California Department of Education
Charter Schools Division
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**ADVISORY COMMISSION ON CHARTER SCHOOLS**

AN ADVISORY BODY TO THE STATE BOARD OF EDUCATION

# February 2021 AgendaItem #01

## Subject

Information Overview of the California Department of Education’s Nonclassroom-Based Funding Determination Process and Implementation of Assembly Bills 1505 and 1507, Which Specifically Addresses the Updated Requirements for Requesting a Funding Determination, and the New Review Standard and Process of the State Board of Education and the Advisory Commission on Charter Schools in the Hearing of Appeals for the Establishment and Renewal of Charter Schools.

## Type of Action

Information

## Summary of the Issue

This item provides information and background on the California Department of Education’s (CDE’s) funding determination process for nonclassroom-based (NCB) charter schools as well as provides an overview of the ongoing work of CDE and State Board of Education (SBE) staff pertaining to the implementation of Assembly Bill 1505 (Chapter 486, Statutes of 2019) and AB 1507 (Chapter 487, Statutes of 2019). Specifically, this item discusses pertinent updates to the funding determination process for fiscal years (FYs) 2020–21 and 2021–22 as well as changes made by AB 1505 to the submission process of new and renewing charter school petitions to school districts, county boards of education, and the SBE. Additionally, this item describes the responsibilities of the SBE in the charter appeal process, details the new standard under which the SBE shall review different types of charter appeals, and summarizes the various impacts AB 1505 and AB 1507 have on different areas of charter school law.

The CDE notes that the implementation of AB 1505 and AB 1507 is an ongoing process. This item serves to provide the Advisory Commission on Charter Schools (ACCS) with an overview of the work and areas of legislation that have been implemented to date. Additional information will be provided to the ACCS as CDE and SBE staff continue this work.

## Nonclassroom-Based Funding Determinations

California *Education Code* (*EC*) sections 47612.5 and 47634.2 established the eligibility requirements for apportionment funding for charter schools that offer NCB instruction. *EC* Section 47612.5(e)(1) and *California Code of Regulations*, Title 5 (5 *CCR*) Section 11963 specify the requirements for classroom-based instruction and school site conditions. A charter school is considered operating as an NCB charter school if its total average daily attendance (ADA) is less than 80 percent classroom based. An NCB charter school must submit a funding determination request to the CDE and receive approval of its funding determination request from the SBE to be eligible for funding for its NCB ADA.

### Review and Evaluation of Funding Determination Requests

*EC*sections 47612.5 and 47634.2, and 5 *CCR* established the criteria for the review and evaluation of determination of funding requests for NCB charter schools. The CDE reviews a charter school’s determination of funding request and presents it for consideration by the ACCS, pursuant to relevant 5 *CCR*. Once heard and acted on by the ACCS, both CDE and ACCS recommendations are presented to the SBE for final approval.

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 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.

For a new NCB charter school, 5 *CCR* Section 11963.6(a) states that a determination of funding request shall be submitted by December 1 of the charter school’s first year of operation and shall be for two FYs. For an existing NCB charter school, 5 *CCR* Section 11963.6(c) specifies that a determination of funding shall be submitted by February 1 of the fiscal year prior to the year the funding determination will be effective and shall be for a minimum time period of two years and a maximum time period of five years.

The CDE notes that Senate Bill 820 modifies the funding determination request process for FYs 2020–21 and 2021–22. Detailed information regarding these changes are provided in the SB 820 and Determination of Funding Requests section below.

### Mitigating Circumstances

For a charter school that does not meet the criteria to receive 100 percent funding for its NCB instruction, the ACCS may include the consideration of mitigating circumstances in conjunction with a recommendation to the SBE. Section 11963.4(e) of 5 *CCR* 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.

## Assembly Bills 1505 and 1507

AB 1505 and AB 1507 went into effect on July 1, 2020, including the new rules and standards for reviewing charter schools seeking establishment and renewal by governing boards of school districts, county boards of education, and the SBE. Changes implemented specifically by AB 1505, include, but are not limited to, the following:

* Extending timelines for reviewing petitions for the establishment of charter schools at the local levels (i.e., governing boards of school districts and county boards of education)
* Identifying specific findings for the denial of petitions for the establishment of charter schools at the local levels, including interests of the entire community and fiscal impact
* Establishing additional criteria for chartering authorities to use when determining whether to grant a charter renewal, including charter schools’ performance levels and verified data
* Revising the process for charter schools appealing to the SBE
* Redefining the role of the ACCS and SBE, including the ability of the SBE to summarily deny the review of an appeal, determine an abuse of discretion, and delegate oversight to the local levels
* Defining situations in which the CDE is to treat charter schools as “continuing for all purposes”
* Phasing in the requirement that charter school teachers have the same teaching credentials as traditional school teachers.

The full text of AB 1505 is available on the California Legislative Information website at <http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1505>. The full text of AB 1507 is available on the California Legislative Information website at <https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1507>. Additionally, the CDE provides *EC* sections 47605, 47607, and 47607.2 as Attachment 1.

CDE and SBE staff present this item and overview to the members of the ACCS to explain the CDE’s new appeal review process; articulate the role of the ACCS under AB 1505; clarify how the abuse of discretion standard impacts the appeal process for new and existing charter schools considered by the SBE and ACCS; and answer questions the ACCS may have related to AB 1505 and AB 1507.

### Key Changes Made by Assembly Bills 1505 and 1507

AB 1505 revises numerous provisions relating to the submission of petitions to establish charter schools, including, extending timelines for petition reviews and identifying specific findings for the denial of petitions. Additionally, AB 1505 outlines criteria by which charter schools may be renewed; modifies the appeal submission process to county boards of education and the SBE; redefines the role of the SBE and the ACCS; places a two-year prohibition on the approval of petitions for new NCB charter schools; defines specific instances in which the CDE is to treat a charter school as a “continuing charter school for all purposes”; and requires charter school teachers to hold the same teaching credentials as traditional school teachers.

To keep stakeholders apprised of matters related to AB 1505 and AB 1507, the CDE created the CDE Legislation Impacting Charters web page, available at <https://www.cde.ca.gov/sp/ch/ab1505.asp>, which serves as a centralized source of information and a means for the CDE to provide regular updates of its implementation efforts. Detailed information of significant changes made by AB 1505 and AB 1507 to charter school law as well as the related work CDE and SBE staff have implemented to date is provided in the sections below.

#### Extension of Timelines to Consider Petitions

AB 1505 extends the timelines for governing boards of school districts and county boards of education to consider a petition for the establishment or renewal of a charter school. Under previous law, these boards had 30 days to hold a public hearing to consider community support and 60 days to either grant or deny the petition.

Under AB 1505, these timelines are extended by an additional 30 to 60 days for the first hearing and 90 days for the final determination, with the option to extend that date by an additional 30 days if both parties agree.

#### Findings for Denial for the Establishment of Charter Schools

Previously, *EC* Section 47605 stated that a governing board of a school district shall not deny a petition for the establishment of a new charter school unless the board makes a specific finding that, among other things, the petition presents an unsound educational program, the petitioners are demonstrably unlikely to successfully implement the program, or the petition does not contain a reasonably comprehensive description of the 15 required charter elements.

AB 1505 requires the governing board of a school district, in making these findings, to consider the academic needs of the students the school proposes to serve. AB 1505 also adds two new findings under which a petition for the establishment of a charter school may be denied.

* Community Impact: A petition may be denied if the board finds that the school is demonstrably unlikely to serve the interests of the entire community in which the school proposes to locate. The school district’s analysis must consider the fiscal impact of the proposed school; the extent to which the proposed school would substantially undermine existing services, academic offerings, or programmatic offerings; and whether the proposal duplicates a program currently offered by the school district.
* Fiscal Impact: A petition may be denied if the school district is not positioned to absorb the fiscal impact of the charter school. A school district satisfies these criteria if it is under the authority of a state trustee or administrator; is a school district in negative certification; or is a school district that is in qualified certification and the county superintendent and Fiscal Crisis and Management Assistance Team certify that approval of the charter school would result in the district having a negative certification.

These new findings only apply to petitions for the establishment of new schools; they do not apply to petitions for renewal. Additional information regarding the renewal of charter schools is provided in the Renewals of Existing Charter Schools section below.

#### Renewals of Existing Charter Schools

##### Charter School Performance Criteria

Under AB 1505, charter authorizers must consider the charter school’s performance on the state and local indicators included in the California School Dashboard when evaluating a petition to renew a charter school. The three-tier process is as follows:

1. High-Performing Charter Schools: A chartering authority shall not deny renewal for a charter school that meets the high-performing criteria. A charter school meets this criterion if, in the two preceding years, it has either:
	1. Received the two highest performance levels schoolwide on all state indicators, which is all blue or green, or
	2. Received performance levels schoolwide and for a majority of subgroups that are the same or higher than the state average on the “academic performance indicators”—test-based indicators for English language arts (ELA) and mathematics, the English Language Progress Indicator (ELPI), and the College and Career Indicator (CCI).

For a high-performing charter school, the renewal period may be for a period of between five and seven years.

2. Mid-Performing Charter Schools: A chartering authority shall consider renewal based on schoolwide performance, subgroup performance, and state and local indicators on the California School Dashboard. In determining whether to grant a renewal, the chartering authority must give greater weight to the school’s performance on “measurements of academic performance”—the test-based indicators in ELA and mathematics, ELPI, and CCI.

In addition, the chartering authority shall consider clear and convincing evidence showing either of the following:

a. The charter school achieved measurable increases in academic achievement, defined by at least one year’s progress for each year in school, or

b. The charter school has achieved strong postsecondary outcomes, as defined by college enrollment, persistence, and completion rates equal to similar peers.

For a mid-performing charter school, the renewal period will be for five years.

A chartering authority may deny renewal of a charter school in the middle tier only upon making a specific written finding that the school has failed to make sufficient progress toward meeting standards that provide a benefit to the school’s students, that closure of the school is in the student’s best interests, and that the decision provided greater weight to performance on “measurements of academic performance”—the test-based indicators in ELA and mathematics, ELPI, and CCI.

1. Low-Performing Charter Schools: A chartering authority shall not renew a charter school that meets the low-performing criteria. A charter school meets this criterion, if in the preceding two years, it has either:

a. Received the two lowest performance levels schoolwide on all state indicators, which is all red or orange, or

b. Received performance levels schoolwide that are the same or lower than the state average and for a majority of subgroups performing below the state average in the “academic performance indicators”—test-based indicators for ELA and mathematics, ELPI, and CCI.

However, a chartering authority may make an exception and renew a low-performing charter school if it makes both of the following written factual findings:

1. The charter school is taking meaningful steps to address the underlying cause or causes of low performance reflected, or will be reflected, in a written plan adopted by the charter school’s governing body, and
2. There is clear and convincing evidence that the charter school has either achieved measurable increases in academic achievement, as defined by at least one year’s progress for each year in school, or the charter school has demonstrated strong postsecondary outcomes.

On June 23, 2020, the CDE hosted a technical webinar to assist local educational agencies and charter schools to understand the criteria for determining performance categories and provide support on the public release of this data set. Approximately 370 individuals participated in the webinar. The slide deck from the webinar is available under the Charter School Performance Categories section of the CDE Legislation Impacting Charters web page at [https://www.cde.ca.gov/sp/ch/ab1505.asp](https://www.cde.ca.gov/sp/ch/ab1505.asp#perform). Additionally, the CDE developed a quick reference document titled Determining Charter School Performance Category Flyer, which is also available on the aforementioned web page as well as at <https://www.cde.ca.gov/sp/ch/documents/determinecharterperf.pdf>.

The list of charter schools and their respective performance categories, as determined by the criteria detailed above, can be accessed on the CDE Charter School Performance Category Data File web page at <https://www.cde.ca.gov/sp/ch/csperformcategory.asp>. This data file will be updated and posted annually to the Charter School Performance Category Data File web page.

##### Consideration of Verified Data

For schools in the low-performing and mid-performing tiers, in addition to California School Dashboard data, a chartering authority must also consider “verified data” in regards to annual academic achievement and postsecondary outcomes. AB 1505 tasked the SBE with establishing criteria to define verified data and identify an approved list of valid and reliable assessments by January 1, 2021. “Verified data” is specified as data from a nationally-recognized, valid, peer-reviewed, and reliable source that is externally produced, including measures of postsecondary outcomes. Upon adoption of a student growth measure for the California School Dashboard, the SBE may reconsider this criterion.

Information regarding the “verified data” requirement was presented to the SBE as Item 14 at its November 5–6, 2020, meeting. The item and its addendum are available at <https://www.cde.ca.gov/be/ag/ag/yr20/documents/nov20item14.docx> and <https://www.cde.ca.gov/be/ag/ag/yr20/documents/nov20item14addendum.docx>, respectively. At its November meeting, the SBE moved to adopt the CDE’s recommendations that the SBE approve the recommendations contained in Attachment 1 of the addendum: (1) the criteria to define verified data, (2) the data use procedures related to verified data, (3) the academic progress indicators for inclusion within the approved verified data list, and (4) the postsecondary indicators for inclusion within the approved verified data list. This motion passed with 11 votes.

#### State Board of Education Appeals

##### Types of Appeals and Review Standards

AB 1505 significantly changes the standard under which the SBE reviews an appeal. Under previous law, both the county board of education and the SBE heard an appeal “de novo”; the SBE made an independent determination regarding the petition and independently considered all of the issues previously considered by the district and county.

Under AB 1505, the county board of education still has a “de novo” standard of review. However, the hearing process and standard of review has changed for the SBE and is dependent on the type of appeal received.

1. AB 1505 requires that the ACCS hold a public hearing to consider the appeal and review the documentary record submitted by the petitioner, local district, and county board of education. Based on its review, the ACCS recommends that the SBE either hear the appeal or summarily deny the review based on the documentary record.
2. For appeals of a petition to establish a new school that was denied by the school district and county board, the SBE must either hear the appeal or summarily deny review of the appeal based on the documentary record. If the SBE hears the appeal, it can only reverse the decision based on a determination that there was an abuse of discretion by the school district and/or the county board of education.
3. For appeals of a petition to establish a new school that has been denied by a district with no separate county board (i.e., counties in which there is a single school district), the SBE basically assumes the role of a county board of education and hears the appeal “de novo.”

A list of counties with a single district governing board is provided as Attachment 3.

1. For appeals of a petition to deny the renewal of an SBE-authorized charter school by a school district, the SBE basically assumes the role of a county board of education and hears the appeal “de novo.”

A list of all charter schools currently authorized by the SBE is provided as Attachment 2.

##### Delegation of Oversight

Under previous law, if the SBE approved a petition on appeal, the SBE became the chartering authority and oversight was conducted by the CDE. The SBE heard material revisions, renewals, and revocations of SBE-authorized charter schools.

Under AB 1505, the SBE no longer provides oversight of charter schools. AB 1505 specifies that if the SBE grants a petition to establish a new charter school or to renew a charter school, it must designate, in consultation with the petitioner, chartering authority to either the governing board of the school district or county board of education where the charter school is located.

AB 1505 specifies that current SBE-authorized charter schools shall continue to operate under SBE oversight until their charter term expires. At that time, the schools must submit their renewal petition to their local school district governing board. If denied, the charter school returns directly to the SBE on appeal. If the charter school is renewed by the SBE, then the SBE must delegate, in consultation with the charter school, chartering authority to the applicable district or county.

#### Proposed Regulatory Process

The CDE is currently in the process of developing regulations pertaining to AB 1505 and AB 1507. To date, the CDE has conducted two phases of outreach to stakeholders soliciting input on proposed regulations. The first phase was conducted in May 2020; the CDE requested stakeholders’ written feedback on areas where regulations may be needed. The CDE has reviewed and considered all written feedback received.

The second phase was conducted during the last week of October 2020. The CDE contracted with WestEd to facilitate a virtual meeting with stakeholders at which additional input from stakeholders was gathered on specific topics.

All stakeholder input assisted the CDE in finalizing the regulatory language that was anticipated to be presented to the SBE at its January 2021 meeting; however, this item was withdrawn from the agenda and will be presented to the SBE at a later date.

#### Nonclassroom-Based Charter Schools

##### Temporary Prohibition

AB 1505 prohibits the approval of a petition for the establishment of a new charter school that offers NCB instruction and should be funded as an NCB charter school from January 1, 2020, to January 1, 2022. However, this prohibition does not apply to existing NCB charter schools that need to submit a petition to a district or county where its resource center is located in order to comply with the *Anderson Union High School District v. Shasta Secondary Home School* (2016) 4 Cal. App. 5th 262 (*Anderson*) decision, or other court order and as needed to retain current program offerings or enrollment.

In the *Anderson* decision, the Third District Court of Appeal held that the geographic restrictions in *EC* sections 47605(a) and 47605.1(d) apply to NCB charter schools operating resource centers. To ensure compliance with this court opinion, a charter school resource center must operate within the boundaries of its authorizing school district, unless an exception applies.

The CDE has provided information regarding the temporary prohibition under the Temporary Prohibition on New NCB Charter Schools section of the CDE Legislation Impacting Charters web page at [https://www.cde.ca.gov/sp/ch/ab1505.asp](https://www.cde.ca.gov/sp/ch/ab1505.asp#ncb). The CDE also sent a notice informing of the temporary prohibition to all California county and district superintendents and charter school administrators at the end of 2019.

##### Senate Bill 820 and Determination of Funding Requests

Section 75 of SB 820 (Chapter 110, Statutes of 2020), which went into effect on September 18, 2020, modifies the funding determination request process for existing NCB charter schools for FYs 2020–21 and 2021–22. Specifically, SB 820 extends the deadline for NCB charter schools to submit funding determination renewal requests from February 1 to June 30, 2021, and June 30, 2022, respectively. Pursuant to this bill, NCB charter schools that submit a complete funding determination request by the applicable June 30 deadline will receive their current level of funding for NCB instruction for two FYs. Charter schools that submit a request after deadline will receive 85 percent funding for their NCB instruction for two years.

As a result of the passage of SB 820, the CDE anticipates that fewer determination of funding items will be heard at SBE meetings for the next two years. However, the SBE may be presented with some determination of funding items as both the charter school and CDE may request that the charter school’s funding level be reconsidered by the ACCS and SBE.

The CDE has provided information regarding the changes to the funding determination request process for FYs 2020–21 and 2021–22 on the CDE Fiscal Support/Nonclassroom-Based Funding web page at <https://www.cde.ca.gov/sp/ch/fs.asp>. Additionally, the CDE has compiled responses to frequently asked questions pertaining to this topic, which are available on the CDE Senate Bills 98 and 820 Frequently Asked Questions web page at <https://www.cde.ca.gov/sp/ch/sb820faqs.asp>. The CDE has also sent correspondence informing of the changes to the funding determination request process to all California charter school administrators. The CDE will send additional notifications over the next two years to all NCB charter schools to ensure that the revised request process is clear and that the funding deadlines for NCB instruction are met.

#### Continuing Charter Schools

AB 1507 prohibits a charter school from operating outside the boundaries of the district where it is authorized, and requires existing charters, who wish to continue operating outside the boundaries of the authorizer’s district, to obtain approval, prior to seeking renewal, from the school district where the site or resource center is located. In the alternative, the charter school can submit a petition for renewal to the school district where the site or resource center is located, and, if approved, will be treated as a continuing school despite obtaining a new authorizer. There are exceptions for emergencies. Additionally, charter schools operated by federally recognized California Indian tribes are exempted from the restrictions on locating outside of the authorizer’s boundaries.

The CDE has engaged in regular meetings with stakeholders. CDE staff have developed and implemented an internal process to ensure that charter schools are appropriately treated as continuing for all purposes. The CDE has provided information regarding the treatment of charter schools as continuing under the Continuing Charter Schools section of the CDE Legislation Impacting Charters web page at [https://www.cde.ca.gov/sp/ch/ab1505.asp](https://www.cde.ca.gov/sp/ch/ab1505.asp#cont).

#### Teacher Credentialing

Prior to AB 1505, charter schools had flexibility on teacher credentialing for noncore, noncollege preparatory classes. AB 1505 removes this flexibility, and requires charter school teachers to have the same teaching credentials as traditional school teachers. AB 1505 requires teachers in charter schools to hold the same credentialing certificate, permit, or other document required for the teacher’s assignment similar to other traditional school teachers. Charter schools have the same ability to obtain waivers or emergency permits from the Commission on Teacher Credentialing (CTC). The provisions apply beginning July 1, 2020; however, teachers employed in a charter school in the 2019–20 school year have until July 1, 2025, to obtain certification for their position. All teachers in charter schools are required to obtain a certificate of clearance and satisfy the requirements for professional fitness by July 1, 2020.

By June 30, 2022, the CTC must conduct a study to examine whether its existing certificates or permits adequately address the needs for noncore, noncollege preparatory courses in all schools.

The CDE has linked information regarding the revised teacher credentialing requirements under the Teacher Credentialing section of the CDE Legislation Impacting Charters web page at [https://www.cde.ca.gov/sp/ch/ab1505.asp](https://www.cde.ca.gov/sp/ch/ab1505.asp#ctc).

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

In October 2019, CDE and SBE staff presented the Charter School Legislation Updates: AB 1505 and AB 1507 information memorandum (memo-eab-csd-oct19item01) to the SBE, which provided a legislation update on AB 1505 and AB 1507. This information memorandum is available on the SBE October 2019 Information Memoranda web page at <https://www.cde.ca.gov/be/pn/im/infomemooct2019.asp>.

In May 2020, CDE and SBE staff presented the Implementation Update: AB 1505 and AB 1507 information memorandum (memo-oab-csd-jun20item01) to the SBE, which provided information and background on the ongoing work of the CDE in conjunction with SBE staff pertaining to the implementation of the new legislation. This information memorandum is available on the SBE May 2020 Information Memoranda web page at <https://www.cde.ca.gov/be/pn/im/infomemomay2020.asp>.

In November 2020, CDE and SBE staff presented the Information Overview on the CDE’s Implementation of AB 1505 and AB 1507 agenda item to the SBE. This agenda item is available on the SBE Agenda for November 2020 web page at <https://www.cde.ca.gov/be/ag/ag/yr20/agenda202011.asp>.

## Fiscal Analysis

Not Applicable.

## Attachments

* **Attachment 1:** California *Education Code* sections 47605, 47607, and 47607.2 (23 Pages)
* **Attachment 2:** Current State Board of Education-Authorized Charter Schools (2 Pages)
* **Attachment 3:** Counties with Jurisdiction Over a Single School District (1 Page)