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

# June 2025 AgendaItem #03

## Subject

Reconsideration of a Request for Determination of Funding as Required for Nonclassroom-Based Charter Schools Pursuant to California *Education Code* sections 47612.5 and 47634.2, *California Code of Regulations*, Title 5Section 11963.6(g), 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 that offers NCB instruction in excess of the amount authorized by *EC* Section 47612.5(e)(1) may receive apportionment funding for NCB instruction only if a determination of funding is made by the California State Board of Education (SBE).

Pursuant to *California Code of Regulations*, Title 5 (5 CCR), the California Department of Education (CDE) reviews a charter school’s determination of funding request and presents it for consideration to the Advisory Commission on Charter Schools (ACCS). The ACCS shall develop a recommendation to the SBE, and the CDE shall present that recommendation to the SBE. The ACCS may include the consideration of mitigating circumstances in conjunction with a recommendation to the SBE, pursuant to 5 *CCR* Section 11963.4(e).

Pursuant to 5 *CCR* Section 11963.4(c), 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 percentage of funding authorized, if any information that may change the conclusion to approve the original multi-year funding determination is found.

Pursuant to 5 *CCR* Section 11963.6(g), if during the effective period of an approved determination, a charter school wishes to seek a higher or lower determination of funding, it shall do so by the filing of a new determination of funding request for consideration by the SBE. The CDE refers to funding determination requests submitted under this subdivision as “reconsideration requests.”

This item presents a reconsideration request from the School of Unlimited Learning (SOUL) (Charter #0149).

## Proposed Recommendation

The CDE proposes to recommend that the SBE approve SOUL’s reconsideration request with the consideration of mitigating circumstances and increase its current funding determination level from 85 percent to 100 percent for fiscal year (FY) 2024–25 and FY 2025–26 as specified in Attachment 1.

## Funding Determination Criteria

*EC* Section 47634.2(a)(1) provides the following:

Notwithstanding any other provision of law, the amount of funding to be allocated to a charter school on the basis of average daily attendance that is generated by pupils engaged in nonclassroom-based instruction…shall be adjusted by the State Board of Education. The State Board of Education shall adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, at a minimum the regulation shall specify that the nonclassroom-based instruction is conducted for the instructional benefit of the pupil and substantially dedicated to that function. In developing these criteria and determining the amount of funding to be allocated to a charter school pursuant to this section, the State Board of Education shall consider, among other factors it deems appropriate, the amount of the charter school’s total budget expended on certificated employee salaries and benefits and on schoolsites, as defined in paragraph (3) of subdivision (d) of Section 47612.5, and the teacher-to-pupil ratio in the school.

*EC* Section 47634.2(a)(4) further states:

For the 2003–04 fiscal year and each fiscal year thereafter, the amount of funding determined by the State Board of Education pursuant to this section shall not be more than 70 percent of the unadjusted amount to which a charter school would otherwise be entitled, unless the State Board of Education determines that a greater or lesser amount is appropriate based on the criteria specified in paragraph (1) of subdivision (a).

Pursuant to *EC* Section 47634.2 and SBE-adopted regulations, a charter school may qualify for 70 percent, 85 percent, or 100 percent funding, or may be denied funding (i.e., 0 percent) for its NCB instruction.

To qualify for a recommendation of 100 percent funding, a charter school must meet the following criteria as outlined in 5 *CCR* Section 11963.4(a)(3):

* Spend at least 40 percent of the charter school’s public revenues on salaries and benefits for all employees who possess a valid teaching certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold issued by the Commission on Teacher Credentialing and who work in the charter school in a position required to provide direct instruction or direct instructional support to students
* Spend at least 80 percent of the charter school’s total revenues on instruction and related services
* Maintain a ratio of average daily attendance (ADA) for independent study pupils to full-time certificated employees responsible for independent study 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

The expenditure and PTR criteria for all funding levels for which a charter school may qualify to receive for its NCB instruction are specified in 5 *CCR* Section 11963.4(a). A summary of the criteria is provided in the table below:

Nonclassroom-Based Instruction Funding Levels

| **Funding Level** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR[[1]](#footnote-1)** |
| --- | --- | --- | --- |
| **100%** | ≥ 40 | ≥ 80 | ≤ 25 to 1 |
| **85%** | ≥ 40 | ≥ 70 | Not Applicable |
| **70%** | ≥ 35 | ≥ 60 | Not Applicable |
| **0%** | < 35 | < 60 | Not Applicable |

### Mitigating Circumstances

The ACCS may find that there is a “reasonable basis” (also referred to as mitigating circumstances) by which to make a recommendation other than what a charter school qualifies to receive for its NCB instruction based on the criteria specified in 5 *CCR* Section 11963.4(a). 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, which may include, but are not limited to, the following:

* Information provided by the charter school, pursuant to 5 *CCR* Section 11963.3(b)(2) through (8)
	+ PTR, calculated pursuant to 5 *CCR* Section 11704
	+ Listing of entities receiving $50,000 or 10 percent or more of total expenditures
	+ Identification of governing board members
	+ Explanation of outgo transfers; explanation of reserves, if over the allowable amount
	+ Facility costs and square footage
	+ Number of full-time equivalent (FTE) employees with a valid teaching certificate
* Documented data regarding individual circumstances of the charter school (e.g., one-time or unique or exceptional expenses for facilities, acquisition of a charter 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
* The number of years the charter school has been in operation

Additionally, under 5 *CCR* Section 11963.4(e), the ACCS shall give charter schools with less than a total of 100 units of prior year second period ADA or that are in their first year of operation serious consideration of 100 percent funding for their NCB instruction.

When considering a charter school’s request for mitigating circumstances, the CDE also reviews other information provided by the charter school as a part of its determination of funding request. Additionally, the CDE may consider a charter school’s previous requests that included mitigating circumstances.

### Reconsideration of a Funding Determination

Pursuant to *5 CCR* Section 11963.6(g), if, during the effective period of its funding determination, a charter school wishes to seek a higher or lower determination of funding, it shall do so by the filing of a new determination of funding request for consideration by the SBE. A charter school may only submit one reconsideration request per fiscal year. If approved by the SBE, the reconsideration request would replace the determination of funding then in effect. A charter school may not request a change to the number of years that the funding determination is active, only the amount of funding received. A denial of a charter school’s reconsideration request would mean that the charter school’s current determination of funding remains in effect with no change.

## School of Unlimited Learning (Charter #0149)

### Previous Funding Determination Request

At its May 2024 meeting, the SBE approved a funding determination for SOUL at 85 percent for FY 2024‒25 through FY 2025‒26, as the charter school’s reported FY 2022–23 financial data demonstrated that it met the requirements for 85 percent funding for its NCB instruction.

SOUL requested the consideration of mitigating circumstances with its funding determination request to receive a higher level of funding. However, the request to consider mitigating circumstances was denied. The CDE noted the following in its review of SOUL’s previous funding determination request:

The CDE notes that had the expenses toward roof repairs and HVAC expenses been spent on instruction and related services instead, the school’s expenditure calculations for percentages spent on certificated salaries and benefits and instruction and related services would have been 42.65 percent and 76.19 percent, respectively, which still qualifies it for 85 percent funding for its NCB instruction.

When asked for clarification of the other factors cited as a part of its mitigating circumstances request, the school did not provide information specific to how each factor contributed to the school’s failure to meet the regulatory criteria or why it would be a reasonable basis to recommend a higher level of funding than for which it qualifies. With specific regard to its plans for facility expansion, the school did not provide an estimated cost or timeframe. Additionally, the CDE notes that upon further communication with the school, the school no longer believes that it will purchase a new facility.

Detailed information regarding the previous funding determination request is provided in Item 08 of the SBE Agenda for May 2024 web page, which is available at <https://www.cde.ca.gov/be/ag/ag/yr24/agenda202405.asp>.

### Current Reconsideration Request

SOUL is requesting that its current funding determination of 85 percent be increased to 100 percent for FY 2024–25 through FY 2025–26.

The following table provides the regulatory criteria for funding levels and the charter school’s expenditures percentage calculations and PTR as reported in its determination of funding request.

School of Unlimited Learning Nonclassroom-Based Instruction Funding Qualification

| **Criteria** | **Percentage Spent on Certificated Salaries and Benefits** | **Percentage Spent on Instruction and Related Services** | **PTR** |
| --- | --- | --- | --- |
| **100 Percent** | ≥ 40 | ≥ 80 | ≤ 25 to 1 |
| **85 Percent** | ≥ 40 | ≥ 70 | Not Applicable |
| **70 Percent** | ≥ 35 | ≥ 60 | Not Applicable |
| **Charter School** | 42.65 | 72.95 | 15.46 to 1 |

Without the consideration of mitigating circumstances, the charter school qualifies for 85 percent funding for its NCB instruction.

The charter school’s complete determination of funding request with mitigating circumstances is provided at the following locations on the June 2025 ACCS Meeting Agenda web page:

* Funding Determination Form: <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun25item03a2.docx>
* Attachment of Governing Council Members for 2024–25: <https://www.cde.ca.gov/be/cc/cs/documents/accs-jun25item03a3.pdf>

Mitigating circumstances cited by the charter school include the following:

* The charter school has had changes in administration and faculty.
* The charter school received one-time funding from the following sources: ESSER II, ESSER III, and ELO-G.
* The charter school is hiring consultants to assist with the charter renewal process.
* The charter school plans to expand its classroom-based program and CTE course offerings by using a recently acquired nearby building. The expansion project has an estimated cost of $600,000 and is scheduled for completion by December 2025.

The CDE finds that there is a reasonable basis to recommend a higher level of funding than what the charter school qualifies for according to the regulatory criteria. The charter school received $280,920 in one-time funding that had a direct impact on the charter school’s expenditure calculations. Had the one-time funding not been received, the charter school’s expenditure calculations would have been 46.67 percent and 96.54 percent, which meets the expenditure criteria for full funding.

The CDE proposes to recommend that the SBE approve SOUL’s reconsideration request with the consideration of mitigating circumstances and increase its current funding determination level from 85 percent to 100 percent for FY 2024–25 and FY 2025–26 as specified in Attachment 1.

## Attachments

* **Attachment 1:** Proposed Recommendation to Reconsider a Nonclassroom-Based Determination of Funding (1 Page)
* **Attachment 2:** Determination of Funding Request for the School of Unlimited Learning (Charter #0149) (13 Pages)
* **Attachment 3:** Additional Attachment from the School of Unlimited Learning (Charter #0149) (1 Page)
1. The PTR criteria outlined in this table pertain only to charter schools submitting funding determination requests for their NCB instruction. All charter schools offering independent study are required to comply with the ADA to certificated-employee ratios outlined in *EC* Section 51745.6. [↑](#footnote-ref-1)