

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

oab-csd-nov21item01

# California State Board of Education November 2021 Agenda Item #13

## Subject

Consideration of Retroactive Requests for Determination of Funding 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 may receive apportionment funding for NCB instruction only if a determination of funding is made by the 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) and SBE, 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 SBE waiver to waive the aforementioned sections of 5 *CCR*.

The Monterey County Office of Education and Tracy Joint Unified School District each submitted a waiver request to the SBE on behalf of Open Door Charter (charter number 2091) and Tracy Independent Study Charter (charter number 2090), respectively, requesting approval to submit a retroactive funding determination request. The waivers were approved at the July 14, 2021, SBE meeting, which allowed each charter school to submit a funding determination request after the required deadline; funding determination requests are approved separately from waivers. The schools’ waivers are available on the SBE Agenda for July 2021 web page at <https://www.cde.ca.gov/be/ag/ag/yr21/agenda202107.asp>.

## Recommendation

The CDE recommends that the SBE approve the determination of funding request at the percentage and for the time period specified for Open Door Charter and Tracy Independent Study Charter as provided in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its October 12, 2021, meeting, the ACCS moved for recommendation to the SBE of the CDE staff recommendation. The motion passed unanimously.

The notice for the October 12, 2021, ACCS meeting and the funding determination request forms for Open Door Charter and Tracy Independent Study Charter are located on the SBE October 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice101221.asp>.

## Background

*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:

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.

Because the two schools presented in this item do not have an active funding determination that expires on June 30, 2021, or June 30, 2022, SB 820 is not applicable and the schools are each required to obtain an approved funding determination from the SBE.

The purpose of the funding determination requests presented in this item is to request funding for NCB instruction beginning in FY 2021–22.

## Brief Analysis of Key Issues

Pursuant to 5 *CCR* Section 11963.4(a), an NCB charter school requesting a determination of funding may qualify for either 70 percent, 85 percent, or 100 percent funding, or may be denied.

To qualify for a 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 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.

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 prospective (not for the current year) and submitted by February 1. The CDE received a completed determination of funding request from the two schools after the required February 1, 2021, deadline, thereby making the requests retroactive, not prospective. Since the schools did not submit a completed request by the regulatory filing deadline, they were required to submit a waiver for SBE approval to allow the school to request a funding determination after the deadline. The waiver requests were approved by the SBE at its July 14, 2021, meeting.

For an existing NCB charter school, 5 *CCR* Section 11963.6(c) specifies that a determination of funding shall be for a minimum time period of two years and a maximum time period of five years. It is the CDE’s current practice to recommend time periods based on the number of years a charter school has been in operation.

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.

The CDE notes that no charter schools were required to report ADA to the CDE for FY 2020–21. Pursuant to *EC* Section 43505(a)(1), charter schools that began operations in FY 2020–21 received funding based on a proxy ADA calculated using California Longitudinal Pupil Achievement Data System enrollment data, which is not reflected in the funding determination form.

## 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, the two charter schools listed in Attachment 1 would receive apportionment funding for their NCB average daily attendance under the Local Control Funding Formula model.

## California Department of Education Staff Review

Direct links to both schools’ funding determination requests are provided below. The requests are also available under Agenda Item 1 of the SBE October 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice101221.asp>.

* Determination of Funding Request for Open Door Charter, Charter #2091 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-oct21item01a2.pdf>)
* Determination of Funding Request for Tracy Independent Study Charter, Charter #2090 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-oct21item01a3.pdf>)

## Attachment

* **Attachment 1:** Proposed Determination of Funding Recommendation for a Nonclassroom-Based Charter School (1 Page)