California Department of Education

Executive Office

SBE-002 (REV. 11/2017)

memo-oab-csd-jun22item01

# MEMORANDUM

**DATE:** June 30, 2022

**TO:** MEMBERS, State Board of Education

**FROM:** Tony Thurmond, State Superintendent of Public Instruction

**SUBJECT:** Charter School Appeals to the California State Board of Education: Abuse of Discretion Review Standard

## Summary of Key Issues

This memorandum provides information and background on California *Education Code* (*EC*) Section 47605 as amended by Assembly Bill 1505 [Chapter 486, Statutes of 2019], which was approved by the Governor on October 3, 2019. Specifically, this memorandum provides information on the review standards under which the California State Board of Education (SBE) shall hear charter school appeals.

The California Department of Education (CDE) previously provided the SBE with an overview of the various changes made by AB 1505 in the following documents:

* <https://www.cde.ca.gov/be/pn/im/documents/oct19memocsd01.docx>
* <https://www.cde.ca.gov/be/ag/ag/yr20/documents/nov20item13.docx>

The full text of AB 1505 is available on the California Legislative Information website at <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1505>.

## Background

The following memorandum outlines the CDE’s anticipated approach to reviewing charter petition appeals under the new standard. The CDE follows the Charter School Act in its review of charter appeals that come to the SBE. It is anticipated that the CDE will learn from each appeal and that this process will evolve as the CDE engages with the Advisory Commission on Charter Schools (ACCS), SBE, and education partners.

## Hearing of Appeals by the State Board of Education

AB 1505 modified *EC* Section 47605 and changed the manner in which the SBE hears charter school appeals. The SBE may hear a charter school appeal under an “abuse of discretion” review standard or under a “de novo” review standard. A description of each review standard is provided below.

### Abuse of Discretion Review Standard

Pursuant to *EC* Section 47605(k)(2)(E), the “abuse of discretion” review standard is mandated for an appeal of a petition to establish a new charter school that has been denied by the governing board of a school district and a county board of education. Also, pursuant to *EC* Section 47607.5, the abuse of discretion review standard is mandated for an appeal of a petition to renew a charter school that has been denied by either a school district governing board or a county board of education. The SBE can only overturn the local decision when it determines there was an abuse of discretion, pursuant to *EC* Section 47605. This review standard does not apply to an appeal of a petition to renew an SBE-authorized charter school that has been denied by a school district governing board.

#### What is an “Abuse of Discretion”?

Abuse of discretion is the most deferential standard of review, meaning that the SBE is required to give deference to the decision of the school district governing board and county board of education to deny the petition. The SBE’s review is limited to a determination of whether the district governing board’s or county board’s decision to deny the charter petitioner “was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair” (*California School Boards Association v. State Board of Education* [2010] 186 Cal.App.4th 1298, 1313-1314).

#### What Does the Statute Require or Permit to be Presented to the State Board of Education for the Abuse of Discretion Review Standard?

Pursuant to *EC* Section 47605(k)(2)(A), when submitting an appeal to the SBE, which is governed by the abuse of discretion review standard, the petitioner **shall** include the following:

1. Written submission with citations to the documentary record detailing how the governing board of the school district or the county board of education, or both, abused their discretion, from the petitioner
2. Findings by the district governing board
3. Documentary record from the district, including transcripts of the public hearing at which the district denied the charter
4. Findings by the county board
5. Documentary record from the county, including transcripts of the public hearing at which the county denied the charter
6. Charter petition, as denied by the district governing board and county board
7. Any other supporting documentation from the petitioner

The SBE does not have any discretion on how to proceed if any of the items numbered one through six above are missing from an appeal package.

Pursuant to *EC* Section 47605(k)(2)(C), within 30 days of receipt of the appeal submitted to the SBE, the governing board of the school district or county board of education may submit a written opposition to the SBE, detailing, with specific citations to the documentary record, how the governing board of the school district or county board of education did not abuse its discretion in denying the charter petition.

*EC* Section 47605(k)(1)(A)(i) specifies that if an appeal contains new or different material terms, the county board or the SBE shall immediately remand the petition back to the governing board of the school district. Pursuant to *EC* Section 47605(k)(1)(A)(iii), material terms are defined as the signatures, affirmations, documents, and descriptions in the petition but does not include “minor administrative updates” to the petition or related documents due to changes in circumstances based on the passage of time related to fiscal affairs, facilities arrangements, state law, or to reflect the county board of education as the chartering authority.

Pursuant to *EC* Section 47605(k)(2)(D), the SBE shall either hear the appeal or summarily deny review of the appeal based on the following documentation: 1) district and county findings, 2) documentary record, and 3) written submission from the petitioner with specific citations to the documentary record, detailing how the governing board of the school district or the county board of education, or both, abused their discretion in the denial of the charter petition.

Pursuant to *EC* Section 47605(k)(2)(E), the SBE may reverse the denial of a charter petition only upon a determination that there was an abuse of discretion.

#### Role of the Advisory Commission on Charter Schools When Presented with an Appeal Alleging an Abuse of Discretion

*EC* Section 47605(k)(2)(D) codifies the role of the ACCS in the SBE appeal process under the abuse of discretion review standard. Specifically, this Section provides the following:

The state board’s Advisory Commission on Charter Schools shall hold a public hearing to review the appeal and documentary record. Based on its review, **the Advisory Commission on Charter Schools shall submit a recommendation to the state board whether there is sufficient evidence to hear the appeal or to summarily deny review of the appeal based on the documentary record**.

Pursuant to statute, the ACCS’ defined role is to make a recommendation whether the SBE should hear the appeal or summarily deny the appeal based on the documentary record.

When the petitioner files an appeal alleging an abuse of discretion by the local jurisdiction, the CDE will review the evidentiary record and appeal, and will make a recommendation to the ACCS regarding whether there is sufficient evidence of an issue so that the SBE should hear the appeal or there are grounds to summarily deny review of the appeal.

The ACCS item will outline the contents of the appeal, including, the documentation submitted by the petitioner, district, and county. The following documentation will also be available for the ACCS’ reference:

* Written submission with citations from the petitioner
* Findings and documentary record from the district
* Findings and documentary record from the county
* Written opposition from the district
* Written opposition from county
* Charter petition, as denied by the district and county
* Supporting documentation from the petitioner, district, and/or county

At the ACCS meeting, a public hearing will be held during which the petitioner and denying district and/or county office of education may make a presentation to the ACCS, pursuant to Article 7 Section 2 of the SBE bylaws. After considering all information, the ACCS will take action to either make a recommendation to the SBE whether there is sufficient evidence to hear the appeal or to summarily deny review of the appeal based on the documentary record.

#### Role of the State Board of Education When Presented with an Appeal Alleging an Abuse of Discretion

The SBE’s role is to either summarily deny the appeal or hear the appeal.

##### SBE Summarily Denying Review of the Appeal

The CDE and/or the ACCS may make a recommendation to the SBE to summarily deny the appeal. If the SBE summarily denies review of the appeal, the SBE neither affirms nor reverses the decisions to deny the petition. Summary denial may be warranted when there is no general issue for hearing or the appeal is procedurally defective. As a result of a summary denial, the decisions of the district and county office to deny the petition stand.

##### SBE Hearing of the Appeal

When the SBE decides to hear the appeal, the CDE will make a recommendation to the SBE to either affirm or reverse the decisions of the governing board of the school district and the county board of education based on the presence or absence of an abuse of discretion in the denial of the charter petition. The CDE will prepare an agenda item for the SBE, which details the CDE’s review, findings, and recommendations. In addition, the CDE will prepare a summary of the district’s and county’s findings and an outline of the petitioner’s allegations of abuse of discretion in a separate document (i.e., Attachment 1).

The CDE will present its review, findings, and recommendations, to the SBE at a public meeting, although the statute does not require that there be a public hearing. The CDE recommends that the SBE give the petitioner, the district, and county opportunity to make a presentation. Under the abuse of discretion standard, the SBE is limited to reviewing the findings, documentary record, and written submission for evidence of an abuse of discretion by either the governing board of the school district or the county board.

Upon consideration of all information, including any presentations and public comment, the SBE will decide to either affirm or reverse the denial of the charter petition. Pursuant to *EC* Section 47605, the SBE may only reverse the denial of the charter petition only upon a determination that there was an abuse of discretion in the denial of the charter petition at the local level. If the denial of a charter petition is reversed by the SBE, the SBE shall designate the governing board of the school district or the county board of education in which the charter school is located as the chartering authority.

### De Novo Review Standard

While this situation will be rare, another standard of review under which the SBE may hear an appeal is referred to as “de novo.” The SBE will use the de novo hearing process and standard of review for appeals of a petition to establish a new school that has been denied by a district with no separate county board (i.e., counties in which there is a single school district). In this situation, the SBE acts like the county board of education and hears the appeal de novo, pursuant to *EC* Section 47605(k)(1)(B).

The de novo standard of review is also implemented for SBE-authorized charter schools that have been denied renewal by the governing board of the school district in which they are located. Pursuant to *EC* Section 47605.9(b), if the governing board of the school district denies the renewal petition, the charter school may submit the petition for renewal directly to the SBE, which shall review the petition in accordance with *EC* Section 47605(k)(1)(B).

#### What Does “De Novo” Mean?

When an appeal for a charter school is heard “de novo,” the SBE makes an independent determination regarding the charter petition with no deference to the issues previously considered by the governing board of the school district. Under this review standard, the SBE reviews the charter petition on appeal under the same standards applicable to review by the governing board of the school district.

#### What is Considered Under the De Novo Review Standard?

Under the de novo review standard, a charter petition is reviewed to determine whether it is consistent with sound educational practice and with the interests of the community in which the school is proposing to locate. Petitions shall not be denied unless written factual findings, specific to the petition, are made, that support one or more of the findings outlined in *EC* sections 47605(c)(1) through (8).

#### Role of the Advisory Commission on Charter Schools When Presented with an Appeal to be Reviewed De Novo

The role of the ACCS in de novo reviews is not codified in statute. However, the ACCS plays a role in the hearing of these types of appeals as per the SBE Policy #01-04, the ACCS shall advise the SBE on all aspects of the SBE’s duties under the Charter Schools Act.

Upon receipt of a charter school appeal that is to be reviewed de novo, the CDE’s approach has been to review the charter petition and all attachments pursuant to *EC* Section 47605(c). The CDE summarizes its analysis of the charter petition, including whether it has met all of the required elements under *EC* Section 47605(c) and prepares an agenda item for the ACCS. Based on that analysis, the CDE may recommend denial of the charter petition, or may recommend that the charter petition be granted and the decision of the district to deny be reversed.

In de novo reviews, the ACCS’ approach has been to review the charter petition and all pertinent attachments pursuant to *EC* Section 47605(c), and hear presentations from the CDE, petitioner, and denying district at a public meeting. Upon hearing all presentations, the ACCS considers the completeness and quality of the charter petition as well as the recommendation of the CDE, and make its own recommendation to either deny the petition, or grant the petition and reverse the decision of the district to deny.

#### Role of the State Board of Education When Presented with an Appeal to be Reviewed De Novo

In de novo reviews, the CDE and ACCS have made recommendations to the SBE to grant or deny the charter petition. Under this review standard, the SBE’s approach has been to review the charter petition and all pertinent attachments pursuant to *EC* Section 47605(c), and hear presentations from the CDE, petitioner, and denying district at a public meeting. Upon hearing all presentations, the SBE considers the completeness and quality of the charter petition as well as the recommendations of the CDE and ACCS. The SBE decides to either deny the petition or grant the petition and reverse the decision of the district to deny.

If the denial of a charter petition to establish a new school in a district with no separate county board is reversed by the SBE, the SBE shall designated the governing board of the school district in which the charter school is located as the chartering authority, pursuant to *EC* Section 47605(k)(1)(B).

If the denial to renew the charter petition of an SBE-authorized charter school is reversed by the SBE, the SBE shall designate the governing board of the school district or the county board of education in which the charter school is located as the chartering authority, pursuant to *EC* Section 47605.9(b).

## Upcoming Appeals

The ACCS and SBE will hear their first appeal under the abuse of discretion standard at its June 14, 2022, and July 13–14, 2022, meetings, respectively. Two additional appeals will be heard under the abuse of discretion standard at the August 11, 2022, ACCS meeting and September 14–15, 2022, SBE meeting. At each meeting, CDE staff will provide a brief overview of the abuse of discretion review standard prior to presenting the appeal items.

## California *Education Code* Sections

Links to the following *EC* sections are provided below:

* California Legislative Information *EC* Section 47605 web page: <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=47605&lawCode=EDC>
* California Legislative Information *EC* Section 47605.9 web page: <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=47605.9.&lawCode=EDC>
* California Legislative Information *EC* Section 47607.5 web page: <https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?sectionNum=47607.5.&lawCode=EDC>

## Attachment

None.