

Letters sent from the California Department of Education Charter Schools  
Division on November 1, 2010, September 1, 2011, and October 17, 2011.



CALIFORNIA  
DEPARTMENT OF  
EDUCATION

**JACK O'CONNELL**  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

November 1, 2010

Sent via email and facsimile

Scott Pearson, Director  
Charter Schools Program  
Office of Innovation and Improvement  
U.S. Department of Education  
400 Maryland Avenue, SW  
Washington, DC 20202

Subject: Response to Post-Award Document and Charter School Grant Program Peer  
Reviewer Comments

Dear Mr. Pearson:

The California Department of Education (CDE) received peer reviewer comments for the state's Application for Grants under the Charter Schools Program (CSP). Following are the CDE's responses to the peer reviewer comments, as well as responses to CSP assurances 3A and 3B and California's revised project year one budget narrative.

**Dissemination sub-grant information is not linked strongly enough to student academic performance.**

California has a comprehensive accountability system that monitors the academic achievement of all public schools, including charter schools, in the state. The system is based on the state's Public Schools Accountability Act (PSAA) of 1999 and on the federal requirements established by the Elementary and Secondary Education Act (ESEA). The state's accountability system is used to determine a charter school's eligibility to apply for a Public Charter Schools Grant Program (PCSGP) Dissemination Grant.

**California Law:** California *Education Code (EC)* Section 47607 details the academic performance that a charter school must achieve to be eligible for renewal. The requirements include:

- Attaining its Academic Performance Index (API) growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years.

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- Ranking in deciles 4 to 10 (statewide ranks range from 1 to 10 with ten being high), inclusive, on the API in the prior year or in two of the last three years.
- Ranking in deciles 4 to 10, inclusive, on the API for a demographically comparable school in the prior year or in two of the last three years.

API rankings are based on pupil achievement as measured by statewide assessments that are required for all pupils in grades two through eleven, including pupils in charter schools. Every school in the state receives a base and a growth API each year. The base API is calculated from the results of the statewide spring testing, while the growth API measures each school's academic achievement from one year to the next. The tests used for calculating the API assess pupils' achievement of the state's academic content standards with tests designed to assess pupil achievement for normally developing pupils, pupils with moderate disabilities, and pupils with significant cognitive disabilities.

*EC Section 47605(b)(5)(B)* requires that each school's charter include the measureable pupil outcomes identified for use by the charter school.

*EC Section 47605(b)(5)(C)* requires each school's charter to include the method by which pupil progress in meeting the pupil outcomes will be measured.

*EC Section 47605(c)(1)* requires charter schools to meet all statewide standards and conduct the pupil assessments...as applicable to pupils in noncharter public schools.

*EC Section 52051.5* specifies that all references to schools for the Public Schools Accountability Act of 1999 shall include charter schools. *Section 52055.57* identifies charter schools that are direct funded (receive all funding directly from the state rather than through an LEA) as LEAs for purposes of early warning programs and program improvement under the No Child Left Behind Act.

**Federal Law:** Federal law requires schools to meet Adequate Yearly Progress (AYP) criteria with annual targets that increase until 2013–14 when all schools, including charter schools, must have 100 percent of their pupils performing at proficient or above on statewide tests. Schools must meet four sets of performance requirements to make AYP: (1) percentage of students participating in statewide tests; (2) percentage of pupils scoring at proficient or above on statewide tests in English and mathematics; (3) meeting API growth target; and (4) meeting graduation rate for high schools. In addition to the requirement for all pupils, each numerically significant subgroup at a school also must meet the participation rate and percent proficient requirements.

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**Dissemination Grant Eligibility:** California will prepare its Dissemination Grant Request for Applications (RFA) during spring 2011. California's PCSGP Dissemination Grants are designed to disseminate innovative and proven practices that are focused on closing the achievement gap and ensuring pupils' academic success in achieving state and national academic content standards. To be eligible to apply for a dissemination grant a charter school must have:

- Served pupils for at least three consecutive years,
- Demonstrated substantial progress in improving pupil academic achievement,
- Demonstrated high levels of parent satisfaction,
- Demonstrated the management and leadership necessary to overcome initial start-up problems and establish a thriving, financially viable charter school,
- Met the measureable pupil outcomes set forth in its charter,
- Demonstrated leadership in implementing the best practices to be disseminated,
- Attained its API growth target for at least two of the prior three years,
- Attained an API statewide ranking of 4 or higher,
- Attained an API similar schools ranking of 4 or higher,
- Met its AYP targets for at least two of the prior three years, and
- Not been identified for Program Improvement.

**SEA's peer review process is unclear.**

Charter developers applying for PCSGP funds must complete an online application. California then uses a three-tiered approach in evaluating the applications:

- A screening checklist is completed to determine if the application is complete and ready for scoring. If the application is not complete, the applicant will be contacted and offered technical assistance to provide the missing information. (A copy of the screening checklist is attached.)
- Each complete application is then assigned to two independent readers, Education Program Consultants in the Charter Schools Division, to read and score. The applications are scored using a 4-point rubric with scores assigned to the school's description of being a highly autonomous charter school, its public random drawing/lottery procedures, the school's approved charter, and a work plan that details the measureable objectives and activities to be funded from the grant. The school's approved charter is reviewed to ensure compliance with state law and the work plan is reviewed to determine the likelihood that the school will develop into a high quality charter school.

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- If both readers score the four components as 3 or 4, the application is approved for receiving grant funding.
- If the two readers both assign one or more areas a score of 1 or 2, the application is denied grant funding. The applicant will be provided technical assistance, and the application may be revised and resubmitted.
- If the two readers have discrepant scores—the application would be approved for a grant based on one reader's scores and not approved based on the other reader's scores—the application will be forwarded to a third reader who is an administrator or developer of a high quality charter school in the state.
- The approval or disapproval of the application will be based on the score of the third reader. If the application is denied, the developer may receive technical assistance to revise and resubmit the application.

Copies of the screening checklist, charter scoring document, and final score sheet are attached.

#### **How will California ensure that CSP SEA assurances will be met?**

- A. Assurance 3A: State law, regulations, or other policies in the State where the applicant is located require that each authorized charter school in the State operate under a legally binding charter or performance contract between itself and the school's authorized public chartering agency that describes the obligations and responsibilities of the school and the public chartering agency; conduct annual, timely, and independent audits of the school's financial statements that are filed with the school's authorized public chartering agency; and demonstrate improved student academic achievement.**

#### **Legally Binding Charter**

*EC* Section 47605(b) details the procedures and processes that a chartering authority must follow when considering whether to approve or deny a charter petition, and also lays out the 16 elements that must be described in a "reasonably comprehensive" manner in a charter petition, as follows:

- A description of the educational program of the school
- The measurable pupil outcomes identified for use by the charter school

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- The method by which pupil progress in meeting those pupil outcomes is to be measured
- The governance structure of the school, including processes to ensure parental involvement
- The qualifications to be met by individuals to be employed by the school
- Procedures to ensure health and safety of pupils and staff
- Means by which the school will achieve a racial and ethnic balance among its pupils
- Admission requirements
- The manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority
- The procedures by which pupils can be suspended or expelled
- The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security
- The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools
- A description of the return rights of any employee of the school district upon leaving the employment of the school district to work in a charter school
- The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter
- A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school
- A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of

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all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

Charter petitions in California are required to include a reasonably comprehensive description of all of the above elements in order to be approved to operate in the state. The approved petition charter serves as the legally-approved charter contract between the school and its authorizer. Further, the required 16 charter elements provide a comprehensive description of the obligations and responsibilities of the charter school and its authorizer. For example, a charter must include a reasonably comprehensive description of the measurable pupil outcomes it will meet for annual reviews or renewal (as specified in the charter); and in exchange, the charter authorizer is obligated to evaluate the identified pupil outcomes in the charter when making decisions about school operations, renewal, or other matters under an authorizer's purview.

California education code also describes the criteria, obligations, and responsibilities for charter schools and authorizers relating to, for example, reasonable inquiries to a charter school by its authorizer (*EC* Section 47604.3); the duties of a chartering authority (*EC* Section 47604.32); required annual reports by every charter school (*EC* Section 47604.33); and charter renewal and revocation (*EC* Section 47607).

Any charter school operating in California must also be assigned a charter school number. The number is assigned by the State Board of Education (SBE) following a thorough and comprehensive review of documentation, as detailed in state education code.

*EC* Section 47602 details the SBE process for assigning a number to each charter petition that it grants. The charter package for SBE review and numbering is detailed on the CDE Website at <http://www.cde.ca.gov/sp/cs/re/chrterpkg.asp> and includes the following documentation:

- Original charter petition
- Statements that the charter school will be nonsectarian, will not charge tuition, and will not discriminate
- Signed petition and signature pages
- Evidence of governing board public hearing (e.g., board minutes)
- Evidence of governing board approval of charter (e.g., board minutes)

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- Information regarding potential effects on the district (administrative services, facilities, liability) and first year start-up costs, cash flow, and three year financial projections.

Prior to submission to the SBE, the CDE reviews the application for completeness. Any incomplete package is not forwarded to the SBE for numbering.

### **Annual Audits**

*EC* Section 47605(b)(5) describes the 16 elements that must be addressed in the school's charter, one of which relates directly to annual audits. *EC* Section 47605(b)(5)(l) states that a charter petition shall include a reasonably comprehensive description of "[t]he manner in which annual, independent financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority." The annual audits are available to the school's chartering authority pursuant to *EC* Section 47604.3.

### **Demonstrate Improved Academic Achievement**

Please see the section below, "Renewal," regarding state law that requires charter schools to demonstrate improved academic achievement in order to be renewed, pursuant to *EC* Section 47607.

**B. Assurance 3B: State law, regulations, or other policies in the State where the applicant is located require that authorized public chartering agencies use increases in student academic achievement for all groups of students described in section 1111(b)(2)(C)(v) of the ESEA as the most important factor when determining whether to renew or revoke a school's charter.**

*EC* Section 47607 stipulates the conditions under which the chartering authority may renew or revoke a school's charter.

### **Renewal**

In accordance with *EC* Section 47607(b), a charter school must meet at least one of four criteria prior to receiving a charter renewal. Three of these criteria (tied to API growth targets and decile ranks) are described above. The fourth criterion is that the charter school's academic performance is greater than or equal to that of those schools that the students would otherwise be attending as well as of schools within the same district. This determination shall be made by the charter school's authorizer and be



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**TOM TORLAKSON**  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

September 1, 2011

Stefan Huh, Director  
Charter Schools Program  
Office of Innovation and Improvement  
United States Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Mr. Huh:

Subject: Compliance with Assurances 3(A) and 3(B) of the Public Charter Schools Grant Program

The California Department of Education (CDE) believes that its charter schools and State charter authorizers have a demonstrated track record of success in boosting student learning and driving achievement. This letter is in response to recent communications between CDE and the United States Department of Education (ED) related to the State's implementation of the Public Charter Schools Grant Program (PCSGP).

It is CDE's understanding that the cuts to California's PCSGP grant are not a result of the State's failure to comply with assurances 3(A) and 3(B), but are instead based on other issues. In order to protect the State's right to due process, the State will respond to the cuts in the grant in separate correspondence. However, to the extent that ED believes that the State is out of compliance with assurance 3(A) and 3(B), CDE respectfully submits the following plan of action.

Assurance (3)(A) requires that (1) each charter school in the State operate under a legally binding charter or performance contract between itself and the school's authorized public chartering agency, (2) charter schools conduct annual, timely, and independent audits of the school's financial statements that are filed with the school's authorized public chartering agency, and (3) each charter school be required to demonstrate improved student achievement for all students. Assurance 3(B) requires that authorized public chartering agencies use increases in student academic achievement for all groups of students described in Elementary and Secondary Education Act (ESEA) Section 1111(b)(2)(C)(v) as the most important factor when determining to renew or revoke a school's charter.

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Pursuant to our e-mail correspondence with our original ED program contact Richard Payton, we understand that ED considers CDE to be out of compliance with the last of the three factors listed in assurance 3(A) and the entire assurance 3(B). It is the opinion of ED that the State is in compliance with the first two parts of assurance 3(A).

Over the last several months, CDE has worked with ED to address these compliance issues and to identify current California statutory and regulatory requirements that address achievement of students in charter schools. Specifically, *EC* Section 47605(c)(1) requires that charter schools participate in all statewide pupil assessment programs and *EC* Section 47605(b)(5)(B) requires that charter schools identify measurable pupil outcomes that will be used by the charter school to demonstrate pupil achievement. In addition, California *EC* Section 47607(b) uses a comprehensive evaluation system that compares student achievement at each charter to minimum California Academic Performance Index growth targets and requires schools to achieve a decile ranking between 4 and 10 in order to be eligible for renewal. In addition, 5 *CCR* Section 11968.5 requires the CDE to identify and the State Superintendent of Public Instruction to review and recommend charter schools in the lowest performance deciles that have not shown adequate increases in academic achievement to the State Board of Education (SBE) for revocation.

However, it is CDE's understanding that ED considers California out of compliance because there is no explicit statutory or regulatory requirement that (1) each and every charter school demonstrate improved student academic achievement or (2) increases in academic achievement for all pupils be the primary factor in a renewal decisions. In addition, California's revocation regulations apply only to charter schools in the lowest deciles and not all charter schools. Therefore, ED has determined that the CDE is not in compliance with assurance 3(B).

### **Corrective Plan**

In order to address ED's noncompliance findings, CDE plans to work with the SBE and the California State Legislature as follows:

1. **Legislation:** Legislative changes would need to be made to California *EC* sections 47605, 47605.6, and 47607 in order to make increases in achievement for all students the most important factor when considering approval, renewal, or revocation of a charter petition. The CDE's Legislative Affairs Division has already begun conversations with legislative staff about this issue and will continue working towards finalizing language that would be introduced as part of the Superintendent's 2012 legislative package. The Legislature returns from recess January 4, 2012, at which time legislation could be introduced. During the interim recess, staff from the Legislative Affairs Division will work towards

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securing an author for this legislation and will work with the SBE, Governor, and stakeholder groups toward a legislative solution.

2. **Regulations:** At the September 7<sup>th</sup> and 8<sup>th</sup> meeting of the SBE, the CDE will recommend that the SBE direct the CDE to start the rulemaking process to revise 5 CCR Section 11968.5 to ensure that all charter schools are held accountable for the increased academic achievement of all pupils served. The SBE will consider this request as part of Item 6 on its agenda, which can be accessed on the CDE SBE Agenda Web page at <http://www.cde.ca.gov/be/ag/ag/yr11/agenda201109.asp>. If directed by the SBE to commence the rulemaking package to revise 5 CCR Section 11968.5, the CDE will convene a stakeholder group in October 2011 regarding proposed regulations that the CDE will bring to the SBE at its January 2012 meeting. If approved by the SBE at that meeting, the regulations package would be circulated for a mandatory 45-day public comment period, after which, depending on the comments received, the SBE could either approve the regulations at its March 2012 meeting and submit them to the California Office of Administrative Law to be enacted, or revise and recirculate the package for additional 15-day public comment periods until approved.

The CDE takes seriously the concerns regarding compliance with assurances 3(A) and 3(B). Because the SBE is not scheduled to meet until September 7, 2011, and because the current legislative session ends September 9, 2011, the CDE is unable to provide details until mid October regarding changes to regulation or law that may be made. The CDE commits to providing the ED with an update regarding its specific timelines and plans to initiate the necessary legislative and regulatory changes to comply with the special conditions placed on the PCSGP funds by October 15, 2011. If you have any questions or concerns about the elements of this plan, please contact Beth Hunkapiller, Director, Charter Schools Division, by phone at 916-322-6029 or by e-mail at [bhunkapiller@cde.ca.gov](mailto:bhunkapiller@cde.ca.gov).

Sincerely,



Lupita Cortez Alcalá  
Deputy Superintendent  
California Department of Education

LA:bg

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cc: Sue Burr, Executive Director, California State Board of Education



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**TOM TORLAKSON**  
STATE SUPERINTENDENT OF PUBLIC INSTRUCTION

October 17, 2011

Stefan Huh, Director  
Charter Schools Program  
Office of Innovation and Improvement  
United States Department of Education  
400 Maryland Avenue, SW  
Washington, D.C. 20202

Dear Mr. Huh:

Subject: Compliance with Assurances 3(A) and 3(B) of the Public Charter Schools Grant Program

The California Department of Education (CDE) appreciates the United States Department of Education (ED's) efforts to clarify California's grant awards for Budget Periods 1 and 2 and to assist California in making timely awards to qualified 2011–12 Public Charter Schools Grant Program (PCSGP) sub-grantees by forward funding \$31,355,794 to California from Budget Period 3.

This letter is in response to the August 11, 2011, Grant Award Notification letter, in which the ED required that the CDE must either provide evidence of state law, regulation, or other policy that addresses compliance with assurances 3A and 3B of the PCSGP application or provide a written plan of action to the DOE that addresses compliance by September 1, 2011.

The ED determined that California is out of compliance with the following excerpt from Assurance 3(A) and out of compliance with Assurance 3(B) that requires that –

- 3(A) Each authorized charter school in the State operate under a legally binding charter or performance contract between itself and the school's authorized public chartering agency that ... demonstrates improved student academic achievement; and
- 3(B) Authorized public chartering agencies use increases in student academic achievement for all groups of students described in section 1111(b)(2)(C)(v) of the ESEA, including economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency, as the most important factor when determining to renew or revoke a school's charter.

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Over the last several months, the CDE has worked with the ED to address these compliance issues and to identify current California statutory and regulatory requirements that address achievement of students in charter schools. The CDE submitted a letter to the ED on September 1, 2011, describing these efforts and indicating that the CDE would provide an update to the ED after the California State Board of Education (SBE) held its September 2011 meeting and after the conclusion of the California legislative session.

In order to address the ED's findings, the CDE plans to work with the SBE and the California State Legislature as follows:

1. **Legislation:** Legislative changes will need to be made to California *EC* sections 47605, 47605.6, and 47607 in order to make increases in achievement for all students the most important factor when considering approval, renewal, or revocation of a charter petition. The SSPI is committed to sponsoring a bill that addresses Assurances (3)(A) and (3)(B). The Legislature returns from recess January 4, 2012, at which time legislation could be introduced. The CDE's Legislative Affairs Division has already begun conversations with legislative staff about this issue and will continue working towards finalizing language that would be introduced as part of the SSPI's 2012 legislative package. During the interim recess, staff from the Legislative Affairs Division will work towards securing an author for this legislation and will work with the SBE, Governor, and stakeholder groups toward a legislative solution.
2. **Regulations:** At the September 7th and 8th meeting of the SBE (SBE Agenda Web page at <http://www.cde.ca.gov/be/ag/ag/yr11/agenda201109.asp>), the SBE directed the CDE to collect stakeholder input from charter schools and authorizers prior to starting the rulemaking process to revise 5 CCR Section 11968.5 to ensure that all charter schools are held accountable for the increased academic achievement of all pupils served. The SBE asked for a report on the collection of this input at its January 2012 meeting. The Advisory Commission on Charter Schools met September 28, 2011, to consider appropriate measures for initial charter petition approval, renewal, and revocation as part of Item 5 on its agenda.

If you have any questions or concerns about the elements of this plan, please contact me by phone at 916-322-6029 or by e-mail at [bhunkapiller@cde.ca.gov](mailto:bhunkapiller@cde.ca.gov).

Sincerely,

Beth Hunkapiller, Director  
Charter Schools Division

BH:bg

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bcc: Sue Burr, Executive Director, California State Board of Education  
Richard Zeiger, Chief Deputy Superintendent, California Department of  
Education  
Deborah V. H. Sigman, Deputy Superintendent, California Department of  
Education