

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education May 2022 Agenda Item #04

## 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* (*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 that offers NCB instruction in excess of the amount authorized by *EC* Section 47612.5(e)(1) 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.

Sierra Foothill Charter, an existing classroom-based charter school which has not previously had a funding determination, has submitted a determination of funding request for NCB instruction beginning in the 2021–22 fiscal year (FY) and a request to consider mitigating circumstances.

## Recommendation

The CDE recommends that the SBE deny Sierra Foothill Charter’s mitigating circumstances request and approve the determination of funding request at 70 percent funding for two years, as provided in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its April 12, 2022, meeting, the ACCS did not accept the CDE recommendation, and instead, moved to recommend that the SBE approve Sierra Foothill Charter’s mitigating circumstances request and approve the determination of funding at 100 percent funding for two years, as provided in Attachment 1. The motion passed by a vote of six to one.

The notice for the April 12, 2022, ACCS meeting and the funding determination request form for the school are located on the SBE April 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041222.asp>.

## Background

### Senate Bill 820 Section 75

*EC* Section 47612.5(d)(1) states that a charter school that has an approved charter may receive funding for its NCB instruction only if a determination for funding is made by the SBE.

However, for fiscal years (FY) 2020–21 and 2021–22, certain schools are exempt from the requirement to obtain an approved funding determination from the SBE, pursuant to Senate Bill 820 (Chapter 110, Statutes of 2020) Section 75:

A charter school with a nonclassroom-based funding determination pursuant to Section 47612.5 of the Education Code that expires on June 30, 2021, or   
June 30, 2022, shall receive its current funding level for two years upon submission of a complete funding determination request to the State Department of Education pursuant to Section 11963.3 of Title 5 of the California Code of Regulations. A charter school’s funding determination request shall be received by the State Department of Education no later than June 30, 2021 or June 30, 2022, as applicable.

Because Sierra Foothill Charter does not have an active funding determination that expires on June 30, 2021, or June 30, 2022, SB 820 Section 75 is not applicable and the school is required to obtain an approved funding determination from the SBE.

### Submission Deadline for Classroom-Based Charter Schools

Pursuant to 5 *CCR* Section 11963.6(c), determination of funding requests approved by the SBE for existing NCB charter schools shall be prospective (not for the current year) and shall be submitted in the FY prior to the year the funding determination will be effective. This requirement does not apply to classroom-based charter schools; existing classroom-based charter schools are not required to submit a funding determination request prior to the year the funding determination will be effective. However, charter schools may experience significant fiscal impacts to their Local Control Funding Formula (LCFF) funding if funding determination requests are not submitted timely. Existing charter schools seeking funding for their NCB average daily attendance (ADA) for the 2021–22 school year must have a funding determination approved by the SBE by its January 2022 meeting. If a funding determination is not approved by the SBE by its January 2022 meeting, beginning with the First Principal (P-1) Apportionment for FY 2021–22, the CDE will not disburse LCFF funds to charter schools based on its NCB ADA. In order to receive disbursement of LCFF funds for NCB ADA for the Second Principal (P-2) Apportionment, funding determinations must be approved by the SBE by its May 2022 meeting.

In the above scenario, funding may be adjusted after funding determinations are approved. However, any funding withheld at the P-2 Apportionment will not be adjusted until the following FY P-1 Apportionment certified in February 2023. Additionally, the charter schools’ 2022–23 Advance Apportionment funding will be impacted. Other ADA-driven funding for charter schools, such as lottery funding, may also be impacted.

## Brief Analysis of Key Issues

*EC* Section 47634.2(a)(1) provides the following:

Notwithstanding any other provision of law, the amount of funding to be allocated to a charter school on the basis of average daily attendance that is generated by pupils engaged in nonclassroom-based instruction…shall be adjusted by the State Board of Education. The State Board of Education shall adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, at a minimum the regulation shall specify that the nonclassroom-based instruction is conducted for the instructional benefit of the pupil and substantially dedicated to that function. In developing these criteria and determining the amount of funding to be allocated to a charter school pursuant to this section, the State Board of Education shall consider, among other factors it deems appropriate, the amount of the charter school’s total budget expended on certificated employee salaries and benefits and on schoolsites, as defined in paragraph (3) of subdivision (d) of Section 47612.5, and the teacher-to-pupil ratio in the school.

*EC* Section 47634.2(a)(4) further states:

For the 2003–04 fiscal year and each fiscal year thereafter, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 70 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

Regulations provide that the ACCS shall develop a recommendation to the SBE regarding determination of funding requests. As stated in 5 *CCR* Section 11963.4(a), a charter school requesting a determination of funding may qualify for either 70 percent, 85 percent, or 100 percent funding, or may be denied (i.e., 0 percent funding). The expenditure and pupil-teacher ratio criteria for each funding level for NCB instruction is outlined in 5 *CCR* Section 11963.4(a) and is summarized in the table below:

| **Funding Level** | **Percent of Public Revenues Spent on Certificated Salaries and Benefits** | **Percent of All Revenues Spent on Instruction and Related Services** | **Pupil-Teacher Ratio** |
| --- | --- | --- | --- |
| **100%** | ≥ 40% | ≥ 80% | 25:1 |
| **85%** | ≥ 40% | ≥ 70% | Not Applicable |
| **70%** | ≥ 35% | ≥ 60% | Not Applicable |
| **0%** | < 35% | < 60% | Not Applicable |

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 other information provided by the charter school on the funding determination form, including, but not limited to, the charter school’s contracts, governing board members, and reserves, or documented data regarding individual circumstances of the charter school and provides examples of the types of mitigating circumstances that the ACCS might consider.

5 *CCR* Section 11963.4(e) provides:

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.

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 time periods based on the number of years a charter school has been in operation and the number of times it has obtained a funding determination.

The CDE recommends a funding determination period of two FYs for a charter school requesting the consideration of mitigating circumstances, regardless of the number of years the charter school has been in operation and the number of times it has obtained a funding determination. A period of two years allows the CDE to timely revisit the school’s funding determination and ensure that the school meets the appropriate expenditure requirements for its approved level of funding for its NCB instruction.

In the past, the CDE recommended five-year periods dependent on a charter school’s Academic Performance Index (API) rank, pursuant to *EC* Section 47612.5(d)(2); however, because API is no longer calculated, the CDE does not currently recommend five-year funding determination periods.

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

### Sierra Foothill Charter

Sierra Foothill Charter does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2021–22 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 37.20 percent on certificated salaries and benefits, expenditures of 74.90 percent on instruction and related services costs, and a pupil teacher ratio of 24.2 to 1. Without the consideration of mitigating circumstances, the school qualifies for only a 70 percent determination of funding.

The school cites as mitigating circumstances that it received approximately $135,000 in ESSER III funding, which has been allocated to a capital project; without this one-time revenue, it would have reported expenditures of 40.75 percent on certificated salaries and benefits and expenditures of 81.91 percent on instruction and related services costs. However, the CDE notes in its review that the school had reported total reserves of $943,297, or 61.47 percent of total expenditures, and a projected P-2 ADA of 122.26 for FY 2021–22.

Pursuant to 5*CCR* Section 11963.3(a)(5)(F), when calculating a funding determination, reserves in excess of the greater of $50,000 or 5 percent of total expenditures may be allowed for economic uncertainties or long-term expenditures such as capital projects if the excess reserves are satisfactorily explained pursuant to 5 *CCR* Section 11963.4(b). Specifically, 5 *CCR* Section 11963.4(b) states that the CDE may ask a charter school to provide additional information in order to make possible a more detailed review or to develop a reasonable basis for a recommendation other than those prescribed by 5 *CCR* Section 11963.4(a).

Pursuant to 5 *CCR* Section 11963.4(b), the CDE requested additional information from Sierra Foothill Charter regarding the school’s determination of funding request. The school provided a response on February 22, 2022, stating that the capital project for which it had intended to use the ESSER III funds was an additional set of student bathrooms, but the owners of the facility had recently denied the project. The school states that its board would review a revised plan for the use of these funds at its March 29, 2022, meeting.

The school also states in its response that about $139,000 of the reserves represents investments in fixed assets, but there are no specific plans for the remaining reserves of about $771,000, which is over 50 percent of its total expenditures. The school states that although there are no specific plans, these reserves may be used for salary and benefits increases, unexpected facility repairs, anticipated drops in enrollment, and any unforeseen emergencies. The school also states that as a small school, its strong reserves allowed for it to weather state deferrals in FY 2020–21 without borrowing.

The CDE has determined that the information submitted does not support the claim for mitigating circumstances. While the school did obtain one-time revenue that impacted its expenditure percentages, the school had sizable reserves at its disposal that could have been spent on certificated salaries and benefits and instruction and related service, and it did not otherwise provide specific plans for these reserves. While a school’s reserves are not the primary basis upon which the CDE proposes a funding determination recommendation, it is a consideration that that is permitted by 5 *CCR* Section 11963.4(b). Pursuant to this section, the CDE considers other information provided on a school’s funding determination form, including its reserves, when a school fails to meet the expenditure requirements for a recommendation of 100 percent funding for its NCB instruction. Unlike previously-heard schools with large reserves for which the CDE has recommended a greater funding than indicated by salary and educational program spending, Sierra Foothill Charter did not articulate plans that would require additional funding above the school’s existing robust reserve. The school declined to describe capital projects, such as a facility purchase or renovation, when asked about future plans. For these reasons, the CDE proposes to recommend that the SBE deny the school’s mitigating circumstances request and approve the determination of funding request for 70 percent funding for two years as specified in Attachment 1.

The CDE notes that if the school’s mitigating circumstances request is denied and it obtains a 70 percent funding determination, it may submit a reconsideration request to seek a higher level of funding during the effective period of its funding determination, pursuant to 5 *CCR* Section 11963.6(g).

## Summary of Previous California Department of Education Action

From January 2017 through March 2022, the CDE has presented to the SBE 81 funding determination requests with the consideration of mitigating circumstances. Of those requests, the CDE has recommended the denial of a school’s mitigating circumstances on three occasions. The CDE has previously cited a school’s high reserves as a reason for denying mitigating circumstances requests.

## 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, Sierra Foothill Charter would receive apportionment funding for its NCB ADA under the LCFF model.

## California Department of Education Staff Review

A direct link to the school’s funding determination request is provided below. The request is also available under Agenda Item 2 of the SBE April 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice041222.asp>.

* Determination of Funding Request for Sierra Foothill Charter, Charter #1396 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-apr22item02a2.pdf>)

## Attachment

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