California Department of Education

Executive Office

SBE-002 (REV. 10/2021)

memo-lab-csd-apr23item03

# **MEMORANDUM**

**DATE:** April 13, 2023

**TO:** MEMBERS, California State Board of Education

**FROM:** Tony Thurmond, State Superintendent of Public Instruction

**SUBJECT:** Funding Determination Requests for Charter Schools Offering Nonclassroom-Based Instruction

## Summary of Key Issues

Pursuant to California *Education Code* (*EC*)sections 47612.5 and 47634.2, and associated *California Code of Regulations*, Title 5 (5 *CCR*), in order for a charter school to receive funding for its nonclassroom-based (NCB) instruction, it must obtain an approved funding determination from the California State Board of Education (SBE).

The purpose of this Memorandum is to provide the SBE with background information on funding determinations and the funding determination request process. Specifically, this Memorandum outlines the statutory and regulatory requirements surrounding funding determinations and provides information on the California Department of Education’s (CDE’s) implementation of those requirements.

### Definition of Nonclassroom-Based Instruction

For the purposes of calculating apportionments for classroom-based average daily attendance (ADA), *EC* Section 47612.5(e)(1) defines classroom-based instruction as follows:

…at least 80 percent of the instructional time offered by the charter school shall be at the schoolsite, and the charter school shall require the attendance of all pupils for whom a classroom-based apportionment is claimed at the schoolsite for at least 80 percent of the minimum instructional time required to be offered…

*EC* Section 47612.5(e)(2) specifies that instruction that does not meet the requirements of classroom-based instruction, constitutes NCB instruction.

Pursuant to the above *EC* Section, a charter school is designated as NCB by the CDE if its classroom-based ADA falls below 80 percent of its total ADA (i.e., its NCB ADA exceeds 20 percent of its total ADA). A charter school’s designation as NCB is *not* determined by its past or present possession of an SBE-approved funding determination.

### Eligibility Requirements and Criteria for Funding for Nonclassroom-Based Instruction

*EC* Section 47634.2 established the eligibility requirements for apportionment funding for a charter school that offers NCB instruction. Specifically, *EC* Section 47634.2(a)(1) provides the following:

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).

Section 11963.4 of 5 *CCR* specifies that a charter school may qualify for either 70 percent, 85 percent, or 100 percent funding, or may be denied (i.e., 0 percent funding) for its NCB instruction. To qualify for a recommendation for 100 percent funding, a 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-to-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 subsections (1) through (4) of 5 *CCR* Section 11963.4. A summary of the criteria is provided in the table below:

Funding Levels and Criteria for Charter School Nonclassroom-Based Instruction

| **Funding Level** | **Percent of Public Revenues Spent on Certificated Salaries and Benefits** | **Percent of All Revenues Spent on Instruction and Related Services** | **Pupil-Teacher Ratio[[1]](#footnote-1)** |
| --- | --- | --- | --- |
| **100%** | ≥ 40% | ≥ 80% | ≤ 25 to 1 |
| **85%** | ≥ 40% | ≥ 70% | Not Applicable |
| **70%** | ≥ 35% | ≥ 60% | Not Applicable |
| **0%** | < 35% | < 60% | Not Applicable |

### Information Collected for Funding Determination Requests and Calculations for Funding Levels

The information collected and used to calculate the funding level for which a charter school qualifies to receive for its NCB instruction is outlined in 5 *CCR* Section 11963.3. The specific fiscal data required to be collected of a charter school requesting a funding determination includes, but is not limited to, the following:

* Total resources, including all federal, state, and local revenue, and other financing sources
* Total expenditures for instruction and related services
* Total expenditures for school site and administrative site operations and facilities
* Total expenditures for administration
* Other outgo and other uses, including debt service payments and transfers
* Revenues over expenditures
* Reserves

In addition, 5 *CCR* Section 11963.3(b) states that a complete funding determination request shall include the following information of the charter school:

* Certification from the charter school’s director, principal, or board chair
* 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 employees with a valid teaching certificate

The calculations to be used to determine the funding level for which a charter school qualifies for its NCB instruction are provided in 5 *CCR* Section 11963.3(c):

1. Calculate the charter school’s total expenditures on certificated staff salaries and benefits as a percentage of the charter school’s total public revenues
2. Calculate the charter school’s total expenditures on instruction and related services as a percentage of the charter school’s total revenues

Pursuant to 5 *CCR* Section 11963.3(a), the CDE collects all required information and performs the aforementioned calculations via the Funding Determination Form (FDF). The FDF is reviewed annually by CDE staff and is posted to the CDE NCB Determination of Funding web page at <https://www.cde.ca.gov/sp/ch/nclrbifunddet.asp> for charter school use.

### Deadlines to Submit Funding Determination Requests

A new charter school in its first year of operation shall submit a funding determination request by December 1, pursuant to 5 *CCR* Section 11963.6(a). An existing charter school must submit a renewal funding determination request by February 1 of the year prior to the year its current funding determination will expire, pursuant to 5 *CCR* Section 11963.6(c).

In the months prior to the aforementioned deadlines, CDE staff issue regular reminders and conduct personalized outreach to charter schools via both email and phone. A charter school that does not submit a funding determination request by the applicable deadline must go through the CDE waiver process to waive the deadline, prior to submitting its funding determination request to the CDE.

### California Department of Education Review and Recommendation

#### Funding Level

The CDE reviews all FDFs received for accuracy and completeness. The CDE requests corrections to charter schools’ FDFs as well as clarification of information submitted, as necessary.

The CDE reviews all funding determination requests in accordance with the aforementioned statutory and regulatory requirements. The CDE performs its own independent calculations of the percentage spent on certificated salaries and benefits, percentage spent on instruction and related services, and PTR.

The basis of the CDE’s recommendation for funding levels for charter schools is guided by the aforementioned calculations. However, the CDE regularly asks charter schools to provide clarification or additional information in order to make possible a more detailed review, pursuant to 5 *CCR* Section 11963.4(b).

#### Funding Period

Pursuant to *EC* Section 47612.5(d)(2), a determination of funding may not exceed five years. Pursuant to 5 *CCR* Section 11963.6(a), a funding determination submitted by a new charter school in its first year of operation shall be for a period of two fiscal years. Pursuant to 5 *CCR* Section 11963.6(c), a funding determination submitted by an existing charter school with an active funding determination shall be in increments of a minimum of two years and a maximum of five years in length.

It is the CDE’s current practice to recommend time periods between two to four years based on the number of times a charter school has received an approved funding determination by the SBE.

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.

### Hearing of Funding Determination Requests

Pursuant to 5 *CCR* Section 11963.4, upon receipt of a complete funding determination request, the CDE shall review and present the request to the Advisory Commission on Charter Schools (ACCS) who shall develop a recommendation to the SBE. Both the CDE’s and ACCS’ recommendations are presented to the SBE.

Funding determination requests submitted by December 1 from new charter schools offering NCB instruction are typically presented to the ACCS and the SBE at their February and March meetings, respectively. However, as the establishment of new NCB charter schools from January 1, 2020, to January 1, 2025, inclusive, is prohibited (*EC* Section 47612.7), the ACCS and SBE will not hear funding determination requests of this nature.

Funding determination requests submitted by existing charter schools are typically presented to the ACCS and the SBE at their April and May meetings, respectively. However, for fiscal years 2020–21 and 2021–22, certain charter schools were exempted from the requirement to obtain an approved funding determination from the SBE, pursuant to Senate Bill 820 Section 75 [Chapter 110, Statutes of 2020], which stated the following:

A charter school with a nonclassroom-based funding determination pursuant to Section 47612.5 of the Education Code that expires on June 30, 2021, or June 30, 2022, shall receive its current funding level for two years upon submission of a complete funding determination request to the State Department of Education pursuant to Section 11963.3 of Title 5 of the California Code of Regulations.

Due to SB 820, for the last two fiscal years, the ACCS and SBE have heard significantly fewer funding determination requests than in previous years. As SB 820 does not apply to fiscal years 2022–23 and beyond, the CDE anticipates the ACCS and SBE to return to hearing a large volume of funding determination requests at their April and May meetings, respectively.

The majority of funding determination requests are presented to the ACCS and the SBE between February through May. However, other or additional circumstances may impact the timing during which funding determination requests are submitted by charter schools. As such, funding determination requests may be heard by the ACCS and SBE at other times throughout the year.

### Funding Determination Requests with Mitigating Circumstances

For charter schools that do not meet the aforementioned requirements and criteria, 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.

For a charter school requesting the consideration of mitigating circumstances, the CDE is guided by 5 *CCR* Section 11963.4(e) and considers the unique or exceptional circumstances of the charter school as well as the charter school’s reserves and previous requests for the consideration of mitigating circumstances.

The CDE recommends a funding determination period of two fiscal years for a charter school requesting the consideration of mitigating circumstances, regardless of the number of times it has received an approved funding determination by the SBE. A period of two years allows the CDE to timely revisit the school’s funding determination and ensure that the school meets the appropriate expenditure requirements for its approved level of funding for its NCB instruction.

### Reconsideration of Funding Determination Requests

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 submit no more than one reconsideration request per year. If approved by the SBE, the reconsideration request would replace the determination of funding then in effect. A charter school may not request an increase 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 means that the school’s current determination of funding remains in effect with no change.

For this type of request, a charter school typically requests a higher amount of funding for the entire period of the funding determination. However, the SBE may approve a modification of the funding determination for only one year, if deemed appropriate, pursuant to 5 *CCR* Section 11963.7, which states:

Any multi-year funding determination approved by the State Board of Education may be modified by the State Board of Education, in terms of both the multi-year approval and the funding authorized.

For example, if a charter school’s original determination of funding request was approved for 85 percent funding for two years and it has subsequently submitted a reconsideration request to obtain 100 percent funding for those two years, the SBE may choose to modify only the second year of the funding determination for 100 percent funding.

Upon receipt of a reconsideration of a funding determination request, the CDE considers information such as updated financial data indicating that the charter school meets the requirements for its requested level of funding. A reconsideration request may also include the consideration of mitigating circumstances.

## Attachments

* **Attachment 1:** California *Education Code* Sections Pertinent to Nonclassroom-Based Funding Determinations (5 Pages)
* **Attachment 2:** *California Code of Regulations*, Title 5 Sections Pertinent to Nonclassroom-Based Funding Determinations (13 Pages)
1. The PTR criteria outlined in this table pertain specifically to charter schools submitting NCB 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)