

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

lab-csd-jul23item02

# California State Board of Education July 2023 Agenda Item #08

## Subject

Consideration of Requests for Determination of Funding 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, Consent

## 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). 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*). The ACCS and SBE may include the consideration of mitigating circumstances.

This item considers determination of funding requests with mitigating circumstances for four charter schools.

## Recommendation

The CDE recommends that the SBE approve the schools’ determination of funding requests at 100 percent for two fiscal years (2023–24 through 2024–25), as specified in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its June 13, 2023, meeting, the ACCS moved for recommendation to the SBE of the CDE staff recommendation. The motion passed unanimously.

The notice for the June 13, 2023, ACCS meeting and the funding determination forms for the schools presented in this item are located on the June 2023 ACCS Meeting Agenda web page (Item 02) at <https://www.cde.ca.gov/be/cc/cs/accsnotice061323.asp>.

## 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 either 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 for 100 percent funding, a 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 (FTE) that does not exceed a pupil-to-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:

### Table of 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 |

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). For an existing charter school with an active funding determination, it is the CDE’s current practice to recommend a time period of three or four years based on the number of times the charter school has renewed its funding determination with the SBE.

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.

For charter schools requesting the consideration of mitigating circumstances, the CDE typically recommends a funding determination period of two years, regardless of the number of times the school has renewed its funding determination with the SBE. A period of two years allows the CDE to timely revisit a charter school’s funding determination, ensure that the 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 school on its funding determination form.

### Mitigating Circumstances

The ACCS may find a “reasonable basis” (also referred to as mitigating circumstances) by which to make a recommendation other than what an NCB charter school qualifies to receive 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 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 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 its NCB instruction.

When considering a charter school’s request for mitigating circumstances, the CDE also reviews other information provided on the school’s funding determination form, including the school’s reserves, as permitted by *CCR* Section 11963.3(a)(5)(F), which states,

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).

The CDE also considers a charter school’s previous requests to the ACCS and the SBE for the consideration of mitigating circumstances.

## Analysis of Mitigating Circumstances Requests

All schools presented in this item fail to meet the requirements to qualify for 100 percent funding for their NCB instruction based on reported fiscal year (FY) 2021–22 data. Details of each school’s mitigating circumstances request as well as the CDE’s analysis and recommendation to the SBE, are provided below.

The CDE finds a reasonable basis for the following schools to be approved for a higher level of funding despite not meeting the regulatory criteria outlined in 5 *CCR* Section 11963.4(a). Therefore, the CDE recommends that the SBE approve the schools’ determination of funding requests at 100 percent for two years.

### Hanford Online Charter (Charter #1997)

Without the consideration of mitigating circumstances, the school qualifies for 70 percent funding for its NCB instruction as detailed in the table below:

#### Hanford Online Charter Nonclassroom-Based Instruction Funding Qualification

| **Criteria** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR** |
| --- | --- | --- | --- |
| **70 Percent Funding** | ≥ 35 | ≥ 60 | NA |
| **Charter School** | 47.48 | 61.28 | 20.63[[2]](#footnote-2) |

The school’s complete funding determination with mitigating circumstances request is provided on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item02a2.pdf>.

The following bullets summarize the school’s mitigating circumstances request:

* Increase in ADA
* Hold harmless provision of the 2020–21 Budget Act
* Conservative budgeting

The CDE finds the aforementioned factors to have contributed to the school’s failure to meet the expenditure requirements to qualify for 100 percent funding, which it would have otherwise met.

During its review of the school’s funding determination request, the CDE noted that the school reported total reserves of $606,917, or 60.00 percent of total expenditures. Pursuant to 5 *CCR* Section 11963.3(a)(5)(F), the CDE requested an explanation of the school’s plans for its excess reserves. The school states that it has reserves set aside to cover instructional materials, equipment, furniture, restricted resources, cash flow, and the purchase of a building. The CDE finds the school’s explanation of its excess reserves to be satisfactory.

The CDE finds that the information submitted by the school supports its claim for mitigating circumstances and its request for 100 percent funding and therefore recommends that the school receive 100 percent funding for its NCB instruction for two years.

**Pathways Charter Academy (Charter #2089)**

Without the consideration of mitigating circumstances, the school fails to qualify for funding for its NCB instruction as detailed in the table below:

#### Pathways Charter Academy Nonclassroom-Based Instruction Funding Qualification

| **Criteria** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR** |
| --- | --- | --- | --- |
| **0 Percent Funding** | < 35 | < 60 | NA |
| **Charter School** | 40.37 | 50.60 | 7.87 |

The school’s complete funding determination with mitigating circumstances request is provided on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item02a3.pdf>.

The following bullet summarizes the school’s mitigating circumstances request:

* Receipt of the A-G Completion Improvement Grant

The CDE finds the information submitted by the school to support its claim for mitigating circumstances. Receipt of the grant contributed towards the school’s failure to meet the expenditure requirements for 100 percent funding, which it would have otherwise met.

During its review of the school’s funding determination request, the CDE noted that the school reported total reserves of $166,721, or 79.99 percent of total expenditures. Pursuant to 5 *CCR* Section 11963.3(a)(5)(F), the CDE requested an explanation of the school’s plans for its excess reserves. The school states that it intends to return the A-G Completion Improvement Grant funds to the CDE. The CDE finds the school’s explanation of its excess reserves to be satisfactory.

The CDE finds the information submitted by the school to support its claim for mitigating circumstances and request for 100 percent funding and therefore recommends that the school receive 100 percent funding for its NCB instruction for two years.

### Peak Prep Pleasant Valley (Charter #2062)

Without the consideration of mitigating circumstances, the school fails to qualify for funding for its NCB instruction as detailed in the table below:

#### Peak Prep Pleasant Valley Nonclassroom-Based Instruction Funding Qualification

| **Criteria** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR** |
| --- | --- | --- | --- |
| **70 Percent Funding** | ≥ 35 | ≥ 60 | NA |
| **Charter School** | 41.57 | 53.59 | 15.40 |

The school’s complete funding determination with mitigating circumstances request is provided on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item02a4.pdf>.

The following bullet summarizes the school’s mitigating circumstances request:

* The school received significantly more Local Control Funding Formula funding than expected late in FY 2021–22 due to the reconsideration and revision of its funding determination at the July 2022 SBE meeting.

Further details regarding the school’s reconsideration item from the prior year are provided in SBE Agenda for July 2022 Item 13, which is available at <https://www.cde.ca.gov/be/ag/ag/yr22/documents/jul22item13.docx>.

The CDE finds the information submitted by the school to support its claim for mitigating circumstances. The school could not budget for the recovery of funds resulting from the revision of the prior funding determination, which contributed towards the school’s failure to meet the expenditure requirements for full funding, which it would have otherwise met.

During its review of the school’s funding determination request, the CDE noted that the school reported total reserves of $1,917,336, or 56.26 percent of total expenditures. Pursuant to 5 *CCR* Section 11963.3(a)(5)(F), the CDE requested an explanation of the school’s plans for its excess reserves. The school states that it plans to use its funds for FY 2022–23 and beyond for the following: purchasing individual devices for both students and faculty, investing in intervention and tutoring for students, providing a one-time adjustment to employee salaries, and spending one-time funds in future years based on its board-approved expenditure plan. The CDE finds the school’s explanation of its excess reserves to be satisfactory.

The CDE finds that the information submitted by the school supports its claim for mitigating circumstances and its request for 100 percent funding and therefore recommends that the school receive 100 percent funding for its NCB instruction for two years.

### Uncharted Shores Academy (Charter #0859)

Without the consideration of mitigating circumstances, the school qualifies for 70 percent funding for its NCB instruction as detailed in the table below:

#### Uncharted Shores Academy Nonclassroom-Based Instruction Funding Qualification

| **Criteria** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR** |
| --- | --- | --- | --- |
| **70 Percent Funding** | ≥ 35 | ≥ 60 | NA |
| **Charter School** | 39.26 | 79.86 | 22.58 |

The school’s complete funding determination with mitigating circumstances request is provided on the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun23item02a5.pdf>.

The following bullets summarize the school’s mitigating circumstances request:

* Receipt of significant one-time revenues from the following:
  + A-G Completion Improvement Grant
  + Expanded Learning Opportunity Grant
  + Elementary and Secondary School Emergency Relief (ESSER) II
  + ESSER III
  + Pre-Kindergarten Planning and Implementation Grant

The CDE finds the information submitted by the school to support its claim for mitigating circumstances. The aforementioned one-time revenues received by the school contributed towards its failure to meet the expenditure requirements for 100 percent funding, which it would have otherwise met.

During its review of the school’s funding determination request, the CDE noted that the school reported total reserves of $2,209,481, or 82.19 percent of total expenditures[[3]](#footnote-3). Pursuant to 5 *CCR* Section 11963.3(a)(5)(F), the CDE requested an explanation of the school’s plans for its excess reserves. The school states that $589,636 of its reserves represented fixed assets and that the remaining amount largely represented grants receivable and prepaid expenses. The school states that it allocates excess reserves to its facilities fund, which will be spent on the purchase of the building that it is currently leasing. The CDE finds the school’s explanation of its excess reserves to be satisfactory.

The CDE finds that the information submitted by the school supports its claim for mitigating circumstances and its request for 100 percent funding and therefore recommends that the school receive 100 percent funding for its NCB instruction for two years.

## Summary of Previous California 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 by the SBE, the charter schools included in this item would receive apportionment funding for their NCB ADA under the Local Control Funding Formula model.

## California Department of Education Staff Review

Direct links to the funding determination forms for all schools presented in this item are provided under each school’s analysis of mitigating circumstances section. All forms are also available under Item 02 of the June 2023 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice061323.asp>.

## Attachment

* **Attachment 1:** Recommendations for Nonclassroom-Based Determinations of Funding with Mitigating Circumstances (1 Page)

1. The PTR criteria outlined in this table pertain only to charter schools submitting NCB 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)
2. The school states that it incorrectly reported its PTR on its funding determination form and confirmed that its PTR is 20.63. [↑](#footnote-ref-2)
3. On its funding determination form, the school incorrectly reported its total reserve; the CDE has confirmed with the school that its total reserve is actually $2,209,481. [↑](#footnote-ref-3)