

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

oab-csd-jan21item02

# California State Board of EducationJanuary 2021 AgendaItem #19

## Subject

Consideration of Requests for Determination of Funding 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*).

## Recommendation

The CDE recommends that the SBE approve the determination of funding requests at the percentages and for the time periods as specified for the charter schools in Attachment 1.

The CDE notes that at the December 9, 2020, ACCS meeting, the CDE had proposed a recommendation for 85 percent funding for Insight @ San Diego and Insight @ San Joaquin based on the information provided by both schools at the time. Following the ACCS meeting, the CDE received additional information from the schools and their auditor that addressed the outstanding questions held by the CDE. As such, the CDE has changed its recommendation for these two schools to 100 percent funding for the time periods as specified in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its December 9, 2020, meeting, the ACCS voted on three separate motions regarding this item.

1. The ACCS moved to approve the CDE recommendation that the SBE approve the determination of funding requests for California Virtual Academy at Kings, California Virtual Academy @ Sonoma, and California Virtual Academy at Sutter at 100 percent for the time periods specified in Attachment 1.

The motion passed by a vote of six to one.

1. The ACCS moved to approve the CDE recommendation that the SBE approve the determination of funding requests for Insight @ San Diego and Insight @ San Joaquin at 85 percent for the time periods specified in Attachment 1. In this motion, the ACCS acknowledged that the CDE’s recommendation may change should the schools provide additional clarifying information to support recommendations for 100 percent funding.

The motion passed by a vote of five to two.

1. The ACCS moved to approve the CDE recommendation that the SBE approve the determination of funding request for Cabrillo Point Academy at 100 percent for the time period specified in Attachment 1.

The motion received four yes votes, one no vote, and two abstentions. Each formal recommendation of the ACCS shall require an affirmative vote of at least five members. As this motion did not receive an affirmative vote of at least five members, no formal recommendation was moved by the ACCS to the SBE.

At its December 9 meeting, some ACCS members expressed concerns regarding Cabrillo Point Academy’s associations with Inspire Charter Schools and its inclusion in the San Diego County Office of Education’s request for an Assembly Bill 139 Extraordinary Audit of Inspire Charter Schools by the Fiscal Crisis and Management Assistance Team (FCMAT). That audit has not yet been completed.

However, in order to receive funding for their NCB instruction at the First Principal Apportionment, the school must receive an approved funding determination at the January 13–14, 2021, SBE meeting. The CDE notes that pursuant to 5 *CCR* Section 11963.7, any multi-year funding determination approved by the SBE may be modified by the SBE, in terms of both the multi-year approval and the funding authorized. The CDE recommends the minimum time period permitted by 5 *CCR* for this school’s funding determination and will review the FCMAT audit when it is completed for any impact on the school’s funding determination.

The notice for the December 9, 2020, ACCS meeting and the schools’ funding determination request forms are located on the SBE ACCS web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>.

## Brief History of Key Issues

NCB charter schools must obtain an approved determination of funding from the SBE in order to establish eligibility to receive apportionment funding for 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 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 (PTR) of 25:1 or the PTR of the largest unified school district in the county or counties in which the charter school operates.

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 fiscal years (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.

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.

### California Virtual Academies and Insight Schools of California

The following California Virtual Academy schools (CAVA) and Insight Schools of California (Insight) were required to submit a funding determination renewal request by the February 3, 2020, deadline in order to continue to receive funding for their NCB instruction, and are presented in this item:

* California Virtual Academy at Kings (charter #0840)
* Insight @ San Diego (charter #1371)
* Insight @ San Joaquin (charter #1762)
* California Virtual Academy @ Sonoma (charter #0653)
* California Virtual Academy at Sutter (charter #1606)

#### Summary of Communications

Unresolved findings from the California Virtual Academies and Insight Schools of California Audit Report, conducted by the California State Controller Office in October 2017, regarding CAVA and Insight’s PTR calculation prompted the CDE to request additional information of CAVA and Insight to support their funding determination renewal requests, pursuant to 5 *CCR* Section 11963.4(b).

As a charter school’s PTR is one of the three criteria considered for a 100 percent determination of funding recommendation, the CDE requested additional information be submitted with CAVA and Insight’s funding determination renewal requests in order to ensure that each of their PTR was calculated and reported accurately. A timeline of the communications between the CDE, CAVA and Insight, and CAVA and Insight’s legal counsel is provided below:

* **January 27, 2020:** The CDE received funding determination renewal requests from CAVA and Insight schools whose funding determinations expire at the end of FY 2019–20. The CDE requested that CAVA and Insight also provide supplemental PTR information.
* **February 24, 2020:** The CDE reiterated its request for the aforementioned information via a phone call with CAVA and Insight staff. During the phone call, staff stated their intent to provide the requested information by February 28, 2020.
* **March 30, 2020:** The CDE sent a follow-up letter to CAVA and Insight’s legal counsel acknowledging receipt of funding determination forms for the schools and requesting that the supporting PTR documentation requested on January 27 and February 24 be provided to the CDE by May 1, 2020.
* **April 24, 2020:** CAVA and Insight’s legal counsel provided the CDE with the requested documentation to support the schools’ PTR.

Over the following three months, CDE staff, including staff from the Charter Schools Division, School Fiscal Services Division, and Legal Affairs Division, and SBE Office staff reviewed all documentation provided by CAVA and Insight.

* **August 6, 2020:** The CDE sent a letter to CAVA and Insight’s legal counsel confirming receipt of the supporting PTR documentation and requesting confirmation that all school teachers are employees of the school where they are teaching.
* **September 8, 2020:** CAVA and Insight’s legal counsel responded to CDE’s August 2020 letter and reassured the CDE that the schools are in full compliance with the law, including the requirements for independent study, employment of teachers, and calculation of PTR.
* **October 6, 2020:** The CDE’s legal counsel communicated discrepancies found by CDE staff in the funding determination forms submitted for Insight @ San Diego and Insight @ San Joaquin to Insight’s legal counsel via phone and email. Specifically, the CDE’s legal counsel informed Insight’s legal counsel that CDE staff found that the expenditures reported by the schools were not consistent with the expenditures indicated in their FY 2018–19 annual audits. On the funding determination forms, some of the schools’ administrative expenses appeared to be improperly reported as instruction and related services expenses. The CDE’s legal counsel advised that Insight staff reach out directly to CDE staff to explain the discrepancies.

Detailed information regarding the CDE’s initial findings for both Insight schools is available in Agenda Item 2 of the December 2020 ACCS meeting at <https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item02.docx>.

* **October 7, 2020:** Insight’s legal counsel acknowledged receipt of October 6, 2020, email from CDE’s legal counsel.
* **December 3, 2020:** Insight’s legal counsel sent a letter to the CDE to address the CDE’s concerns about whether both of the schools improperly classified some administrative expenses as instruction and related services expenses. Insight’s legal counsel listed positions that were reported as “administrative support services” on the annual audit but that were included in instruction and related services expenses for the purposes of the funding determination form.

Attached to the letter were the job descriptions of the positions asserted to be instruction-related and a letter from the school’s auditor, which provided a general statement that some instruction and related services expenses were classified as “administrative support services” on the audit due to differences in terminology between Generally Accepted Accounting Principles and the funding determination form. The auditor letter did not confirm whether the specific positions listed by the school were reported as instruction and related services expenses.

* **December 15, 2020:** The CDE sent a letter to Insight’s legal counsel requesting the following: 1) a statement from the auditor regarding whether the specific positions that Insight’s legal counsel named in its letter and attachments were indeed expensed as "administrative support services" in the audit, and 2) a list of all expenses reviewed by the auditor and classified as “instruction related services” and “administrative support services” in the audit. The CDE requested that the documentation be submitted by December 18, 2020.
* **December 18, 2020:** The auditor for Insight sent a letter to the CDE with the requested information, confirming that the specific positions listed by Insight’s legal counsel were classified as “administrative support services” in the audit but were considered instruction and related services expenses for the purposes of the funding determination form. Additionally, the auditor provided a breakdown of expenses that were classified as “administrative support services” on the audit but were considered instruction and related services expenses on the funding determination form, and expenses that were classified as “program services” on the audit but were not considered instruction and related services expenses on the funding determination form.

Pursuant to 5 *CCR* Section 11963.6(f), not more than 120 days following the receipt of a complete determination of funding request, the CDE shall present the request and recommendation of the ACCS to the SBE. The CDE notes that it received complete funding determination requests, including supplemental PTR calculation documentation, from CAVA and Insight on September 9, 2020. Pursuant to 5 *CCR*, CAVA and Insight’s funding determination requests shall be heard by the SBE at its January 2021 meeting.

The CDE has reviewed the funding determination forms and all supplemental information submitted by CAVA and Insight and has determined that all five CAVA and Insight schools provided in Attachment 1 qualify for a recommendation of 100 percent funding for their NCB instruction.

## Conclusion

The CDE recommends that the SBE approve the determination of funding requests at the percentages and for the time periods specified for the charter schools as provided in Attachment 1.

The CDE notes that it recommends that the SBE approve the determination of funding requests for the charter schools listed in Attachment 1 for a period of two fiscal years despite the fact that all charter schools have previously renewed their funding determinations. Two fiscal years, which is the minimum time period permitted by 5 *CCR* Section 11963.6(c), allows the CDE to timely revisit the charter schools’ funding determinations, follow up on outstanding concerns, and ensure that all requirements to receive funding for NCB instruction are appropriately met.

## 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 in Attachment 1 would receive apportionment funding for their NCB ADA under the Local Control Funding Formula model.

## California Department of Education Staff Review

Direct links to the documents reviewed by the CDE in the consideration of the schools’ funding determination requests are provided below. These documents are also available under Agenda Item 2 of the SBE December 2020 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice120920.asp>.

* **Item 2 Attachment 2:** Determination of Funding Request for California Virtual Academy @ Kings, Charter #0840 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item02a2.pdf>)
* **Item 2 Attachment 3:** Determination of Funding Request for Cabrillo Point Academy, Charter #1748 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item02a3.pdf>)
* **Item 2 Attachment 4:** Determination of Funding Request for Insight @ San Diego, Charter #1371 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item02a4.pdf>)
* **Item 2 Attachment 5:** Determination of Funding Request for Insight @ San Joaquin, Charter #1762 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item02a5.pdf>)
* **Item 2 Attachment 6:** Determination of Funding Request for California Virtual Academy @ Sonoma, Charter #0653 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item02a6.pdf>)
* **Item 2 Attachment 7:** Determination of Funding Request for California Virtual Academy at Sutter, Charter #1606 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec20item02a7.pdf>)

## Attachment

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