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# MEMORANDUM

**DATE:** October 30, 2019

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

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

**SUBJECT: Charter School Legislation Updates: AB 1505 and AB 1507**

## Summary of Key Issues

This memo provides a summary of Assembly Bill 1505 (<http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1505>) (operative on July 1, 2020) and AB 1507 (<http://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201920200AB1507>) (operative on January 1, 2020), as well as the implications of the new legislation on the role of the State Board of Education (SBE), the Advisory Commission on Charter Schools (ACCS), and the California Department of Education (CDE).

## Summary of Current Law

The Charter Schools Act of 1992 under California *Education Code* (*EC*) Section 47605 provides guidance for the establishment and operation of charter schools. Charter petitions for the establishment of a charter school may be submitted to the governing board of a school district where the charter school will be located. Appeals for a petition on denial may be submitted to the county board of education and/or the SBE. Charter petitions must include signatures, affirmations, and a comprehensive description of the 15 required elements.

Additionally, charter renewals are guided by *EC* Section 47607 which establishes charter renewal approval and denial criteria. Authorizers are to consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal. Currently, each renewal is granted for a period of five years.

## AB 1505

AB 1505 makes changes to the charter appeal and renewal process, the oversight process for SBE-authorized charter schools, and the renewals of SBE-authorized charter schools. It also places a moratorium on new nonclassroom-based (NCB) charter schools.

Most of the provisions of AB 1505 take effect July 1, 2020, including the changes to the appeal process and the findings for denial. However, a two-year moratorium on the establishment of a non-classroom based charter school in AB 1505 goes into effect January 1, 2020.

## Changes to the Appeal Process

AB 1505 makes a number of changes to the process for submission of new petitions to school districts, county boards of education, and the SBE.

### Findings for Denial

Currently, *EC* Section 47605 requires 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 petition’s elements. AB 1505 will require the governing board, 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 charter petition 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 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 district.
* Fiscal Impact: A petition may be denied if the district is not positioned to absorb the fiscal impact of the charter school. A district satisfies this criteria if it is under the authority of a state trustee or administrator; is a district in negative certification; or is a district that is in qualified certification and the county superintendent and Fiscal Crisis and Management Assistance Team (FCMAT) certify that approval of the charter school would result in the district having a negative certification.

It is important to note that these new findings only apply to petitions for the establishment of new schools and not for petitions for renewal. See “Renewal” section below.

### Timelines

AB 1505 extends the timelines for district governing boards and county boards of education to consider a petition. Currently, these boards have 30 days to hold a public hearing to consider the community support and 60 days to either grant or deny the petition. Under AB 1505, these timelines are extended by an additional 30–60 days for first hearing, 90 days for final determination, with the option to extend that date by an additional 30 days if both parties agree.

### Material Changes to the Petition

AB 1505 specifies that if an appeal contains new or different material terms, the county board or the SBE must remand the petition back to the governing board of the school district. Material terms are defined as the signatures, affirmations, documents, or descriptions in the petition but does not include “minor administrative updates” to the petition or related documents due to changes in circumstances based on the passage of time related to fiscal affairs, facilities arrangements, or state law.

### State Board of Education Appeals and Role of the Advisory Commission on Charter Schools

AB 1505 significantly changes the standard under which the SBE reviews an appeal. Under current law, both the county board of education and the SBE hear an appeal “de novo,” which means that the SBE makes an independent determination regarding the petition and considers 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 been changed for the SBE, depending on the types of appeals.

* AB 1505 requires that the Advisory Commission on Charter Schools (ACCS) hold a public hearing to consider appeals and the documentary record submitted by the petitioner and the district. The ACCS makes a recommendation that the SBE either hear the appeal or summarily deny the review based on the documentary record.
* For appeals of a petition to establish a new school that was denied by the district and county board, the SBE must either hear the appeal or deny 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 district and/or the county board.
* 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 acts like the county board of education and hears the appeal “de novo.”

## Delegation of Oversight

Under AB 1505, the SBE will no longer provide oversight of charter schools. Under current law, if the SBE approves a petition on appeal, the SBE becomes the chartering authority. Oversight is conducted by the CDE and the SBE hears material revisions, renewals, and revocations of SBE-authorized 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.

The law specifies that current SBE-authorized charter schools continue to operate under SBE oversight until their charter term expires. At that time, if the schools are renewed by the SBE, then the SBE must delegate, in consultation with the charter school, chartering authority to the applicable district or county. Attachment 1 references a list of SBE-authorized charter schools and the expiration date for those charter terms.

These *EC* sections cannot be waived by the SBE.

## Renewals of Existing Charter Schools

Under AB 1505, charter authorizers must consider the charter school’s performance on the indicators included in the California School Dashboard when evaluating a petition to renew a charter school. The new renewal process creates essentially three tiers of renewal.

1. High-Performing Charter Schools: A chartering authority shall not deny renewal for a charter school that meets the high-performing criteria and the school can be renewed for a period of between five and seven years. A charter school meets this criteria 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

b. 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 math, the English Language Progress Indicator (ELPI), and the College and Career Indicator (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 criteria, 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 math, ELPI, and CCI.

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

a. 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

b. 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.

3. Middle-Performing Charter Schools: For all other charter schools, the chartering authority shall consider for renewal based on the performance schoolwide, and the performance of all subgroups of pupils served by the school, on the state and local indicators on the 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 math, 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.

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 math, ELPI, and CCI.

The renewal period will be for five years.

### Verified Data

For schools in the low-performing and middle-performing tiers, in addition to Dashboard data, the authorizer must also consider “verified data” regarding year-to-year student growth in academic achievement and postsecondary outcomes. The SBE is required to define criteria and to adopt an approved list of valid and reliable assessments to define “verified data” by January 1, 2021, which means action will need to be taken at the November 2020 SBE meeting. “Verified data” is specified as data from a nationally-recognized, valid, peer-reviewed, and reliable source that are externally produced. Upon adoption of a student growth measure for the Dashboard, the SBE may reconsider the criteria.

### Fiscal and Governance Issues

A chartering authority may deny renewal of a charter school in any of the three tiers upon a finding that the school is demonstrably unlikely to successfully implement the program due to substantial fiscal or governance factors, or if the charter school is not serving all pupils who wish to attend. Even a high-performing charter may be denied renewal based upon such a finding. However, the chartering authority must give the school at least 30 days’ notice of the alleged violation and provide the charter school with a reasonable opportunity to cure. A finding supporting non-renewal would then have to include findings that either the corrective action proposed by the school was unsuccessful, or that the violations are sufficiently severe and pervasive as to render a corrective action plan unviable.

None of the laws regarding renewal may be waived by the SBE.

## Renewal of Current SBE-Authorized Schools (Excluding Statewide Benefit)

Under the new law, current SBE-authorized schools will need to petition for renewal through the district where they are located. If the initial renewal petition is denied at the local level, they can appeal directly to the SBE. The SBE will conduct a “de novo” review of the renewal appeal. If renewal is granted, the SBE will designate, in consultation with the charter school, either the district or county where the school is located as the chartering authority. This provision excludes the statewide benefit charter schools.

## Renewal of the Statewide Benefit Charter Schools

AB 1505 repeals *EC* Section 47605.8, which allowed the SBE to approve statewide benefit charter schools. There is currently one statewide benefit charter school, High Tech High in San Diego, and whose term expires June 30, 2022. Attachment 2 references the statewide benefit charter school sites.

The statewide benefit charter school will submit its renewal petition directly to the SBE and the SBE will consider the renewal consistent with the standards for all other charter schools. If the SBE grants renewal, the SBE shall designate, in consultation with the petitioner, the governing board of the school district or county board in which the school is located as the chartering authority. If the county board of education is designated as the chartering authority, the school will qualify as a countywide charter under *EC* Section 47605.6. All subsequent renewals will be subject to the same requirements as other charter schools, including the right to appeal a denial to the SBE pursuant to *EC* sections 47607 and 47605(k)(2).

## Additional Amendments

### Temporary Prohibition on New Nonclassroom-based Charter Schools

AB 1505 prohibits the approval of a petition for the establishment of a new charter school offering NCB instruction and 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. A charter school may also establish a resource center in an adjacent county.

This section cannot be waived by the SBE.

### Teacher Credentialing

Current law provides charter schools with 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 public 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 public 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.

This section cannot be waived by the SBE.

### Collection of Data

AB 1505 requires the CDE, in consultation with the SBE, to collect data to track implementation of these changes in law.

## AB 1507

### Location Restrictions

Currently, charter schools are permitted to locate outside the boundaries of their authorizing district if a facility or site is unavailable or if the site is needed for temporary use during a construction or expansion project, and advance notification is provided. In addition, charter schools are permitted to open a resource center in an adjacent county.

AB 1507 prohibits a charter school from operating outside the boundaries of the district where it is authorized, and would require existing charters, who wish to continue operating outside the boundaries of the authorizer’s district, to obtain approval, prior to seeking renewal, from the district where the site or resource center is located. In the alternative, the charter school can submit a petition for renewal to the 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, and charter schools operated by federally recognized California Indian tribes are exempted from the restrictions on locating outside of the authorizer’s boundaries.

This section cannot be waived by the SBE.

## Next Steps

This information memorandum serves to provide a high-level overview of AB 1505 and AB 1507. The CDE has assembled an internal workgroup, which will provide regular updates pertaining to the implementation of AB 1505 and AB 1507.

Attachments

* **Attachment 1:** Current SBE-Authorized Charter Schools (2 pages)
* **Attachment 2:** Statewide Benefit Charter (1 page)

# Attachment 1: Current State Board of Education-Authorized Charter Schools

The following chart lists the State Board of Education (SBE)-authorized charter schools currently operating, the geographic district the school sites are located in, and the charter term expiration dates. California Department of Education oversight responsibilities will decrease yearly through June 2025.

| **SBE Authorized Charter** | **Geographic District** | **Term Expiration** |
| --- | --- | --- |
| Academia Avance Charter | Los Angeles Unified | 6/30/2020 |
| Baypoint Preparatory Academy | Hemet Unified | 6/30/2020 |
| New School of San Francisco | San Francisco Unified | 6/30/2020 |
| Olive Grove Charter | Cuyama Joint Unified | 6/30/2020 |
| OnePurpose | San Francisco Unified | 6/30/2020 |
| Audeo II | Carlsbad Unified | 6/30/2021 |
| Isana Himalia Academy | Los Angeles Unified | 6/30/2021 |
| Prepa Tec Los Angeles High | Los Angeles Unified | 6/30/2021 |
| Rocketship Futuro | Mt. Diablo Unified | 6/30/2021 |
| Ross Valley | Ross Valley Elementary | 6/30/2021 |
| The School of Arts and Enterprise | Pomona Unified | 6/30/2021 |
| Grossmont Secondary | Grossmont Union High | 6/30/2022 |
| New West Charter | Los Angeles Unified | 6/30/2022 |
| Sweetwater Secondary School | Sweetwater Union High | 6/30/2022 |
| Baypoint Preparatory Academy – San Diego | San Marcos Unified | 6/30/2023 |
| College Preparatory Middle | La Mesa Spring Valley | 6/30/2023 |
| Knowledge is Power Program Bayview Elementary | San Francisco Unified | 6/30/2023 |
| Knowledge is Power Program Navigate College Prep | East Side Union High | 6/30/2023 |
| Latitude 37.8 Charter School | Oakland Unified | 6/30/2023 |
| Olive Grove – Buellton | Santa Ynez Valley Union High | 6/30/2023 |
| Olive Grove – Lompoc | Lompoc Unified | 6/30/2023 |
| Olive Grove – Orcutt/Santa Maria | Santa Maria Joint Union High | 6/30/2023 |
| Olive Grove – Santa Barbara | Santa Barbara Unified | 6/30/2023 |
| Perseverance Preparatory School | San Jose Unified | 6/30/2023 |
| Vista Springs Charter School | Vista Unified | 6/30/2023 |
| Los Angeles College Prep Academy (formerly Los Angeles International Charter High School) | Los Angeles Unified | 6/30/2024 |
| Magnolia Science Academy Santa Ana | Santa Ana Unified | 6/30/2024 |
| Mary L. Booker Leadership Academy | San Francisco Unified | 6/30/2024 |
| Watsonville Prep School | Pajaro Valley Unified | 6/30/2024 |

# Attachment 2: Statewide Benefit Charter

Currently the State Board of Education authorizes High Tech High, a statewide benefit charter with a term ending June 30, 2022. High Tech High charter currently operates the following nine sites:

* High Tech Elementary Chula Vista
* High Tech Middle Chula Vista
* High Tech High Chula Vista
* High Tech Elementary Mesa
* High Tech Middle Mesa
* High Tech High Mesa
* High Tech Elementary North County
* High Tech Middle North County
* High Tech High North County