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Caliber: High School Written Submission



MAY 13, 2022

VIA: EMAIL
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1430 N Street, Suite 5401
Sacramento, CA 95814

***Re: Caliber: High School's Appeal of the Denial of its
Establishment Charter Petition to the State Board of Education
Written Submission with Citations to the Record Detailing the Basis for Appeal***

Dear Director Farland:

This letter serves as Caliber: High School's ("Caliber" or the "Charter School") appeal of the denial of its establishment charter petition (the "Petition" or "Charter") by the Vallejo City Unified School District Board of Education ("VCUSD" or the "District") and the Solano County Board of Education ("SCBOE" or the "County"), to the State Board of Education ("SBE"), as provided for in Education Code¹ Section 47605(k)(2). This appeal is submitted 30 days after the County Board denied the Charter School's charter petition on April 13, 2022, (on appeal from the District's denial of the charter petition on December 15, 2021) and is thus within the 30 days permitted by Section 47605(k)(2)(A).

BACKGROUND

Caliber Public Schools currently operates two charter schools in the Bay Area that serve more than 1,700 students across grades TK-8, Caliber: ChangeMakers Academy (authorized by the District) and Caliber: Beta Academy, authorized by the Contra Costa County Board of Education. Our charter schools focus on academics, social emotional learning, and teaching the

¹ All statutory references herein are to the Education Code unless otherwise stated.



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whole child, with our Heart, Smart, Think, Act philosophy. Our student body is highly diverse, including 60.4% Latinx, 23.4% African American, and 9.9% Asian Pacific Islander students; 71% qualify for free and reduced price meals; 20% are English Learners; and 11% receive special education services. We are closing the achievement gap for our students, who regularly outperform their peers statewide in ELA and math. We are ready to continue this critical work through a third charter school to serve grades 9-12.

Our Petition to establish Caliber: High School reflects more than two years of homegrown planning to create a high school that will build on our successful TK-8 programs, principally serve graduates of Caliber: ChangeMakers Academy, and support our current students through high school on their pathways to college and career. By a significant margin, current graduates of Caliber: ChangeMakers Academy, including those who reside in Vallejo, choose to attend schools other than those operated in the District; specifically, 62.4% attend other independent charter high schools authorized by the District or leave the District completely for high school. We wish to provide a continued home for our students and others in the Vallejo community seeking an alternative option for high school based on our unique academic philosophy and strong emphasis on social emotional learning. We want to establish additional reasons for families to stay in Vallejo, to make the entire city thrive. Here, the Petition was supported by more than 650 parents who signed their name in support of the Petition signature requirements, more than seven times the minimum number of signatures required under the law – more than the number of students the Charter School will serve in its first four-years.

While appeals to the SBE from denied charter petitions have frequently reflected a fundamental disagreement between the petitioner and the chartering authorities below on whether the proposed charter school program is sound or not, that is not at all the case in this appeal. Here, **District Staff found that the Petition met all legal requirements for approval, including that the proposed charter school program was sound, that petitioners were likely to successfully implement the program, and that the proposed charter would serve the interests of the community.** The District Board did not find otherwise, either, in its adopted factual findings denying the charter. The Petition checked all of the boxes for approval. County Staff's findings in support of the Petition nearly paralleled that of the District's, with exceptions addressed below or otherwise not germane to this appeal. Like the District, **County Staff and the County Board found the Petition to present a sound program that was in the interests of the community.** In other words, both the District Board and County Board found that the program was expected to provide an educational benefit to students of Vallejo and was fundamentally worthy of approval.

Troublingly, the charter petition was ultimately denied by the District Board and the County Board on the basis of purported adverse fiscal impact to the District pursuant to Section 47605(c)(8), that “[t]he school district is not positioned to absorb the fiscal impact of the proposed charter school.” While as a consequence of Assembly Bill 1505 (2019), it is now possible in limited circumstances for a chartering authority to deny a petition due to fiscal impact on this statutory basis, the finding was not invoked or applied properly to the Petition here, as addressed below. And, even as AB 1505 permits limited consideration of fiscal impact, these decisions uniquely warrant greater scrutiny because of what is at stake for students in California, as this appeal highlights: that even in the presence of an academically sound program found to be in the interests of the community, there is a perverse incentive for a school district to prioritize its interest

in revenue associated with a student over the actual best interests of that student, which may be offering a student the opportunity to enroll in a high quality charter school program.

The Petition should be approved on appeal because both the District and County abused their discretion in depriving Petitioner of the rights and due process protections governing denial of a charter petition. The District Board published staff findings recommending approval of the Petition, which specifically indicated that the “District’s review team has not included a factual finding to support the denial of the Petition on the basis of ‘fiscal impact.’” Then, without required notice, the District Board impermissibly denied the Petition on that very ground for which there was “no factual finding,” violating the due process required under AB 1505. Putting aside that grave procedural error, the District Board and County Board also both got the legal standard completely wrong in denying the Petition based on fiscal impact, and failed to correctly consider and credit Petitioner’s rebuttal evidence as required under Section 47605(c)(8). At bottom, their findings for denial were untethered from the evidence, and ignored the reality that the District is readily “positioned to absorb the fiscal impact of the proposed charter school,” limited as it is.

It is important to consider that here, the sole reason the District is able to invoke denial based on fiscal impact at all under Section 47605(c)(8) is because 18 years ago, in 2004, long before any of our students were born, and long before our first two schools were authorized, the District ran out of money, took out an emergency loan from the State, and that loan remains outstanding as of today. As a consequence of that 2004 loan, the District is considered to be under “state receivership,” a legal status which makes the District potentially eligible to deny charter petitions under Section 47605(c)(8).

However, while the District remains in state receivership as a technical matter, the District exited state control in 2013; it has repaid 80% of the loan; is scheduled to pay off the loan in just two years, by 2024; and the District is projected to have a positive unrestricted ending fund balance of nearly \$30 million through that period. Because a school district will be considered “under receivership” if it owes \$1 dollar or \$100 million dollars to the State, the fact of state receivership is not actually informative of a school district’s fiscal condition. As here, state receivership has no real bearing on the District’s fiscal condition, and the District is situated to absorb the minor fiscal impact that Caliber is anticipated to have on the District, particularly where, as here, relatively few of the students whom Caliber: High School intends to serve would otherwise attend a District-operated school, and Caliber: High School’s budget is less than 2% of that of the entire District over the next two years, without accounting for cost savings and added revenue the District will realize.

There may be instances where denial of a charter petition based on the chartering authority’s dire financial condition is appropriate, but this Petition is surely not one of them. As the first charter petition submitted on appeal addressing denial under Section 47605(c)(8), we appreciate that it is within the prerogative of the Advisory Commission on Charter Schools (“ACCS”) and SBE to clarify the applicable standards bearing on charter petitions under that new standard, hold chartering authorities to the due process requirements and standard they are legally required to observe, affirm that the rights and protections provided under the Charter Schools Act (“CSA”) are not illusory, and ensure that communities’ demands to establish new charter schools are respected.

The District's failure to timely publish advance factual findings supporting denial under Section 47605(c)(8) is a grave abuse of discretion that can never be sanctioned, else it would promote the kind of "gotchas" that AB 1505 was intended to eliminate. And, given what is at stake for students through fiscal impact denials under Section 47605(c)(8), chartering authorities cannot be given a pass from their obligation to demonstrate that they have fully grappled with the Petitioner's rebuttal evidence and faithfully and accurately assessed the real financial impact of a new charter school on the school district's true financial condition. The District and County both abused their discretion in connection with these standards, and related procedural protections addressed below, and the Petition must therefore be approved through this appeal.

THE DOCUMENTARY RECORD AND SUPPORTING DOCUMENTATION

As required pursuant to Section 47605(k)(2)(A), the Charter School is providing a complete copy of its Petition and appendices, in Microsoft Word format.

Section 47605(k)(2)(A) provides that the "documentary record" for a charter appeal under this subdivision shall be prepared by a school district board of education and a county board of education within ten (10) business days of a request for the same by a charter school. The documentary record ("DR") prepared by a school district board of education and a county board of education must include a transcript of the board of education meetings during which the charter was denied. The District's record is included as DR 1 through DR 1667, and the County's record is included as DR 1668 through DR 2703. The District included a transcript of the December 15, 2021 decision meeting on the Petition at DR 1643. The County did not produce a transcript of the April 13, 2022 decision meeting on the Petition, and only provided a video of the same, which is provided with this appeal submission.

In addition to the DR, a petitioner may also submit "supporting documentation" related to an appeal, in accordance with Section 47605(k)(2)(A). Caliber has included supporting documentation in its Supplemental Record ("SR"), to account for documents excluded from the DR and documents that otherwise support this appeal.

Pursuant to Section 47605(k)(2)(A), the District Board's findings are provided in the record at DR 1621, and the County Board's findings are provided in the record at DR 2695 (adopting County staff's report at DR 2612, and Caliber's response to County staff's report is including at DR 2633).

As required by Section 47605(k)(2)(A), a copy of this appeal was provided to the District and County at the same time as this submission to the SBE.

LEGAL STANDARDS RELEVANT FOR APPEAL

Abuse of Discretion Standard

Through the passage of AB 1505 in 2019, the Legislature effectuated a compromise over competing visions for how the charter approval and appeal process would operate going forward. That compromise guaranteed certain due process rights to charter petitioners, as addressed below,

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and in turn, the SBE was designated as the administrative body to correct *abuses of discretion* by school district and county boards of education in denials of charter petitions. (Section 47605(k)(2)(E).)

As discussed below, in hearing appeals post-AB 1505, it is fundamentally the role of the SBE to ensure that school districts and counties comply with the law in reviewing charter petitions, and reverse denials that do not do so. This ensures that school district and county boards of education conform with those requirements going forward. Reversal for abuse of discretion is necessary to ensure that the legal requirements of AB 1505 are applied uniformly, to educate school district and county boards, as well as petitioners, on the legal requirements under the CSA, and to minimize the extent that in the future charter petitioners must bring appeals to the SBE to correct procedural and substantive violations of law. (*See, e.g., County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1582 [“Reversal is warranted when the administrative agency abuses its discretion.”])

Under California law, an abuse of discretion is established when the agency “has not proceeded in a manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code of Civil Procedure Section 1094.5(b); *see also, Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; *Manjares v. Newton* (1966) 64 Cal.2d 365, 370.) The dictates of abuse of discretion act as a safeguard for ensuring that administrative agencies have made careful, reasoned, and equitable decisions. (*J. L. Thomas, Inc. v. County of Los Angeles* (1991) 232 Cal.App.3d 916, 927.)

Abuse of discretion for failure to proceed in the manner required by law takes broad form; it is even appropriately charged when an agency has failed to follow requirements merely *implied* or within the *spirit* of the law. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79–86 [failure to consider requirements implied in law prior to approving or disapproving a project constitutes an abuse of discretion]; *Walsh v. Kirby* (1974) 13 Cal.3d 95, 103–106 [failure to follow spirit of law despite literal compliance is an abuse of discretion].) *See also, Boreta Enterprises v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85, 96, [abuse of discretion in license revocation when decision was based on policy rather than legal rationale]; *Austin v. Department of Motor Vehicles* (1988) 203 Cal.App.3d 305 [agency abused its discretion when it issued a final decision beyond the 15-day timeline required by law.]

And an abuse of discretion is clearly present when the explicit dictates of the law are not followed, as here. (*People v. Superior Court* (Humberto S.) (2008) 43 Cal.4th 737, 746 [an exercise of discretion based on an error of law is an abuse of discretion]); *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 355 [46 Cal. Rptr. 3d 355, 138 P.3d 692] [erroneous application of legal standard constitutes an abuse of discretion]), and the District failed to meet basic procedural requirements (*Envtl. Prot. Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 620 [failure to follow appropriate procedures in approval process is an abuse of discretion]). Administrative agencies have no discretion to make erroneous interpretations of law. (*Garamendi v. Mission Ins. Co.* (2005) 131 Cal.App.4th 30, 41.)

In Caliber’s case, the District and County did “not proceed in a manner required by law,” clearly establishing an abuse of discretion. The District failed to publish staff recommendations and factual findings on the grounds on which the District Board ultimately

denied the Petition, the District and County Board’s adopted findings failed to comply with the standard for “specific” written findings “specific” to the Petition at issue as required under Section 47605(c), and the District and the County both failed to apply the “rebuttable presumption” standard correctly under Section 47605(c)(8).

Under an abuse of discretion standard, the SBE must overturn a denial that is not supported by substantial evidence of the kind required for a charter petition to be denied. “Substantial evidence means evidence which is ‘of ponderable legal significance.’ Obviously, the word cannot be deemed synonymous with ‘any’ evidence. It must be reasonable in nature, credible, and of solid value; it must actually be ‘substantial’ proof of the essentials which the law requires in a particular case.” (*Hall v. Department of Adoptions* (1975) 47 Cal.App.3d 898, 906.) “Speculation is not substantial evidence.” (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 661; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274 [“Unsubstantiated opinions, concerns, and suspicions ... though sincere and deeply felt, do not rise to the level of substantial evidence.”])

The District and County also abused their discretion in that the denial of Caliber’s charter petition was not supported by the “specific” findings “specific” to the Petition at issue as required under Section 47605(c), and the findings adopted were not supported by substantial evidence as required under the abuse of discretion standard. Specifically, the District Board and County Board both failed to correctly calculate and evaluate the fiscal impact of the Charter School under accurate and reliable methods, and facts. Instead, the findings and record indicate that the District and County based their denials on impermissible speculation and opinion about what may or may not occur in the future and on grounds irrelevant to the legal basis on which the Petition was actually denied, not “specific” facts and not evidence “specific” to the Petition constituting substantial evidence to support a denial under Section 47605(c)(8).

Under an abuse of discretion standard, the SBE must also overturn the denial of a charter petition where the evidence indicates prejudice by the chartering authority and its governing authority in denying the petition. The process under Section 47605 governing the approval of charter petitions is quasi-adjudicatory because the governing board is responsible for receiving evidence and testimony, weighing the evidence, and making factual determinations. The law requires that where an agency or governing body is acting in that capacity as a decision maker, as here, the governing body “must be neutral and unbiased.” (See *Woody’s Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, 1021.) A governing body cannot be considered “unbiased” unless they have “no conflict of interest, ha[ve] not prejudged the specific facts of the case, and [are] free of prejudice against or in favor of any party.” (*Petrovich Development Co., LLC v. City of Sacramento* (2020) 48 Cal.App.5th 963, 973 [citing with approval *The Rutter Group* (2019) ¶ 3:426, p. 3-70.]) Critically, “allowing a biased decision maker to participate in the decision is enough to invalidate the decision” under an abuse of discretion standard. (*Id.*)

As addressed below, the District and County also abused their discretion by only relying on “prejudged” assertions of facts and ignoring and failing to account for Caliber’s rebuttal evidence. The District and County had a legal obligation to weigh Caliber’s rebuttal evidence (Section 47605(c)(8)) and make “specific” findings of fact on the same, “specific,” to the Petition (Section 47605(c)), but proceeded to consider only the version of the facts

presented to them by their staff, and through a lens that ignored and failed to grapple with the applicable and correct legal standard and evidence presented by Caliber.

Any Abuse of Discretion By the District or County Must Result in the Approval of the Petition

As addressed below, both the District and the County abused their discretion in different ways. Any one abuse of discretion by either the District or the County is sufficient to result in the approval of the Petition. (*See, e.g., County of Santa Cruz v. Civil Service Commission of Santa Cruz* (2009) 171 Cal.App.4th 1577, 1582 [“Reversal is warranted when the administrative agency abuses its discretion.”])

Irrespective of the adequacy of the County’s process in hearing the appeal, Petitioner was entitled to have its petition approved from the start and in the first instance by the District in accordance with the legal requirements under Section 47605. This principle is underscored by the appeal rights provided under the CSA, that where a petition has been denied by both a school district and county board of education, the petitioner has the right to appeal the denial of the Petition to the SBE and demonstrate “how the governing board of the school district or the county board of education, or both, abused their discretion.” (Section 47605(k)(2)(A). Thus, the ACCS and SBE are designated to correct abuses of discretion occurring at the district level, the county level, or both.

Accordingly, the purpose of the right of appeal to the County Board is not to give the County Board an opportunity to correct abuses of discretion by the District, or to improve upon and cleanse the errors made by the District through a new process, but instead, to give the Petitioner an opportunity for their charter to be approved and authorized by a welcoming county board, as an alternative authorizer from the school district where the charter school is proposed to be located. The county board must make all of its own factual findings on appeal on a *de novo* basis and similarly owes an obligation to the petitioner to approve meritorious charter petitions as though it were submitted to the county board from the start.

Thus, by the time a charter petition is appealed to the SBE, two authorizers have reviewed the petition and have denied it for potentially different reasons and decided not to authorize the charter school based on their own authorization process. If either of them denied the petitioner the opportunity for approval due to an abuse of discretion, this means that the petitioner was entitled to authorization by either or both of the authorizers below. After all, if a district had not abused its discretion in a denying a petition, the charter school would have been authorized. If a county board had not abused its discretion in a denying a petition, the charter school would have also been so authorized.

On appeal, the SBE reviews for abuse of discretion by the district and/or the county, each, and not merely whether the county abused its discretion in not granting the petition as an appellate body. This is confirmed in the statutory language and process governing appeals as addressed below:

First, the ACCS is tasked to “review the appeal and documentary record,” i.e., to evaluate whether there is evidence of an abuse of discretion by the school district, the county board of education, or both, and “[b]ased on its review ... submit a recommendation to the state board

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whether there is sufficient evidence to hear the appeal or to summarily deny review of the appeal based on the documentary record,” i.e., evidence of an abuse of discretion by the school district, the county board of education, or both. (Section 47605(k)(2)(D).)

Second, the SBE must decide whether to “hear the appeal or summarily deny review of the appeal based on the documentary record,” i.e., a record indicating evidence or lack thereof of an abuse of discretion by the school district, the county board of education, or both. (Section 47605(k)(2)(E).)

Third, if the SBE hears the appeal based on such evidence, its option is either to “affirm the determination of the governing board of the school district or the county board of education, or both of those determinations” in the absence of an abuse of discretion, “or may reverse only upon a determination that there was an abuse of discretion,” i.e., by either the district or the county board of education, or both. (Section 47605(k)(2)(E).)

In all cases, and at all stages, the driver of the appeal process is whether the record sufficiently indicates that an abuse of discretion has occurred, and by the time the appeal has reached the SBE for hearing, the SBE must make a final decision on whether an abuse of discretion has occurred, and if it has, the only outcome is reversal of the denial.

Standards for Approval and Denial, Generally

In determining whether the District Board and County Board abused their discretion, it is important to consider two global and overarching legal obligations that govern their review and decision making process, including for denial of a charter petition based on fiscal impact (Section 47605(c)(8).)

First, the core standard for the approval and denial of a charter petition by a district or county board provides that they “shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice and with the interests of the community in which the school is proposing to locate” and that on balance, the chartering authority “shall consider the academic needs of the pupils the school proposes to serve.” (Section 47605(c).) The law further provides that chartering authorities “shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the [statutory grounds for denial].” (Section 47605(c).) A district and county board abuses its discretion when it denies a charter petition without the required factual specificity, specific to the charter petition at issue, and without putting first the interests of the community and the academic needs of students proposed to be served by the proposed charter school.

Where the law requires an agency to prepare written findings memorializing its action, as here, the law requires that they are not legally compliant unless they “reveal the line(s) of factual and legal conclusions upon which the board relies. [citation]” (*American Funder Concepts v. Board of Funeral Directors & Embalmers* (1982) 136 Cal.App.3d 303, 309 [citing *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506].) Findings are inadequate if they are conclusory in nature, boilerplate, are ambiguous, or uncertain as to whether the agency

has conducted the analysis required under the statutory scheme in reaching a decision. (See *e.g.*, *Glendale Mem. Hosp. & Health Ctr. v. State Dep't of Mental Health* (2001) 91 Cal.App.4th 129; *Los Alamitos Gen. Hosp. v. Lackner* (1978) 86 Cal.App.3d 417.)

Second, a charter petition may be denied only if, 15 days before the decision meeting on the petition, the governing board of the school district has “publish[ed] all staff recommendations, including the recommended findings” for denial and the petitioner is afforded “procedures to present evidence and testimony to respond to the staff recommendations and findings.” (Section 47605(b).) That is, a governing board may not move to deny a charter petition if it has not provided the petitioner with recommended findings for denial in advance so that the petitioner may prepare specifically to respond to those findings. A district or county board that fails to provide complete advance notice of the grounds on which it may deny a charter petition abuses its discretion.

Fiscal Impact, Generally

As framing for the core issue in this appeal, the operation of the fiscal impact ground for denial under Section 47605(c)(8), it is important to consider that charter schools do not take money away from school districts. All state aid education dollars are property of the State, generated by taxpayers. Under the State’s education finance scheme, money follows students to the school district or charter school that they attend. This makes sense, as only that student’s school is responsible for hiring teachers, buying supplies, procuring facilities, and the like, to serve that student. Insofar as it is sometimes said that charter schools take money from school districts, this refers to circumstances where a student has exercised their choice to attend a public charter school, and the revenue associated with their attendance may be claimed only by the charter school and not the student’s school district of residence. This choice reflects the core objective of the CSA, “to provide opportunities for teachers, parents, pupils, and community members to establish and maintain schools that operate independently from the existing school district structure” and to “provide vigorous competition within the public school system to stimulate continual improvements in all public schools.” (Section 47601.)

When a student makes that choice and rejects the traditional public school assigned to them by their local district, which they would otherwise attend, the school district theoretically loses the opportunity to claim revenue for that student (assuming that student was truly going to attend the district school, instead of pursuing other alternatives like private schools, other charter schools, other districts). Of course, in “losing” that potential enrollee, the school district is also relieved of the obligation to educate that student and the obligation to incur expenses to do so. The circumstances affecting a school district when a student enrolls in a charter school is no different from the competition that has long existed between school districts to offer the best school programs, and which encourages families to move to new neighborhoods. When a student moves out of a school district to attend a school in a neighboring school district, only the receiving school district may claim revenue associated with that student.

Fundamentally, the State of California and its citizens have an interest in ensuring that all students are educated, not that a student enrolls in any given school district for its own sake, or that any particular school district maintain a particular level of enrollment. Ostensibly, where there is a successful charter school serving students and a school district that is not, public policy

interests would be best satisfied if enrollment in the successful charter school increased and enrollment in the school district decreased. There is no fundamental educational benefit to students in the State by protecting school district attendance from competition from better options for students.

Operation of Section 47605(c)(8)

Under AB 1505, a financially distressed or mismanaged school district may now in certain statutory circumstances prevent a charter school from opening if the charter school would compete with the school district for students, i.e., where it is expected that students would choose to enroll in the charter school over the school district. While the new law allows this, because of the great potential for abuse and conflicted decision making, i.e., that a district could preclude a high-quality charter school from opening and limit student mobility and competition from better school options, the law also provides important protections for charter petitioners, relevant here. They are particularly important where, as here, the District denied the Petition based on its receivership status, yet will exit that status in two years with an ending unrestricted fund balance of nearly \$30 million, and has operated with charter schools authorized in its district and has been able to absorb their fiscal impact throughout the past 18 years the District has been in receivership.

First, denial under Section 47605(c)(8) may be invoked only when “[t]he school district is **not positioned to absorb the fiscal impact** of the proposed charter school.” (Emphasis added.) Of course, a student who chooses to enroll in a charter school over their local traditional public school will have some kind of fiscal impact on school district insofar as the school district will not enroll that student and claim their revenue. But, this provision cannot be invoked for mere fiscal impact, although that term is tossed around in discussion; it only applies when the district **cannot** absorb the fiscal impact, i.e., the district does not have the financial ability to do so. It is not sufficient for denial that the District would prefer not to absorb the fiscal impact or that it would pose inconvenience for the District to absorb the fiscal impact. Denial under Section 47605(c)(8) is appropriate only where the District cannot conceivably absorb the fiscal impact. If the District can absorb the fiscal impact, they must, and cannot deny a charter petition under Section 47605(c)(8).

Second, denial under Section 47605(c)(8) may be invoked only for qualifying school districts that “[have] 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.” In other words, Section 47605(c)(8) may only be invoked by school districts with legally recognized statuses suggesting they may be financially imperiled.

Third, “[c]harter schools proposed in a school district” with one of the foregoing fiscal conditions “shall be subject to a rebuttable presumption of denial.” This provision is analyzed in further detail below, but in sum, it means that if the chartering authority invokes Section 47605(c)(8) after the charter petition is submitted, the burden shifts to the petitioner to present evidence challenging the assertion of “inability to absorb” the charter school under Section

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47605(c)(8). If the petitioner presents evidence rebutting the school district's assertion that it is "not positioned to absorb the fiscal impact of the proposed charter school," and the District does not refute that rebuttal evidence with specific evidence, and there are no other grounds for denial (as there are not here), the charter petition shall be approved.

Under the law, a "presumption is an assumption of fact that the law requires to be made from another fact or group of facts found or otherwise established," however, "[a] presumption is not evidence." (Evidence Code Section 600, emphasis added.) "A presumption is either conclusive or rebuttable." (Evidence Code Section 601.) "Every rebuttable presumption is either (a) a presumption affecting the burden of producing evidence or (b) a presumption affecting the burden of proof." (*Id.*) Below, we unpack these concepts and apply them to the "rebuttable presumption" at issue here.

Once a school district invokes threshold facts supporting denial on the grounds of fiscal impact under Section 47605(c)(8), i.e., evidence that it is in state receivership and recommends denying the petition on that basis," the Petition is then subject to evaluation under the "rebuttable presumption." Again, the presumption itself is not itself evidence of the school district's inability to absorb the fiscal impact of the charter school. The District must present evidence that it is "not positioned to absorb the fiscal impact of the proposed charter school," and if the Petitioner submits no creditable rebuttal evidence, the school district's asserted facts for denial are deemed sufficient for denial. However, if the Petitioner presents facts that rebut the factual finding that the "school district is not positioned to absorb the fiscal impact of the proposed charter school," the Charter Petition may not be denied on the basis of fiscal impact.

This rebuttable presumption departs from the ordinary process of charter approval in that it places the burden on the charter petitioner to advance evidence and facts that are otherwise not their responsibility to advance under the other grounds for denial stated in Section 47605(c). In all other circumstances, there is a presumption of approval of the charter petition, and the burden of producing evidence and proof otherwise rests on the chartering authority to make that case entirely, without any obligation on the charter petitioner to make a case beyond what is contained in the charter petition. In the case Section 47605(c)(8) is asserted by a school district or county, i.e., in the recommended staff findings published post-petition submission, there is a presumption of denial. The burden of proof and production of evidence then shifts to the petitioner to make the case for approval on the limited issue of fiscal impact *after* the staff findings recommending denial under Section 47605(c)(8) have been issued. This shift in burden is necessary because a petitioner cannot know whether a school district will seek to deny based on fiscal impact and the grounds therefor until the district asserts its reasons in the published findings that are due 15 days before the decision meeting on the charter petition. This was pointed out by District Counsel as well in response to a question from a District Board member on whether rebuttal evidence must be contained in the charter petition. [DR 1663 (charter petitioners "can't presume what the proposed findings are going to be.")]

Although under Section 47605(c)(8), the burden shifts to the petitioner to present evidence that a finding under Section 47605(c)(8) is not factually supported, denial in all cases under Section 47605 still requires the District to affirmatively present "specific facts" "specific to the particular petition" to warrant denial under Section 47605(c)(1)-(8). Because the presumption itself is not

evidence, a District cannot rely on the presumption alone as a ground for denial, except in the absence of countervailing rebuttal from the petitioner. In the written findings for denial, the District Board, as the finder of fact, must adjudicate whether the rebuttable presumption has been rebutted based on the specific rebuttal evidence presented, and identify the “specific facts” “specific to the particular petition” that demonstrate that the presumption has not been rebutted. It must do so based on what is presented to the district or county board in response to staff findings. Thus, for example, a resolution for denial prepared in advance of the decision meeting by district or county staff and which does not address the rebuttal evidence actually presented is not adequate to deny a charter petition under Section 47605(c)(8).

If a governing board were able to deny a petition under Section 47605(c)(8) without making specific findings on whether the presumption has been rebutted or not based on evidence presented at the hearing, this would effectively turn the “rebuttable presumption” into a “conclusive presumption,” which is clearly not the standard under the plain language of Section 47605(c)(8). The Legislature could have drafted Section 47605(c)(8) to be a conclusive presumption and result in an automatic denial, but did not do so.

Charter petitioners are entitled to the benefit of the statutory language that denials under Section 47605(c)(8) are subject to being rebutted by petitioners. If the governing board were permitted to ignore rebuttal evidence, and deny a petition without addressing the rebuttal evidence in written findings with “specific facts” this would undermine the protection afforded to petitioners under Section 47605(c)(8). Again, all denials under Section 47605(c) require written factual findings “specific to the petition,” and denials under Section 47605(c)(8) must include facts indicating that the presumption has not been rebutted.

Fiscal Impact Analysis Under Section 47605(c)(8)

As charter schools do not “take money away from school districts” (charter schools are funded for the students who choose to enroll), whether a school district is actually positioned to absorb the fiscal impact of a charter school is determinable through consideration of the projected impact on district enrollment due to competition with the charter school. We submit that the following represents a reasonable method of calculating and assessing that impact:

- (i) First, determine a reasonable estimate of the number of students that will enroll in the charter school.
- (ii) Then, determine a reasonable estimate of the number of students that will to enroll in the charter school who would not otherwise enroll in the school district’s schools (i.e., excluding students who would enroll in an existing charter school, private school, homeschool, move, or otherwise transfer to a different school district).
- (iii) Subtract (ii) from (i), the result of which will be the number of students who would likely enroll in the school district’s schools and generate revenue for the school district if not for the charter school.
- (iv) Multiply (iii) by a reasonable estimate of the ratio of ADA to enrollment to determine the expected loss in ADA that would otherwise be generated by the school district if not for the establishment of the charter school (e.g., by applying

- the District's average attendance rate in the grade spans that will be served by the charter school).
- (v) Multiply (iv) by the District's funding rate per unit of ADA to determine the expected loss revenue that would otherwise be received by the school district if not for the establishment of the charter school.
 - (vi) Subtract the expenditures associated with serving the number of students in (ii) who the school district will not be responsible for serving, e.g., personnel who need not be hired or retained, instructional materials, facilities expense, etc.
 - (vii) Add to (vi) all revenue anticipated to accrue to the district as a consequence of the authorization of the charter school, e.g., oversight fees, contracted services revenues, Prop 39 related revenues. The amount reflects the anticipated net fiscal impact of the charter school.
 - (viii) Subtract (vii) from the ending fund balance projected by the school district during the reasonably expected duration of the school district's adverse fiscal condition as specified in Section 47605(c)(8), e.g., while in state receivership.
 - (ix) If (viii) is a positive number and would not (i) result in a specific and significant adverse financial impact to the school district; (ii) result in a negative certification of the school district's finances; and/or (iii) in the case of a school district in state receivership, prevent the school district from making payments due to the State, the fiscal impact of the charter school may be absorbed by the District.

The point of performing these calculations and assessments is that it is not enough that a charter school will attract students who will in enroll in their programs instead of the school district. It is not enough that the school district will forgo revenue for charter school students who it is not responsible for educating. What matters for purposes of Section 47605(c)(8) is whether the school district qualifies for a designated fiscal condition, and even then, whether it is possible for the school district to absorb that impact. If the impact can be expected to be absorbed during the pendency of the invoked status (e.g., receivership), the chartering authority must grant the charter petition in the absence of any other grounds for denial.

THE DISTRICT AND COUNTY DID NOT PROCEED IN A MANNER REQUIRED BY LAW AND THEREFORE ABUSED THEIR DISCRETION IN DENYING CALIBER'S PETITION

Issue #1 – 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

Section 47605(b) provides that “[t]he governing board of the school district shall publish all staff recommendations, including the recommended findings ... regarding the petition at least 15 days before the public hearing at which the governing board of the school district will either grant or deny the charter.” (Emphasis added.) Any findings upon which the governing board of the chartering authority may rely on must be set forth in the published findings at that time so that “[a]t the public hearing” petitioners may “respond to the staff recommendations and findings.” At the time of the decision, “[t]he governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the [grounds for denial].” (Section 47605(c).)

That is, the published findings published by the governing board must provide 15 days advance notice of the universe of findings that may serve as a basis to deny a charter petition, and if the published findings do not contain a recommended finding, the chartering authority may not deny a petition on that ground as the required advanced notice of potential denial has not been provided to the petitioner. School districts must decide whether they will be moving forward with a potential denial based on fiscal impact under Section 47605(c)(8) at the time of publication. There can be no exceptions. As evidence of that, for example, if a district intends to deny under Section 47605(c)(8) based on a qualified interim certification, the district must actually publish “the certification from the county superintendent of schools prepared pursuant to paragraph (8) of subdivision (c),” and cannot simply wait until the decision meeting hearing to produce that evidence for the first time.

The District Board published their proposed findings 15 days in advance as required, on November 30, 2021, as noted in the District’s agenda for the decision meeting. [DR 826.] For this Petition, there were no recommended findings for denial of any kind. [DR 829-837.] There was specifically no recommended finding for denial based on fiscal impact. The published findings stated that “the District’s review team has not included a factual finding to support the denial of the Petition on the basis of ‘fiscal impact’” and noted that “based on a totality of the circumstances, District staff has determined that the Petition is reasonably comprehensive and meets the minimum Education Code requirements for approval of the requested five-year term, beginning on July 1, 2022 and ending on June 30, 2027.” [DR 830.] The District confirmed the lack of this finding at the time it posted the agenda for the decision meeting. [DR 827.] The First Interim report adopted by the District confirmed that the District could absorb the fiscal impact of the Charter School even assuming a fiscal impact of 100 units of ADA per year. [SR 401 (“First Interim enrollment included Caliber HS projected enrollment,” deleted as of the Second Interim report, indicating an assumption of 100 units of ADA impacted by the Charter School, double the Charter School’s own impact projection.)]

On December 10, 2021, five days before the decision meeting on December 15, 2022, for the first time, staff published a recommended resolution for denial of the petition, which included recommended facts and findings to support denial of the Petition solely on the basis of fiscal impact. [DR 838-840.] Such recommended facts and findings contained in a proposed resolution were published too late and violate the requirement that charter petitioners be afforded 15 days of advance notice of the factual bases and findings upon which the governing board is recommended to act, if it chooses denial.

It was an abuse of discretion for the District Board to deny the Petition as it did based on recommended findings in the draft resolution under Section 47605(c)(8) [DR 1622-1623] that were not included among the recommended findings published 15 days prior to decision meeting. Denial of the Petition for these reasons failed to afford Caliber the due process it was entitled to, including the opportunity to prepare for and fully respond to the last-minute charges that the Petition was recommended for denial on the basis of fiscal impact. In reliance on the staff report’s recommendation for approval, there were no proposed findings for denial for which Petitioner could have responded, and thus, Petitioner did not submit a written response to the staff findings, which again, only paved a path for approval.

The statutory requirement that petitioners be provided 15 days advance notice of all possible factual grounds for denial is critical, particularly for denial based on Section 47605(c)(8) given that it is subject to a “rebuttable presumption” of denial that may be overcome by a factual showing by the petitioner upon notice that denial is recommended on that ground. A petitioner needs to know as of that time whether the school district may assert factual findings for denial based on fiscal impact so that it can fully avail itself of the opportunity to rebut that recommended finding. The District abused its discretion by not proceeding as the law required, and the denial of the Petition must be reversed.

To be clear, the fact that written findings must be provided 15 days in advance does not mean that the published document cannot contain alternative factual findings to reflect differing views or potential views among board members. Chartering authorities do this elsewhere, i.e., they provide alternative language for findings if a governing board should choose to deny on a particular basis. And, there is ample time and opportunity for board members to ensure that the published draft findings contain the recommended findings for denial on which the Board may wish to act. It is important to consider that a governing board has between 90 days to review a charter petition before it must make a decision on the charter petition, which can be extended by 30 more days as needed. (Section 47605(b).) The board itself is deemed to receive the charter petition when it is submitted to the district office. (*Id.*) No later than 60 days after submission of the petition, the Board must hold a public hearing (*id.*), as was observed here. It is the “**governing board of the school district**” (emphasis added) itself, not just staff, that “shall publish all staff recommendations, including the recommended findings” 15 days before the decision meeting. (Section 47605(c).) That is, the published draft findings are those of the governing board itself.

Thus, insofar as a governing board wishes to ensure that certain factual findings are addressed in the published document that they are responsible for publishing, they have two options. First, they can work with staff during the 90-day process to ensure that particular proposed findings are included as of the time “the governing board of the school district shall publish” the proposed findings. For example, in discussion at the initial public hearing, the governing board or members could request that staff include certain proposed findings for consideration. Or, second, if the proposed findings that are published do not contain all of the potential facts on which a board may wish to act, the board can withdraw the published findings, reschedule the decision meeting, and publish revised findings. So long as the revised recommended findings are published 15 days before the rescheduled decision meeting, that is allowable under the law. Given that the process allows for 90 days, or even up to 120 days with an extension, if needed, there is ample time for a Board to ensure that the published recommended findings do reflect Board member input.

While the County Board did provide sufficient notice through its published recommended findings that denial of the Petition would be recommended under Section 47605I(8) [DR 2612.], this fact is not relevant for purposes of appeal here, i.e., whether the District abused its discretion, as indicated, and whether on that basis, the denial of the Petition by the District must be reversed. Petitioner was entitled to have its petition approved by the District in accordance with the legal requirements under Section 47605, and the ACCS and SBE are designated to correct abuses of discretion occurring at the district level, the county level, or both.

Issue #2 – The District Board Failed to Apply the Correct Standard in Denying the Petition Under Section 47605(c)(8), Constituting an Abuse of Discretion

Again, the recommended findings published by the District Board presented no basis upon which the Petition could have been denied, and it was an abuse of discretion for the District Board to deny the Petition based on findings under Section 47605(c)(8) [DR 1622-1623] for which Petitioner received inadequate notice. However, the actual written findings contained in the District’s resolution for denial [DR 1621-1623], as adopted by the District Board, were also insufficient to support denial of the Petition under the standards described above governing the operation of the rebuttable presumption, and the District abused its discretion in adopting them.

Putting aside that the District failed to provide adequate notice of its recommendation to deny the petition based on fiscal impact in its published findings, the adopted findings are completely silent on the “rebuttable presumption” standard, and does not at all address evidence submitted by the Petitioner demonstrating that the District is “positioned to absorb the fiscal impact of the proposed charter school.” [DR 1621-1623.] The document does not mention the “rebuttable presumption” standard at all. [DR 1621-1623.] And of course, because the resolution was prepared before the decision meeting [DR 828, DR 838-840], it could not have accounted for any of the rebuttal facts that Caliber addressed as of the decision meeting. The record indicates that the District Board did not discuss, consider, or weigh any rebuttal evidence at all at the decision meeting, even if discussion were a substitute for the requirement for written factual findings (they are not). [DR 1643-1667.] The District Board improperly and implicitly transformed a “rebuttable presumption” into a “conclusive presumption” by accounting only for its own position as reflected in the resolution prepared in advance as being dispositive to the outcome, i.e., in adopting its finding for denial under Section 47605(c)(8) [DR 1622-1623.]

In fact, the record indicates that the District Board also did not actually understand the applicable legal standard under Section 47605(c)(8) at all and that it was obligated to adjudicate the rebuttable presumption. For example, District Board Trustee Ubalde indicated that the District Board had received a letter from the author of AB 1505, Assemblymember O’Donnell that “stated very clearly ... the only requirement for denying a charter petition under section 47605(c)(8) is that the District meets one of the three categories listed which VCUSD that’s us clearly does by virtue of being in a state receivership.” [DR 1665.] He further states that “*VCUSD can therefore make a finding to deny any charter petition before the school board under 47605(c)(8) without needing any additional information or analysis.*” [DR 1665.] (Emphasis added.) This is just completely false.² Being in receivership is not the “only requirement for denying a charter petition under section 47605(c)(8).” It merely creates a rebuttable presumption that requires adjudication of evidence regarding whether the District can absorb the fiscal impact when the petitioner submits

² The plain language of Section 47605(c)(8) and its inclusion of a rebuttable presumption speaks for itself. Although the Assemblymember’s letter is not in the record, the hearsay of what it said, even if considered, would not be legally relevant. (*In re Marriage of Bouquet* (1976) 16 Cal.3d 583, 589 [“In construing a statute we do not consider the motives or understandings of individual legislators who cast their votes in favor of it... Nor do we carve an exception to this principle simply because the legislator whose motives are proffered actually authored the bill in controversy.”])

rebuttal evidence. It is also not true that a denial may be made “*without needing any additional information or analysis.*” The presumption is not a “conclusive presumption,” it is a “rebuttable presumption,” and the District Board must adjudicate the rebuttal evidence presented, i.e., additional information or analysis. It was an abuse of discretion for this Board to do so, as Trustee Ubalde indicated was how the Board was in fact proceeding.

That the Board was under this false impression that it could ignore rebuttal evidence and rely solely on the fact of receivership is also apparent in Trustee Fox’s discussion before voting indicating his belief that denial was allowable “even though *the* findings are met” because “we have this other recourse because we are one of four in the state that protects us because of our financial status being state receivership.” [DR 1666.] No other District Board member indicated that they understood, much less applied, the rebuttable presumption. [DR 1643-1667.]

The District Resolution just stated, in conclusory fashion, that “[t]he Board has serious concerns regarding the adverse fiscal impacts on the District that could result if it approves the Petition due to the likelihood that the District will lose student enrollment and the fact that, for every student that enrolls in the Charter School who would otherwise attend a District high school, the District would suffer a commensurate loss of state apportionment funding.” [DR 1622.] “Serious concerns” are not “facts,” and do not respond or grapple with the facts supplied by Caliber that the fiscal impact of the Charter School would be nominal and readily absorbed based on the following evidence:

- Caliber would grow slowly, opening with only a 9th grade class of 150 students. [DR 2527, DR 888.]
- Caliber committed to not recruit current District high school students. [DR 2527.]
- Only 37.8% of Caliber: Changemakers students matriculate to District schools upon graduation, making it reasonable to project that the impact of the charter school on District enrollment would be approximately 50 units of ADA (i.e., 37.8% of 150 students, reduced based on attendance). [DR 877, DR 2528.]
- 80% of the State’s loan to the State has been repaid and the final payment will be made in 2024. [DR 2529.]
 - At that time in 2024, the Charter School will be only half-enrolled, reflecting an ADA impact on the District of approximately 100 units of ADA. [DR 888.]
 - The District’s First Interim budget forecast does not raise any concerns by 2024 with respect to the fiscal impact of the Charter School’s ADA. [DR 1639, DR 1649-1650, SR 24.] Even with the incorporation of a fiscal impact on the District of 100 units of ADA each year (which is higher than the actual reasonable projected impact of 50 units of ADA), the First Interim budget still indicated that the District would have a positive fund balance. [SR 401 (“First Interim enrollment included Caliber HS projected enrollment,” deleted as of the Second Interim report, indicating an assumption of 100 units of ADA impacted by the Charter School, double the Charter School’s own impact projection.)]
- The Charter School’s revenue between the proposed open date of the Charter School and maturity of the State loan only constitutes 2% of the District’s budget

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during that time period, based on First Interim financial data, even if it is assumed that all of the Charter School's revenue comes at the expense of the District with no offsets, e.g., for cost savings to be realized and expenditures avoided. [DR 2530.]

- The District's financial analysis was based on stale school Local Control Funding Formula ("LCFF") COLA projections from the summer of 2021 and failed to account for the Legislative Analysts Office's ("LAO") November 2021 forecast that projected meaningful increases in the 2022-23 and 2023-24 school years, combined percentage increases of 3.26%. [DR 2531.]
- The District failed to account for a \$10 billion projected increase in Proposition 98 funding, translating to more than \$15 million per year in additional funding accruing to the District. [DR 2532.]

Putting aside the fact that the District's improper late notice of its intent to deny the Petition based on Section 47605(c)(8) deprived Petitioner of the opportunity to submit a detailed and comprehensive analysis, the above evidence indicated that the District could reasonably be expected to absorb the fiscal impact of the charter school through the period of time that the District itself was projecting forward, i.e., 2023-24, even assuming unreasonably that the Charter School would have a 2% impact on the District's budget during that time period, i.e., assuming students at the Charter School would otherwise attend the District's high school in both years consistent with Caliber's projections grounded in actual matriculation experience and data. The First Interim Budget presented to the District Board that evening identified a \$30 million unrestricted ending fund balance in 2022-23 and a \$19 million unrestricted ending fund balance in 2023-24, while repaying the State's loan. [SR 24.]

The District's unquantified conjecture that some students may enroll at the Charter School instead of the District is not evidence that the District is "not positioned to absorb the fiscal impact of the proposed charter school." In the absence of rebuttal evidence from the petitioner, the presumption under Section 47605(c)(8) may be sufficient for denial, but as here, in the presence of rebuttal evidence, the District Board was required to address Petitioners' rebuttal evidence, and either credit it and approve the Petitioner, or present "specific facts" on why the presumption was not rebutted and deny the petition through the written findings required to be made under Section 47605(c). The District failed to do so, as reflected in the written findings adopted regarding Section 47605(c)(8) (and lack of written findings therein adjudicating the rebuttable presumption), [DR 1621-1623]. Thus, the District abused its discretion in denying the Petition without adequate written findings that observed the correct standards for denial under Section 47605(c) and Section 47605(c)(8).

Issue #3 – The County Board Failed to Apply the Correct Standard in Denying the Petition Under Section 47605(c)(8), Constituting an Abuse of Discretion

Although unlike the District, County Staff's findings recommending denial based on Section 47605(c)(8) were timely published, acknowledge that denial under Section 47605(c)(8) is subject to a rebuttable presumption, and quoted some of the evidence submitted by Caliber, the County Board ultimately misapplied the standard and abused its discretion in denying the Petition. The County Board's recommended and adopted findings otherwise determined that "the Charter

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School's proposed program is consistent with sound educational practice, and the Petition generally meets the requirements outlined in Education Code section 47605, subdivisions (c)(1)-(7)." [DR 2612.] The County Board's resolution for denial purports to deny the Petition solely on the basis of Section 47605(c)(8)³, but like the District Board's resolution for denial, it also fails to grapple with, adjudicate, or apply (let alone mention) the rebuttable presumption standard and Caliber's rebuttal evidence. [DR 2695.] The County Board abused its discretion in adopting its finding for denial under Section 47605(c)(8) for all of the reasons addressed below. [DR 2695.]

Again, denial under Section 47605(c)(8) is dependent on whether after consideration of Petitioner's rebuttal evidence, "specific facts" indicate that the District is "not positioned to absorb the fiscal impact of the proposed charter school." The County Board's adopted findings do not grapple with or adjudicate Petitioner's rebuttal evidence as required, nor give Caliber the benefit of the rebuttable presumption, nor provide "specific facts" in writing doing so. [DR 2695.]

The County Board's written findings are ultimately predicated on the position that "the proposed Charter School will have a negative fiscal impact on VCUSD due to loss of enrollment," [DR 2627] but enrollment loss does not go to the key issue of whether the district is "positioned to absorb the fiscal impact of the proposed charter school." Of course, for every student who chooses to go to a charter school instead of a district school, that means that State education dollars will follow the student to the charter school, and less money will flow to the District, it also means that the District is not responsible for educating and incurring expenses to serve that student. The fiscal impact issue is thus not whether a school district will lose money as a consequence of a student never enrolling in the first place, but instead, whether the financial impact of that non-enrollment in the district cannot be absorbed by the district.

It is notable that there are no findings at all for denial by the District or the County under Section 47605(c)(7), that given "consideration of the fiscal impact of the proposed charter school," "the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings." [DR 2695.] In other words, neither the District Board nor County Board contended that the fiscal impact of the Charter School, i.e., lost revenue, would actually impair "existing services, academic offerings, or programmatic offerings." The only contention that the County Board asserts is that approval of the Charter School is projected to exacerbate a paper deficit that is not projected to be negative until the fourth year of the Charter School's initial

³ The County's original published findings raised "concerns" regarding the first year of the Charter School's operation under Section 47605(c)(2) (demonstrably unlikely to successfully implement the program) and had originally included a proposed finding for denial on that statutory basis. However, the legal basis for denial that was ultimately recommended in the published findings and at the decision meeting was for fiscal impact under Section 47605(c)(8) [DR 2628 (concluding that "SCOE staff recommends that the Petition be denied pursuant to Education Code section 47605, subdivision (c)(8)")] and the County Board's adopted resolution reflects the same. [DR 2695.] In any event, Caliber fully responded to County Staff's concerns in its written response [DR 2633-2637], and it would have been an abuse of discretion in any event to have denied the Petition under Section 47605(c)(2) if the County Board had done so based on the lack of substantial evidence to support such findings.

term. [DR 2627-2628.] The County Board’s written findings in support of denial were inadequate and failed to address or fairly adjudicate Caliber’s rebuttal evidence, as addressed below.

1. The County Ignored Rebuttal Evidence of the Actual Projected ADA Impact of the Charter School and LCFF Impact

First, County Staff’s fiscal impact analysis and calculations were made on the unsupported assumption that the Charter School would cause a reduction of 100 units of ADA each year, [DR 2627] but the only actual fact in the record is that “[o]nly one-third of [Caliber: ChangeMakers Academy’s] graduating 8th grade students enroll in VCUSD-operated high schools,” [DR 2625, 2638] thus making the potential ADA impact of the Charter School on the District approximately 50 units of ADA, or, half of the 100 units of ADA used by the County to project the expected impact of the Charter School on the District. The County Board did not hear evidence rebutting Caliber’s evidence regarding the true anticipated enrollment impact expected from the Charter School. [DR 4/13/2022 County Meeting Video (“CMV”) 00:19:01-00:29:00; 00:38:07-00:47:16⁴.] County Staff picked 100 units of ADA without conducting actual matriculation analysis, assuming with no basis that 66% of new enrollment at the Charter School will be drawn from students who would otherwise attend the District. [DR 2627, 2638.] At the decision meeting, County staff could not explain how it calculated 100 units of ADA to be an accurate projection of yearly ADA impact on the District beyond just say-so. [DR CMV 3:42:40-3:43:26.] The actual evidence indicates that only around a third of projected enrollment could be reasonably expected to otherwise enroll in District schools and the LCFF impact will be substantially less than what the County Board assumed. [DR 2625, 2638.]

	2022-23	2023-24	2024-25	2025-26	2026-27
Caliber HS enrollment	150	300	450	600	600
Enrollment impact on VCUSD (one-third)	50	100	150	200	200
Impact on District ADA (93%)	46.50	93.00	139.50	186.00	186.00
LCFF \$ impact	591,622	1,233,713	1,916,079	2,554,772	2,554,772

[DR 2642.]

Relatedly, County Staff’s projections of student growth are flawed. As a high school, at capacity, and even in its fifth year, Caliber’s population will be at 600 students (four year of 150 students). [DR 2642.] Yet County Staff presumed under its 80 ADA and 100 ADA impact projections that Caliber would continue to experience enrollment growth in its fifth year, which is not the case. [DR 2627.]

2. The County Ignored Rebuttal Evidence that its Fiscal Impact Projections Were Erroneous

Second, through its own fiscal impact projections, the County ignored the evidence of the immaterial impact of the Charter School on the District’s finances, given the low ADA impact on the District, and the fact that the Charter School’s revenues will at most constitute about 2% of the District’s revenues during the first two-years of the charter term, [DR 2625] the only years projected by the District itself in its First Interim and Second Interim reports. [SR 24, SR 234.] (The County recognizes this is true as to the First Interim report figures it cites, DR 2628.) The

⁴ Timestamps referenced with respect to the CMV refer hours:minutes:seconds.

analysis also failed to adjust for cost savings and revenue gains that would result as a consequence of authorizing the Charter School, had it been authorized by the District as it should have been from the outset. [DR 2628, 2640.]

	2022-23	2023-24	2024-25	2025-26	2026-27	Total
Authorizer Oversight Fees (1% of LCFF)	17,791	36,688	56,984	75,978	75,978	263,419
Facility Use Fees (2% of LCFF)	35,582	73,376	113,968	151,956	151,956	526,838
Reduced Vandalism Costs (estimated)	100,000	100,000	100,000	100,000	100,000	500,000
Reduced Student Support Costs (\$800 pp)	40,000	80,000	120,000	160,000	160,000	560,000
TOTAL	193,373	290,064	390,952	487,934	487,934	1,850,257

[DR 2640.]

Instead of analyzing Caliber’s rebuttal evidence, County relied upon only its own highly flawed deficit projections four years into the future, which do not actually bear on whether the District can “absorb the fiscal impact of the proposed charter school.” [DR 2628.] The only budget projections rendered by the District itself are through the 2023-24 school year. [DR 2628.] The projections created by County Staff for 2024-25 and 2025-26 are not fair projections, including because they were not created or adopted by the District, which is responsible for budgeting responsibly based on enrollment projections going forward, e.g., making their own adjustments in expenditures based on projected enrollment and programming. The County was in no position to make those adjustments for the District, and neither the County nor District attempted to do so. The County was only able to contrive the District’s ending fund balance into the negative four years into the future (again, two years beyond the District’s own projections showing a significant positive ending fund balance) and beyond the period of receivership by making simplistic and unrealistic assumptions that the District itself did not and could not make, and at an irrelevant future time period.

The only potentially relevant projections for a District under receivership (assuming they are reasonable) are the District’s own projections of its finances as the entity asserting an inability to absorb the fiscal impact of the Charter School due to the state of receivership. This is buttressed by the fact that Section 47605(k)(1)(A)(ii) provides that “[i]f the denial of the petition was made pursuant to paragraph (8) of subdivision (c), the county board of education shall also review the school district’s findings pursuant to paragraph (8) of subdivision (c),” i.e., the District’s rationale for denial based on its purported inability to absorb the fiscal impact of the charter school. It is improper for the County to contrive new or different reasons why a school district cannot absorb the fiscal impact of a charter school when it is the school district that will purportedly be impacted and thus its existing evidence regarding fiscal impact is what is relevant.

Indeed, the District’s own projections based on its First and Second Interim Reports demonstrate that the District *can* absorb the impact of the charter school during the period that the District has projected forward and that the District will have a substantial ending fund balance of more than \$20 million through the 2023-24 school year under the First Interim report (accounting for Caliber’s purported fiscal impact at 100 units of ADA, SR 401), and nearly \$30 million under the Second Interim report. [DR 2628, DR 2639, 2642.] This indicates that the District can readily absorb any potential fiscal impact of the Charter School:

The County Board projects that looking forward through the 2025-26 school year, i.e., four years into the Charter School's first term, that only at that point is the District expected to have a negative fund balance – which the County attributes to the Charter School as a matter of speculation. [DR 2628.] Putting aside the County's failure to consider the Petitioner's rebuttal evidence specifically [DR 2638-2643, DR 2699-2703] the math and inputs underlying the projections are highly flawed. It reflects an abuse of discretion for the County Board to rely on them as it did in determining that the District could not absorb the fiscal impact of the charter school.

Specifically, the purported structural deficit the district faces is contended to be the result of declining enrollment, yet, the County's projections hold expenses and revenue to be static between 2023-24 and 2025-26, making no expense reduction in correspondence with the fact the District is projected to be responsible for educating fewer students. [DR 2628.] As of 2025-26, the District's projected ADA loss under County Staff's projections is estimated to be 400 units of ADA (i.e., because the County Board is assuming Charter School will be serving, simultaneously, four classes of 100 students who would otherwise attend District schools). [DR 2627-2628.] But the County Board's analysis makes no reduction in expenditures for what is essentially the elimination of expense associated operating an entire school of 400 students. [DR 2628.]

The County Board's analysis presumes that the District will continue operating as usual four years from now, notwithstanding the projected loss of 400 units of ADA, and four years of opportunity between now and then to adjust its expenditures and reduce obligations. [DR 2628.] There is thus good reason to only consider the District's own budget projections through 2023-24 and not those that the District has not yet made. County Staff's projections unreasonably assume that the District will not make a sufficient adjustment to its expenses in response to expected declining enrollment. [DR 2627-2628.] Taking into account Caliber's rebuttal evidence, [DR 1678-1683 DR 2638-2643-, DR 2576-2581, DR 2699-2703], there is no counterevidence in the record that the District cannot absorb the anticipated fiscal impact of the Charter School, and to the contrary, the District's own financial projections through 2023-24 show that it can. [DR 2628.] The District presented no facts either disputing the truth of Caliber's rebuttal evidence. [DR 2644-2652.]

Taking into account the positive fiscal impact of the charter school [DR 2642] (but not reducing the District's variable costs for staff, materials, facilities, and the like), and netting out the projected ADA and LCFE impact on the District, Caliber's rebuttal evidence demonstrated that the cumulative fiscal impact of the Charter School on the District over its five year term is only approximately \$7 million [DR 2642], conservatively:

	2022-23	2023-24	2024-25	2025-26	2026-27
Net Impact	-398,249	-943,649	-1,525,127	-2,066,838	-2,066,838

[DR 2642.]

After accounting for that impact during the first two years based on the District's own projections in its Second Interim Report (\$1.34 million), it is clear that the District can readily absorb the potential fiscal impact of the Charter School during that time. [DR 2642.] And, as for

the remaining cumulative \$5.7 million of fiscal impact during the remaining three years of the charter term, that amount constitutes just approximately 20% of the unrestricted ending fund balance for one year alone, 2023-24, i.e., available cash after the District has already satisfied all of its obligations and leaving a healthy reserve. The evidence presented to the County Board, based on the District's own fiscal projections, clearly indicate that the District can absorb the fiscal impact of the Charter School [DR 2642]:

	VCUSD Second Interim Forecast		
	2021-22	2022-23	2023-24
Beginning Unrestricted Fund Balance	27,526,938	48,035,620	42,046,632
Total Revenues	127,283,691	102,621,811	97,874,404
Total Expenditures	106,775,009	108,212,550	111,161,647
Net Increase (Decrease)	20,508,682	-5,590,739	-13,287,243
Ending Unrestricted Fund Balance	48,035,620	42,444,881	28,759,389
Charter Impact		-398,249	-943,649
Adjusted Ending Fund Balance	48,035,620	42,046,632	27,815,740

[DR 2642.]

Again, denial based on County Staff's fiscal projections constituted an abuse of discretion because they are unsound, they ignored Caliber's rebuttal evidence of the actual relevant fiscal impact and on the District's budget in violation of Section 47605(c)(8), and thus do not constitute evidence regarding the District's ability to absorb the fiscal impact of the Charter School on which the County Board could have legally relied in denying the Petition.

3. The County Ignored Rebuttal Evidence from the State that the District's Increased Revenues Would Offset any Fiscal Impact of the Charter School

Third, putting aside the County's failure to consider and credit Caliber's specific rebuttal evidence responding to the County's projections, the County's analysis is fundamentally flawed, and the County abused its discretion by considering only the District's First Interim budget which does not take into account the most recent November 2021 LAO guidance regarding the expected funding levels in the coming years. [DR 2628, DR 2531, DR 2625, DR 2639, DR 2579.] These revised projections indicated that the positive impact on the District's funding under the LAO's forecast is larger than any potential negative impact on the District from the proposed Charter School. [DR 2642.] Reliance on outdated and inaccurate financial data without justification, an issue raised by Caliber, demonstrates that the County's denial of the Petition failed to address rebuttal evidence and thus, the County abused their discretion in failing to apply the required standard for denial under Section 47605(c)(8).

4. The County Ignored Rebuttal Evidence that the District's Own Revised Financial Projections Indicated An Even Greater Capacity to Absorb Any Fiscal Impact of the Charter School

Fourth, and similarly to the County ignoring current LAO fiscal data, the County also abused its discretion by ignoring the District's own revised financial projections. Specifically, when the County published its findings, the District had approved its Second Interim Report weeks earlier, reflecting a substantially improved fiscal condition. [DR 2639-2640.] County staff's

projections do not address the District's revised fiscal analysis, budgeting, and projections. [DR 2628.] At the decision meeting, when asked why that information was ignored, County staff stated specifically that although the Second Interim Report had been available to the County during the period County staff was preparing their petition analysis, County staff simply elected to not do a "thorough analysis" of the Second Interim Report, [DR CMV 3:42:14-3:42:41] and indeed, they did not address it at all. [DR 2625-2628, DR 2695.]

However, ignoring the Second Interim Report constituted an abuse of discretion, since in light of available revised financial information, it rendered the published recommendations unreliable and unusable, and indicated failure to account for Caliber's rebuttal evidence as denial under Section 47605(c)(8) requires. Specifically, the Second Interim Report indicated that as of the end of the 2023-24 school year, the District now projects more than \$29 million in its unrestricted fund balance, growth of approximately \$10 million over the figure in the First Interim Report [DR 2642], which is more than sufficient to cover the overstated \$8.86 million impact County Staff allocates to the Charter School between the 2024-25 and 2025-26 school years, before backing out any cost savings whatsoever. [DR 2627-2628.] Assuming that even just 90% of revenue is spent on direct student expenses and classified and certificated employees and would be saved by the District by not serving 700 units of ADA in those two years (300 ADA in 2024-25 and 400 ADA in 2025-26), the equivalent of closing a school, the net impact on the District would be approximately \$866,000, or less than 3% of the unrestricted fund balance in 2024-25, and a tiny fraction of the District's overall budget.

Even under the County's very high ADA impact projections (again, double what the real-world facts indicate), whether taking into account cost savings or not, the math indicates that the District can absorb the fiscal effects of the Charter School. Again, the County abused its discretion in relying on its flawed projections that ignored and failed to account for the Charter School's rebuttal evidence indicating the relevant current financial data for the District.

5. *The County Ignored Rebuttal Evidence that the District Will Exit State Receivership in Two Years and the Charter School's Fiscal Impact Will Have No Adverse Impact on The District's Ability to Repay the State Emergency Loan*

Fifth, the County ignored rebuttal evidence that the District anticipates making its final State loan payments and exiting state receivership by 2024, eliminating the status under which the District is eligible to invoke denial under Section 47605(c)(8). [DR 2666 DR 2576, DR 2528-2530, DR 2625.] The District's impending loan payoff was even confirmed by FCMAT to occur by January 2024, i.e., prior to the close of the 2023-24 school year addressed by the District's own projections.

Emergency Loan Status as of July 1, 2021

California State Emergency Loan Recipients

California state emergency loans to school districts from 1990 to 2021

Note: This page may need to be printed in landscape view on 8.5" x 14" paper

District	Tenure of Administrators and Trustees	Legal Authority (in addition to Assembly Bill (AB) 1209)	Date of Issue	Amount of State Loan	Interest Rate	Date/Amount of I-Bank Refinance & Remaining General Fund (GF) Loan	Outstanding Balance of I-Bank and General Fund Loans	Amount of Annual Loan Payment; Due Date	Amount Paid By District Including Principal & Interest	Pay Off Date
Vallejo City Unified	Administrator 06/22/04-03/31/13; Trustee 07/13/07-Present	SB 1190, Ch 53/04	06/23/04 06/13/07	\$50,000,000 \$10,000,000 = \$60,000,000	1.5%	12/01/05 \$20,642,992 refinanced by sale of I-Bank bonds of \$21,205,000 (principal and accrued interest) \$25,000,000 - GF \$10,000,000 - GF	\$10,040,837 as of 07/01/21	I-Bank: \$1.3 million total due during the period July through January, 2006-2024; GF: \$1.6 million due each June, 2007-2024; GF: \$670,797 due each August, 2008-2024	\$58,229,240	January 2024 I-bank 06/13/24 GF

[DR 2666.]

This is a further reason why it was inappropriate and an abuse of discretion for the County Board to base its determination of fiscal impact based on a negative fund balance in 2025-26, given that these projections are made beyond the period the receivership will end and the condition giving rise to potential denial of the Petition in the first instance. The evidence indicates that the District’s receivership status and loan balance has no impact on the District’s ability to absorb the fiscal impact of the charter school through 2024 when the District will conclude its repayment of the State emergency loan from 2004 and exit receivership. [DR 2642.]

Further, it is significant that insofar as the District is under state receivership, the assigned State’s trustee submitted no position statement or assessment that in light of receivership the District could not absorb the fiscal impact of the Charter School; there is nothing in the record at all reflecting any objection to the Charter School from the trustee, e.g., that authorizing the Charter School would adversely impact the District’s fiscal condition, or preclude the District from repaying its loan to the State or exiting receivership.

6. *The County Improperly Relied on a FCMAT Opinion That Did Not Address or Account for the Rebuttable Presumption Standard, or Address the District’s Fiscal Condition and Ability to Absorb the Fiscal Impact of the Charter School*

Sixth, the County also abused its discretion in relying on an opinion from FCMAT that because the District is in receivership, it is not positioned to absorb the fiscal impact of the Charter School. [DR 2631-2632.] The County Board relied on the letter and a presentation by FCMAT addressing the same [DR 2661-2668], yet, the opinion did not fully articulate the full standard for denial under Section 47605(c)(8). The letter stated that receivership alone is the “only ... relevant factor appropriation for consideration,” [DR 2632] which is not accurate. Again, receivership is not the “only” relevant factor because denial under Section 47605(c)(8) is subject to a rebuttable presumption, not a conclusive presumption.

While the Caliber Public Schools appeal speaks to many points, FCMAT believes 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.

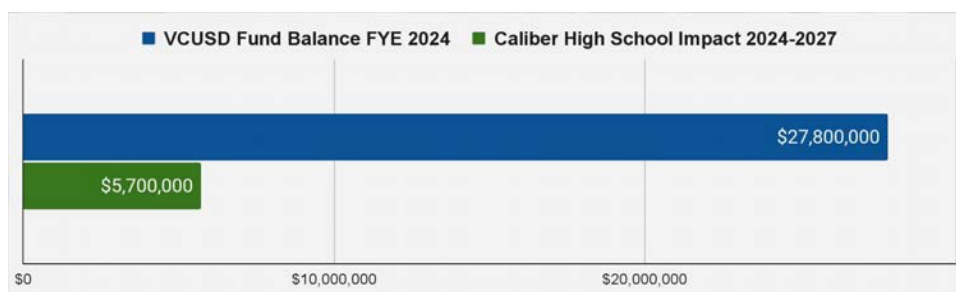
[DR 2632.] As a consequence, the County Board was wrongly informed as to the standard for denial and ignored Caliber’s rebuttal evidence, under the impression that the fact of receivership was sufficient on its own for denial.

At most, the FCMAT letter only serves to confirm the District’s receivership status and the presumption provided under Section 47605(c)(8) arising from the same. [DR 2631-2632.] FCMAT’s letter does not actually analyze whether based on the District’s budget and projections whether it is actually able to absorb the fiscal impact of the Charter School or not. At the decision meeting, a FCMAT representative confirmed that they “did not do analysis,” that they did not “look at LAO numbers,” that they “didn’t do any analysis relative to the charter itself,” and that all FCMAT did was comment “purely on the status of the district,” i.e., that it was in receivership. [DR CMV 03:44:52-03:45:51.] Again, being in receivership is the beginning of the analysis, not the end.

The County Board’s reliance on FCMAT’s letter and failure to actually analyze fiscal impact demonstrates that the County Board abused its discretion by failing to account for and consider Caliber’s rebuttal evidence demonstrating that the District was positioned to absorb the fiscal impact of the Charter School.

7. The County Board Failed to Issue Written Findings for Denial in Compliance with Section 47605(c) that Reflected Application and Adjudication of the “Rebuttable Presumption” Standard; the Evidence Indicates that the County Board Did Not Do So.

In addition to presenting the foregoing rebuttal evidence in Caliber’s written response to staff findings [DR 2638-2642], at the decision meeting specifically, Caliber also presented evidence on these issues, [DR 2699-2703; DR CMA 00:36:08-00:37:37] including the potential impact of Caliber between 2024 and 2027 relative to the District’s unrestricted ending fund balance as of 2024 alone [DR 2702]:



[DR 2702.] In other words, the evidence indicates that even projecting the impact of the Charter School on the District far into the future beyond the District’s current projections, based on the District’s conservative projections of its 2024 ending fund balance in the nearer term, the entire potential fiscal impact of the Charter School is readily absorbable by the District.

The rebuttal evidence presented by Caliber demonstrates that the District can absorb any potential fiscal impact from the Charter School. [DR 2638-2643, DR 2699-2703.] The County Board had a legal obligation to adjudicate Caliber’s rebuttal evidence before denying the Petition,

and there is no evidence in the record that it did so. At the decision meeting, County Staff's presentation did not respond to Caliber's rebuttal evidence or explain why it was wrong or not credible. [DR 2658-2660.] There was no discussion among the County Board addressing or weighing the specific rebuttal evidence presented either [DR CMV 04:05:38-04:22:32], like the District Board. At most, one County Board member dismissed the evidence as a whole without explaining why it should not have been credited. [DR CMV 04:10:25-04:11:07.] Nor could there have been any basis for the County Board to conclude that Caliber's rebuttal evidence was not credible, and outweighed by evidence presented by the District. Caliber's impact, including in the chart above, was based on the District's own financial projections and assumed a reasonable fiscal impact scenario. [DR 2702, DR 2642.] Neither the District nor County responded to that evidence. The District, in its presentation, did not dispute or refute Caliber's evidence. [DR 2644-2652.] The District cited to projected enrollment loss, [DR 2645] but no evidence that it could not absorb the projected fiscal impact of the Charter School. [DR 2644-2652.]

Further, there is evidence that the County Board members did not understand the "rebuttable presumption" standard under Section 47605(c)(8) either. For example, Board Member Dunn expressed her position that her decision was driven by intent to "mak[e] sure ... that there is an equitable, equitable distribution of our resources to all students." [DR CMV 04:08:06-04:08:15.] This is not the issue or standard under Section 47605(c)(8); the State's dollars follow the student, and a denial under Section 47605(c)(8) may not be made on the basis that State resources would somehow be steered to a charter school to serve that charter school's students instead of a school district and result in inequity. The only issue is the application of the rebuttable presumption, and Board Member Dunn failed to apply it. She claimed without evidence that Caliber's financial analysis is "hopeful, but we don't get to make decisions based on optimism and hope and fantasy speculation." [DR CMV 04:10:47-04:10:55.] But, given that Caliber's rebuttal evidence was predicated on the District's own financial data, the evidence was not based on "fantasy speculation." This indicates that Board Member Dunn did not understand or attempt to adjudicate the actual evidence presented and instead treated the rebuttable presumption as a conclusive presumption for denial based on the fact of the District's receivership.

By further example, Board Member Michelle Coleman indicating that she was not voting to deny the Petition because of fiscal impact, but because in her view, Caliber did not show it would be providing "a program that Vallejo city didn't already have" and that otherwise, she "would be more inclined to grant that charter school." [DR CMV 04:16:06-04:16:28.] Board Member Coleman was describing a denial ground under Section 47605(c)(7) (which addresses program duplication), but there was neither a recommendation for denial on that basis in the published findings, nor did the County Board ultimately deny on that basis.

Board Member Sharp observed specifically that her colleagues appeared to be denying the Petition on the false understanding that "receivership is an automatic denial" and that the issue was "completely misunderstood and twisted this evening," [DR CMV 04:12:35-04:12:45] i.e., in the County Board's consideration of the Petition and failure to consider and adjudicate Caliber's rebuttal evidence.

Ultimately, neither County staff's findings nor the adopted resolution address and make "specific" factual findings "specific" to Caliber's Petition based on evidence addressing

Petitioner's rebuttal evidence (identified above), including evidence presented at the hearing as required under Section 47605(c) and Section 47605(c)(8). [DR 2695.] Thus, Caliber was not afforded the benefit of the "rebuttable presumption" standard, nor the guarantee that a charter petition may not be denied without specific written factual findings, based on evidence, specific to the petition. This constitutes an abuse of discretion and the County Board's denial of the Petition must be reversed on appeal.

Issue #4 – The County Board Abused its Discretion by Failing to Provide a Transcript of the April 13, 2022 Decision Meeting

Pursuant to AB 1505, charter petitioners appealing to the State Board are entitled to the documentary record for the hearing on their charter petition, including specifically as the law provides, a "transcript" of the decision meeting. Section 47605(k)(2)(A) states that in the event an appeal of a denial of a charter petition to the State Board, "[t]he governing board of the ... county board of education **shall prepare the documentary record, including transcripts of the public hearing at which the ... board of education denied the charter,** at the request of the petitioner" and "[t]he **documentary record shall be prepared** by the governing board of the ... county board of education no later than 10 business days after the request of the petitioner is made." (Emphasis added.)

Here, Caliber timely requested the documentary record from the County on April 15, 2022. (SR 2-3.) The County failed to comply with its obligation to provide a transcript of the April 13, 2022 meeting. (SR 1-2.)

On this issue, the County Board abused their discretion in denying Caliber its express right to a transcript from the hearing on its Petition, and thus, the State Board must reverse the denial of Caliber's petition. The law requires that county boards of education maintain and provide a transcript of hearings denying charter petitions to that charter petitioners will be able to identify abuses of discretion and assert their rights regarding the same on appeal by citing to a transcript of the proceedings. By providing only a video, this makes it more challenging for the ACCS and the State Board members to review the record.

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

The District Board's and County Board's findings for denial under Section 47605(c)(8) [DR 1621-1623, 2695] constituted abuses of discretion because they were not sufficiently specific or factual to support denial, and failed to observe the standard for written findings under the law that they may not be conclusory. Section 47605(c) provides that "[t]he governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, **setting forth specific facts** to support one or more of the [codified grounds for denial]." (Emphasis added.) To reiterate, denial must be based on "specific facts" that are found by the governing board. A fact is something "that has actual existence . . . an occurrence, quality, or relation to the reality of which is manifest in experience or may be inferred with certainty..." (*Kelly v. William Morrow & Co.* (1986) 186 Cal.App.3d 1625, 1630.)

On this appeal, the “substantial evidence” test (addressed above) must be applied with significant rigor to a denial given the specific Legislative command that “in reviewing petitions for the establishment of charter schools ... the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged,” and the presumption that “[t]he governing board of a school district shall not deny a petition for the establishment of a charter school. (Section 47605(b).) In other words, although the SBE reviews for abuse of discretion, part of its review is to determine whether substantial evidence indicates that the school district and county applied those lenses in rendering “specific facts,” or whether, instead, the presumption for approval was not afforded to the charter petitioners and the denial was driven by opinion rather than fact.

And, although Section 47605(c)(8) initially carries a presumption of denial when a district demonstrates that it is subject to a qualifying fiscal condition or status, insofar as the petitioner has submitted rebuttal evidence, the presumption must be adjudicated. If, even in applying the presumption it is determined that denial is warranted, chartering authorities must observe the requirement to “make[] written factual findings, specific to the particular petition, setting forth specific facts” indicating that grounds for denial exist in consideration of the rebuttal evidence. Here, neither the District nor County’s decision to deny the Petition was supported by substantial evidence, constituting abuses of discretion.

As discussed above, the District’s written findings did not address the Charter School’s rebuttal evidence before it [DR 1648-1651; DR 2525-2534] at all, its findings were general, not specific to the Petition, and do not rise to the level of substantial evidence to support the denial where the presumption has been challenged by Caliber with evidence. [DR 1621-1623.] The District’s findings were based on impermissible speculation and conjecture, entirely unquantified, that the Charter School might result in enrollment loss for the District. [DR 1622.] These contentions neither meet the standard under Section 47605(c)(8) that the District is unable to absorb the fiscal impact of the Charter School, nor constitute substantial evidence of the District’s incapacity to absorb any particular fiscal impact. Further, the discussion by the District Board, among those who spoke, engaged in no consideration of any facts bearing on the District’s ability to absorb the fiscal impact of the charter school beyond referring to the District’s status as in receivership. [DR 1663-1667.] In sum, in the presence of specific facts and evidence presented by Caliber that the District is positioned to absorb the fiscal impact of the charter school (*see* pages 16-18, above), the District’s reliance on general, vague, speculative, and conclusory general positions that ignore Caliber’s rebuttal evidence (*see* pages 15-18, above) cannot constitute substantial evidence supporting a finding for denial.

As also addressed above, the County’s findings that the District could not absorb the fiscal impact of the Charter School was based on speculation years into the future, ahead of the District’s own projections [DR 2628], they failed to take into account available data related to revenue growth, cost savings, the District’s improved fiscal condition under the Second Interim Report, the District’s exit from receivership in two years and repayment of the loan even assuming a 100 ADA impact, and an accurate count of the expected ADA impact on the District given Caliber’s actual experience with its graduating classes [DR 2638-2643, DR 2701-2702, DR 2576-2580, DR 1680-1682]. The County’s conclusions regarding fiscal impact cannot constitute substantial evidence given their deficiencies, speculation, and in light of the information and data they overlook. Like the District, except for one dissenting voice, the County Board members who engaged in

discussion described no facts regarding the District's ability or inability to absorb the fiscal impact of the charter school. [DR CMV 04:06:09-04:21:48.] Like the District, in the presence of specific facts and evidence presented by Caliber to the County that the District is positioned to absorb the fiscal impact of the charter school (*see* pages 16-29, above), the County's reliance on speculative, conclusory, and demonstrably unreliable data and positions that ignore Caliber's rebuttal evidence (*see* pages 28-29, above) cannot constitute substantial evidence supporting a finding for denial.

THE DISTRICT BOARD'S AND COUNTY BOARD'S DECISIONS TO DENY THE CHARTER PETITION REFLECT DECISIONS BASED ON PREJUDICE AND CONSTITUTE ABUSES OF DISCRETION

Under the same facts indicating that the District and County Board failed to proceed as required by law under the "rebuttable presumption" and that their respective decisions were not supported by substantial evidence, the record also indicates that the District Board and County Board abused their discretion in denying the Petition under Section 47605(c)(8) [DR 1621-1623, 2695] based on prejudice as prohibited by law. (*See Petrovich*, 48 Cal.App.5th at 973.) To be clear, while Caliber does not use the term "prejudice" to describe nefariousness, the record indicates that the District and County Boards believed that they need not consider Caliber's rebuttal evidence as described above [DR 2638-2643, DR 2701-2702, DR 2576-2580, DR 1680-1682, DR 1648-1651; DR 2525-2534] and they did not, as reflected in the adopted findings [DR 1621-1623, DR 2695] and Board discussion. [DR 1663-1667, DR CMV 04:06:09-04:21:48.] Board Member Amy Sharp observed specifically that County Staff "acted in a calculated and deliberate way to manufacture a staff report, to get the result that they were looking for. And that this was an unfair process..." [DR CMV 04:13:39-04:14:23.]

In other words, the District and County Boards prejudged the Petition as subject to denial based on District's status as in receivership, and Caliber's rebuttal evidence was not taken into account, discussed, nor refuted, including as indicated in the County's adopted findings and resolution. This is the definition of prejudice – adherence to a position from the outset of a decision, and refusing to give credit to contrary evidence.

CONTENTS OF THE APPEAL: DOCUMENTARY RECORD AND SUPPORTING DOCUMENTS

The documentary record and the supporting documents are enclosed herewith. The files listed below were sequentially numbered in the order presented by the County Board and District Board, followed by the Supplemental Record prepared by Caliber. Caliber has stamped the entire record, DR and SR, so that they bear sequential page numbers in the bottom center of each page.

A. Documentary Record Provided by the District Board

The documentary record prepared by the District Board includes:

1. Board Meeting Agenda Item 8.b. (November 3, 2021)
2. Board Meeting Agenda Item 8.b. Attachment 1 – Slides (November 3, 2021)
3. Board Meeting Agenda Item 8.b. Attachment 2 – Slides with Notes (November 3, 2021)

Caliber: High School Written Submission

4. Agenda Item 8.b. Linked Document – Caliber High School Charter Petition (November 3, 2021)
5. Agenda Item 8.b. – Video Recording of Meeting (November 3, 2021)
6. Board Meeting Minutes (November 3, 2021)
7. Publication of Staff Report and Findings Related to Petition (November 30, 2021)
8. Board Meeting Agenda Item 13.d. (December 15, 2021)
9. Board Meeting Agenda Item 13.d. Attachment 1 – Staff Report and Findings (December 15, 2021)
10. Board Meeting Agenda Item 13.d. Attachment 2 – *Draft* Resolution to Deny (December 15, 2021)
11. Board Meeting Agenda Item 13.d. Attachment 3 – *Draft* Resolution to Approve (December 15, 2021)
12. Agenda Item 13.d. Linked Document – Caliber High School Charter Petition (December 15, 2021)
13. Signed Resolution to Deny (December 15, 2021)
14. VCUSD Agenda Item 13.d. – Video Recording of Item (December 15, 2021)
15. VCUSD Board Meeting Minutes (December 15, 2021)
16. VCUSD Board Meeting Item 13.d. – Written Transcript of Item 13.d. (December 15, 2021)

B. Documentary Record Provided by the County Board

The documentary record prepared by the County Board includes:

1. Agenda packet for the March 9, 2022 meeting, including
 - 1.1. Caliber appeal submission documents, including Caliber’s presentations to the District at the public hearing and decision meeting before the District Board
 - 1.2. Petition
 - 1.3. Caliber presentation slides
 - 1.4. VCUSD presentation slides
2. Audio recording of the March 9, 2022 meeting

Caliber: High School Written Submission

3. Video recording of the March 9, 2022 meeting
4. Spreadsheet containing the downloaded public comments submitted online for the March 9, 2022 meeting
5. Unapproved meeting minutes for the March 9, 2022 meeting
6. Agenda packet for the April 13, 2022 meeting, including
 - 6.1. Caliber appeal submission documents
 - 6.2. Petition
 - 6.3. Staff Report and Findings of Fact
 - 6.4. Caliber's response to staff report and proposed findings
 - 6.5. SCOE staff presentation slides
 - 6.6. Caliber presentation slides
 - 6.7. VCUSD presentation slides
7. Audio recording of the April 13, 2022 meeting
8. Video recording of the April 13, 2022 meeting
9. Spreadsheet containing the downloaded public comments submitted online for the April 13, 2022 meeting
10. Signed Resolution No. B21-22-36 denying the Petition
11. Unapproved meeting minutes for the March 9, 2022 meeting
 - a. Supplemental Record Prepared by Caliber

The documentary record prepared by Caliber includes:

1. Email correspondence with the County regarding the request for the record
2. VCUSD's First Interim Report
3. VCUSD's Second Interim Report

* * *

At its April 13, 2022 meeting, the County Board voted to deny the Charter School's charter petition. This appeal is therefore within the 30-day limit for submission of an appeal of a charter

Caliber: High School Written Submission

petition, as stated in Section 47605(k)(2). A copy of the appeal has been transmitted to the District and the County.

We look forward to working with the CDE and the SBE during their consideration of the charter petition. Please feel free to contact me (terence@caliberschools.org) if you have any questions.

Sincerely,

Terence Johnson
Lead Petitioner

(enclosures provided in download link submitted herewith)