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Attachment 6

Written Opposition from the Los Angeles Unified School District

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**Letter dated May 15, 2023 RE: Los Angeles Unified
School District's Written Opposition to Vista Legacy
Global Academy's Appeal of the Denial of the Charter
Petition to the State Board of Education**



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May 15, 2023

Via electronic mail to CharterAppeals@cde.ca.gov

California State Board of Education
1430 N Street
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Re: Los Angeles Unified School District’s Written Opposition to Vista Legacy Global Academy’s Appeal of the Denial of the Charter Petition to the State Board of Education

Members of the State Board of Education:

The Los Angeles Unified School District (“District” or “LAUSD”) hereby respectfully submits its written opposition (“Opposition”) to the Vista Charter Public Schools’ (“Petitioner”) appeal (“Appeal”) to the State Board of Education (“SBE”) regarding the LAUSD Board of Education’s (“LAUSD Board”) and the Los Angeles County Board of Education’s (“LACOE Board”) denial of Petitioner’s petition to establish Vista Legacy Global Academy (“Petition”).

INTRODUCTION

The question before the SBE regarding the Board’s November 15, 2022 denial of the Petition is simple: *Did the LAUSD Board abuse its discretion when it denied the Petition?* The documentary record confirms the answer is “no.” The Board acted squarely within its broad discretion under the Charter Schools Act (“Act”; Ed. Code, § 47600 et seq.), consistent with legislative intent underpinning Assembly Bill (“AB”) 1505, when it adopted the comprehensive Findings of Fact in Support of Denial of the New Charter Petition for Vista Legacy Global Academy (“Findings”). The LAUSD Board properly denied the Petition on several grounds, including Education Code section 47605, subdivisions (c)(2), (c)(5), and (c)(7). Petitioner bears the burden of proving the opposite but has failed to do so.

Instead, Petitioner’s Appeal is laced with opinions and conclusory statements unsupported by the law and documentary record, and Petitioner improperly seeks to adjudicate the propriety of the LAUSD Board’s adopted policies rather than the actual denial decision—the only subject matter within the jurisdiction of the SBE. Petitioner further requests that the SBE adopt an erroneous standard for analyzing the Act’s community impact basis for denial, wholly inconsistent with the plain language and legislative intent of AB 1505. Finally, in its Appeal, Petitioner fails to adequately cite to the documentary record, as required, to demonstrate how the LAUSD Board abused its discretion. These deficiencies are dispositive.

All told, this matter is straightforward, and the documentary record is clear—the LAUSD Board properly denied the Petition and adopted the Findings to support three separate grounds for denial, set forth in Education Code section 47605. As confirmed in the Findings, the Board acted properly and did not abuse its discretion. Therefore, the SBE must summarily deny review of the Petition. Should the SBE choose to hear the appeal, it must affirm the LAUSD Board’s determination and deny the Appeal.

STATEMENT OF FACTS

Petitioner submitted its Petition to LAUSD on August 18, 2022.¹ Within 60 days of receipt of the new Petition application, on October 11, 2022, the Board held a public hearing where it considered the level of support for the Petition by teachers employed by LAUSD, other employees of LAUSD, and parents, as directed by Education Code section 47605, subdivision (b).² LAUSD published the LAUSD Superintendent’s recommendation, and the written Findings required to support the recommendation, at least 15 days prior to the meeting at which the Board acted on the new Petition.³ On November 15, 2022, within 90 days of receipt of the new Petition, the LAUSD Board held a public hearing where it considered whether to grant or deny the Petition.⁴ LAUSD provided the Petitioner with equivalent time and procedures to present evidence and testimony to respond to the Findings.⁵

Based on a comprehensive review of the Petition and supporting materials and the capacity interview held with the Petitioner, the LAUSD Board denied the Petition, by a vote of 5-1, and adopted LAUSD’s Findings.⁶ Specifically, the LAUSD Board adopted findings that: (1) Petitioner is demonstrably unlikely to successfully implement the educational program set forth in the Petition; (2) the Petition does not contain reasonably comprehensive descriptions of all required elements; and (3) the charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate.⁷

Petitioner appealed to the LACOE Board, and on March 14, 2023, the LACOE Board voted to deny Petitioner’s appeal.⁸ On March 17, 2023, following the LACOE Board’s denial, Petitioner requested a copy of the documentary record from LAUSD. On March 29, 2023, LAUSD provided the Petitioner with a copy of the documentary record, including the transcript of the November 15, 2022 public hearing at which the LAUSD Board denied the Petition.⁹ Additionally, the District’s documentary record production included copies of the Petition and supporting materials, stamped Agendas of the October 11, 2022 and November 15, 2022 Board meetings (Stamped Order of

¹ SBE – VLGA 1189-1428; 02557-4945.

² SBE – VLGA 00137-138; see also <https://lausd.granicus.com/player/clip/4102?&redirect=true&h=8d1ea66694e40952999abb8635d6cd9b>.

³ SBE – VLGA 01120-1135.

⁴ SBE – VLGA 01088-1137, 01458-1506; see also <https://lausd.granicus.com/player/clip/4135>.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ SBE – VLGA 02308-2403.

⁹ SBE – VLGA 00001-2261;

<https://lausd.granicus.com/player/clip/4102?&redirect=true&h=8d1ea66694e40952999abb8635d6cd9b> and <https://lausd.granicus.com/player/clip/4135>.

Business), transcript of the relevant portions of the November 15, 2022 Board meeting, Board materials for the October 11, 2022 Board meeting, Board materials for the November 15, 2022 Board meeting, links to video recordings of the October 11, 2022 and November 15, 2022 Board meetings, and the LAUSD Policy and Procedures for Charter Schools (“Policies”).¹⁰

On April 13, 2023, Petitioner submitted its Appeal to the SBE.

STANDARD OF REVIEW

AB 1505 significantly changed California charter school appeal procedures by establishing “a *limited* appeal process to the [State Board], which will hear appeals for a charter school able to show the school district or county abused its discretion when hearing the petition.”¹¹ Under this limited appeal process, the SBE must *either* hear the appeal *or* summarily deny review of the appeal based on the documentary record.¹² If the SBE hears the appeal, the SBE may, but is not required to, reverse the denial *only* upon a determination that there was an abuse of discretion by *both* the school district and county board of education.¹³ Thus, under AB 1505, when the SBE reviews an appeal of the denial of a charter petition, the SBE’s inquiry is limited to whether the local district or the county board of education abused their discretion in denying the petition.¹⁴

While the Act does not define abuse of discretion, the California Department Education (“CDE”) has provided guidance regarding the SBE’s abuse of discretion standard:

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).¹⁵

Petitioner accepts the CDE’s definition, and so does LAUSD.¹⁶ This highly deferential abuse of discretion standard is a well-established standard of review in the civil appellate review context.

¹⁰ *Id.*

¹¹ Assem. Floor Analysis, AB1505, Concurrence in Senate Amendments (Sep. 5, 2019), Summary ¶ 5 (emphasis added), available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1505 see also Senate Rules Committee Floor Analysis, AB 1505, Comments § 6, pp. 8-9, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1505.

¹² Ed. Code, § 47605, subd. (k)(2)(E), emphasis added.

¹³ *Id.*, emphasis added; Ed. Code, § 75 [“‘Shall’ is mandatory and ‘may’ is permissive”]; *Common Cause v. Bd. of Sups.* (1989) 49 Cal.3d 432, 443 [“‘may’ is ordinarily construed as permissive”]; *Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 802 [normal rule of statutory construction is when the legislature provides a court or other decision-making body “may” do an act, the statute is permissive, granting discretion to the decisionmaker].

¹⁴ Ed. Code, § 47605, subd. (k)(2).

¹⁵ CDE’s June 30, 2022 Memorandum, “Charter School Appeals to the California State Board of Education: Abuse of Discretion Review Standard,” available at <https://www.cde.ca.gov/be/pn/im/infomemojun2022.asp>.

¹⁶ Appeal, pp. 6-7.

“The appropriate test for ‘abuse of discretion’ is whether the [lower body] exceeded the bounds of reason; when two or more inferences can reasonably be deduced from the facts, the reviewing court has no authority to substitute its decision for that of the trial court.”¹⁷ “An abuse of discretion occurs if, in light of the applicable law and considering all of the relevant circumstances, the court’s decision exceeds the bounds of reason and results in a miscarriage of justice... We presume that the court properly applied the law and acted within its discretion unless the appellant affirmatively shows otherwise.”¹⁸ Under this standard, an appellate body must “resolve all evidentiary conflicts in favor of the judgment and determine whether the court’s decision ‘falls within the permissible range of options set by the legal criteria.’”¹⁹

Put differently, a reviewing body may find an abuse of discretion only where a public agency “has not proceeded in the manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.”²⁰ When reviewing an agency’s decision under the “abuse of discretion” standard, the reviewing body may reverse the agency’s decision only if, based on the evidence before the agency, a reasonable person could not have reached the agency’s conclusion.²¹

Thus, in applying this deferential standard of review, the SBE *must* let the denial decisions of the LAUSD and the LACOE Boards stand, *unless* the SBE finds that the district and county boards acted in a manner that “was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.”²² In conducting this analysis, the SBE must not substitute its own judgment for that of the LAUSD Board or the LACOE Board—i.e., the SBE cannot overturn the LAUSD Board’s or LACOE Board’s decision merely because the SBE determines it would have reached a different conclusion on the same evidence.²³ Rather, the SBE may only find abuse of discretion if, based on the evidence, *a reasonable person could not have reached the same conclusion* as the LAUSD Board or the LACOE Board. In this analysis, any doubts must be resolved in favor of the lower agencies’ decisions.

Additionally, in reviewing the LAUSD and LACOE Board’s denials for abuse of discretion, the SBE may not overturn those decisions unless *all* of the grounds for denial were not supported by the findings and evidence. In other words, if *any one* of the statutory grounds for denial cited by the LAUSD Board or LACOE Board was supported by findings, and those findings were supported

¹⁷ *Tudor Ranches, Inc. v. State Comp. Ins. Fund* (1998) 65 Cal.App.4th 1422, 1431.

¹⁸ *Safeco Ins. Co. of America v. Super. Ct.* (2009) 173 Cal.App.4th 814, 833, citing *Mejia v. City of Los Angeles* (2007) 156 Cal.App.4th 151, 158.

¹⁹ *Hirshfield v. Schwartz* (2001) 91 Cal.App.4th at 771; see *Dorman v. DWLC Corp.* (1995) 35 Cal.App.4th 1808, 1815; *Dept. of Parks & Recreation v. State Personnel Bd.* (1991) 233 Cal.App.3d 813, 831.

²⁰ Code Civ. Proc., § 1094.5, subd. (b).

²¹ *Paoli v. Cal. Coastal Com.* (1986) 178 Cal.App.3d 544, 550–51.

²² *Cal. School Boards Assn v. State Bd. of Ed.* (2010) 186 Cal.App.4th 1298, 1313-14.

²³ *Pitts v. Perluss* (1962) 58 Cal.2d 824, 834–35 [“[I]n determining whether the [administrator] has acted arbitrarily or capriciously, this court does not inquire whether, if it had power to draft the regulation, it would have adopted some method or formula other than that promulgated by the director. The court does not substitute its judgment for that of the administrative body.... The substitution of the judgment of a court for that of the administrator in quasi-legislative matters would effectuate neither the legislative mandate nor sound social policy”].

by the evidence, then the SBE must let the decision stand on appeal.²⁴

ARGUMENT

A. **Petitioner Failed to Demonstrate LAUSD Abused its Discretion—the LAUSD Board Denied the Petition Consistent with the Act.**

The SBE is *required* to give deference to the decision of a school district governing board to deny a charter petition. The SBE may reverse such a decision *only* if it finds an abuse of discretion—i.e., the district’s board acted in a manner that “was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.”^{25 26} The documentary record, including the Board’s adopted written factual Findings, confirm LAUSD properly denied the Petition under the Act. Petitioner’s Appeal fails to plausibly demonstrate, with required citations to the documentary record, any cognizable abuse of discretion by LAUSD. Each of Petitioner’s arguments is conclusory, inaccurate, and implicitly invites the SBE to adopt an impermissible de novo standard of review. Petitioner has not, and cannot, meet its burden to establish an abuse of discretion occurred.

1. **The LAUSD Board Properly Denied the Petition Pursuant to Education Code section 47605, subdivision (c)(7), and its Written Findings Soundly Support the Same.**

A chartering authority may deny a petition for community interest reasons, as set forth in the Act. AB 1505 amended the Act to add, among other provisions, Education Code section 47605, subdivision (c)(7) (commonly referred to as the “community interest” provision) as a new basis upon which a chartering authority may deny a charter petition.²⁷ AB 1505 demonstrates clear legislative intent to give charter authorizers greater local control in the petition approval process, and provide school districts flexibility in considering the community impact of a proposed charter school. Among other things, the legislative history explains:

- “[There is] no question that when students leave traditional public schools to attend charter schools, the school district’s finances suffer”;²⁸
- “The bill gives school districts greater authority to choose which charter schools are approved in their community”;²⁹ and
- “This bill allows school districts to have flexibility to consider community impact, including the fiscal impact to the school district.”³⁰

²⁴ See Ed. Code § 47605, subd. (c) [a petition may be denied based on “one or more” of the findings listed in subdivisions (c)(1)-(c)(8)].

²⁵ *Cal. School Bds. Assoc. v. State Bd. of Ed.*, 186 Cal.App.4th 1298 at 1314.

²⁶ CDE’s June 30, 2022 Memorandum, *supra*.

²⁷ Assem. Bill No. 1505 (2019-2020 Reg. Sess.).

²⁸ Senate Comm. on Education Analysis, AB 1505 (July 5, 2019), p. 5, available at https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1505#.

²⁹ *Id.* at p. 10

³⁰ Assem. Floor Analysis, AB 1505, Concurrence in Senate Amendments (Sep. 5, 2019), p. 2, available at <https://leginfo.legislature.ca.gov/faces/billAnalysisClient.xhtml>

To deny a petition on community interest grounds, a governing board must make *written factual findings* supporting that: “The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school.”³¹ ³² Per the Act, “[a] written factual finding under this paragraph shall detail specific facts and circumstances that analyze and consider the following factors”:

- “*The extent to which* the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings”; and
- “Whether the proposed charter school would duplicate *a program* currently offered within the school district and the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.”³³

LAUSD has fully complied with its obligations, and has made the requisite findings to deny the Petition on this ground. Petitioner’s alleged abuses of discretion appear grounded in a misunderstanding or misapplication of the law. As to the first factor above, Petitioner suggests an alternate legal standard applies: “In order to deny a charter petition, the District *must prove* that the proposed charter school would ‘substantially undermine’ surrounding schools.”³⁴ No such requirement exists in the Act. Rather, findings must be adopted that “analyze and consider” “the extent to which” the charter school would “substantially undermine existing services, academic offerings, or programmatic offerings.”³⁵ As to the second factor above, Petitioner suggests another novel legal standard—a requirement for *total program duplication*: “LAUSD errs in its allegation that Vista Legacy duplicates existing programs within the District. *No one school in the community has all the programs* that will be available to Vista Legacy students.”³⁶ Again, this is not the applicable legal standard.

LAUSD’s Findings, as to Education Code section 47605, subdivision (c)(7), comprehensively analyzed and considered all of the requisite community interest factors. As noted in its Findings, LAUSD performed its analysis using multiple data sources, including Petitioner’s Community Impact Assessment, along with District staff’s own community impact analysis.³⁷

As a preliminary matter, Petitioner appears to take issue with LAUSD’s definition of “community.” The Act does not define the word “community,” relative to a community interest

[bill_id=201920200AB1505#](#).

³¹ Ed. Code, § 47605, subd. (c)(7).

³² See also O’Donnell, P., Letter to LACOE Board dated March 10, 2022, attached as Exhibit A [“The language was left broad intentionally, due to the fact that each school district is different and therefore the financial impact is different in each case . . . [a]gain, the Legislative intent was to give school district and county boards of education broad discretion to consider what the fiscal and community impacts of a proper charter school might be . . . [t]he district does not need to meet any criteria of fiscal distress, or be in fiscal distress to deny a charter petition”].

³³ *Id.*, emphasis added.

³⁴ Appeal, p. 15, emphasis added.

³⁵ Ed. Code, § 47605, subd. (c)(7).

³⁶ Appeal, p. 16, emphasis added.

³⁷ SBE – VLGA 01129-01131.

analysis. This is consistent with legislative history indicating this determination is best left in the hands of local school districts, the most familiar with their own communities.³⁸ Anecdotally, many school districts have determined the geographic boundaries of their school district constitute their “community.” LAUSD covers an area totaling 710 square miles, including most of the city of Los Angeles, along with all or portions of 25 cities and unincorporated areas of Los Angeles County; approximately 4.8 million people reside within District boundaries.³⁹ As such, through its Policies, LAUSD’s Board determined that a “community,” for the purposes of analyzing community interest, will be based on LAUSD Community of Schools and neighborhoods within a three-mile radius from the location identified by the petitioner of the proposed location of a charter school.⁴⁰ This policy is not “onerous,” as Petitioner suggests, but entirely reasonable.

Through this lens, the Findings considered several elements in determining the proposed charter school would substantially undermine existing services or offerings in the targeted community, including: comprehensive enrollment trends derived from 2021-2022 Norm Enrollment data from LAUSD’s Master Planning and Demographic office; fiscal impact to the community, including analysis of estimated total revenue losses for District schools and estimated impacts to staff positions for District services and programs; expected enrollment loss for District schools based on historical charter enrollment trends; and average enrollment realization ratios, among other things.⁴¹ These detailed and well-reasoned findings supported LAUSD Board’s denial on this ground.

LAUSD applied similar diligence to its findings relative to duplication of programs. It analyzed at least five charter school programs identified by Petitioner as non-duplicative and using publicly available data determined at least some duplication indeed existed, including where Petitioner alleged it did not. For example—there was notable duplication of Career Technical Education and other program offerings in the applicable community, where existing programs have sufficient capacity for students proposed to be served by the charter school.⁴² The findings also considered, in detail, the academic needs of the surrounding community compared against academic achievement data—notably lower than state averages—of Petitioner’s existing charter programs.

All told, LAUSD’s Findings, adopted by the Board, provide ample support, consideration, and analysis of the requisite factors.⁴³ Petitioner’s Appeal correctly notes: “Section 47605(c)(7) is clear that the District is responsible for making any factual findings.”⁴⁴ LAUSD has done so here,

³⁸ Sen. Com. on Ed. on Assem. Bill 1505, (2019-2020 Reg. Sess.) as amended July 5, 2019, p. 5 [“This measure ensures that charter schools are authorized and overseen by school districts and county offices of education, who are the elected officials that best understand the educational needs of their local students, thus improving proper oversight”].

³⁹ LAUSD Fingertip Facts 2022-2023, https://achieve.lausd.net/site/handlers/filedownload.ashx?moduleinstanceid=73040&dataid=121695&FileName=Fingertip_Facts_2022_2023_ENG_Final_032323.pdf.

⁴⁰ LAUSD Policy and Procedures for Charter Schools, amended January 25, 2022, p. 21, <https://achieve.lausd.net/cms/lib/CA01000043/Centricity/Domain/106/LAUSD%20Policy%20and%20Procedures%20for%20Charter%20Schools%20Amended%20Rev%20001-25-22.pdf>.

⁴¹ Findings, p. 11-12.

⁴² Findings, p. 13.

⁴³ SBE – VLGA 01088-01137

⁴⁴ SBE – VLGA 01134.

in full compliance with the Act, and its Findings are entitled to deference by the SBE.⁴⁵ While it is apparent Petitioner disagrees with LAUSD’s Findings, disagreement is not synonymous with abuse of discretion.

2. Consideration of LAUSD’s Charter School Policies is Beyond the State Board of Education’s Scope of Review.

Despite sound factual findings supporting denial under Education Code section 47605, subdivision (c)(7), Petitioner alleges LAUSD “abused its discretion by acting unlawfully and in a procedurally unfair manner, by using an unlawfully burdensome definition of ‘community impact,’ and by imposing requirements found nowhere in the CSA.”⁴⁶ Put plainly—Petitioner asks the SBE to weigh in on the propriety of LAUSD’s petitioning Policies. This improper request falls squarely *outside* the scope of the SBE’s powers of review.

First, per the CDE’s own guidance, “[t]he 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.’”⁴⁷ This supports that an agency’s *decision* is reviewable for abuse of discretion, but not its underlying policies—the SBE is not tasked with opining on the charter policies of California’s 1,000-plus school districts,⁴⁸ particularly relative to a post-AB 1505 appeal. Chartering authorities throughout the State have varied policies and practices relative to receipt and review of charter petitions. As with LAUSD, such policies are often uniquely tailored to suit the individual needs of a given school district or county—large or small. By definition, policies may include language found nowhere in statute, because policies are implementing documents operationalizing the law.

The Appeal argues LAUSD’s Policies—specifically related to community impact analysis—are preempted by the Act.⁴⁹ This is *purely* a question of law—one that might be litigated in other forums, but is not within the appeal purview of the SBE. Nor should it be. AB 1505’s reforms introduced the “abuse of discretion” review standard for school district decisions, the purpose of which was to create a high legal bar for charter appeals. Per AB 1505’s author, reversal on appeal to the SBE was “meant to be rare and only in the instance where egregious procedural violations occurred at the school board and county board of education, and those procedural violations prohibited the charter from having a fair and legal hearing before the school board and the county board of education.”⁵⁰ Thus, preemption issues have *no bearing* on whether the LAUSD Board abused its discretion in its Petition denial decision; such issues are not within the documentary record, and should be wholly disregarded on appeal.⁵¹

⁴⁵ June 30 Memo, at p. 2.

⁴⁶ Appeal, p. 15.

⁴⁷ June 30 memo at p. 2, emphasis added.

⁴⁸ See CDE’s Fingertip Facts on Education in California, *supra*.

⁴⁹ Appeal, pp. 3, 16.

⁵⁰ O’Donnell, P., Letter to SBE dated Nov. 9, 2022, p. 4, attached as Exhibit B.

⁵¹ The Appeal twice references an unrelated Los Angeles County Superior Court case under which the Court examined LAUSD’s obligation to deem a petition from an unrelated charter school received under Education Code section 47605, subdivision (b). (Appeal, pp. 3, 16; SBE – VLGA 05646-05661.) The Court’s decision in that case *in no way* opined upon the propriety of any of LAUSD’s Policies. To the contrary, the Court found: “In addition to the writ requiring [LAUSD] to receive the EQ7 Petition, Petitioner also requested . . . a writ directing [LAUSD] to set aside any District-promulgated [policy] requirement, restriction or limitation inconsistent with or contrary to the

Even were this issue relevant, it is well-settled that California school districts may adopt policies and administrative procedures to implement or clarify state law. As to charter petitions, the chartering authority “controls the application approval process, with sole power to issue charters.”⁵² Consistent with the permissive nature of school district authority under the Education Code, a school district’s reasonable policies and procedures that do not directly conflict with state or federal law and do not contravene legislative intent, are within the scope of authorizer oversight authority and discretion under the Act.⁵³

Finally, even examining the Policies at face value, this argument is a red herring. As discussed above, at Section A.1, LAUSD’s definition of “community,” relative to community impact analysis, *narrows* LAUSD’s full community of 710 square miles and 4.8 million residents based on LAUSD Community of Schools and neighborhoods within a three-mile radius from the location identified by the petitioner of the proposed charter school’s location. Given the absence of any legal definition of “community” in the Act, there is nothing unlawful about LAUSD crafting such a definition for charter petition review purposes, nor is that procedurally unfair.⁵⁴ Nor do LAUSD’s Policies constitute unlawful burden shifting. Charter petitioners should know their proposed school program and community, and it is logical for Petitioner to participate in providing data supporting LAUSD’s community impact assessment. Per the Findings, District staff conducted their *own* community impact assessment as well, and incorporated said data into the Board-adopted Findings. There is simply no evidence of procedural unfairness, nor of “unlawful burden shifting,” as Petitioner suggests. The abuse of discretion standard remains unmet.

3. The LAUSD Board Properly Denied the Petition Pursuant to Education Code section 47605, subdivision (c)(2), and its Written Findings Soundly Support the Same.

LAUSD fully met its burden in finding that Petitioner is demonstrably unlikely to successfully implement the educational program within the Petition, pursuant to Education Code section 47605, subdivision (c)(2).

Petitioner improperly shifts the standard of review, suggesting LAUSD’s findings as to Education Code section 47605, subdivision (c)(2), are subject to a “substantial evidence” standard of review, rather than “abuse of discretion.” They are not, nor would that be consistent with AB 1505.⁵⁵ “Substantial evidence” is a notably different standard of review than “abuse of discretion.” Under the former standard, a reviewing body must consider whether “the entire record . . . discloses

mandate of Education Code section 47605, subdivision (b)[.] However, Petitioner did not address this prayer for relief in the opening brief or reply. The court considers the issue forfeited for the purposes of this writ petition.” Petitioner’s reliance on this Superior Court case is puzzling, and inapposite here. (SBE – VLGA 05660-05661.)

⁵² See *Wilson v. State Bd. of Ed.* (1999) 75 Cal.App.4th 1125, 1139.

⁵³ See, e.g., Ed. Code, §§ 35160, 35160.1 [“school district may initiate and carry on any program, activity, or may otherwise act in any manner which is not in conflict with or inconsistent with, or preempted by, any law and which is not in conflict with the purposes for which school districts are established”; school districts should create unique solutions to suit individual communities].

⁵⁴ *Id.*

⁵⁵ Appeal, p. 14.

substantial evidence to support [the agency’s decision].”⁵⁶ Under the latter standard, applicable here, an agency’s decision may only be overturned if arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair.⁵⁷ The difference is slight, but important. Although deferential in nature, substantial evidence is *a less* deferential standard than abuse of discretion, and one not contemplated under the Act.

Regardless, LAUSD has met its burden under either an abuse of discretion or substantial evidence standard of review. Under the substantial evidence standard of review, “a reviewing [agency] should ‘not reweigh the evidence...or resolve evidentiary conflicts.’ The determinations should ‘be upheld if...supported by substantial evidence, even though substantial evidence to the contrary also exists and the [agency] might have reached a different result had it believed other evidence.’”⁵⁸ “When two or more inferences can be reasonably deduced from the facts,” the reviewing agency cannot substitute its own judgment.”⁵⁹

The Findings adopted by the Board describe, in high detail, significant facts supporting LAUSD’s decision.⁶⁰ Among other things, District staff found:

- The Petition and supporting materials omit or fail to disclose significant information or facts, raising concerns regarding the charter organization’s transparency with LAUSD, families, and stakeholders. Concerning here, Petitioner appears to have represented publicly that Vista Meridian Global Academy school is operational when, in fact, it is not.⁶¹
- Staff identified inconsistencies between the Petition, supporting documentation, and statements made by Petitioner during the capacity interview, including inconsistencies with direct budgetary implications.⁶²
- Certain aspects of the Petition were not aligned with legal requirements, including as to the school day for high schools—the type of school Petitioner proposes to operate.⁶³
- Of the charter organization’s current portfolio of schools, there is California State Dashboard Data reflecting academic underperformance compared to State averages, and one school is currently classified by the CDE as “Low Performing.”⁶⁴

Thus, while Petitioner plainly disagrees with LAUSD’s Findings, there is ample discussion, evidence, and data supporting the Findings. LAUSD’s considered decision, as to Education Code section 47605, subdivision (c)(2), is far from “arbitrary, capricious, entirely lacking in evidentiary support, or unlawfully or procedurally unfair.” Even under a substantial evidence standard of

⁵⁶ *Mealy v. B-Mobile Inc.* (2011) 195 Cal.App.4th 1218, 1223.

⁵⁷ *Fullerton Joint Union High School Dist. v. State Bd. of Ed.* (1982) 32 Cal.3d 779, 786; see also *Cal. School Bds. Assn. v. State Bd. of Education*, 186 Cal.App.4th at 1314; *County of Del Norte v. City of Crescent City* (1999) 71 Cal.App.4th 965, 972; *California Correctional Peace Officers' Assn. v. State* (2010) 181 Cal.App.4th 1454, 1459-60.

⁵⁸ *In re K.H.* (2022) 84 Cal.App.5th 566, 601.

⁵⁹ *Western States Petroleum Assn. v. Super. Ct.* (1995) 9 Cal.4th 559, 571.

⁶⁰ Findings, p. 1-16.

⁶¹ Findings, p. 4.

⁶² Findings, p. 6.

⁶³ *Id.*

⁶⁴ Findings, p. 6-7.

review—although inapplicable here—the determinations must be upheld even if Petitioner believes evidence exists to the contrary; it is not incumbent upon the SBE, nor proper, to reweigh the evidence considered by LAUSD.⁶⁵ LAUSD’s decision must therefore stand, on this ground too.

4. The LAUSD Board Further Denied the Petition Pursuant to a Third Ground which Petitioner *Has Not* Cited as an Abuse of Discretion—Education Code section 47605, subdivision (c)(5).

The LAUSD Board denied the Petition based on three distinct grounds, and each on their own is legally sufficient to deny a petition under the Act. Specifically, a governing board may deny a charter petition pursuant to Education Code section 47605, subdivision (c), so long as it makes “written factual findings, specific to the particular charter, setting forth specific facts to support *one or more*” of the legal bases for denial set forth in the Act.⁶⁶ Therefore, any *one* basis for denial under section 47605, subdivision (c), is sufficient to deny a petition. Here, the LAUSD Board denied the Petition based on three bases outlined in the Findings: (1) the Petitioner is demonstrably unlikely to successfully implement the educational program set forth in the Petition (see Education Code section 47605, subdivision (c)(2)); (2) the Petition does not contain reasonably comprehensive descriptions of all required elements (see Education Code section 47605, subdivision (c)(5)); and (3) the charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate (see Education Code section 47605, subdivision (c)(7)).⁶⁷ As detailed in Sections A.1-3, the LAUSD Board’s denial pursuant to section 47605, subdivisions (c)(2) and (c)(7) is consistent with the Act and Petitioner fails to demonstrate an abuse of discretion. However, assuming *arguendo* that those two findings were an abuse of discretion—which they were not—the LAUSD Board properly denied the Petition pursuant to section 47605, subdivision (c)(5). This is undisputed by Petitioner.

The Appeal fails entirely to acknowledge the LAUSD Board’s third basis for denial under section 47605, subdivision (c)(5). That is, Petitioner has not argued and therefore has not demonstrated that the denial under section 47605, subdivision (c)(5) was an abuse of discretion. Having not raised this in the Appeal, the argument is forfeited. As such, even were the SBE to find that the LAUSD Board abused its discretion as to the other two bases for denial, the Act only requires *one* written factual finding to support denial and the third basis for denial must stand on its own. Therefore, the Appeal must be denied.

5. The LAUSD Board Submitted Transcripts as Required by the Act.

Petitioner alleges that LAUSD failed to provide transcripts of the initial public hearing.⁶⁸ First, this allegation is a red herring, and wholly irrelevant to the issue of whether the LAUSD Board abused its discretion when it denied the Petition. That said, Education Code section 47605, subdivision (k)(2)(A), *only* requires the documentary record to include the “transcripts of the

⁶⁵ *In re K.H.*, 84 Cal.App.5th at 601.

⁶⁶ Ed. Code, § 47605, subd. (c).

⁶⁷ *Id.*

⁶⁸ Appeal, p. 5 [“neither agency provided transcripts of the public hearings prior to board action”].

public hearing at which the governing board of the school district and county board of education denied the charter.” The District included the transcripts for the November 15, 2022 public hearing at which the Board took action.⁶⁹ Nothing in the Act requires the production of the transcripts from the initial public hearing. Nevertheless, LAUSD provided the video recordings of both the October 11 and November 15, 2022 public hearings, going above and beyond what is statutorily required. Moreover, the SBE has accepted audio recordings as a form of “transcripts” in past SBE charter appeals post-AB 1505. Simply put, Petitioner’s allegation that LAUSD abused its discretion by failing to submit transcripts of the initial public hearing is unfounded, mischaracterizes the requirements of the Act, and is simply irrelevant.

6. The LAUSD Board Properly Considered the Charter Petition Documents.

The Appeal alleges the LAUSD Board did not properly consider Petitioner’s written response to the Findings, submitted on November 14, 2022, just one day before the public hearing and Board decision on the Petition.⁷⁰ First, there is no requirement in the law or elsewhere for a Board to analyze all documents that may come in—particularly those provided one day before the LAUSD Board’s decision. This is precisely the purpose of the second public hearing under the Act, at which charter petitioners “shall have equivalent time and procedures to present evidence and testimony to respond to the staff recommendations and findings.”⁷¹ Petitioner was afforded this opportunity to speak to the LAUSD Board, through its Superintendent, Dr. Don Wilson, but he did not use his time to respond in any substantive manner to the Findings.⁷² Second, to the extent the full scope of Petitioner’s written response was not explicated by the Board, there is no legal authority or record evidence indicating that alone constituted an abuse of discretion as contemplated by AB 1505, nor does Petitioner offer any authority to support this proposition. The LAUSD Board reviewed all documentation it was required to, and heard Petitioner’s verbal response, in public hearing, to the Findings. No abuse of discretion occurred, nor was Petitioner prejudiced in any manner relative to its opportunity to respond to the Findings.⁷³

B. Petitioner Failed to Adequately Cite to the Documentary Record.

When submitting an appeal petition to the SBE, Education Code section 47605, subdivision (k)(2)(A), requires a petitioner to include “a written submission detailing, with *specific citations to the documentary record*, how the governing board of the school district or the county board of education, or both, abused their discretion.”⁷⁴ While Petitioner submitted a written submission along with its Appeal, Petitioner critically fails to cite to the documentary record, with any specificity, to explain *how* LAUSD abused its discretion. Petitioner’s failure to meet this statutory requirement, and thus failure to meet is burden on appeal under the Act, supports a summary denial of the Appeal.

⁶⁹ SBE – VLGA 01458-1506.

⁷⁰ Appeal, p. 14; SBE – VLGA 02518-02534.

⁷¹ Ed. Code, § 47605, subd. (b).

⁷² SBE – VLGA 01462-01466.

⁷³ *JKH Enterprises, Inc. v. Department of Industrial Relations* (2006) 142 Cal.App.4th 1046, 1057 [noting abuse of discretion largely contemplates a prejudicial abuse of discretion].

⁷⁴ Ed. Code, § 47605, subd. (k)(2)(A), emphasis added.

While Petitioner spends significant amount of time asserting how the LACOE Board purportedly abused its discretion, Petitioner fails to articulate how the LAUSD Board's decision was legally or factually an abuse of discretion.⁷⁵ Instead, Petitioner conclusively asserts that the LAUSD Board abused its discretion and relies primarily on arguments challenging LAUSD's Policies rather than the LAUSD Board's decision—the issue before the SBE. Any arguments relative to LAUSD's Policies are inapposite and cannot serve as a basis for finding an abuse of discretion, as outlined in Section A.2. Petitioner must include citations to the record demonstrating how the LAUSD Board's decision—i.e., denial of the Petition—was “arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.” Petitioner has not done so. Moreover, Petitioner's assertion that it did not make sufficient citations to the documentary record because there was an absence of an adequate documentary record, is inaccurate, unsupported, and inadequate.⁷⁶ Therefore, the Appeal is fundamentally deficient, and the SBE must summarily deny On this basis alone.

C. The SBE Must Affirm the LAUSD Board's Decision and Deny the Petition, Regardless of Whether it Affirms or Denies the County Board's Decision.

Education Code section 47605, subdivision (k)(2)(E) provides, in relevant part, the SBE “*may* affirm the determination of the governing board of the school district *or* the county board of education, *or both* of those determinations.”⁷⁷ Thus, the Act affords the SBE four options: (1) affirm the school district's determination, (2) affirm the county board of education's determination, (3) affirm both the school district and county board of education's determination, or (4) affirm neither determination. SBE need only affirm one of the lower governing boards' decisions to deny the Petition. As set forth in detail herein, the LAUSD Board properly denied the Petition, supported by comprehensive written factual findings adopted by the LAUSD Board on November 15, 2022, and no abuse of discretion has been established. Thus, the LAUSD Board's determination must be affirmed, and the Appeal must be denied.⁷⁸

In considering this proposition, the plain language of subdivision (k)(2)(E) is clear on its face and does not require any further analysis—that is, even were the SBE only to overturn one board's decision, the Appeal must be denied.⁷⁹ However, even if the plain language is ambiguous—which it is not—a statutory construction analysis further supports a reading of the statute which only requires the SBE to affirm *either* one *or* both the governing board's denial determinations to deny the Petition. Any alternative interpretation leads to an absurd result, contrary to the legislative intent of the Act. For example, were the SBE to affirm the LAUSD Board's decision and reverse the LACOE Board's decision, but grant the Appeal, the SBE would be approving a Petition that

⁷⁵ Appeal at pp. 7-14, compared to pp. 14-16.

⁷⁶ Appeal, p. 2.

⁷⁷ Ed. Code, § 47605, subd. (k)(2)(E).

⁷⁸ While the LAUSD Board supports the LACOE Board's denial of the Petition, this opposition analyzes only the LAUSD Board's decision under the abuse of discretion standard, as the LACOE Board has an opportunity to prepare its own opposition to the Appeal.

⁷⁹ *In re W.B., Jr.* (2012) 55 Cal.4th 30, 52 [If the statutory language is unambiguous, the court presumes that Legislature meant what it said, and the plain meaning of the statute controls].

does not meet the requirements of the Act, per LAUSD's affirmed Findings. This result would be inconsistent with the Act as a whole.⁸⁰

Where the language of a statutory provision is susceptible of two constructions, one of which, in application, will render it reasonable, fair, and in harmony with its manifest purpose, and another which would be productive of absurd consequences, the former construction will be adopted.⁸¹ Stated differently, even where uncertainty exists, consideration should be given to the consequences that will flow from a particular interpretation, and the SBE should not adopt a statutory construction that will lead to results contrary to the legislature's apparent purpose.⁸²

Therefore, the SBE should review the LAUSD Board's and LACOE Board's decisions independently, and as discussed herein, affirm, at a minimum the LAUSD Board's denial determination, regardless of the SBE's determination as to the propriety of the LACOE Board's decision.

CONCLUSION

Based on the foregoing, the LAUSD Board properly denied the Petition under the Act—a decision which was supported by written factual findings specific to the Petition, and the LAUSD Board did not abuse its discretion. Petitioner's Appeal fails to demonstrate the opposite. Therefore, LAUSD respectfully requests the SBE summarily deny review of the Appeal, or, in the alternative, affirm the LAUSD Board's denial and deny the Appeal.

Yours truly,



Veronica R. Arreguin
Chief Strategy Officer

Enclosure: District Exhibits A-B

⁸⁰ *Zenith Ins. Co. v. Workers' Comp. Appeals Bd.* (2008) 159 Cal.App.4th 483, 491 [interpretation of statutory language should be consistent and harmonized with purpose of the statute and the statutory framework as a whole].

⁸¹ *People ex rel. Lungren v. Superior Court* (1996) 14 Cal.4th 294, 305.

⁸² *Id.*

Exhibits to Los Angeles Unified School District's Written Opposition

*Los Angeles Unified School District's Opposition to Vista
Legacy Public Schools' Appeal to the State Board of Education*

Exhibit A

*Los Angeles Unified School District's Opposition to Vista
Legacy Public Schools' Appeal to the State Board of Education*

Exhibit B

STATE CAPITOL
P.O. BOX 942849
SACRAMENTO, CA 94249-0070
(916) 319-2070
(916) 319-2170 FAX



DISTRICT OFFICE
5000 East Spring Street, Suite 550
LONG BEACH, CA 90815
(562) 429-0470
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MEMORANDUM

November 9, 2022

RE: AB 1505 (O'Donnell, Bonta, McCarty, Smith), Statutes of 2019

FROM: Patrick O'Donnell, Assemblymember, 70th District

This memorandum is regarding the Charter Schools Act, and the legislative changes made to the Act in 2019 through my bill, AB 1505 (O'Donnell, Bonta, McCarty, Smith). I would like to clarify the Legislative intent behind the changes the bill made to the charter school authorization and appeal process.

Fiscal impact and community impact. While working on the bill, I heard clearly from school districts and county offices of education that some school districts were struggling with the fiscal and community impact of charter school expansion in their districts. Therefore, we added two new tools for authorizers to use in determining the fiscal impact of a new charter school (or the expansion of an existing charter school) to a school district and its students, as follows:

- Education Code (EC) Section 47605(c)(7): The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school, including an analysis of the extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings; as well as whether the proposed charter school would duplicate a program currently offered within the school district.
- EC Section 47605(c)(8): The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has any of the following:
 - 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 (districts with an outstanding state loan).

Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

While these two additional reasons that a school district or county board of education can deny a new charter school petition (or request to expand) may seem similar because they both address fiscal impact, they are intentionally different and have differing requirements when they are utilized.

Fiscal impact as part of community impact. Section 47605(c)(7) applies when the approval of the charter will present a negative fiscal impact to the school district's programs, and the school district presents an analysis of how the charter school would substantially undermine existing services, academic offerings, or programmatic offerings because of that fiscal impact. When drafting the bill, we used the word "substantial" to indicate that a financial impact of \$1.00 or other nominal amount is not enough, but instead it must be substantial to the school district, according to their analysis. The language was left broad intentionally, due to the fact that each school district is different and therefore the financial impact is different in each case.

The main requirement of a denial under Section 47605(c)(7), is that the school district must present a basic analysis of the financial impact of opening (or expanding) the charter school on the school district and how that financial impact will substantially undermine existing services to the school district's students. In completing such analysis, the school district may determine the appropriate definition of "entire community," which could be expansive and include services and programs provided to all students in the entire school district, services to specific populations of students within the district, or be narrowly defined to include services or facilities provided to students at a single school site that will be most impacted by the charter school. The lack of definition of "community" was intentional, to allow each school district to determine its own definition of the community and how it will be impacted.

Examples of such an analysis include, but are not limited to, situations where a charter school opens and the school district loses the projected average daily attendance (ADA), the school district may have to adjust their budget accordingly by eliminating the music program, closing a school site, or by requiring two schools to share a single school facility. Similarly, if the charter school petition does not sufficiently lay out a plan to serve a balance of both mild/moderate and moderate/severe special education students and English learner students, compared to the district, the district may have to adjust their budget and services accordingly to serve the needs of the community's most vulnerable student populations. Further, if a school district is experiencing declining enrollment and the loss of projected ADA to the charter school would exacerbate the budget reductions or school closures/consolidations planned in the school district, an authorizer could consider those items as community impact. Similarly, if a school district closes/consolidates a school due to declining enrollment, and a charter petition proposes to serve that student population, the school district can consider how the opening of the charter school will compound the budget reductions that have taken place in the district, and how those additional reductions would affect programs and services to students. The analysis should lay out the impact on the school district and the impact to the community, including the specific student populations, student services or programs that may be impacted by the new or expanding charter school.

Further examples of the Legislative intent in this area can be found in the Bill Analysis presented to the Assembly Floor prior to that body's passage of the bill. As cited in the analysis, my intent was to allow authorizers to, among other things:

"... consider the impact that a charter school would have on school district programs, such as English Learner instruction, hands-on science, music and theater.... Further, school districts may consider the staffing needs of district services and programs that might be impacted by the charter school, and if layoffs of custodial positions, teachers, school resource officers, and other school staff is likely to be exacerbated by the addition of a new or expanding charter schools, school boards must take this into account in order to the meet the needs of all their students."

Again, the Legislative intent was to give school district and county boards of education broad discretion to consider what the fiscal and community impacts of a proposed charter school might be, and deny a charter school under Section 47605(c)(7) if they felt that impact would be substantial for their students, schools, and broader community.

To deny a charter school petition under Section 47605(c)(7), a school district or county board of education need only find that there will be a fiscal and community impact of the proposed school that will "substantially undermine existing services, academic offerings, or programmatic offerings."

The school district does not need to meet any criteria of fiscal distress, or be in fiscal distress to deny a charter petition under Section 47605(c)(7).

Further, a charter school petition can be denied for any of the eight reasons established in the Charter Schools Act. School districts may choose to deny a charter school for multiple reasons or any single reason. School districts may deny a charter school petition under Section 47605(c)(7) alone, or in combination with other reasons for denial. Likewise, a school district may deny a charter school petition under Section 47605(c)(8) alone, or in combination with other reasons for denial.

Fiscal impact as part of school district fiscal distress. To further clarify the difference between Sections 47605(c)(7) and 47605(c)(8), a denial of a charter school under Section 47605(c)(8) requires that the school district meet one of the three criteria of financial distress. By meeting one of the three criteria, that school district may deny the charter school without further analysis. Denial under Section 47605(c)(8) provides a rebuttable presumption of denial, which means the charter petition is presumed to be denied, and may only be rebutted on appeal if the school district does not meet one of the three criteria, based on fact. The Legislature intended for a denial under Section 47605(c)(8) to be an objective measure, not a subjective measure. If the school district is in fiscal distress, and meets one of the three criteria, that school district may deny the charter school petition without further analysis. Denial under Section 47605(c)(8) does not require an analysis of the fiscal impact of the charter school on the district.

When we enacted Section 47605(c)(8), the Legislative intent was to allow school districts that are in fiscal distress to focus on the school district's financial health without additionally having to struggle financially due to an increase in the number of charter schools opening within the district, therefore diverting funds from existing school district programs and services. This provision was explicitly written for school districts experiencing fiscal distress, as evidenced by their budget projections, fiscal certification and status under state receivership.

Again, the *only* requirement for denying a charter petition under Section 47605(c)(8) is that the district meets one of the three categories listed.

The intent of AB 1505 was to provide greater local control to school districts and provide more flexibility to school districts to deny charter school petitions if the proposed charter school (or expansion) would have a substantial impact on the school district's programs under Section 47605(c)(7), or if the school district was in financial distress under Section 47605(c)(8).

Rebuttable presumption of denial. In passing AB 1505, the Legislature wanted to ensure that school districts experiencing fiscal distress, that denied charter petitions for that reason, would not be overturned by the county board of education or State Board of Education on appeal. Therefore, the bill created a rebuttable presumption of denial for appeals of charter petitions that are denied under Section 47605(c)(8), which means that a county board of education and State Board of Education shall deny an appeal petition for a charter school denied under Section 47605(c)(8), if the school districts meets the listed criteria based on fact. The law was intentionally written to make a high bar for a county board of education or the State Board of Education to overturn such an appeal. In order to overturn such a denial, a county board of education or the State Board of Education must be presented with factual evidence that the district does not meet one of the three fiscal distress criteria.

County board of education appeals. AB 1505 maintains the ability for a charter school petitioner to appeal a denial by a school board, to the local county board of education. The charter petitioner must submit such an appeal within 30 days of the denial, and must submit the appeal petition to the school district at the same time as the County Board of Education. The county board of education then has 60 days to hold a hearing on the appeal petition, once the petition is received by both the county board of education and the school board of the school district that denied the petition.

In review of the charter school appeal petition, Education Code Section 47605 (k)(1)(A)(ii) states:

“The county board of education shall review the appeal petition pursuant to subdivision (c). If 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).”

The county board of education shall review the charter school appeal petition, after it is confirmed that there are not different material terms than the petition that was submitted to the school district board. In reviewing the petition, the county board should consider the reasons for denial by the school district board, including denial for community impact under Section 47605 (c)(7) and fiscal distress under Section 47605 (c)(8). Since the school district knows and understands the needs of their local community the best, the school district’s analysis as part of a denial based on community impact, should be considered by a county board of education on appeal. If the school board denied for fiscal distress under 47605 (c)(8), the county board of education is required to review that finding under the rebuttable presumption of denial standard.

Material terms. AB 1505 defines “material terms” and states that different material terms do “not include minor administrative updates to the petition or related documents due to the changes in circumstances based on the passage of time related to fiscal affairs, facilities arrangements, or state law, or to reflect the county board of education as the chartering authority.” This definition was discussed extensively during the drafting of the bill and the Legislative intent was that “minor administrative updates” are updates that do not have an impact on the program. In other words, these are minor updates needed to adjust the petition to make it relevant for the appeal proceedings that are directly related to the passage of time between the time the petition was heard by the school district and when it is heard by the county board of education. For example, the fiscal affairs of the proposed charter school may have changed from the time the petition was presented to the school district, due to the loss of grant funding, and the budget of the proposed charter school would need to be updated to reflect that new information as it is presented for appeal at the county board of education. Similarly, a change to facilities arrangements, due to losing a lease for a facility in a specified location due to the passage of time between hearings, would also meet this definition. Changing facilities from one location to another location across town, or to another school’s enrollment boundary, would change the student population at the proposed charter school, and would therefore not be considered a minor administrative update. Likewise, a change to the school opening date, would not be considered a minor administrative update.

State Board of Education appeals. While working on the bill, I heard from school districts and county offices of education that they sought broader discretion and more tools to evaluate charter petitions and how those charters would impact their students, schools and the broader community. In order to give school districts and county offices of education more local control over the charter schools that are approved in their communities, the bill substantially limited the charter school appeal process at the State Board of Education and authorized the State Board of Education to summarily deny an appeal without a hearing. These changes were important to protect local control and limit the State Board of Education’s time spent on charter school appeals as a whole.

Abuse of discretion standard. In drafting the bill, appeals to the State Board of Education were limited to only those that can prove a clear abuse of discretion occurred. The term abuse of discretion was intentionally used, in order to create a high legal standard for appeals submitted to the State Board of Education. The intent was for only charter petitions that did not receive a legal hearing at the local level (at both the school district and the county board of education), to be able to seek an appeal before the State Board of Education. In the past, there were instances where school districts and county offices of education failed to or refused to hold hearings on charter petitions, and it was the Legislative intent to allow for an appeal to the State Board of Education only in these extreme cases where the school district and county board of education egregiously refused to follow the law.

The Legislative intent was to prohibit charter school appeals to the State Board of Education for charter schools that were unsatisfied by the outcome of a decision by a school board and county board of education. The right to an appeal to the State Board of Education was meant to be rare and only in the

instance where egregious procedural violations occurred at the school board and county board of education, and those procedural violations prohibited the charter from having a fair and legal hearing before the school board and the county board of education. More specifically, the abuse of discretion must occur at both the school board and county board of education in order for a charter school to be able to receive an appeal hearing before the State Board of Education. For example, if the school board is alleged to have had an abuse of discretion, but the county board review of the appeal and subsequent denial is not alleged to have had an abuse of discretion then the charter petitioners have had a fair and legal review of their petition and it is consistent with our Legislative intent that the charter petition should not be eligible for appeal to the State Board of Education.

Overturing a local decision. EC Section 47605(k)(2)(E) states:

“The state board shall either hear the appeal or summarily deny review of the appeal based on the documentary record. 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.”

Should the State Board of Education find there was an abuse of discretion, the Board is not under any obligation to approve the charter petition. If, for example, the petition does not present a sound educational program, or the school district’s evidence is clear that the charter presents a negative community impact, the State Board of Education may deny the charter school, despite the abuse of discretion finding.

Documentary record. AB 1505 requires the documentary record to be provided during the appeal process, and references a transcript. The law does not specify that a transcription service is required, and as such, any record of the meeting, including a video with closed captioning, should be sufficient. Additionally, it seems reasonable that any video recording that includes audio could be sufficient to meet this definition, as it would clearly provide a record of the board meeting.

Most importantly, in order for a charter school to prove there was an abuse of discretion, the egregious procedural violations would need to have occurred at the local level (while the petition was under review by the school board or the county board of education). Therefore, merely failing to provide a transcript as part of the documentation filed at the time that an abuse of discretion appeal is submitted to the State Board of Education, many months after the school board and county board decisions were made, would not lead to a determination of an abuse of discretion.

The intent of AB 1505 was for petitions to be heard and appealed at the local level, by boards who are most directly connected to community, and for appeals to the State Board of Education to be limited and rare.

Charter petition renewals and the balance of pupil populations. The Legislature has repeatedly made changes to the law to address the concern that charter schools historically have not enrolled the same percentages of low-income students, English learners, students with moderate/severe disabilities, and students of similar racial/ethnic backgrounds as compared to their local school district. To further address this issue, I included stronger language in AB 1505 requiring a charter petition to describe the means by which the school will achieve balance among all of these student populations. Further the law provides authorizers the ability, as part of the renewal process, to request the charter school’s demographic and enrollment data from the California Department of Education (CDE) and allows the authorizer to deny a renewal of a charter school that is not serving all students who wish to attend, after a corrective action plan. This means, during the renewal process, an authorizer has the responsibility to consider the balance of student populations at the charter school, whether students have been discouraged to apply or counseled into leaving the charter school, and take steps toward corrective actions to ensure that each charter school they renew is meeting these requirements.

Charter petition renewals and academic performance. AB 1505 defines, during the renewal process, charter schools as either low performing, middle performing or high performing. AB 1505 states that charter schools identified as low performing shall be denied on renewal. The Legislative intent was that charter schools that are not adequately serving the needs of students should not continue to operate. AB 1505 allows authorizers to choose to renew a charter school identified as low performing, only in narrow circumstances, with significant evidence. It was not the Legislative intent to allow low performing schools to be renewed over and over again.

AB 1505 states that charter schools identified as high performing be renewed for between 5-7 years. The intent was that renewal for charter schools identified as high performing be slightly more streamlined and less onerous.

Charter schools not identified as either low performing or high performing are considered middle performing. For this group of charter schools, “the chartering authority shall provide greater weight to performance on measurements of academic performance in determining whether to grant a charter renewal.” The Legislative intent was that the authorizer give greater weight to academic performance measures, and that the authorizer has the discretion to decide how much greater weight to give to these measures. For example, if an authorizer had three key considerations during renewal, they could choose to provide greater weight by considering academic measures as 36% and the other two measures as 32% each.

Further, during the renewal process, all charter schools regardless of status as low performing, middle performing or high performing, can be denied renewal by their authorizer for fiscal and governance concerns, and for failure to enroll all students who wish to attend, pursuant to Section 47607(e).

Countywide benefit charter schools. AB 1505 authorizes school boards to deny a charter petition for community impact (Section 47605(c)(7)) or because the school district is experiencing fiscal distress (Section 47605(c)(8)). Community impact and fiscal distress were not added as reasons for denying a countywide benefit charter school, because county boards of education have longstanding authority to deny a charter petition as stated in Section 47605.6 (b)(7):

“A county board of education shall deny a county wide benefit charter school petition for ‘any other basis that the county board of education finds justifies the denial of the petition.’ ”

This provision of law authorizes a county board of education to deny a countywide benefit charter petition for community impact, the fiscal distress of the school district, or any other reason justifying the denial.

Differentiated assistance. Prior to the passage of AB 1505, charter schools were identified for support (including for differentiated assistance) based on the evaluation rubrics adopted by the State Board of Education, pursuant to Section 52052, on disparate criteria and timelines compared to school districts. The Legislative intent of amending Section 47607.3 was to create parity for charter schools with regard to identification for support and for services offered, compared to school districts.

Equivalent time and procedures. AB 1505, in Section 47605(b) states that charter schools shall be given “equivalent time and procedures to present evidence and testimony to respond to the staff recommendations and findings.” The Legislative intent was that the school district staff and charter school staff be given the opportunity to present to the school district governing board for approximately the same amount of time. In other words, whatever amount of time the school district staff uses to present, the charter should have the opportunity to use approximately the same amount of time to present. The word “equivalent” was used indicate that it should be nearly the same, but not necessarily identical. It does not mean that if the school district staff presents for thirty seconds more than the charter school staff, that it would be grounds for an abuse of discretion appeal, for example. The intent was to ensure both sides had a fair opportunity to present, and the school district staff did not get one hour and the charters school staff got only 10 minutes. Additionally, the intent was that the equivalent time shall apply only to the presentation portion of the hearing, and not include any time taken by school board members to ask questions.

The term “equivalent procedures” was used to state that whatever means by which the school district staff presents information, the charter school staff should have the same opportunity. For example, if the school district staff uses power point technology during their presentation, then the charter school staff shall have access to utilize power point technology as well.

Teacher credentials. After becoming aware that not all charter school teachers held the appropriate credential for their assignment, or held any credential at all, the AB 1505 clarified the law to ensure all students in charter schools are taught by credentialed teachers in all subjects. This means the law requires charter school elementary and middle school students to be taught by multiple subject credentialed teachers and charter school high school students to be taught by single subject credential holders, which provides parity with students in school districts. More specifically, charter school teachers are required to be credentialed in the subject they are teaching, as is required in school districts. In other words, a charter school high school student in mathematics is required to be taught by a single subject math credentialed teacher.

The bill provided a five year phase in for this requirement for teachers in charter schools employed during the 2019-2020 school year, to allow existing charter school teachers time to earn their credential. These teachers, however, were required to obtain a certificate of clearance to ensure they have passed a full background check. All new teachers hired after the enactment of the bill are required to hold the appropriate credential for their assignment.

The Legislative intent was to create parity in teacher credentialing standards between school districts and charter schools.

Nonclassroom based charter school moratorium. In response to the numerous financial scandals and poor academic outcomes at nonclassroom based charter schools in California, a moratorium on the establishment of new nonclassroom based charter schools was included in AB 1505. The moratorium was included in AB 1505, and then extended in the 2021 budget act to give the Legislature and Governor time to identify and implement appropriate solutions to both the fiscal and academic concerns identified at nonclassroom based charter schools, before the moratorium expires.

My staff, Chelsea Kelley, Principal Consultant, Assembly Education Committee, who assisted Assemblymember Rob Bonta, Assemblymember Kevin McCarty, Assemblymember Christy Smith and me in drafting the language in AB 1505, is available to answer any detailed questions you might have. Ms. Kelley can be reached by email at chelsea.kelley@asm.ca.gov or by phone at 916-319-2087.

Sincerely,



Patrick O'Donnell
70th Assembly District
Chair, Assembly Education Committee