

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education May 2018 Agenda Item #08

## Subject

Consideration of Requests 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.

## Recommendation

The CDE proposes to recommend that the SBE approve the determination of funding for the periods specified for the nine nonclassroom-based charter schools as provided in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At the April 10, 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

The nine nonclassroom-based 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 nonclassroom-based 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 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; and
* At least 80 percent of all revenues are to be spent on instruction and instruction- related services; and
* 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.

The funding determination requests are provided in Attachments 2 through 19 of Agenda Item 02 on the ACCS April 10, 2018, Meeting Notice on the ACCS Meeting Agenda Web page located at <http://www.cde.ca.gov/be/cc/cs/accsnotice041018.asp>.

### California Virtual Academy @ Kings #0840

California Virtual Academy @ Kings (Kings) does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported fiscal year (FY) 2016–17 data.

Kings is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Kings reported expenditures of 83.55 percent on instruction and instruction-related services costs; however, it reported expenditures of 39.15 percent on certificated staff costs, which falls below the 40 percent needed for full funding and qualifies Kings for only a 70 percent determination of funding.

Kings cites as mitigating circumstances the use of $75,000 in restricted funds and $97,365 in one time mandated revenues on other allowable non-certificated salary and benefits expenses, which, if excluded, would have resulted in Kings meeting the minimum 40 percent threshold. The CDE agrees with Kings’ mitigating circumstances and recommends that the SBE approve Kings’ request for 100 percent for a two year time period as specified in Attachment 1.

### Mt. Lassen Charter School #1185

Mt. Lassen Charter School (Mt. Lassen) is a retroactive request and does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported FY 2015–16 data. Mt. Lassen’s waiver to file a request beyond the deadline was approved by the SBE at its July 2017 meeting.

Mt. Lassen is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Mt. Lassen reported expenditures of 45.07 percent on certificated staff costs; however, it reported expenditures of 71.60 percent on instruction and instruction-related services costs, which falls below the 80 percent needed for full funding and qualifies Mt. Lassen for only an 85 percent determination of funding.

Mt. Lassen cites as its mitigating circumstances the departure of its superintendent and business manager. Mt. Lassen postponed major spending decisions on $119,789 in restricted and one time funds until a new leadership team was in place. The CDE agrees with Mt. Lassen’s mitigating circumstances and recommends that the SBE approve the request for 100 percent for a two year time period as specified in Attachment 1.

### Pathways Academy Charter School – Adult Education #1828

Pathways Academy Charter School – Adult Education (Pathways) does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported FY 2016–17 data.

Pathways is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Pathways reported expenditures of 33.65 percent on certificated staff costs and 36.73 percent on instruction and instruction-related services costs, which both fall below the 40 percent/80 percent criteria needed for full funding. Pathways would be denied a determination of funding, unless mitigating circumstances are provided for consideration.

Pathways cites as mitigating circumstances the need to be fiscally conservative in its first year of operation, which ended with a fund balance of $2,791. Factors include the uncertainty of its enrollment with a small student population of 16, maintaining adequate cash flow, and having $50,000 in one time start-up costs. A review of Pathways’ budget for the FY 2017–18 shows compliance with the criteria for full funding and estimated ADA increasing to 42. The CDE agrees with Pathways’ mitigating circumstances and recommends that the SBE approve the request for 100 percent for a two year time period as specified in Attachment 1.

### Yosemite-Wawona Elementary Charter School #1610

Yosemite-Wawona Elementary Charter School (Yosemite) does not meet the requirement to qualify for a recommendation of 100 percent funding based on reported FY 2016–17 data.

Yosemite is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Yosemite reported expenditures of 33.55 percent on certificated staff costs and 77.18 percent on instruction and instruction-related services costs, which both fall below the 40 percent/80 percent criteria needed for full funding. Yosemite would be denied a determination of funding, unless mitigating circumstances are provided for consideration.

Yosemite cites as mitigating circumstances its small student population of 21 students being supported by a certificated teacher and assisted by three classified classroom educators. Due to increased enrollment, a review of Yosemite’s budget for the FY 2017–18 shows they meet the minimum requirement in FY 2017–18 with two certificated teachers. The CDE agrees with Yosemite’s mitigating circumstances and recommends that the SBE approve the request for 100 percent for a two year time period as specified in Attachment 1.

### Independence Charter Academy #1679

Independence Charter Academy (Independence) does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported FY 2016–17 data.

Independence is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Independence reported expenditures of 47.28 percent on certificated staff costs; however, it reported expenditures of 75.55 percent on instruction and instruction-related services costs, which falls below 80 percent needed for full funding and qualifies Independence for only an 85 percent determination of funding.

Independence cites as mitigating circumstances the use of $75,000 in restricted funds and $21,526 in one time mandated revenues on other allowable non-instructional expenses, which, if excluded, would have resulted in Independence meeting the minimum 80 percent threshold. The CDE agrees with Independence’s mitigating circumstances and recommends that the SBE approve Independence’s request for 100 percent for a two year time period as specified in Attachment 1.

### Big Sur Charter School #1000

Big Sur Charter School (Big Sur) does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported FY 2016–17 data.

Big Sur is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Big Sur reported expenditures of 40.08 percent on certificated staff costs; however, it reported expenditures of 74.55 percent on instruction and instruction-related services costs, which falls below 80 percent needed for full funding and qualifies Big Sur for only an 85 percent determination of funding.

Big Sur cites as mitigating circumstances the unexpected costs of relocating its learning center, due to unsafe occupation conditions, and the resignation of its director. The one-time costs of relocation and attorney fees related to the move and resignation of the director resulted in Big Sur falling below the minimum 80 percent threshold. The CDE agrees with Big Sur’s mitigating circumstances and recommends that the SBE approve the request for 100 percent for a two year time period as specified in Attachment 1.

### Coastal Academy Charter School #0516

Coastal Academy Charter School (Coastal) does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported FY 2016–17 data.

Coastal is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Coastal reported expenditures of 41.17 percent on certificated staff costs; however, it reported expenditures of 79.77 percent on instruction and instruction-related services costs, which falls below 80 percent needed for full funding and qualifies Coastal for only an 85 percent determination of funding.

Coastal cites as mitigating circumstances the purchase of its main instructional facility in the FY 2013–14. Coastal obtained a 30 year, $14 million bond obligation to purchase its main instructional facility. Prior to that time, Coastal was renting its facility and was able to include rent costs as an instructional cost for purposes of qualifying for full funding. However, per formulas in Senate Bill 740, debt service payments (over $850,000) are not classified as instructional cost, which resulted in Coastal falling below the minimum 80 percent by less than one percent, or $34,000. Based on the reported student hours at the school site, Coastal would have spent the minimum 80 percent if the debt service were treated like rent and included as instructional costs.

#### Information on prior SBE action:

Coastal’s current funding determination request, with the same mitigating circumstance described above, was approved by the SBE at its May 2016 meeting.

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

### Kairos Public School Vacaville Academy #1635

Kairos Public School Vacaville Academy (Kairos) does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported FY 2016–17 data.

Kairos is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Kairos reported expenditures of 47.92 percent on certificated staff costs; however, it reported expenditures of 77.04 percent on instruction and instruction-related services costs, which falls below 80 percent needed for full funding and qualifies Kairos for only an 85 percent determination of funding.

Kairos cites as mitigating circumstances the use of $101,096 in restricted funds and $108,831 in one time mandated revenues on other allowable non-instructional expenses, which, if excluded, would have resulted in Kairos meeting the minimum 80 percent threshold. The CDE agrees with Kairos’ mitigating circumstances and recommends that the SBE approve Kairos’ request for 100 percent for a two year time period as specified in Attachment 1.

### California Virtual Academy @ Sutter #1606

California Virtual Academy @ Sutter (Sutter) does not meet the requirement to qualify for a proposed recommendation of 100 percent funding based on reported FY 2016–17 data.

Sutter is requesting a 100 percent determination of funding for five years with the consideration of mitigating circumstances. Sutter reported expenditures of 88.59 percent on instruction and instruction-related services costs; however, it reported expenditures of 39.29 percent on certificated staff costs, which falls below the 40 percent needed for full funding and qualifies Sutter for only a 70 percent determination of funding.

Sutter cites as its mitigating circumstances the use of $75,000 in restricted funds and $162,773 in one time mandated revenues on other allowable non-certificated salary and benefits expenses, which, if excluded, would have resulted in Sutter meeting the minimum 40 percent threshold. The CDE agrees with Sutter’s mitigating circumstances and recommends that the SBE approve Sutter’s request for 100 percent 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 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.

## Attachments

* **Attachment 1:** Determination of Funding Recommendation for a Nonclassroom-based Charter School (2 Pages)