California Department of Education  
Charter Schools Division  
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**ADVISORY COMMISSION ON CHARTER SCHOOLS**AN ADVISORY BODY TO THE STATE BOARD OF EDUCATION

# June 2023 Agenda Item #03

## Subject

Appeal of the Denial of a Petition for the Establishment of a Classroom-Based Charter School Pursuant to California *Education Code* Section 47605(k)(2): Consideration of Evidence to Hear or Summarily Deny the Appeal of New Pacific School - Yuba City, which was denied by the Yuba City Unified School District and the Sutter County Board of Education.

## Type of Action

Action, Information, Public Hearing

## Background

Pursuant to California *Education Code* (*EC*) Section 47605(a), New Pacific School – Yuba City (NPSYC) submitted its petition, which proposes a new transitional kindergarten through grade twelve charter school, to the Yuba City Unified School District (YCUSD or District). YCUSD denied the petition on August 23, 2022, by a vote of five to zero.

NPSYC appealed the District’s denial to the Sutter County Board of Education (SCBOE or County), pursuant to *EC* Section 47605(k)(1)(A)(i), which states that if the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. SCBOE voted to deny the petition on January 18, 2023, which passed by a vote of three to zero.

Pursuant to *EC* Section 47605(k)(2), if the county board of education denies a petition to establish a charter school, the petitioner may appeal that denial to the California State Board of Education (SBE). NPSYC submitted its petition to the SBE on   
February 7, 2023.

## Recommendation

The California Department of Education (CDE) recommends that the Advisory Commission on Charter Schools (ACCS) issue a recommendation to the SBE to hear the NPSYC appeal. This recommendation is based upon the CDE’s review of the documentary record, which set out sufficient evidence to hear the appeal.

## Role of the Advisory Commission on Charter Schools

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

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

Pursuant to statute, the ACCS’ defined role is to make a recommendation to the SBE whether there is sufficient evidence for the SBE to hear the appeal or summarily deny review of the appeal.

At its July 12–13, 2023, meeting, the SBE will determine whether to hear NPSYC’s appeal or summarily deny review of the appeal. If the SBE decides to hear the appeal, then it may affirm the determination to deny the petition of the governing board of the school district or the county board of education or both, or may reverse the determination to deny the petition but only upon a determination that there was an abuse of discretion, pursuant to *EC* Section 47605(k)(2)(E).

## New Pacific School – Yuba City’s Appeal Submission

Following SCBOE’s denial of the NPSYC petition on January 18, 2023, NPSYC submitted the following items to the SBE on February 7, 2023, pursuant to *EC* Section 47605(k)(2)(A):

* A written submission of NPSYC’s appeal, which includes allegations of abuse of discretion by the governing board of the YCUSD and SCBOE (Attachment 1)
* NPSYC’s charter petition (Attachment 2)
* The documentary record from YCUSD (Attachment 3)
* The documentary record from SCBOE (Attachment 4)
* Supporting documentation from NPSYC (Attachment 6)

## New Pacific School – Yuba City’s Allegations of Abuse of Discretion

In its written submission, NPSYC stated the following allegations of abuse of discretion by the YCUSD to the SBE:

* The District Board adopted findings of fact for denial that were unlawful (Attachment 1, pp. 28–30).
* The District Board adopted findings of fact for denial that were entirely lacking in evidentiary support (Attachment 1, pp. 30–33).

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

* The County Board’s action to deny the charter petition appeal without any written findings was unlawful on its face (Attachment 1, pp. 9–12).
* The County Board’s unapproved post hoc written findings do not match the verbal findings from the board meeting and do not form legal bases for denial, further cementing this unlawful action (Attachment 1, pp. 12–21).
* The County Board’s denial of the charter petition appeal was procedurally unfair (Attachment 1, pp. 21–22).
* The County Board’s unapproved, post hoc reasons for denial were entirely lacking in evidentiary support (Attachment 1, pp. 22–28).
* The County Board meeting was unlawful because it did not provide a fair and impartial hearing process on the charter petition (Attachment 1, pp. 33–34).

## District’s Opposition to New Pacific School – Yuba City’s Appeal

At its August 23, 2022, governing board meeting, YCUSD denied the NPSYC charter petition based on the following findings:

* The petition presents an unsound educational program (*EC* Section 47605[c][1]).
* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition (*EC* Section 47605[c][2]).
* The petition does not contain the number of signatures required by *EC* Section 47605(a) (*EC* Section 47605[c][3]).
* The petition does not contain reasonably comprehensive descriptions of Elements (A) through (O) of *EC* Section 47605(c)(5).

On February 22, 2023, the CDE notified YCUSD that, on February 17, 2023, the SBE had received the NPSYC appeal and that YCUSD may submit a written opposition to the appeal by March 20, 2023, pursuant to *EC* Section 47605(k)(2)(C).

On March 20, 2023, YCUSD submitted to the CDE a written opposition to NPSYC’s appeal with specific citations to the documentary record detailing how it did not abuse its discretion in denying the petition (Attachment 5). YCUSD’s written opposition was submitted within 30 days of the SBE’s receipt of the appeal.

YCUSD’s opposition argues the following in response to NPSYC’s allegations:

* YCUSD’s adopted findings were lawful (Attachment 5, pp. 5–6).
* YCUSD’s adopted findings were supported by the evidence (Attachment 5,   
  pp. 7–8).

## County’s Opposition to New Pacific School - Yuba City’s Appeal

At its January 18, 2023, meeting, SCBOE denied the NPSYC charter petition.

On February 22, 2023, the CDE notified SCBOE that, on February 17, 2023, the SBE had received the NPSYC appeal and that SCBOE may submit a written opposition to the appeal by March 20, 2023, pursuant to *EC* Section 47605(k)(2)(C).

The CDE did not receive a written opposition from SCBOE.

## Conclusion

NPSYC has submitted all required documents and met all timelines, pursuant to *EC* Section 47605(k)(2)(A). YCUSD provided a written opposition with specific citations to the documentary record on how it did not abuse its discretion in denying the petition.

Because SCBOE 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 was unable to review SCBOE’s determination to deny the NPSYC charter petition. 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 SCBOE.

Based on the CDE’s review of NPSYC’s written submission, and the findings and documentary record from YCUSD, the CDE finds that the appeal presents sufficient evidence for the ACCS to issue a recommendation to the SBE to hear the appeal, pursuant to *EC* Section 47605(k)(2)(D). An analysis of whether the submitted evidence supports a finding of an abuse of discretion or whether the SBE should uphold the decisions of the district and county, will be undertaken by the CDE following the ACCS hearing on the matter.

## Attachments

* **Attachment 1:** New Pacific School – Yuba City Written Submission (44 Pages)
* **Attachment 2:** New Pacific School – Yuba City Petition, as denied by the Yuba City Unified School District and the Sutter County Board of Education (298 Pages)
* **Attachment 3:** Documentary Record from Yuba City Unified School District (405 Pages)
* **Attachment 4:** Documentary Record from Sutter County Board of Education (777 Pages)
* **Attachment 5:** Written Opposition from Yuba City Unified School District (9 Pages)
* **Attachment 6:** New Pacific School – Yuba City Supporting Documentation (72 Pages)