

California Department of Education

Executive Office

SBE-003 (REV. 11/2017)

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# California State Board of Education January 2023 Agenda Item #06

## Subject

Consideration of Requests for Determination of Funding with “Reasonable Basis”/Mitigating Circumstances 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, Consent

## 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). 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*). The ACCS may include the consideration of mitigating circumstances in conjunction with a recommendation to the SBE.

Two existing classroom-based charter schools that have not previously had a funding determination have submitted determination of funding requests for NCB instruction with mitigating circumstances.

## Recommendation

The CDE recommends that the SBE approve the two schools’ mitigating circumstances requests and approve the determination of funding requests for 100 percent funding as specified in Attachment 1.

## Advisory Commission on Charter Schools Recommendation

At its December 8, 2022, meeting, the ACCS moved for recommendation to the SBE of the CDE staff recommendation. The motion passed unanimously.

The notice for the December 8, 2022, ACCS meeting and the funding determination request forms for the schools are located on the SBE December 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice120822.asp>.

## Background

### Submission Deadline for Classroom-Based Charter Schools

Pursuant to 5 *CCR* Section 11963.6(c), determination of funding requests approved by the SBE for existing NCB charter schools shall be prospective (not for the current year) and shall be submitted in the fiscal year (FY) prior to the year the funding determination will be effective. This requirement does not apply to classroom-based charter schools; existing classroom-based charter schools are not required to submit a funding determination request prior to the year the funding determination will be effective. However, charter schools may experience significant fiscal impacts to their Local Control Funding Formula (LCFF) funding if funding determination requests are not submitted timely. Existing charter schools seeking funding for their NCB average daily attendance (ADA) for the 2021–22 school year were required to have a funding determination approved by the SBE by its January 2022 meeting; otherwise, beginning with the First Principal (P-1) Apportionment for FY 2021–22, the CDE would not disburse LCFF funds to charter schools based on its NCB ADA. In order to receive disbursement of LCFF funds for NCB ADA for the Second Principal (P-2) Apportionment, these charter schools were required to have a funding determination approved by the SBE by its May 2022 meeting.

In the above scenario, funding may be adjusted after funding determinations are approved. However, any funding withheld at the P-2 Apportionment will not be adjusted until the following FY P-1 Apportionment, which is certified in February 2023. Additionally, the charter schools’ 2022–23 Advance Apportionment funding would be impacted. Other ADA-driven funding for charter schools, such as lottery funding, may also be impacted.

## Brief Analysis of Key Issues

*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).

Regulations provide that the ACCS shall develop a recommendation to the SBE regarding determination of funding requests. Pursuant to 5 *CCR* Section 11963.4(a), a charter school requesting a determination of funding may qualify for either 70 percent, 85 percent, or 100 percent funding, or may be denied (i.e., 0 percent funding).

To qualify for a proposed recommendation of 100 percent funding, 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 (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 NCB instruction are summarized in the table below.

Nonclassroom-Based Instruction Funding Levels

| **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** |
| --- | --- | --- | --- |
| **100%** | ≥ 40% | ≥ 80% | ≤ 25 to 1 |
| **85%** | ≥ 40% | ≥ 70% | Not Applicable |
| **70%** | ≥ 35% | ≥ 60% | Not Applicable |
| **0%** | < 35% | < 60% | Not Applicable |

However, 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 other information provided by the charter school on the funding determination form, including, but not limited to, the charter school’s contracts, governing board members, and reserves, or 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.

Pursuant to *EC* Section 47612.5(d)(2), a determination of funding may not exceed five years. It is the CDE’s current practice to recommend time periods between two to four years based on the number of years a charter school has been in operation and the number of times it has obtained a funding determination.

The CDE recommends a funding determination period of two FYs for a charter school requesting the consideration of mitigating circumstances, regardless of the number of years the charter school has been in operation and the number of times it has obtained a funding determination. 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.

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.

Details of each school’s mitigating circumstances are provided below. The CDE notes that the two schools share the same facilities at 2 Positive Place, Vallejo, California 94589.

The CDE also notes that its review and analysis of determination of funding requests and mitigating circumstances are separate and distinct from Request for Allowance of Attendance Due to Emergency Conditions, or Form J-13A requests. Although both schools reference their Form J-13A requests in their funding determination forms, this matter will not be addressed in this item. Form J-13A requests are not decided upon by the ACCS or the SBE; rather, these requests are decided at the sole discretion of the State Superintendent of Public Instruction pursuant to *EC* Section 41422(a).

### MIT Academy, Charter #0372

MIT Academy does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2021–22 data.

The school is requesting a 100 percent determination of funding for two years with the consideration of mitigating circumstances. The school reported expenditures of 35.20 percent on certificated salaries and benefits, expenditures of 50.65 percent on instruction and related services costs, and a pupil teacher ratio of 18.79 to 1. Without the consideration of mitigating circumstances, the school fails to qualify for funding for its NCB instruction.

The school cites as mitigating circumstances that it experienced an unanticipated campus closure in FY 2021–22 due to the discovery of subsurface mold, which required significant one-time expenditures on mold remediation. According to its funding determination form, the school spent in total $2,136,331 on mold remediation and facilities reconstruction expenses.

The school also reports total reserves of $9,991,788, or 133.17 percent of total expenditures. The school did not provide a plan for its reserves in its determination of funding request. Pursuant to 5 *CCR* Section 11963.3(a)(5)(F),

Reserves in excess of the greater of fifty-thousand dollars or five percent of total expenditures may be allowed for economic uncertainties or long-term expenditures such as capital projects if the excess reserves are satisfactorily explained pursuant to section 11963.4(b).

The CDE contacted the school to ask about its reserves. In its response, the school stated that its reserves are intended to be spent on facility construction.

The school plans to build a facility at its current location, with an approximate cost of $48 million, which would be funded 50 percent by the California Proposition 51, Public School Facility Bonds, or the Kindergarten Through Community College Public Education Facilities Bond Act of 2016, grant awarded to the school and 50 percent by debt by the Charter School Finance Authority. The $24 million in debt would be financed at 3 percent over 30 years, requiring cash debt service comprised of existing reserves and future general fund revenues. The school states that the final approvals of the plan are expected by February 2023, with an estimated construction completion date of August 2025.

The CDE has determined that the information submitted supports the claim for mitigating circumstances. The CDE agrees that the school’s need to spend money on subsurface mold remediation was an exceptional, one-time expense, evidenced by the fact that the school’s campus is open for FY 2022–23 and that the school intends to return to its classroom-based status going forward. Additionally, the school has provided specific plans for its reserves.

Therefore, the CDE proposes to recommend that the SBE approve the school’s mitigating circumstances request and approve the determination of funding request for 100 percent funding as specified in Attachment 1. If the school’s mitigating circumstances request and determination of funding request are approved, it will be eligible to receive funding for ADA identified by the charter school as being generated through NCB instruction pursuant to *EC* Section 47634.2(c).

### Mare Island Technology Academy, Charter #0181

Mare Island Technology Academy does not meet the requirements to qualify for a proposed recommendation of 100 percent funding based on reported FY 2021–22 data.

The school is requesting a 100 percent determination of funding for two years with the consideration of mitigating circumstances. The school reported expenditures of 37.39 percent on certificated salaries and benefits, expenditures of 54.22 percent on instruction and related services costs, and a pupil teacher ratio of 21.15 to 1. Without the consideration of mitigating circumstances, the school fails to qualify for funding for its NCB instruction.

The school cites as mitigating circumstances that it experienced an unanticipated campus closure in FY 2021–22 due to the discovery of subsurface mold, which required significant one-time expenditures on mold remediation. According to its funding determination form, the school spent in total $1,292,705 on mold remediation and facilities reconstruction expenses.

The school also reports total reserves of $4,327,011, or 82.59 percent of total expenditures. The school did not provide a plan for its reserves in its determination of funding request. Pursuant to 5 *CCR* Section 11963.3(a)(5)(F),

Reserves in excess of the greater of fifty-thousand dollars or five percent of total expenditures may be allowed for economic uncertainties or long-term expenditures such as capital projects if the excess reserves are satisfactorily explained pursuant to section 11963.4(b).

The CDE contacted the school to ask about its reserves. In its response, the school stated that its reserves are intended to be spent on facility construction.

The school plans to build a facility at its current location, with an approximate cost of $48 million, which would be funded 50 percent by the California Proposition 51, Public School Facility Bonds, or the Kindergarten Through Community College Public Education Facilities Bond Act of 2016, grant awarded to the school and 50 percent by debt by the Charter School Finance Authority. The $24 million in debt would be financed at 3 percent over 30 years, requiring cash debt service comprised of existing reserves and future general fund revenues. The school states that the final approvals of the plan are expected by February 2023, with an estimated construction completion date of August 2025.

The CDE has determined that the information submitted supports the claim for mitigating circumstances. The CDE agrees that the school’s need to spend money on subsurface mold remediation was an exceptional, one-time expense, evidenced by the fact that the school’s campus is open for FY 2022–23 and that the school intends to return to its classroom-based status going forward. Additionally, the school has provided specific plans for its reserves.

Therefore, the CDE proposes to recommend that the SBE approve the school’s mitigating circumstances request and approve the determination of funding request for 100 percent funding as specified in Attachment 1. If the school’s mitigating circumstances request and determination of funding request are approved, it will be eligible to receive funding for ADA identified by the charter school as being generated through NCB instruction pursuant to *EC* Section 47634.2(c).

## 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 two charter schools listed in Attachment 1 would receive apportionment funding for NCB ADA under the LCFF model.

## California Department of Education Staff Review

Direct links to the schools’ funding determination requests and additional documentation are provided below. The requests are also available under Agenda Item 1 of the SBE December 2022 ACCS Meeting Agenda web page at <https://www.cde.ca.gov/be/cc/cs/accsnotice120822.asp>.

* Determination of Funding Request for MIT Academy, Charter #0372 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec22item01a2.pdf>).
* Additional Documentation from MIT Academy, Charter #0372 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec22item01a3.pdf>)
* Determination of Funding Request for Mare Island Technology Academy, Charter #0181 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec22item01a4.pdf>)
* Additional Documentation from Mare Island Technology Academy, Charter #0181 (<https://www.cde.ca.gov/be/cc/cs/documents/accs-dec22item01a5.pdf>)

## Attachment

* **Attachment 1:** Recommendations for Nonclassroom-Based Determination of Funding (1 Page)