

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of EducationJuly 2022 AgendaItem #13

## Subject

Reconsideration of a Request for Determination of Funding as Required for Nonclassroom-Based Charter Schools Pursuant to California *Education Code* sections 47612.5 and 47634.2, *California Code of Regulations*, Title 5Section 11963.6(g), and Associated *California Code of Regulations*, Title 5.

## Type of Action

Action, Information, Consent

## 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 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 11963.4(c), any multi-year funding determination approved by the SBE may be modified by the SBE, in terms of both the multi-year approval and the percentage of funding authorized, if any information that may change the conclusion to approve the original multi-year funding determination is found. A charter school may also request a reconsideration of their funding determination, pursuant to 5 *CCR* Section 11963.6(g), which states that if during the effective period of an approved determination, a charter school wishes to seek a higher or lower determination of funding, it shall do so by the filing of a new determination of funding request for consideration by the SBE.

Peak Prep Pleasant Valley, charter number 2062, is requesting to be reconsidered for a higher determination of funding for fiscal year (FY) 2020–21 through FY 2023–24. If approved, the higher funding determination would replace the funding determination currently in effect and the prior approved funding determination.

## Recommendation

The CDE recommends that the SBE approve the funding determination reconsideration request for Peak Prep Pleasant Valley, so that the school receives 100 percent funding for the period of FY 2020–21 through FY 2022–23, replacing its funding determinations covering the same period for 70 percent funding, as specified in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its June 14, 2022, meeting, the ACCS moved for recommendation to the SBE of the CDE staff recommendation. The motion passed by a vote of seven to one.

The notice for the June 14, 2022, ACCS meeting and the funding determination request form for the school is located on the SBE June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice061422.asp>.

## Background

### Initial Determination of Funding

Pursuant to 5 *CCR* Section 11963.6(a), an approved determination of funding for a new charter school in its first year of operation shall be for two FYs. A new NCB charter school’s initial funding determination is based on its first-year budget and is approved under the assumption that the school’s actual expenditures will meet the required percentages for its requested funding amount.

At its March 2020 meeting, the SBE approved the initial funding determination for Peak Prep Pleasant Valley at 100 percent for FY 2019–20 through FY 2020–21 as its first-year budget demonstrated that it met the requirements for full funding for its NCB instruction. Detailed information regarding the school’s initial funding determination request is provided in Item 11 of the SBE Agenda for March 2020 web page, which is available at <https://www.cde.ca.gov/be/ag/ag/yr20/agenda202003.asp>.

### 90 Day Report and Revised Determination of Funding

Pursuant to 5 *CCR* Section 11963.6(a), 90 days after a new NCB charter school’s first FY of operation, the school shall submit unaudited actual expense reports and a funding determination form based on the school’s actual second-year budget. The CDE refers to these two items collectively as the 90 Day Report. Pursuant to 5 *CCR* Section 11963.6(a), if the ACCS determines that the 90 Day Report does not support the school’s current funding determination, the ACCS shall recommend that the SBE revise the funding determination.

Ninety days after its first year of operation, Peak Prep Pleasant Valley submitted its 90 Day Report to the CDE. Data reported in its first-year unaudited actuals demonstrated that the school had failed to meet the spending criteria to qualify for a recommendation for full funding for its NCB instruction. As a result, at its May 2021 meeting, the SBE revised the funding determination for Peak Prep Pleasant Valley from 100 percent funding for FY 2020–21 to 70 percent funding for FY 2020–21.

At the time its funding determination was undergoing revision by the SBE, Peak Prep Pleasant Valley was contesting $1.76 million in litigation with its former back office service provider. As a result of this litigation, audited financial data was not yet available. The school stated that its unaudited actuals did not provide a complete picture of the school’s actual expenditures during its first year of operation because the $1.76 million included expenditures that would count toward instruction-related services; the exact amount would be determined by the court case. Detailed information regarding the school’s revised funding determination is provided in Item 07 of the SBE Agenda for May 2021 web page, which is available at <https://www.cde.ca.gov/be/ag/ag/yr21/agenda202105.asp>.

When the school’s funding determination was revised, the CDE noted that the school was permitted to submit a funding determination reconsideration request, pursuant to 5 *CCR* Section 11963.6(g), once litigation concluded and audited data became available.

### Senate Bill 820 Section 75

*EC* Section 47612.5(d)(1) states that a charter school that has an approved charter may receive funding for its NCB instruction only if a determination for funding is made by the SBE. However, for FYs 2020–21 and 2021–22, certain schools are exempt from the requirement to obtain an approved funding determination from the SBE, pursuant to Senate Bill 820 Section 75 [Chapter 110, Statutes of 2020]:

A charter school with a nonclassroom-based funding determination pursuant to Section 47612.5 of the Education Code that expires on June 30, 2021, or June 30, 2022, shall receive its current funding level for two years upon submission of a complete funding determination request to the State Department of Education pursuant to Section 11963.3 of Title 5 of the California Code of Regulations. A charter school’s funding determination request shall be received by the State Department of Education no later than June 30, 2021 or June 30, 2022, as applicable. A charter school that submits a funding determination request after the applicable deadline shall receive 85 percent funding for two fiscal years for nonclassroom-based instruction attendance. Either the charter school or the State Department of Education may request that the Advisory Commission on Charter Schools or the State Board of Education consider a higher or lower funding level pursuant to Section 11963.6 or 11963.7 of Title 5 of the California Code of Regulations.

Peak Prep Pleasant Valley’s initial determination of funding expired on June 30, 2021. Pursuant to SB 820 Section 75, Peak Prep Pleasant Valley received its current level of funding (i.e., its funding level in FY 2020–21) of 70 percent for two years as it submitted a complete and timely determination of funding request by June 30, 2021.

## Brief Analysis of Key Issues

*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 school sites, 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).

Regulations provide that the ACCS shall develop a recommendation to the SBE regarding determination of funding requests. As stated in 5 *CCR* Section 11963.4(a), a charter school requesting a determination of funding may qualify for either 70 percent, 85 percent, or 100 percent funding, or may be denied (i.e., 0 percent funding). To qualify for a proposed recommendation of 100 percent funding, an NCB 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 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 100 percent funding and the remaining funding levels for NCB instruction is summarized in the table below:

| **Funding Level** | **Percent of Public Revenues Spent on Certificated Salaries and Benefits** | **Percent of All Revenues Spent on Instruction and Related Services** | **Pupil-Teacher Ratio** |
| --- | --- | --- | --- |
| **100%** | ≥ 40% | ≥ 80% | ≤ 25 to 1 |
| **85%** | ≥ 40% | ≥ 70% | Not Applicable |
| **70%** | ≥ 35% | ≥ 60% | Not Applicable |
| **0%** | < 35% | < 60% | Not Applicable |

The SBE may modify any multi-year funding determination, pursuant to 5 *CCR* Section 11963.4(c), which states the following:

Any multi-year funding determination approved by the SBE may be modified by the SBE, in terms of both the multi-year approval and the percentage of funding authorized, if any information that may change the conclusion to approve the original multi-year funding determination is found.

Additionally, charter schools that have obtained a funding determination may also request that its approved funding level be reconsidered, pursuant to 5 *CCR* Section 11963.6(g):

If, during the effective period of a determination of funding, a charter school wishes to seek a higher or lower determination of funding, it shall do so by the filing of a new determination of funding request. During the effective period of a charter school's determination of funding, no more than one additional determination of funding request (which would replace the determination of funding then in effect) may be submitted by the charter school in the same fiscal year.

Peak Prep Pleasant Valley is requesting to be reconsidered for a higher determination of funding for FY 2020–21 through FY 2023–24, pursuant to the aforementioned sections of 5 *CCR*. Details of the school’s reconsideration request are provided below.

### Peak Prep Pleasant Valley

Peak Prep Pleasant Valley is requesting reconsideration for a higher determination of funding of 100 percent, from 70 percent. On its funding determination form based on first-year audited data, the school reported total revenues of $3,107,573 and total expenditures of $2,667,063. Overall, it reported spending 48.87 percent of public revenues on certificated salaries and benefits and 81.16 percent of total revenues on instruction and related services while maintaining a PTR of 17.58 to 1, which qualifies the school to receive a recommendation for 100 percent funding.

The school’s funding determination was revised to 70 percent at the May 2021 SBE meeting due to its failure to meet the criteria for full funding, based on data reported in its first-year unaudited actuals. The 70 percent funding determination carried over to its next funding determination due to SB 820 Section 75, which allowed the school to obtain its “current funding level” for the next two years.

Due to the school’s litigation with its back office service provider, first-year audited data was not available at the time its funding determination was revised by the SBE. Litigation has concluded, and first-year audited data is now available. This data supports a recommendation for 100 percent funding. As such, the CDE finds that Peak Prep Pleasant Valley’s 70 percent funding determinations should be replaced with a 100 percent funding determination.

## Conclusion

The CDE proposes to recommend that the SBE approve the school’s reconsideration request and increase its funding level from 70 percent to 100 percent for the period of 2020–21 through 2022–23, as specified in Attachment 1. Approval of the reconsideration request would mean that the school would be eligible to receive 100 percent funding for its NCB average daily attendance for the period of 2020–21 through 2022–23, instead of 70 percent.

## Summary of Previous State Board of Education Discussion and Action

The SBE is responsible for approving determination of funding requests to establish eligibility for apportionment funding for charter schools that offer NCB instruction. The CDE notes that this type of request is a recurring action item for the SBE.

## Fiscal Analysis

If approved, Peak Prep Pleasant Valley would receive apportionment funding for its NCB ADA under the LCFF model.

## California Department of Education Staff Review

A direct link to the school’s funding determination request is provided below. The request is also available under Agenda Item 2 of the SBE June 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice061422.asp>.

* Determination of Funding Request for Peak Prep Pleasant Valley, Charter #2062 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-jun22item02a2.pdf>).

## Attachment

* **Attachment 1:** Recommendation to Reconsider Funding Determinations for a Nonclassroom-Based Charter School (1 Page)