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California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education July 2020 Agenda Item #13

## 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 mitigating circumstances requests and approve the determination of funding requests at the percentages and for the time periods specified for the charter schools as provided in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its June 9, 2020, meeting, the ACCS moved to approve the CDE recommendation that the SBE approve the mitigating circumstances requests and approve the determination of funding requests at the percentages and for the time periods specified for the NCB charter schools listed in Attachment 1. The motion passed by a vote of eight to one.

The notice for the June 9, 2020, ACCS meeting is located on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice060920.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 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.

For a newly operational NCB charter school, 5 *CCR* Section 11963.6(a) requires a funding determination period of two fiscal years (FYs).

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 that an existing NCB charter school submitting a first-time renewal request of its funding determination be approved for a period of three FYs. For an existing NCB charter school that has previously renewed its funding determination, it is the CDE’s current practice to recommend a funding determination period of four FYs.

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.

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):

A charter school that has achieved a rank of 6 or greater on the Academic Performance Index for the two years immediately prior to receiving a funding determination pursuant to subdivision (b) of Section 47634.2 shall receive a five-year determination and is not required to annually reapply for a funding determination of its nonclassroom-based instruction program if an update of the information the State Board of Education reviewed when initially determining funding would not require material revision, as that term is defined in regulations adopted by the board.

However, because API is no longer calculated, the CDE does not currently recommend five-year funding determination periods.

The CDE provides details of each school’s mitigating circumstances below.

### Dimensions Collaborative #1946

Dimensions Collaborative does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported 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 49.27 percent on certificated staff costs, expenditures of 47.52 percent on instruction and instruction-related services costs, and a pupil teacher ratio of 16.42 to 1. Without the consideration of mitigating circumstances, the school is ineligible for a determination of funding, and the ACCS would be required to recommend that the SBE deny the school’s request, pursuant to 5 *CCR* Section 11963.4(a)(4).

The school cites as mitigating circumstances being the recipient of a one-time transfer of $3,399,488 from a closed charter school, Dehesa Charter (charter #0419). The school is a countywide charter school that split from Dehesa Charter, and a majority of the students and many of the staff transferred from there. A percentage of Dehesa Charter’s reserves was transferred to the school so that the funds would benefit the students who generated them.

Without the one-time transfer of funds, the school would have reported 80.63 percent expenditures on instruction and instruction-related services costs, which would qualify the school for full funding.

The CDE has determined that the information submitted supports the 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 a time period of two years as specified in Attachment 1.

### Connecting Waters Charter School - Central Valley #1973

Connecting Waters Charter School - Central Valley does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported 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 54.14 percent on certificated staff costs, expenditures of 33.17 percent on instruction and instruction-related services costs, and a pupil teacher ratio of 14.75 to 1. Without the consideration of mitigating circumstances, the school is ineligible for a determination of funding, and the ACCS would be required to recommend that the SBE deny the school’s request, pursuant to 5 *CCR* Section 11963.4(a)(4).

The school cites as mitigating circumstances a one-time transfer of $5 million from its sister school, Connecting Waters Charter (charter #0477). Without this one-time transfer of funds, the school would have reported 80.11 percent expenditures on instruction and instruction-related services costs, which would have qualified the school for full funding.

In order to remain compliant with the *Anderson Union High School District v. Shasta Secondary Home School* court decision, the original school, Connecting Waters Charter under the Connecting Waters Charter School Inc. non-profit corporation, split into three new charters. With guidance from the Fiscal Crisis and Management Assistance Team, and following board approval, $5 million in existing net assets of the original Connecting Waters Charter was allocated in a one-time transfer to Connecting Waters Charter School - Central Valley.

The school is in the process of acquiring and improving an existing building in Modesto. The facility is intended to be used as the school’s primary resource center. The total project cost is currently estimated at $10.5 million, which includes approximately $1.6 million in initial acquisition costs of the land and building, and $8.9 million in facility improvements. The school has acquired the existing land and building using cash on hand and has entered into a $8,682,000 guaranteed maximum price contract for the building improvements, with the remaining amount saved for facility improvements including the purchase of furniture and equipment, and related costs. Construction is anticipated to be completed in 2020.

The CDE has determined that the information submitted supports the 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 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 schools 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 Nonclassroom-Based Charter Schools (1 Page)