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Attachment 5

Written Opposition from Yuba City Unified School District



Yuba City Unified School District

March 20, 2023

VIA EMAIL and U.S. MAIL
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Sacramento, CA 95814

**RE: YUBA CITY UNIFIED SCHOOL DISTRICT'S OPPOSITION TO APPEAL TO THE SBE
FOR THE ESTABLISHMENT OF NEW PACIFIC SCHOOL – YUBA CITY**

Dear Ms. Farland:

The Yuba City Unified School District ("District") respectfully submits this letter to the State Board of Education ("SBE") as its written opposition to the Pacific Charter Institute's ("Petitioners") appeal (NPS Yuba City Written Submission for Charter Appeal to the SBE hereinafter "Appeal Petition") from the decisions of both the District Board of Trustees ("District Board") and the Sutter County Board of Education ("County Board"), pursuant to California Education Code section 47605(k)(2)(C) ("Opposition").¹

I. INTRODUCTION AND PROCEDURAL BACKGROUND

On May 23, 2022, Petitioners, submitted a petition to the District Board to establish a new charter school which would operate within the Yuba City Unified School District. [Documentary Record ("DR") Exhibit A.1 – 001] As required by Section 47605(b), the District Board held a public hearing on July 26, 2022, in order to consider the level of support for the Petition by the District's teachers, other District employees, and parents. [DR – 010]

During this same time, a team of highly experienced District administrative staff members, including me, Michael Reed, Assistant Superintendent of Human Resources, Scott Bentley, Assistant Superintendent of Business Services, and Pamela Aurangzeb, Assistant Superintendent of Educational Services, along with Elisabeth Davit, Director of Student Support, and District legal counsel, conducted a comprehensive review of the Petition and based on that analysis, prepared a report of proposed findings and recommendations for the District Board. As required by Section 47605(b), that staff report with recommended findings was published for public inspection on August 8, 2022. [DR – 010, 051-067]

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

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In our report, District staff recommended that the District Board deny the Petition, based on the following recommended findings:

- *The Petition presents an unsound educational program for the students enrolled in the New Pacific School – Yuba City charter school (Education Code § 47605(c)(1).)*
- *The Petitioners are demonstrably unlikely to successfully implement the program (Education Code § 47605(c)(2).)*
- *The Petition does not contain the required number of signatures (Education Code § 47605(c)(3).)*
- *The Petition does not provide reasonably comprehensive descriptions of the following required elements set forth in Education Code section 47605:*
 - ♦ *The educational program of the charter school (Education Code § 47605(c)(5)(A))*
 - ♦ *Balance of Students from Different Subgroups (Education Code § 47605(c)(5)(G))*
 - ♦ *Dispute Resolution Procedures (Education Code § 47605(c)(5)(N))*
 - ♦ *Facilities Description/Compliance with Location Requirements (Education Code § 47605(c)(5)(h))*

[DR – 13]

Thereafter, on August 23, 2022, after listening to and considering public comments, including a presentation by Lead Petitioner Paul Keefer and other representatives of the Charter School, the District Board voted to adopt the proposed findings set forth in the District staff report, and on the basis of those findings, deny the Petition. [DR – 009-029, 077-081] The evidence – or more specifically, the absence of sufficient evidence or explanation (i.e., “the how”) – supporting the District staff’s proposed findings and recommendations was carefully articulated in the District staff report, which was attached to and incorporated by reference into the District Board’s resolution denying the Petition. [DR – 009-029, 077-081]

In light of the District Board’s action, on September 21, 2022, Petitioner appealed the District Board’s denial of the Petition to the Sutter County Office of Education consistent with Section 47605(k)(1)(A). [DR – 271] The County Board held the required public hearing on Petitioners’ appeal at its regular meeting held on October 12, 2022, [DR – 272] and County Office staff published their findings and recommendations regarding the Petition to the public in December 2022.

Despite a recommendation from County Office staff that the County Board grant the Petition, the Sutter County Board of Education voted on January 18, 2023, at its regularly scheduled Board meeting, to deny it. [DR – 522-534] In so doing, the County Board considered the presentation

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of the Petitioners as well as other supporters of the Petition, as well as public comments from members of the community voicing strong objections to the establishment of a new charter school in Yuba City.

The Appeal Petition to the SBE followed on February 17, 2023.

II. ABUSE OF DISCRETION STANDARD

With the passage of AB 1505, the Legislature set up a new appeal procedure for charter petitions that are denied by the governing board of a school district or a county board of education. Recognizing the importance of preserving the sovereignty of local school districts to oversee the charter schools operating within their jurisdictional boundaries, AB 1505 significantly modified the role of the SBE with respect to the appeals process. One of those changes included the removal of the SBE's authority to serve as an authorizer of a charter school whose petition was previously denied by the local school district and county board of education. In its place, AB 1505 added Education Code section 47605(k)(2)(E) which provides the SBE with limited authority to reverse a school district or county board of education's denial decision only if it finds that there was a prejudicial abuse of discretion. If this were to occur, the SBE would be required to designate, in consultation with the petitioner, either the school district governing board or the county board of education as the chartering authority.

This amendment to the Charter Schools Act ("CSA") (Education Code section 4760 *et seq.*) reflects the Legislature's intent to support greater local control over public education, as well as the ability of local educational agencies ("LEAs") to oversee and monitor the charter schools operating within their boundaries, so as to ensure that they maintain accountability and transparency in their operations.

Accordingly, in reviewing charter appeals, the SBE is required to apply an "abuse of discretion" standard, which is the most deferential to the District decision, one which the state has expressly acknowledged and applied in prior appeals to the SBE. (*See* <https://www.cde.ca.gov/be/pn/im/documents/jun22memocsd01.docx>) The inquiry is thus whether the District Board prejudicially abused its discretion; that is, whether the District Board's action was "arbitrary, capricious, in excess of its jurisdiction, entirely lacking in evidentiary support, or without reasonable or rational basis as a matter of law." (*San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 673.)

Contrary to the urging of Petitioners, the law is clear that the standard requires the SBE to give "substantial deference to the decisions of local school districts and boards within the scope of their broad discretion," and "intervene only in clear cases of abuse of discretion." (*Dawson v. East Side Union High School Dist.* (1994) 28 Cal.App.4th 998, 1019.) The scope of review "is limited out of deference to the agency's authority and presumed expertise" (*see Polster v. Sacramento County Office of Education* (2009) 180 Cal.App.4th 649,668 quoting *Stone v. Regents of University of California* (1999) 77 Cal.App.4th 736, 745) and requires a presumption

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that the agency "properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise. (*Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 158.)

Petitioners bear the burden of proof and the SBE is not permitted to substitute its views for those of the District Board, nor reweigh conflicting evidence presented to that body. As previously stated by the courts, in determining whether an abuse of discretion occurred, the reviewing body "may not substitute its judgment for that of the administrative board [citation], and if reasonable minds may disagree as to the wisdom of the board's action, its determination must be upheld [citation]." (*Alejo v. Torlakson* (2013) 212 Cal.App.4th 768, 780.) Thus, the abuse of discretion standard is specifically intended to provide an avenue of recourse to overturn decisions that are completely untethered to the underlying facts or applicable law. This standard was never designed or intended to unwind an agency's decision or ruling except in extreme circumstances where there was a clear error of judgment that was prejudicial to the party challenging the decision. The SBE must resolve reasonable doubts in favor of the local agency's findings and determination.

III. THE DISTRICT BOARD DID NOT ABUSE ITS DISCRETION IN DENYING THE PETITION

In the Appeal Petition, Petitioners assert, as they must, that both the District Board and the County Board abused their discretion in denying the Petition. As explained below, however, Petitioners' claim that the District Board abused its discretion is belied by the documentary record itself. Not only did the District Board follow all procedural requirements set forth in the CSA, which fact appears to be undisputed, but all of its written findings were supported by the evidence, or reference to the lack thereof, in the Petition as submitted.

A. The District's Adopted Findings Were Lawful

In the Appeal Petition, Petitioners claim that the District Board's findings, or at least some of them, are "unlawful," and on that basis asserts that its Appeal Petition must be granted. As the record makes clear, however, such claim is wholly unsupported by the facts and the record on appeal.

As set forth in the CSA, a school district governing board cannot 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 findings, including (1) the charter school presents an unsound educational program for the pupils to be enrolled in the charter school; (2) the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition; (3) the petition does not contain the number of signatures required by subdivision (a); (4) the petition does not contain an affirmation of each of the conditions described in subdivision (e); (5) the petition does not contain reasonably comprehensive descriptions of all of the criteria set forth in subsections (c)(5)(A) through (O); (6) the petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of the Educational Employment Relations Act (Gov. Code § 3540 *et seq.*); (7) the charter school is

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demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate; and (8) the school district is not positioned to absorb the fiscal impact of the proposed charter school. (Education Code § 47605.)

To this end, none of the District Board's cited findings fall outside of the express criteria set forth in Section 47605(c) and all are thus lawful. As to one of the findings actually cited as "unlawful" in the Appeal Petition ("Unlawful Example #2," Appeal Petition at p. 27), the District Board clearly made a specific finding that the Petition "presents an unsound educational program for the students enrolled in the New Pacific School – Yuba City charter school." [DR – 016] It appears as though Petitioners' attack on this finding is based on the narrative to describe one of the bases upon which the District Board came to this conclusion, claiming that it is a "unilaterally manufactured legal standard." [DR – Appeal Petition at p. 27] However, siloing this statement and ignoring the fact that it was but one component of a multi-page explanation of how the program overall was determined to be unsound, can in no way serve to render the finding itself unlawful. District Finding of Fact No. 2 (DR – 016) is supported by factual findings, including narrative explanation of the findings and reasoning, over four and a half pages. [DR – 061-020]

The two other "examples" of the District Board's "unlawful" findings cited in the Appeal Petition at pages 28 and 29 ("Unlawful Example #3" and "Unlawful Example #4"), are also specifically authorized by the statute. (*See* Education Code § 47605(c)(2) and (c)(5)(N). Again, the challenges are inherently directed to the sufficiency of the evidentiary support for these findings. The findings themselves are not contrary to law.

And despite Petitioners' generalized statements regarding the unlawfulness of allegedly all of the District Board's findings (*see* Appeal Petition at p. 27), a review of the 35 pages constituting Petitioners' August 22, 2022 Response to Yuba City Unified School District's Staff Report [SR – 004-038], again, Petitioners' statements silo statements and factual findings supporting each statutory findings and argue about them, asserting that parts are "factually inaccurate," "speculative," as well as demonstrating a "lack of understanding of effective teaching strategies." They entirely ignore the entirely holistic nature of the required analyses of at least two of the required criteria – whether Petitioners are demonstrably unlikely to successfully implement the program and whether the Petition presents an unsound educational program. Petitioners' arguments, however, do not render either of these findings "unlawful."

In sum, the District Board has not and does not purport to hold Petitioners to standards not contemplated by the CSA. The District Board's findings as set forth in its resolution denying the Petition directly mirror the statutory criteria set forth in Education Code section 47605(c). As such, Petitioners' claims that the District Board abused its discretion by making "unlawful" findings must be rejected as wholly unsupported by the record.

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B. The District's Adopted Findings Are Supported by the Evidence

The District Staff Report identifies each individual finding in support of denial of the Petition, consistent with the express requirements of the CSA, and includes careful analysis and explanation of the rationale and the facts, or lack of evidence, in the Petition supporting each finding. In fact, as to Finding of Fact No. 2 – “unsound educational program” [DR – 016-020], the District provided three and a half pages of analysis and data to support its finding that the Petition presented an unsound educational program. The finding also carefully articulates how the lofty goals of the Petition are simply not supported by sufficient plan details.

Specifically, the finding of “unsound educational program” is supported by identified concerns with the instructional framework as being not developed to meet the needs of the targeted students, and notes that the educational model lacks specificity in so many regards that meaningful analysis is just not possible. On this point the District cited to the fact that the bell schedules only identified large blocks of time generally but included no explanation of what will occur within each instructional block. Reviewers were thus left to guess how the Charter School could possibly do all of the things they represented as integral to their core instructional program during each school day, including most notably, how the Charter School would be able to implement its main feature – project based learning – in such wide-ranging, multi-grade level classrooms, with the staffing plan presented. The District also identified a marked lack of information or even consideration of how the Charter School would comply with the TK staffing requirements, including maximum adult to student ratios, and maximum class size or address physical education.

In attaching the District's findings, it appears as though the Petitioners confuse “findings” with the District's explanation and citation to supporting facts and evidence (including the absence thereof in the Petition). As such, the Appeal Petition generally just constitutes argument regarding the inherent sufficiency of the District's analysis and citation to evidence.

As to the District Board's finding that the Petitioners were demonstrably unlikely to successfully implement the program, again, District staff explained in great detail its concerns, and how and on what bases, it came to its conclusions. The fact that a significant portion of its analysis was about the *concerning lack of information or evidence* which, if present, might have overcome the issues District staff identified with regard to the program's unrealistic intentions and goals, does not render them inadequate as a matter of law nor do they compel a finding of abuse of discretion. In fact, the nature of the deficiencies was clearly identified, along with cited internal inconsistencies in the Petition and patently inadequate budgets presented for the noted program components.

However, even if Petitioners can establish that one of the District's findings were not supported by the evidence, unless Petitioners are able to show that *all* of the District Board's findings were entirely lacking in evidentiary support or without reasonable or rational basis as a matter of law, or that the District Board's actions were on the whole, arbitrary, capricious or in excess of its jurisdiction, the District submits that the SBE must deny the Appeal Petition, as even one finding

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in support of denial that is supported by the evidence (or lack thereof) – whether reasonable minds could disagree on the conclusion or not – will serve as a sufficient basis to support the District Board’s decision to deny the Petition in the first instance.

IV. PROCEDURAL OR OTHER ERRORS BY THE COUNTY BOARD DO NOT REQUIRE THE SBE TO GRANT THE APPEAL PETITION

Petitioners spend approximately twenty-one (21) pages of its Appeal Petition attacking the actions, procedures, and findings of the Sutter County Board of Education to demonstrate that the County Board committed an abuse of discretion. And although not explicitly asserted by the Petitioners in the Appeal Petition, it is critical to note that even if the SBE finds that the County Board abused its discretion in denying the Petition, whether by failing to properly adopt written findings to support its action to deny the Petition, by acting in a procedurally unfair manner, by adopting findings “entirely lacking in evidentiary support,” or by failing to provide a fair and impartial hearing process, such findings, as a matter of law, do not and cannot serve, alone, as a sufficient basis for the SBE to reverse the District Board’s decision to deny the Petition in the first instance.

In fact, failure of a county board to comply with the procedural requirements set forth in the law only serves to protect a charter school’s right to have the opportunity to appeal its petition to the SBE. To this end, Section 47605(k)(2)(E) states, in no uncertain terms, that:

If the state board hears the 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.

Accordingly, the SBE may uphold the decision to deny the Petition by either the District Board or the County Board, or both. As set forth above, since the District Board complied with all procedural requirements of the CSA and did not abuse its discretion in adopting written findings to support its decision to deny the Petition in the first instance, the SBE must deny the Appeal Petition and uphold the District Board’s denial of the Petition.

V. CONCLUSION

In sum, Petitioners have failed to demonstrate, as a matter of law, that the District Board engaged in any procedural or substantive errors in its consideration of, and action on, the Petition. Unless there was a flagrant violation of the law by the District Board that resulted in actual prejudice to Petitioners, the District Board's decision must stand.

It is neither legally permissible nor appropriate for the SBE to reweigh the facts and evidence or insert its judgment in the place of the District Board. The Legislature intentionally and unequivocally established an extremely high standard of review to prevent the very type of fact pattern that Petitioners bring forward in their Appeal. Unless no reasonable mind could conclude

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that the District Board's findings were supported by the evidence, the SBE must uphold that decision.

Thus, for the reasons articulated above, the District respectfully requests that the SBE summarily deny review of the Appeal. In the alternative, should the SBE decide to hear the instant Appeal, the District requests that the SBE affirm the decision of the District Board and find that there was no abuse of discretion in denying the Petition to establish New Pacific School – Yuba City.

The District appreciates the SBE's consideration of the matters raised in this Opposition. Should the SBE have any questions, please do not hesitate to contact me at (530) 822-7600 or by email at dosumi@ycusd.org.

Sincerely,



Doreen Osumi, Superintendent
Yuba City Unified School District

cc: Members of the YCUSD Board of Trustees
District Superintendent's Executive Cabinet