

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

eab-csd-mar20item02

# California State Board of EducationMarch 2020 AgendaItem #12

## Subject

Consideration of a Request 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* 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 request with mitigating circumstances at the percentage and for the time period specified for the NCB charter school listed on Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At the February 5, 2020, meeting, the ACCS voted unanimously to approve the CDE recommendation that the SBE approve the determination of funding request with mitigating circumstances at the percentage and for the time period specified for the NCB charter school listed on Attachment 1.

The meeting notice for the February 5, 2020, ACCS meeting is located on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice020520.asp>.

## Brief History of Key Issues

NCB charter schools must request to obtain a determination of funding by the SBE to establish eligibility to receive apportionment funding. Pursuant to 5 *CCR* Section 11963.4(a), an 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, an NCB charter school must meet the following criteria:

* At least 40 percent of the school’s public revenues are spent on salaries and benefits for all employees who possess a valid teaching certificate.
* At least 80 percent of all revenues are 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 examples of the types of mitigating circumstances that the ACCS might consider and allows for the ACCS to consider “documented data regarding individual circumstances of the charter school.”

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 ADA 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 shall be for a minimum time period of two years and a maximum time period of five years.

When recommending a time period, the CDE considers the number of years a charter school has been in operation. Generally, the CDE proposes a funding determination period from two to four fiscal years (FYs) for existing NCB charter schools. However, for newly operational charter schools, 5 *CCR* Section 11963.6(a) requires a funding determination period of two FYs. Additionally, the CDE generally proposes a funding determination period of two FYs for NCB charter schools requesting consideration of mitigating circumstances, regardless of the number of years in operation.

### Northern Summit Academy Shasta #2076

Northern Summit Academy Shasta (NSAS) does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2019–20 budget data.

NSAS is requesting a 100 percent determination of funding for two years with the consideration of mitigating circumstances. NSAS reported expenditures of 49.89 percent on certificated staff costs and a pupil teacher ratio of 16.56 to 1; however, it reported expenditures of 62.83 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding. Without the consideration of mitigating circumstances, NSAS qualifies for only a 70 percent determination of funding.

NSAS cites as mitigating circumstances the transfer of an estimated $600,000 from Northern Summit Academy (NSA), a charter school that was authorized by Whitmore Union Elementary School District and closed on June 30, 2019. NSA had closed as a result of the Anderson Union High School District v. Shasta Secondary Home School (2016) 4 Cal. 262 court decision ruling regarding NCB charter schools operating outside the sponsoring district boundaries. After the denial of its petition to establish in the school district in which its leased facilities were located, NSAS was authorized by the Shasta County Office of Education on appeal. The NSAS board subsequently approved the closure of the original charter, NSA, and transferred all residual net assets and reserves to NSAS.

NSAS states that this transfer of funds from NSA reduced the percentage spent on instruction and instruction-related services below the required 80 percent, and that if it were excluded from the calculation, it would have resulted in NSAS meeting the minimum 80 percent threshold. NSAS states that this is a one-time transfer of reserves and will not continue in subsequent years. NSAS states that these funds are intentionally unspent and intended to carry-forward to accumulate funds for a future facility acquisition to replace leased facilities. NSAS has set aside facility reserves of $444,569, which accounts for 24 percent of their total revenues. NSAS states that the lease for its current facilities ends in October 2022.

The CDE finds that the information submitted supports the claim for mitigating circumstances in that the transfer of funds was one-time in nature and that if it were excluded, the school’s expenditures on instruction and instruction-related services costs would be 83.01 percent, which would qualify the school for full funding. Additionally, NSAS has provided documentation that NSA had made serious attempts to acquire a facility and that NSAS will continue to make attempts. Therefore, the CDE recommends that the SBE approve the request for 100 percent funding for a time period of two years as specified in Attachment 1.

## Summary of Previous 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, the charter school listed in Attachment 1 would receive apportionment funding for NCB ADA under the Local Control Funding Formula model.

## Attachment

* **Attachment 1:** Determination of Funding Recommendation for a Nonclassroom-Based Charter School (1 Page)