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Attachment 1

Samoa Beach Academy Written Submission with Citations

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**Samoa Beach Academy's Appeal of the Denial of its
Establishment Charter Petition to the State Board of
Education letter dated March 10, 2022**



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MARCH 10, 2022

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: Samoa Beach Academy's Appeal of the Denial of its
Establishment Charter Petition to the State Board of Education***

Dear Director Farland:

This letter serves as Samoa Beach Academy's ("SBA" or the "Charter School") appeal of the denial of its establishment charter petition by the Northern Humboldt Union High School District Board of Education ("NHUHSD" or the District") and the Humboldt County Board of Education ("HCBOE" 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 29 days after the County Board denied the Charter School's charter petition on February 9, 2022, (on appeal from the District's denial of the charter petition on September 14, 2021) and is thus within the 30 days permitted by Section 47605(k)(2)(A).

BACKGROUND

SBA's charter petition fully articulates the merits and need for SBA's proposed career and college-focused program in Humboldt County; the new opportunities it will bring to area students; the capacity of its founding team to execute the vision for SBA; and the broad support for SBA among the community. In particular, SBA intends to offer a robust Career Technical Education ("CTE") program that will focus on career pathways and jobs that are much needed in our region and are not offered at nearby high schools, including in residential and commercial construction, health science (patient care), and business management. As the SBE knows, student engagement in CTE is an objective within the State's eight priorities, yet CTE access is lacking across the State,

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



and particularly in Humboldt County and greater Eureka, where SBA proposes to locate. Now more than ever, as students must rise to meet the changing workforce of the 21st century, public education must also rise to support their futures and give them the tools they will need to succeed in California's economy.

SBA also intends to offer robust college preparation programs, including through dual enrollment partnerships with area colleges and universities, and to improve upon the below-average college-going rate of area students. SBA's founding team and advisors are experienced, time-tested leaders and experts. As part of our efforts to launch SBA, we commissioned a study affirming the need and the viability of SBA's program. We worked with a leading expert in school design. We worked with a law firm that specializes in charter school law. We worked with a respected charter school back-office services provider to develop sound financial plans. We worked with a developer to secure a plan to build state of the art school facilities in line with SBA's program objectives. Our proposal was widely supported by the community, as evidenced by the great extent of public comment in SBA's favor from parents, students, and local tradespeople, businesses, and industry partners who were excited to work with SBA's students.

We live and work in Humboldt County, and we know just how strongly the community is demanding the program SBA proposes to offer, which will prepare young citizens for good jobs that are in demand in our region. In meeting the promise of the Charter Schools Act of 1992 ("CSA"), this program will "[i]ncrease learning opportunities for all pupils, with special emphasis on expanded *learning experiences* for pupils who are identified as academically low achieving;" through CTE, it will "[p]rovide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system;" again, through an emphasis on CTE that remains underdeveloped in the region, SBA will "[p]rovide vigorous competition within the public school system to stimulate continual improvements in all public schools" as an incubator for CTE in the region. (Section 47601.)

Notably, the denials at issue did not include a finding for denial under Section 47605(c)(7) that the petition or petitioners would not serve the interests of the community, or that the petition would have an adverse financial impact on the District under Section 47605(c)(8).

Petitioners stand by their charter petition, and to date have rebutted in detail every criticism raised by the District and County staff in written responses to findings. Unfortunately, SBA's petitioning team was not meaningfully heard and was denied the procedural and substantive rights to which we were entitled under the CSA to ensure a fair hearing on our charter petition. Community voices were drowned out by staff voices who approached the charter petition with a presumption that it should be denied, as the record indicates. Principally, staff doubted it would be possible to recruit sufficient CTE teachers in Humboldt County to support a high-quality program, but that rank speculation goes to the heart of the problem: that SBA's charter petition was not reviewed pursuant to the presumptions under the CSA that empower charter schools to attempt to achieve that which traditional public schools have been unable to do.

Fundamentally, as addressed below, because the District and County failed to observe the legal procedural protections that were required to be afforded to SBA in hearing and deciding SBA's petition, by denying SBA equal time and process protections, failing to produce a transcript



of the hearing, engaging conflicted counsel, inventing new signature requirements, and failing to review the charter petition and support its denial under the correct legal standard, the denial by the District Board and County Board must be overturned.

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. As addressed below, as an independent ground for overturning the denial of SBA’s charter petition, both the District and the County failed to provide a transcript. The District in particular produced no record other than a copy of board minutes and a link to video of the denial meeting.

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

Pursuant to Section 47605(k)(2)(A), the District Board’s findings are provided in the record at DR-354 (and SBA’s response follows at DR-366), and the County Board’s findings are provided in the record at DR-413 (and SBA’s response follows at DR-448). SBA’s charter petition is provided in the record at DR-10.

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.

LEGAL STANDARD FOR APPEAL

Through the passage of AB 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 administrative body to correct *abuses of discretion* by school district and county boards of education in denials of charter petitions. (Section 47605(k)(2)(E).)

As discussed below, in hearing appeals post-AB 1505, it is fundamentally the role of the SBE to ensure that school districts and counties comply with the law in reviewing charter petitions, and reverse denials that do not do so. 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 legal requirements of AB 1505 are applied uniformly, to educate school district and county boards, as well as petitioners, on the legal requirements under the 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.



Under California law, an abuse of discretion is established when the 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.)

In SBA’s case, the District and County did “not proceeded in a manner required by law,” clearly establishing an abuse of discretion. The District failed to observe equal time and process requirements; the District and County failed to produce a transcript of the denial hearing; SBA was denied a *de novo* review on appeal to the County as a consequence of a conflict involving counsel to the District and County; and the County imposed an incorrect legal standard on SBA’s petition signature requirements.

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, Boretta 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 SBA’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 overturn 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.”])

THE DISTRICT AND COUNTY DID NOT PROCEED IN A MANNER REQUIRED BY LAW AND THEREFORE ABUSED THEIR DISCRETION IN DENYING SBA’S CHARTER PETITION

1. The District Failed to Comply with Equal Time Guarantees Under AB 1505

In hearing SBA’s charter petition, the District denied SBA its rights to equal footing with the District in presenting to the District’s Board. Under AB 1505, charter petitioners were newly guaranteed the right to present at charter decision meetings for the same amount of time as the chartering authority, and have the same procedures at their disposal. This is set forth in Section 47605, which provides that “[a]t the public hearing at which the governing board of the school district will either grant or deny the charter, **petitioners shall have equivalent time and procedures to present evidence and testimony to respond to the staff recommendations and findings.**” (Emphasis added.)

District staff represented to SBA that 10 minutes would be allotted at the decision meeting hearing for presentations. (SR-1.) SBA prepared a presentation of that length and presented to that extent (11 minutes). However, District staff presented for more than triple that time – in excess of 30 minutes. As addressed below, the District failed to produce a timestamped transcript; however, this disparity is indicated in the video of the hearing (provided by SBA with the record), between 1:28 and 2:13 (hours:minutes timestamp). This disparity enabled the District to provide a highly unbalanced response to SBA’s presentation and to reinforce District staff’s recommendations in areas that SBA had no time to itself address, which was both plainly in violation with Section 47605(b) and also highly prejudicial to SBA. SBA was provided no time or procedure for rebuttal as indicated in the video.

The District also failed to give equivalent time and procedures to the Charter School petitioners during the Board question and comment portion of the meeting. After public comment, District staff and counsel and District Board members engaged in a nearly twenty-minute dialogue among themselves, including to address District Board member questions (between 2:39-2:57 of the video). However, Charter School representatives were given no opportunity whatsoever to respond to Board member questions or statements or respond to comments made by District staff and counsel. The phrase “equivalent time and procedures” can only mean that the Charter School should have been afforded a chance to answer all Board member questions posed to staff. Otherwise, Board members are left with the impression that only District staff’s opinion and position matters to their decision, and that the petitioner’s view on those questions is irrelevant – which it is not. In fact, SBA was offered no opportunity whatsoever to respond to the Board member questions posed at the February 9, 2022 hearing.

The denial of equal time was further compounded by the fact that the District’s denial was the product of an opaque process that appeared to have been conducted behind closed doors. The



District Board unanimously adopted District Staff’s findings with essentially no public discussion of the merits of the Petition. Given the absence of public discussion and lockstep voting, it is reasonable to assume that the District Board discussed such public business in closed session, under the agenda item “PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Superintendent.” (SR-260.) Incredibly, the District Board has agendized this specific item no less than nineteen times over the twelve months preceding the decision meeting. (SR-5-51.) However, District Board policy contemplates only one annual performance review of the Superintendent, as is typical, and that the closed session review shall be documented in a writing signed by the Superintendent to demonstrate that it took place, and that goals developed in the performance review shall be reported out in open session following the closed session evaluation; the District Board’s minutes do not reflect those steps were taken. (SR-52- 265.) We can conceive of no legitimate rationale for nineteen sessions of “PUBLIC EMPLOYEE PERFORMANCE EVALUATION – Superintendent” in one year, for a Superintendent who was hired four years ago.

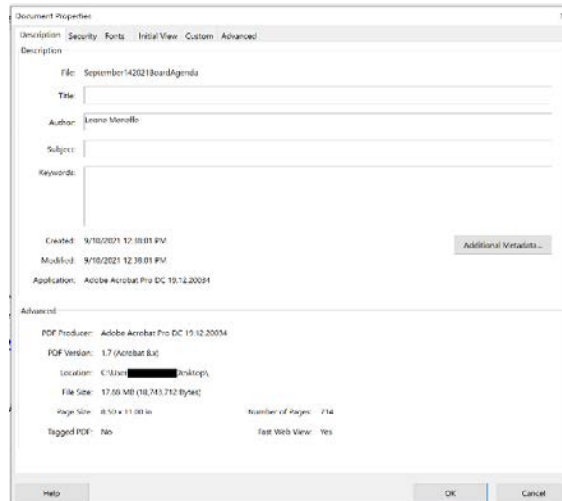
It is a reasonable implication that the District Board has used these closed sessions to discuss other matters, contrary to the requirements and public transparency aims of the Brown Act, including, we assume, whether SBA’s Petition should be approved or not. We raise this issue because SBA’s founding team strongly believes that in the sunshine of a public meeting, the community’s interests would have been more fully considered and addressed, and that through transparent discussion about the facts, SBA’s petition would have been approved

In sum, the District did not proceed with denial of the charter petition in the manner required by law and abused its discretion in denying SBA the explicit procedural protections of which it was entitled. Thus, the SBE must reverse the denial of SBA’s petition. If this abuse of discretion is allowed to stand, it would give carte blanche authority to every school district and county board of education to ignore the equivalent time requirements under Section 47605(b), and deny charter petitioners the legal protections to which they were ensured under AB 1505.

2. The District Failed to Comply with Equal Procedure Guarantees Under AB 1505

Like the District’s failure to ensure equal time to SBA at the hearing on SBA’s charter petition, the District also failed to provide “equivalent ... procedures to present evidence and testimony to respond to the staff recommendations and findings” by excluding SBA’s written response to staff findings from the District Board’s board agenda packet. The District only included its own findings in the agenda packet.

SBA timely submitted its response to the District’s findings on September 9, 2021, five days prior to the hearing. (SR-266.) The District finalized its agenda packet one day later, on September 10, 2021 (see below metadata from agenda packet PDF) but omitted SBA’s response to staff findings in the agenda packet. (SR-267-980.) There is no evidence in the District’s documentary record that District Board considered SBA’s response as it was absent from the agenda packet that District Board members would have studied prior to the decision meeting. Indeed, the only document the District produced as part of its documentary record were minutes from the hearing which does not acknowledge SBA’s written response. At the hearing (of which there is no transcript, see below), no District Board member mentioned reviewing SBA’s written response.



Insofar as the District Board denied SBA’s charter petition based on review of the District’s findings included in the agenda packet but not SBA’s response (again, there is no evidence in the record otherwise, and what is not in the record does not exist for purposes of appeal²), SBA was denied “equivalent ... procedures to present evidence and testimony to respond to the staff recommendations and findings” as required under AB 1505.

In sum, the District did not proceed with denial of the charter petition in the manner required by law and abused its discretion in denying SBA the explicit procedural protections of which it was entitled. Thus, the State Board must reverse the denial of SBA’s petition. If this abuse of discretion is allowed to stand, it would authorize every school district and county board of education to ignore the equivalent procedure requirements under Section 47605(b), and condone a one-sided presentation of staff findings in agenda packets and omission of evidence and information provided by the petitioner.

3. The District and County Each Failed to Comply with Statutory Requirement to Maintain and Produce a Transcript Record of the Hearing Denying the Charter Petition

Pursuant to AB 1505, charter petitioners appealing to the State Board are entitled to the documentary record for the hearing on their charter petition, including specifically as the law provides, a “transcript” of the decision meeting. Section 47605(k)(2)(A) states that in the event an appeal of a denial of a charter petition to the State Board, “[t]he 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” and “[t]he **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.” (Emphasis added.)

² See *Aubert v. Hino Motors Mfg. U.S.A.*, 2021 Cal. App. Unpub. LEXIS 4476, at *19, quoting Lane, Goldstein Trial Technique (3d ed. 1991) § 13:36 “[F]or the purpose of appellate review, what is not in the record does not exist.”]

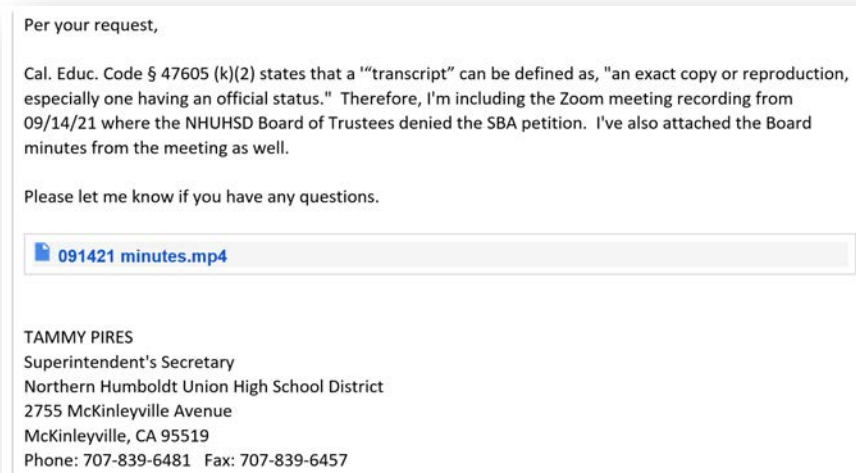
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Here, SBA timely requested the documentary record from the District and County on February 10, 2022. (SR-981-982 and SR-984.) Both the District and County failed to comply with its obligation to provide a transcript of the meeting. (SR-981 and SR-985.)

The District supplied a video of the meeting (SR-981), but a video is not a “transcript” as the law requires. By plain dictionary definition, a transcript is “a written, printed, or typed copy,” (Merriam-Webster’s Dictionary) or “a written, typewritten, or printed copy; something transcribed or made by transcribing,” (Random House Unabridged Dictionary), or “a written or printed version of material originally presented in another medium.” (Oxford Languages Dictionary). Indeed, a transcript in written form is the only meaning of “transcript” given its Latin roots, *trans* (across, beyond, over) *scribere/script* (write). A transcript can be created using a video, but a video is not a transcript. And, moreover, a video is by definition not part of a “documentary record” because a video is of course not a document that SBA can include in a written appeal and cite to by page and line number. A video cannot be printed on paper and brought by a member of the SBE to a hearing.

District staff claimed that “Cal. Educ. Code § 47605 (k)(2) states that a ‘transcript’ can be defined as, ‘an exact copy or reproduction, especially one having an official status.’ Therefore, I’m including the Zoom meeting recording from 09/14/21 where the NHUHSD Board of Trustees denied the SBA petition.” (Emphasis added.) (SR-981.) But Section 47605 does not “state” that definition at all – District staff is making up language that does not exist in the statute.



As to the County, it provided neither a video nor a transcript. (SR-985.)



Good afternoon Dave,

Linked [here](#), please find a Google Folder containing the Documentary Record for the Samoa Beach Academy Charter Petition. Please note, our Board meetings have not been recorded so transcripts from meetings are not available.

Sincerely,

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On this issue, the District Board and County Board both abused their discretion in denying SBA its express right to a transcript from the hearing on its charter petition, and thus, the SBE must reverse the denial of SBA’s petition. The law requires that school district and county boards of education maintain and provide a transcript of hearings denying charter petitions to ensure both integrity and transparency in the hearing and that charter petitioners will be able to identify abuses of discretion and assert their rights regarding the same on appeal by citing to a transcript of the proceedings. Even to the extent the District’s video could be construed as a transcript (it cannot), the fact that the County Board has no transcript record of the proceeding of any kind means that there is no legal record of the proceeding of the appeal to the County Board at all, and the denial on appeal to the County cannot stand in the absence of a record.

Insofar as the SBE now reviews appeals of denied charter petitions on an abuse of discretion basis, a chartering authority that fails (or chooses not) to maintain and supply the required documentary record would effectively insulate itself from a fulsome abuse of discretion review, which is inconsistent with the law and would be contrary to public policy under AB 1505. The absence of a transcript record of a hearing on a charter petition is legally equivalent to a hearing having not been held at all, as required under Section 47605. (*See Aubert*, 2021 Cal. App. Unpub. LEXIS 4476, at *19, quoting Lane, Goldstein Trial Technique (3d ed. 1991) § 13:36 [“[F]or the purpose of appellate review, what is not in the record does not exist.”]) **If this abuse of discretion is allowed to stand, it would invite every school district and county board of education in California to ignore the transcript requirements under Section 47605(k), and deny charter petitioners the legal protections to which they were guaranteed under AB 1505.**

4. 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

The County Board’s review of SBA’s appeal constituted an abuse of discretion because it was not a *de novo* review of the charter petition as SBA was entitled, due to a conflict of interest between counsel simultaneously advising both the District Board and the County Board.

Under AB 1505, charter petitions that are not approved by a district board of education are subject to appeal by the embracing county board of education under a *de novo* review. (Section 47605(k)(1)(A)(i) [obligating the county board of education to “review the petition pursuant to



subdivisions (b) and (c)” of Section 47605, i.e., as though it were reviewing the petition for the first time.]) The County’s findings acknowledge that it was responsible for conduct a *de novo* review. (DR-414.) In law, “de novo review ‘means that the appealing party is entitled to a complete new hearing ... in the [reviewing forum] **that is in no way a review of the prior proceeding.**” (*Blanks v. Seyfarth Shaw LLP* (2009) 171 Cal.App.4th 336, 360.)

For purposes of evaluating SBA’s petition, the District retained counsel from School & College Legal Services of California (“S&C”), which was involved in preparing the District’s findings and the recommendation to deny SBA’s petition. At the hearing held by the District Board (of which the District has failed to provide a transcript), counsel from S&C argued at length that SBA’s charter petition should be denied, including based on the work of S&C. (*See, e.g.*, Video at 2:06.)

However, for the same purpose as the District, the County also retained S&C to prepare and support the County’s findings and recommendations to deny SBA’s petition. S&C counsel again presented at the County hearing in favor of denial. (Again, the County did not provide a transcript.) Review of SBA’s charter petition on appeal before the County was conflicted, and the appeal before the County cannot be upheld as constituting the *de novo* review to which SBA was entitled. Specifically, when S&C was retained by the County to advise on SBA’s charter petition, counsel from S&C still had a fiduciary and ethical duty to the District to advocate for and advance the position ultimately adopted by the District, that SBA’s charter petition does not merit approval. (*People v. McKenzie* (1983) 34 Cal.3d 616, 631 [“The duty of a lawyer both to his client and to the legal system, is to represent his client zealously...”]) After all, the District Board continues to have a right to contest the approval of the charter petition through to appeal before the State Board (Section 47605(k)(2)(C), and maintains a continuing interest in advocating for the denial of a charter petition it denied. Thus, counsel’s representation of the District Board on the petition does not end after the District Board denies the petition.

However, in reviewing SBA’s petition on appeal before the County Board, counsel had a legal duty to impartially advise the County Board on the legal merits of SBA’s petition and conduct a *de novo* review, a completely new review. (*See* Cal. Rules of Professional Conduct Rule 2.1 [“In representing a client, a lawyer shall exercise independent professional judgment and render candid advice.”], Rule 1.7, comment 1 [“Loyalty and independent judgment are essential elements in the lawyer’s relationship to a client.”]) Here, the County was unable to perform a *de novo* review because of S&C’s conflict in both zealously advancing the position of the District and also ensuring that as to the County, the petitioners of SBA received the *de novo* review on appeal to which they were entitled. Those two obligations are incompatible.

Under the Rules of Professional Conduct, absent waiver by the parties, counsel from S&C was forbidden from advising the County Board on a position that would conflict with the position adopted by the District Board, thus legally precluding the possibility of a *de novo* review before the County Board so long as the same legal counsel was involved. (*See* Cal. Rules of Professional Conduct Rule 1.7, comment 1 [“The duty of undivided loyalty to a current client prohibits undertaking representation directly adverse to that client without that client’s informed written consent.”]) It is irrelevant whether different attorneys at S&C participated in reviewing the petition before the District Board and the County Board; a conflict is imputed under the California Rules of Professional Conduct to an entire firm. (*See* Rule 1.10 [“While lawyers are associated in a firm,



none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by rules 1.7...”])

The conflict present here is serious and should not be sanctioned by the SBE because it undermines public confidence in the charter approval process and is an affront to fundamental fairness to which charter petitioners must be afforded. (*See, e.g., Jeffry v. Pounds* (1977) 67 Cal.App.3d 6, 10-11 [“no person may serve two masters, i.e., the attorney should avoid inner conflicts of loyalty... Professional responsibility rules seek the objective of public confidence, as well as internal integrity.”]) The conflict present here is akin to allowing the same judge and clerks to preside over the appeal of that judge’s decision – which is not an appeal at all. The described conflict, and denial of a *de novo* review of SBA’s petition before the County Board, require that the denial of SBA’s charter petition be overturned by the SBA as an abuse of discretion.

5. 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 County Board also wrongly denied SBA’s petition on the stated basis that SBA had failed to refresh its signatures in support its petition with its appeal. (DR-428.) Specifically, the County Board’s findings state that “Petitioners chose to submit signatures from four teachers. Those teachers signed a form stating that they were meaningfully interested in teaching at SBA on June 15-18, 2021. Due to the passage of more than six months, COE staff, requested, twice that SBA have the teachers renew their interest in teaching at SBA.”

This finding constitutes a gross abuse of discretion because it is a requirement invented by the County Board from thin air and is contrary to the requirements of law. Section 47605(a)(1) provides that the petition may be submitted “to the governing board of the school district for review after either of the following conditions is met: (A) The petition is signed by a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the charter school for its first year of operation. (B) The petition is signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the charter school during its first year of operation.” SBA satisfied this requirement by attaching the signatures of more than half of the number of teachers expected to be employed by SBA in its first year of operation. (DR-213.)

There is no requirement in Section 47605 that signatures must be re-collected upon appeal of a denial by a school district to a county board of education, based on the passage of time from when the petition signatures were originally provided. Section 47605(k)(1)(A)(i) provides that all that is required to invoke a county board of education’s appeal process is that “[t]he petitioner shall submit the petition to the county board of education within 30 days of a denial by the governing board of the school district. In turn, “[t]he county board of education shall review the petition pursuant to subdivisions (b) and (c)” of Section 47605. There is simply no requirement to submit new signatures beyond the signatures attached to the original charter petition.

THE DISTRICT BOARD’S AND COUNTY BOARD’S DECISIONS TO DENY THE CHARTER PETITION ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE



Should the SBE find in favor of SBA on any of the foregoing matters on which the District Board and County Board failed to proceed as required by law, 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 and County Board's respective factual findings and the evidence supporting the same.

The District Board's and County Board's findings for denial were not sufficiently specific or factual to support denial. 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.)

On this appeal, the "substantial evidence" test (addressed above) must be applied with significant rigor to a 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 is 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 afforded to the charter petitioners and the denial was driven by opinion rather than fact.

SBA submits that taken together, the findings prepared by District and County staff, and adopted by their respective boards, do not present "substantial evidence" of "specific facts" sufficient to support denial because the findings are pervasively grounded in opinion and speculation, and, and do not indicate application of the presumptions of approval that must guide the charter approval process.

For example, the District Board's "findings" are based on such speculative statements as "we believe that SBA will provide inferior Career Technical Education to students." (DR-357.) The "findings" make an assumption that SBA will "provide inferior Career Technical Education to students and that the proposal does not reflect a robust or sequential CTE Program," but this is entirely unsubstantiated by facts and includes no references to the CTE program actually described in the petition. (DR-357-360.) Similarly, the District's "findings" contend that "we foresee that teacher recruitment will be a major barrier to the success of SBA," (DR-357) but likewise this is speculative and is not an assertion of a fact. As evidenced in Appendix B to its petition, SBA obtained signatures of credentialed teachers who are meaningfully interested in teaching at SBA upon the approval of the charter. (DR-213.) SBA was not required to obtain signatures of all teachers or all CTE teachers at this time. SBA of course cannot recruit teachers and contract with them until it has an approved charter. It would be inconsistent with the CSA if district or county boards could avoid approving a charter petition by charging that teacher recruitment will be



challenging; it is ultimately for the charter school to execute and undertake the groundwork to hire staff. There is no ground for denial in Section 47605 based on the difficulty of teacher recruitment; again, Section 47605 only requires a certain minimum of teacher signatures or parent signatures to demonstrate interest.

Again, this kind of speculation, ungrounded in fact, pervades throughout the District Board's findings and is present on pages DR-357 through DR-364. SBA responded and rebutted each point, respectively, in its response to the District Board's findings, on pages DR-369 through DR-383, however, the County Board failed to meaningfully consider that information, as evidence of consideration is absent from the record. The documentary record provided by the District did not include SBA's response or evaluation of the response, and thus, there is no evidence in the record from the District that the District Board reviewed or considered SBA's response and evidence.

The County Board's decision was similarly ungrounded in facts and based on speculation and untethered to the legal standards applicable to denial of a charter petition. For example, the County Board cited to SBE regulations to set forth a definition of an unsound educational program. The findings state: a charter petition "shall be 'an unsound educational program' if it is any of the following: (1) A program that involves activities that the SBE determines would present the likelihood of physical, educational, or psychological harm to the affected pupils. (2) A program that the SBE determines not to be likely of educational benefit to the pupils who attend." (DR-414.) Yet, the County Board made no findings and does not even suggest in any way that the proposed program would present a likelihood of physical, educational, or psychological harm to pupils. The County Board also found no actual facts that there would not be an educational benefit to students attending, and instead offer speculations regarding course integration, students' ability to change CTE pathways, and presumed capabilities (or lack of capabilities) of teachers, rather than educational benefit of the program. (DR-415-416.)

Incredibly, although the County Board's findings acknowledge that the charter petition's description of its educational program is "many pages long," their findings contend that it only "superficially describes the educational program." (DR-415.) This is belied by the extensive content of the charter petition itself, and ignores the detail in which SBA's CTE program and overall academic program is described. (DR-15 through DR-131.) Again, these contentions are not facts; facts are required for a lawful charter denial.

Like the District Board's findings, the County Board's findings also reflect speculation, ungrounded in fact throughout, including specifically on pages DR-414 through DR-427. SBA responded and rebutted each point, respectively, in its response to the County Board's findings, on pages DR-449 through DR-462, however, the County Board failed to meaningfully consider that information as evidence of consideration is absent from the record.

Because the District Board's and County Board's findings and their documentary records do not indicate substantial evidence of facts to support denial, particularly when weighed against the standard under the CSA that charter petitions should presumptively be granted, and the District Board's and County Board's failure to take into account SBA's responses to staff findings, as well as the legal rights and protections that SBA was denied (addressed above), it is clear that the



District Board and County Board abused their discretion in denying SBA's charter petition. The SBE should therefore reverse the denial of SBA's charter petition.

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. Documentary Record Provided by the County Board

We present the County Board's record first because, as indicated below, the District essentially produced no documentary record aside from a single document. The documentary record prepared by the County Board and provided on February 18, 2022 includes the following (document titles are provided below as identified in the County Board's "List of Documents," item no. 1 below):

1. Documentary Record – List of Documents
2. Charter Petition for Establishment of Samoa Beach Academy, Including Documents Submitted on Appeal to the County [inclusive of the District Board's findings and SBA's responses thereto]
3. Email from SBA to HCOE Submitting the Charter Petition
4. Extension Request
5. Agreement to Extension (two emails)
6. Humboldt County Board of Education Meeting Agenda
7. Minutes from November 10, 2021 Board Meeting
8. Humboldt County Office of Education Meeting Agenda
9. Notice of Public Hearing
10. Minutes from December 14, 2021 Board Meeting
11. Findings of Fact and Recommendations regarding Charter Petition for Samoa Beach Academy



SAMOA BEACH
ACADEMY

12. Email from HCOE to SBA submitting Findings of Fact and Recommendations
13. Samoa Beach Academy Response to Findings
14. Email from SBA to HCOE submitting Response to Findings
15. Letters from Community Members
16. Humboldt County Board of Education Meeting Agenda
17. Notice of Public Hearing
18. HCOE Presentation to the Board
19. Samoa Beach Academy Presentation to the Board
20. DRAFT Minutes from February 9 Board Meeting
21. Resolution of the Humboldt County Board of Education regarding the Petition to form the Samoa Beach Academy
22. Email from HCOE to SBA submitting Resolution

B. Documentary Record Provided by the District Board

The documentary record prepared by the District Board and provided on February 14, 2022 includes:

1. Email Containing Link to Video Recording of Board Meeting
2. Minutes from Board Meeting

C. Supplemental Record Prepared by SBA

1. District Board Agenda and Packet for September 14, 2021 Meeting
2. District Agendas Demonstrating Repeated Closed Session Meetings for Superintendent Performance Evaluation
3. Email to County for Record
4. Email to District for Record and Email From District Confirming No Written Transcript Exists of Board Meeting



SAMOA BEACH
ACADEMY

5. Email From County Confirming No Transcript or Video Exists of Board Meeting
6. Video of District Board Meeting (video file)
7. Email from District Regarding Time Allotted to SBA for Presentation
8. District Board Policy Regarding Superintendent Evaluation
9. Email Transmitting SBA's Response to Findings to the District

* * *

At its February 9, 2022 meeting, the County Board voted to deny the Charter School's charter petition. This appeal is therefore within the 30-day limit for submission of an appeal of a charter petition, as stated in Section 47605(k)(2). 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. Please feel free to contact me (sfdoubled@gmail.com; (707) 496-8954) if you have any questions.

Sincerely,

David Lonn

David Lonn
Lead Petitioner

(enclosures consisting of DR and SR provided in download link:
<https://mycharterlaw.sharefile.com/d-sd88ea0073a4f4ff39120e34d95dac7df>)

**Samoa Beach Academy's Appeal of the Denial of its
Establishment Charter Petition to the State Board of
Education Elimination of Argument Regarding Conflict
letter dated March 21, 2022**



Samoa Beach Academy
PO Box 128
Samoa, CA 95564
www.samoabeachacademy.com

MARCH 21, 2022

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: Samoa Beach Academy's Appeal of the Denial of its
Establishment Charter Petition to the State Board of Education
Elimination of Argument Regarding Conflict***

Dear Director Farland:

I write as lead petitioner of Samoa Beach Academy ("SBA") to notify the State Board of Education ("SBE") and the California Department of Education ("CDE") that SBA is eliminating the argument appearing on pages 9-11 of SBA's March 10, 2022 appeal under the heading "4. SBA Was Denied a *De Novo* Review by the County Board..." and the reference to that argument on pages 3 and 4. SBA is no longer appealing the denial of its charter petition based on that argument, and it need not be considered. To be clear, SBA continues to stand on all remaining arguments that it submitted.

If, for official use going forward, the CDE would prefer to receive a copy of the appeal that omits that argument and references thereto, we would be pleased to provide a new copy upon request.

Through this letter, we also would like to make it completely clear that the at-issue argument at no time made any allegations that School & College Legal Services of California ("SCLS") engaged in any ethical wrongdoing in serving its clients, and it was never SBA's intention to imply that to be the case. Instead, SBA identified the appearance of a conflict impacting whether SBA received the benefit of a *de novo* review by the County Board; even if that conflict of interest was deemed waived by SCLS' clients (i.e., an agreement to move forward in light of the conflict), the concern that SBA was denied a *de novo* review in the presence of the conflict was still present.

Samoa Beach Academy
Written Submission with Citations



Subsequent to the submission of SBA’s appeal, SCLS provided SBA a copy of a letter it sent to its clients (attached) confirming that like SBA, SCLS also believed that an actual conflict existed:

It is SCLS’s opinion that there is an actual conflict with regard to the above-referenced matter because representation of the HCOE and the HCBOE is directly adverse to NHUHSD in the same matter. Specifically, the HCBOE must review the decisions made by NHUHSD and can choose to overturn those decisions if the HCBOE determines that such action is necessary. The HCOE will assist the HCBOE with reviewing Samoa Beach Academy’s petition and will make recommendations regarding the petition appeal to the HCBOE.

....

If you wish to authorize SCLS to simultaneously represent HCOE and NHUHSD with regard to the charter petition appeal, and you waive this conflict, please signify your consent by signing and dating Exhibits A, B, and C, and then send the original, executed document to our office and retain a copy for your records.

(October 28, 2021 conflict letter, page 2) (Emphasis added.) That letter included signatures indicating that both SCLS clients ultimately waived SCLS’ ability to represent them in the presence of a conflict, as indicated, and that SCLS intended to implement a “screen” to prohibit the attorneys involved in the two representations from collaborating with one another on those matters.

From the standpoint of attorney professional responsibility, SBA believes that SCLS satisfied its professional obligations to its own two clients in the presence of an actual conflict by disclosing the conflict and obtaining their consent to waive the prohibition on representation in light of that conflict, and thereafter instituting the “screen.” Of course, the presence of a conflict waiver does not provide assurance or comfort to SBA that SBA itself received the benefit of a true *de novo* review from the County in the presence of an acknowledged actual conflict, where two colleagues from the same law firm were involved in rendering recommendations for denial (which was the point of the position in the charter appeal cover letter). However, SBA understands that SCLS views the argument as questioning its professional ethics. SBA does not see its argument that way for the reasons stated, and respectfully views SCLS’ attorneys as zealous advocates for their clients as the professional rules governing attorneys require. However, as a professional courtesy to SCLS to make completely clear that SBA is not alleging an ethical lapse of any kind by SCLS attorneys as to their own two clients, SBA is eliminating that argument from the appeal as stated above.

* * *



SAMOA BEACH
ACADEMY

Please feel free to contact me (sfdoubled@gmail.com; (707) 496-8954) if you have any questions.

Sincerely,

David Lonn

David Lonn
Lead Petitioner

(enclosure)



SCHOOL & COLLEGE LEGAL SERVICES OF CALIFORNIA

*A Joint Powers Authority
serving school and college
districts throughout the
state.*

October 28, 2021

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Robert J. Henry
Frank Zotter, Jr.

Sent Via Email Only

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Humboldt County Office of Education
901 Myrtle Avenue
Eureka, CA 95501

superintendent@hcoe.org

Mr. Thomas McMahon, Board President
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Roger Macdonald, Superintendent
Northern Humboldt Union High School District
2755 McKinleyville Avenue
McKinleyville, CA 95519

rmacdonald@nohum.k12.ca.us

**Re: Disclosure of Adverse Representation & Waiver of Conflict of Interest
Matter: Charter Petition Appeal by Samoa Beach Academy**

Dear Dr. Hartley, Mr. McMahon, and Mr. Macdonald:

School and College Legal Services of California (“SCLS”) provides on-going legal services to the Humboldt County Office of Education (“HCOE”), the Humboldt County Board of Education (“HCBOE”), and Northern Humboldt Union High School District (“NHUHS”) regarding a variety of legal matters. This fall, SCLS assisted and provided legal advice to NHUHS with the review of a charter school petition for Samoa Beach Academy. NHUHS denied Samoa Beach Academy’s request for a charter petition. Samoa Beach Academy appealed that denial to the HCBOE. HCOE and HCBOE have requested that SCLS provide assistance and legal guidance regarding the appeal of the denial of the charter petition for Samoa Beach Academy.

As attorneys, we are governed by the Rules of Professional Conduct when actual or potential conflicts of interest exist between clients. Rule 1.7, paragraph (a) provides: A lawyer shall not, without informed written consent from each client and compliance with paragraph (d) of Rule 1.7, represent a client if the representation is directly adverse to another client in the same or a separate matter. A complete copy of Rule 1.7 is attached for your reference.

Carl Corbin, SCLS’s General Counsel, spoke with Colby Smart regarding this matter on October 19, 2021. Following that call, he spoke with Damara Moore



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education
Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
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Page 2

and Jennifer Nix regarding this matter. Mr. Corbin spoke with Roger MacDonald on October 28, 2021. Lastly, Mr. Corbin spoke with Thomas McMahon on October 28, 2021. Based on those discussions, and our review of the facts, it is SCLS's opinion that there is an actual conflict with regard to the above-referenced matter because representation of the HCOE and the HCBOE is directly adverse to NHUHSD in the same matter. Specifically, the HCBOE must review the decisions made by NHUHSD and can choose to overturn those decisions if the HCBOE determines that such action is necessary. The HCOE will assist the HCBOE with reviewing Samoa Beach Academy's petition and will make recommendations regarding the petition appeal to the HCBOE.

However, we believe that we can fully represent both parties by creating an "ethical screen." California Rules of Professional Conduct, rule 1.0.1(k) provides that "'Screened' means the isolation of a lawyer from any participation in a matter, including the timely imposition of procedures within a law firm that are adequate under the circumstances (i) to protect information that the isolated lawyer is obligated to protect under these rules or other law; and (ii) to protect against other law firm lawyers and nonlawyer personnel communicating with the lawyer with respect to the matter."

Attorney Damara Moore assisted NHUHSD with the initial charter petition. In doing so, she did not consult with Ms. Nix regarding the charter petition. Moving forward, Ms. Moore will continue to represent NHUHSD, and Ms. Nix will represent the HCOE and the HCBOE. An ethical screen was instituted on October 19, 2021, there will be no communications across the screen, and all files, documents, and information have been locked to ensure access is limited to Ms. Moore (NHUHSD) and Ms. Nix (HCOE, HCBOE). Legal assistants and other SCLS staff also have access restricted as is appropriate. Ms. Moore and Ms. Nix do not work in the same office. Mr. Corbin will monitor the ethical screen to ensure that all ethical requirements are in place through the duration of this matter.

It is important to note that, if NHUHSD, HCOE, and/or HCBOE become dissatisfied with our representation, each party has the right to withdraw from our representation and choose different legal counsel. No party has the right to require another party to withdraw from our representation and choose different legal counsel.

If you wish to authorize SCLS to simultaneously represent HCOE and NHUHSD with regard to the charter petition appeal, and you waive this conflict, please signify your consent by signing and dating Exhibits A, B, and C, and then send the original, executed document to our office and retain a copy for your records.

If desired, you may consult other legal counsel to further advise you regarding the import of giving your consent. You may also seek independent counsel at any time even if you decide to sign the consent included below.



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education
Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
October 28, 2021
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Should you have any questions concerning the above, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Carl D. Corbin".

Carl D. Corbin, General Counsel
School & College Legal Services of California

A handwritten signature in black ink, appearing to read "Jennifer E. Nix".

Jennifer E. Nix, Sr. Associate General Counsel
School & College Legal Services of California

Enc: Exhibit A – Agreement and Consent – Humboldt County Office of Education
Exhibit B – Agreement and Consent – Humboldt County Board of Education
Exhibit C – Agreement and Consent – Northern Humboldt Union High School District
Exhibit D – Rule 1.7 Conflict of Interest: Current Clients
Exhibit E – Rule 1.0.1 Terminology

C: Damara Moore, Senior Associate General Counsel, School & College Legal Services



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education
Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
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EXHIBIT A

INFORMED WRITTEN CONSENT to REPRESENTATION **“MATTER”: Charter Petition Appeal by Samoa Beach Academy**

The undersigned hereby confirms that he has carefully reviewed the above letter from School and College Legal Services of California (“SCLS”) by Carl D. Corbin and Jennifer E. Nix, dated October 28, 2021, and that he has been apprised of the above circumstances which constitute an actual conflict of interest in SCLS’s representation of the Humboldt County Office of Education (“HCOE”) and the Humboldt County Board of Education (“HCBOE”) with regard to the above-referenced matter, as that representation is directly adverse to Northern Humboldt Union High School District (“NHUHSD”) in the same matter. The undersigned acknowledges that he has been apprised of Rule 1.7 of the California Rules of Professional Conduct of the State of California and been given the opportunity to obtain the advice of independent counsel in this matter, if desired.

Consequently, with full knowledge of Rule 1.7, the undersigned, on behalf of HCOE, hereby agrees to SCLS’s representation of HCOE, HCBOE, and NHUHSD with regard to the charter petition appeal involving Samoa Beach Academy. HCOE agrees to waive the actual conflicts specified in the letter.

HUMBOLDT COUNTY OFFICE OF EDUCATION

By: 

Dr. Chris Hartley, Superintendent

Dated: 10/28/2021



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education
Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
October 28, 2021
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EXHIBIT B

INFORMED WRITTEN CONSENT to REPRESENTATION **“MATTER”: Charter Petition Appeal by Samoa Beach Academy**

The undersigned hereby confirms that he has carefully reviewed the above letter from School and College Legal Services of California (“SCLS”) by Carl D. Corbin and Jennifer E. Nix, dated October 28, 2021, and that he has been apprised of the above circumstances which constitute an actual conflict of interest in SCLS’s representation of the Humboldt County Board of Education (“HCBOE”) and the Humboldt County Office of Education (“HCOE”) with regard to the above-referenced matter, as that representation is directly adverse to Northern Humboldt Union High School District (“NHUHSD”) in the same matter. The undersigned acknowledges that he has been apprised of Rule 1.7 of the California Rules of Professional Conduct of the State of California and been given the opportunity to obtain the advice of independent counsel in this matter, if desired.

Consequently, with full knowledge of Rule 1.7, the undersigned, on behalf of HCBOE, hereby agrees to SCLS’s representation of HCBOE, HCOE, and NHUHSD with regard to the charter petition appeal involving Samoa Beach Academy. HCBOE agrees to waive the actual conflicts specified in the letter.

HUMBOLDT COUNTY BOARD OF EDUCATION

By: _____
Thomas McMahon, Board President

Dated: _____



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education
Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
October 28, 2021
Page 6

EXHIBIT C

INFORMED WRITTEN CONSENT to JOINT REPRESENTATION **“MATTER”: Charter Petition Appeal by Samoa Beach Academy**

The undersigned hereby confirms that he has carefully reviewed the above letter from School and College Legal Services of California (“SCLS”) by Carl D. Corbin and Jennifer E. Nix, dated October 28, 2021, and that he has been apprised of the above circumstances which constitute an actual conflict of interest in SCLS’s representation of the Humboldt County Office of Education (“HCOE”) and the Humboldt County Board of Education (“HCBOE”) with regard to the above-referenced matter, as that representation is directly adverse to Northern Humboldt Union High School District (“NHUHSD”) in the same matter. The undersigned acknowledges that he has been apprised of Rule 1.7 of the California Rules of Professional Conduct of the State of California and been given the opportunity to obtain the advice of independent counsel in this matter, if desired.

Consequently, with full knowledge of Rule 1.7, the undersigned, on behalf of NHUHSD, hereby agrees to SCLS’s representation of NHUHSD, HCOE, and HCBOE with regard to the charter petition appeal involving Samoa Beach Academy. NHUHSD agrees to waive the actual conflicts specified in the letter.

NORTHERN HUMBOLDT UNION HIGH SCHOOL DISTRICT

By: _____
Roger Macdonald, Superintendent

Dated: _____



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education
Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
October 28, 2021
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EXHIBIT D

Rule 1.7 Conflict of Interest: Current Clients

- (a) A lawyer shall not, without informed written consent from each client and compliance with paragraph (d), represent a client if the representation is directly adverse to another client in the same or a separate matter.
- (b) A lawyer shall not, without informed written consent from each affected client and compliance with paragraph (d), represent a client if there is a significant risk the lawyer's representation of the client will be materially limited by the lawyer's responsibilities to or relationships with another client, a former client or a third person, or by the lawyer's own interests.
- (c) Even when a significant risk requiring a lawyer to comply with paragraph (b) is not present, a lawyer shall not represent a client without written disclosure of the relationship to the client and compliance with paragraph (d) where:
 - (1) the lawyer has, or knows that another lawyer in the lawyer's firm has, a legal, business, financial, professional, or personal relationship with or responsibility to a party or witness in the same matter; or
 - (2) the lawyer knows or reasonably should know that another party's lawyer is a spouse, parent, child, or sibling of the lawyer, lives with the lawyer, is a client of the lawyer or another lawyer in the lawyer's firm, or has an intimate personal relationship with the lawyer.
- (d) Representation is permitted under this rule only if the lawyer complies with paragraphs (a), (b), and (c), and:
 - (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;
 - (2) the representation is not prohibited by law; and
 - (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.
- (e) For purposes of this rule, "matter" includes any judicial or other proceeding, application, request for a ruling or other determination, contract, transaction, claim, controversy, investigation, charge, accusation, arrest, or other deliberation, decision, or action that is focused on the interests of specific persons, or a discrete and identifiable class of persons.



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education
Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
October 28, 2021
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EXHIBIT E

Rule 1.0.1 Terminology

- (a) “Belief” or “believes” means that the person involved actually supposes the fact in question to be true. A person’s belief may be inferred from circumstances.
- (b) [Reserved]
- (c) “Firm” or “law firm” means a law partnership; a professional law corporation; a lawyer acting as a sole proprietorship; an association authorized to practice law; or lawyers employed in a legal services organization or in the legal department, division or office of a corporation, of a government organization, or of another organization.
- (d) “Fraud” or “fraudulent” means conduct that is fraudulent under the law of the applicable jurisdiction and has a purpose to deceive.
- (e) “Informed consent” means a person’s agreement to a proposed course of conduct after the lawyer has communicated and explained (i) the relevant circumstances and (ii) the material risks, including any actual and reasonably foreseeable adverse consequences of the proposed course of conduct.
- (e-1) “Informed written consent” means that the disclosures and the consent required by paragraph (e) must be in writing.
- (f) “Knowingly,” “known,” or “knows” means actual knowledge of the fact in question. A person’s knowledge may be inferred from circumstances.
- (g) “Partner” means a member of a partnership, a shareholder in a law firm organized as a professional corporation, or a member of an association authorized to practice law.
- (g-1) “Person” means a natural person or an organization.
- (h) “Reasonable” or “reasonably” when used in relation to conduct by a lawyer means the conduct of a reasonably prudent and competent lawyer.
- (i) “Reasonable belief” or “reasonably believes” when used in reference to a lawyer means that the lawyer believes the matter in question and that the circumstances are such that the belief is reasonable.
- (j) “Reasonably should know” when used in reference to a lawyer means that a lawyer of reasonable prudence and competence would ascertain the matter in question.



Dr. Chris Hartley, Superintendent, Humboldt County Office of Education
Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
October 28, 2021
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- (k) “Screened” means the isolation of a lawyer from any participation in a matter, including the timely imposition of procedures within a law firm that are adequate under the circumstances (i) to protect information that the isolated lawyer is RRC2 - 1.0.1 [1-100(B)] - Rule - XFT1 (10-26-16).docx 1 obligated to protect under these rules or other law; and (ii) to protect against other law firm lawyers and nonlawyer personnel communicating with the lawyer with respect to the matter.
- (l) “Substantial” when used in reference to degree or extent means a material matter of clear and weighty importance.
- (m) “Tribunal” means: (i) a court, an arbitrator, an administrative law judge, or an administrative body acting in an adjudicative capacity and authorized to make a decision that can be binding on the parties involved; or (ii) a special master or other person to whom a court refers one or more issues and whose decision or recommendation can be binding on the parties if approved by the court.
- (n) “Writing” or “written” has the meaning stated in Evidence Code § 250. A “signed” writing includes an electronic sound, symbol, or process attached to or logically associated with a writing and executed, inserted, or adopted by or at the direction of a person with the intent to sign the writing.

Comment

Firm or Law Firm**

- [1] Practitioners who share office space and occasionally consult or assist each other ordinarily would not be regarded as constituting a law firm.* However, if they present themselves to the public in a way that suggests that they are a law firm* or conduct themselves as a law firm,* they may be regarded as a law firm* for purposes of these rules. The terms of any formal agreement between associated lawyers are relevant in determining whether they are a firm,* as is the fact that they have mutual access to information concerning the clients they serve.
- [2] The term “of counsel” implies that the lawyer so designated has a relationship with the law firm,* other than as a partner* or associate, or officer or shareholder, that is close, personal, continuous, and regular. Whether a lawyer who is denominated as “of counsel” or by a similar term should be deemed a member of a law firm* for purposes of these rules will also depend on the specific facts. Compare *People ex rel. Department of Corporations v. Speedee Oil Change Systems, Inc.* (1999) 20 Cal.4th 1135 [86 Cal.Rptr.2d 816] with *Chambers v. Kay* (2002) 29 Cal.4th 142 [126 Cal.Rptr.2d 536].



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Mr. Thomas McMahon, Board President, Humboldt County Board of Education
Mr. Roger Macdonald, Superintendent, Northern Humboldt Union High School District
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*Fraud**

- [3] When the terms “fraud”* or “fraudulent”* are used in these rules, it is not necessary that anyone has suffered damages or relied on the misrepresentation or failure to inform because requiring the proof of those elements of fraud* would impede the purpose of certain rules to prevent fraud* or avoid a lawyer assisting in the perpetration of a fraud,* or otherwise frustrate the imposition of discipline on lawyers who engage in fraudulent* conduct. The term “fraud”* or “fraudulent”* when used in these rules does not include merely negligent misrepresentation or negligent failure to apprise another of relevant information. RRC2 - 1.0.1 [1-100(B)] - Rule - XFT1 (10-26-16).docx 2 Informed Consent* and Informed Written Consent*
- [4] The communication necessary to obtain informed consent* or informed written consent* will vary according to the rule involved and the circumstances giving rise to the need to obtain consent.

*Screened**

- [5] The purpose of screening is to assure the affected client, former client, or prospective client that confidential information known* by the personally prohibited lawyer is neither disclosed to other law firm* lawyers or nonlawyer personnel nor used to the detriment of the person* to whom the duty of confidentiality is owed. The personally prohibited lawyer shall acknowledge the obligation not to communicate with any of the other lawyers and nonlawyer personnel in the law firm* with respect to the matter. Similarly, other lawyers and nonlawyer personnel in the law firm* who are working on the matter promptly shall be informed that the screening is in place and that they may not communicate with the personally prohibited lawyer with respect to the matter. Additional screening measures that are appropriate for the particular matter will depend on the circumstances. To implement, reinforce and remind all affected law firm* personnel of the presence of the screening, it may be appropriate for the law firm* to undertake such procedures as a written* undertaking by the personally prohibited lawyer to avoid any communication with other law firm* personnel and any contact with any law firm* files or other materials relating to the matter, written* notice and instructions to all other law firm* personnel forbidding any communication with the personally prohibited lawyer relating to the matter, denial of access by that lawyer to law firm* files or other materials relating to the matter, and periodic reminders of the screen to the personally prohibited lawyer and all other law firm* personnel.
- [6] In order to be effective, screening measures must be implemented as soon as practical after a lawyer or law firm* knows* or reasonably should know* that there is a need for screening.