# CHARTER SCHOOL APPEAL REVIEW:New Pacific School - Yuba City

CALIFORNIA DEPARTMENT OF EDUCATION

This document presents the California Department of Education’s (CDE or Department) review of the appeal of New Pacific School - Yuba City (NPSYC or Petitioner), which was denied by the Yuba City Unified School District (YCUSD or District) and the Sutter County Board of Education (SCBOE or County).

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## Department Overview and Recommendation

Based on its analysis of the documentary record, the CDE has determined that the Yuba City Unified School District (YCUSD or District) made written factual findings in accordance with California *Education Code* (*EC*) Section 47605(c) and that the District’s findings to deny the New Pacific School – Yuba City (NPSYC or Petitioner) petition are supported by evidence in the record. Therefore, the CDE recommends that the California State Board of Education (SBE) affirm the District’s determinations to deny the NPSYC petition.

The District’s determination to deny the NPSYC petition was made pursuant to *EC* Section 47605(c) and is supported by evidence in the documentary record, and thus there was no abuse of discretion. Under *EC* Section 47605(k)(2)(E), the absence of a determination of an abuse of discretion by either the District or the County would affirm the decision of either the District or the County.

Because the Sutter County Board of Education (SCBOE or County) did not make written factual findings setting forth specific facts to support one or more of the findings as required by *EC* Section 47605(c), the CDE does not recommend the SBE affirm the decision of the SCBOE. The SCBOE’s resolution to deny the NPSYC charter petition is accompanied by an attached exhibit that includes written findings; however, the documentary record does not indicate that these written findings were a part of any action taken by the SCBOE. Pursuant to *EC* sections 47605(c) and 47605(k)(1)(A)(i), the county board of education must make written factual findings to deny the petition. The SCBOE did not comply with this requirement. Accordingly, consideration of the documentary record submitted in support of SCBOE’s denial of the NPSYC charter petition has been excluded from the CDE’s analysis in this item.

## Abuse of Discretion Standard on Charter School Appeals

As set forth in *EC* 47605(k)(2)(E):

If the state board hears the [charter school] appeal, the state board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion by each of the governing board of the school district and the county board of education. Abuse of discretion is the most deferential standard of review, under which the state board must give deference to the decisions of the governing board of the school district and the county board of education to deny the petition.

The State Superintendent of Public Instruction’s June 30, 2022, Information Memoranda “Charter School Appeals to the California State Board of Education: Abuse of Discretion Review Standard” states the following:

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 petition “was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair” (p. 2).

## Department Review of Petitioner Allegations of Abuse of Discretion Against the District

### Petitioner Allegation 1

**“The District Board adopted findings of fact for denial that were unlawful” (Appeal Document 1, pp. 28–30).**

The Petitioner’s written submission alleges that the District’s findings are unlawful and provides four excerpts from the District’s findings to serve as examples of unlawful findings. The Petitioner also incorporates the Petitioner’s response to the staff report, which the Petitioner submitted to the District on August 22, 2022, which provides a table of specific responses to the District’s analysis in support of its findings (Appeal Document 5, pp. 9–43).

#### District Written Opposition (Appeal Document 6, pp. 5–6)

In its written opposition to this appeal, the District states that all of its findings fall within the criteria set forth in *EC* Section 47605(c), that none of the Petitioner’s examples of allegedly unlawful findings is supported by facts, and that several of the Petitioner’s examples isolate specific statements found in the District’s findings and ignore the holistic nature of the District’s analysis in support of its findings.

#### Department Analysis and Conclusion

The CDE finds that the Petitioner has not demonstrated how the District’s findings are unlawful and, therefore, has not demonstrated how the District abused its discretion in denying the NPSYC petition.

In reviewing the Petitioner’s allegation and citations to the documentary record, the CDE found no evidence that demonstrates an abuse of discretion by the District. The Petitioner’s written submission does not provide any explanation or evidence that demonstrates that any of the District’s individual findings as a whole are unlawful.

A review of the District’s findings is provided below in the “District Findings for Denial” section of this document.

### Petitioner Allegation 2

**“The District Board adopted findings of fact for denial that were entirely lacking in evidentiary support” (Appeal Document 1, pp. 30–33).**

The Petitioner’s written submission alleges that the District’s findings are entirely lacking in evidentiary support and provides three excerpts from the District’s findings to serve as examples of findings that lack evidentiary support. The Petitioner also incorporates the Petitioner’s response to the staff report, which the Petitioner submitted to the District on August 22, 2022, which provides a table of specific responses to the District’s analysis in support of its findings (Appeal Document 5, pp. 9–43).

#### District Written Opposition (Appeal Document 6, pp. 7–8)

In its written opposition, the District states that its findings consist of a careful analysis of facts that were presented in the petition. The District states that the Petitioner appears to confuse “findings” with the District’s analysis and citation to evidence, and thus the Petitioner’s appeal amounts to an argument regarding the insufficiency of the District’s analysis rather than a demonstration that the findings are entirely lacking in evidentiary support.

#### Department Analysis and Conclusion

The CDE finds that the Petitioner has not demonstrated that the District’s findings are entirely lacking in evidentiary support and, therefore, has not demonstrated how the District abused its discretion in denying the NPSYC charter petition.

In reviewing the Petitioner’s allegation and citations to the documentary record, the CDE found no evidence that demonstrates an abuse of discretion by the District. The Petitioner’s response to the District staff report primarily provides clarifications of ambiguities the District found in the petition and arguments in favor of the petition’s approval, but fails to show how the District abused its discretion. The Petitioner’s allegation appears to ask the SBE to exercise independent judgement in evaluating evidence in support of the petition, which is not permissible under EC Section 47605(k)(2). Rather, this Section specifies that the SBE is to exercise an abuse of discretion standard in evaluating evidence in support of the petition, which it defines as “the most deferential standard of review, under which the state board must give deference to the decisions of the governing board of the school district and the county board of education to deny the petition.”

The CDE further finds that the District’s findings that the petition presents an unsound educational program, that the Petitioner is demonstrably unlikely to successfully implement the program set forth in the petition, and that the petition does not contain reasonably comprehensive descriptions of required elements are supported by evidence in the documentary record. A review of the District’s findings is provided below in the “District Findings for Denial” section of this document.

## District Findings for Denial

### District Finding 1

**“The petition presents an unsound educational program” (*EC* Section 47605[c][1]).**

The District provides the following specific facts and analysis in support of this finding (Appeal Document 2, pp. 18–22):

* Educational Model
	+ There is no evidence the proposed instructional framework was developed to specifically meet the needs of the target population.
	+ The educational model lacks the specificity needed for meaningful analysis. For example, the bell schedule includes instructional blocks, but the Petitioner does not identify what will occur within those blocks.
	+ The District was unable to determine how project-based learning and the proposed curriculum will be implemented within the proposed schedules and in multi-grade classrooms.
	+ The Petitioner states that Pacific Charter Institute (PCI) has a history of meeting the needs of students with an individualized approach, but PCI has no history of delivering this model in a classroom-based setting. The petition does not describe with specificity how the individualized approach in multi-grade classrooms with varying student needs will be implemented.
* Staffing Plan
	+ The District was unable to determine how the staffing plan will meet the needs of the 100 projected elementary school students in year 1, plus the additional 75 middle school students in year 2, all who struggle with low academic achievement, chronic absenteeism, and have been identified as "at promise."
	+ It is unclear how the charter school will meet credentialing and staffing ratio requirements for transitional kindergarten (TK). The petition does not acknowledge these additional requirements.
* Physical Education
	+ It is unclear how the charter school will meet physical education standards in the proposed bell schedules and with available facilities in the proposed area.
* Petitioners’ Academic Record
	+ The District found no compelling evidence that the Petitioner has successfully implemented a classroom-based program. The Petitioner claims their schools outperform YCUSD, but comparison of available academic data from the Petitioner’s schools and YCUSD suggests the Petitioner’s representation of their schools' performance is inaccurate. (See charts on Appeal Document 3, pp. 20–21)
* Special Education Program
	+ The petition states that the charter school will follow applicable policies and practices of the El Dorado Charter Special Education Local Plan Area (SELPA), but none of the policies or practices are included in the petition. As such, the district cannot evaluate the soundness of the special education program or whether it can be successfully implemented in the proposed program.
* Curriculum
	+ The petition states it will include state-adopted materials; however, the petition's list of curriculum/instructional materials does not list any state-adopted materials.
* Student Study Team
	+ The Petitioner states that staff development will include appropriate interventions for SST’s. The District is unaware of any interventions that are appropriate for SST’s.

#### Department Conclusion

The District’s finding that the petition presents an unsound educational program is supported by evidence in the documentary record.

### District Finding 2

**“The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition” (*EC* Section 47605[c][2]).”**

The District provides the following specific facts and analysis in support of this finding (Appeal Document 2, pp. 22–26):

* Concerns Related to Educational Program
	+ The proposed program of project-based learning, aligned to Common Core State Standards in a multi-grade classroom does not appear feasible given the level of individualization the petition proposes. Additionally, the petition does not include an adequate plan for supporting teachers in such a labor-intensive model.
	+ The petition proposes using *Leader In Me* curriculum to develop student self-determination and, along with *7 Habits of a Successful Person*, to identify students for small group instruction. This approach is not reflective of state standards, the research basis for this approach is lacking, and it is unclear how the process can be implemented.
	+ The petition proposes a combination of Explicit Direct Instruction, Leader in Me principles, Franklin Covey strategies, the framework for professional learning communities, and the academic triangle; however, the petition does not describe how these diverse practices will be implemented or how they will work together.
	+ The petition proposes a current PCI staff member as principal, but the same staff member was also named as the principal for another PCI school opening the same year. Additionally, it is unclear whether the proposed principal has the necessary experience to lead the proposed program.
	+ The petition states that "Directors at each charter school oversee day-to-day operations." However, the petition does not contain further reference to directors or describe the difference between a director and a principal.
* Financial and Operational Issues
	+ The financial plan and projections appear unrealistic and lack articulated assumptions in key areas. For example, the petition states that leasing expenditures are "based on an average of potential sites" but does not indicate where those sites are located or the going rates for spaces appropriate for the charter school. There is also no allocation for necessary tenant improvements.
	+ Multi-year projections comingle restricted and unrestricted funds, resulting in possible inflation of reserves and calling into question the Petitioner's ability to implement a compliant program.
	+ Average daily attendance (ADA) projections are out of line with current trends. The Petitioners assumes a 97% attendance rate in a district with 92.7% attendance. The charter school proposes to target students with historically low attendance and gives no grounded assumptions to support the high attendance projection.
	+ The petition's staffing plan of 3 teachers is inadequate to support in-person learning for 100 TK-5th grade students, particularly with TK teacher-to-student ratio requirements.
	+ The petition does not acknowledge TK legal requirements and may be ineligible for apportionment if those requirements are not met.
	+ Projected Local Control Funding Formula (LCFF) revenues lack information regarding the assumptions on which they are based. The petition does not indicate grade spans of projected enrollment or a breakdown of supplement and concentration grant funding.
	+ Nearly half of the charter school's first year funding comes from a "PCI Grant." With potential overstatement of revenue, understatement of expenditures, and lack of grounded assumptions, the proposed budget does not give the district confidence the charter school's program can be implemented.
	+ As the proposed TK-12 program is built out, it appears challenging to provide high school courses that meet UC/CSU A-G requirements in a seat-based program. The petition appears to describe an independent study program cast as a seat-based program.
	+ The charter school proposes heavy reliance on PCI to implement the proposed program, raising concerns regarding the school's operational independence. The petition indicates the charter school would contract with PCI-affiliated entities, but the petition and supporting documents do not include sample contracts or written agreements detailing the scope of services, relationship between parties, or the cost of services.
	+ The NPSYC petition contains significant similarities to other New Pacific School charter petitions. With the amount of duplicated language, the district cannot ascertain whether the Petitioner and founding board have the knowledge, background, and expertise to operate a charter school independent of the extensive involvement of PCI-affiliated entities. The heavy reliance on PCI suggests PCI takes on the character of a charter management organization (CMO).

#### Department Conclusion

The District’s finding that the Petitioner is demonstrably unlikely to successfully implement the program set forth in the petition is supported by evidence in the documentary record.

### District Finding 3

**“The petition does not contain the number of signatures required by *EC* Section 47605(a)” (*EC* Section 47605[c][3]).**

The District provides the following specific facts and analysis in support of this finding (Appeal Document 2, pp. 26–27):

* The petition proposes 100 students and 3 teachers. The petition included 45 parent signatures and 3 teacher signatures.
* The number of parent/guardian signatures (45) is below the Education Code's requirement of half the number of proposed students. Additionally, only 36 of those signatures appear valid based on the information included.
* While the petition includes signatures from 3 teachers, the same 3 teachers also signed the petition for PCI's newly opening Rancho Cordova school. Two of the teachers are already employed at other PCI schools.

#### Department Conclusion

The CDE’s review of the District’s findings did not reveal evidence to support this finding as stated.

### District Finding 4

**“The petition does not contain reasonably comprehensive descriptions of Elements (A) through (O) of *EC* Section 47605(c)(5).”**

The District provides the following specific facts and analysis in support of this finding (Appeal Document 2, pp. 27–31):

* Educational Program (*EC* 47605[c][5][A])
	+ As stated previously, the petition does not adequately describe how TK-12 students will receive the in-person, classroom-based instruction described in the petition.
	+ The petition stated foreign language instruction will occur for all students but does not sufficiently describe how that will occur.
	+ Special education procedures are not clearly elaborated but include only general assurances that the charter school will follow SELPA policy. The petition does not acknowledge its obligation to serve students in the least restrictive environment or describe how the charter school will ensure compliance. The petition's description of the special education program does not include the requirement that goals and objectives be developed within the Individualized Education Program (IEP) process. The petition mentions modifications but does not mention accommodations. The program appears to depend on the Special Education Information System (SEIS) for operation of its program and does not mention students' IEPs being developed through the IEP process. The petition acknowledges requirements to identify and serve students with disabilities as well as English Learners; however, the petition lacks specificity with regard to how the charter school will implement these requirements.
	+ The petition proposes hiring itinerant staff, but the budget proposes only $100,000 for these purposes. Based on the proposed targeted student demographics, this budget is insufficient to provide students with their entitled free appropriate public education (FAPE).
* Balance of Students from Different Subgroups (*EC* 47605[c][5][G])
	+ The petition does not adequately address the means by which the charter school will achieve a balance of student subgroups. Rather, the petition includes only vague references to targeting a diverse group of learners.
* Dispute Resolution Procedures (*EC* 47605[c][5][N])
	+ The petition includes procedures for resolving disputes between the charter school and the district but does not include a process for internal disputes. Additionally, the petition lacks meaningful discussion of how the charter school will comply with Uniform Complaint Procedure (UCP) requirements.
* Facilities Description / Compliance with Location Requirements (*EC* 47605[h])
	+ The petition includes only general descriptions of facilities plans and proposed location. The district's review of available properties indicates there are no readily available spaces appropriate for the proposed program. The petition's budget does not earmark funds for tenant improvements, including those necessary for upgrades for disability access. The petition's proposed location is populated by families that rely on school transportation. NPSYC does not propose to offer transportation, which will make students' access to the proposed location a challenge for families.

#### Department Conclusion

The District’s finding that the petition does not contain reasonably comprehensive descriptions of the required elements is supported by evidence in the documentary record.

## Appeal Documents

The following documents were reviewed by the CDE in its analysis of the NPSYC appeal:

* **Appeal Document 1:** NPSYC written submission, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a1.pdf>
* **Appeal Document 2:** NPSYC petition, as denied by the YCUSD and SCBOE, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a2.pdf>
* **Appeal Document 3:** Documentary record from the YCUSD, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a3.pdf>
* **Appeal Document 4:** Documentary record from SCBOE, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a4.pdf>
* **Appeal Document 5:** NPSYC supporting documentation, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a6.pdf>
* **Appeal Document 6:** Written opposition from the YCUSD, which is available on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item03a5.pdf>