

**STAFF ANALYSIS AND RECOMMENDED FINDINGS OF FACT REGARDING REVIEW OF
SAN BENITO COUNTY POLYTECHNIC ACADEMY CHARTER PETITION**

SEPTEMBER 20, 2023

PROCEDURAL STATUS

The San Benito County Office of Education (“SBCOE”) received a countywide charter petition (“Petition” or “Charter”), from the San Benito County Polytechnic Academy (“SBCPA” or “Charter School”) on June 8, 2023, requesting approval of SBCPA as a countywide benefit charter school for a term of July 1, 2024, through June 30, 2029. The San Benito County Board of Education’s (“SBCBOE”) consideration and action on the Charter is governed by the standards, criteria, and procedures set forth in Education Code Section 47605.6.

SBCPA proposes to operate an in-person high school program that will serve approximately 500 students between the ages of 13 and 22 years when at full capacity. SBCPA plans to open to students for the 2024-25 school year.

On July 20, 2023, SBCBOE held a public hearing on the SBCPA Charter, consistent with the requirement to do so within 60 days of receipt of the renewal charter petition. Per Education Code Sections 47605.6, the County Board has 90 days from receipt of the Petition to act, which may be extended by an additional 30 days by mutual agreement. SBCOE and SBCPA agreed to such an extension of time for SBCBOE action.

The complete Charter that the SBCBOE is acting on is attached to the agenda and is also available for review at:

<https://www.sbcoe.k12.ca.us/files/user/24/file/SBC%20Polytechnic%20Academy%20Charter%20Petition%20Signatures%20redacted.pdf>

**CRITERIA FOR CONSIDERATION AND ACTION ON
A COUNTYWIDE BENEFIT CHARTER PETITION**

The standards and requirements for consideration and action on a countywide charter school petition differ from those applicable to a charter petition that is submitted initially to a school district. Education Code Section 47605.6(b) specifies that a county board of education may grant a charter for the operation of a countywide charter school only if the board is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Education Code Section 47605. Further, the SBCBOE may impose any additional requirements that it considers necessary for the sound operation of the SBCPA.

- I. In order to approve a petition for a countywide charter, a county board must find that the educational services to be provided by the proposed charter school will offer services to a pupil population that will benefit therefrom and that cannot be served as well by a charter school that operates in only one school district in the county and that the petitioner has provided adequate justification for why it could not be established by petition to a school district. (Ed. Code § 47605.6(a) and (b).)**
- II. At least 30 days prior to submission of the charter petition, the petitioners must provide notice to the school districts where the charter school will operate a facility. (Ed. Code § 47605.6(a)(1)(A)-(B).)**
- III. The county board must hold a public hearing on the provisions of the charter at which it considers the level of support for the charter by teachers, parents/guardians, and school districts where the charter school proposes to place facilities. (Ed. Code § 47605.6(b).)**
- IV. The county board shall deny a countywide charter petition if it makes one or more of the following findings: Education Code 47605.6 (b) (1)-(7)**
 - (A) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.
 - (B) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
 - (C) The petition does not contain the number of signatures required by Education Code Section 47605.6(a).
 - (D) The petition does not contain an affirmation of each of the conditions described in Education Code Section 47605.6 (e).
 - (E) The petition does not contain reasonably comprehensive descriptions of all the required elements.
 - (F) The petition does not include a declaration of whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the Educational Employees Relations Act (EERA).
 - (G) Any other basis that the County Board of Education finds justifies the denial of the petition.
- V. The county board is to require charter petitioner(s) to provide information regarding the proposed operation and potential effects of the proposed school, including but not limited to:**
 - ❖ The facilities to be used by the school.
 - ❖ The manner in which administrative services of the school are to be provided.
 - ❖ Potential civil liability effects, if any, upon the school, any school district where the charter school may operate, and upon the county board of education.

- ❖ Financial statements that include a first-year operational budget, including startup costs, and cash flow, and financial projections for the first three years of operation.
- ❖ The names and relevant qualifications of all persons whom the petitioner nominates to serve on the charter school nonprofit corporation’s board of directors.

**REVIEW OF THE CHARTER PETITION, RECOMMENDATIONS,
AND RECOMMENDED FINDINGS**

SBCOE Staff reviewed the Charter using the criteria established in California Education Code Section 47605.6, described above. SBCOE’s analysis, recommendations, and recommended findings are set forth below. The headings correspond to the statutory standards applicable to consideration of a countywide benefit charter, followed by the pertinent analysis, recommendations, and recommended findings.

- I. In order to approve the SBCPA countywide Charter, the SBCBOE must find that the educational services to be provided by the proposed SBCPA will offer services to a pupil population that will benefit therefrom and that cannot be served as well by a charter school that operates in only one school district in San Benito County, and the SBCPA petitioner has provided adequate justification for why it could not be established by petition to a school district. (Ed. Code § 47605.6(a) and (b).)**

The Charter proposes to open and operate an in-person charter school in San Benito County. SBCPA specifies that its target student population is at-promise youth with a goal of closing the achievement gap for “San Benito County’s largest and lowest performing subgroups--Hispanic, English Learner, and Socioeconomically Disadvantaged students, students with disabilities, and students at risk of leaving school prior to graduating, or those who have already left and wish to return to graduate.” Pages 11-18 of the Charter described SBCPA’s rationale for seeking approval as a countywide benefit charter school, rather than submitting the Charter to an individual school district.

The Charter specifies:

In reviewing the educational and physical landscape in San Benito County, the San Benito County Polytechnic Academy leadership, along with a team of advisors, understand that the challenges of developing and maintaining a small, highly targeted academic program often limit the opportunities for students, especially underserved students on the wrong side of the achievement gap in smaller districts. The idea of providing a unique and consistent educational program that is not only highly personalized but that operates across San Benito County, drawing on the scale of need across all of San Benito County, will make the program’s benefits equally and equitably accessible to all students residing in the county regardless of their district of residence. This is the core of why the Charter School seeks to operate as a countywide benefit charter school.

* * *

The San Benito County Board of Education is justified in approving this countywide benefit charter because the educational services to be provided by the charter school will offer the “at-promise” student population a program that is academically sound and tailored to their specific needs, is not offered anywhere else in the county, and cannot be

offered within a single school district without increasing educational inequity in the areas of the county not served.

(Emphasis in original.)

Based on its analysis of the Charter, including the rationale for countywide status, SBCOE Staff has made the findings necessary for approval of a countywide benefit charter, as distinct from a charter petition submitted to a school district.

SBCPA is proposing a sound educational program that will target and serve historically underserved student populations, with a focus on at-risk youth, including engaging and/or reengaging traditionally underserved student groups. The proposal includes dual enrollment opportunities, CTE pathways combined with a college preparatory program, long-term early college and career support and counseling, and SBCPA's "five-part educational experience." This includes bringing students who have fallen behind up to grade-level standards to succeed in a college preparatory program, potentially with an extended five- or six-year course of study. The educational program, including these components, will benefit the proposed pupil population.

As a countywide charter school, students from throughout San Benito County will all receive equal preference in admission to SBCPA, whereas a charter submitted to a single school district must give preference to students who reside in that district, rather than the county as a whole. This will allow all county resident students who can benefit from SBCPA's program to have equal access to enrollment at SBCPA. This is a particularly important distinction given the unique makeup of the school district with high school programs in the County. Approximately 93 percent of all high school students in the County reside in SBHSD and only approximately seven percent in ASJUSD. Were the Charter to have been submitted to SBHSD – the district that encompasses Hollister, where the school intends to locate – residents of ASJUSD would be at a distinct disadvantage in endeavoring to enroll at SBCPA.

For all of these reasons, SBCOE Staff finds, and recommends that SBCBOE find, that the educational services to be provided by the proposed SBCPA will offer services to a pupil population that will benefit therefrom and that cannot be served as well by a charter school that operates in only one school district in San Benito County, and the SBCPA petitioner has provided adequate justification for why it could not be established by petition to a school district.

II. At least 30 days prior to submission of the charter petition, the petitioners must provide notice to school districts where the charter school will operate a facility. (Ed. Code § 47605.6(a) (1) (A)-(B).)

SBCPA proposes to operate within the boundaries of the San Benito High School District ("SBHSD") and/or the Aromas-San Juan Unified School District ("ASJUSD"). SBCPA provided evidence that it gave notice to SBHSD and ASJUSD on April 3, 2023, of its proposed countywide Charter, which was at least 30 days prior to submitting the Charter to SBCOE.

III. The county board must hold a public hearing on the provisions of the charter at which it considers the level of support for the charter by teachers, parents/guardians, and school districts where the charter school proposes to place facilities. (Ed. Code § 47605.6(b).)

The SBCBOE held the required public hearing on the provisions of the SBCPA Charter on July 20, 2023. During the public hearing, local community members, including parents and students, and the SBHSD

and ASJUSD Superintendents and another SBHSD administrator addressed the SBCBOE to express their support or opposition to SBCPA's charter petition. Twenty public speakers expressed support for the SBCPA charter, and four (including the three local school district representatives) spoke in opposition to the SBCPA charter. SBHSD and ASJUSD also both submitted written correspondence opposing the SBCPA Charter.

IV. The SBCBOE shall deny the SBCPA countywide Charter Petition if it makes one or more of the following findings: Education Code 47605.6 (b) (1)-(7)

SBCOE Staff recommends that the SBCBOE not make any of these findings because the Charter satisfies the statutory requirements, as detailed below. However, SBCOE Staff finds that there are areas of the Charter that should be supplemented and/or revised, and there are requirements and conditions that SBCBOE should impose on the approval of SBCPA in order to comply with SBCOE's expectations for the operation of a proposed countywide benefit charter school for the sound operation of the school. As such, SBCOE recommends that SBCBOE impose additional requirements, as described herein, as necessary for the sound operation of a countywide charter school in accordance with Education Code Section 47605.6(b).

Specifically, Staff recommends that SBCBOE require SBCPA to enter into a Memorandum of Understanding ("MOU") with SBCOE, which MOU must include the terms satisfactory to the County Superintendent and/or designee, in their sole discretion, that will govern the SBCOE's oversight of SBCPA, and clarify and provide greater specificity regarding SBCPA's operations pursuant to the Charter, and that will address Staff's recommendations regarding the Charter, including but not limited to those specified in this Staff Analysis and Proposed Findings of Fact ("Staff Analysis") and any additional recommendations and requirements as noted by the SBCBOE. The MOU shall be coextensive with and remain in full force and effect throughout the current term of the Charter, unless revised by the parties in accordance with applicable law and provisions of the MOU. Further, the term of the MOU shall continue in full force and effect beyond the current term of the Charter, including during the period of any renewal granted by the SBCBOE or during the pendency of any challenge to a denial of a renewal request, unless and until such time as (a) SBCOE, SBCPA, and Polytechnic Academy (SBCPA's governing entity) agree in writing that a replacement MOU shall supersede this MOU; (b) SBCOE, SBCPA, and Polytechnic Academy specifically agree in writing that the MOU is terminated; or (c) SBCPA ceases operating for any reason and relinquishes/loses its Charter. Upon termination of the MOU any provisions of the MOU and/or Addendum to the MOU that specify that they shall survive the termination of the Charter and/or MOU, and/or closure of the Charter School shall remain in full force and effect in accordance with their terms. The MOU shall be incorporated into the Charter and made a part thereof as if set forth in full in the Charter itself for all purposes, including for purposes of Education Code Section 47607 controlling charter revocation. In the event of a conflict between the law and the terms of the MOU, the law shall prevail, and any such conflicting terms shall be revised by mutual agreement of the parties. To the extent that there are any inconsistencies or conflicts between the MOU and the approved Charter, the terms of the MOU shall control and prevail and shall be interpreted and deemed updates and clarifications to the Charter.

(A) Does SBCPA present an unsound educational program for the pupils to be enrolled in the school?

The SBCPA Charter presents a sound educational program for the pupils to be enrolled in the Charter School.

The Charter proposes to operate a high school program for 9th-12th grade students to address the needs of “at-promise” students, which includes students who are English Learners, academically underperforming, chronically absent, at risk of not graduating, or who have dropped out of school. The Charter intends to provide a standards-based, culturally diverse curriculum intended to fill the gaps and skills students need to be successful. Students will engage in learning in different ways, based on their individual needs. Options for instruction include in-person classroom instruction, blended learning, or independent study. Students will have access to online courses, dual enrollment options, internships, and opportunities to earn workforce certification.

SBCPA students are required to earn a minimum of 190 credits, but will be encouraged to earn 240 credits, including taking 15 courses that meet the University of California “a-g” requirements so that they graduate “a-g” qualified. The school will use a mastery-based grading approach. Through the eight-week credit accrual system, students will be able to earn 80 credits each year. The multi-track, year-round calendar will allow students the option to attend school the entire year so they can accelerate their learning. Credits may be earned by passing the offered courses or through demonstration of mastery. SBCPA needs to develop a policy to SBCOE’s satisfaction that includes the requirements for demonstration of mastery and the process for obtaining credit that ensures educational parity with the related course.

The Charter intends to provide instruction on Leadership and Digital Citizenship for students as part of the instructional program. In addition, students will earn career pathway experience in the areas of Agriculture Science and Technology, Construction Trades and Community Development, and Healthcare Sciences. Pathway-specific courses are standards-based. Students will also be able to obtain online skills certification, such as Google Certification, which will assist them in becoming eligible for high-paying jobs.

SBCPA intends to seek WASC accreditation immediately. The Annual Calendar and Instructional Calendar indicate that instructional days and minutes will exceed the minimum number required for apportionment.

The Charter appropriately describes how SBCPA will meet the requirements related to English Language Development (ELD) and Reclassification and provide services pursuant to the requirements of Section 504 of the Rehabilitation Act of 1973.

SBCPA’s Charter indicates its intent to be a school of SBCOE for purposes of compliance with the Individuals with Disabilities Education Improvement Act (“IDEA”). The Charter includes resources to comply with SBCPA’s Child Find obligations and provide appropriate support and services for students eligible for special education. It also includes language indicating that SBCPA will work collaboratively with SBCOE to ensure compliance with the Special Education Local Plan inclusive of policies and procedures. The Charter includes a description of how SBCPA proposes special education and related services will be provided and funded, which SBCPA explicitly specifies is for purposes of providing a reasonably comprehensive description of this topic and SBCPA recognizes that it is not binding on SBCOE. SBCPA expresses its intent to enter into a separate memorandum of understanding with SBCOE, governing compliance with the IDEA that will more clearly define how special education funding will be allocated and services will be provided. SBCOE Staff agrees that a separate written agreement – whether as part of the primary MOU or separate therefrom – is necessary to define and govern SBCPA’s compliance with the IDEA as a school of the SBCOE for such purposes. SBCOE Staff finds that the description in the Charter is reasonably comprehensive for these purposes, though SBCOE does not agree to the specific terms as “proposed” by SBCPA in the Charter. Instead, as a requirement of approval for

the sound operation of the school, SBCOE and SBCPA will need to enter into a memorandum of understanding detailing how SBCPA will comply with the IDEA as a school of SBCOE for such purposes.

(B) Are the petitioners demonstrably unlikely to successfully implement the program set forth in the Petition?

The SBCPA Petitioners are not demonstrably unlikely to successfully implement the program set forth in the Petition:

After reviewing the Charter, Staff has determined that it is educationally and fiscally sound and that there are reasonable plans for implementation of the proposed program, though, as a requirement of approval, SBCPA should supplement and/or revise provisions through an MOU(s), as described more fully in this analysis, to be consistent with best practices and SBCOE expectations for the sound operation of the school.

(C) Does the Petition contain the number of signatures required by Education Code Section 47605.6(a)?

SBCPA provided the required number of signatures. SBCPA anticipates enrolling 200 students in its first year of operation, so was required to submit signatures of parents/guardians of at least 100 students who would be in the grade levels to be served by SBCPA in its first year of operation who are meaningfully interested in enrolling their students at the school. SBCPA submitted more than the minimum number of parent/guardian signatures.

(D) Does the Petition contain an affirmation of each of the conditions described in Education Code Section 47605.6 (d)?

The Charter includes the required affirmations. Some of the affirmations are included in the Admissions Policies and Procedures element of the Charter rather than in the “Affirmations and Declaration” section on pages 6-7 of the Charter.

(E) Does the Petition contain reasonably comprehensive descriptions of all the required elements?

Staff found that the Charter includes reasonably comprehensive descriptions of each of the required elements sufficient for approval of the Charter, as described more fully below. As also detailed below, Staff further found that SBCPA should be required as a requirement of approval to supplement and/or clarify some provisions of the Charter in order to be consistent with best practices and SBCOE expectations for the sound operation of the school in accordance with Education Code Section 47605.6(b). This Staff Analysis includes the most significant areas of compliance and/or concerns with the various required charter elements, and there may be additional provisions that are not specifically addressed in this Staff Analysis that should be included in the MOU in order to meet these standards for Charter approval.

1. Element One: Description of the Educational Program/Plan for Student Academic Achievement

The information and analysis of the soundness of the educational program provided in Section IV(A), above, is hereby incorporated herein by this reference.

Additionally, the Charter states that SBCPA will incorporate a variety of instructional strategies and programs through an integrated approach to ensure student success. Approaches include the use of Read 180 and Math 180 to develop basic skills as well as small group instruction and weekly meetings with trained mentor coaches. The Charter describes what it means to be an educated person in the 21st Century and states that students will develop Durable Skills, creating portfolios to document their progress. Students will also have the opportunity to certify workplace skills by earning the WorkKeys National Career Readiness Certificate (NCRC). SBCPA will make after school tutoring and career programs available to students.

To address motivational challenges, SBCPA will connect students to real-life experiences, use culturally relevant curriculum, and provide opportunities for service learning. Each student will work with staff to develop a Personalized Success Plan. Support staff includes an instructional aide to assist with academics and a counselor to provide counseling and wrap-around services. Post-secondary support and follow-up will be provided by a school counselor.

To address learning loss and ensure student success, students will be matched to instructional practices based on individual need and circumstance. Progressions may differ from the normal four-year pathway through high school, resulting in some students taking five or six years to graduate. Instructional practices will focus on mastery learning and providing as much flexibility as possible to maximize learning, allowing students to catch up or get ahead.

SBCOE Staff believes that this element of the Charter is reasonably comprehensive, but provisions need to be supplemented and/or revised through the MOU in order for this element to be consistent with best practices and SBCOE expectations for the sound operation of the school.

2. Element Two: Measurable Student Outcomes

The Charter states that SBCPA will apply for Dashboard Alternative School Status (DASS) for accountability purposes. Students will be measured through formative assessments that include iReady (administrated four times per year), Read 180, Math 180, Personal Success Plans and course projects and demonstrations. Summative assessments to be used are the CAASPP, the PSAT, the ACT, and the WorkKeys National Career Readiness Certificate. The reasons for selecting each assessment are outlined in the Charter.

SBCOE Staff believes that this element of the Charter is reasonably comprehensive.

3. Element Three: Method by Which Pupil Progress in Meeting Outcomes will be Measured

The Charter includes appropriate and relevant Goals, Actions, and Measurable Outcomes aligned to each of the State Priorities. Additionally, SBCPA intends to collect student performance data and share it with parents and students on a regular basis. Parents will have access to their student's performance information and data. Parents will be surveyed to determine whether they are satisfied with the school program and operations and school staff will also partake in similar surveys.

SBCOE Staff believes that this element of the Charter is reasonably comprehensive.

4. Element Four: Location of Each Charter Facility

SBCPA provided notice of its Charter to both SBHSD and ASJUSD, thereby indicating that it will seek to operate within one or both of those districts. The Charter specifies that it plans to locate in Hollister. The Charter specifies that it is seeking a facility for 500 students by 2026-27, and an intent to seek interim facilities for the first two years of operation. The Charter further indicates that SBCPA is currently negotiating for interim space to allow the school to open July 1, 2024, and during the public hearing, SBCPA representatives also indicated that they were working on acquiring interim space. The Charter specifies that, at full capacity, it will need a facility of approximately 30,000 square feet and lists a variety of specific basic facility features that it will require, including 16 classrooms/learning labs, office and meeting space, outdoor activity and play space, and general HVAC and technology needs.

The Charter does not specify whether it anticipates qualifying for and/or seeking an SBHSD or ASJUSD-owned facility pursuant to Education Code Section 47614, commonly referred to as “Proposition 39.”

Staff finds that it is reasonable for SBCPA not to have secured a facility prior to submitting the Charter, as it will only need and be in a position to expend funds on a facility if its Charter is approved. Staff believes that this element of the Charter includes a reasonably comprehensive description. However, securing adequate, appropriate facilities for operating the proposed school in a manner consistent with the Charter is essential to the student educational experience and compliance with the terms of the Charter. As such, Staff recommends that the SBCBOE impose as conditions of approval for the sound operation of the school that the MOU include requirements regarding (1) the specific timing by which SBCPA must secure facilities and provide a facility plan sufficient to support all aspects of the program as outlined in the petition; (2) that SBCPA provide information about the total cost for acquisition of a facility, including payment terms, as well as a list of sufficient funding sources to demonstrate that adequate funding is available to cover the cost of the purchase/lease of the facility and its maintenance and upgrades; and (3) that SBCPA obtain all authorizations for use – including certificates of occupancy and all safety clearances (including fire life safety clearances) – establishing that the facility is legally compliant and approved for operation of SBCPA in advance of opening. If SBCPA does not timely comply with all of these requirements, SBCPA shall be required to delay opening to students until it complies with each of these requirements, which, depending on the timing of compliance, may be a delay until a subsequent school year at the County Superintendent’s discretion.

5. Element Five: Governance Structure

The Charter is to be operated by Polytechnic Academy, a California nonprofit public benefit corporation currently seeking nonprofit status, which is governed by a Board of Directors. The bylaws specify that it is a corporation without members, and Staff recommends that approval of the Charter include a requirement that Polytechnic Academy may not have any members at any time it is operating/governing SBCPA, in order to protect the integrity and transparency of the governance structure and SBCPA’s operations.

The Board is proposed to include three to seven members – there are currently three members – and the Charter acknowledges SBCBOE’s right to appoint a representative. The Charter includes the names and relevant qualifications of the current members of the Board of Directors. Three members is unusually small, and Staff recommends that the minimum number of members be increased to five, and that there be an odd number of members in order to avoid tie votes.

The bylaws provide for the Board to create committees of two or more members, which “shall have all the authority of the Board, to the extent provided in the Board of Directors’ resolution,” with a few limited exceptions. This would authorize the Board to transfer full authority for many governance decisions to as few as two members of the Board of Directors, which could result in important actions being taken and governance decisions made by a minority of the Board. Additionally, it appears that the intent of the bylaws is that a majority of the members in office shall constitute a quorum for holding a meeting, but acts and decisions of the Board shall be by a majority of Directors in attendance at a meeting. This could result in action by a minority of Board members. (For example, a quorum of a seven-member Board would be four, so if four Directors attend a meeting, approval by only three members would be adequate to take action.) Notwithstanding the legal minimum requirements granted to nonprofit corporations, it is concerning for SBCPA to provide for action by a minority of the members of the Board of Directors of a public charter school. Staff recommends that both of these provisions be required to be revised to ensure that committees be limited to advisory roles, with actions of the Board not delegated to a committee, and that actions must be taken by a majority of members, not only a majority of a quorum.

The Charter specifies that the Board of Directors may delegate to any employee all authority except budget approval/revision, approval of the financial audit and performance report, contract approval over \$100,000, and approval of the financial audit. This provides too much authority to delegate major operational and governance decisions, including, for example, decisions to close the school or entirely revise the proposed educational program. This could potentially result in an employee effectively exercising unfettered authority to operate SBCPA, which is also inconsistent with transparency and public accountability, including the mandate that decisions regarding the Charter School’s governance and operations be made at public meetings held in accordance with the Brown Act. Additionally, the delegation of authority for an employee to enter into contracts up to \$100,000 without Board approval or ratification is unusually and unacceptably high. As a requirement for approval, these provisions should be revised to limit delegation authority and require the Board’s involvement and approval of major activities relative to SBCPA’s operations, with the delegation of contracting authority limited to \$15,000.

SBCOE Staff believes that an SBCBOE-approved countywide charter would require compliance with additional best practices and SBCOE oversight standards related to charter school governance, including appropriate updates to governance documents. These best practices, which Staff recommends be requirements of approval, include:

- The Charter School be required to provide evidence that it has attained 501(c)(3) tax exempt status and to maintain that status throughout the term of its Charter.
- The Board of Directors and any other legislative bodies for purposes of the Brown Act include with their posted agendas links to the backup materials for each agenda item for which there are electronic versions of backup materials that are not excluded from public disclosure. At the latter of (1) the posting of the agenda, or (2) the time the Charter School staff provides a final copy of agenda item backup materials to all or a majority of all of the members of the legislative body, it shall post a link in the pertinent agenda item to those materials not excluded from public disclosure.
- Should the SBCBOE or designee choose to exercise its authority to appoint a member to the SBCPA board, such member shall serve solely at the SBCBOE or designee’s discretion, shall have no limitations or requirements for service or terms, and that SBCPA and its bylaws shall

include no restrictions on such appointee or have any involvement in appointing or removing such representative.

- Prior to any proposed revisions to the corporate articles of incorporation and/or bylaws, the Charter School shall provide at least three weeks' prior notice to the County Superintendent or designee of the proposed revision(s). Should the County Superintendent or designee indicate that SBCOE considers the proposed revision(s) a material revision to the Charter, the Charter School may not adopt such revision(s) unless and until it first obtains approval of a material revision.
- Explicitly acknowledge that determinations whether any proposed change to SBCPA's charter/operations constitute a material revision to the Charter be made in the County Superintendent's sole discretion.
- Requirements that all Board members and senior administrators undergo training on the Brown Act, the Political Reform Act, Government Code Section 1090, and the California Public Records Act at least annually and within 90 days of taking the position with the Charter School. This training shall be conducted by an individual or entity with professional knowledge and expertise in the law, regulations, and rules governing these provisions, and not by internal personnel.
- Commitment to at all times adopt the Fair Political Practices Commission's ("FPPC") Model Conflict of Interest Code and the related designation of employees and the formulation of disclosure categories as the Charter School's conflict of interest code. (It appears that SBCPA has intended to adopt the FPPC's model code.)

The Charter discusses parent/guardian involvement, including that parents/guardians and students will be "encouraged" to form an Advisory Committee "that meets quarterly to give input on how the Charter School can be improved for all students, serve as a resource for new families considering enrolling in the Charter School, advocate on behalf of the Charter School in the community, and a forum for reaction to proposed Charter School plans." The Charter also provides that parents/guardians will help evaluate SBCPA's program through meetings and surveys and be taught how to be effective instructional coaches. SBCPA should provide further means by which parents/guardians would actually be involved in the *governance* of the Charter School.

If SBCPA plans to apply for federal and state categorical program funding, it will need to establish a site council constituted in accordance with the Education Code to develop and annually review a school plan for student achievement, or, alternatively, use the LCAP for this purpose, though this is not mentioned in the Charter. Additionally, the Charter does not mention a DELAC/ELAC.

SBCOE Staff believes that this element of the Charter is reasonably comprehensive, but provisions need to be supplemented through the MOU in order for the governance plan to be consistent with best practices and SBCOE expectations for the sound operation of the school.

6. Element Six: Employee Qualifications

This element of the Charter describes the roles and job duties for the various employment positions at SBCPA and the minimum qualifications for each position.

The Charter specifies that all employees must “have a criminal record summary on file.” It is important to understand that all employees (and many contractors) must go through a criminal background check and clearance process, but the Charter School may not maintain the records summaries it receives pursuant to that process, but, rather, is required to destroy those documents. (Ed. Code §§ 44830.1(n) and 45125(k); 11 C.C.R. § 708(a).)

While the Charter specifies that teachers will meet the requirements for employment in Education Code Section 47605.6(l), it also cites to Education Code Section 47605.4, but that exception to the credentialing requirement does not apply to and provides no extra time for teachers to obtain credentials to teach at countywide charter schools.

The Charter specifies that SBCPA will have “a low student-to counselor ratio of 100:1” and describes important work that counselors will engage in as part of the Charter’s operational plans. However, the budget reflects a much higher ratio of 167:1. SBCPA will need to modify its budget in order to comply with the 100:1 plan in the Charter or clarify how the counselor work will be accomplished and students served in the manner described in the Charter with a higher student to counselor ratio.

The description of the qualifications for the Executive Director position includes the following, among other qualifications:

- Relevant experience with school and organizational leadership and innovation
- A master’s degree or higher in an appropriate field is desired
- Relevant successful experience as a school administrator and teacher
- Expertise in curriculum design, supervision and evaluation

This implies that the Executive Director is required to hold at least a bachelor’s degree, a teaching credential, and an administrative credential but those requirements are not explicitly listed in the Charter. Staff recommends that as a requirement of approval, the minimum qualifications for the Executive Director position explicitly include a bachelor’s degree and a valid California teaching credential.

The Charter specifies that the Principal and Learning Director positions will begin as a combined position, and then become two separate positions as the school reaches enrollment capacity. There should be clarity on what size enrollment will require SBCPA to separate the positions and have two professional administrators performing these tasks. Additionally, the positions are described together in the Charter, so SBCPA should be required to specify which duties and qualifications will apply to which positions when they are separated. Finally, similar to the Executive Director, the qualifications imply, but do not state explicitly, that these positions require at least a bachelor’s degree and a teaching credential, which are necessary given the job duties and responsibilities for these positions, so should be explicitly identified as minimum employment qualifications for each of these positions.

SBCOE Staff believes that this element of the Charter is reasonably comprehensive, but provisions need to be supplemented and/or revised through an MOU in order for this element to be consistent with best practices and SBCOE expectations for the sound operation of the school.

7. Element Seven: Health and Safety Procedures

The Charter states that SBCPA will adopt and implement a comprehensive set of health, safety, and risk management policies in consultation with its insurance carriers and risk management experts and commits to reviewing and updating these policies on an ongoing basis. The Charter further commits to annual training of all staff on its health and safety policies. SBCPA will provide a full draft of its health and safety policies to the SBCOE at least 30 days prior to operation (presumably intended to mean the first day of school for students) or as otherwise agreed upon with SBCOE.

The Charter also provides a summary and/or general reference to its major planned health and safety procedures, though it does not specifically list every health and safety procedure or requirement that would apply to SBCPA. For example, the Charter does not include a specific reference to SBCPA's obligation to provide notice at least twice a year on how to initiate access to available student mental health services, does not address the requirement to develop a transportation safety plan, and while committing to comprehensive nondiscrimination policies and protections, this element does not specifically reference a Uniform Complaint Procedure ("UCP") policy (though the UCP is referenced in the dispute resolution element) or Title IX policies and procedures.

The Charter includes a commitment to adopt and annually update by March 1 a school safety plan that includes all of the required topics. The completed school safety plan should be provided to SBCOE with all of the other health and safety policies, and evidence that it has been reviewed and updated as necessary and an updated copy should be provided to the SBCOE annually by March 15.

SBCOE Staff believes that this element includes a reasonably comprehensive description, but SBCPA would need to expand on the health and safety procedures to ensure that it adopts all policies and procedures required by law *prior* to opening to students and maintains its handbooks with updated policies and procedures for the sound operation of the school.

8. Element Eight: Racial, Ethnic, English Learner, and Special Education Balance

Based on its target student population of at-promise youth, SBCPA anticipates serving a diverse student population that includes a disproportionately high percentage of students who are English learners, students who may be behind in grade level in skills and/or credits, students with mental health concerns, and students with disabilities. The Charter lists recruitment strategies and plans SBCPA will use in order to obtain the requisite student population balance. Staff recommends that SBCPA be required at least annually following its open enrollment process, to review and evaluate its enrollment, whether it is reflective of the general population residing within San Benito County, and revise and modify its plans as necessary to address any areas in which it has not enrolled the required pupil balance. SBCPA's plan should include means of tracking which elements of its plan are working, and which are less successful, in order that SBCPA can properly evaluate and refine its plan, as needed.

SBCPA's plan specifies, "Prioritization of at-promise youth for immediate enrollment throughout the school year ahead of general population youth on the waiting list." However, this proposal is inconsistent

with the Admissions Policies and Procedures element of the Charter and contrary to the requirements of Education Code Section 47605.6(e) that if the number of pupils who desire admission exceeds the school's capacity, admission *must* be determined by a public random drawing. While SBCOE understands and supports SBCPA's mission of serving at-promise youth, it must still be implemented in accordance with the Charter Schools Act and the Admissions Policies and Procedures of the Charter. If there are students on the waitlist based on their participation in the public random drawing for admission, other students – even SBCPA's target population of at-promise youth – cannot be admitted ahead of the students who participated in the drawing. This component of the plan for creating the population balance must be deleted.

SBCOE Staff believes that this element of the Charter includes a reasonably comprehensive description so long as SBCPA commits in the MOU to tracking how it is working and annually reviewing and refining the plan as necessary, and, through the MOU, SBCPA must omit the component of the plan that is contrary to the statutory admissions requirements, for the sound operation of the school.

9. Element Nine: Annual Financial Audit

The Charter includes appropriate information about the manner in which annual independent financial audits will be conducted. It proposes meeting with SBCOE to determine how to resolve any audit exceptions and deficiencies to the County's satisfaction. It also proposes that any disputes between SBCOE and SBCPA on the resolution of audit exceptions and deficiencies will be referred to the dispute resolution process, while also specifying, "with the caveat that the Charter School recognizes that the legal requirement is to resolve audit exceptions or deficiencies to the satisfaction of the County." As such, the proposal to submit all disputes on this topic to the dispute resolution process must be further clarified to establish that it will only go through that process should the SBCOE agree to use that process, but any such exceptions and deficiencies would need to be resolved to SBCOE's satisfaction whether or not SBCOE agrees to use the dispute resolution process.

SBCOE Staff believes that this element of the Charter is reasonably comprehensive, though the reference to the applicability of the dispute resolution process must be modified in the MOU to comply with SBCOE rights, standards, and best practices for the sound operation of the school.

10. Element Ten: Student Suspension/Expulsion Procedures

The Charter sets forth suspension and expulsion policies, which have been largely modeled on the procedures applicable to noncharter California public schools. Contrary to the statement in the Charter, the suspension and expulsion procedures are a required element of the Charter and cannot be unilaterally revised by SBCPA, other than as required to comport with law, or if the SBCOE grants authority to permit revisions to remain consistent with the discipline policies in Education Code Section 48900 *et seq.* applicable to noncharter schools.

The Charter acknowledges that the process for suspension and expulsion are the exclusive procedures for any type of involuntary removal of a student from attendance at SBCPA. Staff recommends that SBCOE require the MOU to include explicit agreement that the list of causes for expulsion set forth in the Charter (as the same may be modified from time to time in accordance with the MOU and material revision procedures) are the only causes for any type of involuntary removal from SBCPA, and that SBCPA may not otherwise involuntarily remove a student for other causes (including but not limited to academic performance and/or attendance) irrespective of procedures used for such removal.

SBCOE Staff believes that this element of the Charter is reasonably comprehensive, though the statement about modifications to the causes and procedures for suspension and expulsion must be updated through the MOU for the sound operation of the school.

11. Element Eleven: *Employee Retirement Systems*

The Charter specifies that all employees will participate in federal social security and be eligible for a 403(b)-retirement account, vested after one year. SBCPA needs to specify the title of the position responsible to ensure compliance with SBCPA's coverage obligations.

The Charter reserves the option of offering staff the opportunity to participate in the State Teachers' Retirement System (STRS) or the Public Employees' Retirement System (PERS) in the future. Staff notes a concern that not offering STRS and PERS may impact SBCPA's ability to recruit and retain highly qualified and/or experienced employees.

SBCOE Staff believes that this element of the Charter includes a reasonably comprehensive description, though SBCPA must identify the responsible position in the MOU for the sound operation of the school.

12. Element Twelve: *Dispute Resolution*

The Charter sets forth a proposed dispute resolution procedure for disputes between SBCPA and SBCOE, including a meeting between two Board members of the respective Governing Boards and the use of nonbinding mediation. The Charter recognizes that SBCPA cannot bind SBCOE to this proposed procedure, and states that the Charter School is "willing to consider changes" to the procedure suggested by SBCOE. The proposed procedure is not consistent with the SBCOE's best practices and oversight responsibilities or how the SBCBOE operates, and it would be necessary for SBCPA to agree to comply with SBCOE's preferred dispute resolution procedure, which Staff recommends SBCBOE impose as a requirement for approval of this countywide benefit Charter. The Charter also purports to limit SBCOE's authority to respond to complaints it receives related to the Charter School's operations, and SBCPA cannot limit SBCOE's discretion and/or authority in this manner.

SBCOE Staff believes that this element of the Charter includes a reasonably comprehensive description, though the proposed process must be changed through the MOU to a process defined by SBCOE in conformance with SBCOE's expectations and best practices for the sound operation of the school.

13. Element Thirteen: *Admission Policy and Procedures*

In the event there are more applicants than spaces at a particular grade level, the Charter specifies that SBCPA will determine admission using a public random drawing. Pursuant to law, current students of the Charter School are entitled to remain enrolled and are exempt from the drawing process. In the event a public random drawing is required, SBCPA specifies its intent to implement the following preferences in the following order:

- Siblings of students admitted to or attending the Charter School
- Children of employees and Board members (not to exceed 10% of total enrollment)
- Students deemed at-promise (those who are returning after having left school without graduating or are at-risk of not graduating)
- [P]upils who reside in the County.

These preference groups would necessarily be followed by all other applicants.

Other than the preferences for residents of the County, whether to permit the proposed preferences is within the SBCBOE's discretion.

SBCPA will hold lotteries by grade level and preference group pool, pulling all names from a preference group, followed by the next preference group in order. There does appear to be a typographical error in the Charter, as it indicates that the drawings would start first with the pool of County residents, but that is the lowest preference group, so it would necessarily be the last pool, other than all applicants who do not qualify for any preference group. Students who are not offered admission based on the public random drawing will be offered the opportunity to be included on a waitlist in the order in which they were drawn in the lottery. The Charter acknowledges that it may not request or require submission of a pupil's records prior to enrollment.

Additional details, such as the limited contents of the admission application (to ensure that students are not improperly discouraged from attending or that families are not requested to provide protected information) and how families will be notified of an admission offer, can be included in the MOU. Additionally, Staff recommends that SBCPA be required to use an electronic drawing system that can also be used to track compliance with the admissions policies and procedures.

As noted above, SBCPA must comply with the approved admissions processes and preferences, and cannot admit at-promise youth who did not participate in the public random drawing ahead of students who are on the waitlist based on their participation in the drawing process. The Admissions Policies and Procedures element of the Charter does not propose such an admissions process, which is referenced only in the Student Balance element.

SBCOE Staff believes that this element of the Charter includes a reasonably comprehensive description, though some supplemental information should be included in the MOU for the sound operation of the school.

14. Element Fourteen: Public School Attendance Alternatives

The Charter specifies that no students are required to attend SBCPA and that students who reside within the County who choose not to attend SBCPA may attend their school of residence or other schools within or outside of their district of residence in accordance with the district's inter- and intra-district attendance policies.

SBCOE Staff believes that this element of the Charter includes a reasonably comprehensive description.

15. Element Fifteen: Description of the Rights of An Employee of the County Superintendent of Schools, Upon Leaving the Employment of the County Superintendent of Schools to be Employed by the Charter School

The Charter specifies that employees of the County Superintendent who leave their employment positions at SBCOE to work at SBCPA shall have only those rights to return as granted by SBCOE and/or applicable collective bargaining agreements. Staff notes that the County Superintendent is the employer of all employees at SBCOE.

The Charter specifies that sick and vacation leave and years of service credit from working at SBCOE or any school district will not be transferred to SBCPA. Staff notes that this could negatively impact SBCPA's ability to recruit highly qualified and/or experienced employees.

SBCOE Staff believes that this element of the Charter includes a reasonably comprehensive description.

16. Element Sixteen: Closure Protocol

The Charter describes proposed closure procedures consistent with the legal requirements for closure. Additional specificity, including timelines for providing notices and more specifics regarding closure procedures and the handling and transfer of records, could be included in an MOU. Additionally, the Charter specifies that on closure all assets of the Charter School, including all ADA apportionments and other revenues generated by students attending the Charter School, remain the sole property of the Charter School. However, at least revenues generated by students through state and federal apportionments should be distributed to another public school or educational entity operating in San Benito County upon closure of SBCPA, which should be a requirement of approval.

SBCOE Staff believes that this element of the Charter includes a reasonably comprehensive description, though the plan for distribution of revenues generated by students should be modified through the MOU for the sound operation of the school.

(F) A declaration of whether or not SBCPA shall be deemed the exclusive public school employer of the employees of SBCPA for purposes of the EERA.

The Charter includes the required statement that Polytechnic Academy, the nonprofit public benefit corporation that will governing SBCPA, will be deemed the exclusive public school employer of the employees of the SBCPA for purposes of the EERA.

(G) Any other basis that the SBCBOE finds justifies the denial of the SBCPA Petition.

As specified above, SBCOE Staff believes that the SBCPA Charter meets the statutory requirements for approval of a countywide charter pursuant to Education Code Section 47605.6, subject to the conditions and requirements specified herein that are necessary for the sound operation of SBCPA as a countywide charter school. As such, Staff does not recommend that the SBCPA Charter be denied on any other basis.

V. Additional Required Information: The petitioner(s) are required to provide information regarding the proposed operation and potential effects of the school including but not limited to:

❖ The facilities to be used by SBCPA.

The information about facilities included in the Charter, and Staff's findings and recommendations relative thereto, are described above.

❖ The manner in which administrative services of SBCPA are to be operated.

The Charter specifies SBCPA will provide or procure its own administrative services, including but not limited to financial management, accounts payable/receivable, payroll, human resources, and instructional program development, through its own staff or appropriately qualified third-party providers. The Charter

provides for SBCPA to discuss the possibility of purchasing administrative services from SBCOE, subject to SBCOE's availability and willingness to provide those services. The Charter further specifies that the terms and costs of any administrative services to be provided by SBCOE will be set forth in a separate agreement(s).

SBCPA's budget projections and cash flow include reasonable projections for the costs of providing administrative services, including contracting for such services from either private contractors or SBCOE.

❖ Potential civil liability effects, if any, upon SBCPA, any school district where the charter school may operate and upon the SBCBOE/SBCOE

The Charter includes a statement of intent to enter into a memorandum of understanding whereby it will indemnify SBCBOE and SBCOE "for the actions of the Charter School under this charter." It also specifies that SBCPA will obtain insurance "of the types and in the amounts required for an enterprise of similar purpose and circumstance. Coverage amounts will be based on recommendations provided by the County and the Charter School's insurer." It also specifies that the SBCBOE will be named as an additional insured on all SBCPA insurance policies. The Charter further provides that its bylaws will provide for indemnification of its Board, officers, agents, and employees, and that it will purchase general liability, Board Members and Officers insurance, and fidelity bonding to secure against financial risks.

It would be an essential requirement of SBCBOE approval that SBCPA carry out those intentions and commitments and enter into an MOU with SBCOE fully committing to comply with insurance, indemnification, defense, and hold harmless requirements established to the County Superintendent's sole satisfaction based on the County Superintendent and SBCOE's risk management assessments, and that SBCPA could not commence or continue operations unless and until it is and remains in compliance with such requirements.

❖ Financial statements that include a first-year operational budget, including startup costs, and cash flow, and financial projections for the first three years of operation.

SBCPA submitted the required budget and financial documents.

Based on a detailed review of the assumptions, financial projections and cash flow provided by SBCPA, it will be able to meet its financial obligations throughout the projected period with the support of the Polytechnic Academy corporation and individual donations and grants, which are necessary to support SBCPA's cashflow needs.

SBCOE recommends the use of the countywide financial system throughout the term of the Charter. SBCPA must keep SBCOE apprised of its back-office services provider at all times should SBCPA contract with any provider other than SBCOE. SBCPA shall adhere to the Standardized Account Code Structure for financial reporting for the Charter School's July 1 budget, as well as actual and interim budget reports. SBCPA shall provide copies of the Charter School's annual audit to SBCOE.

SBCPA will provide SBCOE with the detailed information regarding the location of the Child Nutrition program, where it will be housed, who will be providing meals in the first year, and what program will be used to track meals. The current plan does not provide for sufficient funding to support the operations of a Child Nutrition program. The SBCPA must provide SBCOE a plan as to how meals will be provided as required by law. The plan must include who SBCPA is contracting with to provide meals or how it plans to staff and support the program within SBCPA's facility.

As noted above in the discussion of facilities location, SBCPA must provide a facility plan that includes total costs associated with the lease/purchase of the facility and payment terms for such use/purchase as well as the appropriate funding sources that will be utilized to make such payments to the County Superintendent or designee's satisfaction prior to opening.

SBCOE Staff believes that this element of the Charter includes a reasonably comprehensive description, though the plan for distribution of revenues generated by students should be modified through the MOU.

❖ The names and relevant qualifications of all persons whom the petitioner nominates to serve on the charter school nonprofit corporation's board of directors.

SBCPA provided names and resumes for its proposed Board of Directors members.

CONCLUSION

SBCOE Staff reviewed the Charter for SBCPA utilizing the criteria for consideration and action on a petition for a countywide charter set forth in Education Code Section 47605.6. It is SBCOE Staff's recommendation that the SBCPA countywide Charter be approved with requirements and conditions to address all SBCBOE and SBCOE concerns, including those specified herein and that the San Benito County Board of Education adopt Board Resolution No. 23-24-10 Approving the Charter for the San Benito County Polytechnic Academy with Requirements, and, Alternatively, Denying San Benito County Polytechnic Academy's Charter if it Fails to Comply with the Requirements.