

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

oab-csd-jul22item03

# California State Board of Education July 2022 Agenda Item #16

## Subject

Appeal of the Denial of a Petition for the Establishment of a Classroom-Based Charter School Pursuant to California *Education Code* Section 47605(k)(2): Consideration of Evidence to Hear or Summarily Deny the Appeal of Samoa Beach Academy, which was denied by the Northern Humboldt Union High School District and the Humboldt County Board of Education

## Type of Action

Action, Information

## Background

Pursuant to California *Education Code* (*EC*) Section 47605(a), Samoa Beach Academy (SBA) submitted its petition which proposed a new grade nine through twelve charter school, to the Northern Humboldt Union High School District (“NHUHSD” or “District"). NHUHSD denied the petition on September 14, 2021, by a vote of five to zero.

SBA appealed the District’s denial to the Humboldt County Board of Education (“HCBOE” or “County”), pursuant to *EC* Section 47605(k)(1)(A)(i), which states that if the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. HCBOE denied the petition on February 9, 2022, by a vote of five to zero.

Pursuant to EC Section 47605(k)(2), if the county board of education denies a petition to establish a charter school, the petitioner may appeal that denial to the California State Board of Education (SBE). SBA submitted its petition to the SBE on March 11, 2022.

## Recommendation

The California Department of Education (CDE) recommends that the SBE hear the SBA appeal. This recommendation is based upon the CDE’s review of SBA’s appeal and the documentary record. SBA has submitted sufficient evidence to hear the appeal, and there are no grounds to summarily deny.

## Advisory Commission on Charter Schools Recommendation

At its June 14, 2022, meeting, the Advisory Commission on Charter Schools (ACCS) accepted the CDE recommendation and moved to recommend that the SBE hear the SBA appeal. The motion passed by a vote of seven to one.

The notice for the June 14, 2022, ACCS meeting, SBA’s appeal submission, and the documentary record are located on the SBE June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice061422.asp>.

## Legislative Changes to the Appeal Process

Assembly Bill 1505 [Chapter 486, Statutes of 2019] modified *EC* Section 47605 and changed the manner in which the SBE hears charter school appeals as well as codified the role of the ACCS in the appeal process.

Prior to AB 1505, the SBE reviewed all charter petitions that had been denied at the local level under the same standards applicable to review by the governing board of the school district and county board of education. The SBE could approve the petition in accordance with subdivision (b) (formerly *EC* Section 47605[j][1]) or deny it. Under this review standard, the completeness and quality of the charter petition were weighed by the ACCS and the SBE.

However, the passage of AB 1505 modified *EC* Section 47605 and updated the appeal requirements of the petitioner, codified the role of the ACCS, and changed the role of the SBE. Specifically, *EC* Section 47605(k)(2)(A) states the following regarding the appeal requirements of the petitioner:

The petitioner shall submit the petition to the SBE within 30 days of a denial by the county board of education. The petitioner shall include the findings and documentary record from the governing board of the school district and the county board of education and a written submission detailing, with specific citations to the documentary record, how the governing board of the school district or the county board of education, or both, abused their discretion. The governing board of the school district and county board of education shall prepare the documentary record, including transcripts of the public hearing at which the governing board of the school district and county board of education denied the charter, at the request of the petitioner. The documentary record shall be prepared by the governing board of the school district and county board of education no later than 10 business days after the request of the petitioner is made. At the same time the petition and supporting documentation is submitted to the SBE, the petitioner shall also provide a copy of the petition and supporting documentation to the school district and the county board of education.

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

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

Pursuant to *EC* Section 47605(k)(2)(E), the role of the SBE is as follows:

The SBE shall either hear the appeal or summarily deny review of the appeal based on the documentary record. If the SBE hears the appeal, the board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion.

In this item, the SBE will determine whether to hear SBA’s appeal or summarily deny review of the appeal. If the SBE decides to hear the appeal, then, in a separate item, the SBE will hear the appeal, and thereafter may affirm the determination to deny the petition of the governing board of the school district or the county board of education or both, or may reverse the determination to deny the petition but only upon a determination that there was an abuse of discretion, pursuant to *EC* Section 47605(k)(2)(E).

## Samoa Beach Academy’s Appeal Submission

Following the HCBOE’s denial of the SBA petition on February 9, 2022, pursuant to *EC* Section 47605(k)(2)(A), SBA submitted the following items to the CDE on March 11, 2022:

* A written submission of SBA’s appeal detailing, with specific citations to the documentary record, how the governing board of the NHUHSD and HCBOE abused their discretion
* SBA’s charter petition as denied as submitted to NHUHSD on June 18, 2021
* Findings by NHUHSD
* The documentary record from NHUHSD
* Findings by HCBOE
* The documentary record from HCBOE
* SBA’s supporting documentation

## Samoa Beach Academy’s Allegations of Abuse of Discretion

In its written submission with citations to the documentary record, SBA stated the following allegations of abuse of discretion by the NHUHSD and HCBOE, to the SBE:

* **The District and the County did not proceed in a manner required by law and therefore abused their discretion in denying SBA’s charter petition.**
  + The district failed to comply with equal time guarantees under AB 1505.
  + The district failed to comply with equal procedure guarantees under AB 1505.
  + The district and county each failed to comply with the statutory requirement to maintain and produce a transcript record of the hearing denying the charter petition.
  + SBA was denied a *de novo* review by the county board because the county board and the district board impermissibly shared legal counsel advising on the charter petition. ***This claim was withdrawn by SBA in a letter to the CDE received on March 21, 2022***.
  + The county board impermissibly denied the charter petition on the purported basis that SBA did not re-obtain teacher signatures in appealing to the county board.
* **The District’s and County’s decisions to deny the charter petition are not supported by substantial evidence.**
  + SBA’s written submission detailing the specific allegations regarding NHUHSD’s findings can be found on pages 562–580 of the documentary record from the HCBOE
  + SBA’s written submission detailing the specific allegations regarding HCBOE’s findings can be found on pages 537–552 of the documentary record from the HCBOE

## District’s Opposition to Samoa Beach Academy’s Appeal

On April 8, 2022, pursuant to *EC* Section 47605(k)(2)(C), NHUHSD submitted a written opposition to SBA’s appeal with specific citations to the documentary record detailing how it did not abuse its discretion in denying the petition. NHUHSD’s written opposition was submitted within 30 days of the submission of the appeal to the SBE.

NHUHSD’s opposition argues that its denial of SBA’s petition was based on evidence demonstrating the following findings:

* The SBA petition presents an unsound educational program for the pupils to be enrolled in the charter school (*EC* Section 47605[c][1]) and
* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition (*EC* Section 47605[c][2]).

Additionally, NHUHSD argues that the procedural claims in SBA’s appeal do not demonstrate an abuse of discretion.

## County’s Opposition to Samoa Beach Academy’s Appeal

On April 6, 2022, pursuant to *EC* Section 47605(k)(2)(C), HCBOE submitted a written opposition to SBA’s appeal with specific citations to the documentary record detailing how it did not abuse its discretion in denying the petition. HCBOE’s written opposition was submitted within 30 days of the submission of the appeal to the SBE.

HCBOE’s opposition argues that it did not abuse its discretion by not recording the meeting at which SBA’s petition was denied, and that its findings in support of denying SBA’s petition met all requirements of the law. HCBOE denied SBA’s petition based on the following findings:

* The SBA petition presents an unsound educational program for the pupils to be enrolled in the charter school (*EC* Section 47605[c][1]),
* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition (*EC* Section 47605[c][2]), and
* The petition does not contain the number of signatures required by *EC* Section 47605(a).

## Conclusion

SBA has submitted all required documents and met all timelines pursuant to *EC* Section 47605(k)(2)(A). SBA submitted in its appeal, a record of the findings from NHUHSD and HCBOE, and a written submission with citations to the documentary record, detailing how the district and county abused their discretion. NHUHSD and HCBOE provided written oppositions with specific citations to the documentary record on how they did not abuse their discretion in denying the petition. The appeal and written oppositions demonstrate that there is a factual dispute concerning NHUHSD’s and HCBOE’s decisions to deny SBA’s petition and the findings made to support the denials. Based on the CDE’s review of the appeal and the documentary record, the CDE finds there are no grounds to summarily deny SBA’s appeal. The CDE further finds that the appeal and oppositions present sufficient evidence for the SBE to hear the appeal.

## Samoa Beach Academy’s Appeal Documents

The following documents were considered by the CDE in its review of the SBA appeal:

* Samoa Beach Academy Written Submission with Citations, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a1.pdf>
* Samoa Beach Academy Petition, as denied by the Northern Humboldt Union High School District and the Humboldt County Board of Education, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a2.pdf>
* Findings by Northern Humboldt Union High School District, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a3.pdf>
* Documentary Record from Northern Humboldt Union High School District, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a4.pdf>
* Findings by Humboldt County Board of Education, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a5.pdf>
* Documentary Record from Humboldt County Board of Education, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a6.pdf>
* Samoa Beach Academy Supporting Documentation, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a7.pdf>
* Written Opposition from Northern Humboldt Union High School District, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a8.pdf>
* Written Opposition from Humboldt County Board of Education, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a9.pdf>
* Samoa Beach Academy’s Elimination of Argument Regarding Conflict, which is available on the June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item03a10.pdf>

## Attachment

None.