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

# June 2024 Agenda Item #03

## Subject

Consideration of a Determination of Funding Request with “Reasonable Basis”/Mitigating Circumstances for Imperial Pathways Charter, 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 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 a determination of funding request with mitigating circumstances for Imperial Pathways Charter (Charter #1815).

## Proposed Recommendation

The CDE proposes to recommend that the SBE approve the determination of funding request with the consideration of mitigating circumstances for Imperial Pathways Charter 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 charter 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 proposed 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 charter 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 charter 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 on the charter school’s 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. 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 is dependent upon factors such as the number of times the charter school has renewed its funding determination with the SBE, and the information provided by the charter 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 renewing its funding determination request with the SBE for the first time and a funding period of four years for subsequent renewals.

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 request.

## Review of Imperial Pathways Charter’s Funding Determination Request

Based on its reported fiscal year (FY) 2022–23 data, Imperial Pathways Charter does not meet the regulatory requirements to qualify for 100 percent funding for its NCB instruction. Without the consideration of mitigating circumstances, Imperial Pathways Charter qualifies for 70 percent funding for its NCB instruction.

The CDE finds a reasonable basis for Imperial Pathways Charter’s determination of funding request 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 request with the consideration of mitigating circumstances for Imperial Pathways Charter at 100 percent for two years.

The following table provides the regulatory criteria for funding levels and Imperial Pathway Charter’s expenditures percentage calculations and PTR.

Imperial Pathways 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 | N/A |
| **70 Percent** | ≥ 35 | ≥ 60 | N/A |
| **Charter School** | 35.44 | 63.21 | 22.43 to 1 |

Imperial Pathways Charter’s complete determination of funding request with mitigating circumstances is provided on the June 2024 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun24item03a2.docx>. The following bullet summarizes the Imperial Pathways Charter’s reasoning for not meeting the regulatory expenditure requirements:

* The charter school’s ADA has continued to grow substantially. The charter school attributes this growth to a high number of adults in Imperial County who do not have a high charter school diploma. The charter school intends to buy out a lease for a building to accommodate its growth. The charter school states that its current facilities do not have enough space for more teachers. The charter school will use the larger facility to add teachers, instructional assistants, technology, classroom supplies, and additional CTE programs.

Upon consideration of all information provided by Imperial Pathways Charter, the CDE finds that the information supports its claim for mitigating circumstances and its request for 100 percent funding. The CDE acknowledges that Imperial Pathways Charter has set aside funds to obtain an additional facility. 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.

Therefore, the CDE proposes to recommend that the SBE approve the determination of funding request with the consideration of mitigating circumstances for Imperial Pathways Charter at 100 percent for a period of two fiscal years (2024–25 through 2025–26), as detailed in Attachment 1.

If Imperial Pathways Charter’s determination of funding request is approved, it will be eligible to receive funding for its ADA generated through NCB instruction as approved by the SBE, pursuant to *EC* Section 47634.2(c). If Imperial Pathways Charter’s funding determination is approved at a lower level than requested, it may submit a funding determination reconsideration request, pursuant to 5 *CCR* Section 11963.6(g).

## Attachments

* **Attachment 1:** Proposed Recommendation for a Nonclassroom-Based Determination of Funding Request with Mitigating Circumstances (1 Page)
* **Attachment 2:** Determination of Funding Request from Imperial Pathways Charter (Charter #1815) (13 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)