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Charter Schools Division  
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**ADVISORY COMMISSION ON CHARTER SCHOOLS**

AN ADVISORY BODY TO THE STATE BOARD OF EDUCATION

# December 2023 Agenda Item #01

## Subject

Consideration of a Retroactive Request for Determination of Funding as Required for a Nonclassroom-Based Charter School Pursuant to California *Education Code* sections 47612.5 and 47634.2, and Associated *California Code of Regulations*, Title 5.

## Type of Action

Action, Information

## Summary of the Issue

California *Education Code* (*EC*)sections 47612.5 and 47634.2 established the eligibility requirements for apportionment funding for charter schools that offer nonclassroom-based (NCB) instruction. The statutes specify that a charter school that offers NCB instruction in excess of the amount authorized by *EC* Section 47612.5(e)(1) may receive apportionment funding for NCB instruction only if a determination of funding is made by the California State Board of Education (SBE). The California Department of Education (CDE) reviews a charter school’s determination of funding request and presents it for consideration by the Advisory Commission on Charter Schools (ACCS), pursuant to relevant *California Code of Regulations*, Title 5 (5 *CCR*).

Pursuant to 5 *CCR* Section 11963.6(c), any determination of funding request approved by the SBE for an existing NCB charter school must be submitted by February 1 and be prospective (i.e., submitted during the fiscal year [FY] prior to the year the funding determination will be effective). Retroactive determination of funding requests refer to requests that are submitted after the regulatory deadline and that require an approved waiver by the SBE to waive the aforementioned sections of 5 *CCR*.

Black Oak Mine Unified School District submitted a waiver request to the SBE on behalf of American River Charter (charter number 1176) requesting approval to submit a retroactive funding determination request. The waiver was approved at the July 12–13, 2023, SBE meeting, which allowed the charter school to submit a funding determination request after the regulatory deadline. Funding determination requests are approved separately from waivers.

The school’s waiver is available on the SBE Agenda for July 2023 web page at <https://www.cde.ca.gov/be/ag/ag/yr23/agenda202307.asp>.

## Proposed Recommendation

The CDE proposes to recommend that the SBE approve the school’s determination of funding request as specified in Attachment 1.

## Funding Determination Criteria

*EC* Section 47634.2(a)(1) provides the following:

Notwithstanding any other provision of law, the amount of funding to be allocated to a charter school on the basis of average daily attendance that is generated by pupils engaged in nonclassroom-based instruction…shall be adjusted by the State Board of Education. The State Board of Education shall adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, at a minimum the regulation shall specify that the nonclassroom-based instruction is conducted for the instructional benefit of the pupil and substantially dedicated to that function. In developing these criteria and determining the amount of funding to be allocated to a charter school pursuant to this section, the State Board of Education shall consider, among other factors it deems appropriate, the amount of the charter school’s total budget expended on certificated employee salaries and benefits and on schoolsites, as defined in paragraph (3) of subdivision (d) of Section 47612.5, and the teacher-to-pupil ratio in the school.

*EC* Section 47634.2(a)(4) further states:

For the 2003–04 fiscal year and each fiscal year thereafter, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 70 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

Pursuant to the *EC* Section 47634.2 and SBE-adopted regulations, a charter school may qualify for either 70 percent, 85 percent, or 100 percent funding, or may be denied funding (i.e., 0 percent) for its NCB instruction.

To qualify for a proposed recommendation of 100 percent funding, a charter school must meet the following criteria:

* Spend at least 40 percent of the school’s public revenues on salaries and benefits for all employees who possess a valid teaching certificate
* Spend at least 80 percent of all revenues on instruction and related services
* Maintain a ratio of average daily attendance (ADA) for independent study pupils to full-time certificated employees that does not exceed a pupil-teacher ratio (PTR) of 25:1 or the PTR of the largest unified school district in the county or counties in which the charter school operates

The expenditure and PTR criteria for all funding levels for which a charter school may qualify to receive for its NCB instruction are specified in 5 *CCR* Section 11963.4(a). A summary of the criteria is provided in the table below:

**Table of Nonclassroom-Based Instruction Funding Levels**

| **Funding Level** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR[[1]](#footnote-1)** |
| --- | --- | --- | --- |
| **100%** | ≥ 40 | ≥ 80 | ≤ 25 to 1 |
| **85%** | ≥ 40 | ≥ 70 | Not Applicable |
| **70%** | ≥ 35 | ≥ 60 | Not Applicable |
| **0%** | < 35 | < 60 | Not Applicable |

A determination of funding may not exceed five years, pursuant to *EC* Section 47612.5(d)(2). For a new charter school in its first year of operation, a funding determination shall be for a period of two fiscal years, pursuant to 5 *CCR* Section 11963.6(a). For an existing charter school with an active funding determination, a funding determination shall be in increments of a minimum of two years and a maximum of five years in length, pursuant to 5 *CCR* Section 11963.6(c). For an existing charter school with an active funding determination, it is the CDE’s current practice to recommend a time period of three or four years based on the number of times the charter school has renewed its funding determination with the SBE.

In the past, the CDE recommended five-year periods dependent on a charter school’s Academic Performance Index (API) rank, pursuant to *EC* Section 47612.5(d)(2); however, because API is no longer calculated, the CDE does not currently recommend five-year funding determination periods.

## Analysis of Funding Determination Request

American River Charter meets the criteria to qualify for a recommendation of 100 percent funding for its NCB instruction, pursuant to 5 *CCR* Section 11963.4(a). Details of the school’s expenditures and PTR are provided in Attachment 1.

Therefore, the CDE proposes to recommend that the SBE approve the school’s determination of funding request at 100 percent for the time period specified in Attachment 1.

## Attachments

* **Attachment 1:** Proposed Recommendation for a Nonclassroom-Based Determination of Funding (1 Page)
* **Attachment 2:** Determination of Funding Request for American River Charter, Charter #1176 (9 Pages)

1. The PTR criteria outlined in this table pertain only to charter schools submitting NCB funding determination requests for their NCB instruction. All charter schools offering independent study are required to comply with the ADA to certificated-employee ratios outlined in *EC* Section 51745.6. [↑](#footnote-ref-1)