# *California Code of Regulations*, Title 5Sections Pertinent to Nonclassroom-Based Funding Determinations

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## Section 11963. Definition of Classroom-Based Instruction

(a) In accordance with the definition of classroom-based instruction specified in Education Code section 47612.5(e)(1), and for purposes of identifying and reporting that portion of a charter school's average daily attendance that is generated through nonclassroom-based instruction pursuant to Education Code sections 47634.2(c) and 47612.5(e)(2), classroom-based instruction in a charter school occurs only when all four of the following conditions are met.

(1) The charter school's pupils are engaged in educational activities required of those pupils, and the pupils are under the immediate supervision and control of an employee of the charter school who is authorized to provide instruction to the pupils within the meaning of Education Code section 47605(l).

(2) At least 80 percent of the instructional time offered at the charter school is at the schoolsite.

(3) The charter school's schoolsite is a facility that is used principally for classroom instruction.

(4) The charter school requires its pupils to be in attendance at the schoolsite at least 80 percent of the minimum instructional time required pursuant to Education Code section 47612.5(a)(1).

(b) The requirement to be “at the schoolsite” is satisfied if either of the following conditions is met.

(1) The facility in which the pupils receive instruction is:

(A) Owned, rented, or leased by the charter school principally for classroom instruction;

(B) Provided to the charter school by a school district pursuant to Education Code section 47614 principally for classroom instruction; or

(C) Provided to the charter school free-of-charge principally for classroom instruction pursuant to a written agreement.

When not being used by the charter school for classroom instruction, the facility may be rented, leased, or allowed to be used for other purposes (e.g., for evening adult classes not offered by the charter school, local theater productions, or community meetings) and still be deemed to be principally for classroom instruction.

(2) The charter school facility meets the criteria in paragraph (1) of subdivision (b) and the pupils are on a field trip during which the pupils remain under the immediate supervision and control of the employee of the charter school and are carrying out an educational activity required of the pupils.

(c) The requirement to be “at the schoolsite” is not satisfied if the pupils are in a personal residence (i.e., a dwelling), even if space in the residence is set aside and dedicated to instructional purposes and/or the charter school rents or leases space in the residence for the provision of instruction. As used in this subdivision, a personal residence shall not include a facility that is licensed by a state or local government agency to operate as a facility in which pupils not related to the facility's owners are provided custodial care and supervision (e.g., a licensed children's institution or a boarding school).

(d) The definitions in this section are solely for the purpose of determining if a charter school must submit a determination of funding request pursuant to Education Code section 47634.2.

## Section 11963.1. Nonclassroom-Based Instruction in Charter Schools

This article does not change the requirement that nonclassroom-based instruction in charter schools comply with the provisions of Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 of the Education Code.

## Section 11963.2. Average Daily Attendance for Nonclassroom-Based Instruction in Charter Schools

(a) A charter school may receive funding for nonclassroom-based instruction only if a determination of funding is made pursuant to Education Code section 47634.2. A determination of funding is a specific percentage approved by the State Board of Education for each affected charter school by which the charter school's reported nonclassroom-based average daily attendance must be adjusted by the Superintendent of Public Instruction prior to the apportioning of funds based upon that average daily attendance. A determination of funding shall only be approved by the State Board for a charter school if the charter school has submitted a request.

(b) A determination of funding request approved by the State Board of Education shall be 70 percent, unless a greater or lesser percentage is determined appropriate by the State Board of Education in accordance with section 11963.4. In no case shall an approved determination of funding exceed 100 percent.

## Section 11963.3. Determination of Funding Request Forms and Calculations

(a) For purposes of submitting a determination of funding request, the California Department of Education shall issue a form or set of forms to collect the information specified in this subdivision. Unless otherwise indicated, charter schools submitting a determination of funding request shall complete the form or forms in accordance with the definitions used in the 2005 edition of the California School Accounting Manual (which can be obtained from the California Department of Education web site at: http://www.cde.ca.gov/fg/ac/sa). The form or forms shall be developed by the California Department of Education in consultation with the Advisory Commission on Charter Schools. The form or forms shall include all of the following and, to the extent the form or forms include more than the following, the form or forms shall require the approval of the State Board of Education and comply with applicable provisions of the Administrative Procedure Act.

(1) The name, charter number, authorizing entity, address, contact name and title, telephone number, fax number, and email address, if any, for the charter school.

(2) The percentage requested by the school as its determination of funding.

(3) The number of fiscal years for which the determination of funding is requested, which shall not exceed five years.

(4) The date the charter was initially granted and the date the charter or charter renewal will expire.

(5) For charter schools that operated in the prior fiscal year, all of the following:

(A) The school's total resources, including all federal revenue, with federal Public Charter School Grant Program start-up, implementation, and dissemination grants separately identified; all state revenue; all local revenue with in-lieu property taxes separately identified; other financing sources; and the ending balance from the prior fiscal year.

(B) The school's total expenditures for instruction and related services, by object of expenditure, which shall include all of the following:

1. Activities dealing with the interaction between teaching staff and students, without regard to the instructional location or medium.

2. Services that provide administrative, technical, and logistical support to facilitate and enhance instruction.

3. Services in direct support of students.

4. School-sponsored extra-curricular or co-curricular activities designed to provide motivation and enjoyment and improvement of skills.

5. Instructional materials, supplies, and equipment.

(C) The school's total expenditures for schoolsite and administrative site operations and facilities, by object of expenditure, which shall include all of the following:

1. Activities concerned with securing and keeping open and working the physical plants, grounds, and equipment necessary for the operation of the school.

2. Facility rents, leases, and utilities.

3. Facilities acquisition and construction.

(D) The school's total expenditures for administration and all other activities, by object of expenditure, which shall include all of the following:

1. Activities concerned with establishing and administering policy for operating the entire charter school, such as the governing board, director, and administrative staff.

2. Other general administration activities, such as payroll and accounting services, auditing and legal services, property and liability insurance, personnel, charter-wide telephone service, and data processing services.

3. Supervisorial oversight fees charged by the chartering authority.

4. Other expenditures not reported elsewhere, such as those for community services and enterprise activities and cumulative administrative overhead from related party transactions.

(E) Other outgo and other uses, including debt service payments and transfers.

(F) The excess (or deficiency) of revenues over expenditures calculated by subtracting the total of subparagraphs (B), (C), (D), and (E), from the total resources reported pursuant to subparagraph (A), and a list of the amount of reserves for: facilities acquisition or construction, economic uncertainties, the amount required by the charter-authorizing entity, or other reserves. Reserves in excess of the greater of fifty-thousand dollars or five percent of total expenditures may be allowed for economic uncertainties or long-term expenditures such as capital projects if the excess reserves are satisfactorily explained pursuant to section 11963.4(b).

(6) For charter schools that did not operate in the prior fiscal year, the revenue and expenditure information required in paragraph (5) shall be provided using reasonable estimates of current-year annualized revenues and expenditures.

(b) In addition to the form or forms prescribed pursuant to subdivision (a), a complete determination of funding request shall also include the following information. Only a determination of funding request that is complete may be acted upon by the State Board of Education.

(1) A certification signed by the charter school's director, principal, or governing board chairperson of the following:

(A) That the information provided is true and correct to the best of the ability and knowledge of the individual authorized to do so by the charter school's governing board.

(B) That the charter school's nonclassroom-based instruction is conducted for and substantially dedicated to the instructional benefit of the school's students.

(C) That the governing board of the charter school has adopted and implements conflict of interest policies.

(D) That all of the charter school's transactions, contracts, and agreements are in the best interest of the school and reflect a reasonable market rate for all goods, services, and considerations rendered for or supplied to the school.

(2) The charter school's pupil-teacher ratio as calculated pursuant to title 5, section 11704 of the California Code of Regulations.

(3) A listing of entities that received in the previous fiscal year (or will receive in the current fiscal year) $50,000 or more or 10 percent or more of the charter school's total expenditures identified pursuant to subparagraphs (B), (C), (D), and (E) of paragraph (5) of subdivision (a), the amount received by each entity; whether each of the contract payments is based on specific services rendered or upon an amount per unit of average daily attendance or some other percentage; and an identification of which entities, if any, have contract payments based on a per unit average daily attendance amount or some other percentage.

(4) An identification of the members comprising the charter school's governing board (i.e., parent, teacher, etc.) and a description of how those members were selected; whether the governing board has adopted and implemented conflict of interest policies and procedures; and whether any of the governing board members are affiliated in any way with any of the entities reported pursuant to paragraph (3) and if so, how.

(5) An explanation of all transfers reported pursuant to subparagraph (E) of paragraph (5) of subdivision (a).

(6) A list and the amount of each of the other reserves reported pursuant to subparagraph (F) of paragraph (5) of subdivision (a).

(7) To the extent that a charter school desires to have facility costs considered as an instructional cost, the total annual facility-related and operational cost, total facility square footage occupied by the charter school, total classroom-based average daily attendance (if applicable) as reported at the prior-year second principal apportionment, and the total student hours attended by nonclassroom-based pupils at the school site shall be provided.

(8) The number of full-time equivalent 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. For purposes of these regulations, “direct instructional support” includes, but is not limited to, activities that are directly related to student instruction that are performed by qualified certificated persons such as curriculum coordinators, individualized education plan coordinators, librarians, counselors, psychologists, and nurses.

(c) The California Department of Education shall perform the following using the resource and expenditure data provided pursuant to subdivision (a).

(1) A calculation showing the charter school's total expenditures for 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) as a percentage of the school's total public revenues. For the purposes of this subdivision:

(A) “Employees” shall include special education teachers who possess a valid teaching certificate, permit, or other document equivalent to that which special education teachers in non-charter public schools would be required to hold issued by the Commission on Teacher Credentialing, and who provide direct instruction or direct instructional support to pupils of the charter school pursuant to a contract with a public or private entity.

(B) “Employees” shall include individuals who possess a valid certificate, permit, or other document equivalent to that which the individuals would be required to possess in a non-charter public school, issued by the Commission on Teacher Credentialing, and who are employed by a local education agency (LEA), provided all of the following conditions are met: the LEA is the employer of all the charter school's staff; the governing board of the LEA is the governing authority for the charter school (i.e., the charter school is not a corporate entity separate from the LEA); and the LEA's employees are assigned exclusively to work at the charter school providing direct instruction or direct instructional support to students or, to the extent that the LEA's employees are assigned to work at the charter school on a part-time basis, the charter school pays for the services rendered by the employee providing direct instruction or direct instructional support to students on a documented, fee-for-service basis and not, for example, on the basis of a fixed annual amount, fixed percentage of average daily attendance revenue, or other basis that is not related to documented services actually rendered to the charter school. Under no circumstances shall certificated employees of an LEA be considered employees of a charter school for purposes of this subparagraph unless the charter school pays for the services rendered by the LEA's employees on a documented, fee-for-service basis.

(C) For purposes of this section, “employee” also means qualified persons that provide direct instruction or direct instructional support, that are hired directly by the charter school through an employment services contract based on a documented, fee-for-service basis.

(D) The school's total public revenue is based on the amounts reported pursuant to subparagraph (A) of paragraph (5) of subdivision (a) and equals the sum of: all federal revenue, less any Public Charter School Grant Program start-up, implementation, and dissemination grant funds; state revenue; and local revenue from in-lieu property taxes.

(2) A calculation showing the charter school's total expenditures on instruction and related services as a percentage of the school's total revenues. For the purposes of this subdivision, the school's total revenues do not include the ending balance from the prior fiscal year.

## Section 11963.4. Evaluation of Determination of Funding Requests Regarding Nonclassroom-Based Instruction

(a) When a complete determination of funding request is received from a charter school, it shall be reviewed by the California Department of Education and presented to the Advisory Commission on Charter Schools, along with credible information pertaining to the request obtained from any other source. The Advisory Commission shall develop a recommendation pursuant to this section to the State Board of Education regarding the request, and that recommendation shall be presented to the State Board of Education by the California Department of Education. The following criteria shall guide the process of reviewing and developing a recommendation on the request. The California Department of Education shall report any difference of opinion between the California Department of Education and the Advisory Commission as to the recommendation presented to the State Board of Education.

(1) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of section 11963.3 equals at least 35 percent but less than 40 percent, and the percentage calculated pursuant to paragraph (2) of subdivision (c) of section 11963.3 equals at least 60 percent but less than 70 percent, the Advisory Commission on Charter Schools shall recommend to the State Board of Education approval of the request at 70 percent, unless there is a reasonable basis to recommend otherwise. If the recommended percentage is lower than the requested percentage, the recommendation to the State Board shall include the reasons justifying the reduction and, if appropriate, describe how any deficiencies or problems may be addressed by the charter school.

(2) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of section 11963.3 equals or exceeds 40 percent, and the percentage calculated pursuant to paragraph (2) of subdivision (c) of section 11963.3 equals at least 70 percent but less than 80 percent, the Advisory Commission on Charter Schools shall recommend to the State Board of Education approval of the request at 85 percent, unless there is a reasonable basis to recommend otherwise. The recommendation to the State Board shall include the reasons justifying a percentage that is greater than 70 percent and, if the recommended percentage is lower than the requested percentage, the reasons justifying the reduction and, if appropriate, describe how any deficiencies or problems may be addressed by the charter school.

(3) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of section 11963.3 equals or exceeds 40 percent, the percentage calculated pursuant to paragraph (2) of subdivision (c) of section 11963.3 equals or exceeds 80 percent, and the ratio of average daily attendance for independent study pupils to full-time certificated employees responsible for independent study does not exceed a pupil-teacher ratio of 25:1 or the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the largest unified school district, as measured by average daily attendance, in the county or counties in which the charter school operates, the Advisory Commission on Charter Schools shall recommend to the State Board of Education approval of the request at 100 percent (i.e. full funding), unless there is a reasonable basis to recommend otherwise. If the recommended percentage is lower than the requested percentage, the recommendation to the State Board shall include the reasons justifying the reduction and, if appropriate, describe how any deficiencies or problems may be addressed by the charter school.

(4) If the percentage calculated pursuant to paragraph (1) of subdivision (c) of section 11963.3 is less than 35 percent, or the percentage calculated pursuant to paragraph (2) of subdivision (c) of section 11963.3 is less than 60 percent, then the charter school's nonclassroom-based instruction is not substantially dedicated to the instructional benefit of the students, and the Advisory Commission on Charter Schools shall recommend that the State Board of Education deny the request, unless there is a reasonable basis to recommend otherwise. The recommendation to the State Board shall include the reasons justifying the denial and, if appropriate, describe how any deficiencies or problems may be addressed by the charter school. Denial of a determination of funding request by the State Board of Education shall result in no funding being apportioned for average daily attendance identified by the charter school as being generated through nonclassroom-based instruction pursuant to Education Code section 47634.2(c).

(5) Any request for a funding determination received prior to the effective date of these regulations will be reviewed pursuant to the criteria in effect at the time of submittal.

(b) The Advisory Commission on Charter Schools and/or the California Department of Education may ask the charter school to provide additional information in order to make possible a more detailed review or to develop a reasonable basis for a recommendation other than those prescribed in subdivision (a). With the consent of the Superintendent of Public Instruction, the request for additional information shall be considered a reasonable inquiry to which the charter school must respond pursuant to Education Code section 47604.3.

(c) Any multi-year funding determination approved by the State Board of Education may be modified by the State Board of Education, 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.

(d) Prior to a recommendation by the Advisory Commission on Charter Schools (that a determination of funding request be denied or approved at a percentage lower than that requested) being forwarded to the State Board of Education, the affected charter school shall be given thirty (30) calendar days in which to amend its determination of funding request and/or to provide additional information in support of the request. Based upon consideration of the amended request or any additional information that may be provided, the Advisory Commission may modify its recommendation to the State Board.

(e) A reasonable basis for the Advisory Commission on Charter Schools to make a recommendation other than one that results from the criteria specified in subdivision (a) may include, but not be limited to, the following: the information provided by the charter school pursuant to paragraphs (2) through (8), inclusive, of subdivision (b) of section 11963.3, documented data regarding individual circumstances of the charter school (e.g., one-time or unique or exceptional expenses for facilities, acquisition of a 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, and how many years the charter school has been in operation. The Advisory Commission on Charter Schools shall give charter schools with less than a total of one hundred (100) units of prior year second period average daily attendance or that are in their first year of operation serious consideration of full funding.

## Section 11963.5. Determination of Funding Requests for Nonclassroom-Based Virtual or On-Line Charter Schools

A virtual or on-line charter school is one in which at least 80 percent of teaching and student interaction occurs via the Internet.

(a) A virtual or on-line nonclassroom-based charter school may receive approval of a funding determination with no maximum pupil-teacher ratio if the charter school has and maintains an 8 or above Academic Performance Index (API) rank in either its statewide or similar schools ranking and has no less than a 6 in the other of these two rankings.

(b) In order to be funded pursuant to (a) above, a virtual or on-line charter school, must demonstrate that:

(1) The school has met its overall and subgroup API growth targets.

(2) Instructional expenditures are at least 85 percent of the overall school budget. A substantial portion of these expenditures (at least 25 percent of the charter school's general purpose entitlement and categorical block grant as defined in Education Code section 47632), are spent on technology that directly benefits students and teachers and results in improved student achievement.

(3) Computer-based instruction and assessment is provided to each student and includes the use of an on-line instructional management program, which at a minimum includes standards-based guided lessons, lesson plans, initial testing of students, periodic assessment of student achievement, and the use of other measurements of student progress over a period of time.

(4) Teachers are provided with technology tools and print media, which at a minimum must include: standards-aligned instructional materials, computer, printer, monitor, Internet service, telephone, staff development that provides for the monitoring of student progress, and a means of electronic communication for frequent student contact.

(5) All students are provided an individualized learning plan that is based on initial testing of the students and that is monitored either remotely or in person, by the teacher to evaluate student progress.

(6) All students are provided access to a computer, Internet service, printer, monitor, and standards-aligned materials based on State Board adopted academic content standards for each grade level and for each subject studied.

(7) All students eligible for special education supports and services receive those supports and services in accordance with their individualized education program.

(8) Charter school admission practices will not favor high performing students or recruit a student population that is of a higher socioeconomic group or lower racial or ethnic representation than the general population of the county or counties served. Admission practices not reflective of the county or counties served shall be cause for denial by the State Board of Education under this section.

## Section 11963.6. Submission and Action on Determination of Funding Requests Regarding Nonclassroom-Based Instruction

(a) An approved determination of funding for a new charter school in its first year of operation shall be submitted by December 1 and shall be for two fiscal years. Within 90 days after the end of its first fiscal year of operation, a charter school shall submit unaudited actual expense reports and a funding determination form based on the school's actual second-year budget. If the Advisory Commission on Charter Schools determines that the actual expenditures of the charter school or the second year funding determination form do not support the funding determination for the second year, the Advisory Commission on Charter Schools shall recommend that the State Board of Education revise the funding determination.

(b) For the 2005-06 fiscal year only, a determination of funding request approved by the State Board of Education for any nonclassroom-based charter school that is not in its first year of operation shall be for the 2005-06 fiscal year and additionally a minimum of one year but a maximum of four years prospectively (for a total funding determination of not more than five years).

(c) Any determination of funding request approved by the State Board of Education for an existing nonclassroom-based charter school from the 2006-07 fiscal year forward shall be prospective (not for the current year), in increments of a minimum of two years and a maximum of five years in length. Beginning with the 2007-08 fiscal year, nonclassroom-based charter schools that had a funding determination in the prior year must submit a funding determination request by February 1 of the fiscal year prior to the year the funding determination will be effective, when a new request is required under these regulations.

(d) A determination of funding shall be subject to review each time a material change is made in the school's charter with respect to nonclassroom-based instruction, and may be subject to review each time the school's charter is renewed, and/or in accordance with any conditions the State Board of Education may impose at the time of the determination of funding request approval. A material change in the school's charter with respect to nonclassroom-based instruction is any significant change that affects the level of resources devoted to nonclassroom-based instruction, the courses to be offered through nonclassroom-based instruction, and/or the delivery of educational services to pupils receiving nonclassroom-based instruction. The charter school shall notify the California Department of Education no later than thirty (30) days after the material change is made.

(e) A charter school may submit a request for funding determination up to one year prior to the fiscal year in which the request will initially be effective. The State Board may grant the request for up to five years following the effective date of the request.

(f) Not more than 120 days following the receipt of a complete determination of funding request, the California Department of Education shall present the request and the recommendation of the Advisory Commission on Charter Schools to the State Board of Education in accordance with subdivision (a) of section 11963.4.

(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.

## Section 11963.7. Termination of a Determination of Funding Regarding Nonclassroom-Based Instruction

Any multi-year funding determination approved by the State Board of Education may be modified by the State Board of Education, in terms of both the multi-year approval and the funding authorized.

The State Board of Education may terminate a determination of funding if updated or additional information requested by the California Department of Education and/or the Advisory Commission on Charter Schools is not made available by a charter school within thirty (30) calendar days or if credible information from any source supports termination. If the latter is the case, the charter schools shall be given thirty (30) calendar days prior to the termination of funding to provide additional information to support the school's determination of funding.

California Department of Education
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