

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

ssb-csd-mar18item03

# California State Board of Education March 2018 Agenda Item #17

## Subject

Consideration of a Retroactive Request for Determination of Funding with “Reasonable Basis”/Mitigating Circumstances as Required for a Nonclassroom-based Charter School Pursuant to California *Education Code* sections 47612.5 and 47634.2, 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 instruction. The statutes specify that a charter school may receive apportionment funding for nonclassroom-based 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*). The ACCS may include the consideration of mitigating circumstances in conjunction with a recommendation to the SBE.

Pursuant to 5 *CCR* Section 11963.6(c), any determination of funding request approved by the SBE for an existing nonclassroom-based charter school must be prospective (not for the current year). The CDE received a completed determination of funding request from MAAC Community Charter (MCC) after the February 1 filing deadline, thereby making the request retroactive, not prospective. Since MCC did not submit a completed request by the regulatory filing deadline, MCC was required to request a waiver for SBE approval to allow the charter school to request a non-prospective funding determination.

A waiver was submitted to the SBE requesting approval for a retroactive funding determination for fiscal year (FY) 2016–17. The waiver was approved by the SBE at its July 2017 meeting, as specified in Attachment 1. The waiver request is located on the SBE Agenda for July 2017 Web page at <http://www.cde.ca.gov/be/ag/ag/yr17/agenda201707.asp>.

## Recommendation

The CDE proposes to recommend that the SBE approve the mitigating circumstances request and approve a determination of funding of 100 percent for two years, as provided in Attachment 1.

### Advisory Commission on Charter Schools Recommendation

At the February 7, 2018 meeting, the ACCS voted unanimously to approve the CDE recommendation that the SBE approve the determinations of funding and the time periods specified for the nonclassroom-based charter schools as provided in Attachment 1.

## Brief History of Key Issues

MCC submitted a request to obtain a determination of funding by the SBE with the consideration of mitigating circumstances to establish eligibility to receive apportionment funding.

Pursuant to 5 *CCR* Section 11963.4(a), a nonclassroom-based charter school may qualify for 70 percent, 85 percent, or 100 percent funding, or may be denied. To qualify for a proposed recommendation of 100 percent funding, a nonclassroom-based charter school must meet the following criteria:

* At least 40 percent of the school’s public revenues are to be spent on salaries and benefits for all employees who possess a valid teaching certificate;
* At least 80 percent of all revenues are to be spent on instruction and instruction- related services; and
* The ratio of average daily attendance for independent study pupils to full-time certificated employees does not exceed a pupil-teacher ratio of 25:1, or the pupil-teacher ratio of the largest unified school district in the county or counties in which the charter school operates.

However, 5 *CCR* Section 11963.4(e) states that the ACCS may find a “reasonable basis” (also referred to as mitigating circumstances) by which to make a recommendation other than one that results from the criteria specified in the regulations.

5 *CCR* Section 11963.4(e) provides specific examples of the types of mitigating circumstances for the ACCS to consider well documented “one-time or unique or exceptional circumstances.” Mitigating circumstances described by a charter school in the funding determination process clarify and provide guidance as to whether or not a specific charter school meets the percentage requirements for a funding determination, as expressed in 5 *CCR* Section 11963.4(a).

Pursuant to 5 *CCR* Section 11963.4(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.

5 *CCR* Section 11963.6(c) specifies that a determination of funding approved by the SBE shall be prospective (not for the current year), and shall be in increments of a minimum of two years and a maximum of five years in length.

### MAAC Community Charter – #0303

MCC does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported data. Therefore, MCC submitted a request to consider mitigating circumstances. A summary of the request is provided below and in Attachment 3.

MCC is requesting a 100 percent determination of funding for five years with the consideration of the charter school’s mitigating circumstances. MCC reported expenditures of 43.61 percent on certificated staff costs; however, it reported expenditures of 71.57 percent on instruction and instruction-related services costs, which qualifies the charter school for an 85 percent determination of funding.

MCC’s mitigating circumstances request cites that the charter school is historically a classroom-based charter school, but declines in FY 2016–17 in classroom-based student referrals due to the postponement of the California High School Exit Examination, and with the nonclassroom-based student enrollment remaining consistent, caused its nonclassroom-based student population to exceed 20 percent. The CDE recommends that the SBE approve MCC’s mitigating circumstances request and recommends a determination of funding of 100 percent for two years (2016–17 through 2017–18) as provided in Attachment 1.

The funding determination requests are provided in Attachments 2 through 3 of Agenda Item 03 on the ACCS February 7, 2018, Meeting Notice on the SBE February 2018 ACCS Meeting Agenda Web page located at <http://www.cde.ca.gov/be/cc/cs/accsnotice020718.asp>.

## Summary of Previous State Board of Education Discussion and Action

The SBE is responsible for approving a determination of funding to establish eligibility for apportionment funding for charter schools that offer nonclassroom-based instruction. The CDE notes that this request is a recurring action item for the SBE.

## Fiscal Analysis

If approved, the charter schools listed in Attachment 1 would receive apportionment funding under the Local Control Funding Formula model.

## Attachment

* **Attachment 1:** Determination of Funding Recommendation (2 Pages)

# Attachment 1: Determination of Funding Recommendation

Determination of Funding Recommendation for Nonclassroom-based Charter Schools

| Charter School Information Type | Value |
| --- | --- |
| County-District-School Code | 37-68411-3731304 |
| Charter Authorizer and County | Sweetwater Union High School District, San Diego County |
| Charter School Name (Charter Number) | MAAC Community Charter (0303) |
| First Year of Operation | 2001–02 |
| Percent Spent on Certificated Staff Compensation *(footnote* *[[1]](#endnote-1))* | 43.61% |
| Percent Spent on Instruction and Instruction Related Services *(footnote 1)* | 71.57% |
| Pupil Teacher Ratio *(footnote 1)* | 25:0:1 |
| Funding Determination and years requested by Charter School with Mitigating Circumstances | 100% for 5 Years (2016–17 through 2021–22) |
| Funding Determination Without Mitigating Circumstances (*California Code of Regulations*, Title 5 [5 *CCR*] Section 11963.4) | 85% |
| CDE Recommendation Funding Determination and Years | 100% for 2 years (2016–17 through 2017–18) *(footnote [[2]](#endnote-2))* |
| CDE Recommendation Mitigating Circumstances Provided | Yes |

Created by the California Department of Education (CDE), Charter Schools Division February, 2018

1. Spending percentages and pupil-teacher ratio correspond to the charter school’s funding determination request as originally submitted to the CDE. [↑](#endnote-ref-1)
2. 5 *CCR* Section 11963.4(a) specifies criteria to qualify for a funding determination of 100 percent, 85 percent, 70 percent, or denial. For a nonclassroom-based charter school that spends 40 percent or more of the school’s public revenues on salaries and benefits for all employees who possess a valid teaching certificate, and State Board of Education (SBE) approval of the request at 85 percent, unless there is a reasonable basis to recommend otherwise. At its July 2017 meeting, the SBE approved the request to waive specific portions of 5 *CCR* Section 11963.6(c), for the period of July 1, 2016, through June 30, 2017. [↑](#endnote-ref-2)