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Attachment 1

New Pacific School – Yuba City Written Submission

Table of Contents

Letter dated February 17, 2023 RE: New Pacific School – Yuba City Charter Petition Appeal to the State Board of Education.....	2
District Abuse of Discretion Tables.....	37
County Abuse of Discretion Tables.....	42

**Letter dated February 17, 2023 RE: New Pacific School
– Yuba City Charter Petition Appeal to the State Board
of Education**

Pacific Charter Institute

February 17, 2023

Via Email
CharterAppeals@cde.ca.gov

Stephanie Farland, Director
Charter Schools Division
California Department of Education
1430 N Street, Suite 5401
Sacramento, CA 95814

RE: New Pacific School – Yuba City Charter Petition Appeal to the State Board of Education

Dear Director Farland:

This letter serves as Pacific Charter Institute’s (“PCI”) appeal of the denial of the establishment charter petition for New Pacific School – Yuba City (“NPS – Yuba City” or the “Charter School”) by the Yuba City Unified School District Board of Education (“YCUSD” or the “District”) and the Sutter County Board of Education (“SCBOE” or the “County Board”), to the State Board of Education (“SBE”), as provided for in Education Code¹ Section 47605(k)(2) and Title 5, California Code of Regulations (“5 CCR”) Section 11966.6. This appeal is submitted within 30 days after the County Board denied the Charter School’s charter petition on January 18, 2023, (on appeal from the District’s denial of the charter petition on August 23, 2022) and is thus within the timeline permitted by Section 47605(k)(2)(A).

SYNOPSIS OF THE ABUSES OF DISCRETION AT ISSUE

In alignment with the “abuse of discretion” standard of review articulated by the California Department of Education (“CDE”), and discussed and applied by the SBE in its several actions on post-Assembly Bill (“AB”) 1505 charter petition appeals to date, this appeal presents evidence of abuses of discretion by both the Sutter County Board of Education and the Yuba City Unified School District Board of Education.

SCBOE abused its discretion in denying NPS – Yuba City’s charter petition appeal by not adopting written factual findings as part of its action to deny the charter on January 18, 2023. That failure is a plain, unmistakable example of a failure to proceed in a manner required by law, which under any standard renders the action an impermissible abuse of discretion. This action was **unlawful**, as it contravened Section 47605(c) which explicitly states that any action to deny a charter petition requires “written” factual findings supporting one or more of the eight permissible

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

statutory findings for denial—which the documentary record demonstrates did not occur. The action was also **procedurally unfair**, as the Petitioner had no opportunity to respond to findings for denial (since the Sutter County Superintendent of Schools’ (“SCSOS” or the “County”) staff report recommended approval), which violates Section 47605(b). Finally, even if the County Board’s action were not unlawful or procedurally unfair, the *post hoc* written factual findings for denial, drafted by individual County Board members and not approved by SCBOE, were **entirely lacking in evidentiary support**.

Further, the District Board abused its discretion in denying NPS – Yuba City’s charter petition because it adopted findings of fact that were **unlawful** and also **entirely lacking in evidentiary support**.

Additionally, SCBOE abused its discretion in denying NPS – Yuba City charter petition appeal in failing to proceed in a manner required by law because it did not provide a fair and impartial hearing process.

ABOUT NPS – YUBA CITY

NPS – Yuba City, which proposes to serve approximately 212 students in grades TK-9 by its third year of operation, growing to TK-12, is founded on the belief that cultivating a deep culture of connectedness between students, families, and teachers is the solution to the growing mental health problem among California’s youth. According to 2017-2018 estimates, 23% of California youth ages 12-17 needed help for emotional or mental health problems (such as feeling sad, anxious, or nervous) in the previous year, up from 13% in 2009. Among those who needed help, fewer than half (45%) received counseling. In 2017-2019, an estimated 32.3% of California students in grades 9, 11, with low levels of school connectedness seriously considered attempting suicide in the previous year. (kidsdata.org.) In 2021, three in five teenage girls felt persistent sadness, and one in three seriously contemplated suicide.²

Pacific Charter Institute, which will operate the Charter School, has a distinguished track record of meeting the needs of learners who need an individualized approach to learning. The learning environment at NPS – Yuba City continues this tradition as we welcome students who have struggled with bullying, connectedness, depression, chronic absenteeism, suspensions, or low-academic performance. Further, NPS – Yuba City offers students accelerated learning, project-based learning, and learning in the community that students’ previous schools did not offer. The staff members will take great care to learn about the learner and tailor the experience to the student.

NPS – Yuba City will appeal to TK-12 students and families who desire a nurturing, community based, balanced, and personalized learning environment focused on the whole child. We strive to effectively support the needs of a wide range of learning styles, interests, and abilities. NPS – Yuba City will be a dynamic, welcoming, and committed community where knowledge,

² <https://www.nytimes.com/2023/02/13/health/teen-girls-sadness-suicide-violence.html>

innovation, and individual creativity are honored and celebrated. The Charter School fits the student, rather than forcing the student to fit the Charter School.

NPS – Yuba City will serve the whole-child and offer learning experiences that integrate academics and social emotional learning across all grades in a small, inclusive environment. Key Elements of NPS – Yuba City include:

- Project-based Learning
- Individualized Learning Plans
- Social Emotional Learning
- College and Career Readiness
- Professional Development for Teachers

NPS – Yuba City integrates two trauma-informed SEL frameworks as the foundation for student capacity development. The first framework empowers students to set bold goals and grow into resilient, self-determined leaders through Dr. Steven Covey’s Leader in Me approach. Dr. Covey’s CASEL-endorsed curriculum is used in schools worldwide. The second framework will unify developmental psychology and cognitive neuroscience to foster culturally aware restorative practices.

By empowering students with self-determination, resilience, and self-regulation they can seamlessly launch into an inquiry/project-based curriculum that is both student-paced and teacher facilitated. Students will receive further support to access deeper learning experiences including dual enrollment, competitions, and showcases to prepare NPS – Yuba City students for college, career, and community work.

NPS – Yuba City will be a K-12 learning community where students are empowered to be self-directed scholars, connected to themselves and others as a whole-child and encouraged to embark on a rigorous, personalized learning plan. It is the school’s belief that this best occurs when all levels of the community—students, parents, teachers, staff—collaborate to support whole-child success. This means that the cognitive, emotional, social, and academic growth of our students is the very core of our work.

Our trauma-informed Social Emotional Learning frameworks unify our commitment to developing self-determined, caring, inclusive, resilient, and balanced learners. Dr. Steven Covey’s Leader in Me curriculum combines accessible, bold goal setting with habits that enhance the executive functioning of all students. NPS – Yuba City will meld the latest psychology and neuroscience to enact culturally sensitive and equitable restorative environments at all levels of the school. These frameworks work hand-in-hand to address Adverse Childhood Experiences to develop an MTSS. Families will join NPS – Yuba City because they want a learning community that meets the demands of the 21st century. The industrial school model of the past no longer meets the needs of this rapidly changing world. Our students will stand at the intersection of curiosity, independence, leadership, and resilience years after graduation.

Another exciting component of our program will be the design of multi-grade classrooms. While having multi-age classrooms is not a new pedagogical strategy at NPS – Yuba City, it will be an intentional practice. Learning environments will not be confined by grade, as all students are in different places academically. What will distinguish students is their specific Learning Growth Plan at the beginning of the school year and multiple sources of student data that may include work samples, early literacy data, and/ or MAP RIT scores. This way, students can be grouped by skills and re-grouped for Project Based Learning. Each learning environment will have at least one certificated teacher and one paraprofessional. Student to staff ratios will be low. Additionally, the classroom will be designed with an open flexible concept.

In addition to four nonclassroom-based schools, PCI also operates New Pacific School – Roseville, its first classroom-based charter school, which opened in 2022. PCI has plans to open New Pacific School – Rancho Cordova in the fall of 2023.

THE DOCUMENTARY RECORD AND SUPPORTING DOCUMENTATION

Section 47605(k)(2)(A) provides that the “documentary record” for a charter appeal under this subdivision shall be prepared by a school district board of education and a county board of education within ten (10) business day of a request for the same by a charter school. The documentary record (“DR”) prepared by a school district board of education and a county board of education must include a transcript of the board of education meetings during which the charter was denied. Both SCBOE and YCUSD provided timely responses to requests for the DR, and the DR is enclosed herewith. Each submission did include a written transcript of the proceedings, as required by law. Notably, neither submission included the NPS – Yuba City charter petition, and both were missing presumably key documents that should have been included.

In addition to the DR, a petitioner may also submit “supporting documentation” related to an appeal, in accordance with Section 47605(k)(2)(A). NPS – Yuba City has included supporting documentation in its Supplemental Record (“SR”), enclosed herewith, to account for documents excluded from the DR and documents that otherwise support this appeal.

Additionally, the CDE requires several documents for a charter petition appeal, including a checklist, tables, and specific documents. These are also enclosed herewith.

Pursuant to Section 47605(k)(2)(A), the District Board’s findings for denial are provided in the record at Exhibit A.2 and DR-013 (and NPS – Yuba City’s response follows at SR-004), and the County Board’s *post hoc*, unapproved findings for denial are provided in the record at DR-565 (NPS – Yuba City could not respond to the findings because they were prepared *post hoc*, and never “made” by the Board). NPS – Yuba City’s charter petition is provided in the record at Exhibit A.1. (neither the District nor the County included the charter petition in the documentary record). We also note that an important factor in this appeal is the absence of evidence in the record that would support the actions. Therefore, in those instances, there is nothing to cite to in the DR.

As required by Section 47605(k)(2)(A), a copy of this appeal was provided to the District and County at the same time as this submission to the SBE.

THE SBE'S STANDARD OF REVIEW

Through the passage of Assembly Bill 1505 in 2019, the Legislature effectuated a compromise over competing visions for how the charter approval and appeal process would operate going forward. That compromise guaranteed certain due process rights to charter petitioners, as addressed below, and in turn, the SBE was designated as the authority to correct *abuses of discretion* by school district and county boards of education in actions to deny charter petitions. (Section 47605(k)(2)(E).)

As discussed below, the role of the SBE for charter appeals is to ensure that school districts and counties act lawfully and fairly when performing their statutory obligations in reviewing and acting upon charter petitions, and to reverse actions where a school district or county board of education abused its discretion in that regard. Despite changes in law made by AB 1505, the Legislature still mandates that new charter petitions should be encouraged, and charter petitions shall be deemed approved “unless” the written factual findings are correctly made. (Sections 47601 and 47605(c).) This ensures that school district and county boards of education conform with those requirements going forward. Reversal for abuse of discretion is necessary to ensure that the standards and procedures under Section 47605 are applied uniformly, to educate school district and county boards, as well as petitioners, on the legal requirements under the Charter Schools Act (“CSA”), and to minimize the extent that in the future charter petitioners must bring appeals to the SBE to correct procedural and substantive violations of law.

It is PCI’s position that, despite the standard articulated by the CDE last year, under California law, an abuse of discretion is established when an agency “has not proceeded in a manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence.” (Code of Civil Procedure Section 1094.5 (b); *see also*, *Topanga Assn. for a Scenic Community v. County of Los Angeles* (1974) 11 Cal.3d 506, 515; *Manjares v. Newton* (1966) 64 Cal.2d 365, 370.) The dictates of abuse of discretion act as a safeguard for ensuring that administrative agencies have made careful, reasoned, and equitable decisions. (*J. L. Thomas, Inc. v. County of Los Angeles* (1991) 232 Cal.App.3d 916, 927.)

As noted above, the Charter School recognizes that the CDE has set forth a definition of abuse of discretion that is not dissimilar from the “has not proceeded in a manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence” definition set forth in the Code of Civil Procedure for judicial review of agency actions cited immediately above. Instead of the three components that comprise the petitioners’ proffered standard, the CDE’s standard, articulated in a June 30, 2022 memo from Superintendent Thurmond, has five components:

What is an “Abuse of Discretion”?

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

In practical terms, and in this context, there is little difference between “...entirely lacking in evidentiary support, unlawful, procedurally unfair,” on the one hand, and “has not proceeded in a manner required by law, the order or decision is not supported by the findings, or the findings are not supported by the evidence,” on the other. As such, for this appeal, NPS – Yuba City will generally conform to the CDE’s current definition of the abuse of discretion standard.

In this case, the District and County Board both proceeded in an “unlawful” and “procedurally unfair” manner, clearly establishing an abuse of discretion. The County Board took action to deny the charter without any written factual findings whatsoever; and the District Board adopted findings of fact that were legally impermissible bases for denial of a charter petition.

Abuse of discretion for failure to proceed in the manner required by law takes broad form; it is even appropriately charged when an agency has failed to follow requirements merely *implied* or within the *spirit* of the law. (*No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 79–86 [failure to consider requirements implied in law prior to approving or disapproving a project constitutes an abuse of discretion]; *Walsh v. Kirby* (1974) 13 Cal.3d 95, 103–106 [failure to follow spirit of law despite literal compliance is an abuse of discretion].) *See also, Boreta Enterprises v. Department of Alcoholic Beverage Control* (1970) 2 Cal.3d 85, 96, [abuse of discretion in license revocation when decision was based on policy rather than legal rationale].)

And an abuse of discretion is clearly present when the explicit dictates of the law are not followed, as here. (*People v. Superior Court* (Humberto S.) (2008) 43 Cal.4th 737, 746 [an exercise of discretion based on an error of law is an abuse of discretion]; *City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 355 [46 Cal. Rptr. 3d 355, 138 P.3d 692] [erroneous application of legal standard constitutes an abuse of discretion]), and the District failed to meet basic procedural requirements (*Envtl. Prot. Info. Ctr. v. Johnson* (1985) 170 Cal.App.3d 604, 620 [failure to follow appropriate procedures in approval process is an abuse of discretion]). Administrative agencies have no discretion to make erroneous interpretations of law. (*Garamendi v. Mission Ins. Co.* (2005) 131 Cal.App.4th 30, 41.)

The District and County also abused their discretion in that the denial of NPS – Yuba City’s charter petition was not supported by the findings and the findings were not supported by substantial evidence. Specifically, the District Board and County Board both failed to apply the standard under the CSA requiring a presumption of charter approval. Instead, the findings indicate

that the District and County based their denials on impermissible speculation and opinion about what may or may not occur in the future, not facts and not evidence.

Under an abuse of discretion standard, the State Board must reverse a denial that is not supported by substantial evidence of the kind required for a charter petition to be denied. “Substantial evidence means evidence which is ‘of ponderable legal significance. Obviously, the word cannot be deemed synonymous with ‘any’ evidence. It must be reasonable in nature, credible, and of solid value; it must actually be ‘substantial’ proof of the essentials which the law requires in a particular case.” (*Hall v. Department of Adoptions* (1975) 47 Cal.App.3d 898, 906.) “Speculation is not substantial evidence.” (*People v. Killebrew* (2002) 103 Cal.App.4th 644, 661; *Banker's Hill, Hillcrest, Park West Community Preservation Group v. City of San Diego* (2006) 139 Cal.App.4th 249, 274 [“Unsubstantiated opinions, concerns, and suspicions ... though sincere and deeply felt, do not rise to the level of substantial evidence.”])

ABUSE OF DISCRETION BY THE COUNTY BOARD AND DISTRICT BOARD

1. The County Board’s Action to Deny the Charter Petition Appeal Was an Abuse of Discretion

a. The County Board’s Action to Deny the Charter Petition Appeal Without Any Written Findings Was Unlawful On Its Face

On January 18, 2023, the County Board voted to deny the NPS – Yuba City charter petition appeal, apparently based on comments made orally about some Board members’ thoughts and feelings about the charter petition. This is documented in the record at DR-151. That action was patently unlawful, as it violates the clear requirement and plain meaning of Section 47605(c): “The governing board of the school district³ shall not 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 following [codified] findings” (Emphasis added.) Truly, the Legislature could not have been clearer. A charter petition may only be denied with written factual findings. Verbal findings alone are not a lawful means of denying a charter petition.

The County Board did not approve written factual findings when it acted to deny the NPS – Yuba City charter petition appeal, and to date SCBOE still has not adopted, or “made” written factual findings for denial.

The County Board was required under Section 47605(b)-(c) to either: (1) grant the petition; or (2) adopt written factual findings to deny the petition. That legislative mandate is binary—the County Board must do one or the other. There is no third option, as happened here, for the County Board to fashion a different process. “Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion.” (*Carrancho v. Cal. Air Resources Board*

³ Section 47605(c) applies to a county board of education in the same manner as it applies to a school district board of education. See Section 47605(k)(1)(A)(ii).

(2003) 111 Cal.App.4th 1255, 1267.) Put simply, the County Board had no legal authority to act to deny the NPS – Yuba City charter with verbal findings alone.

Indeed, the County Board was explicitly advised by SCSOS staff, verbally, during the meeting, that the Board is legally required to adopt written, factual findings. They were warned that if they were to vote to deny the charter petition, they had to first adopt written factual findings for denial. SCSOS prepared two resolutions for the County Board to consider, one to approve and one to deny the charter. (DR-302 and DR-337.) **The resolution to deny the charter contained blank lines for County Board members to write on.** (DR-339.) Nevertheless, SCBOE persisted in attempting to deny the charter with only verbal findings. Following is the explicit direction from Mr. Hendrix, SCSOS Deputy Superintendent, to the County Board, after he specifically consulted with County legal counsel on this point.

If someone is inclined to believe it should be denied, it's an opportunity for you to identify the reasons that -- then if you would look at the next item on the agenda, which is an action item, there's space on there for the Board. If you so choose to deny, then you can write those reasons in that resolution. And that was advice from legal counsel on how to do that, if you so choose.

(DR-139, lines 12-19)

After County Board member comments, SCBOE members prepared to take action on the NPS – Yuba City charter petition appeal. The County Board action to deny the charter petition very clearly did not include *any* factual findings, let alone *written* factual findings, to support the denial action that a majority of the County Board voted for. In meandering fashion, SCBOE acted unlawfully in denying the NPS – Yuba City charter petition appeal without any written factual findings. The Board did not vote to approve a particular resolution. The Board did not summarize the preceding discussion into a detailed motion. The Board did not so much as even attempt to list one of the eight lawful reasons for denial of the charter petition appeal, to support its action.

Instead, in their apparent zeal to vote to deny, the Board acted unlawfully in denying the charter petition appeal, violating Education Code Section 47605(c). For context in the below, Ms. McJunkin is the Board President; Ms. Lachance is the Board Vice President; and Mr. Singh is a Board member.

MS. MCJUNKIN: Are you -- you moving to adopt, or are you moving to deny?

MS. LACHANCE: Okay. I -- I'm moving to deny.

MS. MCJUNKIN: Is there a second?

MR. SINGH: Just based on what I've been hearing, I'll second that.

MS. MCJUNKIN: Okay. It has been moved and seconded to deny the petition of the New charter -- New Pacific charter school in Yuba City. All in favor? Oh.

MR. HENDRIX: Roll call.

MS. LACHANCE: We have a roll call.

(DR-150, lines 12-23)

The Board did pause to correct itself and proceed with a roll call, rather than voice, vote. However, when both the SCSOS Deputy Superintendent and Superintendent (Mr. Reusser) interjected to remind the Board about the legal requirement to adopt written factual findings for denial, pursuant to Section 47605(c), the Board members waved away those warnings, declaring instead that they would write up reasons later:

MR. HENDRIX: If I could reiterate, legal coun
-- legal counsel, um --

MR. REUSSER: We need to put the reasons in.

MS. MCJUNKIN: Yes.

MR. REUSSER: Do you have them?

MS. LACHANCE: I'll type mine out.

MS. MCJUNKIN: Yeah, just send them to me and I'll put it in the resolution. Thank you.
(Thereupon, the proceedings were concluded.)

(DR-151, lines 11-19)

It is genuinely shocking, 30 years into the charter school movement, that a county board of education would actively ignore and contravene such a basic legal requirement as acting to deny a charter petition without adopting written factual findings. Once again, Section 47605(c) offers a binary choice: the County Board could approve the charter (without findings), or deny the charter with written factual findings. But whatever it chooses to do, the County Board must do those things at the singular “public hearing at which the governing board of the school district will either grant or deny the charter,” (Section 47605(c)) i.e., within 90 days of when the County Board receives the appeal.⁴ It is plainly **unlawful** for SCBOE to deny the charter and then declare that they would write up findings at some later date, which may or may not ever be approved by the County Board, and in this case, those written findings were never approved by SCBOE. “Where a statute or ordinance clearly defines the specific duties or course of conduct that a governing body must take, that course of conduct becomes mandatory and eliminates any element of discretion.” (*Carrancho v. Cal. Air Resources Board, supra.*)

Without written factual findings in the record supporting the action to deny, and given the default position in the law for charter approval, this charter should have been approved.

b. The County Board’s Unapproved *Post Hoc* Written Findings do not Match the Verbal Findings from the Board Meeting and Do Not Form Legal Bases for Denial, Further Cementing this Unlawful Action

During the January 18, 2023 SCBOE meeting, three County Board members offered, verbally, the reasons why they were each contemplating a vote to deny. As detailed above, none of these were reduced to writing contemporaneous with the vote to deny the charter petition appeal, as required by Section 47605(c). Again, that act alone meets the “unlawful” component of the CDE’s abuse of discretion definition.

Adding to the already unlawful act, County Board members, after the meeting, were asked to, and did, prepare “written” factual findings for denial. (DR-565.) Egregiously, County Board members used this opportunity to employ an intellectual Zamboni to their verbal reasons for denial, smoothing the findings out and making them appear more aligned with law. Additionally, some of the findings are not consistent, from the verbal to the written.

Keep in mind that the written findings were prepared *after* the County Board action was taken. This meant that the Petitioner had no opportunity to meaningfully respond to this effort to clean up otherwise incoherent and unlawful verbal findings in the moment, during the SCBOE meeting. Receiving the written findings two weeks after the meeting (DR-107) means that the County Board violated the legal requirement to give NPS – Yuba City petitioners equivalent time and procedures as required by Section 47605(b); there was nothing in the moment for the Lead Petitioner to respond to, even if he’d been allowed to respond.

⁴ NPS – Yuba City submitted its charter petition appeal to SCBOE on September 21, 2022. (DR-535). The 90-day timeline would have expired on December 20, 2022. On December 13, 2022, the SCSOS Superintendent requested an extension of the timeline to January 19, 2023, a total of 120 days from submission, consistent with Section 47605(b). (SR-045)

For example, the finding, “It kind of turned me off from the get-go,” (DR-147) from Board President McJunkin, is neither legally cognizable, nor a specific factual finding that the Petitioner could address.

Below are tables comparing the verbal and written findings made by three SCBOE members.

(1) Mr. Singh

Verbal “Findings”	Written “Findings”
<p>So in reading to the pes -- uh, petition, I noticed that in the school's first year, there will be 100 TK to 5, uh, students. And now for those students, there will be three teachers and four assistants. So this means there would be two classes of 33 students and one class of 34 students, with the student-to-adult ratio of 14:1.</p> <p>(DR-141, lines 12-18)</p>	<p>- In the school’s 1st year, there will be 100 TK-5 students. For those students, there will be 3 teachers and 4 assistants. This means there will be two classes of 33 students and 1 class of 34 students. With a student:adult ratio of 14:1.</p> <p>- This is an unsound educational program because California Education Code (EC) sections 41376 and 41378 prescribes the maximum class size for kindergarten not to exceed 31 students; no class larger than 33 students. New Pacific School would have 1 class exceeding this limit.</p> <p>(DR-565)</p>
<p>Umm, and also the new law with universal pre-K states that: A charter school shall maintain an average ratio of at least one adult per every 12 pupils, umm, during instructional time. And the ratios that we're looking at for this charter are 14 to 1.</p> <p>(DR-141, line 25 – DR-142, lines 1-4)</p>	<p>- It is also unsound because according to California's new universal pre-k law, "A charter school shall maintain an average ratio of at least 1 adult for every 12 pupils during instructional time." New Pacific School's ratio exceeds this limit.</p> <p>(DR-565)</p>
<p>I noted, like Joe pointed out, there were a few, uh, uh, other issues that were pointed out that can be addressed in an MOU, umm, in terms of like, How is the outreach being done? Who is being outreached to? You know, we want our charter to be inclusive of the diverse Yuba City community and we had discussion on this and there is a proposed MOU.</p>	<p>- Additionally, I am concerned about how outreach was being conducted and who was being outreached to. We want the charter to be inclusive of the diverse Yuba City community. We had discussion on this during our study session and it is noted in the findings of fact that assurances will be made in a memorandum of understanding. This is not enough. A charter is a crucial document that others will use and model their petitions</p>

(DR-142, lines 9-16)	<p>off of. It sets precedent. As board members who have to look at the bigger picture and see what precedent we are setting for potential future charters. We have to get it right in the original charter and not just have add-ons with an MOU.</p> <p>(DR-565)</p>
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In his finding about class sizes and student to adult ratios, Mr. Singh *post hoc* added legal citations in the written finding, which were not even hinted at in the verbal finding. The finding about TK staffing is based on an inaccurate assumption about how NPS – Yuba City will staff classrooms, to which the Charter School was never permitted to respond. The finding about outreach to potential students was phrased as a string of questions, verbally, during the meeting; the *post hoc* written finding gives a more detailed explanation of the particular concern, which appears to have little to do with student outreach.

(2) Ms. Lachance

Verbal “Findings”	Written “Findings”
<p>Well, I've read so much, I'm confused, you know. One of my things I have here was, um, of the facility, which you've kind of explained tonight, why you haven't named the facility yet. But in -- you would -- originally it said something about 99 inclusive in that area, which is a highway and stuff, and I do -- I don't feel that's a good area to even be looking at for a charter school for kids to be going to. And then, um, the physical impact which, we found out, it's just maintenance and stuff.</p> <p>(DR-144, lines 11-20)</p>	<p>1. The Petition Does Not Identify A Single Facility:</p> <p>I believe that a site or possible sites should of been in the original petition. How can you plan for a number of students if you don't even know where or how the students you are targeting will be able to attend in the said area.</p> <p>With not knowing where NPC will be located it is unlikely to serve the interests of the entire community.</p> <p>(DR-567)</p>
<p>A small classroom, to me, is not 37 kids in a classroom with one teacher and a couple of assistants. That's not a small classroom. And I don't see how they can individualize for each student that's in that classroom. Because like we've said, they're all different, all students are different, and they all need something else. You know, some help, some way or something. So that's kind of my -- I have a lot more, but</p>	<p>2. NPC Proposes Duplicate Programs Already Existing in the Community:</p> <p>NPS list 5 key elements for their school: Project based learning; individualized learning plans; social emotional learning; college and career readiness.</p> <p>The project based learning in a multi-grade classroom is a very good idea. How can you have TK-5 with 100 students, 3 teachers and 4</p>

<p>I'd be talking more than three minutes, so --</p> <p>(DR-146, lines 8-16)</p>	<p>assistance in 2 classroom be considered small classrooms and have students work on and at their own levels?</p> <p>(DR-567)</p>
<p>But that's a -- that's my main stuff, it's the classroom size and I have seen the same thing, about 100 students and I think, wait with three teachers? You know, that --</p> <p>(DR-146, lines 18-21)</p>	<p>TK classes at Charter schools are held to the ratio of 12-1 students per classroom, just as all schools have to implement. The teacher not only needs a multiple subject credential, but also by August 2023 the need 24 units in ECE or child development. I did not see any information in the petition that mention this concern.</p> <p>(DR-567)</p>
<p><i>No verbal finding provided</i></p>	<p>SCSOS already has these programs within the districts that are in our county. I feel all of our school in Sutter county have done and are doing programs that are meeting all our students. Students and parents have many options to look into and find which programs meets their concern and education outlooks.</p> <p>(DR-567)</p>
<p><i>No verbal finding provided</i></p>	<p>With this being said, I feel they would be taking students away from the schools in Sutter county, causing loss of ADA.</p> <p>(DR-567)</p>
<p><i>No verbal finding provided</i></p>	<p>I mentioned I have more concern about the NPS.</p> <p>(DR-567)</p>

In her written finding about the facility and facility location, Ms. Lachance articulated a much more specific, nuanced, and legalistic concern – albeit still an impermissible reason for denial of the charter petition – than the one in her verbal finding, which was about a good location and “maintenance and stuff.” The verbal finding about class size and individualization for students was drastically converted into a written finding tied to replication of existing programs. The vague verbal finding about the total number of students was transformed into commentary about TK staffing and employment qualifications. Finally, Ms. Lachance offered three new written findings (on replication, “taking” students, and more concerns), which she did not make verbally during the meeting.

Even if the *post hoc* written findings were made prior to the SCBOE vote on NPS – Yuba City’s charter petition appeal, they would have been **unlawful**. As per Section 47605(c), a charter petition can only be denied for one of the eight reasons codified in law. These findings do not meet the legal requirements for denial.

(3) Ms. McJunkin

Verbal “Findings”	Written “Findings”
<p>One of the things that – right at the top of the information that we were looking at now, that reminded me of -- is this charter school really in the best interest of the community? And I have to say, from the get-go, I was disappointed in the petition. It was not well done. When you couldn't change Sacramento to Sutter, it tells me this was a cut and paste, let's turn it over and slide it into the next place. It kind of turned me off from the get-go.</p> <p>(DR-146, lines 22-25 – DR-147, lines 1-5)</p>	<p>- One of the important statements in this discussion is whether or not the charter school is in the best interest of the community. I do not believe that it is.</p> <p>- The charter petition itself was obviously a copy of one that was used in Sacramento County since those references were still part in the petition when it as presented.</p> <p>(DR-571)</p>
<p>You-all did the research. I read in the petition. You had the numbers about what the population looked like, and yet you get down to the other part and you don't include one of our very largest populations in your materials.</p> <p>(DR-148, lines 22-25 – DR-149, line 1)</p>	<p>The analysis of the population for Yuba City Unified Schools appeared to be accurate. And yet, when promises to provide translations in all forms were identified, one of largest communities was overlooked and only English and Spanish were included.</p> <p>(DR-571)</p>
<p>But as I read the petition, I went, Okay. Umm, I saw that the schools that you-all -- that were included in the petition as the, umm -- the schools that you chose to, actually, point out in the petition are Park Avenue, Bridge Street, Gray Avenue, and Yuba City High School. They are from the very lowest end of our community in terms of success. And yet, when you talk about where you're thinking about putting the facility, it's about as far away from Park and Bridge as you can get.</p> <p>And those are families that do not drive their kids to school; guaranteed. I know that because that's the schools my kids</p>	<p>Yuba City Unified has 17 schools according to the petition. Yet only four schools were selected for analysis and included in the petition. The schools’ low performance was identified as reason to have a charter school. These schools are not reflective of all Yuba City Unified Schools.</p> <p>(DR-571)</p>

<p>went to. That's my district. That's my trustee area. And yeah, Park Avenue is maybe not what it used to be, but it's still a good school and it will get back to being a good school one of these days.</p> <p>(DR-147, lines 6-22)</p>	
<p>So anyway. Umm, I'm -- I'm curious about the corporate structure and then the board of directors because I don't see a place for an authorizing board to be a part of that in any way, shape, or form. It -- it seems like, Okay, you want us to authorize and the superintendent and his staff will do oversight because we authorized. And what does that mean for us? I mean, what's our place in this picture? I -- I just never quite got that.</p> <p>And I -- so I don't sense it. I don't have a sense of partnership here. It's kind of like, You want us to authorize, and then you'll go build your school, and we'll go visit. And that's all you really want from us. This community is a little more involved than that. I mean, in that sense. Vicky (phonetic) was kind of pointing that out. She's from the south end of the county and very involved. So it's kind -- it's -- it's really -- yeah.</p> <p>(DR-147, lines 23-25 – DR-148, lines 1-15)</p>	<p>Sutter County Board would authorize the charter and the the <i>[sic.]</i> County Superintendent would provide oversight. The board for the charter school is located in Sacramento. I do not sense any kind of partnership with the Pacific Charter Institute's Board of Directors.</p> <p>(DR-571)</p>
<p>And as far as the MOU, the things that are being suggested should have been there to begin with. They shouldn't be afterthoughts. Some of them may because that -- that happens. But some of these should not have -- language should -- language should not have been, or the way things are presented for families.</p> <p>(DR-148, lines 16-21)</p>	<p>Each time an area was noted as being unclear or incorrect, the solution is to add it to a growing list for a MOU.</p> <p>(DR-571)</p>

The verbal finding about one inaccurate reference to Sacramento County in the charter was, in the written finding, slightly cleaned up. However, neither finding meets the statutory threshold

for denial on the basis that a charter petition would not serve the interests of the entire community, which is stated in Section 47605(c)(7) (there is no “best interests” standard):

Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school. A written factual finding under this paragraph shall detail specific facts and circumstances that analyze and consider the following factors:

(A) The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.

(B) 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.

(Emphasis added.)

One errant word is not tantamount to fiscal impact, undermining of existing service, and duplication of an existing program. Next, the finding about the local student demographics and outreach materials is also an **unlawful** reason for denial of the charter petition appeal. The verbal finding about which parents drive their students to school was converted into a quarrel with including data about the local schools that NPS – Yuba City intends to locate near.

The verbal finding asking rhetorical questions about the PCI Board was transformed into a succinct written finding about a perceived lack of partnership. Again, a “sense” is not a factual finding, specific to the particular petition, setting forth specific facts related to one or more of eight possible reasons for denial. (See Section 47605(c).) Finally, the finding about afterthoughts was altered into a complaint about provisions in a prospective memorandum of understanding. This finding has no basis in law, and is an impermissible reason for denial of the charter petition appeal.

The County Board’s *post hoc* written findings for denial of the NPS – Yuba City charter petition appeal are an abuse of discretion because SCBOE members **unlawfully**: (1) took action to deny the charter without written factual findings, in contravention of Section 47605(c); (2) later attempted to paper over those verbal findings, outside of a meeting, and possibly with the assistance of legal counsel or other experts; (3) the SCBOE Board never voted to approve the written findings (and still hasn’t); (4) the petitioner did not have equivalent time and procedures to address the verbal or written findings, violating Section 47605(b); and (5) neither the verbal nor the written findings legitimately amount to lawful findings for denial of a charter petition.

Without question, the SCBOE process of first denying the charter petition with verbal findings that were unlawful in both content and procedure, and second privately preparing written findings that were also unlawful in both content and procedure, had a prejudicial effect on the Charter School. NPS – Yuba City currently lacks a license to operate a charter school, precisely because of unlawful procedures by the County Board.

Board member Singh, for example, does not/will not be constrained to legal reasons for denial set forth in the CSA, and instead chooses to review the charter holistically, considering some unarticulated precedent:

Umm, but -- and I think what staff has found is correct in terms of looking at the charter, but I know that as board members, we have to look a little bit more holistically at sort of what this charter would mean, and the precedent that charters set for future people, umm, who might be petitioning after future charters within the district.

(DR-142, lines 17-23.)

Again, the CSA explicitly prohibits this kind of consideration. A charter petition may only be denied with specific written factual findings, specific to the particular petition, setting forth specific facts to deny in one or more of eight codified reasons for denial.

Board member Lachance expressed a desire to deny the charter because of class size. She stated that she read the charter, which is for a classroom-based school, but then criticized NPS – Yuba City for students learning virtually.

Now in this charter school, where you're saying you're going to have 100 students, is this students that are going to be there, or are they going to be more FaceTiming, or -- yeah, I mean, you -- you know, on the computer, work from home, or -- because I don't see, like Harjit was saying, about how many students are in the classroom, how that is considered a small classroom with the teachers you had mentioned that would be there.

(DR-145, lines 13-21)

Board member McJunkin mused that she would like to deny the charter because there was no role for the County Board. Of course, this is legally inaccurate. Had the County Board approved the charter, it would have become the chartering authority of NPS – Yuba City (Section 47605). That means the County Board would have had the right to a representative on the PCI Board (Section 47604), oversight responsibilities (Section 47604.32), and more.

be a part of that in any way, shape, or form. It -- it seems like, Okay, you want us to authorize and the superintendent and his staff will do oversight because we authorized. And what does that mean for us? I mean, what's our place in this picture? I -- I just never quite got that.

And I -- so I don't sense it. I don't have a sense of partnership here. It's kind of like, You want us to authorize, and then you'll go build your school, and we'll go visit. And that's all you really want from us. This community is a little more involved than that. I mean, in that sense. Vicky (phonetic) was kind of pointing that out. She's from the south end of the county and very involved. So it's kind -- it's -- it's really -- yeah.

(DR-148, lines 1-15)

During the SCBOE meeting, following County Board members' comments, the Lead Petitioner specifically asked to be recognized to respond to Board members' verbal findings, and was denied an opportunity to speak.

MR. KEEFER: Can I comment on any of that? Or is it -- is there room for comments? 'Cause it sounded like I was being asked questions. Was I being asked questions or was I ignoring reservations?

MS. MCJUNKIN: We're not in a hearing.

MS. LACHANCE: Yeah, we're in a meeting.

(DR-149, lines 8-13)

c. The County Board's Denial of the Charter Petition Appeal Was Procedurally Unfair

SCBOE abused its discretion in denying the NPS – Yuba City charter petition appeal because it acted in a procedurally unfair manner. The Charter School has documented above how the act of denying a charter petition without written factual findings is unlawful. It is also procedurally unfair because it obliterates the protection in the CSA for the approval charter schools.

While Section 47605(c) does not expressly state that written factual findings must be adopted contemporaneous with a denial of a charter petition, that is clearly the intent of the protection, and, moreover, it is industry standard, up and down the state, at all levels. If findings for denial can be written well after a decision to deny, then the protection in statute for charter schools is meaningless.

“[C]harter schools are strictly creatures of statute.” (*Wilson v. State Bd. of Educ.* (1999) 75 Cal.App.4th 1125, 1135.) “From how charter schools come into being...to funding, accountability and evaluation—the Legislature has plotted all aspects of their existence.” (*Id.*) The Legislature has “plotted” a clear process for a county board of education to follow when presented with a petition on appeal for the establishment of a charter school. If the governing board of a school district denies a charter petition, the petition may be submitted on appeal to the county board. (Section 47605(k)(1)(A)(i).) The county board “shall review” the appeal *de novo*, pursuant to Sections 47605(b) and (c). (*Id.*) The county board “shall not 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 of the codified grounds for denial. (Section 47605(c).)

Here, despite the clear roadmap set by the Legislature, and reminders from SCSOS, the County Board failed to follow the legally-required process, which is procedurally unfair for NPS – Yuba City.

The County Board rejected the SCSOS Staff Report and “denied” the NPS – Yuba City petition on January 18, 2023, and, to date, still has not adopted written factual findings. This means the County Board acted in a procedurally unfair manner, which is an abuse of discretion.

The recent case of *Tran v. County of Los Angeles* (2022) 74 Cal.App.5th 154, is instructive. In the *Tran* case, the county board of supervisors was required by law to either grant or deny a conditional use permit and adopt factual findings within 30 days of the public hearing. (*Id.*) At the public hearing, the county board of supervisors voted to “approve” the permit but did not adopt the required findings. Instead, the board directed legal counsel to draft findings for ratification at a future meeting. The board did not ratify the findings until eight months after the public hearing—well outside the 30-day timeline. The Court held that the county board of supervisors abused its discretion by not complying with the legally-required timeline to make a decision, in the manner required (i.e., adoption of written findings). The Court stated that directing legal counsel to draft the required findings and bring them back for approval after-the-fact is not in compliance with the law. The findings must be actually adopted by the board within the timeline. (See *Austin v. Department of Motor Vehicles* (1988) 203 Cal.App.3d 305 [rendering a final decision beyond the 15-day timeline required by law was an abuse of discretion].)

It is indisputable that the County Board did not adopt any written factual findings for denial on January 18, 2023. SCBOE held a meeting on February 8, 2023, after NPS – Yuba City put the County Board on notice of a possible appeal to the SBE of its charter denial. That meeting agenda included no action item to approve the *post hoc* written factual findings for denial. (SR-064.) **This means that SCBOE has still not approved any written factual findings for denial of the NPS – Yuba City charter petition appeal.** This action, alone, is an abuse of discretion on its face.

Instead of publicly adopting written factual findings for denial, three SCBOE members privately, and possibly with the assistance of legal counsel or other experts, penned written findings. This is procedurally unfair because both the community and the petitioner were excluded from what is required to be a public process. Indeed, the *post hoc* written findings have not been made public, except in this charter appeal. This type of *post hoc* rationalization is precisely what was held to be an abuse of discretion in the *Tran* case. If the County Board’s interpretation of the law is correct, authorizers could vote to deny a charter petition by oral motion within the 90-day timeline but then wait weeks, months, or even longer to adopt the required written factual findings in support of denial. This would be an absurd result that would effectively re-write the appeal process under Section 47605.

d. Even if the County Board’s Action to Deny of the Charter Petition Appeal Were Not Unlawful and Not Procedurally Unfair, the Unapproved, *Post hoc* Reasons for Denial Were Entirely Lacking in Evidentiary Support

Even if the privately drafted, unapproved *post hoc* findings by three County Board members had been timely made, which they were not, they are not supported by substantial evidence in the record and they violate the plain dictates of Section 47605(c). The privately drafted, unapproved *post hoc* findings were prepared after traditional business hours on January 19, 2023, and on January 20, 2023, outside of the timeline for consideration of the NPS – Yuba

City charter petition appeal. (See SR-045, SCSOS request for an extension.) SCBOE had until January 19, 2023 to approve written factual findings for denial of the NPS – Yuba City charter petition. The County Board failed to do so.

The late, privately drafted, unapproved *post hoc* findings, even if they could lawfully have been considered, themselves violate Section 47605(c) because they were not specific factual findings, specific to the particular petition, setting forth specific facts in one or more of the eight statutory reasons for denial of a charter petition. We address each finding (reproduced in italicized text) in turn:

Mr. Singh

- In the school's 1st year, there will be 100 TK-5 students. For those students, there will be 3 teachers and 4 assistants. This means there will be two classes of 33 students and 1 class of 34 students. With a student:adult ratio of 14:1. (DR-565)

A charter school's proposed class size, or adult to student ratio, is not, on its own, a permissible reason to deny a charter petition. Charter schools are not subject to particular class sizes or adult to student ratios (except in transitional kindergarten, see Section 48000(c)).

No facts whatsoever have been given to demonstrate that an adult to student ratio of 14:1, or a class size over 30 students, is unsound. Conclusory statements like this violate Section 47605(c). Accordingly, this finding is an impermissible basis for denial of the charter petition.

- This is an unsound educational program because California Education Code (EC) sections 41376 and 41378 prescribes the maximum class size for kindergarten not to exceed 31 students; no class larger than 33 students. New Pacific School would have 1 class exceeding this limit.

Charter schools are exempt from Sections 41376 and 41378 (see Section 47610). As such, a charter petition may not lawfully be denied for alleged violation of these Sections. Accordingly, this finding is an impermissible basis for denial of the charter petition.

- It is also unsound because according to California's new universal pre-k law, "A charter school shall maintain an average ratio of at least 1 adult for every 12 pupils during instructional time." New Pacific School's ratio exceeds this limit.

Mr. Singh's citation is unattributed, so NPS – Yuba City cannot respond directly to that statement. This purported finding, however, penalizes the Charter School for a law that was enacted on September 27, 2022 (AB 185), after the charter petition was submitted to YCUSD on May 23, 2022 (DR-006). No changes to a charter petition are permitted on appeal to a county board of education (see Section 47605(k)(1)(A)(i)). Furthermore, NPS – Yuba City affirmed compliance with all legal requirements applicable to charter schools (Exhibit A.1., charter page 8). Accordingly, this finding is an impermissible basis for denial of the charter petition.

- New Pacific School claims to have a small school environment with a low student to staff ratio. If there are 33 or 34 students in 1 class, that is not a small school environment and so the petitioners are unlikely to successfully implement this small school program they set forth in their petition.

This finding evidences an opinion only, and not facts. It offers no support for the statement that the Charter School is unlikely to successfully implement the program it proposes; legally, a finding in this area must show that a charter school is **demonstrably** unlikely to successfully implement the program (see Section 47605(c)(2)). Mr. Singh's privately drafted, unapproved, *post hoc* finding contains no demonstration of anything to support his conclusion.

The finding misapprehends what a small school environment means – at NPS – Yuba City, this means 100 students, grades TK-5 in the first year, up to approximately 212 students in grades TK-9 in year three. (Exhibit A.1., charter page 264.) As to adult to student ratios in classrooms, a 14:1 ratio is proposed, which result in a substantial amount of individualized attention for each student. Accordingly, this finding is an impermissible basis for denial of the charter petition.

- Additionally, I am concerned about how outreach was being conducted and who was being outreached to. We want the charter to be inclusive of the diverse Yuba City community. We had discussion on this during our study session and it is noted in the findings of fact that assurances will be made in a memorandum of understanding. This is not enough. A charter is a crucial document that others will use and model their petitions off of. It sets precedent. As board members who have to look at the bigger picture and see what precedent we are setting for potential future charters. We have to get it right in the original charter and not just have add-ons with an MOU.

This purported finding, which is unattached to any of the eight statutory reasons for denial of a charter in Section 47605(c), amounts to a complaint about a process recommended by the SCSOS, and commonly utilized up and down the state: entering into an MOU to memorialize agreements between the parties. It also ignores the commitment that NPS – Yuba City made, more than a month before the January 18, 2023 SCBOE meeting, to produce outreach materials in Punjabi and Spanish, in addition to English. (SR-044.) Accordingly, this finding is an impermissible basis for denial of the charter petition.

Ms. Lachance

1. The Petition Does Not Identify A Single Facility:

I believe that a site or possible sites should of [sic.] been in the original petition. How can you plan for a number of students if you don't even know where or how the students you are targeting will be able to attend in the said area.

With not knowing where NPC will be located it is unlikely to serve the interests of the entire community. (DR-567)

This finding appears to conflate two different legal requirements, and in the process misses the mark on both. First, it seems to focus on Section 47605(h), which states: “[t]he governing board of a school district shall require that the petitioner or petitioners provide information regarding ... the facilities to be used by the charter school.... The description of the facilities to be used by the charter school shall specify where the charter school intends to locate.” Notably, this information is not legally required to be included in the charter petition itself. The law only states that the governing board shall require that petitioners provide the information. NPS – Yuba City met this requirement without being asked, in its charter petition. (Exhibit A.1., charter page 175.)

NPS – Yuba City explained that it will locate within YCUSD boundaries, and also explained why, like all other establishment charter schools, it could not commit to a specific address. (Exhibit A.1., charter page 175.)

The finding then jumps over to Section 47605(c)(7), serving the interests of the community. However, denying a charter petition under this subdivision requires a very specific and detailed analysis, which has nothing to do with facilities, and which was not even attempted. Section 47605(c)(7) requires:

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. A written factual finding under this paragraph **shall detail specific facts and circumstances that analyze and consider** the following factors:

(A) The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.

(B) 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.

(Emphasis added.)

Again, none of these clear mandates were met (or even attempted) by the Board member. Accordingly, this finding is an impermissible basis for denial of the charter petition.

2. NPC [sic.] Proposes Duplicate Programs Already Existing in the Community:

NPS list 5 key elements for their school:

Project based learning; individualized learning plans; social emotional learning; college and career readiness.

The project based learning in a multi-grade classroom is a very good idea. How can you have TK-5 with 100 students, 3 teachers and 4 assistance in 2 classroom be considered small classrooms and have students work on and at their own levels?

TK classes at Charter schools are held to the ratio of 12-1 students per classroom, just as all schools have to implement. The teacher not only needs a multiple subject credential, but also by August 2023 the need 24 units in ECE or child development. I did not see any information in the petition that mention this concern.

SCSOS already has these programs within the districts that are in our county. I feel all of our school in Sutter county have done and are doing programs that are meeting all our students. Students and parents have many options to look into and find which programs meets their concern and education outlooks.

With this being said, I feel they would be taking students away from the schools in Sutter county, causing loss of ADA. (DR-567)

This finding, too, purports to tie itself to Section 47605(c)(7) as a reason for denial of the NPS – Yuba City charter petition. However, again, it does not engage in, or even attempt, the analysis required by this finding.

As to class sizes and adult to student ratios, as well as TK staffing, please refer to the Charter School’s response above to these same issues raised by Mr. Singh. NPS – Yuba City affirmed compliance with all legal requirements applicable to charter schools (Exhibit A.1., charter page 8), which necessarily includes qualifications for TK teachers.

Finally, the conclusory and “I feel” statements in the privately drafted, unapproved, *post hoc* findings simply do not meet the legal requirement for factual findings. They also do not meet the analytical rigor required by Section 47605(c)(7). Accordingly, this finding is an impermissible basis for denial of the charter petition.

Ms. McJunkin

- One of the important statements in this discussion is whether or not the charter school is in the best interest of the community. I do not believe that it is. (DR-571.)

Statements of belief do not meet the legal threshold of factual findings for denial, under Section 47605(c). Further, there is no mention of “the best interest of the community” in Section 47605. SCBOE cannot deny a charter for an invented standard. Accordingly, this finding is an impermissible basis for denial of the charter petition.

- The charter petition itself was obviously a copy of one that was used in Sacramento County since those references were still part in the petition when it as presented. (DR-571.)

An inadvertent typographical error does not meet the legal threshold of factual findings for denial, under Section 47605(c). The NPS – Yuba City charter was replete with information about operating within YCUSD (*see* Exhibit A.1., charter pp. 28-37, as one example). Ms. McJunkin even acknowledged that the Charter School has researched the local community. (DR-148, lines 22-24.) Accordingly, this finding is an impermissible basis for denial of the charter petition.

- The analysis of the population for Yuba City Unified Schools appeared to be accurate. And yet, when promises to provide translations in all forms were identified, one of largest communities was overlooked and only English and Spanish were included. (DR-571.)

The translation of outreach materials into a specific language does not meet the legal threshold of factual findings for denial, under Section 47605(c). The privately drafted, unapproved, *post hoc* finding also ignores the commitment that NPS – Yuba City made, more than a month before the January 18, 2023 SCBOE meeting, to produce outreach materials in Punjabi and Spanish, in addition to English. (SR-044.) Accordingly, this finding is an impermissible basis for denial of the charter petition.

- Yuba City Unified has 17 schools according to the petition. Yet only four schools were selected for analysis and included in the petition. The schools' low performance was identified as reason to have a charter school. These schools are not reflective of all Yuba City Unified Schools. (DR-571.)

There is no legal requirement for a charter school to analyze or compare itself to every school within a school district (*see* Section 47605(c), 47607, and 47607.2). Further, NPS – Yuba City clearly explained why it provided data for four schools in its charter. It stated: “[a]s detailed below, within a mile of the target location, there are two elementary schools, one middle school, and one comprehensive high school.” (Exhibit A.1., charter p. 30.) It only makes sense for the Charter School to review data for the schools closest to its planned location. Because it contains no factual finding, this finding is an impermissible basis for denial of the charter petition.

- Sutter County Board would authorize the charter and the the [sic.] County Superintendent would provide oversight. [sic.] The board for the charter school is located in Sacramento. I do not sense any kind of partnership with the Pacific Charter Institute's Board of Directors. (DR-571.)

The existence of partnership, genuine or sensed, does not meet the legal threshold of factual findings for denial, under Section 47605(c). There is no legal requirement for a charter school and chartering authority to be partners, though of course that's the ideal. Because there is no legal requirement underpinning it, this finding is an impermissible basis for denial of the charter petition.

Additionally, this finding ignores the fact that the Lead Petitioner for NPS – Yuba City is the President of the Sacramento County Board of Education, which is immediately adjacent to Sutter County. These Board members are effectively already colleagues in the local educational community.

- Each time an area was noted as being unclear or incorrect, the solution is to add it to a growing list for a MOU. (DR-571.)

This purported finding states no fact relevant to a review of a charter petition. Accordingly, it is an impermissible basis for denial of the charter petition.

2. THE DISTRICT BOARD’S DENIAL OF THE CHARTER PETITION WAS AN ABUSE OF DISCRETION

Should the SBE find in favor of NPS Yuba City on any of the foregoing matters on which the County Board acted unlawfully or in a procedurally unfair manner, which require the reversal of the denial of SBA’s petition, it is unnecessary for the State Board to reach this final issue, which addresses substantive defects in the District Board’s factual findings for denial of the Charter Petition and the evidence supporting the same.

The District Board’s findings for denial were not sufficiently specific or factual to support a legally-compliant denial of NPS Yuba City’s charter petition. Section 47605(c) provides that “[t]he governing board of the school district shall not 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 [codified grounds for denial].” (Emphasis added.) To reiterate, denial must be based on “specific facts” that are found by the governing board. A fact is something “that has actual existence . . . an occurrence, quality, or relation the reality of which is manifest in experience or may be inferred with certainty...” (*Kelly v. William Morrow & Co.* (1986) 186 Cal.App.3d 1625, 1630.)

For this appeal, the “substantial evidence” test (addressed above) must be applied with significant rigor to the charter denial, given the specific Legislative command that “in reviewing petitions for the establishment of charter schools . . . the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that the establishment of charter schools should be encouraged,” and the presumption that “[t]he governing board of a school district shall not deny a petition for the establishment of a charter school.” (Section 47605(b).) In other words, although the SBE reviews for abuse of discretion, part of its review must be to determine whether substantial evidence indicates that the school district and county applied those lenses in rendering “specific facts,” or whether, instead, the presumption for approval was not properly afforded to the charter petitioners, and the denial was driven by opinion rather than fact.

NPS Yuba City submits that the findings prepared by District staff, and adopted by the District Board, do not present “substantial evidence” of “specific facts” sufficient to support denial because the findings are pervasively grounded in opinion and speculation, and do not indicate application of the presumptions of approval that must guide the charter approval process.

a. The District Board Adopted Findings of Fact for Denial that Were Unlawful

Across 35 pages, NPS Yuba City systematically demonstrated why each purported District finding for denial was not supported by fact or law (and therefore an impermissible basis for denial of the charter petition). That document is available at page SR-004. Each of those arguments are fully incorporated by reference here, and stand as the Charter School's written submission on this issue. For purposes of this written submission, we highlight just a few of unlawful findings, and why the finding was an impermissible basis for denial of the charter petition.

Unlawful Example #1 – YCUSD Finding: *“Finding of Fact No. 1: The Below-Listed Criteria Areas in the Petition **Meet Legal Standards**.”*

The following sections of the Petition were reviewed and although staff identified some concerns and/or weaknesses in the charter school's descriptions in areas as noted, they were considered overall to meet the evaluation criteria set forth in Education Code section 47605.” (DR-015)

NPS Yuba City Response: This was a finding of fact documenting where the charter petition **does** meet legal requirements. As such, this is plainly, objectively, not a finding for denial. A listing of the areas where a charter meets legal requirements cannot be adopted to deny a charter, as it contains no specific facts, specific to the particular petition, setting forth specific facts to support one or more of the codified reasons for denial of a charter petition. As this finding states that it does not support one or more of the codified reasons for denial, and does not actually support one or more of the codified reasons for denial, it is therefore an unlawful reason for denial of this charter petition.

The District Board did adopt this finding as a finding for denial. (DR-010-011)

Unlawful Example #2 – YCUSD Finding: *“With regard to whether the proposed model would provide a meaningful benefit for the proposed targeted students that is distinctive from what the District schools already offer, the District was unable to evaluate this factor as no compelling evidence or data was provided that shows that the Petitioners have any proven success in a classroom-based, multi-grade environment.” (DR-039)*

NPS Yuba City Response: The District's unilaterally manufactured legal standard of “whether the proposed model would provide a meaningful benefit for the proposed targeted students” is an impermissible basis for denial of the Charter Petition. Section 47605(c) provides the exclusive and limited legal grounds on which a charter petition may be denied. Specifically, “[t]he governing board of the school district shall not 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 [codified grounds for denial]. Therefore, because “meaningful benefit” is not a basis upon which the Charter School's petition can be denied, the District's contention here is unlawful.

Unlawful Example #3 – YCUSD Finding: *“It is **unrealistic** that the teachers will be able to support students in a multigrade, project-based learning format, with class sizes in compliance with state*

*TK legal requirements and otherwise at or exceeding 30 students, while adequately teaching to the state standards. This **does not appear feasible** particularly given the additional overlay of the individualized student focus that the Petition describes.” (DR-020, emphasis added.)*

NPS Yuba City Response: This finding is speculative, and not based upon facts. The District’s contention that Petition contains “no evidence of such critical ongoing teacher training” is alarmingly false. The Petition at pp. 66-69 (Exhibit A.1.) describes specific teacher training and professional development goals (i.e., to 1. Ensure that students are ready for college by maintaining a common set of high standards for every student; 2. Instill powerful teaching and learning in schools by designing rigorous instruction that fosters the development of critical thinking and problem-solving skills; 3. Redefine professionalism by having a collaborative work orientation and a commitment to improving the capacity of staff; 4. Foster shared leadership by developing a shared mission for their school and shared leadership for improved student outcomes; 5. Personalize educational resources by knowing students well enough to help them achieve academically; 6. Implement a purposeful design by allocating resources so best practices become common practice), but the Petition also sets forth a three-year teacher training and professional development plan and schedule. (Exhibit A.1. – charter pp. 66-69, Table 32.)

For these reasons, the District’s blatantly incorrect assertion is an impermissible basis for denial of the charter petition.

Unlawful Example #4 – YCUSD Finding: *“The Petition includes proposed dispute resolution procedures between the District and the Charter School, but the process for resolution of internal disputes or complaints (between staff, students, parents/guardians) is unclear. Additionally, the Petition appears to lack any meaningful discussion of how the Charter School would comply with required Uniform Complaint Procedures (UCP).” (DR-028)*

NPS Yuba City Response: The District failed to comprehend that the only legal requirement for this element is dispute resolution procedures between the District and the Charter School. There is no legal requirement to provide a reasonably comprehensive description of an internal dispute resolution process. For this reason alone, this finding is an impermissible basis for denial of the charter petition.

Section 47605(c)(5)(N) only requires that the charter petition include a reasonably comprehensive description of “[t]he procedures to be followed by the charter school and **the chartering authority** to resolve disputes relating to provisions of the charter” and does not otherwise require internal dispute resolution procedures to be included. (Emphasis added.) Where NPS Yuba City exceeds minimum legal requirements and identifies that internal dispute resolution procedures will be adopted and implemented, including a Uniform Complaint Policy and Procedures, the District cannot lawfully make a finding for denial of the charter petition. (Exhibit A.1. – charter p. 168.)

b. The District Board Adopted Findings of Fact for Denial that Were Entirely Lacking in Evidentiary Support

Because of the clear legal presumption for approval of a charter, a school district or county board of education may only deny a charter upon adopting specific facts, specific to the particular petition, setting forth specific facts to support one or more of the codified reasons for denial. The legal burden is on the school district or county board of education to only adopt findings that are accurate as to the particular charter petition before the board. In the event that the school district or county board of education adopts findings that either do not contain specific factual findings for denial, or that are not specific to the particular petition, such findings are subject to an abuse of discretion appeal, under the “entirely lacking in evidentiary support” component of the CDE and SBE’s definition of abuse of discretion.

Following are several examples of YCUSD’s Board-adopted findings for denial that are entirely lacking in evidentiary support. Once again, NPS Yuba City incorporates here by reference its response to the District’s findings for denial, set forth at SR-004.

Lacking in Evidence Example #1 – YCUSD Finding: *“The Petition also states that there will be a student driven project-based learning approach, but the reviewers were unable to determine by the schedules and curriculum presented, how project-based learning will be fully implemented as represented, in wide-ranging multi-grade level classrooms.”* (DR-017)

NPS Yuba City Response: The District’s contentions are factually inaccurate and are an impermissible basis for denial of the Charter Petition. Throughout the Petition, the Charter School describes the way project-based learning will be implemented within the curriculum. For example:

“History-Social Science: Social studies courses focus on the California History Social Science Framework published by the California Department of Education Sacramento, 2017. The framework clearly lays out by grade level the expected content for the students to master. This Framework complements the project-based learning supported by self-determination of Leader in Me so students are able to work individually as well as collaborate with other students. The curriculum and tools to support the project-based learning include PBL-Works Resources and Glencoe McGraw-Hill.” (Exhibit A.1. – charter pp. 63-64.)

“Foreign Language: New Pacific School will utilize the World Languages Standards for California Public Schools adopted 2019 to guide the foreign language program . . . The school will also offer experiential live virtual classes to promote international cultural awareness. Language acquisition will be infused in the project-based learning for the students. Students learn the fundamentals of the language and culture including history, cultural practices, visual arts, and idioms.” (Exhibit A.1. – charter at p. 64.)

“Fine Arts: New Pacific School recognizes the importance of visual and performing arts and offers a variety of venues and mediums at all grade levels to expose students to a quality fine arts program and to develop their talents. The school will use the State Board of Education-Adopted Arts Framework (2020) as a guiding tool for the art program. The design of the Arts Framework focuses the action of art, which applies to the hands-on project-based learning at New Pacific School. Publishers provide materials that teachers are able to select through student interest derived by individual and collaborative discussions. The arts will be integral to the whole child development

and will provide students the opportunity to blend the arts into their project-based learning in science.” (Exhibit A.1. – charter at p. 65.)

“Students, parents, and the teacher will have a clear academic portfolio of the student including formative assessments completed daily in the project-based learning activities.” (Exhibit A.1. – charter p. 72.)

“New Pacific School will conduct at least three large-scale events per school year for the entire family including back to school nights, Spring showcase, student project-based demonstrations of learning, and end of the year accomplishment ceremonies.” (Exhibit A.1. – charter p. 98.)

Lacking in Evidence Example #2 – YCUSD Finding: “[T]he number of parent/guardian signatures which the Petitioners confirm as having submitted (45) is thus deficient on its face, as in order to support a petition for a school of 100 students in its first year, the Petition would have needed to include at least 50 signatures of meaningfully interested parents/guardians.” (DR-025)

NPS Yuba City Response: The Charter School submitted two sets of signatures, one from parents and one from teachers, only one of which – teachers – NPS Yuba City relied upon to meet the legal requirement for petition signatures in Section 47605(a)(1). The Charter School submitted parent signatures only for the purpose of demonstrating community support, and not to meet the legal requirement. Accordingly, the District Board’s denial action based on incomplete parent signatures, when more than enough teacher signatures were submitted, demonstrates that there was no evidentiary support for that finding.

Lacking in Evidence Example #3 – YCUSD Finding: “Further, the District questions the degree to which the officers or employees of the PCI-affiliated entities would be involved in the day-to-day operations of the Charter School. Based on the information provided in the Petition, the Charter School would heavily rely upon the PCI-affiliated entities for a range of support and services, including fiscal, human resources, administrative, and special education services. Given this high level of involvement, the role of the PCI-affiliated entities (e.g., Pacific Charter Institute) appears to take on the character of a charter management organization (CMO).” (DR-024)

NPS Yuba City Response: Pursuant to Section 47604(a), “[a] charter school may elect to operate as, or be operated by, a nonprofit public benefit corporation.” As stated in the charter, New Pacific School intends to be operated by PCI, a California non-profit public benefit corporation, which successfully operates four independent charter schools serving students in fourteen counties. The PCI Board is the governing body that oversees each of the charter schools that it operates, including New Pacific School – Yuba City upon charter approval, with leaders at each charter school overseeing day-to-day operations. The Board oversight focuses on academic success and fiduciary compliance and viability. A detailed description of the Board’s duties and the Executive Director’s duties are outlined on pages 115-127 and 129, respectively. (Exhibit A.1. – charter pp. 115-127 and 129.)

In other words, it is wholly lawful for the Charter School to be operated by and otherwise “rely upon the Pacific Charter Institute,” a nonprofit public benefit corporation, to operate the Charter

School, including for administrative, fiscal/back office, human resources, special education, marketing, and other services. It would be premature to have written contracts and agreements detailing the services that the Charter School will seek when the petition has not yet been approved and when the Charter School has not yet enrolled any students.

This finding is speculative, and therefore entirely lacking in evidentiary support.

3. The County Board Meeting Was an Abuse of Discretion

a. The County Board Meeting Was Unlawful Because it did not Provide a Fair and Impartial Hearing Process on the Charter Petition

At the outset, it was clear that the Board President wanted the charter appeal item to be dispensed with as quickly as possible, with no regard for legal safeguards now in place for petitioners, much less a serious regard for SCBOE's role in providing a fair hearing to charter petitioners. For context in the below screen capture, Ms. McJunkin is the County Board President. Mr. Joe Hendrix is the SCSOS Deputy Superintendent. Ms. McJunkin is hurrying along Mr. Hendrix's presentation of the charter appeal item.

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MS. MCJUNKIN: -- the -- the window is closed.
Okay. At that -- Joe, what are you doing over
there?
MR. HENDRIX: I have a PowerPoint to walk us
through the people who --
MS. MCJUNKIN: Is it more than three minutes?
MR. HENDRIX: Oh, I would imagine. Yes,
ma'am.
MS. MCJUNKIN: No more than five. We have a
lot of people here, Joe.
MR. HENDRIX: We do.
MS. MCJUNKIN: Let's move it along.
MR. HENDRIX: We have legal requirements.
MS. MCJUNKIN: Come on.
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(DR-112, lines 8-20)

The Board President's demand for a presentation not exceeding three minutes, and relenting to five, on a matter as important as whether a new school will open or not is indicative of the lack of procedural fairness before the SCBOE. Notably, even before the SBE, an appeal of the denial of an appeal, charter petitioners are afforded ten minutes of presentation time.

CONTENTS OF THE APPEAL: DOCUMENTARY RECORD AND SUPPORTING DOCUMENTS

The documentary record and the supporting documents are enclosed herewith. The files listed below were sequentially numbered in the order presented by the County Board and District Board, followed by the Supplemental Record prepared by SBA. SBA has stamped the entire record, DR and SR, so that they bear sequential page numbers in the bottom center of each page.

A. Statutorily Required Documents

1. NPS – Yuba City charter petition and all appendices (PDF and Word versions)
2. Staff report and findings for denial by the District
3. Staff report recommending approval by the County

B. CDE-Required Documents

1. SBE Appeal Checklist
2. District Abuse of Discretion Table
3. County Abuse of Discretion Table

C. Documentary Record Provided by the District Board

The documentary record prepared by the District Board and provided on February 1, 2023 includes the following:

1. August 23, 2022 District Board meeting agenda (DR-002)
 2. YCUSD Governing Board Meeting Staff Report on NPS – Yuba City charter petition (DR-006)
 3. YCUSD Board Resolution to deny the NPS – Yuba City charter (signed), with Exhibit A, YCUSD Staff Report, Findings of Fact, and Recommendation Concerning New Pacific School – Yuba City Charter Petition (DR-009)
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4. YCUSD Board Resolution to approve the NPS – Yuba City charter (void), with Exhibit A, YCUSD Staff Report, Findings of Fact, and Recommendation Concerning New Pacific School – Yuba City Charter Petition (DR-030)
 5. YCUSD Staff Report, Findings of Fact, and Recommendation Concerning New Pacific School – Yuba City Charter Petition (DR-051)
 6. YCUSD staff PowerPoint presentation (DR-068)
 7. YCUSD public hearing notice (DR-076)
 8. YCUSD August 23, 2022 Board meeting minutes (DR-077)
 9. Transcript of YCUSD August 23, 2022 Board meeting (DR-082)
 10. YCUSD Board member Priddy statement (DR-105)

D. Documentary Record Provided by the County Board

The documentary record prepared by the County Board and provided on February 2, 2023 includes:

1. Cover letter from SCSOS regarding the documentary record (DR-107)
2. Audio recording of SCBOE January 18, 2023 Board meeting (Exhibit D.2.)
3. Transcript of SCBOE January 18, 2023 Board meeting (DR-108)
4. SCBOE January 18, 2023 Board meeting agenda and packet (DR-153)
5. Draft minutes from SCBOE January 18, 2023 Board meeting (DR-522)
6. SCBOE Board Resolution denying NPS – Yuba City charter petition appeal, with attachments (DR-528)
7. Emails from SCBOE members with unapproved, *post hoc* reasons for denial of the charter petition (DR-565)

E. Supplemental Record (Supporting Documents) Prepared by NPS – Yuba City

1. YCUSD request for extension of statutory timeline (SR-002)
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2. NPS – Yuba City response to District staff report and findings for denial (SR-004)
 3. NPS – Yuba City response to County staff recommendation for approval (SR-039)
 4. SCBOE request for extension of statutory timeline (SR-045)
 5. NPS – Yuba City presentation during SCBOE’s January 18, 2023 meeting (SR-046)
 6. SCBOE Board meeting agenda for February 8, 2023 (documenting no approval of written factual findings) (SR-064)

* * *

This appeal is timely and complete, consistent with Section 47605(k)(2) and the CDE’s interpretation of legal requirements. A copy of the appeal has been transmitted to the District and the County.

We look forward to working with the CDE and the SBE during their consideration of the charter petition appeal. Please feel free to contact me (paul.keefer@pacificcharters.org; (916) 616-3958) if you have any questions.

Sincerely,



Paul Keefer
Lead Petitioner

(enclosures consisting of Exhibits, DR and SR provided in download link:
<https://mycharterlaw.sharefile.com/d-sec599d49ed1a43119919b630d31b39d6>)

District Abuse of Discretion Tables

New Pacific School - Yuba City Written Submission

California Department of Education
Charter Schools Division
Created 05/2020

Appeal to the State Board of Education

Table 1. Written Submission by the Petitioner Detailing How the Governing Board of the School District Abused its Discretion

Instructions: The State Board of Education (SBE) requests the petitioner or its designee to complete the below table when submitting an appeal for the establishment or renewal of a charter school petition to the SBE after county denial, pursuant to *Education Code* sections 47605(k)(2)(A) and 47607.5, respectively. Additional sheets may be attached. Note, the process for the review of an appeal of an SBE-authorized charter school or a school lacking an independent county board of education is different; this table does not apply.

Charter School Name: New Pacific School - Yuba City

Denying District Name: Yuba City Unified School District

Findings by the District to Deny the Establishment/Renewal Charter Petition	Description of How the District Abused its Discretion (For Each Finding)	Specific Citation to the Supporting Evidence in the Record
1. No evidence that the instructional framework presented was developed to specifically meet the needs of the stated target populations	1. The finding is contradicted by the plain language of the Petition	1. SR-005
2. The bell schedules for each grade level identify instructional blocks but do not explain what will occur within each instructional block	2. The charter describes "A Day in the Life of a New Pacific School Student" and what occurs within each instructional block.	2. SR-006
3. Unable to determine by the schedules and curriculum presented, how project-based learning will be fully implemented as represented	3. Throughout the Petition, the Charter School describes the way project-based learning will be implemented within the curriculum	3. SR-007
4. Has no history providing an individualized approach in a traditional classroom setting nor staff who have provided such teaching...	4. The District's skepticism about innovative teaching strategies is an impermissible basis for denial of the Charter Petition	4. SR-008
5. Unable to determine how students will be grouped in a multi-grade environment and staffing plan	5. Students will not be grouped by age or grade level. Groups will be formed and dissolved by teachers throughout the year in response ...	5. SR-009
6. Unclear how the credentialing and staffing requirements for TK will be met	6. The Charter School affirmed and declared that the Charter School shall follow any and all other federal, state, and local laws	6. SR-010
7. Unclear how physical education, covering movement skills and knowledge and the identified sports and games, could be provided.	7. The Standards do not require any particular specialized space or facility	7. SR-010
8. Whether the proposed model would provide a meaningful benefit for the proposed targeted students distinctive from what the District...	8. The District's unilaterally manufactured legal standard is an impermissible basis for denial of the Charter Petition.	8. SR-011
9. NPS will follow all applicable policies and practices of the SELPA yet none of the applicable SELPA policies and practices were include	9. No legal requirement to provide publicly available SELPA policies	9. SR-013
10. Review of the curriculum/instructional materials section submitted does not list any such state-adopted materials.	10. PCI has voluntarily decided to utilize some state-adopted materials as described in the Petition at pp. 47-65.	10. SR-013

New Pacific School - Yuba City Written Submission

California Department of Education
Charter Schools Division
Created 05/2020

Appeal to the State Board of Education

Table 1. Written Submission by the Petitioner Detailing How the Governing Board of the School District Abused its Discretion

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Charter School Name: New Pacific School - Yuba City

Denying District Name: Yuba City Unified School District

Findings by the District to Deny the Establishment/Renewal Charter Petition	Description of How the District Abused its Discretion (For Each Finding)	Specific Citation to the Supporting Evidence in the Record
1. There is no truly distinctive program uniqueness not already offered within District schools	1. No single District school offers all of the programs the Charter School proposes. There is no legal requirement that a charter be unique	1. SR-014
2. It is unrealistic that the teachers will be able to support students in a multigrade, project-based learning format	2. This finding is speculative, and not based upon facts. NPS does offer teacher training.	2. SR-014
3. This approach is extremely problematic because neither of these resources are based on or reflective of the state content standards.	3. District seems not to understand that the Leader in Me is one way of identifying students who need additional interventions.	3. SR-015
4. there is no description for how all of these processes, that are very diverse in practice, will be implemented or how they ...	4. This establishes a uniform, foundational culture, and climate of connectedness and social- and emotional safety that creates the ...	4. SR-015
5. The feasibility of serving as a site principal for two classroom-based charter schools, located approximately 50 miles apart, seems ...	5. Speculative, no legal requirement to identify school leader.	5. SR-016
6. No reference to "directors" at each charter school	6. Typographical error.	6. SR-017
7. Components of the proposed financial plan and accompanying projections submitted with the Petition appear unrealistic.	7. PCI properly budgeted and planned for facilities	7. SR-018
8. The multi-year budget projection, however, comingles [sic.] these unrestricted and restricted resources	8. PCI used the California Department of Education modeling calculator v23.1.b. to develop the Budget.	8. SR-018
9. Petitioners assume a 97% attendance rate without any articulation about how that rate was derived	9. The Charter School is not required to adopt the District's low attendance rates as its own.	9. SR-019
10. The hiring of only three teachers appears woefully inadequate to support in-person teaching and learning	10. Petitioner is aware of the TK ratio and will adjust staffing accordingly based on the ages of students who enroll.	10. SR-020

New Pacific School - Yuba City Written Submission

California Department of Education
Charter Schools Division
Created 05/2020

Appeal to the State Board of Education

Table 1. Written Submission by the Petitioner Detailing How the Governing Board of the School District Abused its Discretion

Instructions: The State Board of Education (SBE) requests the petitioner or its designee to complete the below table when submitting an appeal for the establishment or renewal of a charter school petition to the SBE after county denial, pursuant to *Education Code* sections 47605(k)(2)(A) and 47607.5, respectively. Additional sheets may be attached. Note, the process for the review of an appeal of an SBE-authorized charter school or a school lacking an independent county board of education is different; this table does not apply.

Charter School Name: New Pacific School - Yuba City

Denying District Name: Yuba City Unified School District

Findings by the District to Deny the Establishment/Renewal Charter Petition	Description of How the District Abused its Discretion (For Each Finding)	Specific Citation to the Supporting Evidence in the Record
1. The Charter School would also appear to be ineligible for apportionment for any TK students should it fail to meet such requirements	1. New Pacific School specifically affirmed and declared that the Charter School shall follow any and all federal, state, and local laws..	1. SR-021
2. Projected LCFF revenues set forth in the various budget documents are also completely lacking in information	2. There is no legal "requirement for approval" in Section 47605 to include the "a breakdown of anticipated supplemental and concentration	2. SR-021
3. Providing a seat-based program and courses that meet the UC/CSU A-G requirements would also appear to be challenging	3. This finding is entirely speculative and not based upon any facts.	3. SR-022
4. The District also has serious concerns regarding the operational independence of the Charter School.	4. The PCI Board is the governing body that oversees each of the charter schools that it operates, including New Pacific School	4. SR-023
5. Model calls into question the extent to which the Charter School and its Board of Directors would be operationally dependent upon ...	5. PCI's governance model is much like that of school districts: one governing board operates multiple schools.	5. SR-023
6. District also has significant concerns regarding the manner in which the Charter School would procure the myriad of [sic.] services ...	6. This finding is entirely speculative and not based upon any facts.	6. SR-024
7. District questions the degree to which the officers or employees of the PCI-affiliated entities would be involved in the day-to-day ...	7. NPS intends to be operated by PCI, a California non-profit public benefit corporation, which successfully operates fourteen counties	7. SR-025
8. The number of parent/guardian signatures is deficient on its face	8. New Pacific School exceeded the legally required number of teacher signatures.	8. SR-025
9. Two teacher signers are already actively employed by schools operated by the Pacific Charter Institute network of schools.	9. With three (3) undisputed teacher signatures, the Charter School has satisfied this legal requirement.	9. SR-026
10. If so, it violates the current statutory moratorium on new independent study charter schools.	10. The District's contentions are factually inaccurate and are an impermissible basis for denial of the Charter Petition.	10. SR-027

New Pacific School - Yuba City Written Submission

California Department of Education
Charter Schools Division
Created 05/2020

Appeal to the State Board of Education

Table 1. Written Submission by the Petitioner Detailing How the Governing Board of the School District Abused its Discretion

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Charter School Name: New Pacific School - Yuba City

Denying District Name: Yuba City Unified School District

Findings by the District to Deny the Establishment/Renewal Charter Petition	Description of How the District Abused its Discretion (For Each Finding)	Specific Citation to the Supporting Evidence in the Record
1. "all students TK-12 will engage in foreign language" does not sufficiently describe how that will actually occur	1. assertions that students "will be receiving instruction virtually through curriculum delivered online" and that the Charter School's ..	1. SR-029
2. Special education procedures are not clearly elaborated.	2. the petition contains a reasonably comprehensive description of the educational program of the charter program, including a description	2. SR-030
3. responsible for hiring itinerant staff to provide services including speech language pathologists, school psychologists, occupational..	3. The Charter School's budget includes four teacher assistants who will support the needs of special education students.	3. SR-032
4. The Petition includes vague references to targeting non-English speakers and diverse groups of learners and families ...	4. The Petition outlines the extensive outreach conducted in the communities in and surrounding Yuba City	4. SR-032
5. The process for resolution of internal disputes or complaints (between staff, students, parents/guardians) is unclear.	5. There is no legal requirement to provide a reasonably comprehensive description of an internal dispute resolution process.	5. SR-034
6. The petition does not indicate any potential locations nor does it provide a general description of the type and size of facilities ...	6. A charter petitioner has no obligation under Section 47605 to articulate its precise facility location as part of the approval process	6. SR-035
7.	7.	7.
8.	8.	8.
9.	9.	9.
10.	10.	10.

County Abuse of Discretion Tables

New Pacific School - Yuba City Written Submission

California Department of Education
Charter Schools Division
Created 05/2020

Appeal to the State Board of Education

Table 2. Written Submission by the Petitioner Detailing How the County Board of Education Abused its Discretion

Instructions: The State Board of Education (SBE) requests the petitioner or its designee to complete the below table when submitting an appeal for the establishment or renewal of a charter school petition to the SBE after county denial, pursuant to *Education Code* sections 47605(k)(2)(A) and 47607.5, respectively. Additional sheets may be attached. Note, the process for the review of an appeal of an SBE-authorized charter school or a school lacking an independent county board of education is different; this table does not apply.

Charter School Name: New Pacific School - Yuba City

Denying County Name: Sutter County Board of Education

Findings by the County to Deny the Establishment/Renewal Charter Petition	Description of How the County Abused its Discretion (For Each Finding)	Specific Citation to the Supporting Evidence in the Record
1. County Board denied charter without written factual findings.	1. Acted unlawfully, one of the components of the SBE's definition of abuse of discretion	1. DR- 150-151
2. County Board's unapproved post hoc privately written findings do not match the unlawful verbal findings.	2. Acted unlawfully and procedurally unfair	2. DR- 139-149 and 565-571
3. Procedural unfairness because Board members wrote findings after the act to deny, trying to clean up the error during the meeting.	3. Petitioners did not get a fair and impartial hearing.	3. DR- 139-149 and 565-571
4. Class size and adult to student ratio	4. Not a legal requirement, no connection to one or more of eight codified reasons for denial of a charter.	4. DR-565
5. Lack of compliance with Sections 41376 and 41378	5. Not applicable to charter schools (Section 47610)	5. DR-565
6. TK staffing ratio	6. Became law after charter was submitted	6. DR-006
7. Small school environment	7. The charter does describe a small school environment	7. Exhibit A.1., charter page 264
8. Outreach in languages other than English	8. Not a legal requirement, no connection to one or more of eight codified reasons for denial of a charter.	8. DR-565, SR-044
9. Does not identify a facility, unlikely to serve interests of the community	9. Conflates two legal requirements, adhering to neither.	9. Exhibit A.1., charter page 175
10. SCSOS already has these programs within the districts that are in our county.	10. Finding does not address legal requirements of Section 47605(c) (7).	10. DR-567

New Pacific School - Yuba City Written Submission

California Department of Education
Charter Schools Division
Created 05/2020

Appeal to the State Board of Education

Table 2. Written Submission by the Petitioner Detailing How the County Board of Education Abused its Discretion

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Charter School Name: New Pacific School - Yuba City

Denying County Name: Sutter County Board of Education

Findings by the County to Deny the Establishment/Renewal Charter Petition	Description of How the County Abused its Discretion (For Each Finding)	Specific Citation to the Supporting Evidence in the Record
1. I feel they would be taking students away from the schools in Sutter county, causing loss of ADA	1. Violates Section 47605(c), not a lawful reason for denial	1. DR-567
2. ... whether or not the charter school is in the best interest of the community. I do not believe that it is.	2. There is no "in the best interest of the community" standard.	2. DR-571
3. One typographical error	3. The NPS – Yuba City charter was replete with information about operating within YCUSD	3. DR-571, Exhibit A.1., charter pp. 28-37
4. Only four schools were selected for analysis and included in the petition	4. NPS - Yuba City analyzed 4 schools because they cover the grade spans of the Charter School, and are within 1 mile of the location	4. DR-571
5. I do not sense any kind of partnership with the Pacific Charter Institute's Board	5. This is a statement of feeling, not fact, violating Section 47605(c)	5. DR-571
6. Each time an area was noted as being unclear or incorrect, the solution is to add it to a growing list for a MOU	6. This not a factual finding, per Section 47605(c)	6. DR-571
7. County Board did not provide a fair and impartial hearing process on the charter petition.	7. A rushed process defeats the legislative intent for charter schools	7. DR-112
8.	8.	8.
9.	9.	9.
10.	10.	10.