

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

oab-csd-may21item02

# California State Board of EducationMay 2021 AgendaItem #08

## Subject

Revision of a Funding Determination 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(a), and Associated *California Code of Regulations*, Title 5.

## Type of Action

Action, Information

## Summary of the Issue

California *Education Code* 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), pursuant to relevant *California Code of Regulations*, Title 5 (5 *CCR*).

Pursuant to 5 *CCR* Section 11963.6(a), 90 days after a new NCB charter school’s first fiscal year 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.

## Recommendation

The CDE recommends that the SBE revise the funding determination for Peak Prep Pleasant Valley, which was previously approved for 100 percent funding for the period of 2019–20 through 2020–21, so that the school receives 70 percent funding for the 2020–21 fiscal year with the consideration of mitigating circumstances as specified in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its April 13, 2021, meeting, the ACCS moved to approve the CDE recommendation that the SBE revise the determination of funding request for Peak Prep Pleasant Valley at the percentage and for the time period as specified in Attachment 1. The motion passed by a vote of seven to two.

The notice for the April 13, 2021, ACCS meeting and the school’s funding determination request form are located on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>.

## Brief Analysis of Key Issues

NCB charter schools must obtain an approved determination of funding from the SBE in order to establish eligibility to receive apportionment funding for NCB instruction. Pursuant to 5 *CCR* Section 11963.4(a), an NCB charter school may qualify for either 70 percent, 85 percent, or 100 percent full funding, or may be denied. To qualify for a recommendation of 100 percent funding to the SBE, 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(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. Ninety days after a new NCB charter school’s first fiscal year 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 actual expenditures of the charter school or the second-year funding determination form do not support the funding determination for the school’s second year, the ACCS shall recommend that the SBE revise the funding determination. Revision of the funding determination would mean that the amount of funding the school receives for its NCB instruction for its second fiscal year of operation would be adjusted as appropriate.

### Peak Prep Pleasant Valley #2062

At its March 11–12, 2020, meeting, the SBE approved a funding determination for Peak Prep Pleasant Valley for 100 percent funding for the period of 2019–20 through 2020–21 under the assumption that the school’s expenditures for its first year of operation would meet the required percentages for full funding based on the school’s first-year budget.

According to the school’s initial funding determination request based on its first-year budget, the school projected total revenues of $3,883,487 and total expenditures of $3,767,775 (Attachment 2 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>). Overall, the school projected spending 42.43 percent of public revenues on certificated salaries and benefits and 80.01 percent of total revenues on instruction and related services while maintaining a PTR of 17.36 to 1, which qualified the school for a recommendation for 100 percent (full) funding. 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

Pursuant to 5 *CCR* Section 11963.6(a), Peak Prep Pleasant Valley submitted its 90 Day Report to the CDE on September 28, 2020 (Attachment 3, pp. 1–15 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>). The school’s funding determination form based on its second-year budget projects total revenues of $3,353,463 and total expenditures of $3,228,878 (Attachment 3, pp. 1–10 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>). Overall, the school projects spending 68.21 percent of public revenues on certificated salaries and benefits and 82.33 percent of total revenues on instruction and related services while maintaining a PTR of 17.58 to 1, which is compliant with the requirements for a recommendation for full funding.

However, because there appeared to be a discrepancy between the unaudited actual expense reports compared to the school’s initial funding determination request based on its first-year budget, the CDE requested that the school also submit a funding determination form based on the first-year unaudited actual expense report as a supplement to the 90 Day Report (Attachment 2 and Attachment 3, pp. 11–15 and 16–25 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>). The school submitted this supplemental form to the CDE on December 11, 2020.

After reviewing all information submitted by the school, the CDE has determined that the actual expenditures of the school do not support the funding determination for the second year. On its 90 Day Report supplemental form, the school reported total revenues of $3,107,573 and total expenditures of $1,546,420. Overall, it reported spending 11.87 percent of public revenues on certificated salaries and benefits and 47.31 percent of total revenues on instruction and related services while maintaining a PTR of 12.37 to 1.

Pursuant to 5 *CCR* Section 11963.4(a)(4), schools that report spending less than 35 percent of public revenues on certificated salaries and benefits, or less than 60 percent of total revenues on instruction and related services, are not substantially dedicated to the instructional benefit of the students. For schools that fall into this category, the ACCS shall recommend that the SBE deny the funding determination request, unless there is a reasonable basis to recommend otherwise.

##### CDE Follow Up

Due to the discrepancies observed between the school’s initial funding determination request and 90 Day Report supplemental form, on December 23, 2020, the CDE notified Peak Prep Pleasant Valley of its intent to present the school’s funding determination request to the ACCS for revision. At this time, the CDE requested a written explanation from the school regarding its unaudited actual expenses for fiscal year 2019–20 (Attachment 4, pp. 43–44 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>).

The school and its back office provider, Ventura County Schools Business Services Authority, responded to the CDE’s request and provided clarifying information on January 8, 2021 (Attachment 4, pp. 46–61 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>).

On January 13, 2021, the CDE acknowledged its receipt of the additional information provided by the school and its back office provider. The CDE also informed the school that it may submit a revised supplemental funding determination form with mitigating circumstances to the CDE for the ACCS and SBE to consider if it wishes to seek continued funding for its NCB instruction (Attachment 4, pp. 145–146 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>).

#### Mitigating Circumstances

On February 12, 2021, Peak Prep Pleasant Valley submitted a revised funding determination form requesting the consideration of mitigating circumstances as well as supplemental documentation regarding the circumstances of the school and in support of the continuation of its 100 percent funding determination for the 2020–21 fiscal year (Attachment 4 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>). In its explanation for the insufficient expenditure percentages reported in its first-year unaudited actual expense report, the school cited its former back office provider during the 2019–20 fiscal year, Accel Schools, as being inexperienced in California charter school fiscal management and inappropriately handling how payroll and benefits were billed.

The school states that Accel Schools failed to perform services as contracted and to deliver adequate backup documentation for the charged amounts. The school terminated its contract with Accel Schools at the end of the 2019–20 fiscal year and contracted with its current back office provider, Ventura County Schools Business Services Authority beginning with the 2020–21 fiscal year. After the contract between Peak Prep Pleasant Valley and Accel Schools was terminated, Accel Schools continued to demand payment of approximately $2.6 million for its services. The school’s governing board asked the school, its legal counsel, and its current back office provider to look into how much of that $2.6 million was deserved. Dr. Shalen Bishop, the school’s superintendent, states the following (Attachment 4, p. 50 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>):

In July 2020, Peak Prep’s Board directed myself, Peak Prep’s counsel Young, Minney & Corr, LLP (“YMC”), and [Ventura County Schools Business Services Authority] to assess whether and to what extent the amounts invoiced had been actually earned by Accel. A review of Accel’s performance under the Services Agreement against Accel’s invoices, generated serious doubt that Accel had earned the fees it was seeking, not only in terms of calculation (as was an initial concern), but also substantively, in light of Accel’s troubled performance in the 2019–20 school year, the fact that Accel had not performed all of the services for which it was contracted, and questions regarding the value of the services that Accel did perform.

As to the Leasing Agreement, Peak Prep came to learn that Accel was marking up the cost of payroll, which was not authorized under the Services Agreement or Leasing Agreement or indicated on the payroll invoices. Thus, Peak Prep’s Board made the decision to consider the invoices and amounts contested until Peak Prep received satisfactory documentation and reached a resolution with Accel as to the amounts Accel may be due.

Accel Schools filed a lawsuit against the school seeking $2.6 million in payment. According to Peak Prep Pleasant Valley, if the school had paid the full amount that Accel Schools has charged them, it likely would have met the expenditure requirements for full funding because the expenses would have been reflected in the unaudited actual expense reports and applied towards the school’s certificated salaries and benefits, and instruction and related services expenses. However, per Peak Prep Pleasant Valley, reporting their expenditures in this manner would not have been a “reflection of prudent stewardship of public dollars and transparency” because of the contested amounts (Attachment 4, p. 46 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>).

The revised form submitted by the school on February 12, 2021, is mostly identical to the supplemental form submitted as a part of the 90 Day Report review; however, on the revised form the school reported higher expenditures for certificated staff salaries and benefits and lower expenditures for contracts for instructional services. The school asserts the reason for the change is that even though the employees were on Accel Schools’ payroll, they were “hired and supervised by Peak’s Superintendent to exclusively serve Peak’s students,” so that would be the correct reporting of those expenditures (Attachment 4, p. 12 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>). Ventura County Schools Business Services Authority also provides details on these expenditures (Attachment 4, pp. 55–61 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>). Ventura County Schools Business Services Authority states in its letter that Accel Schools’ use of “co-employees” caused the school’s expenditures on certificated salaries and benefits to be recorded as subagreements for services, and that they should be recognized as expenditures toward certificated salaries and benefits (Attachment 4, p. 60 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>):

What is missing from this calculation are the salaries and benefits of the co-employed employees from the start of the year through April 2020. In compliance with CSAM procedures, I recorded the expenses for these leased employees as subagreements for services: $877,770.45 was recorded under object 5100 and $25,000 in object 5800. The total cost of the leased employees is estimated to be $902,770.45, per my analysis as discussed above. Again, all of these leased employees were eventually converted to direct employees of Peak Prep, and most of them remain currently employed with Peak Prep. If this amount were added to the salaries and benefits reflected in the unaudited actuals report, then the total salaries and benefits would come out to $1,333,513.12, which equals 42.91% of revenues. This percentage is in alignment with the initial FDF, and I believe that the CDE should recognize the co-employed employee costs as part of the 40% requirement for certificated salaries and benefits, given that these employees were ultimately selected, supervised, and directed by Peak Prep’s Superintendent to teach and support Peak Prep’s students, and acted for all practical purposes as though they were directly employed by Peak Prep.

Ventura County Schools Business Services Authority also states that the unaudited actuals that they prepared “only accounts for the expenses that Peak Prep finds justifiable, subject to any determination in the course of the ongoing litigation” and that $1.76 million remains contested in litigation. The $1.76 million includes expenditures that would count toward instruction-related services, so the actual expenditures will be determined by the outcome of the court case (Attachment 4, p. 60 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>).

The below table outlines the discrepancies between the following funding determination forms submitted by the school:

* Initial funding determination form based on first-year budget data
* 90 Day Report based on second-year budget data
* 90 Day Report supplemental form based on unaudited actuals
* Revised 90 Day Report supplemental form based on unaudited actuals

| **Report** | **Date Submitted** | **Total Revenues** | **Total Expenditures** | **Certificated Salaries and Benefits** | **Instruction and Related Services** | **PTR** |
| --- | --- | --- | --- | --- | --- | --- |
| Initial Funding Determination Form (Based on First-Year Budget) | 12/2/2019 | $3,883,487 | $3,767,775 | 42.43 percent | 80.01 percent | 17.36 to 1 |
| 90 Day Report (Based on Second-Year Budget) | 9/28/2020 | $3,353,463 | $3,228,878 | 68.21 percent | 82.33 percent | 17.58 to 1 |
| 90 Day Report Supplemental Form (Based on Unaudited Actuals) | 12/11/2020 | $3,107,573 | $1,546,420 | 11.87 percent | 47.31 percent | 12.37 to 1 |
| Revised 90 Day Report Supplemental Form (Based on Unaudited Actuals) | 2/12/2021 | $3,107,573 | $1,546,420 | 39.44 percent | 47.31 percent | 12.37 to 1 |

The CDE notes that its recommendation is based on the Revised 90 Day Report supplemental form, which is based on Peak Prep Pleasant Valley’s unaudited actuals and which was submitted on February 12, 2021.

## Conclusion

The CDE has determined that the information submitted by Peak Prep Pleasant Valley in its 90 Day Report does not support the school’s current funding determination of 100 percent funding for its NCB ADA for the 2020–21 fiscal year. Without the consideration of mitigating circumstances, the school qualifies for no funding for its NCB ADA, pursuant to 5 *CCR* Section 11963.4(a)(4). However, the CDE finds the school’s claim for mitigating circumstances to have some merit.

Per CDE attendance guidelines, a teacher must be an employee of the charter school that is claiming ADA. While the CDE does not endorse the school’s previous engagement in a co-employment model, the CDE does acknowledge that Peak Prep Pleasant Valley has ended its contract with its previous back office provider and has ensured that its teachers are employees of the school. Additionally, the school has indicated that it is on track to meet the expenditure requirements for full funding for the 2020–21 fiscal year based on its first and second interim budgets (Attachment 4, p. 172 of Agenda Item 2 on the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>).

Therefore, the CDE recommends that the SBE revise the current funding determination for Peak Prep Pleasant Valley to 70 percent for the time period specified in Attachment 1. A revision of the funding determination would mean that the school would be eligible to receive 70 percent funding for its NCB ADA for the 2020–21 fiscal year, instead of 100 percent, and would be required to pay back to the CDE excess funds received for that year. The CDE notes that the school may submit a funding determination reconsideration request after litigation determines the actual amount spent by the school.

## 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.

At its March 11–12, 2020, meeting, the SBE approved a funding determination for Peak Prep Pleasant Valley for 100 percent funding for the period of 2019–20 through 2020–21 under the assumption that the school’s expenditures for its first year of operation would meet the required percentages for full funding based on the school’s first-year budget.

## Fiscal Analysis

If approved, Peak Prep Pleasant Valley would receive a reduction of apportionment funding for its NCB ADA under the Local Control Funding Formula model for the amount and the time period as specified in Attachment 1.

## California Department of Education Staff Review

Direct links to the documents reviewed by the CDE in the consideration of the revision of the school’s funding determination are provided below. The request is also available under Agenda Item 2 of the SBE April 2021 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041321.asp>.

* Initial Funding Determination Form Based on the First-Year Budget for Peak Prep Pleasant Valley, Charter #2062 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-apr21item02a2.pdf>)
* 90 Day Report and Supplemental Funding Determination Information for Peak Prep Pleasant Valley, Charter #2062 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-apr21item02a3.pdf>)
* Revised Funding Determination Form and Supplemental Documentation from Peak Prep Pleasant Valley, Charter #2062 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-apr21item02a4.pdf>)

## Attachment

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