



SAMOA BEACH
ACADEMY

February 4, 2022

Via Email
tmcmahon@hcoe.org

Thom McMahon, President
Humboldt County Board of Education
901 Myrtle Avenue
Eureka, CA 95501

RE: Humboldt County Office of Education Findings for Denial of Samoa Beach Academy Charter Petition Appeal

Dear Board President McMahon and Board Members:

Samoa Beach Academy (“SBA” or the “Charter School”) is in receipt of the Humboldt County Office of Education’s (“HCOE” or the “County staff”) FINDINGS AND RECOMMENDATION REGARDING SAMOA BEACH ACADEMY, A PETITION FOR A CHARTER SCHOOL (the “findings”), dated January 24, 2022. SBA was quite disappointed that County staff chose to prioritize what amount to differences of opinion over a unique and inspiring option for local educational choice for Humboldt County students.

By law, the establishment of charter schools is to be encouraged. (Education Code Section 47605(c).) In fact, the law mandates approval of charter petitions unless a chartering authority can make written factual findings, specific to the particular charter petition, setting forth specific facts within a list of legally-approved areas. (Education Code Section 47605(c).) We believe that HCOE failed to follow the law, and that, therefore, its findings form an impermissible basis for denial of the SBE charter.

Beyond the legal requirements, SBA believes that County staff have done a deep disservice to local students by advocating to deny a charter school whose innovative public-private partnership is vital to provide the kind of program envisioned in the charter petition. A charter school solely focused on Career Technical Education (“CTE”) would be a game-changer in our county. We understand the skepticism about getting the program off the ground, but fail to comprehend the unwillingness to even try. A schoolwide focus on CTE means that this key pathway will be centered in all aspects of Charter School life. It will not be an auxiliary program that is under-resourced. Further, the investment of substantial private sector dollars into a state-of-the-art facility is an offer that most communities never receive.

We firmly urge the Board to conduct its own due diligence into the proposed SBA charter petition and arrive at its own determination on the merits of the appeal. We are confident that in



doing so, you will conclude that the value of this program outweighs any operational questions, which can be quickly resolved in a memorandum of understanding (“MOU”) between the parties.

Following, please find SBA’s responses (in plain text) to HCOE’s findings (excerpted in *italicized* text and highlighted in gray), in the order in which the findings were presented.

* * *

Unsound Educational Program

CTE Course Integration

HCOE cites to State Board of Education (“SBE”) regulations, legally inapplicable here, 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.” ... In this case, both criteria are met.*

To clear low bar the SBE has set for defining an unsound educational program, Petitioners only have to show that the program does not involve activities that are likely to present physical, educational, or psychological harm, and that the program will benefit students. The SBA petition, on its own, clears this bar.

HCOE makes 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 only discussion of “harm” appears to relate to implementation of multi-tiered systems of support (“MTSS”). The Staff Report indicates that MTSS should be used as a “framework,” but then criticizes the petition for explaining the framework for when certain interventions would be used. This response entirely fails to establish that SBA’s program is likely to cause harm. Responses to specific criticisms are addressed further below.

The second prong of the test is that the program is not likely to be of educational benefit to the pupils. The criticisms appear to relate to course integration and presumed capabilities (or lack of capabilities) of teachers, rather than educational benefit of the program. The criticisms also relate to whether students will be able to change pathways to a different CTE pathway after they have selected a pathway to follow. These criticisms do not support a conclusion that the SBA program will not be of educational benefit to the pupils, as discussed in greater detail below.

As reflected in the Petition, students will be well cared for and educationally challenged. They will have access to a program that will lead to well-paying jobs. Those facts, alone, are sufficient to show that the Charter School presents a sound educational program. Certainly, the



Staff Report fails to include sufficient proposed factual findings to make the determination that the proposed program is educationally unsound.

The Petition emphasizes CTE integration into the general education curriculum but is lacking detail reflected in the course descriptions. Despite being many pages long, the Petition only superficially describes the educational program.

This finding is entirely unsubstantiated by facts and includes no references to the CTE program actually described in the charter petition. The law requires the charter petition to contain a “reasonably comprehensive” description of the educational program. (Education Code Section 47605(c).) HCOE’s finding well exceeds any definition of reasonably comprehensive, and is based on answers provided during a meeting, not the charter petition. This renders the finding an unlawful basis for denial of the charter.

The SBA effort is being led by volunteer Board members, who have deep experience in many of the aspects necessary to run a successful charter school. The Board shapes the vision for the Charter School and embraces the foundational aspects of the Charter School. It works to develop and support the framework for the Charter School. Once the vision is in place, through collaboration with SBA staff and stakeholders, the Board assists in the development of the specifics that live with in the vision for the Charter School. The specific curricular objectives and lessons, the specific pathways, the specific organization for instructional delivery, the specifics of the supports available for students, and so on. Only upon charter approval, can the Board hire staff to create this collaborative process.

The [staffing] plan proposes hiring ten different teachers with a total of ten different credentials. Many of the teachers would be hired at less than full time employment, and some teachers would be expected to teach up to five unique courses. Each of those courses also is required to implement both CTE integration and A-G coursework on top of regular coursework. This plan is simply unrealistic and reflects a clear lack of understanding of reasonable expectations of teachers by Petitioners.

As above, findings for denial must contain specific facts from the particular petition. This finding is purely speculative in nature and simply dismisses the efficacy of SBA’s plan, without meaningfully considering it.

SBA provided two samples of master schedules to the County staff as per their request. In the first sample, each teacher only teaches two (2) different courses, not five (5). Additionally, SBA plans on using industry professionals to teach one (1) CTE course in each of the pathways. The CDE encourages schools to use industry professionals for CTE so that the students learn from instructors with current skills by credentialing professionals through the Industry Experience Recency Requirement (<https://www.ctc.ca.gov/educator-prep/cte>).



SBA is following the legislation¹ that CTE is integrated in core content areas in order to ensure that students are prepared for college or career. The SBE approved the CTE Model Curriculum Standards in May 11, 2005 which include the Standards for Career Ready Practice which are described in detail in the charter petition. The Standards for Career Ready Practice are intended for completion by all students in California either prior to entering a career technical education program or as integrated into other coursework in preparation to meet career and college readiness. The idea that it is “unrealistic” to integrate CTE standards into core content coursework which is already meeting the A-G requirements is outdated since CTE standard integration in curriculum has been practiced in California since 2005.

While SBA recognizes that recruiting and hiring well-qualified and credentialed CTE instructors will take time, there is no information in the Petition that suggests that SBA would be unable to recruit and hire the necessary instructors to teach students at SBA, and the County has no factual basis for making this assertion. As evidenced in Appendix B, SBA has obtained signatures of credentialed teachers who are meaningfully interested in teaching at SBA upon the approval of the charter. SBA remains confident that it can recruit and hire like-minded CTE instructors who have a desire to serve the students of our community by bringing their experience and expertise to SBA. In fact, many CTE instructors have reached out to SBA because they want to work at a Charter School, even without contributions to the State Teachers’ Retirement System, where CTE is the focus and not an afterthought. In their own words, they “are tired of being second class citizens.”

Assuming that teachers will be incapable of teaching different courses, or that teachers will be incapable of teaching both college-track and CTE-track students, is disrespectful to teachers and inconsistent with reality, particularly in smaller communities. Further, insisting that the proponents of the program explain how the teachers will integrate CTE subjects into their lessons—rather than concluding that credentialed teachers are qualified to prepare lesson plans—is surprising and unrealistic. Regardless, **assumptions** that teachers will be incapable of teaching students is not a lawful basis from which to conclude that that program is not likely to be of benefit to the students.

Chosen CTE Pathways

The method of choosing CTE pathways is likely to lead to an unfocused program that students cannot complete.

This finding is speculative and not a reason for denial. SBA wants our students to graduate from SBA and go on to work in our community. The input we received from our Business Partners

¹ Education Code Section 51226 provides legal authority to develop the CTE standards and framework. This legislation requires the development and adoption of CTE standards that incorporate the integration of career technical and academic education no later than June 1, 2005.



also helped to determine the pathways. SBA made a cognitive choice not to duplicate the programs currently available in the County in order to provide even more choice for students and families.

This criticism appears to disregard the fact that students must complete specified coursework for high school graduation, and that there are limited elective course slots available to complete the CTE training. Certainly, SBA would make every effort to support a student who wanted to change tracks, but, practically, it may be difficult for them to complete all required coursework in the available time. The fact that a few students might decide later in their high school career that they would rather be a health worker and not a construction worker, for example, does not mean that the program, as a whole, will not be of educational benefit to the students.

Student Supports

The Petition, on its face, raises concerns regarding whether the proposed program will meet the needs of more vulnerable and more at-risk students.

HCOE's findings come down to a difference of opinion. SBA cited research to support its plans for a Multi-Tiered System of Supports and its Restorative Practices and Circles. County staff simply disagree with that research and offer their own. This difference of opinion does not render the educational program unsound; it is not likely to harm students, and it does provide a reasonably comprehensive description of the supports that will be offered.

HCOE speculates about the nature of SBA's professional development plans. First, this is not a required component of the charter petition; and second, this find is based on assumptions alone, and not facts. County staff go on to speculate about SBA's potential English Learner population. Such speculation is an impermissible reason for denial of the charter petition. The Charter School made affirmations about how it will serve this student population. Once the charter is approved, HCOE can hold SBA to those promises.

Finally, regarding students with disabilities, the Petition reflects a lack of understanding of students with disabilities and serving said students.

Setting aside HCOE's sanctimonious lecture on parlance, the SBA petition, and the petitioners, have shown time and again that they can deliver a legally-compliant, beneficial program for students with disabilities. In accordance with Education Code Section 47605(c)(5)(A)(i), the SBA Petition contains a reasonably comprehensive description of the educational program of the charter program, including a description of its plan to serve students with disabilities, on pages 76-91 of the Petition. There is no legal requirement for the entire scope of the Charter School's special education program to be included in the Petition in its entirety. SBA has clearly stated that it "shall comply with all applicable state and federal laws in serving students with disabilities, including, but not limited to, Section 504 of the Rehabilitation Act ('Section 504'), the Americans with Disabilities Act ('ADA') and the Individuals with Disabilities Education Improvement Act." (Petition, p 76.) The Charter School shall ensure that all aspects of



its plan to serve students with disabilities will be implemented in a manner that fully complies with all applicable legal requirements. The County’s statement that the Petition “paints a false narrative of how students with disabilities will be served” is a dangerous falsehood.

SBA budgeted to spend \$7,301 per special education student. This is an appropriate estimate, considering the fact that it is impossible to know exactly what the costs for special education will be until students with disabilities actually enroll. The comparison in the Findings is beyond the scope for approval or denial.

The findings accurately state that “the costs of serving students with disabilities will necessarily vary based on student enrollment;” yet County staff continue to express concern over budgeted costs, in direct contradiction of their stated observation. For example, the analysis compares the year 1 special education budget of SBA to Six Rivers Charter School, describing the latter as “an established charter school located within [Northern Humboldt Union School District (“NHUHSD’s[“]” boundaries.” Based on the projected number of students served, SBA had budgeted costs of \$7,301 in year one, increasing to \$9,613 in year five. Six Rivers Charter School, in comparison, budgets per student spending of \$8,550 (according to NHUHSD, in a communication to SBA. For this comparison to be meaningful, HCOE should not be comparing the operating costs of a first-year charter school with the operating costs of an “established” charter school. HCOE’s analysis also notably excludes the fact that the SBA budget exceeds the comparative spending of Six Rivers Charter School, once the former becomes an established charter school.

County staff make a comparison to NHUHSD’s cost to educate a student with disabilities, but also point out that “many charter schools do have lower per-pupil costs for special education,” acknowledging this comparison is moot.

SBA has consistently committed to meeting the needs of all special education students and has drafted its budget based on the information currently available. As with all public schools in California, SBA will continue to update, revise, and refine cost estimates as they are available.

Universal Meals Program

The Petition does not reflect implementation of the Universal Meals Program.

HCOE’s concern in this area of the budget is regarding the number of students receiving required meals and the related costs thereof. However, County staff omit from their analysis the directly correlated increase in revenue, from both the National School Lunch Program and the School Breakfast program, which would pay for the additional meals noted. Since the higher meal count would be paid for through established State and Federal programs, the ending result of a higher participation in the meal program will have no material impact on SBA’s proposed budget surplus or reserve balance. HCOE also acknowledges that “Petitioners did indicate that they intended to provide both breakfast and lunch.”



Other Instructional Components

The Petition indicates that the Charter School will offer dual enrollment opportunities at College of the Redwoods and Humboldt State University. Although Petitioners are not expected to have those programs in place at this time, Petitioners were unable to articulate what steps they would need to take to implement that aspect of the program.

Again, HCOE’s finding here is based on a capacity interview where the Petitioners did in fact explain the steps that would be taken to offer dual enrollment and not based on the charter petition, and is therefore an impermissible basis for denial of the charter petition.

When asked, Petitioners did not demonstrate an understanding of the rules and regulations developed by the California Interscholastic Federation (“CIF”), or of how they would implement any CIF sports at their school.

Again, HCOE’s finding here is based on a capacity interview where the Petitioners did in fact explain the steps that would be taken to offer sports and not based on the charter petition, and is therefore an impermissible basis for denial of the charter petition

Demonstrably Unlikely to Successfully Implement

The second purported ground for denial of the charter petition is discussed beginning at page 9 of the Staff Report, addressing the conclusion that “petitioners are demonstrably unlikely to successfully implement the program.” The Report cites to an inapplicable SBE regulation regarding the circumstances under which charter school petitioners would be demonstrably unlikely to succeed.

HCOE claims that Petitioners are unfamiliar with the law and contents of the Petition, but only does so by vague reference to the discussion “above.” Petitioners cannot identify any location “above” in which they were accused of being unfamiliar with the Petition. The only discussion of being unfamiliar with the “law” was not the law at all, but an assertion that the Petitioners were unfamiliar with the California Interscholastic Federation (“CIF”) for how sports would be implemented. The fact that SBA might need to review CIF requirements when applying for recognition of sports, once those sports are identified as of interest to the student body, is not a lawful basis to deny the Petition.

The primary challenges seem to be to SBA’s financial plan, and those challenges are discussed in detail below. In addition, Petitioners respond to criticism of their background below.



Financial Plan

Enrollment projections are unrealistic based on the actual student population in the areas SBA would serve and historical data from other local charter schools. This results in over-projection of LCFF funds.

SBA feels confident that the enrollment projections are accurate based on community support. There is growth in the community of Samoa with new housing being added. Families have come to SBA looking for school choice and an immersive CTE program.

Average Daily Attendance (“ADA”) predictions are significantly above local averages for high school. This results in an over-projection of LCFF funds.

Similar to myriad other contradictions contained in the findings, County staff raise concerns over SBA’s budgeted 95% attendance rate, yet note that the proposed rate is only 1.01% higher than statewide averages and “it is not unusual for charter school attendance rates to exceed those of the local school district.” County staff clearly do not believe in the merits of this finding; as such, it is an impermissible basis for denial of the charter petition.

Overestimated special education funding for the first year, combined with underestimation of costs of special education.

The calculation of AB602 State Special Education funds was based on the formula provided by the County Office of Education. The detailed calculation is as follows:

<u>Source</u>	<u>Funding Rate</u>	<u>SBA Count</u>	<u>Total</u>
AB602 Augmentation	\$ 9,518	0	\$ -
Rate per Undup.	\$ 2,255	24	\$ 54,623
Base rate per ADA	\$ 104	142.50	\$ 14,798
		Total Funding	\$ 69,421
		Federal Portion	\$ 27,264
		State Portion	\$ 42,157
		State Rate per ADA	\$ 296

The timing of cash flow is based on the first principal apportionment calculation, divided by 20% for each of the remaining months, a manner consistent with most SELPAs throughout the State.



Budget for staffing is unrealistic.

SBA’s average teacher salary was based on the NHUHSD certificated salary schedule, SBA then added appropriate cost of living increases to arrive at the average starting teacher salary of \$51,500. This is the equivalent of the NHUHSD’s BA+30, or 5th step on the salary scale. NHUHSD’s current average teacher salary is higher than the average proposed by SBA because the District has a higher average years of experience since it has been in existence. It would be incorrect to assume that a new charter would have the same staffing in its first year of existence. Furthermore, the benefits package offered is consistent with charter schools operating across the State. Based on recent data, only 60% of charter schools participate in STRS, and while SBA will not be participating, the school will be offering (and has budgeted) a 5% match for all employees to a 403b retirement plan, an amount significantly higher than a typical charter school.

There is no budget for food service staffing, maintenance/custodial staff, paraprofessional staff, or secretary/Registrar, each of which are contemplated in the Petition.

HCOE notes that the budget does not include food service staff, maintenance/custodial staff, or a Secretary/Registrar. However, the same paragraph also acknowledges that “cafeteria services will be outsourced” (see SBA budget, account 4700). Furthermore, the Charter School will be outsourcing janitorial services (budgeted in account 5502 at \$24,000 in year 1) and the Secretary/Registrar is the only position in account 2400, and is included in all five years of the budget.

Payroll services costs appear low.

County staff note that the payroll service fee is below the HCOE cost to provide service, and offer speculation in this finding. This statement has no bearing on the County Board’s consideration of the charter petition appeal. SBA’s payroll will be processed by Charter Impact. The amount included in the budget is based on the fee proposed by Charter Impact. This is a clear example of how a charter school can identify service providers and operating costs below those utilized by school districts and county offices of education, which are consistently, and unfairly, used as a benchmark throughout the findings.

Total costs associated with facilities are extraordinarily high, as discussed below.

Please see detailed response immediately following.

Facilities

Under “Concerns regarding Facilities,” the findings contend that the cost of the proposed facilities is excessive and that Dan Johnson’s advocacy for the proposed Charter School and



consultation with the organizers precludes leasing the facility from the Danco Group if the proposal is approved. Both HCOE conclusions are incorrect and unsupported.

Purported excessive cost

The County staff's conclusion regarding the cost of the facilities is materially inaccurate and misleading because it compares two facilities that are substantially different from one another. HCOE relies on lease costs incurred by Northern United – Humboldt Charter School in comparison. However, in calculating the cost per square foot at SBA, the findings first fail to account for substantial facilities proposed at SBA that Northern United does not appear to offer, such as athletic fields, a gym, and specialty training facilities. Further, the Northern United curriculum does not include the training to be offered at SBA, which requires specialized equipment; a significant amount of the lease cost for SBA includes the cost of leasing such equipment. By spreading the total cost over only a small portion of the SBA facilities and failing to address equipment costs, the findings artificially inflate the SBA lease cost. Comparing lease costs of two schools with substantially different facilities and equipment is not meaningful.

To establish that the lease costs are unreasonable, County staff would have to identify a **comparable** facility meeting SBA's specialized needs in the area in which the Charter School is proposed. The Report does not identify any such facility and, to the knowledge of the petitioners, no such facility exists. Thus, the facility must be constructed or materially modified, complying with detailed State requirements for school facilities and protection of students and providing for the specific needs of the Charter School. The facility also would have to be furnished with the specialized equipment required. The Report makes no effort to establish that a new facility could be constructed and furnished to meet the needs of SBA at a cost anywhere near the cost proposed, let alone a lower cost.

Even if the rental rate could be compared between the two facilities, which, again, it cannot, the rate stated in the findings is substantially overstated. Considering the rate in 2025-26, after the ramp-up period Danco proposed before charging full rental rates, a rate of \$624,240 equates to **\$11.50 per square foot** for the entire rented square footage, including the gymnasium.² Even that rate is overstated because it allocates all costs of the athletic field to square footage, essentially assuming that there would be no cost to leasing the athletic field.

The rates charged are less than would be expected for leasing a build-to-suit facility, particularly one that must be built at higher costs with State requirements for school buildings and paying prevailing wages if applicable. In the market, such a facility that cannot readily be leased

² It is unclear how County staff reached a rate of over \$30 per square foot. Even if staff considered only the square footage of the academic building, the rate would be $\$624,240 \div 33,212 \text{ ft}^2 = \18.80 per square foot. To get to the high rate claimed in the findings, staff necessarily excluded certain facilities commonly included in schools, such as common spaces, library, staff offices, food preparation/dining areas, gymnasium, lockers, and space for support services.



for another purpose would be expected to be leased at an annual rate of **no less than** 10% of the construction cost. In fact, the lease rate likely would be higher for a lease as short as the five years included in the proposal, particularly for a lease with a ramp-up period before charging full lease rates. Even at the highest proposed rent (year 5), the lease rate proposed by Danco is only 65% of what would be expected on the low end, or 6.5% of the anticipated construction costs.

Finally, because SBA has not been approved, SBA cannot have committed, and has not committed, to contract with Danco to lease the facilities. Certainly, Danco has offered to construct the needed facilities and specified a rental rate to ensure that SBA can operate as proposed when and if the proposal is approved. However, the governing Board of SBA—if approved—will have to make the final determination as to the facilities to lease. If another facility is available in the location meeting SBA’s needs, then SBA can and will consider such an alternate facility to ensure that the leased premises will both meet the needs of SBA and be appropriately priced.

Purported conflict of interest

The findings conclude that SBA could not lease facilities from Danco because of Mr. Johnson’s advice regarding a potential charter school. HCOE is incorrect in this position, and the principle it suggests would hamstring any public entity’s ability to research and obtain necessary community input. If the findings were correct, then public entities could not obtain any input or information from any community members regarding any potential contracts without risk of invalidating those contracts. Sales representatives meeting with a public entity to discuss desirable features of a product would preclude the agency purchasing the product. The position in the findings could even preclude a company from receiving a public contract simply because the public entity reviewed information on the company’s website or that was published by a company owner in considering what products or services to purchase. However, contrary to the position in the findings, only **contracted** private consultants to a public entity even potentially trigger conflict of interest prohibitions against the consultant performing recommended work.

Mr. Johnson has to date, at most, provided his expertise and support for SBA as member of the community desiring to see SBA come to fruition, and offered Danco’s property development services to support SBA’s facility needs post-charter approval. Neither Mr. Johnson nor Danco has been hired or compensated by anyone to prepare, support, advise, or advocate for the charter school proposal. It has always been clear from the very outset of Mr. Johnson’s relationship with SBA that he was a developer proposing that Danco build and lease facilities for SBA’s use if SBA’s charter were approved. As a site-based charter school seeking to locate in a particular area, it was critical for SBA to identify potential school facilities with a developer before submitting their charter petition, as SBA did. This preliminary legwork to support the merits of SBA’s charter petition, and Mr. Johnson’s support for SBA as a private citizen and local businessman, cannot raise a Section 1090 issue.

As a threshold matter, Section 1090 cannot possibly be considered relevant until after SBA’s charter is approved and Section 1090 is made applicable to contracts approved by SBA



going forward. Education Code Section 47604.1(b), making conflict of interest provisions including section 1090 applicable to charter schools, indicates that it applies to charter schools and entities managing a charter school. An “entity managing a charter school” is a nonprofit entity “that operates a charter school.” (Education Code Section 47604.1(a).) SBA, of course, does not have an approved charter at this time, so it cannot be either a charter school or an entity operating a charter school. As such, the conflict of interest provisions cannot apply to SBA unless and until its application to operate a charter school is approved. Application of Government Code Section 1090 is a prospective question for SBA’s Board only if and when SBA is approved. It is not an appropriate consideration for the application for approval.

Moreover, Section 1090 does not apply to Dan Johnson. Section 1090 prohibits “[m]embers of the Legislature, state, county, district, judicial district, and city officers or employees” from being “financially interested in any contract made by them in their official capacity, or by any body or board of which they are members.” (Emphasis added.) Mr. Johnson is not a member, officer, or employee of any such public entity now. He has not been proposed as a member of SBA’s Board after SBA’s petition is approved. Mr. Johnson will have no “official capacity” of any kind with SBA when SBA’s governing board considers entering into a lease with Danco in the future, and thus Mr. Johnson will be incapable of “making” any contract on behalf of SBA in any “official capacity” for SBA within the scope of Section 1090. SBA’s governing board and employees will have no financial interest in the proposed lease, and will discharge their applicable fiduciary duties to SBA to ensure that entering into the lease is in the best interests of the Charter School. The future consideration of a lease with Danco by SBA’s governing board raises no Section 1090 issue.

HCOE’s conclusions regarding Section 1090 rely on cases holding that consultants and independent contractors *can* be considered “employees” for purposes of Section 1090 in certain circumstances. As the California Supreme Court affirmed, “section 1090 liability extends only to independent contractors who can be said to have been entrusted with ‘transact[ing] on behalf of the Government.’” (*People v. Superior Court (Sahlolbei)* (2017) 3 Cal.5th 230, 240) (Citation omitted.) “An individual’s status as an official under [section 1090] turns on the extent to which the person influences an agency’s contracting decisions or otherwise acts in a capacity that demands the public trust.” (*Id.*) (Citation omitted.)

As an example, the Court noted that “a stationery supplier that sells paper to a public entity would ordinarily not be liable under section 1090 if it advised the entity to buy pens from its subsidiary because there is no sense in which the supplier, in advising on the purchase of pens, was transacting on behalf of the government.” (*Id.*) Section 1090 is concerned with a different issue regarding contractors, not present here, namely involving “a contractor who has been **retained or appointed** by a public entity and whose actual duties include engaging in or advising on public contracting is charged with acting on the government’s behalf.” (*Id.*) (emphasis added).

It is thus not enough to invoke Section 1090 that Mr. Johnson “consulted” with SBA’s founders before the Charter School has even been approved—before any public entity existed.



Even if pre-charter-approval “consulting” could be relevant to Section 1090, Mr. Johnson was never retained to “engage in” or “advise on” SBA’s contracting, or as an agent to negotiate on SBA’s behalf. Mr. Johnson was not “hired” as a consultant by SBA in an employment-like relationship, e.g., pursuant to a contract in exchange for compensation. (*Davis v. Fresno Unified School Dist.* (2015) 237 Cal.App.4th 261, 300-301 [“we join the courts in *Hanover* and *Hub City* in concluding that, in civil actions, the term ‘employees’ in Government Code section 1090 encompasses consultants *hired* by the local government.”]) (Emphasis added.)

When SBA’s governing board takes up the matter of the facility lease in the future, and SBA is subject to Section 1090, Mr. Johnson will be no more than an owner of a company that is a potential landlord proposing to lease facilities to SBA. He will not be “transact[ing] on behalf of the Government” or have any role in contracting in an official capacity for SBA within the reach of Section 1090 any more than any other proposed landlord would be. The fact that Mr. Johnson gratuitously provided his input to SBA as it was considering whether a charter school was feasible has nothing to do with Section 1090 or prohibitions on conflicts of interest.

Operational Plan – Staffing

Based on recruitment difficulties faced by other CTE programs in the County, SBA will find it difficult, if not impossible, to recruit qualified CTE staff.

While SBA recognizes that recruiting and hiring well-qualified and credentialed CTE instructors will take time, there is no information in the Petition that suggests that SBA would be unable to recruit and hire the necessary instructors to teach students at SBA. SBA has obtained signatures of credentialed teachers who are meaningfully interested in teaching at SBA upon the approval of the charter. (Appendix B.) These teachers expressed interest in teaching at SBA not only because of the compensation that they would receive but because of the unique aspects of the educational program that SBA intends to offer. Similarly, while SBA recognizes that it will take time and effort, the Charter School remains confident that it can recruit and hire like-minded CTE instructors who have a desire to serve the students of our community by bringing their experience and expertise to SBA.

Petitioners personally lack the necessary background in the area of curriculum, instruction, and assessment

SBA’s proposed program relies on careful, well-planned integration of core course content and CTE standards. Petitioners need to personally have the necessary background to ensure successful implementation of that program. With Ms. Scott’s departure, it is not clear that is the case.

Personal disparagement aside, the SBA Board has stated time and again that it will recruit and hire for curriculum, instruction, assessment, and CTE expertise. The Charter School cannot do that until the charter petition is approved. This kind of criticism has been leveled against charter



schools for more than twenty years. It is speculative and not factual; indeed, it ignores relevant facts. SBA has promised to deliver on the educational program described in its charter petition. The County Board has the prerogative to hold the Charter School accountable to that.

The petition does not contain the number of signatures required

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 is a shockingly bad faith finding. HCOE has invented a requirement – that petition signatures be re-submitted – which has no basis in law, and then faults SBA for not meeting this made-up hurdle. The law requires signatures from meaningfully interested persons at the time the original charter is submitted. It is undisputed that SBA met this requirement. There is no reason for the Charter School to participate in the County’s bad faith attempts to hurt it.

* * *

Samoa Beach Academy respectfully requests that the County Board exercise its independent review and judgment, and take action to approve a five-year charter term. We have documented how each and every County staff finding is inaccurate or violates the law; as such, denying the charter based on the findings will also violate the law. We urge that the findings be set aside, in favor of the default legal position of charter approval.



SAMOA BEACH
ACADEMY

SBA looks forward to answering any questions from the County Board, and the opportunity for collaboration with the County Board to serve the students of our community. Should you wish to discuss our responses to any of the above findings or require additional information, please do not hesitate to contact me at sfdoubled@gmail.com or 707-496-8954.

Sincerely,

David Lonn

David Lonn
Lead Petitioner

cc: Michael Davies-Hughes, Interim Superintendent
Colby Smart, Assistant Superintendent
Loretta Eckenrode, Board Vice President
Mary Scott, Board Trustee
Robert Siekmann, Board Trustee
Sheila Rocker Heppe, Board Trustee