

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

gacsb-csd-may19item02

# California State Board of Education May 2019 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

## 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 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*). The ACCS may include the consideration of mitigating circumstances in conjunction with a recommendation to the SBE.

## Recommendation

The CDE recommends that the SBE approve the determination of funding requests with mitigating circumstances at the percentages and time periods specified for the charter schools listed on Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At the April 10, 2019, 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 NCB charter schools as provided in Attachment 1.

The meeting notice for the April 10, 2019, ACCS meeting is located on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041019.asp>.

## Brief History of Key Issues

The 13 NCB charter schools identified on Attachment 1 submitted requests to obtain a determination of funding by the SBE to establish eligibility to receive apportionment funding. These NCB charter schools submitted requests 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 NCB charter school may qualify for either 70 percent, 85 percent, or 100 percent full funding, or may be denied. To qualify for a proposed recommendation of 100 percent funding, a NCB 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.
* The ratio of average daily attendance (ADA) 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.

### Chawanakee Academy Charter School #1763

Chawanakee Academy Charter School (Chawanakee Academy) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported fiscal year (FY) 2017–18 data.

Chawanakee Academy is requesting a 100 percent determination of funding for two years with the consideration of mitigating circumstances. Chawanakee Academy reported expenditures of 45.65 percent on certificated staff costs; however, it reported expenditures of 70.95 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Chawanakee Academy for only an 85 percent determination of funding.

Chawanakee Academy cites as mitigating circumstances the implementation of four portable classrooms in addition to relocating its physical location. The cost of relocation, procurement and incidental fees incurred effectively reduced the percent of instruction and instruction-related services below the required 80 percent, which if excluded, would have resulted in Chawanakee Academy meeting the minimum 80 percent threshold. Chawanakee Academy does not foresee abnormally high percentages to be spent on facilities and operations in current and future years. The CDE agrees with Chawanakee Academy’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Clovis Online Charter School #1006

Clovis Online Charter School (Clovis) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

Clovis is requesting a 100 percent determination of funding for two years with the consideration of mitigating circumstances. Clovis reported expenditures of 59.01 percent on certificated staff costs; however, it reported expenditures of 74.53 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Clovis for only an 85 percent determination of funding.

Clovis cites as its mitigating circumstances the need to set aside funds each fiscal year to build reserves to construct a new facility to accommodate the growing student population. During FY 2017–18, the ADA was 394.28, and projections for FY 2018-19 are estimated to reach 445.74. Additionally, Clovis has received a significant amount of one-time funding that is not fiscally appropriate to use for ongoing expenditures. The CDE agrees with Clovis’ mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Connecting Waters Charter School, East Bay #1881

Connecting Waters Charter School, East Bay (Connecting Waters) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

Connecting Waters is requesting a 100 percent determination of funding for three years with the consideration of mitigating circumstances. Connecting Waters reported expenditures of 41.30 percent on certificated staff costs; however, it reported expenditures of 74.72 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Connecting Waters for only an 85 percent determination of funding.

Connecting Waters cites as mitigating circumstances the need to be fiscally conservative in order to fund their initial reserve balances for the first year. Building the reserves is necessary and one-time in nature and will not be recurring. The CDE agrees with Connecting Waters’ mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Cottonwood Creek Charter School #1183

Cottonwood Creek Charter School (Cottonwood) does not meet the requirements to qualify for a recommendation of 100 percent funding based on reported FY 2017–18 data.

Cottonwood is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Cottonwood reported expenditures of 45.85 percent on certificated staff costs; however, it reported expenditures of 75.26 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Cottonwood for only an 85 percent determination of funding.

Cottonwood cites as mitigating circumstances the first factor of receiving Prop 39 Energy Facility Grant funds, of which $230,185 was expended as a one-time facility expense for new air conditioning/heating units and new lighting throughout the school.

The second factor was purchasing a new Learning Center Campus Site which consisted of qualifying for a mortgage loan that required a 20 percent down payment and fees of $181,522. The CDE agrees with Cottonwood’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Heritage K–8 Charter School #0556

Heritage K–8 Charter School (HK8) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

HK8 is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. HK8 reported expenditures of 47.88 percent on certificated staff costs; however, it reported expenditures of 77.49 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies HK8 for only an 85 percent determination of funding.

HK8 cites as mitigating circumstances the first factor of the Senate Bill (SB) 740 facilities grant from the California School Finance Authority (CSFA). The SB 740 award amount was estimated at $487,262.26 as of November 3, 2017. On March 12, 2018, the same award amount was confirmed to be $487,262.26, but on November 18, 2018, a “True Up” award was announced. The final apportionment amount increased and totaled to $827,656.40, which caused HK8 to not meet the minimum 80 percent threshold. The amount of the final apportionment from the SB 740 program is only an estimate throughout the fiscal year, and the true, final award amount is not known to recipients until the fall of the following fiscal year. Schools receiving SB 740 facility grant funds have to estimate the anticipated revenue throughout the year and HK8 used a reasonable formula to estimate its revenue, based on the forecasts provided by various outside charter school advocacy organizations, who were in contact with CSFA staff.

HK8’s second factor of mitigating circumstances consists of the school’s facility expenses for serving classroom-based students which are held to the same spending requirements as the NCB program. The classroom-based programs serve students on site, and the NCB program serves students in a facility with 10 classroom spaces, yet HK8 claims the funding determination form does not allow the school to count all of the collective, actual, instructional facilities expenses toward the 80 percent spending requirement.

The CDE agrees with HK8’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Lemoore Online College Preparatory High School #1877

Lemoore Online College Preparatory High School (Lemoore) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

Lemoore is requesting a 100 percent determination of funding for two years with the consideration of mitigating circumstances. Lemoore reported expenditures of 64.06 percent on certificated staff costs; however, it reported expenditures of 55.19 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and Lemoore would be denied a determination of funding, unless mitigating circumstances are provided for consideration.

Lemoore cites as mitigating circumstances that the prior fiscal year was the school’s first year of operation and consisted of a small student population of 12.70. Lemoore requests to withhold $85,600 (Other Financing Sources), because the expenditures of the first year of operations exceeded their state revenues and the $85,600 reflects a transfer to this charter fund to maintain a positive cash balance in the school’s funds. If excluded, it would have resulted in Lemoore meeting the minimum 80 percent threshold. The CDE agrees with Lemoore’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Long Valley Charter School - Susanville #1871

Long Valley Charter School - Susanville (Long Valley) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

Long Valley is requesting a 100 percent determination of funding for three years with the consideration of mitigating circumstances. Long Valley reported expenditures of 50.61 percent on certificated staff costs; however, it reported expenditures of 70.15 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Long Valley for only an 85 percent determination of funding.

Long Valley cites as mitigating circumstances the need to be fiscally conservative in order to fund their initial reserve balances for the first year. Building the reserves is necessary and one-time in nature and will not be recurring. The CDE agrees with Long Valley’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Northwest Prep Charter School #0526

Northwest Prep Charter School (Northwest Prep) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

Northwest Prep is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Northwest Prep reported expenditures of 40.65 percent on certificated staff costs; however, it reported expenditures of 72.40 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Northwest Prep for only an 85 percent determination of funding.

Northwest Prep cites mitigating circumstances due to the October 2017 wildfires. The Piner-Olivet Union School District, including Northwest Prep, was devastated by the October 2017 firestorm. A large part of the 2017 firestorm occurred within the district boundaries and resulted in the loss of 1,200-1,300 homes as well as a three week closure at the school. Many of the students, families, and staff lost their homes, which had a profound impact on the mental and emotional health and well-being of students and staff. There were many instruction-related expenditures that were put on hold until FY 2018–19, and this alone put the school below the 80 percent minimum.

In addition to the effect of the wildfire, the district board has required that the school increase its fund balance to reach $100,000 for economic uncertainties and $100,000 for cash flow purposes.

The CDE agrees with Northwest Prep’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Olive Grove Charter School #1768

Olive Grove Charter School (Olive Grove) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

Olive Grove is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Olive Grove reported expenditures of 48.29 percent on certificated staff costs; however, it reported expenditures of 77.18 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Olive Grove for only an 85 percent determination of funding.

Olive Grove cites as mitigating circumstances splitting from one school into five schools in order to come into compliance with the *Anderson Union High School District v. Shasta Secondary Home School* (2016) 4 Cal. 262 court decision. The original school consisted of over 750 students; since splitting into five schools, only 25 students now remain at the original location. The school needed to maintain a strong reserve to help the four new schools, which would not receive funding until December 2018 when the Charter School Special Advance Apportionment arrived. The new schools were unable to apply for the Pupil Estimates for New or Significantly Expanding Charters (PENSEC), because they did not have their County-District-School (CDS) code prior to the PENSEC filing deadline. Reserves were held to follow the students and support the costs incurred in opening four new schools without having to incur costs associated with selling receivables. The costs that would have been paid in interest fees for receivable sales will instead be used on the students.

The CDE agrees with Olive Grove’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Phoenix Charter Academy #1900

Phoenix Charter Academy (Phoenix) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

Phoenix is requesting a 100 percent determination of funding for three years with the consideration of mitigating circumstances. Phoenix reported expenditures of 42.76 percent on certificated staff costs; however, it reported expenditures of 69.52 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Phoenix for only a 70 percent determination of funding.

Phoenix cites as mitigating circumstances the need to be fiscally conservative in order to fund their initial reserve balances for the first year. Building the reserves is necessary and one-time in nature and will not be recurring. The CDE agrees with Phoenix’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Santa Cruz County Career Advancement Charter #1904

Santa Cruz County Career Advancement Charter (SCCCAC) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

SCCCAC is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. SCCCAC reported expenditures of 36.50 percent on certificated staff costs and 36.84 percent on instruction and instruction-related services costs, which both fall below the 40 percent/80 percent criteria needed for full funding. SCCCAC would be denied a determination of funding, unless mitigating circumstances are provided for consideration.

SCCCAC cites as mitigating circumstances that this was the school’s first year of operation and the program was still being established. SCCCAC remains a small school that is still developing and growing. Currently the school has a small student population of 58.51, with an estimated ADA increasing to 90.13. For FY 2018–19, SCCCAC has continued with outreach, the program has become more established, and additional certificated instructors have been hired. The CDE agrees with SCCCAC’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### SIATech #0627

SIATech does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

SIATech is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. SIATech reported expenditures of 44.98 percent on certificated staff costs; however, it reported expenditures of 77.29 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies SIATech for only an 85 percent determination of funding.

SIATech cites as mitigating circumstances a 4.5 percent loss in ADA in comparison to the prior year, causing instructional costs to be lower as a result of certificated staff reduction. Their independent study program has allowed SIATech to reach students outside of Job Corps, but as an open-entry, open-exit drop-out recovery program, enrollment fluctuates greatly. Very conservative budgeting is required to maintain fiscal health. The CDE agrees with SIATech’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

### Valley Oak Charter School #0501

Valley Oak Charter School (Valley Oak) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2017–18 data.

Valley Oak is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Valley Oak reported expenditures of 44.99 percent on certificated staff costs; however, it reported expenditures of 54.68 percent on instruction and instruction-related services costs, which falls below the 80 percent criteria needed for full funding. Valley Oak would be denied a determination of funding, unless mitigating circumstances are provided for consideration.

Valley Oak cites as mitigating circumstances their recent purchase of a 4.5 acre property that they have been leasing since 2011. The purchase required $300,000 of their reserves to be used as a down payment on the mortgage. Valley Oak claims that the remainder of their reserves will also be expended during the current fiscal year. In addition, Valley Oak is limited under the terms of their charter to no more than 75 students total, spanning grades K–12, which equates to a smaller annual budget. The CDE agrees with Valley Oak’s mitigating circumstances and recommends that the SBE approve the request for 100 percent funding for a two year time period as specified in Attachment 1.

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

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

## Fiscal Analysis

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

## Attachment

* **Attachment 1:** Determination of Funding Recommendations for NCB Charter Schools (1 Page)