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Attachment 9

Written Opposition from Humboldt County Board of Education



Michael Davies-Hughes
Superintendent of Schools

April 5, 2022

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

VIA DROPBOX ONLY

Re: Humboldt County Board of Education's Opposition to Samoa Beach Academy's Appeal of the Denial of its Establishment Charter Petition to the State Board of Education

Dear Director Farland:

On behalf of the Humboldt County Board of Education ("County Board"), I submit this Opposition to Samoa Beach Academy's appeal ("SBA Appeal") to the State Board of Education ("SBE") regarding denial of the establishment of a charter school. The County Board did not abuse its discretion in denying SBA's petition for establishment of a charter school ("Petition").

I. RELEVANT FACTUAL BACKGROUND

On February 9, 2022, the Humboldt County Board of Education denied a petition for establishment of a charter school within the Northern Humboldt Union High School District ("NHUHSD") boundaries. That proposed charter school, Samoa Beach Academy ("SBA" or "Charter School"), proposed to establish a "rigorous college preparation and career technical education program [for] the high school students of our community." The County Board identified serious concerns regarding the educational program proposed by the Petition and with the ability of the Petitioners to successfully implement the program proposed by the Petition. The County Board denied the Petition based on findings that: 1) It presented an unsound educational program for the pupils to be enrolled in the charter school; 2) The Petitioners were demonstrably unlikely to successfully implement the program set forth in the Petition; and 3) The Petition did not contain the number of required signatures. The County Board adopted extensive written findings to support its denial.

II. THE ABUSE OF DISCRETION STANDARD

In order for the State Board of Education to overturn the decision of the County Board, the SBE must make a determination that the County Board abused its discretion.¹ The abuse-of-discretion standard is a high bar for appellants to prove, particularly in the school context. A decision of a Local Education Agency ("LEA") is an abuse of discretion only if it is "arbitrary,

¹ Educ. Code § 47605(k)(2)(E).



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capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.”² “In determining whether an abuse of discretion has occurred, an appellate body may not substitute its judgment for that of the administrative board, and if reasonable minds may disagree as to the wisdom of the board’s action, its determination must be upheld.”³

The SBE should look to caselaw regarding an ordinary writ of mandate under Section 1085 of the California Code of Civil Procedure to establish its abuse-of-discretion standard. Public agency decisions – if reviewable by a court – typically are reviewed via a writ of mandate.⁴ The County Board’s decision in this matter – following appeal to the SBE – would be subject to judicial review as an ordinary mandate under Section 1085 of the California Code of Civil Procedure, as its decision regarding SBA was not adjudicatory.⁵

Notably, the SBA Appeal to the SBE cites standards for abuse of discretion that should be inapplicable to this situation.⁶ The SBA Appeal relies on Section 1094.5(b) of the California Civil Code of Procedure. Section 1094.5(b) governs administrative mandate proceedings, which permit a petitioner to challenge an administrative decision only after an adjudicatory hearing.⁷ No such hearing was held here, making the administrative mandate process – and its governing caselaw – inapplicable to this appeal.

Moreover, the cases cited by SBA in support of its purported legal standard are not applicable to school districts. Instead, they all consider decisions of agencies that are not provided with the same substantial deference in decision making as LEAs.⁸

Since 1976, the Legislature has ceded substantial discretionary control over public education to local school districts.⁹ Prior to this date, school districts “possessed little, if any, power to act without express legislative or administrative authorization.”¹⁰ The Legislature clarified the extent of local control in 1987, enacting Section 35160.1 of the Education Code, which reads:

(a) The Legislature finds and declares that school districts, county boards of education, and county superintendents of schools have diverse needs unique to their individual communities

² *Khan v. Los Angeles City Employees’ Retirement System* (2010) 187 Cal.App.4th 98, 106, 113 Cal.Rptr.3d 417.

³ *Manjares v. Newton* (1966) 64 Cal.2d 365, 370–371, 49 Cal.Rptr. 805, 411 P.2d 901 (internal citations omitted) (reviewing an ordinary writ of mandate).

⁴ Cal. C.C.P. § 1085.

⁵ *Id. See, e.g., Ridgecrest Charter Sch. v. Sierra Sands Unified Sch. Dist.* (2005) 130 Cal.App.4th.986; 30 CalRptr.3d 648) (reviewing a school district’s alleged inadequate response to a charter school’s request to use district facilities under Section 1085).

⁶ SBA Appeal, pp.3-5.

⁷ Cal. C.C.P. § 1094.5.

⁸ SBA Appeal p.4.

⁹ Cal. Const., art. IX § 14; Educ. Code § 35160 (“The Legislature may authorize the governing boards of all school districts to initiate and carry on any programs, activities, or to otherwise act in any manner which is not in conflict with the laws and purposes for which school districts are established.”).

¹⁰ *Johnson v. Bd. of Educ.* (1986) 179 Cal.App.3d 593, 600–601, 224 Cal.Rptr. 885.



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and programs. Moreover, in addressing their needs, common as well as unique, school districts, county boards of education, and county superintendents of schools should have the flexibility to create their own unique solutions.

(b) In enacting Section 35160, it is the intent of the Legislature to give school districts, county boards of education, and county superintendents of schools broad authority to carry on activities and programs, including the expenditure of funds for programs and activities which, in the determination of the governing board of the school district, the county board of education, or the county superintendent of schools are necessary or desirable in meeting their needs and are not inconsistent with the purposes for which the funds were appropriated. It is the intent of the Legislature that Section 35160 be liberally construed to effect this objective.

(c) The Legislature further declares that the adoption of this section is a clarification of existing law under Section 35160.¹¹

There is a correlative limitation upon the authority of courts, and, in this case, the State Board of Education, to control the actions of LEAs. "The United States Supreme Court has long recognized that school boards have broad discretion in the management of school affairs. . . . As a result, it is generally permissible and appropriate for local boards to make educational decisions based upon their personal social, political and moral views."¹² In other words, appellate bodies "should give substantial deference to the decisions of local school districts and boards within the scope of their broad discretion, and should intervene *only in clear cases of abuse of discretion*."¹³

In summary, the SBE should review this appeal under the abuse-of-discretion standard applicable to an ordinary writ of mandate, not that of an administrative mandate. This is the appropriate standard applicable to LEA decisions regarding charter schools and is reflective of the significant local control granted to LEAs under the California Constitution and the Education Code.

III. THE COUNTY BOARD DID NOT ABUSE ITS DISCRETION IN DENYING SBA'S PETITION FOR ESTABLISHMENT OF A CHARTER SCHOOL

The County Board's decision to deny the Petition for SBA was not arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair. Instead, the County Board followed all procedures provided for in the law, reviewed all relevant written materials, and listened to information provided by Petitioners, staff of the Humboldt County Office of Education ("HCOE"), and the general public. Following careful consideration and review of all information, the County Board denied SBA's petition based on legally permissible reasons and

¹¹ Educ. Code § 35160.1; *see also id.* § 14000 ("The system of public school support should be designed to strengthen and encourage local responsibility for control of public education.").

¹² *McCarthy v. Fletcher* (1989) 207 Cal.App.3d 130, 139, 254 Cal.Rptr. 714; *cf. Bd. of Educ. v. Pico* (1982) 457 U.S. 853, 866, 102 S.Ct. 2799, 2807-08, 73 L.Ed.2d 435.).

¹³ *Dawson v. East Side Union High Sch. Dist.* (1994) 28 Cal.App.4th 998, 1017-1018, 34 Cal.Rptr.2d 108 (italics added).



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adopted supporting written findings. Accordingly, the County Board did not abuse its discretion in denying the Petition.

The SBA Appeal tries to argue otherwise, but SBA's arguments are either not accurate per the documentary record or misapply applicable law. Each argument is discussed below.

a. The County Board did not abuse its discretion by not recording the meeting at which the SBA petition was denied.

The law does not require that LEAs record public hearings, either generally, or specific to charter school petitions. Moreover, even if it did, Petitioners provide no harm that occurred based on the County Board not recording this meeting.

Assembly Bill 1505 revised Section 47605 of the Education Code to, among other things, amend the procedure by which the County Board considers an appeal of a charter petition. Amended subdivision (b) of 47605, which applies to appeals to the County Board pursuant to subdivision (k), reads as follows:

No later than 60 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 90 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. A petition is deemed received by the governing board of the school district for purposes of commencing the timelines described in this subdivision on the day the petitioner submits a petition to the district office, along with a signed certification that the petitioner deems the petition to be complete. The governing board of the school district shall publish all staff recommendations, including the recommended findings and, if applicable, the certification from the county superintendent of schools prepared pursuant to paragraph (8) of subdivision (c), regarding the petition at least 15 days before the public hearing at which the governing board of the school district will either grant or deny the charter. At 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.¹⁴

Subdivision (b) contains the entirety of the procedural requirements applicable when considering a petition for establishment of a charter school. Notably, subdivision (b) does *not* require that the County Board make a recording of the public meeting at which it grants or denies a charter petition.

¹⁴ Educ. Code § 47605(b), (k).



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The SBA Appeal relies on the code section regarding appeal of a denial to the State Board of Education to argue that the County Board was required to record its board meeting, which reads: “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.”¹⁵ Without a corresponding explicit requirement to record the board meeting, that subdivision should be read to require a transcript *if one exists*.

In other words, the County Board was not required to record its board meeting, and the law’s requirement to provide a transcript of the board meeting should only apply if the board meeting was recorded. To read an additional requirement into the process established in subdivision (b) defies the will of the Legislature. There is no law requiring public meetings to be audio recorded.¹⁶ Instead, various regulations require certain types of meetings or hearings to be recorded.¹⁷ If the Legislature had intended to require the recording of hearings related to charter school petitions, it would have explicitly required recording in the amended procedures of subdivision (b), as done in other contexts.¹⁸ Assembly Bill 1505 was not hasty legislation; instead, the Governor and the Legislature held numerous public hearings regarding the bill and engaged in negotiations regarding bill language with a number of stakeholders.¹⁹ Given the time spent on this legislation, it defies logic to assume that the Legislature would omit such an important – and expensive²⁰ – procedural requirement from subdivision (b) if such a requirement had been their intent.

Moreover, even if the County Board should have recorded the public hearing at which it denied SBA’s petition, the SBA Appeal does not explain how the error is not harmless or how the error makes the record inadequate for review by the SBE. The SBA Appeal states generally that a transcript would enable a charter petitioner to “identify abuses of discretion and assert their rights regarding the same on appeal.”²¹ The SBA Appeal does not state that they have any concerns with being able to assert their rights on appeal because of the lack of a transcript from this meeting. The SBA Appeal also does not allege that the failure to provide a transcript of the

¹⁵ Educ. Code § 47605(k)(2)(A).

¹⁶ See generally Ralph M. Brown Act, Gov’t Code §§ 54950 *et seq.*

¹⁷ See, e.g., 14 C.C.R. § 3908 (requiring recording of State Mining and Geology Board hearings); 18 C.C.R. § 5572 (providing that the State Board of Equalization records its hearings); 22 C.C.R. § 66271.11 (requiring recording of all public hearings in which there is a significant degree of public interest in a draft hazardous waste permit).

¹⁸ Indeed, there is no requirement that general civil proceedings in the state of California have a court reporter. (See *Jameson v. Desta* (2018) 5 Cal.5th 594, 610-11 (recounting the limited availability of court reporters to a “narrow category” of civil cases as determined by each Superior Court).)

¹⁹ See, e.g., *Governor Newsom Signs Charter Legislation 10.3.19*, available at <https://www.gov.ca.gov/2019/10/03/governor-newsom-signs-charter-school-legislation-10-3-19/>; Assembly Bill 1505 History and Analysis, available at https://leginfo.ca.gov/faces/billAnalysisClient.xhtml?bill_id=201920200AB1505.

²⁰ LEAs are spending thousands of dollars to generate transcripts of board meetings within the 10-day timeline for appeal. At no time was the potential for this mandated cost discussed by the Legislature.

²¹ SBA Appeal at 9.



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public hearing was arbitrary, capricious, entirely lacking in evidentiary support, unlawful, or procedurally unfair.

Indeed, they cannot make such an argument. Petitioners were provided meeting minutes from the County Board's February 9, 2022, meeting, which detail what occurred at the meeting,²² were present at the meeting itself, including accompanying legal counsel,²³ and received copies of the County Board's decision and findings in writing.²⁴ Accordingly, any error on the County Board's part in not recording the meeting was harmless and does not rise to an abuse of discretion.

b. The County Board did not abuse its discretion by requiring that SBA have the number of signatures required by law.

The County Board did not abuse its discretion in finding that the Petition did not meet the law's signature requirement. The Petition, as submitted to the HCOE on October 12, 2021, does not contain the number of signatures required by law. SBA makes no arguments to the contrary, and statements that the County Board required them to amend their Petition on appeal are belied by the record.

Subdivision (a) of Section 47605 of the Education Code requires that each charter petition be signed by either: 1) 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; or 2) 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.²⁵

As detailed in the County Board's Findings, Petitioners chose to submit signatures from four teachers.²⁶ Those teachers signed a form stating that they were meaningfully interested in teaching at SBA on June 15-18, 2021.²⁷ Of those four teachers, one had never been meaningfully interested in teaching at SBA, one was no longer meaningfully interested in teaching at SBA, one did not hold a California credential as he had previously attested, and one was unreachable.²⁸ In other words, at the time of submission of the petition to NHUHSD for approval, SBA only had three meaningfully interested teachers and one of those teachers does not hold a California teaching credential.²⁹

The SBA Appeal argues that the County Board *required* SBA to resubmit new signatures of meaningfully interested teachers on appeal. There is no support for that argument in the

²² DR-506-07.

²³ DR-506.

²⁴ DR-413-47, 512-514.

²⁵ Educ. Code § 47605(a).

²⁶ DR-213, 428.

²⁷ DR-213.

²⁸ DR-428.

²⁹ DR-428.



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record. Instead, the record shows that HCOE staff were concerned that the signatures requirement had not been met and gave SBA a chance to remedy this concern on appeal.³⁰ When SBA did not remedy this concern, the County Board correctly found – based on the Petition submitted to them – that the signatures requirement was not met. The Petition simply did not contain the signatures required in the law because its signees were not meaningfully interested in or were ineligible from teaching at SBA at the time of signing.³¹ Accordingly, the County Board did not abuse its discretion in denying SBA’s Petition because it did not contain the appropriate signature requirements.

c. The County Board did not abuse its discretion by failing to make appropriate written findings.

The County Board’s findings met all requirements in the law. Section 47605(c) requires that any denial of a petition for establishment of a charter school be based on “written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the [statutory] findings.”³² The SBA Appeal argues that the County Board’s findings were speculative and ungrounded in fact, but neither argument holds water. The County Board must make the necessary factual findings based on the record before it, which it did.

The County Board adopted the factual findings drafted by the HCOE.³³ Those findings, not including appendixes, consisted of more than 7,500 words across 17 pages.³⁴ The County Board made specific findings for each grounds for denial, including:

1. The Petition presented an unsound educational program because its CTE program was poorly described because it did not contain a description of adequate CTE integration with general curriculum and did not present cohesive CTE pathways; it described insufficient student supports for students with disabilities, students with social-emotional or behavioral needs, and students who are English Learners; it did not address the Universal Meals Program requirements; and it promised programmatic components that could not reasonably be implemented.³⁵
2. The Petitioners were demonstrably unlikely to implement the Petition because they were unfamiliar with the content of the Petition and requirements of law; their financial and operational plan was unsound, including unrealistic enrollment projections, numerous budgetary concerns, a plan for a facility that likely violates conflict of interest laws and laws surrounding gifts of public funds, proven difficulty staffing CTE positions, and a lack of necessary expertise among petitioners.³⁶

³⁰ DR-428.

³¹ DR-428, 512-13.

³² Educ. Code § 47605(c).

³³ DR-512-13.

³⁴ DR-413-28.

³⁵ DR-414-21.

³⁶ DR-421-27.



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3. The Petition lacked the necessary number of signatures.³⁷

The findings contained numerous references to the record or to established facts outside of the record, but relevant to the Petition. Those references included, *inter alia*:

1. Description of how the Petition described CTE course integration and teacher staffing, as compared to best practices.³⁸
2. Description of how the Petition described CTE pathways, as compared to best practices.³⁹
3. Description of how the Petition described MTSS, as compared to best practices.⁴⁰
4. Description of the Petition's estimate of English Learners, as compared with those of the local area.⁴¹
5. Description of how the Petition described special education services and programming, as compared with actual budgeted costs and estimated costs and other local charter schools' special education expenditures.⁴²
6. Description of the Petition's predicted enrollment, as compared to regional enrollment in various similarly situated programs, including consideration of a feasibility study.⁴³
7. Description of the Petition's plan for proposed facilities, including costs and ownership, as compared to facilities costs for other local charter schools and in light of conflict-of-interest laws.⁴⁴
8. Description of the Petition's plan for proposed staffing, as compared to *actual* CTE staffing and attempted staffing in the county.⁴⁵
9. Description of the Petition's attached signatures, as compared to meaningfully interested teacher confirmations.

In other words, the record is clear that the County Board considered the Petition and supporting documents and compared it to relevant factual information, which were detailed in extensive written findings. No abuse of discretion occurred.

IV. CONCLUSION

The SBA Appeal does not provide support for a finding that the County Board abused its discretion when it denied establishment of SBA as per their Petition. Accordingly, this matter should be summarily denied.

Please contact me with any questions.

³⁷ DR-428.

³⁸ DR-415-16.

³⁹ DR-416.

⁴⁰ DR-416-17.

⁴¹ DR-417-18.

⁴² DR-418-19, 423-24.

⁴³ DR-422.

⁴⁴ DR-424-25.

⁴⁵ DR-425-27.



Michael Davies-Hughes
Superintendent of Schools

Sincerely,

A handwritten signature in black ink, appearing to read "Thom McMahon", with a long horizontal flourish extending to the right.

Thom McMahon, Trustee Area 3

President, Humboldt County Board of Education