

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education November 2020 Agenda Item #10

## 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* (*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 [FY] 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 charter school’s mitigating circumstances request and determination of funding request at the percentage and for the time period specified in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its October 7, 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 eight to one.

The notice for the October 7, 2020, ACCS meeting and the school’s funding determination request form are located on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice100720.asp>.

## Brief History of Key Issues

Charter schools must obtain an approved determination of funding from the SBE in order to establish eligibility to receive apportionment funding for its 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 instruction-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 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 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 charter 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. The waiver request is provided 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. Unless a shorter time period is requested by the charter school, 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 the school’s mitigating circumstances below.

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

W.E.B. DuBois Public Charter 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 40.65 percent on certificated staff costs, expenditures of 79.36 percent on instruction and instruction-related services costs, and a pupil teacher ratio of 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 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. The school’s on-site hours have also declined due to fewer independent study students. Additionally, regarding the two campuses it closed, the school was able to end one lease but is still obligated to another lease through 2020–21.

The school has taken efforts to meet 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.

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 its determination of funding request at 100 percent for a time period of 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.

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 school listed in Attachment 1 would receive apportionment funding for its NCB ADA under the Local Control Funding Formula model.

## Attachment

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