California Department of Education  
Charter Schools Division  
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**ADVISORY COMMISSION ON CHARTER SCHOOLS**

AN ADVISORY BODY TO THE STATE BOARD OF EDUCATION

# August 2024 Agenda Item #02

## Subject

Consideration of Determination of Funding Requests with “Reasonable Basis”/Mitigating Circumstances as Required for Nonclassroom-Based Charter Schools 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).

Pursuant to *California Code of Regulations*, Title 5 (5 *CCR*), the California Department of Education (CDE) reviews a charter school’s determination of funding request and presents it for consideration to the Advisory Commission on Charter Schools (ACCS). The ACCS shall develop a recommendation to the SBE, and the CDE shall present that recommendation to the SBE. The ACCS may include the consideration of mitigating circumstances in conjunction with a recommendation to the SBE, pursuant to 5 *CCR* Section 11963.4(e).

This item considers determination of funding requests with mitigating circumstances from two charter schools.

## Proposed Recommendation

The CDE proposes to recommend that the SBE approve the determination of funding requests with the consideration of mitigating circumstances for the two charter schools included in this item at 100 percent for a period of two fiscal years (2024–25 through 2025–26), as detailed 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 *EC* Section 47634.2 and SBE-adopted regulations, a charter school may qualify for 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 recommendation of 100 percent funding, a charter school must meet the following criteria as outlined in 5 *CCR* Section 11963.4(a)(3):

* Spend at least 40 percent of the charter school’s public revenues on salaries and benefits for all employees who possess a valid teaching certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold issued by the Commission on Teacher Credentialing and who work in the charter school in a position required to provide direct instruction or direct instructional support to students
* Spend at least 80 percent of the charter school’s total revenues on instruction and related services
* Maintain a ratio of average daily attendance (ADA) for independent study pupils to full-time certificated employees responsible for independent study 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:

*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 |

### Mitigating Circumstances

The ACCS may find a “reasonable basis” (also referred to as mitigating circumstances) by which to make a recommendation other than what a charter school qualifies to receive for its NCB instruction based on the criteria specified in 5 *CCR* Section 11963.4(a). Specifically, 5 *CCR* Section 11963.4(e) allows the ACCS to consider “documented data regarding individual circumstances of the charter school” and provides examples of the types of mitigating circumstances that the ACCS might consider, which may include, but are not limited to, the following:

* Information provided by the charter school, pursuant to 5 *CCR* Section 11963.3(b)(2) through (8)
  + PTR, calculated pursuant to 5 *CCR* Section 11704
  + Listing of entities receiving $50,000 or 10 percent or more of total expenditures
  + Identification of governing board members
  + Explanation of outgo transfers; explanation of reserves, if over the allowable amount
  + Facility costs and square footage
  + Number of full-time equivalent (FTE) employees with a valid teaching certificate
* Documented data regarding individual circumstances of the charter school (e.g., one-time or unique or exceptional expenses for facilities, acquisition of a charter school bus, acquisition and installation of computer hardware not related to the instructional program, special education charges levied on the charter school by a local educational agency, restricted state, federal, or private grants of funds awarded to the charter school that cannot be expended for teacher salaries, or contracted instructional services other than those for special education)
* The size of the charter school
* The number of years the charter school has been in operation

Additionally, under 5 *CCR* Section 11963.4(e), the ACCS shall give charter schools with less than a total of 100 units of prior year second period ADA or that are in their first year of operation serious consideration of 100 percent funding for their NCB instruction.

When considering a charter school’s request for mitigating circumstances, the CDE also reviews other information provided by the charter school as a part of its determination of funding request. Additionally, the CDE considers a charter school’s previous requests to the ACCS and the SBE for the consideration of mitigating circumstances.

### Funding Periods

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).

Regarding five-year funding periods, *EC* Section 47612.5(d)(2) provides the following:

A charter school that has achieved a rank of six or greater on the Academic Performance Index for the two years immediately prior to receiving a funding determination…shall receive a five-year determination.

Based on the CDE’s interpretation of statute and regulations, the CDE recommends a funding period between two to four years for an existing charter school with an active funding determination. Because the Academic Performance Index is no longer calculated, the CDE does not recommend five-year funding determination periods.

The CDE’s recommended funding period for an existing charter school with an active funding determination is dependent upon factors such as the number of times the school has obtained a funding determination from the SBE, and the information provided by the school as a part of its determination of funding request. The CDE typically recommends a funding period of three years for a charter school that is obtaining a funding determination with the SBE for the second time and a funding period of four years for subsequent times.

For charter schools requesting the consideration of mitigating circumstances, the CDE typically recommends a funding determination period of two years. A period of two years allows the CDE to timely revisit a charter school’s funding determination, ensure that the charter school meets the appropriate expenditure requirements for its approved level of funding for its NCB instruction, and follow up on other matters reported by the charter school on its determination of funding form.

## Review of Funding Determination Requests

Based on reported fiscal year (FY) 2022–23 data, neither charter school presented in this item meets the regulatory requirements to qualify for its requested level funding for NCB instruction without the consideration of mitigating circumstances. Both charter schools are requesting 100 percent funding.

The CDE finds a reasonable basis for both charter schools to be approved for 100 percent funding despite not meeting the regulatory criteria outlined in 5 *CCR* Section 11963.4(a). The CDE proposes to recommend that the SBE approve the determination of funding requests with the consideration of mitigating circumstances from the charter schools at 100 percent for two years. Summaries of each charter school’s mitigating circumstance as well as the CDE’s review and proposed recommendation to the SBE, are provided below.

If the charter schools’ requests for funding determinations with the consideration of mitigating circumstances are approved, the charter schools will be eligible to receive funding for their ADA generated through NCB instruction as approved by the SBE, pursuant to *EC* Section 47634.2(c).

### Gold Rush Home Study Charter (Charter #0807)

The following table provides the regulatory criteria for funding levels and the charter school’s expenditures percentage calculations and PTR as reported on its funding determination form.

Gold Rush Home Study Charter Nonclassroom-Based Instruction Funding Qualification

| **Criteria** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR** |
| --- | --- | --- | --- |
| **100 Percent** | ≥ 40 | ≥ 80 | ≤ 25 to 1 |
| **85 Percent** | ≥ 40 | ≥ 70 | Not Applicable |
| **70 Percent** | ≥ 35 | ≥ 60 | Not Applicable |
| **Charter School** | 40.24 | 77.32 | 19.67 to 1 |

Without the consideration of mitigating circumstances, the charter school qualifies for 85 percent funding for its NCB instruction.

The charter school’s complete determination of funding request with mitigating circumstances is provided on the August 2024 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug24item02a2.docx>. The following bullets summarize the charter school’s reasoning for not meeting the regulatory expenditure requirements:

* The charter school plans to purchase the building that it leases from its authorizer, Curtis Creek School District, or another nearby property. The building is for its independent study students, and the purchase would allow the school to make improvements to the building that are not possible due to it being leased.
* The charter school states its director left halfway through the 2021–22 school year. As a result, the charter school states that its administrative costs were higher as it had to hire an interim director and a business consultant during that period. The charter school states that these two positions were eliminated when a new director was hired at the beginning of the 2022–23 fiscal year.

Upon consideration of all information provided by the charter school, the CDE finds that the information supports the charter school’s claim for mitigating circumstances and its request for 100 percent funding. The CDE acknowledges that the charter school reserved a significant portion of its revenues on a future facility acquisition, which affected the charter school’s expenditure percentages. Pursuant to 5 *CCR* Section 11963.4(e), one-time or unique or exceptional expenses for facilities may provide a reasonable basis for a recommendation other than one that results from the regulatory criteria.

The CDE therefore proposes to recommend that the charter school receive 100 percent funding for its NCB instruction for two years.

### Pacific Coast Charter (Charter #0170)

The following table provides the regulatory criteria for funding levels and the charter school’s expenditures percentage calculations and PTR as reported on its funding determination form.

Pacific Coast Charter Nonclassroom-Based Instruction Funding Qualification

| **Criteria** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR** |
| --- | --- | --- | --- |
| **100 Percent** | ≥ 40 | ≥ 80 | ≤ 25 to 1 |
| **85 Percent** | ≥ 40 | ≥ 70 | Not Applicable |
| **70 Percent** | ≥ 35 | ≥ 60 | Not Applicable |
| **Charter School** | 51.13 | 69.25 | 22.73 to 1 |

Without the consideration of mitigating circumstances, the charter school qualifies for 70 percent funding for its NCB instruction.

The charter school’s complete determination of funding request with mitigating circumstances is provided on the August 2024 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-aug24item02a3.docx>. The following bullet summarizes the charter school’s reasoning for not meeting the regulatory expenditure requirements:

* Receipt of one-time revenues, including the Arts, Music & Instructional Materials Block Grant and Learning Recovery Emergency Block Grant

Upon consideration of all information provided by the charter school, the CDE finds that the information supports the charter school’s claim for mitigating circumstances. The CDE notes that had the one-time revenues been excluded, the charter school’s expenditure calculations for percentages spent on certificated salaries and benefits and instruction and related services would have been 60.13 percent and 80.67 percent, respectively, qualifying it for a recommendation for 100 percent funding.

The CDE therefore proposes to recommend that the charter school receive 100 percent funding for its NCB instruction for two years.

## Attachments

* **Attachment 1:** Proposed Recommendations for Nonclassroom-Based Determination of Funding Requests (1 Page)
* **Attachment 2:** Determination of Funding Request from Gold Rush Home Study Charter (Charter #0807) (12 Pages)
* **Attachment 3:** Determination of Funding Request from Pacific Coast Charter (Charter #0170) (14 Pages)

1. The PTR criteria outlined in this table pertain only to charter schools submitting 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)