

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

oab-csd-jul22item06

# California State Board of EducationJuly 2022 AgendaItem #17

## 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 the Allegations of Abuse of Discretion made by 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, Hearing

## 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, 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 affirm the NHUHSD and HCBOE decisions to deny the petition to establish SBA, pursuant to *EC* Section 47605(k)(2)(D), based on the CDE’s determination that the documentary record indicates that neither NHUHSD nor HCBOE abused its discretion in denying SBA’s petition.

## Legislative Change 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. 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 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 Allegations of Abuse of Discretion

In their 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:

### Claims Regarding the District’s and County’s Findings

### 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

### Claims of Procedural Violations

**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 Assembly Bill 1505.
* The district failed to comply with equal procedure guarantees under AB 1505.
* 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.
* 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 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.

## 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).

## California Department of Education’s Review of Allegations of Abuse of Discretion

Based on the CDE’s review of SBA’s written submission, documentary record, and supporting documentation, and the NHUHSD’s and HCBOE’s oppositions, the CDE provides the following responses to SBA’s allegations of abuse of discretion.

A comprehensive summary of the NHUHSD’s and HCBOE’s findings regarding the SBA petition, including SBA’s allegations of abuse of discretion, and NHUHSD’s and HCBOE’s written oppositions, is provided as Attachment 1.

### Review of NHUHSD’s Findings

After reviewing the documentary record and supporting documentation submitted by the parties to this appeal, the CDE has determined that NHUHSD’s findings were supported by evidence.

NHUHSD based their decision to deny SBA’s charter on the following findings, which were supported by evidence in the documentary record:

* The charter school presents an unsound educational program for the pupils to be enrolled in the charter school (*EC* Section 47605[c][1]; *California Code of Regulations*, Title 5 [5 *CCR*] Section 11967.5.5; SBA Supplementary Record, pp. 348–351).
* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition (*EC* Section 47605[c][2]; SBA Supplementary Record, pp. 352–355).

### Review of HCBOE’s Findings

After reviewing the complete documentary record and supporting documentation submitted by the parties to this appeal, the CDE has determined that two of HCBOE’s three findings were supported by evidence in the documentary record.

HCBOE based their decision to deny SBA’s charter on the following findings, which were supported by evidence in the documentary record:

* The charter school presents an unsound educational program for the pupils to be enrolled in the charter school (*EC* Section 47605[c][1]; 5 *CCR* Section 11967.5.5; Documentary Record from HCBOE, pp. 414–421).
* The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition (*EC* Section 47605[c][2]; Documentary Record from HCBOE, pp. 421–427).

### Review of Claims of Procedural Violations

The CDE concludes that the documentary record does not demonstrate an abuse of discretion resulting from the procedural violations outlined in SBA’s appeal letter.

While neither the NHUHSD nor HCBOE followed all procedures pursuant to *EC* Section 47605, these procedural violations are not sufficient to overturn the denials by the NHUHSD or HCBOE because the district governing board’s and county board’s decisions to deny the charter petition were not arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair (Attachment 2). Therefore, the CDE does not find evidence that NHUHSD or HCBOE abused their discretion in their decisions to deny the SBA petition.

## Conclusion

After reviewing the complete documentary record and supporting documentation submitted by the parties to this appeal, the CDE has determined that neither the NHUHSD nor HCBOE abused their discretion in reaching their decisions to deny SBA’s charter petition. Therefore, the CDE recommends the SBE affirm NHUHSD’s and HCBOE’s decisions to deny SBA’s charter petition.

## 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>

## Attachments

* **Attachment 1:** California Department of Education Summary of Samoa Beach Academy Appeal (11 Pages)
* **Attachment 2:** Charter School Appeals to the California State Board of Education: Abuse of Discretion Review Standard Memorandum (8 Pages)