# California *Education Code* Sections Pertinent to Nonclassroom-Based Funding Determinations

The following California *Education Code* sections were obtained from the California Legislative Information website at <https://leginfo.legislature.ca.gov/faces/home.xhtml>.

## Section 47612.5

(a) Notwithstanding any other law and as a condition of apportionment, a charter school shall do all of the following:

(1) For each fiscal year, offer, at a minimum, the following number of minutes of instruction:

(A) To pupils in kindergarten, 36,000 minutes.

(B) To pupils in grades 1 to 3, inclusive, 50,400 minutes.

(C) To pupils in grades 4 to 8, inclusive, 54,000 minutes.

(D) To pupils in grades 9 to 12, inclusive, 64,800 minutes.

(2) Maintain written contemporaneous records that document all pupil attendance and make these records available for audit and inspection.

(3) Certify that its pupils have participated in the state testing programs specified in Chapter 5 (commencing with Section 60600) of Part 33 in the same manner as other pupils attending public schools as a condition of apportionment of state funding.

(b) Notwithstanding any other law and except to the extent inconsistent with this section and Section 47634.2, a charter school that provides independent study shall comply with Article 5.5 (commencing with Section 51745) of Chapter 5 of Part 28 and implementing regulations adopted thereunder. The state board shall adopt regulations that apply this article to charter schools. To the extent that these regulations concern the qualifications of instructional personnel, the state board shall be guided by subdivision (l) of Section 47605.

(c) A reduction in apportionment made pursuant to subdivision (a) shall be proportional to the magnitude of the exception that causes the reduction. For purposes of paragraph (1) of subdivision (a), for each charter school that fails to offer pupils the minimum number of minutes of instruction specified in that paragraph, the Superintendent shall withhold from the charter school’s apportionment for average daily attendance of the affected pupils, by grade level, the sum of that apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.

(d) (1) Notwithstanding any other law and except as provided in paragraph (1) of subdivision (e), a charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made pursuant to Section 47634.2 by the state board. The determination for funding shall be subject to any conditions or limitations the state board may prescribe. The state board shall adopt regulations on or before February 1, 2002, that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction other than the nonclassroom-based instruction allowed by paragraph (1) of subdivision (e). Nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education. In prescribing any conditions or limitations relating to the qualifications of instructional personnel, the state board shall be guided by subdivision (l) of Section 47605.

(2) Except as provided in paragraph (2) of subdivision (b) of Section 47634.2, a charter school that receives a determination pursuant to subdivision (b) of Section 47634.2 is not required to reapply annually for a funding determination of its nonclassroom-based instruction program if an update of the information the state board reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board. A charter school that has achieved a rank of 6 or greater on the Academic Performance Index for the two years immediately before receiving a funding determination pursuant to subdivision (b) of Section 47634.2 shall receive a five-year determination and is not required to annually reapply for a funding determination of its nonclassroom-based instruction program if an update of the information the state board reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the state board. Notwithstanding any law, the state board may require a charter school to provide updated information at any time it determines that a review of that information is necessary. The state board may terminate a determination for funding if updated or additional information requested by the board is not made available to the board by the charter school within a reasonable amount of time or if the information otherwise supports termination. A determination for funding pursuant to Section 47634.2 shall not exceed five years.

(3) A charter school that offers nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2 to receive funding each time its charter is renewed or materially revised pursuant to Section 47607. A charter school that materially revises its charter to offer nonclassroom-based instruction in excess of the amount authorized by paragraph (1) of subdivision (e) is subject to the determination for funding requirement of Section 47634.2.

(e) (1) Notwithstanding any other law, and as a condition of apportionment, “classroom-based instruction” in a charter school, for purposes of this part, occurs only when charter school pupils are engaged in educational activities required of those pupils and are under the immediate supervision and control of an employee of the charter school who possesses a valid certification document registered as required by law. For purposes of calculating average daily attendance for classroom-based instruction apportionments, at least 80 percent of the instructional time offered by the charter school shall be at the schoolsite, and the charter school shall require the attendance of all pupils for whom a classroom-based apportionment is claimed at the schoolsite for at least 80 percent of the minimum instructional time required to be offered pursuant to paragraph (1) of subdivision (a).

(2) For the purposes of this part, “nonclassroom instruction” or “nonclassroom-based instruction” means instruction that does not meet the requirements specified in paragraph (1). The state board may adopt regulations pursuant to paragraph (1) of subdivision (d) specifying other conditions or limitations on what constitutes nonclassroom-based instruction, as it deems appropriate and consistent with this part.

(3) For purposes of this part, a schoolsite is a facility that is used principally for classroom instruction.

(4) Notwithstanding any other law, neither the state board nor the Superintendent may waive the requirements of paragraph (1) of subdivision (a).

*(Amended by Stats. 2020, Ch. 24, Sec. 47. (SB 98) Effective June 29, 2020.)*

## Section 47634.2

(a) (1) 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, as defined by paragraph (2) of subdivision (d) of Section 47612.5, including funding provided on the basis of average daily attendance pursuant to Sections 47613.1, 47633, 47634, and 47664, 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.

(2) For the 2001–02 fiscal year only, the amount of funding determined by the State Board of Education pursuant to this section shall not be less than 90 percent of the unadjusted amount to which a charter school would otherwise be entitled on the basis of average daily attendance.

(3) For the 2002-03 fiscal year, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 80 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).

(4) 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).

(5) This section does not authorize the board to adjust the amount of funding a charter school receives on the basis of average daily attendance generated through classroom-based instruction, as defined for purposes of calculating average daily attendance for classroom-based instruction apportionments by paragraph (1) of subdivision (d) of Section 47612.5.

(b) (1) The State Board of Education shall appoint an advisory committee to recommend criteria to the board in accordance with this section if it has not done so by the effective date of the act adding this section. The advisory committee shall include, but is not limited to, representatives from school district superintendents, charter schools, teachers, parents, members of the governing boards of school districts, county superintendents of schools, and the Superintendent of Public Instruction.

(2) If a charter school submits a substantially complete request for a determination for funding by February 13, 2002, and the State Board of Education does not act on that request by March 19, 2002, full funding is automatically granted for the 2001–02 fiscal year, but the charter school shall reapply for a determination for funding for the 2002–03 fiscal year.

(3) The determination for funding shall be on a percentage basis and the superintendent shall implement the determination for funding by reducing the charter school’s reported average daily attendance by the determination for funding percentage specified by the State Board of Education.

(4) If the State Board of Education denies request for a determination for funding or provides a reduction as authorized by subdivision (a), the board shall, in writing, give the reasons for its denial or reduction and, if appropriate, may describe how any deficiencies or problems may be addressed.

(c) Each charter school offering nonclassroom-based instruction shall, in each report provided to the Superintendent of Public Instruction for apportionment purposes, identify the portion of its average daily attendance that is generated through nonclassroom-based instruction as defined in paragraph (2) of subdivision (d) of Section 47612.5.

(d) Notwithstanding any other provision of law, charter schools shall be subject, with regard to subdivisions (c) and (d) of Section 47612.5 and this section, to audits conducted pursuant to Section 41020.

*(Amended by Stats. 2002, Ch. 664, Sec. 62. Effective January 1, 2003.)*

California Department of Education
Charter Schools Division
Compiled March 2023