

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education July 2020 Agenda Item #15

## Subject

Consideration of Retroactive 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.

Pursuant to 5 *CCR* Section 11963.6(a), a determination of funding request for a new NCB charter school must be submitted during its first year of operation by December 1. 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*.

Waivers requesting approval for a retroactive funding determination were submitted for each charter school and were approved by the SBE at its May 7, 2020, meeting. The waiver requests are provided in the May 2020 SBE Agenda Item W-01, which is located at <https://www.cde.ca.gov/be/ag/ag/yr20/documents/may20w01.docx>.

## Recommendation

The CDE recommends that the SBE approve the mitigating circumstances requests of two schools and deny the mitigating circumstances request of one school, and approve the determination of funding requests at the percentages and for the time periods as specified 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 of two schools and deny the mitigating circumstances request of one school, and approve the determination of funding requests at the percentages and for the time periods as specified in Attachment 1. The motion passed by a vote of seven 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 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.

Pursuant to 5 *CCR* Section 11963.6(a), a determination of funding request for a new NCB charter school must be submitted during its first year of operation by December 1. The CDE received completed determination of funding requests from Thompson Peak Charter (charter #2066) and Long Valley (charter #2067) after the required December 1, 2019, deadline. As the charter schools failed to submit a completed request by the regulatory filing deadline, they were each required to request a waiver for SBE approval to allow the schools to request a funding determination after the deadline.

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 eCademy Charter at Crane (charter #1309) after the required February 1, 2020, deadline, thereby making the request retroactive, not prospective. As the charter school failed to submit a completed request by the regulatory filing deadline, it was required to request a waiver for SBE approval to allow the school to request a funding determination after the deadline.

Each charter school submitted a waiver to the SBE requesting approval to submit a funding determination request after the regulatory deadline. The waivers were approved at the May 7, 2020, SBE meeting. The waiver requests are provided on the May 2020 SBE Agenda web page at <https://www.cde.ca.gov/be/ag/ag/yr20/agenda202005.asp>.

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.

### Thompson Peak Charter #2066

Thompson Peak Charter does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2019–20 data.

The school is requesting a 100 percent determination of funding for three years with the consideration of mitigating circumstances. The school reported expenditures of 52.64 percent on certificated staff costs, expenditures of 61.66 percent on instruction and instruction-related services costs, and a pupil teacher ratio of 17.30 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 a one-time transfer of $818,457 from the closed charter school, Long Valley Charter - Susanville (charter #1871). Without the one-time transfer of funds, the school would have reported 89.62 percent expenditures on instruction and instruction-related services costs, which would have qualified the school for full funding.

In order to comply with Assembly Bill 1507, Long Valley Charter - Susanville closed on June 30, 2019, and re-opened as Thompson Peak Charter on July 1, 2019. It is considered a new charter school in terms of funding because it obtained a new charter number. With guidance from the Fiscal Crisis and Management Assistance Team (FCMAT), and following board approval, $818,457 in existing net assets of the original Long Valley Charter - Susanville was allocated in a one-time transfer to Thompson Peak Charter.

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.

### Long Valley #2067

Long Valley does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2019–20 data.

The school is requesting a 100 percent determination of funding for three years with the consideration of mitigating circumstances. The school reported expenditures of 60.04 percent on certificated staff costs, expenditures of 54.05 percent on instruction and instruction-related services costs, and a pupil teacher ratio of 16.28 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 $1,888,675 from the closed charter school, Long Valley Charter (charter #1549). Without the one-time transfer of funds, the school would have reported 93.02 percent expenditures on instruction and instruction-related services costs, which would have qualified the school for full funding.

In order to comply with AB 1507, Long Valley Charter closed on June 30, 2019, and re-opened as Long Valley on July 1, 2019. It is considered a new charter school in terms of funding because it obtained a new charter number. With guidance from the FCMAT, and following board approval, $1,888,675 in existing net assets of the original Long Valley Charter was allocated in a one-time transfer to Long Valley.

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.

### eCademy Charter at Crane #1309

eCademy Charter at Crane 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 71.92 percent on certificated staff costs, expenditures of 78.45 percent on instruction and instruction-related services costs, and a pupil teacher ratio of 17.17 to 1. Without the consideration of mitigating circumstances, the school qualifies for only an 85 percent determination of funding.

The school cites as mitigating circumstances multiple changes in administration leading to an unawareness of the expenditure requirements to qualify for full funding. The school has had three principals serving over the past five years, which greatly impacted the school’s planning and budget allocation process. Additionally, the school states that the new principal has limited experience with regard to charter schools, so overall planning as well as master schedule development and implementation took a great deal of his focus. Now that the school is aware of the expenditure requirements, it will include fiscal monitoring as a regular component of program monitoring throughout the year to ensure that it will meet the expenditure requirement upon its next determination of funding request.

The CDE has determined that an unawareness of the expenditure requirements to receive full funding for NCB instruction is insufficient to support the claim for mitigating circumstances. The school has failed to demonstrate that its situation was unique or exceptional pursuant to 5 *CCR* Section 11963.4(e). The CDE recommends that the SBE deny the school’s request for consideration of mitigating circumstances and approve the determination of funding request for 85 percent funding for a time period of two years as specified in Attachment 1.

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

At its May 7, 2020, meeting, the SBE approved the CDE’s recommendation to approve the requests to waive specific portions of 5 *CCR* Section 11963.6(c), which allowed each of the charter schools identified in Attachment 1 to submit a determination of funding request after the regulatory deadline.

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)