

California Department of Education  
Executive Office  
SBE-003 (Rev. 11/2017)  
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# California State Board of Education September 2022 Agenda Item #09

## 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 Caliber: High School, which was denied by the Vallejo City Unified School District and the Solano County Board of Education.

**Type of Action**

Action, Information

## Background

Pursuant to California *Education* Code (*EC*) Section 47605(a), Caliber: High School (CHS) submitted its petition, which proposes a new grade nine through grade twelve charter school, to the Vallejo City Unified School District (VCUSD or District). VCUSD denied the CHS petition on December 15, 2021, by a vote of five to zero.

CHS appealed the District’s denial to the Solano 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 denied the petition on April 13, 2022, by a vote of six to one.

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). CHS submitted its petition to the SBE on May 13, 2022.

## Recommendation

The California Department of Education (CDE) recommends that the SBE summarily deny review of the CHS appeal based on the documentary record, pursuant to *EC* Section 47605(k)(2)(E). CHS has not met their burden to rebut the fact that while in state receivership, VCUSD is unable to absorb the fiscal impact of the proposed charter.

*EC* Section 47605(c)(8) states that a school district may deny a petition for the establishment of a charter school if it is not positioned to absorb the fiscal impact of the proposed charter. A school district in state receivership satisfies *EC* Section 47605(c)(8). Currently, VCUSD is one of four school districts in the state of California that is currently under state receivership. VCUSD entered receivership status in 2004 and received an emergency loan in the amount of $60 million. VCUSD is assigned a trustee and, at the time the appeal was submitted, had an outstanding balance of approximately $9.5 million on the emergency loan.[[1]](#footnote-2)

## Advisory Commission on Charter Schools Recommendation

The Advisory Commission on Charter Schools (ACCS) held a public hearing on   
August 11, 2022. At the hearing, the ACCS put forth a motion to recommend that the SBE hear the CHS appeal to determine if the district and/or county board of education abused its discretion. The motion failed by a vote of three to five. The ACCS put forth a second motion to adopt the CDE’s recommendation that the SBE summarily deny the CHS appeal. That motion passed by a vote of five to three.

The notice for the August 11, 2022, ACCS meeting, CHS’s appeal submission, and the documentary record are located on the SBE August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice081122.asp>.

## Background on State Receivership

California created a process for districts experiencing financial distress, under specific conditions, to receive emergency apportionments from the State (*EC* sections 41320 and 41326). This process is commonly referred to as “state receivership.”

A school district that is not positioned to absorb the fiscal impact of a proposed charter school due to being under state receivership may deny a petition for the establishment of a charter school, pursuant to *EC* Section 47605(c)(8). Specifically, this section states the following:

The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has a qualified interim certification pursuant to Section 42131 and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Section 42131, has a negative interim certification pursuant to Section 42131, or is under state receivership. Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

## Fiscal Crisis Management Assistance Team

Pursuant to *EC* Section 47605(c)(8), the Solano county superintendent of schools consulted with the Fiscal Crisis and Management Team (FCMAT) regarding the CHS appeal. FCMAT found that VCUSD is under state receivership and is not positioned to absorb the fiscal impact of the proposed charter school.

According to FCMAT’s letter dated February 28, 2022, there is only one relevant factor appropriate for consideration. The District remains under state receivership. Until the loan is fully repaid, the District is not positioned to absorb the fiscal impact of the proposed charter school (Documentary Record from SCBOE, pp. 965–966).

## Legislative Changes to the Appeal Process

Assembly Bill 1505 [Chapter 486, Statutes of 2019] modified *EC* Section 47605 and changed the manner in which the SBE hears charter school appeals as well as codified the role of the ACCS in the appeal process.

Prior to AB 1505, the SBE reviewed all charter petitions that had been denied at the local level under the same review standards applicable to the governing board of the school district and the county board of education. The SBE could approve the petition in accordance with subdivision (b) (formerly *EC* Section 47605[j][1]) or deny it. Under this review standard, the completeness and quality of the charter petition were weighed by the ACCS and the SBE.

However, the passage of AB 1505 modified *EC* Section 47605 and updated the appeal requirements of the petitioner, codified the role of the ACCS, and changed the role of the SBE. Specifically, *EC* Section 47605(k)(2)(A) states the following regarding the appeal requirements of the petitioner:

The petitioner shall submit the petition to the SBE within 30 days of a denial by the county board of education. The petitioner shall include the findings and documentary record from the governing board of the school district and the county board of education and a written submission detailing, with specific citations to the documentary record, how the governing board of the school district or the county board of education, or both, abused their discretion. The governing board of the school district and county board of education shall prepare the documentary record, including transcripts of the public hearing at which the governing board of the school district and county board of education denied the charter, at the request of the petitioner. The documentary record shall be prepared by the governing board of the school district and county board of education no later than 10 business days after the request of the petitioner is made. At the same time the petition and supporting documentation is submitted to the SBE, the petitioner shall also provide a copy of the petition and supporting documentation to the school district and the county board of education.

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

The ACCS will hold a public hearing to review the appeal and documentary record. Based on its review, the ACCS shall submit a recommendation to the SBE whether there is sufficient evidence to hear the appeal or to summarily deny review of the appeal based on the documentary record. If the ACCS does not submit a recommendation to the SBE, the SBE shall consider the appeal, and shall either hear the appeal or summarily deny review of the appeal based on the documentary record at a regular public meeting of the SBE.

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.

If the SBE decides to hear the appeal, it 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, 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.

## Caliber: High School’s Appeal Submission

Following SCBOE’s denial of the CHS petition on April 13, 2022, pursuant to *EC* Section 47605(k)(2)(A), CHS submitted the following items to the SBE on May 13, 2022:

* A written submission of CHS’ appeal, which included allegations of abuse of discretion by the governing boards of the VCUSD and SCBOE
* CHS’ charter petition
* Findings by VCUSD governing board
* Documentary record from VCUSD governing board
* Findings by SCBOE
* Documentary record from SCBOE
* CHS’ supporting documentation

## Caliber: High School’s Allegations of Abuse of Discretion

In its written submission, CHS stated the following allegations of abuse of discretion by the VCUSD and SCBOE, to the SBE:

* **The District and the County did not proceed in a manner required by law and therefore abused their discretion in denying CHS’ charter petition (CHS Written Submission, p. 14).**
  + The District’s published findings contained no factual findings for denial and the District Board’s subsequent denial based on fiscal impact was an abuse of discretion.
  + The District Board failed to apply the correct standard in denying the petition under Section 47605(c)(8), constituting an abuse of discretion.
  + The County Board failed to apply the correct standard in denying the petition under Section 47605(c)(8), constituting an abuse of discretion.
  + The County Board abused its discretion by failing to provide a transcript of the April 13, 2022, decision meeting.
* **The District Board’s and County Board’s decisions to deny the charter petition are not supported by substantial evidence and constitute abuses of discretion (CHS Written Submission, p. 29).**
* **The District Board’s and County Board’s decisions to deny the charter petition reflect decisions based on prejudice and constitute abuses of discretion (CHS Written Submission, p. 31).**

## District’s Opposition to Caliber: High School’s Appeal

VCUSD denied CHS’ petition based on the following finding:

* VCUSD is currently under state receivership and cannot absorb the fiscal impact of the charter school (*EC* Section 47605[c][8]).

On June 10, 2022, pursuant to *EC* Section 47605(k)(2)(C), VCUSD submitted to the SBE a written opposition to CHS’ appeal with specific citations to the documentary record detailing how it did not abuse its discretion in denying the petition. VCUSD’s written opposition was submitted within 30 days of the submission of the appeal to the SBE.

VCUSD’s opposition argues that its denial of CHS’ petition was based on evidence demonstrating that VCUSD is currently under state receivership and is not in a position to absorb the fiscal impact of the charter school (*EC* Section 47605[c][8]).

## County’s Opposition to Caliber: High School’s Appeal

SCBOE denied CHS’ petition based on the following finding:

* VCUSD is currently under state receivership and cannot absorb the fiscal impact of the charter school (*EC* Section 47605[c][8]).

On June 10, 2022, pursuant to *EC* Section 47605(k)(2)(C), SCBOE submitted to the SBE a written opposition to CHS’ appeal with specific citations to the documentary record detailing how it did not abuse its discretion in denying the petition. SCBOE’s written opposition was submitted within 30 days of the submission of the appeal to the SBE.

SCBOE’s opposition argues that it did not abuse its discretion by not providing a written transcript of the meeting at which the CHS’ petition was denied, and that its finding in support of denying CHS’ petition met all requirements of the law.

## Conclusion

Based on the CDE’s review of the appeal and the documentary record, the CDE finds there are grounds to summarily deny CHS’s appeal. The CDE finds that VCUSD is under state receivership and satisfies the requirements of *EC* Section 47605(c)(8). CHS has not provided sufficient evidence to rebut the presumption that while in state receivership VCUSD is not able to absorb the fiscal impact of the proposed charter. Therefore, CHS has not met their burden to rebut the presumption for denial under *EC* Section 47605(c)(8).

## Caliber: High School’s Appeal Documents

The following documents were considered by the CDE in its review of the CHS appeal:

* CHS Written Submission, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a1.pdf>
* CHS Petition, as denied by the VCUSD and the SCBOE, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a2.pdf>
* Findings and Staff Report by VCUSD, which are available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a3.pdf>
* Documentary Record from VCUSD, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a4.pdf>
* Findings by SCBOE, which are available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a5.pdf>
* Documentary Record from SCBOE, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a6.pdf>
* CHS Supporting Documentation, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a7.pdf>
* Written Opposition from VCUSD, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a8.pdf>
* Written Opposition from SCBOE, which is available on the August 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug22item03a9.pdf>

## Attachment

None.

1. As of July 2022, VCUSD has an outstanding emergency loan balance of $7,420,366. [↑](#footnote-ref-2)