with conviction.

The PPS petitioner proposes to serve 128 pupils in grade five in the 2018−19 school year. PPS will then expand their services each year over the five year term to 256 pupils in grade five and grade six in 2019−20, 384 pupils in grade five through grade seven in 2020−21, and 512 pupils in grade five through grade eight in 2021−22, at which time they will meet their grade level goal.

In considering the PPS petition for establishment, CDE staff reviewed the following:

* PPS charter petition for establishment (Attachment 3 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a3.pdf>).
* Educational and demographic data of schools where PPS pupils would otherwise be required to attend (Attachment 2 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a2.xls>).
* PPS budget and financial projections (Attachment 4 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a4.xls>).
* SJUSD findings for denial of the PPS petition and the PPS response (Attachment 5 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a5.pdf>).
* SCCBOE findings for denial of the PPS petition and the PPS response (Attachment 6 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a6.pdf>).
* PPS letter to the SBE dated September 23, 2017, containing the description of changes to the PPS petition on appeal to the SBE (Attachment 7 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a7.pdf>).
* PPS Articles of Incorporation (Attachment 8 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a8.pdf>).
* PPS Bylaws (Attachment 9 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a9.pdf>).
* PPS budget narrative and assumptions (Attachment 10 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a10.pdf>).
* PPS Draft Student and Family Handbook (Attachment 11 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a11.pdf>).
* Silicon Schools’ letter to the SBE regarding start-up funding for PPS of $200,000 (Attachment 12 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a12.pdf>).

### Ability to Successfully Implement the Intended Program

The CDE finds that the PPS petitioner is demonstrably unlikely to successfully implement the intended program as the petitioner has presented an unrealistic financial and operational plan for the proposed charter school. However, this finding would be resolved if the petitioner is able to present evidence of the receipt of the funding included in the budget from Silicon Schools Fund, prior to opening.

#### Budget

The CDE reviewed the PPS projected budget and multi-year fiscal plan and concludes that the financial plan is not fiscally sustainable due to negative ending fund balances of $215,991 and $69,919 with no reserves for fiscal years (FYs) 2018–19 and 2019–20, respectively. This is largely because the CDE excluded $200,000 in anticipated grant funding from Silicon Schools Fund. The CDE is aware that the petitioner has a commitment letter from Silicon Schools Fund for funding; however, the commitment letter does not obligate Silicon Schools Fund to provide this funding. The CDE finds that relying on this funding presents a risk to the fiscal viability of PPS.

The CDE notes that PPS has budgeted rent at $6 per square foot for 15,030 square feet in the first year, based on other Bay Area Proposition 39 (Prop. 39) agreements. In 2018−19, the projected rent is $90,180. After 2018−19, an additional 85 square feet per pupil, or 2,720 square feet per classroom, is added annually.

The PPS budget states that rental expense is $166,340 and $177,220 for FYs 2020−21 and 2021−22, respectively (Attachment 4 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a4.xls>). However, the CDE’s analysis calculates the PPS cost for rental expense to be $220,000 and $286,000 for the FYs 2020−21 and 2021−22, respectively. The CDE finds that the PPS multi-year projected budget appears to understate the rental expense by $54,400 and $108,000 in FYs 2020–21 and 2021−22, respectively.

The CDE notes that PPS may not have at the beginning of the 2018–19 school year, an SJUSD Board approved Prop. 39 facility agreement and therefore, may need to find a facility to rent or lease at the budgeted amount of $6 per square foot. The CDE researched the current market rate for a 15,000 square foot facility in the 95112 and 95126 zip code areas (<http://www.loopnet.com/for-lease/san-jose-ca-95126/?view=list&e=u>), and notes that the PPS budgeted amount to rent or lease is understated with regard to comparable commercial property in the San Jose area.

The CDE finds that in FY 2020–21 the PPS projected budget has a positive ending fund balance. However, the CDE notes that the FY 2020–21 positive ending fund balance projection is based on the assumption that PPS will gain 128 pupils and has adequately estimated facility costs. Furthermore, if PPS does not receive the grant funding PPS is anticipating from the Silicon Valley Fund, PPS may need to borrow to make up the deficits the CDE projects for the first two years of operation. The resulting long-term debt costs will threaten the long-term fiscal viability of PPS, even in the years the CDE projects positive ending fund balances.

### District and County Office of Education Findings

On May 18, 2017, the SJUSD denied the PPS petition based on the following findings (Attachment 5 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a5.pdf>):

* The petition fails to contain a reasonably comprehensive description of the proposed educational program.
  + The petition does not provide a clear and rational description of how the classroom teaching structure for grade six through grade eight will impact pupil education.
  + The petition is not clear how subject matter content would be divided or assigned among teachers.
  + The petition fails to set forth specific credentialing requirements for teachers.
  + The petition does not contain a reasonable, comprehensive description of the rationale for choosing the grade five through grade eight structure.
  + The petition incorrectly lists the preferences for the lottery drawing for enrollment to be current pupils of PPS, then siblings of PPS pupils.
  + The petition fails to contain a reasonably comprehensive description of when restorative justice would be used.
  + The petition is inconsistent in the language regarding grounds for discipline within the PPS Comprehensive School Safety Plan, the PPS Student and Family Handbook, and the PPS petition.
* The petition presents an unsound educational program for the pupils to be enrolled in PPS.
  + The petition is not clear regarding how pupils would be offered important academic subjects and identified enrichment courses, such as leadership, technological literacy, physical education, health, and visual and performing arts.
  + The petition is not clear regarding sufficient time for instruction of English learners (ELs).
  + The petition does not reference local district or Special Education Local Plan Area practices and policies to incorporate during the time that PPS assumes school of the district status for special education purposes.
* The petitioner is demonstrably unlikely to successfully implement the program.
  + The petition proposes to add an additional 512 middle school seats to the SJUSD, in addition to the approximate 190 seats provided by Sunrise Middle School, 190 seats provided by ACE Charter Middle School [sic], and 500 seats provided by Downtown College Prep Middle School. PPS waitlists, cited by the PPS petition as evidence of demand, are inapplicable since PPS does not involve middle school programs serving the grade level configuration that the PPS petition proposes. Therefore, there is no evidence that PPS-cited programs demonstrate demand in the grade levels claimed by PPS.
* The petition does not contain reasonably comprehensive descriptions of all of the required elements of a charter petition.
  + The petition fails to contain a reasonably comprehensive description of a proposed educational program that is innovative or distinct.
  + The petition fails to explain why the program has chosen to align as a grade five through grade eight school, and to provide a reasonably comprehensive description of PPS classroom schedule and teacher assignment structure.
  + The petition is not clear whether instruction for grade six through grade eight will follow a departmentalized block schedule, or self-contained structure.
  + The petition does not contain a reasonably comprehensive description of how it would deliver the proposed course of study and meet credentialing requirements within the proposed, loosely defined, classroom schedule structure.
  + The petition does not contain a reasonably comprehensive description of how PPS would offer instruction beyond the core subject matters, such as foreign language, physical education, health, and visual and performing arts, within the proposed classroom and teaching structure.
  + The petition is demonstrably unlikely to successfully implement the program set forth due to the existence of three charter middle schools already operating in the SJUSD.
  + The petition’s plan to offer 403b plans to employees, rather than California State Teacher Retirement System or California Public Employee Retirement System, will hurt PPS efforts to recruit qualified employees.
  + The petition’s health and safety section fails to meet legal requirements since the PPS standards for reporting suspected child abuse violate existing criminal law and inadequately protect children.
  + The petition calls for a public random drawing, with applicants given preference as follows:

1. Pupils currently enrolled at PPS
2. Siblings of current PPS pupils (second year forward)
3. Children of current staff
4. In-district pupils
5. All other pupils

*EC* Section 47605 (d)(2)(B) requires that preference will be extended to pupils who reside in the SJUSD. PPS gives preference to pupils of current staff over SJUSD pupils, and is therefore unlawful.

* + The petition fails to contain a reasonably comprehensive description of when restorative justice would be used, as opposed to the formal disciplinary procedure set forth in the PPS petition and appendices. The Re-entry Circle potentially dovetails with the PPS suspension procedure. PPS exposes itself to allegations of differential or discriminatory treatment if it chooses different disciplinary approaches for two different pupils without well-defined criteria for invoking both.

On August 16, 2017, the SCCBOE denied the PPS petition on appeal based on the following findings (Attachment 6 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a6.pdf>):

* The petition presents an unsound educational program for the pupils to be enrolled in PPS.
  + The petition violates the affirmation not to charge tuition by mandating the purchase of school uniforms.
  + The petition lacks clarity on the implementation of the proposed rotational model across and between grade levels.
  + The petition lacks clarity and understanding of developing sound plans for EL pupils and pupils with disabilities.
  + The petition does not include a reasonably comprehensive description of measurable student outcomes.
  + The petition does not include a reasonably comprehensive description of the methods by which pupil progress in meeting outcomes will be measured.
  + The petition plan fails to provide sufficient information regarding academics, governance, and budget to substantiate all of the required elements for a sound educational program.
* The petitioner is demonstrably unlikely to successfully implement the program set forth in the petition.
  + The petition lacks knowledge and understanding of charter school laws.
  + The petition fails to describe any significant parent involvement in PPS governance.
  + The petition has significant discrepancies with the stated job requirements and qualifications for staff compared to the roles defined in the petition.
  + The petition language regarding admission requirements is confusing, incomplete, and internally inconsistent.
  + The petition language regarding suspension and expulsion lacks clarity and raises concerns of due process.
  + The petition budget, Average Daily Attendance goals, revenue, and expense forecasts show lack of understanding of actual financial needs to operate a school site and raises concerns as to the accountability and sustainability of PPS.
* The petition does not contain reasonably comprehensive descriptions of all of the required elements.
  + The petition lacks knowledge and understanding of charter school laws.
  + The petition presents various concerns and deficiencies, including but not limited to, the issues relative to the educational program, plan for complying with the Individuals with Disabilities Education Improvement Act, and significant budgetary issues that demonstrate that PPS is unlikely to successfully implement the program as set forth in the petition.

The detailed CDE analysis of the petition review is provided in Attachment 1 of Agenda Item 02 on the ACCS December 7, 2017, Meeting Notice on the SBE ACCS Web page located at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec17item02a1.doc>.

## Summary of Previous State Board of Education Discussion and Action

Currently, 30 charter schools operate under SBE authorization as follows:

* One statewide benefit charter, operating a total of six sites
* Seven districtwide charters, operating a total of 18 sites
* Twenty-two charter schools, authorized on appeal after local or county denial

The SBE delegates oversight duties of the districtwide charters to the county office of education of the county in which the districtwide charter is located. The SBE delegates oversight duties of the remaining charter schools to the CDE.

## Fiscal Analysis

If approved as an SBE-authorized charter school, the CDE would receive approximately one percent of the revenue of PPS for the CDE’s oversight activities. However, no additional resources are allocated to the CDE for oversight.

## Attachment

* **Attachment 1:** California State Board of Education Standard Conditions on Opening and Operation (3 Pages)

# Attachment 1: California State Board of Education Standard Conditions on Opening and Operation

* **Department of Justice and Subsequent Arrest Notification.** Each California State Board of Education (SBE)-authorized charter school shall comply with and remain compliant with the requirements of California *Education Code* (*EC*) Section 44830.1, pertaining to criminal history record summaries, fingerprints, and subsequent arrest notices (SANs), and that the School must comply with this Code section in requesting a subsequent arrest service notification from the California Department of Justice (DOJ). The California Department of Education (CDE) will request written assurance on school letterhead that the School is in compliance with *EC* Section 44830.1. This assurance must provide evidence that (1) the School, as a local educational agency and the employer of record, has a DOJ/SAN account; (2) that *all* school employees have the appropriate DOJ clearance; (3) that the custodian of records will receive the SANs; (4) that the School has a procedure for monitoring the SANs of the designated custodian of records; and (5) employee records are kept secure at the School and available upon request for review. This assurance must be signed by the school administrator and the custodian of record.
* **Insurance Coverage.** Prior to opening, (or such earlier time as the School may employ individuals or acquire or lease property or facilities for which insurance would be customary), submit documentation of adequate insurance coverage, including liability insurance, which shall be based on the type and amount of insurance coverage maintained in similar settings. Additionally, the School will provide a document stating that the District will hold harmless, defend, and indemnify the SBE and the CDE, their officers and employees, from every liability, claim, or demand that may be made by reason of: (1) any injury to volunteer; and (2) any injury to person or property sustained by any person, firm, or corporation caused by any act, neglect, default, or omission of the School, its officers, employees, or agents. In cases of such liabilities, claims, or demands, the School at its own expense and risk will defend all legal proceedings that may be brought against it and/or the SBE or the CDE, their officers and employees, and satisfy any resulting judgments up to the required amounts that may be rendered against any of the parties.
* **Memorandum of Understanding/Oversight Agreement.** Prior to opening, either: (a) accept an agreement with the SBE, administered through the CDE, to be the direct oversight entity for the School, specifying the scope of oversight and reporting activities, including, but not limited to, adequacy and safety of facilities; or (b) enter into an appropriate agreement between the charter school, the SBE (as represented by the Executive Director of the SBE), and an oversight entity, pursuant to *EC* Section 47605(k)(1), regarding the scope of oversight and reporting activities, including, but not limited to, adequacy and safety of facilities.
* **Special Education Local Plan Area Membership.** Prior to opening, submit written verification of having applied to a Special Education Local Plan Area (SELPA) for membership as a local educational agency and submit either written verification that the School is (or will be at the time pupils are being served) participating in the SELPA; or an agreement between a SELPA, a school district that is a member of the SELPA, and the School that describes the roles and responsibilities of each party and that explicitly states that the SELPA and the district consider the School’s pupils to be pupils of the school district in which the School is physically located for purposes of special education programs and services (which is the equivalent of participation in the SELPA). Satisfaction of this condition should be determined by the Executive Director of the SBE based primarily on the advice of CDE staff following a review of either: (1) the School’s written plan for membership in the SELPA, including any proposed contracts with service providers; or (2) the agreement between a SELPA, a school district, and the School, including any proposed contracts with service providers.
* **Educational Program.** Prior to opening, submit a description of the curriculum development process the School will use and the scope and sequence for the grades envisioned by the School; and submit the complete educational program for pupils to be served in the first year including, but not limited to, a description of the curriculum and identification of the basic instructional materials to be used; plans for professional development of instructional personnel to deliver the curriculum and use the instructional materials; and identification of specific assessments that will be used in addition to the assessment identified in *EC* Section 60640 in evaluating student progress. Satisfaction of this condition should be determined by the Executive Director of the SBE based primarily on the advice of CDE staff.
* **Student Attendance Accounting.** Prior to opening, submit for approval the specific means to be used for student attendance accounting and reporting that will be satisfactory to support state average daily attendance claims and satisfy any audits related to attendance that may be conducted. Satisfaction of this condition should be determined by the Executive Director of the SBE based primarily on the advice of the Director of the School Fiscal Services Division.
* **Facilities Agreements.** Prior to opening, present written agreements (e.g., a lease or similar document) indicating the School’s right to use the principal school sites and any ancillary facilities identified by the petitioners for at least the first year of each School’s operation and evidence that the facilities will be adequate for the School’s needs. Satisfaction of this condition should be determined by the Executive Director of the SBE based primarily on the advice of the Director of the School Facilities and Transportation Services Division.
* **Zoning and Occupancy.** Not less than 30 days prior to the School’s opening, present evidence that each School’s facility is located in an area properly zoned for operation of a school and has been cleared for student occupancy by all appropriate local authorities. For good cause, the Executive Director of the SBE may reduce this requirement to fewer than 30 days, but may not reduce the requirement to fewer than 10 days. Satisfaction of this condition should be determined by the Executive Director of the SBE based primarily on the advice of the Director of the School Facilities and Transportation Services Division.
* **Final Charter.** Prior to opening, present a final charter that includes all provisions and/or modifications of provisions that reflect appropriately the SBE as the chartering authority and otherwise address all concerns identified by CDE and/or SBE staff, and that includes a specification that the School will not operate satellite schools, campuses, sites, resource centers, or meeting spaces not identified in the charter without the prior written approval of the Executive Director of the SBE based primarily on the advice of the Charter Schools Division (CSD) staff. Satisfaction of this condition is determined by the Executive Director of the SBE based primarily on the advice of the Director of the CSD.
* **Processing of Employment Contributions.** Prior to the employment of any individuals by the School, present evidence that the School has made appropriate arrangements for the processing of the employees’ retirement contributions to the California Public Employees’ Retirement System and the California State Teachers’ Retirement System.
* **Operational Date.** If any deadline specified in these conditions is not met, approval of the charter is terminated, unless the SBE deletes or extends the deadline not met. If the School is not in operation by September 30, 2018, approval of the charter is terminated.