

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education January 2021 Agenda Item #18

## Subject

Consideration of a Retroactive 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.

Pursuant to 5 *CCR* Section 11963.6(c), any determination of funding request approved by the SBE for an existing NCB charter school must be submitted by February 1 and be prospective (i.e., submitted during the fiscal year prior to the year the funding determination will be effective). Retroactive determination of funding requests refer to requests that are submitted after the regulatory deadlines and that require an approved SBE waiver to waive the aforementioned sections of 5 *CCR*.

## Recommendation

The CDE recommends that the SBE approve the mitigating circumstances request and the determination of funding request at the percentage and for the time period as specified for W.E.B. DuBois Public Charter in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its December 9, 2020, meeting, the ACCS moved to approve the CDE recommendation that the SBE approve the mitigating circumstances request and approve the determination of funding request at the percentage and for the time period as specified in Attachment 1. The motion passed by a vote of six to one.

The notice for the December 9, 2020, ACCS meeting and the school’s funding determination request form are located on the SBE December 2020 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>.

## Brief History of Key Issues

NCB charter schools must obtain an approved determination of funding from the SBE in order to establish eligibility to receive apportionment funding for NCB instruction. 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 recommendation of 100 percent funding to the SBE, an NCB charter school must meet the following criteria:

* Spend at least 40 percent of the school’s public revenues on salaries and benefits for all employees who possess a valid teaching certificate.
* Spend at least 80 percent of all revenues on instruction and related services.
* Maintain a ratio of average daily attendance (ADA) for independent study pupils to full-time certificated employees that does not exceed a pupil-teacher ratio (PTR) of 25:1 or the PTR 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 identified in regulations. Specifically, 5 *CCR* Section 11963.4(e) allows the ACCS to consider “documented data regarding individual circumstances of the charter school” and provides examples of the types of mitigating circumstances that the ACCS might consider.

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.

Pursuant to 5 *CCR* Section 11963.6(c), any determination of funding request approved by the SBE for an existing NCB charter school must be prospective (not for the current year) and submitted by February 1. The CDE received a completed determination of funding request from W.E.B. DuBois Public Charter (charter #0270) after the required February 1, 2020, deadline, thereby making the request retroactive, not prospective. The school submitted a waiver to the SBE requesting approval to submit a funding determination request after the regulatory deadline. The waiver was approved at the July 8, 2020, SBE meeting and is provided in Item W-01 on the SBE Agenda for July 2020 web page at <https://www.cde.ca.gov/be/ag/ag/yr20/agenda202007.asp>.

For an existing NCB charter school, 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. It is the CDE’s current practice to recommend a funding determination period of two FYs for a charter school requesting the consideration of mitigating circumstances.

Details of the school’s mitigating circumstances are provided below.

### W.E.B. DuBois Public Charter #0270

W.E.B. DuBois Public Charter does not meet the requirements to qualify for a recommendation of 100 percent funding based on reported fiscal year (FY) 2018–19 data.

The school is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. The school reported expenditures of 40.65 percent on certificated staff costs, expenditures of 79.36 percent on instruction and instruction-related services costs, and a PTR of 17 to 1. Without the consideration of mitigating circumstances, the school qualifies for only an 85 percent determination of funding recommendation.

The school cites as mitigating circumstances the need to expend a considerable amount of revenues on facilities and a decrease in NCB ADA caused by a campus closure resulting from the *Anderson Union High School District v. Shasta Secondary Home School* (*Anderson*) court decision.

The school had three campuses, but to comply with the *Anderson c*ourt decision, it was required to close two of them. The closure of the campuses and the consolidation of the students into one campus caused a significant decrease in independent study ADA compared to the ADA at the time of the school’s prior approved funding determination. Additionally, the school’s on-site hours have also reduced due to fewer independent study students. The school was able to end one lease, but it is still obligated to another one through 2020–21.

The school has taken efforts to meeting the required expenditure percentages for full funding by increasing teacher salaries beginning in FY 2019–20. Additionally, the school will be able to renegotiate costs on one facility whose lease expires in 2021. Because the school was close to meeting the required expenditure percentages for full funding, the school believes it will be able to meet them after renegotiations. The school has also seen an increase in site-based students, which will increase cash flow and further support its operations.

### October 2020 Advisory Commission on Charter Schools Meeting

The CDE previously presented W.E.B. DuBois Public Charter’s determination of funding request with mitigating circumstances to the ACCS at its October 7, 2020, meeting, at which the ACCS moved to approve the CDE recommendation that the SBE approve the mitigating circumstances request and approve the determination of funding request for 100 percent for two years. The motion passed by a vote of eight to one.

### November 2020 State Board of Education Meeting

At its November 5–6, 2020, meeting, the SBE did not act on W.E.B. DuBois Public Charter’s funding determination request with mitigating circumstances, citing confusion surrounding the facility lease agreements of the school. The SBE expressed concerns regarding the Agape-Ellis, LLC lease agreement and facility ownership referenced on pages five and six of the school’s funding determination form (Attachment 2 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>).

On November 9, 2020, the CDE sent a letter to W.E.B. DuBois Public Charter (Attachment 3 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>) following up on the SBE’s concerns and requesting additional information on the relationship between Agape Schools and the Ellis Family Partnership III and the school’s facility lease agreements. Specifically, the CDE requested the following:

* Copies of the Agape-Ellis, LLC lease agreements (Attachment 4 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>)
* Copies of facility rent statements and invoices (Attachment 5 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>)
* Copies of contracts and/or partnership agreements between Agape Schools and the Ellis Family Partnership III (Attachment 6 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>)
* Organizational chart that details the Agape Schools and the Ellis Family Partnership III’s relationship to one another (Attachment 7 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>)
* List of all employees, including the governing board and leadership team, of Agape Schools, with the time period(s) each person was employed by Agape Schools (Attachment 8 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>)
* List of all employees, including the governing board and leadership team, of Ellis Family Partnership III, with the time period(s) each person was employed by Ellis Family Partnership III (Attachment 9 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>)

On November 13, 2020, W.E.B. DuBois Public Charter provided the CDE with the information requested.

The CDE has reviewed all additional documentation provided by W.E.B. DuBois Public Charter and presents the following information to address the concerns expressed by the SBE at its November 2020 meeting. Specifically, the CDE notes that W.E.B. DuBois Public Charter clarified the purpose of Agape-Ellis, LLC as holding the titles of the properties that Agape Schools occupies. Neither the school nor Agape Schools share board members with Agape-Ellis, LLC; Agape-Ellis, LLC is comprised of two general managers and does not maintain a board (Attachment 6, p. 3 and Attachment 7 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>). The CDE also notes that W.E.B. DuBois Public Charter clarified that the facilities for which they are obligated to pay rent are still in use by the school; the school is not paying for a facility that they are not using (Attachment 10, p. 20 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>). Additional details are provided below.

#### Relationship between Agape Schools and the Ellis Family Partnership III

On November 24, 2004, Agape Schools, a California non-profit corporation, and the Ellis Family Partnership III, a California general partnership, entered into an operating agreement with one another, thus forming Agape-Ellis, LLC, a California limited liability company (Attachment 6 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>). This partnership was entered into for the purposes of developing a permanent charter school facility and holding the titles of the properties that Agape Schools occupy. Agape Schools and the Ellis Family Partnership III each hold 50 percent ownership of Agape-Ellis, LLC (Attachment 6 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>).

Agape-Ellis, LLC does not maintain a board. Rather, Agape-Ellis, LLC maintains two general managers: one manager represents and makes decisions on behalf of Agape Schools and one manager represents and makes decisions on behalf of the Ellis Family Partnership III (Attachment 6 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>). Neither manager is compensated by Agape-Ellis, LLC.

#### Facility Lease Agreements

A lease agreement between Agape-Ellis, LLC (landlord) and AGAPE Schools (tenant) was entered into on June 27, 2005, for the facility at 1313 P Street, Fresno, California for a term of 10 years (Attachment 4 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>). On July 16, 2013, the term of the lease was extended 10 years for a term beginning August 1, 2015, through July 31, 2025 (Attachment 4 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>). The P Street facility is located within the boundaries of Fresno Unified School District.

On February 29, 2008, Agape-Ellis, LLC (landlord) and W.E.B. DuBois Public Charter (tenant) entered into a lease agreement with W.E.B. DuBois Public Charter for the facility at 2604 South Martin Luther King Boulevard, Fresno, California, which is located within the boundaries of Washington Unified School District (Attachment 4 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>).

In order to comply with the *Anderson* court decision, W.E.B. DuBois Public Charter made plans to cease its usage of the P Street facility and to establish the Martin Luther King Boulevard facility as its primary facility at which students were served. W.E.B. DuBois Public Charter’s transition between the two facilities occurred in FY 2018–19. During FY 2018–19, all students being served at the P Street facility that wished to stay with the school were transitioned to being served at the Martin Luther King Boulevard facility. At this time, W.E.B. DuBois Public Charter served students at both the P Street facility and the Martin Luther King Boulevard facility, and had the following rent obligation for the P Street facility: 100 percent usage, $12,210 per month (Attachment 10, p. 20 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>).

To date, W.E.B. DuBois Public Charter continues to use the P Street facility for central and back office services, including hiring, terminations, trainings, professional development, and storage (Attachment 10, p. 20 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>). However, because it ceased serving students at the P Street facility after FY 2018–19, W.E.B. DuBois Public Charter’s usage of the building decreased along with its rent obligations for the facility as follows:

* FY 2019–20: 60 percent usage, $7,326 per month
* FY 2020–21: 25 percent usage, $3,052 per month

## Conclusion

The CDE has determined that the information submitted by W.E.B. DuBois Public Charter supports its claim for mitigating circumstances. Therefore, the CDE recommends that the SBE approve the school’s request for consideration of mitigating circumstances and approve the determination of funding request for 100 percent funding for two years as specified in Attachment 1.

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

At its July 8, 2020, meeting, the SBE approved the CDE’s recommendation to approve the charter school’s request to waive specific portions of 5 *CCR* Section 11963.6(c), which allowed the charter school identified in Attachment 1 to submit a determination of funding request after the regulatory deadline.

At its November 5–6, 2020, meeting, the SBE did not act on W.E.B. DuBois Public Charter’s funding determination request with mitigating circumstances, citing confusion surrounding the facility lease agreements of the school. The SBE expressed concerns regarding the Agape-Ellis, LLC lease agreement and facility ownership referenced on pages five and six of the school’s funding determination form (Attachment 2 of Agenda Item 1 on the December 9, 2020, Meeting Notice on the SBE ACCS web page located at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>).

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, W.E.B. DuBois Public Charter would receive apportionment funding for its NCB ADA under the Local Control Funding Formula model.

## California Department of Education Staff Review

Direct links to the documents reviewed by the CDE in the consideration of the school’s funding determination request are provided below. These documents are also available under Agenda Item 1 of the SBE December 2020 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>.

* **Item 1 Attachment 2:** Determination of Funding Request for W.E.B. DuBois Public Charter, Charter #0270 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a2.pdf>)
* **Item 1 Attachment 3:** California Department of Education November 9, 2020, Letter to W.E.B. DuBois Public Charter regarding its Funding Determination Request with Mitigating Circumstances (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a3.pdf>)
* **Item 1 Attachment 4:** Copies of the Agape-Ellis, LLC Lease Agreements (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a4.pdf>)
* **Item 1 Attachment 5:** Copies of Facility Rent Statements and Invoices (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a5.pdf>)
* **Item 1 Attachment 6:** Copies of Contracts and/or Partnership Agreements between Agape Schools and the Ellis Family Partnership III (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a6.pdf>)
* **Item 1 Attachment 7:** Agape Schools and Ellis Family Partnership III Organization Flow Chart (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a7.pdf>)
* **Item 1 Attachment 8:** Agape Schools Employee List (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a8.pdf>)
* **Item 1 Attachment 9:** Ellis Family Partnership III Employee List (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a9.pdf>)
* **Item 1 Attachment 10:** Additional Information provided by W.E.B. DuBois Public Charter in Response to the California Department of Education’s November 9, 2020, Letter (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item01a10.pdf>

## Attachment

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