

# CHARTER SCHOOLS

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## I.

### PURPOSE, INTENT AND VALIDITY OF THE CHARTER SCHOOL LAW

In 1992, the Legislature passed the Charter Schools Act of 1992.<sup>1</sup> The Legislature stated that it was its intent to provide opportunities for teachers, parents, pupils and community members to establish and maintain schools that operate independently from the existing school district structure as a method to accomplish improved pupil learning, increase learning opportunities for all pupils, encourage the use of different and innovative teaching methods, create new professional opportunities for teachers, provide parents and pupils with expanded choices in the types of educational opportunities that are available within the public school system, hold schools accountable for meeting measurable pupil outcomes, and provide vigorous competition within the public school system to stimulate continual improvements in all public schools.<sup>2</sup>

The validity of the Charter Schools Act was challenged in court. The Court of Appeal in Wilson v. State Board of Education,<sup>3</sup> held that the Charter Schools Act does not offend state constitutional provisions requiring public schools to be under the exclusive control and jurisdiction of officers in the public school system. Nor does it offend state constitutional provisions prohibiting the appropriation of public money for the support of sectarian or denominational schools. The Court of Appeal held that the Charter Schools Act does not create a separate school system in violation of the provisions of the California Constitution requiring the Legislature to provide for a system of common schools, because charter schools are public schools. The court held that the Charter School Act's delegation of certain educational functions to parents and teachers who write the charters and operate the schools does not violate the California Constitution.<sup>4</sup>

The Court of Appeal in Wilson noted that the Education Code was a complex tangle of rules that had the potential to zap creativity and innovation for accountability and undermine the effective education of our children.<sup>5</sup> The Court noted that charter schools, “. . . would be free from most state laws pertaining uniquely to school districts.”<sup>6</sup> In addition, charter schools were required to be nonsectarian and could not charge tuition or discriminate against any students and could not convert a private school to a charter school.<sup>7</sup> The Court of Appeal noted that, “. . . even a school operated by a nonprofit could never stray from under the wings of the chartering authority, the Board, and the Superintendent.”<sup>8</sup>

The California Attorney General stated in a 1998 opinion<sup>9</sup> that while a charter school operates independently from the existing school structure, it may not be formed as a legal entity

<sup>1</sup> Education Code section 47600 et seq.

<sup>2</sup> Education Code section 47601.

<sup>3</sup> 89 Cal.Rptr.2d 745, 75 Cal.App.4th 1125 (1999).

<sup>4</sup> *Ibid.*

<sup>5</sup> *Id.* at 1130.

<sup>6</sup> *Id.* at 1130. [Emphasis added.]

<sup>7</sup> *Id.* at 1131; See, Education Code section 47605(d)(1); Education Code section 47602(b).

<sup>8</sup> *Id.* at 1140. See also Mendoza v. State of California, 149 Cal.App.4th 1034, 1060-1062, 57 Cal.Rptr.3rd 505, 525-527 (2001).

<sup>9</sup> 81 Ops.Cal.Atty.Gen. 140 (1998).

separate from the school district that granted the charter. The Attorney General noted that although a charter school is subject to a distinct set of provisions governing its operations, as compared to those governing traditional schools in the same district, nothing inherent in the distinction authorizes legal separation from the school district that created it.<sup>10</sup> In addition, the Attorney General noted that a school charter may be periodically renewed, revised, or revoked only by the school district governing board that granted it. The authority of a school district governing board to grant, renew, revise, and revoke a charter is consistent with the determination that a charter school is not an independent legal entity apart from the school district itself. The Attorney General concluded:

“It is concluded that a charter school may not be formed as a separate legal entity from the school district that granted the charter. Whether a charter school may exercise such independent legal rights as to sue and be sued, purchase property, employ personnel, and contract for services, including legal services, are governed by the provisions of the particular charter.”<sup>11</sup>

## II.

### NUMBER OF CHARTER SCHOOLS

Beginning in the 1998-99 school year, the maximum total number of charter schools authorized to operate in California was 250. Each year thereafter, an additional 100 charter schools are authorized to operate in California. The State Board of Education is required to assign a number to each charter petition that is granted based on the chronological order in which notice is received.<sup>12</sup>

On or after January 1, 2003, the number assigned to the charter must identify the geographic and site limitations in which the charter school will operate. Sites that share educational programs and serve similar pupil populations may not be counted as separate schools. Sites that do not share a common educational program must be considered separate schools.<sup>13</sup>

By July 1, 2003, the Legislative Analyst was required to report to the Legislature on the effectiveness of the charter school approach and recommend whether to expand or reduce the annual rate of growth of charter schools authorized by the Charter School Law.<sup>14</sup>

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<sup>10</sup> *Id.* at 141-142.

<sup>11</sup> *Id.* at 144; See, Education Code section 47601; 80 Ops.Cal.Atty.Gen. 52, 55-56 (1997).

<sup>12</sup> Education Code section 47602(a)(1). See also 5 California Code of Regulations section 11968, noting that whenever the statutory limit on the permissible number of charter schools is reached, requests for new numbers will be placed on a list in the order received by the State Board of Education.

<sup>13</sup> Education Code section 47602(a)(1).

<sup>14</sup> Education Code section 47602(a)(2).

### III.

#### DUTIES OF CHARTER SCHOOLS

The Charter School Law prohibits the conversion of any private school to a charter school. The Charter School Law also prohibits a charter school from receiving public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition. The State Board of Education adopted regulations to implement this requirement.<sup>15</sup>

The Charter School Law does not prohibit any private person or organization from providing funding or other assistance to the establishment or operation of a charter school.<sup>16</sup> Charter schools may elect to operate as or be operated by a nonprofit public benefit corporation.<sup>17</sup> The governing board of a school district that grants a charter for the establishment of a charter school formed and organized pursuant to the Charter School Law shall be entitled to a single representative on the board of directors of the nonprofit corporation.<sup>18</sup> A school district or county office of education that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation, is not liable for the debts or obligations of the charter school or for claims arising from the performance of acts, errors or omissions by the charter school, if the authority has complied with all oversight responsibilities required by law, including but not limited to those required by Section 47604.32 and Section 47605(m).<sup>19</sup>

A charter school is required to promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority, the county office of education that has jurisdiction over the school's chartering authority, or from the Superintendent of Public Instruction and shall consult with the chartering authority, the county office of education or the Superintendent of Public Instruction regarding any inquiries.<sup>20</sup>

<sup>15</sup> Education Code section 47602(b); 5 California Code of Regulations section 11966.

<sup>16</sup> Education Code section 47603.

<sup>17</sup> Education Code section 47604(a).

<sup>18</sup> Education Code section 47604(b).

<sup>19</sup> Education Code section 47604(c). Education Code section 47604.32 states:

“Each chartering authority, in addition to any other duties imposed by this part, shall do all of the following with respect to each charter school under its authority:

- (a) Identify at least one staff member as a contact person for the charter school.
- (b) Visit each charter school at least annually.
- (c) Ensure that each charter school under its authority complies with all reports required of charter schools by law, including the annual update required by Section 47606.5.
- (d) Monitor the fiscal condition of each charter school under its authority.
- (e) Provide timely notification to the department if any of the following circumstances occur or will occur with regard to a charter school for which it is the chartering authority.
  - (1) A renewal of the charter is granted or denied.
  - (2) The charter is revoked.
  - (3) The charter school will cease operation for any reason.
- (f) The cost of performing the duties required by this section shall be funded with supervisory oversight fees collected pursuant to Section 47613.”

Section 47605(m) states: “A charter school shall transmit a copy of its annual, independent financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the department by December 15 of each year. This subdivision does not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.”

<sup>20</sup> Education Code section 47604.3.

## IV.

### DUTIES OF CHARTERING AUTHORITY

Each chartering authority, in addition to any other duties imposed under the Charter School Law, is required to do all of the following with respect to each charter school under its authority:

1. Identify at least one staff member as a contact person for the charter school.
2. Visit each charter school at least annually.
3. Ensure that each charter school, under its authority complies with all reports required of charter schools by law.
4. Monitor the fiscal condition of each charter school under its authority.
5. Provide timely notification to the California Department of Education if any of the following circumstances occur or will occur with regard to a charter school for which it is the chartering authority:
  - a. A renewal of the charter is granted or denied.
  - b. The charter is revoked.
  - c. The charter school will cease operation for any reason.<sup>21</sup>

The cost of performing the above duties is to be funded by the supervisory oversight fees collected pursuant to Section 47613.<sup>22</sup>

Under Section 47613, a chartering authority may charge for the actual costs of supervisory oversight of a charter school not to exceed 1% of the revenue of the charter school.<sup>23</sup> A chartering authority may charge for the actual costs for supervisory oversight of a charter school not to exceed 3% of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering authority.<sup>24</sup> The charter school may separately purchase administrative or other services from the chartering authority or any other source.<sup>25</sup>

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<sup>21</sup> Education Code section 47604.32.

<sup>22</sup> Education Code section 47604.32.

<sup>23</sup> Education Code section 47613(a).

<sup>24</sup> Education Code section 47613(b).

<sup>25</sup> Education Code section 47613(d).

## V.

### ANNUAL REPORTS OF CHARTER SCHOOLS

Each charter school is required to annually prepare and submit reports to its chartering authority and the county superintendent of schools or if the county board of education is a chartering authority, then only to the county superintendent of schools:

1. On or before July 1, a preliminary budget. For a charter school in its first year of operation, the information submitted pursuant to subdivision (g) of Section 47605 satisfies this requirement.
2. On or before July 1, an annual update pursuant to Section 47606.5.
3. On or before December 15, an interim financial report. This report shall reflect changes through October 31.
4. On or before March 15, a second interim financial report. This report shall reflect changes through January 31.
5. On or before September 15, a final unaudited report for the full prior year.<sup>26</sup>

The chartering authority is required to use the financial information it obtains from the charter school to assess the fiscal condition of the charter school. The cost of assessing the fiscal condition of the charter school is to be funded with the supervisorial oversight fees that the chartering authority collects.<sup>27</sup>

## VI.

### AUTHORITY OF THE COUNTY SUPERINTENDENT AND STATE SUPERINTENDENT

In addition to the authority to make reasonable inquiries to the charter school pursuant to Section 47604.3, a county superintendent of schools may, based upon written complaints by parents or other information that justifies the investigation, monitor the operations of a charter school located within the county and conduct an investigation into the operations of that charter school. If a county superintendent of schools monitors or investigates a charter school, the county office of education shall not incur any liability beyond the cost of the investigation.<sup>28</sup> The charter school is required to notify the county superintendent of schools of the county in which it is located of the location of the charter school, including the location of each site, prior to commencing operations.<sup>29</sup>

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<sup>26</sup> Education Code section 47604.33(a).

<sup>27</sup> Education Code section 47604.33(b), (c).

<sup>28</sup> Education Code section 47604.4(a).

<sup>29</sup> Education Code section 47604.4(b).

The state board of education, whether or not it is the authority that granted the charter, may, based upon the recommendation of the Superintendent of Public Instruction, take appropriate action, including, but not limited to, revocation of the school’s charter, when the State Board of Education finds any of the following:

1. Gross financial mismanagement that jeopardizes the financial stability of the charter school.
2. Illegal or substantially improper use of charter school funds for the personal benefit of any officer, director or fiduciary of the charter school.
3. Substantial and sustained departure from measurably successful practices such that continued departure would jeopardize the educational development of the school’s pupils.
4. Failure to improve student outcomes across multiple state and school priorities identified in the charter.<sup>30</sup>

## VII.

### LOANS AND CHARTER SCHOOLS

A charter school is a part of the public school system and cannot lend money, or borrow money from another charter school or a bank, but may borrow money through the statutorily established Charter School Revolving Loan Fund.

Article XVI, Section 6, of the California Constitution states, in part:

“The Legislature shall have no power to give or to lend, or to authorize the giving or lending, of the credit of the State, or of any county, city and county, city, township or other political corporation or subdivision of the state now existing, . . . in aid of or to any person, association or corporation . . . or to pledge the credit thereof, in any manner whatever for the payment of liabilities of any individual . . . nor shall it have power to make any gift or authorize the making of any gift, of any public money or thing of value to any individual . . . .”

Article XVI, Section 6, of the California Constitution prohibits state and local agencies from making a gift of public funds or lending the credit of a public agency to private individuals or companies. The courts have established a “public purpose” exception to the constitutional prohibition.<sup>31</sup> If a direct and substantial public purpose is served and private individuals are only

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<sup>30</sup> Education Code section 47604.5. See, also, Education Code sections 47605(b)(5)(A) and 47605.6(d)(5)(A).

<sup>31</sup> See, California Housing Finance Agency v. Elliott, 17 Cal.3d 575, 583 (1976).

incidentally benefited, then the constitutional prohibition against the gift of public funds is not violated. See, Wine v. Boyar, 220 Cal.App.2d 375, 379 (1963).

In Elliott, the California Supreme Court held that the Legislature may determine whether a particular program serves a public purpose. The court held that the Legislature had determined that available low cost housing served a public purpose, that the Legislature found out there was a serious shortage of affordable housing which persons and families of low or moderate income could afford, and that it was not violative of the gift of public funds provision of the California Constitution to establish a program to issue bonds to construct low cost housing. In Elliott, the Legislature authorized the California Housing Finance Agency to make loans to private housing sponsors and mortgage lenders at below market interest rates, to purchase loans from certain lenders and to refinance already existing mortgages. The agency also was authorized to create supplementary bond security.

Education Code section 47612 states that a charter school shall be deemed to be under the exclusive control of the officers of the public schools. In Wilson v. State Board of Education,<sup>32</sup> the Court of Appeal held that the Charter Schools Act did not offend the state constitutional provisions requiring public schools to be under the exclusive control and jurisdiction of officers in the public school system, because the Charter Schools Act did not create a separate school system in violation of the provisions of the California Constitution requiring the Legislature to provide for a system of common schools, since charter schools are public schools. The Court of Appeal held that the Charter Schools Act's delegation of certain educational functions to parents and teachers who write the charters and operate the schools does not violate the California Constitution.

In addition, Education Code section 47633(c) states that the funding received by charter schools may be used for any public school purpose determined by the governing body of the charter school. Education Code section 41365 et seq. establishes a loan fund program for charter schools.

Therefore, it is clear that the Legislature intended that the funds received by charter schools are public funds and must be spent in accordance with the rules that govern public funds. These rules prohibit the lending of credit or borrowing from other charter schools or banks. Only borrowing money through the Charter School Revolving Loan Fund is permissible.

## VIII.

### ESTABLISHMENT OF CHARTER SCHOOLS

#### A. Filing a Petition for a Charter School with a School District

Charter schools are formed when a petition for the establishment of a charter school within any school district is circulated by one or more persons seeking to establish a charter school. The petition for the establishment of a charter school must identify a single charter

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<sup>32</sup> Wilson v. State Board of Education, 89 Cal.Rptr.2d 745, 75 Cal.App.4th 1125 (1999).

school that will operate within the geographic boundaries of that school district. A charter school may operate multiple sites within the school district as long as each location is identified in the charter school petition. The petition must be submitted to the governing board of the school district for review after either of the following conditions is met:<sup>33</sup>

1. The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.
2. The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.<sup>34</sup>

In the case of a petition for the establishment of a charter school through the conversion of an existing public school, the petition may be circulated by one or more persons seeking to establish a converted charter school. The petition may be submitted to the governing board of the school district for a review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.<sup>35</sup>

A petition for a charter school must include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.<sup>36</sup>

After receiving approval of its petition, a charter school that proposes to establish operation at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the governing board of the school district of those additional locations. The governing board of the school district shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved by the governing board, they shall be a material revision to the charter school's charter.<sup>37</sup>

A charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operation and either of the following circumstances exists:

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<sup>33</sup> Education Code section 47605(a).

<sup>34</sup> Education Code section 47605(a). The petition may not include signatures from teachers at any already existing charter school. See, 78 Ops.Cal.Atty.Gen. 297 (1995).

<sup>35</sup> Education Code section 47605(a)(2). The charter school must not be eligible for a loan pursuant to Education Code section 41365(b).

<sup>36</sup> Education Code section 47605(a)(3).

<sup>37</sup> Education Code section 47605(a)(4).

1. The school has attempted to locate a single site or facility to house the entire program, but such a facility or site is unavailable in the area in which the school chooses to locate.
2. The site is needed for temporary use during a construction or expansion project.<sup>38</sup>

A petition to establish a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grades served by that school district.<sup>39</sup>

## **B. School District Review of Charter Petition**

The governing board of a school district, after receiving a charter petition, shall hold a public hearing on the provisions of the charter no later than 30 days after receipt. The governing board shall consider the level of support for the petition by teachers employed by the district, other employees of the district and parents. Following review of the petition and the public hearing, the governing board shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension.<sup>40</sup>

In reviewing petitions for the establishment of charter schools, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school if it is satisfied that granting the charter is consistent with sound educational practice.<sup>41</sup>

The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support its findings.<sup>42</sup> These findings must include one or more of the following:

1. The charter school presents an unsound educational program for the students to be enrolled in the charter school.<sup>43</sup>

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<sup>38</sup> Education Code section 47605(a)(5).

<sup>39</sup> Education Code section 47605(a)(6).

<sup>40</sup> Education Code section 47605(b).

<sup>41</sup> Education Code section 47605(b). In addition, the State Board of Education enacted regulations to clarify the criteria for review and approval of charter school initial and renewal petitions, which are instructive for all charter authorizers and petitioners. With regard to sound educational practice, Title 5 of the California Code of Regulations section 11967.5.1 (a) provides: For purposes of Education Code section 47605(b), a charter petition shall be “consistent with sound educational practice” if, in the SBE’s judgment, it is likely to be of educational benefit to pupils who attend. A charter school need not be designed or intended to meet the educational needs of every student who might possibly seek to enroll in order for the charter to be granted by the SBE.

<sup>42</sup> Education Code section 47605(b).

<sup>43</sup> 5 California Code of Regulations section 11967.5.1 (b) provides: For purposes of Education Code section 47605(b)(1), a charter petition shall be “an unsound educational program” if it is any of the following:

2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.<sup>44</sup>

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(1) A program that involves activities that the SBE determines would present the likelihood of physical, educational, or psychological harm to the affected pupils.

(2) A program that the SBE determines not to be likely to be of educational benefit to the pupils who attend.

(3) If the petition is for renewal of a charter school, and either the charter school has not met the standards for renewal pursuant to Education Code section 47607(b), as applicable, or the charter school has not met the measurable pupil outcomes as described in its charter.

<sup>44</sup> 5 California Code of Regulations section 11967.5.1 (c) provides: For purposes of Education Code section 47605(b)(2), the SBE shall take the following factors into consideration in determining whether charter petitioners are “demonstrably unlikely to successfully implement the program.”

(1) If the petitioners have a past history of involvement in charter schools or other education agencies (public or private), the history is one that the SBE regards as unsuccessful, e.g., the petitioners have been associated with a charter school of which the charter has been revoked or a private school that has ceased operation for reasons within the petitioners' control.

(2) The petitioners are unfamiliar in the SBE's judgment with the content of the petition or the requirements of law that would apply to the proposed charter school.

(3) The petitioners have presented an unrealistic financial and operational plan for the proposed charter school. An unrealistic financial and operational plan is one to which any or all of the following applies:

(A) In the area of administrative services, the charter or supporting documents do not adequately:

1. Describe the structure for providing administrative services, including, at a minimum, personnel transactions, accounting and payroll that reflects an understanding of school business practices and expertise to carry out the necessary administrative services, or a reasonable plan and time line to develop and assemble such practices and expertise.

2. For any contract services, describe criteria for the selection of a contractor or contractors that demonstrate necessary expertise and the procedure for selection of the contractor or contractors.

(B) In the area of financial administration, the charter or supporting documents do not adequately:

1. Include, at a minimum, the first-year operational budget, start-up costs, and cash flow, and financial projections for the first three years.

2. Include in the operational budget reasonable estimates of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based, when possible, on historical data from schools or school districts of similar type, size, and location.

3. Include budget notes that clearly describe assumptions on revenue estimates, including, but not limited to, the basis for average daily attendance estimates and staffing levels.

4. Present a budget that in its totality appears viable and over a period of no less than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school.

5. Demonstrate an understanding of the timing of the receipt of various revenues and their relative relationship to timing of expenditures that are within reasonable parameters, based, when possible, on historical data from schools or school districts of similar type, size, and location.

(C) In the area of insurance, the charter and supporting documents do not adequately provide for the acquisition of and budgeting for general liability, workers compensations, and other necessary insurance of the type and in the amounts required for an enterprise of similar purpose and circumstance.

(D) In the area of facilities, the charter and supporting documents do not adequately:

1. Describe the types and potential location of facilities needed to operate the size and scope of educational program proposed in the charter.

2. In the event a specific facility has not been secured, provide evidence of the type and projected cost of the facilities that may be available in the location of the proposed charter school.

3. Reflect reasonable costs for the acquisition or leasing of facilities to house the charter school, taking into account the facilities the charter school may be allocated under the provisions of Education Code section 47614.

(4) The petitioners personally lack the necessary background in the following areas critical to the charter school's success,

3. The petition does not contain the number of required signatures.<sup>45</sup>
4. The petition does not contain an affirmation of each of the conditions described in Section 47605(d).<sup>46</sup>
5. The petition does not contain reasonably comprehensive descriptions<sup>47</sup> of all the following:
  - (a) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an educated person in the 21<sup>st</sup> century, and how learning best occurs. The goals identified in the program shall include the objective of enabling students to become self-motivated, competent, and lifelong learners. A description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements must also be included, if the proposed school will serve high school students.<sup>48</sup>

and the petitioners do not have a plan to secure the services of individuals who have the necessary background in these areas:

- (A) Curriculum, instruction, and assessment.
- (B) Finance and business management.

<sup>45</sup> 5 California Code of Regulations section 11967.5.1 (d) provides: For purposes of Education Code section 47605(b)(3), a charter petition that “does not contain the number of signatures required by subdivision (a)” of Education Code section 47605 shall be a petition that did not contain the requisite number of signatures at the time of the submission of the original charter to a school district governing board pursuant to Education Code section 47605(a). The SBE shall not disregard signatures that may be purported to have been withdrawn or to have been determined to be invalid after the petition was denied by the school district. The signature requirement set forth in Education Code section 47605(a) is not applicable to a petition for renewal.

<sup>46</sup> 5 California Code of Regulations section 11967.5.1 (e) provides: For purposes of Education Code section 47605(b)(4), a charter petition that “does not contain an affirmation of each of the conditions described in subdivision (d)” of Education Code section 47605 shall be a petition that fails to include a clear, unequivocal affirmation of each such condition, not a general statement of intention to comply. Neither the charter nor any of the supporting documents shall include any evidence that the charter will fail to comply with the conditions described in Education Code section 47605(d).

<sup>47</sup> 5 California Code of Regulations section 11967.5.1 (g) provides: A “reasonably comprehensive” description, within the meaning subdivision (f) of this section and Education Code section 47605(b)(5) shall include, but not be limited to, information that:

- (1) Is substantive and is not, for example, a listing of topics with little elaboration.
- (2) For elements that have multiple aspects, addresses essentially all aspects the elements, not just selected aspects.
- (3) Is specific to the charter petition being proposed, not to charter schools or charter petitions generally.
- (4) Describes, as applicable among the different elements, how the charter school will:
  - (A) Improve pupil learning.
  - (B) Increase learning opportunities for its pupils, particularly pupils who have been identified as academically low achieving.
  - (C) Provide parents, guardians, and pupils with expanded educational opportunities.
  - (D) Hold itself accountable for measurable, performance-based pupil outcomes.
  - (E) Provide vigorous competition with other public school options available to parents, guardians, and students.

<sup>48</sup> 5 California Code of Regulations section 11967.5.1 (f) (1) provides: The description of the educational program of the school, as required by Education Code section 47605(b)(5)(A), at a minimum:

- (b) The measurable pupil outcomes identified for use by the charter school. “Pupil outcomes” means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge and attitudes specified as goals in the school’s educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement both schoolwide and for all groups of pupils served by the charter school, as that term is defined in Section 47607(a)(3)(B).<sup>49</sup> The pupil outcomes shall align with the state priorities as described in Section 52060(d),<sup>50</sup> that apply for the grade level served, or the nature of the program operated, by the charter school.<sup>51</sup>

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(A) Indicates the proposed charter school's target student population, including, at a minimum, grade levels, approximate numbers of pupils, and specific educational interests, backgrounds, or challenges.

(B) Specifies a clear, concise school mission statement with which all elements and programs of the school are in alignment and which conveys the petitioners' definition of an “educated person” in the 21st century, belief of how learning best occurs, and goals consistent with enabling pupils to become or remain self-motivated, competent, and lifelong learners.

(C) Includes a framework for instructional design that is aligned with the needs of the pupils that the charter school has identified as its target student population.

(D) Indicates the basic learning environment or environments (e.g., site-based matriculation, independent study, community-based education, or technology-based education).

(E) Indicates the instructional approach or approaches the charter school will utilize, including, but not limited to, the curriculum and teaching methods (or a process for developing the curriculum and teaching methods) that will enable the school's pupils to master the content standards for the four core curriculum areas adopted by the SBE pursuant to Education Code section 60605 and to achieve the objectives specified in the charter.

(F) Indicates how the charter school will identify and respond to the needs of pupils who are not achieving at or above expected levels.

(G) Indicates how the charter school will meet the needs of students with disabilities, English learners, students achieving substantially above or below grade level expectations, and other special student populations.

(H) Specifies the charter school's special education plan, including, but not limited to, the means by which the charter school will comply with the provisions of Education Code section 47641, the process to be used to identify students who qualify for special education programs and services, how the school will provide or access special education programs and services, the school's understanding of its responsibilities under law for special education pupils, and how the school intends to meet those responsibilities.

<sup>49</sup> All groups served by the charter school means a numerically significant pupil subgroup as defined in Section 52052(a)(3) (at least 30 pupils, each of whom has a valid test score).

<sup>50</sup> Education Code section 52060(d) states:

All of the following are state priorities:

(1) The degree to which the teachers of the school district are appropriately assigned in accordance with Section 44258.9, and fully credentialed in the subject areas, and, for the pupils they are teaching, every pupil in the school district has sufficient access to the standards-aligned instructional materials as determined pursuant to Section 60119, and school facilities are maintained in good repair as specified in subdivision (d) of Section 17002.

(2) Implementation of the academic content and performance standards adopted by the state board, including how the programs and services will enable English learners to access the common core academic content standards adopted pursuant to Section 60605.8 and the English language development standards adopted pursuant to Section 60811.3 for purposes of gaining academic content knowledge and English language proficiency.

(3) Parental involvement, including efforts the school district makes to seek parent input in making decisions for the school district and each individual schoolsite, and including how the school district will promote parental participation in programs for unduplicated pupils and individuals with exceptional needs.

(4) Pupil achievement, as measured by all of the following, as applicable:

(A) Statewide assessments administered pursuant to Article 4 (commencing with Section 60640) of Chapter 5 of Part 33 or any subsequent assessment, as certified by the state board.

- (c) **The method by which student progress in meeting pupil outcomes will be measured.**<sup>52</sup> To the extent practicable, the method for

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- (B) The Academic Performance Index, as described in Section 52052.
- (C) The percentage of pupils who have successfully completed courses that satisfy the requirements for entrance to the University of California and the California State University, or career technical education sequences or programs of study that align with state board-approved career technical educational standards and frameworks, including, but not limited to, those described in subdivision (a) of Section 52302, subdivision (a) of Section 52372.5, or paragraph (2) of subdivision (e) of Section 54692.
- (D) The percentage of English learner pupils who make progress toward English proficiency as measured by the California English Language Development Test or any subsequent assessment of English proficiency, as certified by the state board.
- (E) The English learner reclassification rate.
- (F) The percentage of pupils who have passed an advanced placement examination with a score of 3 or higher.
- (G) The percentage of pupils who participate in, and demonstrate college preparedness pursuant to, the Early Assessment Program, as described in Chapter 6 (commencing with Section 99300) of Part 65 of Division 14 of Title 3, or any subsequent assessment of college preparedness.
- (5) Pupil engagement, as measured by all of the following, as applicable:
- (A) School attendance rates.
- (B) Chronic absenteeism rates.
- (C) Middle school dropout rates, as described in paragraph (3) of subdivision (a) of Section 52052.1.
- (D) High school dropout rates.
- (E) High school graduation rates.
- (6) School climate, as measured by all of the following, as applicable:
- (A) Pupil suspension rates.
- (B) Pupil expulsion rates.
- (C) Other local measures, including surveys of pupils, parents, and teachers on the sense of safety and school connectedness.
- (7) The extent to which pupils have access to, and are enrolled in, a broad course of study that includes all of the subject areas described in Section 51210 and subdivisions (a) to (i), inclusive, of Section 51220, as applicable, including the programs and services developed and provided to unduplicated pupils and individuals with exceptional needs, and the program and services that are provided to benefit these pupils as a result of the funding received pursuant to Section 42238.02, as implemented by Section 42238.03.
- (8) Pupil outcomes, if available, in the subject areas described in Section 51210 and subdivisions (a) to (i), inclusive, of Section 51220, as applicable.
- (e) For purposes of the descriptions required by subdivision (c), a governing board of a school district may consider qualitative information, including, but not limited to, findings that result from school quality reviews conducted pursuant to subparagraph (J) of paragraph (4) of subdivision (a) of Section 52052 or any other reviews.
- (f) To the extent practicable, data reported in a local control and accountability plan shall be reported in a manner consistent with how information is reported on a school accountability report card.
- (g) A governing board of a school district shall consult with teachers, principals, administrators, other school personnel, local bargaining units of the school district, parents, and pupils in developing a local control and accountability plan.
- (h) A school district may identify local priorities, goals in regard to the local priorities, and the method for measuring the school district's progress toward achieving those goals.

<sup>51</sup> 5 California Code of Regulations section 11967.5.1 (f) (2) provides: Measurable pupil outcomes, as required by Education Code section 47605(b)(5)(B), at a minimum:

(A) Specify skills, knowledge, and attitudes that reflect the school's educational objectives and can be assessed, at a minimum, by objective means that are frequent and sufficiently detailed enough to determine whether pupils are making satisfactory progress. It is intended that the frequency of objective means of measuring pupil outcomes vary according to such factors as grade level, subject matter, the outcome of previous objective measurements, and information that may be collected from anecdotal sources. To be sufficiently detailed, objective means of measuring pupil outcomes must be capable of being used readily to evaluate the effectiveness of and to modify instruction for individual students and for groups of students.

(B) Include the school's Academic Performance Index growth target, if applicable.

<sup>52</sup> 5 California Code of Regulations section 11967.5.1 (f) (3) provides: The method by which pupil progress is to be measured, as required by Education Code section 47605(b)(5)(C), at a minimum:

(A) Utilizes a variety of assessment tools that are appropriate to the skills, knowledge, or attitudes being assessed, including, at a minimum, tools that employ objective means of assessment consistent with paragraph (2)(A) of subdivision (f) of this section.

(B) Includes the annual assessment results from the Statewide Testing and Reporting (STAR) program.

measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

- (d) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.<sup>53</sup>
- (e) The qualifications to be met by individuals to be employed by the school.<sup>54</sup>
- (f) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.<sup>55</sup>
- (g) **The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population**

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(C) Outlines a plan for collecting, analyzing, and reporting data on pupil achievement to school staff and to pupils' parents and guardians, and for utilizing the data continuously to monitor and improve the charter school's educational program.

<sup>53</sup> 5 California Code of Regulations section 11967.5.1 (f) (4) provides: The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement in supporting the school's effort on behalf of the school's pupils, as required by Education Code section 47605(b)(5)(D), at a minimum:

(A) Includes evidence of the charter school's incorporation as a non-profit public benefit corporation, if applicable.

(B) Includes evidence that the organizational and technical designs of the governance structure reflect a seriousness of purpose necessary to ensure that:

1. The charter school will become and remain a viable enterprise.
2. There will be active and effective representation of interested parties, including, but not limited to parents (guardians).
3. The educational program will be successful.

<sup>54</sup> 5 California Code of Regulations section 11967.5.1 (f) (5) provides: The qualifications to be met by individuals to be employed by the school, as required by Education Code section 47605(b)(5)(E), at a minimum:

(A) Identify general qualifications for the various categories of employees the school anticipates (e.g., administrative, instructional, instructional support, non-instructional support). The qualifications shall be sufficient to ensure the health, and safety of the school's faculty, staff, and pupils.

(B) Identify those positions that the charter school regards as key in each category and specify the additional qualifications expected of individuals assigned to those positions.

(C) Specify that the requirements for employment set forth in applicable provisions of law will be met, including, but not limited to credentials as necessary.

<sup>55</sup> 5 California Code of Regulations section 11967.5.1 (f) (6) provides: The procedures that the school will follow to ensure the health and safety of pupils and staff, as required by Education Code section 47605(b)(5)(F), at a minimum:

(A) Require that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.

(B) Include the examination of faculty and staff for tuberculosis as described in Education Code section 49406.

(C) Require immunization of pupils as a condition of school attendance to the same extent as would apply if the pupils attended a non-charter public school.

(D) Provide for the screening of pupils' vision and hearing and the screening of pupils for scoliosis to the same extent as would be required if the pupils attended a non-charter public school.

residing within the territorial jurisdiction of the school district to which the charter petition is submitted.<sup>56</sup>

- (h) Admission requirements, if applicable.<sup>57</sup>
- (i) The manner in which annual, independent financial audits shall be conducted, which will employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies will be resolved to the satisfaction of the chartering authority.<sup>58</sup>
- (j) The procedures by which pupils can be suspended or expelled.<sup>59</sup>

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<sup>56</sup> 5 California Code of Regulations section 11967.5.1 (f) (7) provides: Recognizing the limitations on admissions to charter schools imposed by Education Code section 47605(d), the means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted, as required by Education Code section 47605(b)(5)(G), shall be presumed to have been met, absent specific information to the contrary.

<sup>57</sup> 5 California Code of Regulations section 11967.5.1 (f) (8) provides: To the extent admission requirements are included in keeping with Education Code section 47605(b)(5)(H), the requirements shall be in compliance with the requirements of Education Code section 47605(d) and any other applicable provision of law.

<sup>58</sup> 5 California Code of Regulations section 11967.5.1 (f) (9) provides: The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority, as required by Education Code section 47605(b)(5)(I), at a minimum:

- (A) Specify who is responsible for contracting and overseeing the independent audit.
- (B) Specify that the auditor will have experience in education finance.
- (C) Outline the process of providing audit reports to the SBE, California Department of Education, or other agency as the SBE may direct, and specifying the time line in which audit exceptions will typically be addressed.
- (D) Indicate the process that the charter school will follow to address any audit findings and/or resolve any audit exceptions.

<sup>59</sup> Chartering authorities and charter petitioners will also want to consider the due process components of formal student discipline in addition to suspensions and expulsions. Scott B. v. Board of Trustees of Orange County High School for the Arts, 217 Cal.App.4th 117, 158 Cal.Rptr.3d 173 (2013). 5 California Code of Regulations section 11967.5.1 (f) (10) provides: The procedures by which pupils can be suspended or expelled, as required by Education Code section 47605(b)(5)(J), at a minimum:

- (A) Identify a preliminary list, subject to later revision pursuant to subparagraph (E), of the offenses for which students in the charter school must (where non-discretionary) and may (where discretionary) be suspended and, separately, the offenses for which students in the charter school must (where non-discretionary) or may (where discretionary) be expelled, providing evidence that the petitioners' reviewed the offenses for which students must or may be suspended or expelled in non-charter public schools.
- (B) Identify the procedures by which pupils can be suspended or expelled.
- (C) Identify the procedures by which parents, guardians, and pupils will be informed about reasons for suspension or expulsion and of their due process rights in regard to suspension or expulsion.
- (D) Provide evidence that in preparing the lists of offenses specified in subparagraph (A) and the procedures specified in subparagraphs (B) and (C), the petitioners reviewed the lists of offenses and procedures that apply to students attending non-charter public schools, and provide evidence that the charter petitioners believe their proposed lists of offenses and procedures provide adequate safety for students, staff, and visitors to the school and serve the best interests the school's pupils and their parents (guardians).

(E) If not otherwise covered under subparagraphs (A), (B), (C), and (D):

1. Provide for due process for all pupils and demonstrate an understanding of the rights of pupils with disabilities in regard to suspension and expulsion.

- (k) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.<sup>60</sup>
- (l) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.<sup>61</sup>
- (m) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.<sup>62</sup>
- (n) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.<sup>63</sup>

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2. Outline how detailed policies and procedures regarding suspension and expulsion will be developed and periodically reviewed, including, but not limited to, periodic review and (as necessary) modification of the lists of offenses for which students are subject to suspension or expulsion.

<sup>60</sup> 5 California Code of Regulations section 11967.5.1 (f) (11) provides: The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security, as required by Education Code section 47605(b)(5)(K), at a minimum, specifies the positions to be covered under each system and the staff who will be responsible for ensuring that appropriate arrangements for that coverage have been made.

<sup>61</sup> 5 California Code of Regulations section 11967.5.1 (f) (12) provides: The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools, as required by Education Code section 47605(b)(5)(L), at a minimum, specify that the parent or guardian of each pupil enrolled in the charter school shall be informed that the pupils has no right to admission in a particular school of any local educational agency (LEA) (or program of any LEA) as a consequence of enrollment in the charter school, except to the extent that such a right is extended by the LEA.

<sup>62</sup> 5 California Code of Regulations section 11967.5.1 (f) (13) provides: The description of the rights of any employees of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school, as required by Education Code section 47605(b)(5)(M), at a minimum, specifies that an employee of the charter school shall have the following rights:

- (A) Any rights upon leaving the employment of an LEA to work in the charter school that the LEA may specify.
- (B) Any rights of return to employment in an LEA after employment in the charter school as the LEA may specify.
- (C) Any other rights upon leaving employment to work in the charter school and any rights to return to a previous employer after working in the charter school that the SBE determines to be reasonable and not in conflict with any provisions of law that apply to the charter school or to the employer from which the employee comes to the charter school or to which the employee returns from the charter school.

<sup>63</sup> 5 California Code of Regulations section 11967.5.1 (f) (14) provides: The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter, as required by Education Code section 47605(b)(5)(N), at a minimum:

- (A) Include any specific provisions relating to dispute resolution that the SBE determines necessary and appropriate in recognition of the fact that the SBE is not an LEA.
- (B) Describe how the costs of the dispute resolution process, if needed, would be funded.
- (C) Recognize that, because it is not an LEA, the SBE may choose to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter, provided that if the SBE intends to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter, it must first hold a public hearing to consider arguments for and against the direct resolution of the dispute instead of pursuing the dispute resolution process specified in the charter.
- (D) Recognize that if the substance of a dispute is a matter that could result in the taking of appropriate action, including, but not limited to, revocation of the charter in accordance with Education Code section 47604.5, the matter will be addressed at the SBE's discretion in accordance with that provision of law and any regulations pertaining thereto.

- (o) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purpose of Educational Employment Relations Act.<sup>64</sup>
- (p) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of the pupil records.<sup>65</sup>

### C. Charter Schools – General Requirements

Charter schools are required to meet all statewide standards and conduct the pupil assessments required pursuant to California law and any other statewide standards authorized by law.<sup>66</sup> Charter schools shall, on a regular basis, consult with their parents and teachers regarding the school’s educational programs.<sup>67</sup>

Charter schools must be nonsectarian in their programs, admission policies, employment practices and all other operations. Charter schools are prohibited from charging tuition and discriminating against any pupil on the basis of ethnicity, national origin, gender or disability.<sup>68</sup>

No governing board of a school district shall require any employee of the school district to be employed in a charter school.<sup>69</sup> No governing board of a school district shall require any pupil enrolled in the school district to attend the charter school.<sup>70</sup>

### D. Charter Schools – Admission Requirements

Charter schools are required to admit all pupils who wish to attend the school. Charter school admission shall not be determined according to the place of residence of the pupil or the parent, except that an existing public school converting partially or entirely to a charter school shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school. If the number of pupils who wish to attend the charter school exceeds the school’s capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5 which establishes preferences for facilities funding for charter schools

<sup>64</sup> Government Code section 3540 et seq. In addition, 5 California Code of Regulations section 11967.5.1 (f) (15) provides: (15) The declaration of whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act. Education Code section 47605(b)(5)(O) recognizes that the SBE is not an exclusive public school employer. Therefore, the charter school must be the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (commencing with Government Code section 3540).

<sup>65</sup> Education Code section 47605(b).

<sup>66</sup> Education Code section 47605(c)(1).

<sup>67</sup> Education Code section 47605(c)(2).

<sup>68</sup> Education Code section 47605(d)(1).

<sup>69</sup> Education Code section 47605(e).

<sup>70</sup> Education Code section 47605(f).

serving low income students. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.<sup>71</sup>

In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and in no event shall take any action to impede the charter school from expanding enrollment to meet pupil demand.<sup>72</sup>

A charter school with a school site physically located in the attendance area of a public elementary school in which 50 percent or more of the pupil enrollment is eligible for free or reduced price meals may give a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the charter school site is located. This requirement is not intended to affect the requirement that a public school converting partially or entirely to a charter school adopt and maintain a policy that gives an admission preference to pupils who reside within the former attendance area of that public school.<sup>73</sup>

#### **E. Charter Schools – Required Information**

The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be utilized by the school, the manner in which the administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.<sup>74</sup>

#### **F. School District Approval of the Charter Petition**

In reviewing the petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the California Department of Education.<sup>75</sup> Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the California Department of Education, and the State Board of Education.<sup>76</sup>

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<sup>71</sup> Education Code section 47605(d).

<sup>72</sup> Education Code section 47605(d)(2)(C).

<sup>73</sup> Education Code section 47605.3

<sup>74</sup> Education Code section 47605(g).

<sup>75</sup> Education Code section 47605(h).

<sup>76</sup> Education Code section 47605(i).

## **G. School District Denial of the Charter Petition**

If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education is required to review the petition in the same manner as the governing board of a school district.<sup>77</sup> If the petitioner wishes to appeal to the county board of education, the petition must be received by the county board not later than 180 calendar days after the denial.<sup>78</sup> To file the petition on appeal, the petitioner shall provide a complete copy of the charter petition as denied, including the required signatures; evidence of the school district governing board's action to deny the petition and written factual findings; a signed certification stating the petitioner will comply with all applicable law; and a description of any changes to the petition necessary to reflect the county board of education as the chartering entity.<sup>79</sup>

## **H. County Board of Education Review of the Charter Petition**

If the petitioner elects to submit a petition for the establishment of a charter school to the county board of education, a county board of education has 60 days from receipt of the charter petition to hear the appeal.<sup>80</sup> If the county board does not grant or deny the petition within this timeline, the charter school may submit the petition to the State Board of Education.<sup>81</sup> If the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education, and the State Board of Education may approve the petition utilizing the same criteria as the governing board of the school district.<sup>82</sup> Any charter school that receives approval of its petition from a county board of education or from the State Board of Education on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the school district to which it originally submitted its petition. A charter petition that is submitted to either a county board of education or to the State Board of Education shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.<sup>83</sup> In considering charter petitions that have been previously denied, the county board of education or State Board of Education are not limited to a review based solely on the reasons for denial stated by the school district, but must review the charter school petition in accordance with Education Code section 47605 (b).<sup>84</sup>

## **I. State Board of Education Review of the Charter Petition**

The State Board of Education is required to develop criteria to be used for the review and approval of charter school petitions presented to the State Board of Education. The criteria must address all elements required for charter approval (i.e., the same criteria as required for school

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<sup>77</sup> Education Code section 47605(j)(1).

<sup>78</sup> 5 California Code of Regulations section 11967 (a).

<sup>79</sup> 5 California Code of Regulations section 11967 (b).

<sup>80</sup> 5 California Code of Regulations 11967 (d). The county board of education and the charter petitioner may extend this date by an additional 30 days by mutual written agreement.

<sup>81</sup> Id.

<sup>82</sup> Education Code section 47605(j)(1).

<sup>83</sup> Education Code section 47605(j)(1).

<sup>84</sup> 5 California Code of Regulations section 11967 (f).

district approval.)<sup>85</sup> The State Board of Education shall utilize the criteria set forth in Title 5, California Code of Regulations section 11967.5.1 in reviewing charter petitions.<sup>86</sup> The purpose of these criteria is to convey to charter petitioners the State Board of Education's understanding of the meaning of the statutory elements of a charter petition.<sup>87</sup> These criteria are intended to require no charter provisions in excess of what the State Board of Education believes necessary to determine whether the statutorily-required elements are satisfactorily addressed, and where judgments must be made, judgments shall be reasonable, rational, and fair to the petitioners and other parties potentially affected by the chartering of the school by the State Board of Education.<sup>88</sup> A charter school for which a charter is granted by either the county board of education or the State Board of Education based on an appeal shall qualify fully as a charter school for all funding and other lawful purposes.<sup>89</sup> If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny a petition shall, thereafter, be subject to judicial review.<sup>90</sup>

The State Board of Education is required to adopt regulations implementing county board of education and State Board of Education review of charter petitions.<sup>91</sup> Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the California Department of Education and the State Board of Education.<sup>92</sup>

The State Board of Education may, by mutual agreement, designate its supervisory and oversight responsibilities for a charter school approved by the State Board of Education to any local educational agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition. The designated local educational agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education. A charter school that has been granted its charter through an appeal to the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.<sup>93</sup>

## **J. Teacher Credential Requirements**

Teachers in charter schools must hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and

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<sup>85</sup> Education Code section 47605(j)(2). See also 5 California Code of Regulations section 11967.5.1.

<sup>86</sup> 5 California Code of Regulations section 11967.5.

<sup>87</sup> Id.

<sup>88</sup> Id.

<sup>89</sup> Education Code section 47605(j)(3).

<sup>90</sup> Education Code section 47605(j)(4).

<sup>91</sup> Education Code section 47605(j)(5).

<sup>92</sup> Education Code section 47605(j)(6).

<sup>93</sup> Education Code section 47605(k).

are subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, non-college preparatory courses.<sup>94</sup>

#### **K. Transmission of Charter School Audit**

A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, to its chartering entity, the state Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of that county in which the charter is sited is the chartering entity, and the California Department of Education by December 15 of each year, unless the audit of the charter school is encompassed in the audit of the chartering entity.<sup>95</sup>

#### **L. Geographic Limitations**

The charter school that is granted a charter from the governing board of a school district or county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, shall locate in accordance with the geographic and site limitations of Section 47605 (i.e., sites must be located within school district boundaries except under very limited circumstances).<sup>96</sup>

A charter school that is granted a charter by the State Board of Education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, based on the denial of a petition by the governing board of a school district or county board of education, may locate only in the geographic boundaries of the chartering entity that initially denied the petition for the charter.<sup>97</sup>

A charter school that receives approval of its charter from a governing board of a school district, a county office of education, or the State Board of Education prior to July 1, 2002, but does not commence operations until after January 1, 2003, shall be subject to the geographic limitations of Section 47605 and must be located within school district boundaries except under very limited circumstances.<sup>98</sup>

A charter school may establish a resource center, meeting space or other satellite facility located in a county adjacent to that in which the charter school is authorized if the facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based, independent study of the charter school and the charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the charter school is authorized.<sup>99</sup>

A charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but

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<sup>94</sup> Education Code section 47605(l).

<sup>95</sup> Education Code section 47605(m).

<sup>96</sup> Education Code section 47605.1(a)(1).

<sup>97</sup> Education Code section 47605.1(a)(2).

<sup>98</sup> Education Code section 47605.1(a)(3).

<sup>99</sup> Education Code section 47605.1(c).

within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations and the charter school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the charter school chooses to locate or the site is needed for temporary use during a construction or expansion project.<sup>100</sup>

For a charter school that was granted approval of its charter prior to July 1, 2002, and provided educational services to pupils before July 1, 2002, these geographic limitations only apply to any new educational services or school sites established or required by the charter school on or after July 1, 2002.<sup>101</sup> For a charter school that was granted approval of its charter prior to July 1, 2002, but did not provide educational services to pupils before July 1, 2002, the geographic limitations shall only apply upon the expiration of a charter that is in existence on January 1, 2003.<sup>102</sup>

By June 30, 2005, or upon the expiration of a charter that is in existence on January 1, 2003, whichever is later, all charter schools will be required to comply with the geographic limitations for school sites (i.e., within the boundaries of the school district) at which educational services are provided to pupils, regardless of whether the charter school initially received approval of its charter school petition prior to July 1, 2002. To achieve compliance with the geographic limitation requirements, a charter school will be required to receive approval of a charter petition in accordance with the petition requirements of Section 47605.<sup>103</sup>

A charter school that submits its petition directly to a county board of education may establish charter school operations only within the geographic boundaries of the county in which that county board of education has jurisdiction.<sup>104</sup> The geographic limitations of Sections 47605 and 47605.1 do not apply to a charter school that provides instruction exclusively in partnership with any of the following:

1. The Federal Workforce Investment Act of 1998.
2. Federally affiliated Youth Build programs.
3. Federal job core training or instruction provided pursuant to a memorandum of understanding with the federal provider.
4. The California Conservation Corps or local conservation corps certified by the California Conservation Corps.

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<sup>100</sup> Education Code section 47605.1(d).

<sup>101</sup> Education Code section 47605.1(e)(1).

<sup>102</sup> Education Code section 47605.1(e)(2).

<sup>103</sup> Education Code section 47605.1(e)(3).

<sup>104</sup> Education Code section 47605.1(f).

5. Instruction provided to juvenile court school pupils pursuant to Education Code section 42238.18(c) or Section 1981 for individuals who are placed in a residential facility.<sup>105</sup>

#### **M. Charter Petitions Filed Directly with a County Board of Education**

The Charter School Law allows the submission of a petition for a charter school directly to a county board of education, under certain limited circumstances. These circumstances include submitting a charter petition to a county board of education if it will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services (e.g., juvenile court schools, severely disabled special education students).<sup>106</sup>

A charter petition may also be submitted to a county board of education for a charter school that will operate at one or more sites within the geographic boundaries of the county and will provide instructional services to a pupil population that cannot be served as well by a charter school that operates in only one school district in the county.<sup>107</sup> In large counties such as Orange County, with comparatively large school districts, in most cases a charter school will be able to operate satisfactorily in a school district in the county.

The petition submitted to a county board of education for review must meet either of the following conditions:

1. The petition has been signed by a number of parents or guardians of pupils residing within the county that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days' notice of petitioner's intent to operate a school pursuant to Section 47605.6.
2. The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days' notice of the petitioner's intent to operate a school pursuant to Section 47605.6.<sup>108</sup>

An existing public school may not be converted to a charter school in accordance with Section 47605.6.<sup>109</sup>

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<sup>105</sup> Education Code section 47605.1(g).

<sup>106</sup> Education Code section 47605.5.

<sup>107</sup> Education Code section 47605.6.

<sup>108</sup> Education Code section 47605.6(a)(1).

<sup>109</sup> Education Code section 47605.6(a)(2).

After receiving approval of its petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education must notify the school districts where those sites will be located. The charter school must also request a material revision of its charter by the county board of education that approved its charter and the county board must consider whether to approve those additional locations at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located. If approved, the location of the approved sites shall be a material revision of the school's approved charter.<sup>110</sup>

A petition for a countywide charter must include a prominent statement indicating that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter must be attached to the petition.<sup>111</sup>

No later than 60 days after receiving a petition (and 30 days after notice to the school district), the county board of education must hold a public hearing on the provisions of the charter, at which time the county board of education shall consider the level of support for the petition by teachers, parents and the school districts where the charter school petitioner proposes to place school facilities. Following review of the petition and the public hearing, the county board of education must either grant or deny the charter within 90 days of receipt of the petition. This date may be extended by an additional 30 days if both parties agree to the extension.<sup>112</sup>

A county board of education may impose any additional requirements beyond those required by Section 47605.6 that it considers necessary for the sound operation of a countywide charter school. A county board of education may grant a charter for the operation of a school under Section 47605.6 only if the county board is satisfied that granting the charter is consistent with sound educational practice and the charter school has reasonable justification for why it could not be established by a petition to a school district.<sup>113</sup>

A county board of education may grant a petition for the establishment of a countywide charter only if the board is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by a petition to a school district.<sup>114</sup> The county board may deny the petition on any other basis it finds justifies the denial.<sup>115</sup>

A county board of education shall deny a petition for the establishment of a countywide charter school if the board finds one or more of the following:

1. The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

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<sup>110</sup> Education Code section 47605.6(a)(3).

<sup>111</sup> Education Code section 47605.6(a)(4).

<sup>112</sup> Education Code section 47605.6(b).

<sup>113</sup> Education Code section 47605.6(b).

<sup>114</sup> Education Code section 47605.6(b).

<sup>115</sup> Education Code section 47605.6(b)(6).

2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
3. The petition does not contain the number of signatures required.
4. The petition does not contain an affirmation of each of the conditions described in subdivision (d).
5. The petition does not contain reasonably comprehensive descriptions of all of the following:
  - a. A description of the educational program designed to identify those pupils whom the school is attempting to educate, what it means to be an educated person in the 21<sup>st</sup> century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.
  - b. If the proposed charter will enroll high school pupils, a description of the manner in which the charter school will inform parents regarding the transferability of courses to other high schools and whether the courses are accredited by the Western Association of Schools and Colleges.
  - c. If the proposed charter will enroll high school pupils, information as to the manner in which the charter school will inform parents as to whether each individual course offered by the charter school meets college entrance requirements.
  - d. The measurable pupil outcomes identified for use by the charter school. Outcomes for purposes of this part means the extent to which all pupils of the school demonstrate that they have obtained the skills, knowledge, and aptitude specified as goals in the school's educational program. Pupil outcomes shall include outcomes that address increases in pupil academic achievement in both schoolwide and for all groups of pupils served by the charter school as that term is defined in Section 47607(a)(3)(B).<sup>116</sup>
  - e. The method by which pupil progress and meeting those pupil outcomes is to be measured.
  - f. The location of each charter school facility that the petitioner proposes to operate.

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<sup>116</sup> All groups served by the charter school means a numerically significant pupil subgroup as defined in Section 52052(a)(3) (at least 30 pupils, each of whom has a valid test score).

- g. The governance structure of the school including, but not limited to, the process to be followed by the school to ensure parental involvement.
- h. The qualifications to be met by individuals to be employed by the school.
- i. The procedures that the school will follow to ensure the health and safety of the pupils and staff.
- j. The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district<sup>117</sup> to which the charter petition is submitted.
- k. The manner in which annual independent financial audits shall be conducted in accordance with regulations established by the school board in the manner in which audit exceptions and deficiencies shall be resolved.
- l. The procedures by which pupils can be suspended or expelled.
- m. The manner by which staff members of the charter school would be covered by the teachers' retirement system, the public employees' retirement system, or federal social security.
- n. The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.
- o. A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the EERA.
- p. Admission requirements of the charter school, if applicable.
- q. The public school attendance alternatives for pupils residing within the county who choose not to attend the charter school.
- r. A description of the rights of an employee of the county office of education, upon leaving the employment of the county office of education, to be employed by the charter school, and a description of any rights of return to the county office of education that an employee may have upon leaving the employ of the charter school.

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<sup>117</sup> The statute contains the words "school district" but in the context of a countywide charter, the legislative intent must have been "county" rather than "school district."

- s. A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any assets and for the maintenance and transfer of public records.<sup>118</sup>

A county board of education that approves a petition for the operation of a countywide charter may, as a condition of charter approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor and report to the county board of education on the operations of the charter school. The county board of education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the county board of education.<sup>119</sup>

## **N. Countywide Charter School Requirements**

Countywide charter schools are required to meet all statewide standards and conduct pupil assessments and any other statewide standards applicable to pupils in noncharter public schools. Charter schools are required to consult, on a regular basis, with their parents and teachers regarding the school's educational programs.<sup>120</sup>

A countywide charter school must be nonsectarian in its programs and operations, shall not charge tuition and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender or disability. A countywide charter school shall admit all pupils who wish to attend the school. However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the county. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law. In the event of a drawing, the county board of education shall make reasonable efforts to accommodate the growth of the charter school and shall not take any action to impede the school from expanding enrollment to meet pupil demand.<sup>121</sup>

A county board of education is prohibited from requiring an employee of the county or a school district to be employed by the charter school.<sup>122</sup> A county board of education is prohibited from requiring any pupil enrolled in a county program to attend a charter school.<sup>123</sup>

A county board of education must require that the petitioners provide information regarding the proposed operation and potential effects of the charter school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any

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<sup>118</sup> Education Code section 47605.6(b). Also see 5 California Code of Regulations section 11967.5.1 for the State Board of Education's criteria for review of charter petitions.

<sup>119</sup> Education Code section 47605.6(c).

<sup>120</sup> Education Code section 47605.6(d).

<sup>121</sup> Education Code section 47605.6(e).

<sup>122</sup> Education Code section 47605.6(f).

<sup>123</sup> Education Code section 47605.6(g).

school district where the charter school may operate and upon the county board of education. The petitioners shall also be required to provide financial statements that include a proposed first year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.<sup>124</sup>

The county board of education must give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioners as academically low achieving.<sup>125</sup>

Upon approval of the petition by the county board of education, the petitioners shall provide written notice of that approval, including a copy of the petition, to the school districts within the county, the Superintendent of Public Instruction, and the State Board of Education.<sup>126</sup>

If a county board of education denies a petition, the petitioner may not elect to submit the petition for the establishment of the countywide charter school to the State Board of Education.<sup>127</sup>

Teachers in countywide charter schools are required to hold an appropriate credential equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority.<sup>128</sup>

A charter school is required to transmit a copy of its annual, independent, financial audit report for the preceding fiscal year to the county office of education, State Controller, and the California Department of Education by December 15 of each year.<sup>129</sup>

## **O. Legislative History of Countywide Charter Schools**

Education Code section 47605.5 was added in 1998.<sup>130</sup> Section 47605.5 states:

“A petition may be submitted directly to a county board of education in the same manner as set forth in Section 47605 for charter schools that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services. Any denial of a petition shall be subject to the same process for any other county board of education denial of a charter school petition pursuant to this part.”

In 2002, Education Code section 47605.6 was added.<sup>131</sup> Section 47605.6(a)(1) states:

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<sup>124</sup> Education Code section 47605.6(h).

<sup>125</sup> Education Code section 47605.6(i).

<sup>126</sup> Education Code section 47605.6(j).

<sup>127</sup> Education Code section 47605.6(k).

<sup>128</sup> Education Code section 47605.6(l).

<sup>129</sup> Education Code section 47605.6(m).

<sup>130</sup> Stats. 1998, ch. 34, AB 544.

<sup>131</sup> Stats. 2002, ch. 1058, AB 1994.

“In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may only approve a countywide charter if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. A petition for the establishment of a countywide charter school pursuant to this subdivision may be circulated throughout the county by any one or more persons seeking to establish the charter school.”<sup>132</sup>

The Legislative Counsel’s Digest states:

“Existing law authorizes a petition to be submitted directly to a county board of education for a charter school that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and services.

“This bill would also authorize a county board of education to approve a charter for the operation of a charter school that would operate at multiple sites throughout the county. The bill would prescribe the petition and approval process for such school, the applicable requirements for operation, and other related matters.”<sup>133</sup>

The legislative report entitled “Concurrence in Senate Amendments” as amended August 28, 2002, notes that the Senate Amendments authorize a county board of education to approve a petition for the operation of a charter school that operates one or more sites and applies the following provisions to a charter that submits its petition directly to the county board of education:

1. The charter is required to establish a school only within the geographical boundaries of the county in which that county board of education is located.
2. A countywide charter can only be approved if it finds that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates only in one school district in the county.

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<sup>132</sup> Education Code section 47605.6 (emphasis added).

<sup>133</sup> Legislative Counsel’s Digest, AB 1994, Stats. 2002, ch. 1058, § 5 (emphasis added).

3. Applies the same process for reviewing, approving, and denying charters as well as setting up additional charters as prescribed for district charters and requires petitioners to give thirty days' notice to each school district where the charter school would operate a facility. Permits the county board of education to directly grant a charter only if the charter school has reasonable justification for why it could not be established by petition to a school district.<sup>134</sup>

## **P. State Charter Schools**

A petition for the operation of a state charter school may be submitted directly to the State Board of Education and the State Board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board of Education shall adopt regulations for the implementation of the operation of state charter schools.<sup>135</sup> Any regulations adopted shall ensure that a charter school approved by the State Board of Education as a state charter school shall meet all of the requirements otherwise imposed on charter schools, except that a state charter school shall not be subject to the geographic and site limitations otherwise imposed on charter schools.<sup>136</sup> The petitioner must submit a copy of the petition to the county superintendent of schools of each county in which the petitioner proposes to operate the state charter school. The petitioner must also ensure that the governing board of each school district in which a site is proposed to be located is notified no later than 120 days prior to the commencement of instruction at each site, as applicable.<sup>137</sup>

In California School Boards Association v. State Board of Education,<sup>138</sup> the Court of Appeal determined that the State Board of Education must make specific findings, in accordance with duly adopted regulations, to support a petition for a statewide benefit charter school. The court looked to the legislative history of the Charter Schools Act, noting that the statutory scheme “reflects an intent to promote district-chartered schools and local oversight while allowing for limited exceptions.”<sup>139</sup> A letter sent by the Speaker of the Assembly and President Pro Tempore of the Senate to the State Board of Education while this petition was pending, requested a moratorium on authorization of statewide benefit charters until the scope of Education Code section 47605.8 was clarified.<sup>140</sup> This letter stated that multiple-location charter schools that were not statewide by necessity, such as charter schools operated by California Conservation Corps or federal job corps training programs, should seek approval of petitions at the school district or county office level to be “consistent with the principals of local control in the charter school law generally, and in the [2002 amendment] more specifically....”<sup>141</sup>

Following the Court of Appeal’s decision, the State Board of Education enacted regulations to clarify the criteria for statewide benefit charters. The State Board of Education may not approve a petition for the operation of state charter schools unless the State Board finds

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<sup>134</sup> Legislative Report, “Concurrence in Senate Amendments” (August 28, 2002).

<sup>135</sup> See 5 California Code of Regulations section 11967.6.

<sup>136</sup> 5 California Code of Regulations section 11967.6 (a) (1).

<sup>137</sup> Education Code section 47605.8(a).

<sup>138</sup> 186 Cal.App.4<sup>th</sup> 1298, 113 Cal.Rptr.3d 550 (2010).

<sup>139</sup> Id. at 1320.

<sup>140</sup> Id.

<sup>141</sup> Id.

that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county.<sup>142</sup> The finding of the State Board in this regard shall be made part of the public record of the Board's proceedings and shall precede the approval of the charter.<sup>143</sup>

The State Board of Education may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor and report on the operations of the charter school. The State Board may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operation of the charter school to the State Board of Education.<sup>144</sup>

The State Board of Education shall not be required to approve a petition for the operation of a state charter school, and may deny approval based on any of the reasons set forth in Section 47605.6(b) for countywide charters.<sup>145</sup>

#### **Q. Conversion of All District Schools to Charter Schools**

A school district may convert all of its schools to charter schools only if it meets all of the following conditions:

1. Fifty percent of the teachers within the school district sign the charter petition.
2. The charter petition contains all the requirements set forth in a charter school petition submitted to a school board and a provision that specifies alternative public school attendance arrangements for pupils residing within the school district who choose not to attend charter schools.<sup>146</sup>

Approval of a districtwide charter petition must be made by joint action of the Superintendent of Public Instruction and the State Board of Education.<sup>147</sup>

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<sup>142</sup> 5 California Code of Regulations section 11967.6 (b) provides: "Instructional services of a statewide benefit", as referenced in Education Code section 47605.8(b), shall include, but not be limited to, the following factors:

(1) Unique factors and circumstances related to the statewide benefit charter school's educational program that can only be accomplished as a statewide benefit charter and not as a single district- or single county-authorized charter, including specific benefits to each of the following:

- (A) The pupils who would attend the statewide benefit charter school,
- (B) The communities (including the school districts and the counties) in which the individual schools would be located (e.g., in terms of pupil demographics and performance),
- (C) The state, to the extent applicable, and
- (D) The statewide benefit charter school itself (e.g., in fund raising, community partnerships, or relationships with institutions of higher education).

(2) Neither an administrative benefit to a charter operator, nor a desire by a charter operator to provide services in more than one district and county, shall be considered sufficient in and of itself to constitute a statewide benefit.

<sup>143</sup> Education Code section 47605.8(b).

<sup>144</sup> Education Code section 47605.8(c).

<sup>145</sup> Education Code section 47605.8(d).

<sup>146</sup> Education Code section 47606(a).

<sup>147</sup> Education Code section 47606(b).

## **R. LCAP Requirements**

On or before July 1, 2015, and each year thereafter, a charter school shall update the goals and annual actions to achieve those goals identified in the reasonably comprehensive description of the charter petition and LCAP. The annual updates shall be developed using a template adopted by the State Board of Education and shall include all of the following:

1. A review of the progress toward the goals included in the charter, an assessment of the effectiveness of the specific actions described in the charter toward achieving the goals, and a description of changes to the specific actions the charter school will make as a result of the review and assessment.
2. A listing and description of the expenditures for the fiscal year implementing the specific actions included in the charter as a result of the reviews and assessments required by subparagraph 1.<sup>148</sup>
3. The expenditures identified above shall be classified using the California School Accounting Manual pursuant to Section 41010.<sup>149</sup>
4. For purposes of the review required, a governing body of the charter school may consider qualitative information, including, but not limited to, findings that result from the school quality reviews or any other reviews.<sup>150</sup>
5. To the extent practicable, data reported pursuant to Section 47606.5 shall be reported in a manner consistent with how information is reported on a school accountability report card.<sup>151</sup>
6. The charter school shall consult with teachers, principals, administrators, other school personnel, parents, and pupils in developing the annual update.<sup>152</sup>

## **S. Length of Charter School Approval and Renewal of Charter Petition**

A charter may be granted by a school district, county board of education, or the State Board of Education for a period not to exceed five years. A school district governing board, county board of education or State Board of Education may grant one or more subsequent renewals. Each renewal shall be for a period of five years. A material revision of the provisions of a charter petition may be made only with the approval of the chartering authority. The

<sup>148</sup> Education Code section 47606.5(a).

<sup>149</sup> Education Code section 47606.5(b).

<sup>150</sup> Education Code section 47606.5(c).

<sup>151</sup> Education Code section 47606.5(d).

<sup>152</sup> Education Code section 47606.5(e).

authority that granted the charter may inspect or observe any part of the charter school at any time.<sup>153</sup>

Renewals and material revisions of charters are governed by the same provisions as charter applications and shall include, but not be limited to, a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed. The authority that granted the charter shall 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. For purposes of this section, “all groups of pupils served by the charter school” means a numerically significant pupil subgroup as defined in Section 52052(a)(3),<sup>154</sup> served by the charter school.<sup>155</sup>

Commencing on January 1, 2005, or after a charter school has been in operation for four years, whichever is later, a charter school must meet at least one of the following criteria prior to receiving a charter renewal:

1. Attained its Academic Performance Index (API) growth target in the prior year or in two of the last three years, both schoolwide and for all groups of pupils served by the charter school.
2. Ranked in deciles 4 to 10, inclusive, on the API in the prior year or two of the last three years.
3. Ranked in deciles 4 to 10, inclusive, on the API for a demographically comparable school in the prior year or in two of the last three years.
4. The entity that granted the charter determines that the academic performance of the charter school is at least equal to the academic performance of the public schools that the charter school pupils would otherwise have been required to attend, as well as the academic performance of the schools in the school district in which the charter school is located, taking into account the composition of the pupil population that is served at the charter school.<sup>156</sup>

The chartering authority’s determination of the above criteria must be based upon all of the following:

1. Documented and clear and convincing data.
2. Pupil achievement data from assessments, including, but not limited to, the standardized testing and reporting program for demographically similar pupil populations in the comparison schools.

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<sup>153</sup> Education Code section 47607(a)(1).

<sup>154</sup> At least 30 pupils, each of whom has a valid test score.

<sup>155</sup> Education Code section 47607(a)(2).

<sup>156</sup> Education Code section 47607(b).

3. Information submitted by the charter school.<sup>157</sup>

A petition for renewal shall be considered by a school district governing board upon receipt of documentation that the charter school meets at least one of the criteria specified in Education Code section 47607(b) and a copy of the renewal charter petition including a reasonably comprehensive description of how the charter school has met all new charter school requirements enacted into law after the charter was originally granted or last renewed.<sup>158</sup> When considering a renewal petition, the governing board shall consider past performance of the school shall consider the past performance of the school's academics, finances, and operation in evaluating the likelihood of future success, along with future plans for improvement if any.<sup>159</sup> If within 60 days of receipt of the renewal petition, the governing board has not made written factual findings as required by Education Code section 47605 (b), the absence of findings shall be deemed an approval of the renewal petition.<sup>160</sup>

The chartering authority must submit to the Superintendent of Public Instruction copies of supporting documentation and a written summary of the basis for any determination made based on the above criteria. The Superintendent of Public Instruction shall review the materials and make recommendations to the chartering authority based on that review. The review may be the basis for a recommendation made pursuant to Section 47604.5 (i.e., substantial and sustained departure from measurably successful practices such that continued departure would jeopardize the educational development of the school's pupils).<sup>161</sup> A charter renewal may not be granted to a charter school prior to 30 days after that charter school submits materials.<sup>162</sup>

If either a school district governing board or a county board of education, as a chartering agency, does not grant a renewal to a charter school pursuant to Section 47607, the charter school may submit its application for renewal pursuant to the procedures pertaining to a denial of the petition for establishment of a charter school (i.e., appeal to the county board of education or State Board of Education).<sup>163</sup>

## **T. Revocation of a Charter**

A charter may be revoked by the authority that granted the charter if the chartering authority finds, through a showing of substantial evidence, that the charter school did any of the following:

1. Committed a material violation of any of the conditions, standards or procedures set forth in the charter.

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<sup>157</sup> Education Code section 47607(b).

<sup>158</sup> 5 California Code of Regulations section 11966.4 (a). The signature requirement of Education Code section 47605 (a) is not applicable to a petition for renewal.

<sup>159</sup> 5 California Code of Regulations section 11966.4 (b).

<sup>160</sup> 5 California Code of Regulations section 11966.4 (c). The school board and charter petitioner may extend this date by an additional 30 days by written mutual agreement.

<sup>161</sup> Education Code section 47607(b).

<sup>162</sup> Education Code section 47607(b)(4)(D).

<sup>163</sup> Education Code section 47607.5. See also 5 California Code of Regulations section 11966.5 (nonrenewals submitted to county boards of education (and section 11966.6 (nonrenewals submitted to the State Board of Education)).

2. Failed to meet or pursue any of the pupil outcomes identified in the charter.
3. Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.
4. Violated any provision of law.<sup>164</sup>

The authority that granted the charter shall 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 revoke a charter.<sup>165</sup> In American Indian Model Schools v. Oakland Unified School District,<sup>166</sup> the Court of Appeal held that Education Code section 47607 (a) (3) (A) requires charter school authorizers to consider pupil academic achievement for all groups, and numerically significant subgroups, of pupils as the “most important factor” in determining whether or not to revoke a charter, and that the record of revocation from the school district governing board must show substantial evidence to support a finding that pupil academic achievement was considered as the most important factor.

In AIMS, the Oakland Unified School District board revoked the charter operator’s three charters on the basis of fiscal mismanagement and violations of law. Based on the grounds for revocation, funding for AIMS was discontinued pursuant to Education Code section 47607 (i). After the County Board of Education upheld the revocation, AIMS filed for injunctive relief. The trial court granted relief, highlighting the excellent academic performance of the charter schools.<sup>167</sup> On appeal, the court opined that specific findings based on substantial evidence must be made to show the charter school authorizer considered pupil achievement as the “most important factor;” statements such as “track record of high performance” and “[t]he District has considered the academic achievement of the AIMS program and considers the AIM’[s] academic record as the paramount factor to consider during the revocation process” were deemed insufficient.<sup>168</sup> In addition, the appellate court held that section 47607 (i) does not absolutely bar a charter school with a revoked charter from receiving funding during the pendency of appeals.<sup>169</sup>

Prior to revocation, the authority that granted the charter shall notify the charter school of any violation of Section 47607 and give the school a reasonable opportunity to remedy the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.<sup>170</sup>

Prior to revoking a charter for failure to remedy a violation pursuant to Education Code section 47607(d), and after expiration of the charter school’s reasonable opportunity to remedy

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<sup>164</sup> Education Code section 47607(c).

<sup>165</sup> Education Code section 47607(c)(2).

<sup>166</sup> \_\_\_ Cal.Rptr.3d (2014), WL 2811562 (Cal.App.1 Dist).

<sup>167</sup> Id. at 17-18.

<sup>168</sup> Id. at 14, fn. 11.

<sup>169</sup> Id. at 18-19. In footnote 16, the appellate court further opined that “the burden caused by closing the charter school is not uniform. The closing of three charter schools where the students’ academic achievement has been outstanding has a different consequence for the students and community than the closing of charter schools where the students have low API scores.”

<sup>170</sup> Education Code section 47607(d); 5 California Code of Regulations section 11968.5.3.

without successfully remedying the violation, the chartering authority must provide a written notice of intent to revoke and notice of facts in support of revocation to the school.<sup>171</sup> No later than 30 days after providing the notice of intent to revoke a charter, the chartering authority must hold a public hearing on the issue of whether evidence exists to revoke the charter. No later than 30 days after the public hearing, the chartering authority must issue a final decision to revoke or decline to revoke the charter, unless the chartering authority and the charter school agree to extend the issuance of the decision by an additional 30 days. The chartering authority shall not revoke a charter unless it makes written factual findings supported by substantial evidence, specific to the charter school that supports its findings.<sup>172</sup>

If a school district is the chartering authority and it revokes a charter, the charter school may appeal the revocation to the county board of education within 30 days following the final decision of the chartering authority.<sup>173</sup> The county board may reverse the revocation decision if the county board determines that the findings made by the chartering authority are not supported by substantial evidence. The school district may appeal the reversal to the State Board of Education.<sup>174</sup> If the county board does not issue a decision on the appeal within 90 days of receipt, or the county board upholds the revocation, the charter school may appeal the revocation to the State Board. The State Board may reverse the revocation decision if the State Board determines that the findings made by the chartering authority are not supported by substantial evidence. The State Board may uphold the revocation decision of the school district if the State Board determines that the findings made by the chartering authority are supported by substantial evidence.<sup>175</sup>

If a county office of education is the chartering authority and the county board revokes the charter, the charter school may appeal the revocation to the State Board within 30 days following the decision of the chartering authority. The State Board may reverse the revocation decision if the State Board determines that the findings made by the chartering authority are not supported by substantial evidence.<sup>176</sup>

If the revocation decision of the chartering authority is reversed on appeal, the agency that granted the charter shall continue to be regarded as the chartering authority.<sup>177</sup> During the pendency of an appeal, a charter school whose revocation proceedings are based on paragraph (1) or (2) of Education Code section 47607(c) (i.e., that the charter school committed a material violation of any of the conditions, standards, or procedures set forth in the charter, or failed to meet or pursue any of the pupil outcomes identified in the charter), shall continue to qualify as a charter school for funding and for all other lawful purposes, and may continue to hold all existing grants, resources, and facilities, in order to ensure that the education of pupils enrolled in the school is not disrupted.<sup>178</sup>

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<sup>171</sup> 5 California Code of Regulations section 11968.5.2.

<sup>172</sup> Education Code section 47607(e).

<sup>173</sup> 5 California Code of Regulations section 11968.5.4.

<sup>174</sup> 5 California Code of Regulations section 11968.5.5.

<sup>175</sup> Education Code section 47607(f).

<sup>176</sup> Education Code section 47607(g).

<sup>177</sup> Education Code section 47607(h).

<sup>178</sup> Education Code section 47607(i).

Immediately following the decision of a county board to reverse a decision of a school district to revoke a charter, the following shall apply:

1. The charter school shall qualify as a charter school for funding and all other lawful purposes.
2. The charter school may continue to hold all existing grants, resources, and facilities.
3. Any funding, grants, resources, and facilities that had been withheld from the charter school, or that the charter school had otherwise been deprived of use, as a result of the revocation of the charter, shall be immediately reinstated or returned.<sup>179</sup>

A final decision of a revocation or appeal of a revocation shall be reported to the chartering authority, the county board, and the California Department of Education.<sup>180</sup>

All meetings of the governing board of the school district and the county board of education at which the granting, revocation, appeal or renewal of a charter petition is discussed must comply with the open meeting requirements of the Brown Act.<sup>181</sup>

If a charter school fails to improve pupil outcomes for three or more pupil subgroups identified in Section 52052, or, if the charter school has less than three pupil subgroups, all of the charter schools' pupil subgroups, in regard to one or more state or school priorities identified in the charter, in three out of four consecutive years, all of the following shall apply:

1. Using an evaluation rubric adopted by the State Board of Education pursuant to Education Code section 52064.5, the chartering authority shall provide technical assistance to the charter school.
2. The Superintendent of Public Instruction may assign, at the request of the chartering authority and with the approval of the State Board of Education, the California Collaborative for Educational Excellence to provide advice and assistance to the charter school pursuant to Section 52074.<sup>182</sup>

A chartering authority shall consider for revocation any charter school to which the California Collaborative for Educational Excellence has provided advice and assistance, and about which it has made either of the following findings, which shall be submitted to the chartering authority:

1. That the charter school has failed, or is unable, to implement the recommendations of the California Collaborative for Educational Excellence.

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<sup>179</sup> Education Code section 47607(j).

<sup>180</sup> Education Code section 47607(k).

<sup>181</sup> Education Code section 47608.

<sup>182</sup> Education Code section 47607.3(a).

2. That the inadequate performance of the charter school, based upon an evaluation rubric adopted pursuant to Section 52064.5, is either so persistent or so acute as to require revocation of the charter.<sup>183</sup>

A chartering authority shall consider increases in pupil academic achievement for all pupil subgroups served by the charter school as the most important factor in determining whether to revoke the charter.<sup>184</sup>

A chartering authority shall comply with the hearing process described in Section 47607(e) in revoking a charter. A charter school may not appeal a revocation of a charter school made pursuant to Section 47607.3.<sup>185</sup>

In Today's Fresh Start Inc. v. Los Angeles County Office of Education,<sup>186</sup> the California Supreme Court upheld the provisions of Education Code section 47607, which set forth the procedures for revoking a charter.

Today's Fresh Start Inc. challenged its charter revocation alleging that the procedure violated due process. The court noted that charter schools are independently operated but are part of the public school system. The court noted that Education Code section 47607 specifies the grounds for revoking a charter. Section 47607 requires the chartering authority to provide notice of violations that could lead to revocation, an opportunity to cure, notice of intent to revoke if the school fails to cure, a public hearing, and a written decision with factual findings supporting any revocation decision. The statute also provides an administrative appeals process to contest the charter revocation.<sup>187</sup>

The California Supreme Court reviewed case law under both the federal and state Constitutions with respect to due process and held that Section 47607's charter revocation procedures comply with due process requirements.

The court held that the plaintiffs failed to show actual bias by the Los Angeles County Superintendent of Schools or any conflict of interest by the general counsel. The court pointed out that the general counsel's role was to advise staff and the county office of their duties under the law and that the general counsel did not act as a prosecutor and did not argue in favor or against revocation of the charter. The court held that the general counsel was not in a position of defending a prior action and the county board was deciding in the first instance whether to revoke the charter not reviewing a decision already reached. The court also held that it was permissible for county office of education staff to discuss their recommendation with county board members. The court rejected Today's Fresh Start's position that the county board members should be prohibited from communicating with its own staff.<sup>188</sup> The California Supreme Court concluded, "Considering the record as a whole, we conclude the evidence that

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<sup>183</sup> Education Code section 47607.3(b).

<sup>184</sup> Education Code section 47607.3(c). See AIMS v. Oakland Unified School District, *infra*.

<sup>185</sup> Education Code section 47607.3(d).

<sup>186</sup> 57 Cal.4<sup>th</sup> 197, 303 P.3d 1140, 159 Cal.Rptr.3d 358, 294 Ed.Law Rep. 1052 (2013).

<sup>187</sup> *Id.* at 1146.

<sup>188</sup> *Id.* at 1160-1162.

Today's Fresh Start presents establishes neither actual bias nor an unconstitutional risk of actual bias."<sup>189</sup>

The California Supreme Court also rejected Today's Fresh Start's contention that an evidentiary hearing was required. The court held that Today's Fresh Start was given the opportunity to be heard at a meaningful time and in a meaningful manner, and therefore, the process was constitutional.<sup>190</sup> The court concluded by stating, "The Legislature's choices here comport with due process."<sup>191</sup>

## IX.

### CHARTER SCHOOL OPERATION

#### A. Compliance with Existing Law

A charter school is required to comply with the provisions of the Charter School Law and all of the provisions set forth in its charter but is otherwise exempt from the laws governing school districts (e.g., Education Code) except the provisions of Education Code sections 41365 (Charter School Revolving Loan Funds), 47611 (State Teachers' Retirement Plan), and all laws establishing minimum age for public school attendance.<sup>192</sup>

Charter school facilities must comply with the California Building Standards Code by January 1, 2007. However, a charter school facility is exempt from the Building Standards Code if either of the following conditions apply:

1. The charter school facility complies with Education Code section 17280 et seq. and Section 17365 et seq.; or
2. The charter school facility is exclusively owned or controlled by an entity that is not subject to the California Building Standards Code, including, but not limited to, the federal government.<sup>193</sup>

#### B. Retirement Benefits

If a charter school chooses to make the State Teachers' Retirement Plan available, all employees of the charter school who perform creditable service shall be entitled to have that service covered under the plan's Defined Benefit Program or Cash Balance Benefit Program and all provisions regulating the State Teachers' Retirement System shall apply in the same manner as the provisions apply to other public schools in the school district that granted the charter.<sup>194</sup>

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<sup>189</sup> *Id.* at 1160.

<sup>190</sup> *Id.* at 1160-62.

<sup>191</sup> *Id.* at 1162.

<sup>192</sup> Education Code section 47610.

<sup>193</sup> Education Code section 47610.5.

<sup>194</sup> Education Code section 47611(a).

If a charter school offers its employees coverage by the State Teachers' Retirement System (STRS) or the Public Employees' Retirement System (PERS), or both, the charter school shall inform all applicants for positions within that charter school of the retirement system options for employees of the charter school.<sup>195</sup> The information shall specifically include whether the charter school makes available to employees coverage under the STRS, the PERS, or both systems and that accepting employment in the charter school may exclude the applicant from further coverage in the applicant's current retirement system, depending on the retirement options offered by the charter of the charter school.<sup>196</sup>

At the request of a charter school, a school district or county office of education that is the chartering authority of the charter school shall create any reports required by the STRS and the PERS. The school district or county office of education may charge the charter school for the actual cost of the reporting services. As a condition of creating and submitting reports for STRS and PERS, the school district or county office of education shall not require a charter school to purchase payroll processing services from the chartering authority. Information submitted on behalf of the charter school to STRS, PERS, or both, shall be in a format conforming to the requirements of those systems.<sup>197</sup>

### **C. Collective Bargaining**

The provisions of the Education Employment Relations Act (EERA) shall apply to charter schools. A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for purposes of the EERA. If the charter school is not so deemed the public school employer, the school district where the charter is located shall be deemed the public school employer. If the charter of a charter school does not specify that it shall comply with those statutes and regulations governing public school employers that establish and regulate tenure, or a merit or civil service system, the scope of representation for that charter school shall also include discipline and dismissal of charter school employees.<sup>198</sup>

The Public Employment Relations Board (PERB) shall take into account the Charter School Act of 1992 when deciding cases brought before it related to charter schools.<sup>199</sup> The approval or a denial of a charter petition by a granting agency shall not be controlled by collective bargaining agreements or subject to review or regulation by the PERB. By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer, and such declaration shall not be materially inconsistent with the charter.<sup>200</sup>

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<sup>195</sup> Education Code section 47611(b)(1).

<sup>196</sup> Education Code section 47611(b)(2).

<sup>197</sup> Education Code section 47611.3.

<sup>198</sup> Education Code section 47611.5.

<sup>199</sup> Education Code section 47611.5(d), California Teachers Association v. Public Employment Relations Board, 169 Cal.App.4<sup>th</sup> 1076, 87 Cal.Rptr.3d 530 (2009) (holding that PERB is expressly required to take into account the unique goals of the Charter Schools Act, including the legislative intent for charter schools to "create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site" pursuant to Education Code section 47601 (d)).

<sup>200</sup> Education Code section 47611.5.

## **D. Control of Charter Schools**

A charter school shall be deemed to be under the exclusive control of the officers of the public schools for purposes of Article IX, Section 8 of the California Constitution, with regard to the appropriation of public monies to be apportioned to any charter school, including, but not limited to, appropriations made for the purposes of the Charter School Law. The average daily attendance in a charter school may not, in any event, be generated by a pupil who is not a California resident. To remain eligible for generating charter school apportionments, a pupil over 19 years of age shall be continuously enrolled in public school and make satisfactory progress toward award of a high school diploma.<sup>201</sup>

A charter school shall be deemed to be a school district for the purposes of Education Code sections 14000 et seq. (apportionment of state school funds), 41301 (state school funding), 41302.5 (Proposition 98 funding of schools), Sections 41850, et seq. (state funding of home to school transportation), and Sections 8 and 8.5 of Article XVI of the California Constitution (Proposition 98 – public school funding).<sup>202</sup>

Notwithstanding any other provisions of law and as a condition of apportionment, a charter school is required to do all of the following:

1. Offer, at a minimum, the same number of minutes of instruction set forth in Education Code section 46201(a)(3) for the appropriate grade levels.
2. Maintain written contemporaneous records that document all pupil attendance and make these records available for audit and inspection.
3. Certify that its pupils have participated in the state testing programs in the same manner as other pupils attending public schools as a condition of apportionment of state funding.<sup>203</sup>

A reduction in apportionment shall be proportional to the magnitude of the exception that causes the reduction. The Superintendent of Public Instruction shall withhold from the charter school's apportionment for average daily attendance for each charter school that fails to offer pupils the required minimum number of minutes of instruction, the sum of that apportionment multiplied by the percentage of the minimum number of minutes of instruction at each grade level that the charter school failed to offer.<sup>204</sup>

A charter school that has an approved charter may receive funding for nonclassroom-based instruction only if a determination for funding is made by the State Board of Education pursuant to Education Code section 47634.2. The determination for funding shall be subject to any conditions or limitations the State Board of Education may prescribe.<sup>205</sup>

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<sup>201</sup> Education Code section 47612.

<sup>202</sup> Education Code section 47612(c).

<sup>203</sup> Education Code section 47612.5(a).

<sup>204</sup> Education Code section 47612.5(c).

<sup>205</sup> Education Code section 47612.5(d).

## E. Supervisorial Oversight

A chartering authority may charge for the actual costs of supervisorial oversight of a charter school not to exceed one percent of the revenue of the charter school.<sup>206</sup> A chartering authority may charge for the actual costs of supervisorial oversight of a charter school not to exceed three percent of the revenue of the charter school if the charter school is able to obtain substantially rent-free facilities from the chartering authority.<sup>207</sup> A charter school may separately purchase administrative or other services from the chartering authority or any other source.<sup>208</sup>

## F. Charter School Facilities

Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.<sup>209</sup>

The school district may charge the charter school a pro rata share (based on the ratio of space allocated by the school district to the charter school, divided by the total space of the district) of those school district facilities costs which the school district pays for with unrestricted general fund revenues. The charter school shall not be otherwise charged for the use of the facilities. No school district shall be required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter school students.<sup>210</sup>

Each year, each charter school desiring facilities from a school district in which it is operating shall provide the school district with a reasonable projection of the charter school's average daily classroom attendance by in-district students for the following year. The district shall allocate facilities to the charter school for that following year based upon this projection. If the charter school, during that following year, generates less average daily attendance by in-district students than it projected, the charter school shall reimburse the district for the over-allocated space at rates to be set by the State Board of Education.<sup>211</sup> Facility requests based on projections of fewer than 80 units of average daily attendance for the year may be denied by the school district.<sup>212</sup>

The Charter School Facility Grant Program, established by the California Department of Education, is intended to provide assistance with facilities rent and lease costs for pupils in charter schools. Charter schools may apply for funding.<sup>213</sup>

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<sup>206</sup> Education Code section 47613(a).

<sup>207</sup> Education Code section 47613(b).

<sup>208</sup> Education Code section 47613(d).

<sup>209</sup> Education Code section 47614(b).

<sup>210</sup> Education Code section 47614(b)(1).

<sup>211</sup> Education Code section 47614(b)(2).

<sup>212</sup> Education Code section 47614(b)(4).

<sup>213</sup> Education Code section 47614.5.

The Court of Appeal in Sequoia Union High School District v. Aurora Charter High School,<sup>214</sup> held that the Sequoia Union High School District was required to provide facilities to a charter high school located within its boundaries and educating high school students residing in the high school district even though an elementary school district approved the charter. The Court of Appeal held that Education Code section 47614(b) clearly states that each school district must make facilities available to charter schools operating within their geographic boundaries sufficient for the charter school to accommodate all of the charter school's in-district students.<sup>215</sup>

In November 2000, Education Code section 47614 was amended when the voters approved Proposition 39. Section 47614 now provides that school districts must make facilities available to charter schools operating in the district that will accommodate all the charter school's in-district students. The district is required to allocate facilities to the charter school based on the charter school's projected average daily classroom attendance of in-district students for the following year. The district may deny facilities if the projection is fewer than 80 units of average daily attendance.<sup>216</sup>

In December 2001, Aurora made a "Proposition 39" request to the high school district for facilities, beginning July 1, 2002, based on a projection of 110 units of average daily attendance by in-district students. In March 2002, the high school district denied the request, stating that the projected average daily attendance did not appear to be realistic and that the facilities request should have been directed to the elementary district that granted Aurora's charter. The high school district requested Aurora to provide a factual basis for its average daily attendance projection and to provide legal authority for its claim that the high school district rather than the elementary school district was obligated to provide facilities to Aurora.<sup>217</sup>

In August 2002, Aurora provided a declaration under penalty of perjury, stating that Aurora had identified 97 students residing in the high school district who showed interest in enrolling in Aurora for the 2002-2003 school year. The declaration stated that Aurora students historically maintained 95 percent attendance, so Aurora projected more than 92 units of average daily attendance for the 2002-2003 school year.<sup>218</sup>

The Superior Court concluded that Aurora's projected enrollment and attendance were reasonable and that the high school district was therefore obligated to provide facilities to Aurora. The Superior Court ordered the high school district to provide facilities to Aurora. The high school district then appealed.<sup>219</sup>

The Court of Appeal held that Education Code section 47614, as amended by Proposition 39, stated that public school facilities should be shared fairly among all public school pupils, including those in charter schools.

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<sup>214</sup> 112 Cal.App.4<sup>th</sup> 185, 181 Ed.Law.Rep. 211 (2003).

<sup>215</sup> *Ibid.*

<sup>216</sup> Education Code section 47614(b).

<sup>217</sup> *Id.* at 190.

<sup>218</sup> *Id.* at 190.

<sup>219</sup> *Id.* at 190-191.

The Court of Appeal held that the language of Section 47614(b) does not limit the responsibility of providing facilities to the school district that approved the charter school's charter, but rather imposes the obligation on each school district in which a charter school provides education to students who live in that district and who, if not attending the charter school, would have to be accommodated by schools in that district. The court noted that Aurora was educating high school students who reside in the high school district and would be attending the high school district, not the elementary school district. Therefore, the Court of Appeal held that under the plain meaning of Section 47614(b), the high school district must make its facilities available to Aurora's students.<sup>220</sup>

The Court of Appeal also noted that Education Code section 47605(a)(6), beginning January 1, 2003, does not allow a school district to approve a petition to establish a charter school serving students in a grade level that is not served by that district (i.e., an elementary school district may not approve a charter for high school students and a high school district may not approve a charter for elementary school students).<sup>221</sup> The Court of Appeal went on to state:

“In plain, straightforward language, the statute permits the school, if it has the requisite projected student enrollment from each district in which it operates, to request facilities from all those districts, and it mandates all those districts to provide facilities to accommodate their in-district students who attend that charter school, if their projected number meets the statutory minimum. Therefore, if a charter school has elementary and high school students and it operates, geographically, in both an elementary and high school district, both districts are obligated to provide facilities if the requisite number of students from both districts attend the school.”<sup>222</sup>

The Court of Appeal noted that if the charter school provides a reasonable projection and offers some explanation in its facilities request for the basis of the projection, the school district must provide the facilities. The Court of Appeal noted that the charter school may subsequently be penalized if its projection was incorrect, by having to reimburse the district for over-allocated space. The Court of Appeal found that Aurora's projection of 110 students was reasonable under the circumstances and that Aurora had explained its projection based on historical attendance rates, its current enrollment of 90 students, the expressed interest of current students and their families of continuing their education at Aurora, and the expressed interest of prospective students and their families in attending Aurora during the next academic year.<sup>223</sup>

The Court of Appeal noted that the State Board of Education adopted regulations that became operative August 29, 2002, that required the charter schools to submit a written facilities request that includes certain specified information.<sup>224</sup> The Court of Appeal noted that although the regulations permitted a district to question the projected enrollment, they do not permit the

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<sup>220</sup> *Id.* at 191-196.

<sup>221</sup> *Id.* at 193.

<sup>222</sup> *Id.* at 193.

<sup>223</sup> *Id.* at 194-196.

<sup>224</sup> Cal. Code Regs., Title 5, sections 11969.1-11969.9.

district to deny the request once the charter school has responded to the district's concerns with a showing of a projected 80 units of average daily attendance.<sup>225</sup>

In Los Angeles International Charter High School v. Los Angeles Unified School District,<sup>226</sup> the Court of Appeal held that Proposition 39<sup>227</sup> requires public school districts to share their facilities fairly among all public school students, including those in charter schools, by providing charter schools with facilities sufficient to accommodate all of the charter schools in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools in the district, and by making reasonable efforts to provide those facilities near where the charter school wishes to locate.<sup>228</sup> The Court of Appeal held that the Los Angeles Unified School District complied with the requirements of Education Code section 47614 when it offered to provide classrooms at Belmont High School for the charter school.

Education Code section 47614 states that public school facilities should be shared fairly among all public school pupils, including those in charter schools. Education Code section 47614(b) states in part:

“Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.”

The implementing regulations<sup>229</sup> established the method for determining reasonable equivalency under Education Code section 47614(b). The school district must first create a comparison group of district-operated schools with similar grade levels that serve students living in the attendance area in which the largest number of students of the charter school resides. The school district then contrasts the comparison group school's capacity, specialized classroom space, and various factors of physical condition and infrastructure to determine which school meets the requirements of Section 47614(b).

The Los Angeles International Charter High School is a high school chartered by the Los Angeles Unified School District in 2005. The charter school submitted a Proposition 39 request to the district for facilities for projected in-district average daily attendance of approximately 157

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<sup>225</sup> 112 Cal.App.4<sup>th</sup> 185, 196 (2003).

<sup>226</sup> 209 Cal.App.4<sup>th</sup> 1348, 147 Cal.Rptr.3d 757, 284 Ed.Law Rep. 1017 (2012).

<sup>227</sup> In November, 2000, California voters approved Proposition 39. Proposition 39 amended the Charter School Act, effective November 8, 2000, and amended Education Code section 47614.

<sup>228</sup> See, Education Code section 47614.

<sup>229</sup> 5 California Code of Regulations section 11969.3.

students for the 2010-2011 school year. In its application, the charter school indicated that it wished to locate within the area served by Franklin High School. The school district offered Belmont High School. The superior court ruled that the school district, in offering Belmont High School, complied with Education Code section 47614. The charter school appealed.<sup>230</sup>

The Court of Appeal reviewed the school district's analysis of the comparable school facilities. The school district created a comparison group of schools at the same grade level as the charter school which included Belmont High School, Franklin High School, Lincoln High School, and Wilson High School, all of which were near where the charter school stated in its application in which it wished to be located. In weighing these schools, the district concluded that almost all of the high schools in northeast Los Angeles lacked classrooms available to accommodate the charter school students. By comparison, Belmont High School, a high school campus nearest to the charter school's private campus and Franklin High School, had eight contiguous full-sized exclusive use classrooms available for academic year 2010-2011 (which the district allocated as seven classrooms and one office) in a building separate from the main part of the campus, but with immediate access to a wide array of shared-use facilities. The district's analysis also contained a chart showing what facilities were available at all of the comparison schools.<sup>231</sup>

Comparing campus conditions and infrastructure at each of the schools, the district found that Belmont High School's facilities were reasonably equivalent to, if not better than, all of the comparison group schools with respect to campus size and condition due to 54 modernization and upgrade construction projects at Belmont High School that were greater than the renovations at the other comparison schools.<sup>232</sup>

With respect to capacity, the district described how it assessed the capacity of each school site for available classrooms, the manner in which classrooms are used, the operating capacity of each school, and the present and projected uses of district school sites. Belmont High School had the best ratio of classrooms-to-students and had specialized classroom space and non-teaching station space, such as an office, an auditorium, library, athletic fields, and cafeteria.<sup>233</sup>

The district also provided capacity data for the comparison schools. Although Wilson High School was operating slightly below capacity, it did not have sufficient classrooms available to accommodate the 157 charter school students. Lincoln High School was operating at over-capacity because its total campus capacity was 2,379, and total enrollment was 2,485.<sup>234</sup>

At Franklin High School, there were 81 available seats located randomly throughout the campus. However, these empty seats did not translate into a single free classroom. The district explained that a school may be able to absorb 100 or more students into its existing classrooms by adding three, four or five seats per classroom, but that is a different proposition than providing three empty classrooms with the same total number of contiguous available seats. The

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<sup>230</sup> 209 Cal.App.4<sup>th</sup> 1348, 1352 (2012).

<sup>231</sup> *Id.* at 1356-58.

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

<sup>234</sup> *Id.* at 1359.

difficulty of carving out whole classrooms is compounded on the high school level where students do not sit in one room all day, but move around to different classrooms with different groups of students.<sup>235</sup>

The school district also presented evidence of the harm to district students of carving out the charter school's exclusive classrooms at Franklin High School as the charter school requested. The district would have had to redistribute eight classrooms serving 40 classes, displace 240 students, and force eight teachers with five different periods each day to vacate their classrooms, so as to provide the 157 charter school students with eight contiguous classrooms in the midst of the school year. The school district detailed the effects of this disruption which would cause school administrators to recalculate the master schedule, disturb instructional programs, and interrupt the ongoing education of the Franklin High School students.<sup>236</sup>

The school would have also had to institute a program of classroom sharing by dismantling the dedicated assignment of classrooms to specific teachers and requiring those teachers to travel from room-to-room each day carrying all of their materials with them. Not only would this have created particular challenges for specialized classrooms, such as science labs, but requiring teachers to travel disrupts lesson continuity and interferes with essential classroom facilities, such as bulletin boards and storage space. The district would have had to disperse 240 Franklin High School students to other similar classes or to other schools in the middle of the academic year, upending the schedules of those students, and potentially putting them at academic disadvantage.<sup>237</sup>

Based on these findings, the Court of Appeal rejected the charter school's contention that the district was required to offer Franklin High School. The Court of Appeal found that the school district provided adequate analysis of comparable schools and that the school district met the requirements of Proposition 39 as it had eight contiguous classrooms available at Belmont High School. The Court of Appeal rejected the charter school's contention that the school district was required to offer the school of its choice, Franklin High School.<sup>238</sup>

The Court of Appeal found that the school district made reasonable efforts to provide the charter school with facilities in the area the charter school wished to be placed, namely at or near Franklin High School. The Court of Appeal noted that Belmont High School lies only three miles outside the geographic area identified by the charter school in its facilities application and is closer to the geographic area the charter school requested than Wilson High School, another comparison school, and Marshall High School, one of the schools the charter school named as an alternative. The Court of Appeal noted that only Belmont High School met all of the Proposition 39 factors and it would have been disruptive to Franklin High School to place 157 charter school students in eight contiguous classrooms in the middle of the school year at Franklin High School.<sup>239</sup> The Court of Appeal stated:

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<sup>235</sup> *Ibid.*

<sup>236</sup> *Id.* at 1359-60.

<sup>237</sup> *Id.* at 1360.

<sup>238</sup> *Ibid.*

<sup>239</sup> *Id.* at 1361.

“More to the point, Section 47614, subdivision(b) does not entitle LAICHS [the charter school] to facilities in the specific location it desires, if so doing would favor charter school students over other district students. Proposition 39 requires that facilities ‘should be shared fairly among all public school pupils, including those in charter schools.’ . . . To move large numbers of students in a district-run school to new campuses, force teachers to travel in the midst of an academic year, just to provide LAICHS eight contiguous classrooms in the school in which it wants to be placed, would put LAICHS’ needs over those of the Franklin High School population and would not ‘strike a fair balance between the needs of the charter school and those of the district run schools.’ A holding that the district must provide facilities a charter school requests, on demand and without regard to overcrowding or the impact on other public school students, would tip the balance too far in favor of the charter school.”<sup>240</sup>

### **G. Local Control and Accountability Plans (LCAP) for Charter Schools**

The Local Control and Accountability Plan (LCAP) statutes apply to charter schools as well. Education Code section 52064(a) states that on or before March 31, 2014, the State Board of Education shall adopt templates for use by charter schools to meet the requirements of Education Code section 47606.5.

Education Code section 47604.32(c) states that each chartering authority shall ensure that each charter schools under its authority complies with all reports required of charter schools by law, including the annual update to the LCAP required to pursuant to Section 47606.5.<sup>241</sup> Education Code section 47604.33(a)(2) states that on or before July 1, an annual LCAP update shall be prepared by the charter school as required by Section 47606.5.

Education Code section 47604.5(d) states that the State Board of Education, whether or not it is the authority that granted the charter may, based on the recommendation of the Superintendent of Public Instruction, take appropriate action, including, but not limited to, revocation of a school’s charter when the State Board of Education finds that the charter school has failed to improve pupil outcomes across multiple state and school priorities identified in the charter and the charter school’s LCAP.

Education Code section 47605(b)(5)(A)(ii), as amended effective July 1, 2013, states that the charter petition for the establishment of a charter school must include a description of the annual goals for all pupils and for each subgroup of pupils identified pursuant to Education Code section 52052, to be achieved in the state priorities, as described in Section 52060(d) that apply for the grade level served, or the nature of the program operated, by the charter school, and the specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities and the specific annual actions to achieve those

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<sup>240</sup> *Id.* at 1362.

<sup>241</sup> Stats. 2013, ch. 47 (AB 97), effective July 1, 2013.

goals.<sup>242</sup> Section 47605(b)(5)(B) states that pupil outcomes shall align with the state priorities, as described in Section 52060(d), that apply for the grade level served, or the nature of the program operated, by the charter school. To the extent practical, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

Education Code section 47605.6(b)(5)(A)(ii), as amended effective July 1, 2013, states that a petition for a countywide charter shall include a description of the annual goals for all pupils and for each subgroup of pupils identified pursuant to Education Code section 52052, to be achieved in the state priorities, as described in Section 52060(d), that apply for the grade levels served, or the nature of the program operated, by the charter school, and specific annual actions to achieve those goals. A charter petition may identify additional school priorities, the goals for the school priorities, and the specific annual actions to achieve those goals. The pupil outcomes shall align with the state priorities, as described in Section 52060(d), that apply for the grade levels served, or the nature of the program operated, by the charter school. To the extent practical, the method for measuring pupil outcomes for state priorities shall be consistent with the way information is reported on a school accountability report card.

Education Code section 47606.5<sup>243</sup> states that on or before July 1, 2015, and each year thereafter, a charter school shall update the goals and annual actions to achieve those goals identified in the charter. The annual update shall be developed using the template developed by the State Board of Education and shall include all of the following:

1. A review of the progress toward the goals included in the charter, an assessment of the effectiveness of the specific actions described in the charter toward achieving the goals, and a description of changes to the specific actions the charter school will make as a result of the review and assessment.
2. A listing and description of the expenditures for the fiscal year implementing the specific actions included in the charter as a result of the reviews and assessments.

Education Code section 47606.5(b) states that the expenditures identified shall be classified using the California School Accounting Manual pursuant to Section 41010. The governing body of a charter school may consider qualitative information including, but not limited to, findings that result from school quality reviews or any other reviews. To the extent practical, data reported pursuant to Section 47606.5 shall be reported in a manner consistent with how information is reported on a School Accountability Report Card. The charter school shall consult with teachers, principals, administrators, other school personnel, parents, and pupils in developing the annual update.

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<sup>242</sup> Stats. 2013, ch. 47 (AB 97), effective July 1, 2013.

<sup>243</sup> Stats. 2013, ch. 47 (AB 97), effective July 1, 2013.

Education Code section 47607.3<sup>244</sup> states that if a charter school fails to improve outcomes for three or more pupil subgroups identified pursuant to Section 52052, or, if the charter school has less than three pupil subgroups, all of the charter school's pupil subgroups in regard to one or more state or school priorities identified in the charter in three out of four consecutive school years, all of the following shall apply:

1. Using an evaluation rubric adopted by the State Board of Education pursuant to Education Code section 52064.5, the chartering authority shall provide technical assistance to the charter school.
2. The Superintendent of Public Instruction may assign, at the request of the chartering authority and with the approval of the State Board of Education, the California Collaborative for Educational Excellence to provide advice and assistance to the charter school pursuant to Section 52074.

Education Code section 47607.3(b) states that a chartering authority shall consider for revocation any charter school to which the California Collaborative for Educational Excellence has provided advice and assistance and about which it has made either of the following findings, which shall be submitted to the chartering authority:

1. That the charter school has failed, or is unable, to implement the recommendations of the California Collaborative for Educational Excellence.
2. That the inadequate performance of the charter school, based upon an evaluation rubric adopted pursuant to Section 52064.5, is either so persistent or so acute as to require revocation of the charter.

Education Code section 47607.3(c) states that the chartering authority shall consider increases in pupil academic achievement for all pupil subgroups served by the charter school as the most important factor in determining whether to revoke the charter. Section 47607.3(d) states that a chartering authority shall comply with the hearing process described in Section 47607(e) in revoking a charter. A charter school may not appeal a revocation of a charter made pursuant to this section.

## **X.**

### **INDEPENDENT STUDY**

Notwithstanding any other provision of law and except to the extent inconsistent with Education Code section 47612.5 (instructional minutes) and Section 47634.2 (separate funding scheme for charter schools operating independent study programs), a charter school that provides

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<sup>244</sup> Stats. 2013, ch. 47 (AB 97), effective July 1, 2013.

independent study must comply with all of the provisions in the Education Code for independent study set forth at Section 51745 et seq., and implementing regulations,<sup>245</sup> and as a condition of receiving state apportionments must do all of the following:

1. Offer, at a minimum, the same number of minutes as other schools in the public school system for each grade level as required by law.
2. Maintain written contemporaneous records that document all pupil attendance and make these records available for audit and inspection.
3. Certify that its pupils have participated in state testing programs in the same manner as other pupils attending public schools.

The State Board of Education is required to adopt regulations that apply the independent study requirements to charter schools.<sup>246</sup>

The governing board of a school district, a county office of education, or a charter school may offer independent study to meet the educational needs of pupils.<sup>247</sup> Educational opportunities offered through independent study may include the following:

1. Special assignments extending the content of regular courses of instruction.
2. Individualized study in a particular area of interest or in a subject not currently available in the regular school curriculum.
3. Individualized alternative education designed to teach the knowledge and skills of the core curriculum. Independent study shall not be provided as an alternative curriculum.
4. Continuing and special study during travel.
5. Volunteer community service activities that support and strengthen student achievement.<sup>248</sup>

A special education student may not participate in independent study unless his or her individualized educational program specifically provides for that participation.<sup>249</sup> A temporarily disabled student may not receive individual instruction through independent study.<sup>250</sup> No courses included among the courses required for high school graduation shall be offered exclusively through independent study.<sup>251</sup>

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<sup>245</sup> Implementing regulations include 5 California Code of Regulations sections 11963.2 through 11963.7.

<sup>246</sup> Education Code section 47612.5(b). See 5 California Code of Regulations section 11963.1.

<sup>247</sup> See Education Code section 51745 et seq.; Ops.Cal.Atty.Gen. 253 (1995).

<sup>248</sup> Education Code section 51745(a).

<sup>249</sup> Education Code section 51745(c).

<sup>250</sup> Education Code section 51745(d).

<sup>251</sup> Education Code section 51745(e).

The ratio of average daily attendance for independent study pupils 18 years of age or less to school district full-time equivalent certificated employees responsible for independent study, calculated as specified by the State Department of Education, shall not exceed the equivalent ratio of pupils to full-time certificated employees for all other educational programs operated by the school district.<sup>252</sup>

A charter school, school district or county office of education shall not be eligible to receive apportionments for independent study by pupils, regardless of age, unless it has adopted written policies, pursuant to rules and regulations adopted by the Superintendent of Public Instruction that include, but are not limited to, all of the following:

1. The maximum length of time, by grade level and type of program, that may elapse between the time an independent study assignment is made and the date by which the pupil must complete the assigned work.
2. The number of missed assignments that will be allowed before an evaluation is conducted to determine whether it is in the best interests of the pupil to remain in independent study or whether he or she should return to the regular school program. A written record of the findings of any evaluation must be treated as a mandatory interim pupil record and maintained for a period of three years from the date of evaluation.
3. A requirement that a current written agreement for each independent study pupil be maintained on file including, but not limited to, all of the following:
  - a. The manner, time, frequency and place for submitting pupil's assignments and for reporting his or her progress.
  - b. The objectives and methods of study for the pupil's work, and the methods utilized to evaluate that work.
  - c. The specific resources, including materials and personnel that will be made available to the pupil.
  - d. A statement of the policies adopted regarding the maximum length of time allowed between the assignment and the completion of the pupil's assigned work, and the number of missed assignments allowed prior to an evaluation of whether or not the pupil should be allowed to continue in independent study.
  - e. The duration of the independent study agreement, including the beginning and ending dates for the pupil's participation in independent study under the agreement. No independent study agreement shall be valid for any period longer than one semester or one half year for a school on a year-round calendar.

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<sup>252</sup> Education Code section 51745.6(a).

- f. A statement of the number of course credits or, for the elementary grades, other measures of academic accomplishment appropriate to the agreement, to be earned by the pupil upon completion.
- g. The inclusion of a statement in each independent study agreement that independent study is an optional, educational alternative, in which no pupil may be required to participate.
- h. Each written agreement shall be signed, prior to the commencement of independent study, by the pupil, the pupil's parent, legal guardian, or caregiver, if the pupil is less than 18 years of age, the certificated employee who has been designated as having responsibility for the general supervision of independent study, and all persons who have direct responsibility for providing assistance to the pupil.<sup>253</sup>

A charter school may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the agency has provided any funds or other thing of value to the pupil or his or her parent or guardian that the agency does not provide to pupils who attend regular classes or to their parents or guardians. A charter school may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the charter school has provided any funds or other thing of value to the pupil or his or her parent or guardian that a school district could not provide to a similarly situated pupil of the school district or to his or her parent or guardian.<sup>254</sup>

## XI.

### SPECIAL EDUCATION STUDENTS

A petition for the establishment of a charter school shall not be denied based on the actual or potential cost of serving special education students.<sup>255</sup> A school district shall not be prevented from meeting its obligation to ensure that the proposed charter school will meet the needs of individuals with exceptional needs in accordance with state and federal law, nor shall there be limitation or alteration of the reasons for denying a petition for the establishment of a charter school.<sup>256</sup>

The Education Code requires that special education students in charter schools be served in the same manner as they are served in other public schools.<sup>257</sup> It is the intent of the Legislature that local plans for special education local plan areas (SELPAs) shall provide for federal funds to special education students in charter schools.<sup>258</sup>

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<sup>253</sup> Education Code section 51747(c).

<sup>254</sup> Education Code section 51747.3(a).

<sup>255</sup> Education Code section 47605.7(a).

<sup>256</sup> Education Code section 47605.7(b).

<sup>257</sup> Education Code section 56145.

<sup>258</sup> Education Code section 56146.

Under federal law, the duty to serve special education students also applies to charter schools. The Individuals with Disabilities Education Act (IDEA) states that charter schools that are public schools of the school district must serve children with disabilities attending charter schools in the same manner as the district serves children with disabilities in its other schools. In addition, the school district must provide funds to charter schools in the same manner as it provides funds to its other schools.<sup>259</sup>

The statutory language does not require that the charter school maintain special education programs for all disabled children, including low incidence disabilities, but it requires the charter school to maintain special education programs that are typically located in each public school in the district (e.g., RSP programs). Many charter petitions that have been submitted to school districts make the assumption that all special education children will be served outside of the charter school, including RSP children. Such an approach violates the IDEA.

The IDEA regulations contain a number of provisions that refer to charter schools. 34 C.F.R. Section 300.28 includes a public charter school established by a local educational agency within the definition of local educational agency. As a result, all regulations which set forth requirements for local educational agencies apply to public charter schools as well. Section 300.33 includes public charter schools that are not otherwise included as local educational agencies within the definition of public agency.

Section 300.209(a) states that children with disabilities who attend public charter schools and their parents retain all rights under the IDEA. Section 300.209(b) states that if the public charter school is a school of a local educational agency (i.e., school district) that receives federal funding, the local educational agency is responsible for ensuring that the requirements of the IDEA are met, unless state law assigns that responsibility to some other entity. Section 300.209(c) states that if a public charter school is itself a local educational agency that receives federal funding, the charter school is responsible for ensuring that the requirements of the IDEA are met, unless state law assigns that responsibility to some other entity. The state law in California is silent on this issue. Therefore, in California the responsibility for charter school compliance with the IDEA remains with the school district that granted the charter.

Therefore, it is a violation of federal law for charter schools to refuse to serve special education students. Charter schools should serve special education children in the same manner as other schools in the district. Special education programs which are typically located at each school must also be located at the charter school. Special education programs which, due to the low incidence of the disability, are provided at a limited number of schools in the district or are regionalized may continue to be located in this manner.

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<sup>259</sup> 20 U.S.C. § 1413(a)(5).

## APPENDIX A

### CHARTER SCHOOL QUESTIONS AND REQUESTS FOR INFORMATION FOR CHARTER SCHOOL PETITIONERS

**Please answer the following questions and attach to your response the requested information regarding your Charter School petition. The failure to satisfactorily answer all questions and provide all information requested may be grounds for denial of your Charter School petition.**

#### GENERAL

1. What accreditations does your Charter School have? How will the Charter School (if serving high school students) assure postsecondary education institutions that its graduates are prepared to enter college courses?
2. How was the curriculum developed? Was the curriculum developed by a university or a school district? Did the university or school district copyright the curriculum? Have you obtained appropriate releases from the university or school district to utilize the curriculum?
3. What is the proposed teacher/student ratio for the Charter School? How do you intend to serve the students? How often will the students have contact with their teachers? Could you describe the background and experience of the teachers you intend to employ at the Charter School?

#### CORPORATE INFORMATION

4. Will all of the Charter School's records be open to inspection by the public and the school district? Will all financial records, including an itemized budget with the salaries of all officers and employees be open to inspection by the school district? Will the Charter School comply with the provisions of the Public Records Act, Government Code sections 6250 et seq.?
5. Will all meetings of the Board of Directors of the Charter School be publicly advertised and open to the public? Will the Charter School comply with the provisions of the Brown Act, Government Code sections 54950 et seq.?
6. What is the date of incorporation for your corporation?
7. Does your corporation hold public Board meetings? If so, what are the dates, times, and places of these meetings? Please attach copies of minutes of board meetings for the past two years.
8. Are there any lawsuits pending against your organization regarding Charter Schools?

9. Are any of the approved vendors from which supplies and materials will be purchased, relatives or personal friends of the Chief Executive Officer/Director of the Charter School or Charter School board members?
10. Is the Chief Executive Officer/Director or any of the Charter School Board members financially interested in any of the businesses of the vendors (i.e., an owner, investor, director, officer, employee or agent of the company)?
11. Will the Charter School comply with the competitive bidding requirements of the Public Contract Code? What procedures will be used?
12. What happens if all of this funding is not used at the end of the year?
13. How is that funding spent?
14. Is there an approved vendor list?
15. How is that approved vendor list compiled?
16. Please attach a copy of the Articles of Incorporation and Bylaws of your corporation.
17. What are the names, addresses, and telephone numbers of the corporate officers of your corporation? Please provide a list of the names, addresses, and telephone numbers.
18. What are the names, addresses, and telephone numbers of all members of the Board of Directors for your corporation?
19. What corporate resolutions or other actions have been taken by the Board of Directors? Has the Charter School corporation approved any contracts with a private management company? If yes, who? Please provide a list of the names, addresses, and telephone numbers of the corporate officers of the private management company. Are there any individuals or family members serving both the Charter School and the private management company? Who?
20. What school districts has your corporation submitted Charter School petitions to? What is the status of these petitions? How many charter schools do you presently have in California? Have you had any Charter School petitions revoked or rescinded?

### **FINANCIAL INFORMATION**

21. Does your corporation have a conflict of interest code adopted by the Board of Directors for your corporation? If so, please provide the District with a copy. Are you aware of any conflict of interest that would violate Government Code section 1090 et seq., or the Political Reform Act, Government Code section 87100 et seq.? Does your conflict of

interest policy comply with or incorporate Government Code section 1090 et seq. and 87100 et seq.?

22. What experience does your corporation have in the areas of special education, bilingual education, and regular education?
23. What public or private entities do you plan to contract with? For what purposes/services will you contract with other public and/or private agencies? Please provide the Articles of Incorporation and Bylaws of each of these agencies as well as the names, addresses, and telephone numbers of the officers and management employees of these companies.
24. What services will be provided via contracted public or private entities versus services provided by Charter School employees? Please give us a detailed description of these services.
25. How will the Charter School respond and enforce audit exceptions, deficiencies, and recommendations and ensure that the expenditure of public tax funds is appropriate and consistent with state and federal law? What checks and balances will be in place to ensure that Charter School funds are spent in an appropriate manner?
26. What level of property and liability insurance will the Charter School maintain to protect both the Charter School and the school district as the agency that granted the petition?
27. Who will administer the Charter School's workers' compensation program? What level of reserve will the Charter School maintain in order to safeguard both itself and the school district?
28. What locations within the District are proposed for Charter Schools?
29. Does your corporation have any lease agreements held by the corporation for school locations within the school district? What is the amount of rent specified in these leases? How much is the rent per square foot? How many square feet are being leased?
30. What percentage of your budget will be spent on direct services to students?
31. How will you determine your student/teacher ratio? Will you comply with District regulations?
32. Is a private management company going to control and manage the Charter School? Please give us a detailed description of services to be provided by the private management company versus services to be provided by corporate employees. Please provide a copy of any contracts or agreements with the private management company.
33. Do you engage in business dealings with family members or companies owned or controlled by yourself or family members? Please summarize these business dealings.

34. Please list the 10 companies with whom you presently transact the most business. Are you or your family members, directors, officers, principals or employees of any of these companies? Please list the names, addresses, and telephone numbers of the officers of each of these companies.
35. Have any of the officers, directors, principals, or employees associated with this charter ever been convicted of a felony? Of a crime that would disqualify them from employment in the public schools of California? Terminated for cause by a school district in California?
36. Do any other Charter School petitions presently pending in the County of Orange, contain one or more of these same signatures?

### **DISABLED STUDENTS**

37. How will the Charter School, as a public institution, provide for the needs of students identified under the Individuals with Disabilities Education Act (IDEA), if the school district chooses not to be the LEA? Do you plan to contract with an outside agency to provide any of these services?
38. Is your corporation prepared to comply with IDEA, Section 504, ADA, Title IX, and other federal requirements? Please provide information to assure that the corporation is prepared to comply.
39. What number and types of special education students have been previously and are currently serviced by your corporation?

### **STUDENT ISSUES**

40. Does your corporation charge fees for materials required of students or parents in order to enroll in the Charter School? If so, what are these fees?
41. What are the graduation standards adopted by your proposed Charter School?
42. Do you have course outlines, descriptions, and objectives, for each course offered? Please provide copies.
43. How many credits will you require for graduation? What specific subjects will be required? What electives will be offered? Will you have a G.P.A. requirement for graduation?
44. How will the Charter School provide substantial proof that the curriculum and instruction provided to students who wish to return to District schools will meet the District's course and graduation requirements and pass the District's requirements of competency?

45. What disciplinary standards and procedures have been developed for use by your Charter School to ensure compliance with state law and constitutional mandates?
46. What will be your procedures for suspensions and expulsions? How will you guarantee due process? Where will your expelled students be educated?
47. What educational policies and procedures have been adopted by your corporation?
48. Please provide test score summaries of all Charter Schools currently or previously operated by your corporation. Please provide copies of all test scores on standardized state tests required by state law.

### **AFFILIATED CHARTER SCHOOLS**

49. Is the Chief Executive Officer/Director affiliated presently with any other Charter School?
50. What is the name of that Charter School?
51. What is the Chief Executive Officer/Director's role with that Charter School?
52. Will this affiliation continue?
53. Where is this Charter School located?

### **INDEPENDENT STUDY**

54. [If an independent study program is proposed] Please describe how the Charter School will comply with Education Code section 51745 and its implementing regulations regarding independent study.

### **EMPLOYEE SALARIES**

55. How will the salary of the Chief Executive Officer/Director be determined?
56. Is there a maximum salary for the Chief Executive Officer/Director?

### **ADDITIONAL SERVICES**

57. Do you have a model contract for additional services provided to parents? Does the Charter School charge parents for these additional services? How are additional services defined?
58. How does the Charter School determine whether it will pay a tutor?
59. What is the compensation rate for a tutor?

60. What qualifications must the tutor possess?

### **INSURANCE**

61. [If operated as a nonprofit corporation] Does the Charter School nonprofit corporation have error and omissions insurance for the Board of Directors? What is the policy limit?
62. [If operated as a nonprofit corporation] Does the Charter School bond the top management of the Charter School so that the chartering authority will be indemnified if any public funds are improperly spent?

### **REPORTING**

63. Is the Charter School willing to annually report to the chartering authority all assets and liabilities?
64. Is the Charter School willing to annually report to the chartering authority the total compensation of all officers and management employees of the Charter School? Is the Charter School willing to provide copies of all W-2 forms of officers and top management employees to the chartering authority on an annual basis?
65. Is the Charter School willing to annually report all payments over a specified amount to vendors and independent contractors?
66. Is the Charter School willing to identify all relatives and their spouses on the Charter School payroll or on the payroll of any company which contracts with the Charter School?
67. Is the Charter School willing to have all contracts for health and welfare benefits for Charter School employees pre-approved by the chartering authority?
68. Is the Charter School intending to form or join any joint powers agencies? If yes, which ones? Is the Charter School willing to seek pre-approval from the chartering authority before forming or joining any joint powers agencies?
69. Is the Charter School intending to purchase any real property? Is the Charter School willing to obtain pre-approval of the chartering authority before purchasing any real property?
70. Is the Charter School intending to purchase or lease any vehicles for Charter School employees? If yes, is the Charter School willing to obtain pre-approval from the chartering authority before purchasing or leasing any vehicles?

**APPENDIX B**

**CHARTER SCHOOL CHECKLIST**

- \_\_\_\_\_ 1. Has the petition been submitted in a timely manner? Petitioners have 180 days from the date of denial to file the petition with the county board of education or the State Board of Education. 5 C.C.R. §11967.
- \_\_\_\_\_ 2. Does the petition identify a single charter school that will operate within the geographic boundaries of the school district? The Charter School must be located within the geographic boundaries of the school district with certain limited exceptions. Education Code section 47605.1(a)(2).
- \_\_\_\_\_ 3. Has the petition been signed by a sufficient number of parents? The petition must be signed by “a number of parents or legal guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.” Education Code section 47605(a)(1)(A).
- \_\_\_\_\_ 4. As an alternative to #3, has the petition been signed by a sufficient number of teachers?
- \_\_\_\_\_ 5. Does the petition include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child attend the Charter School, or in the case of a teacher’s signature, that the teacher is meaningfully interested in teaching at the Charter School? Education Code section 47605(a)(3) requires such a statement.
- \_\_\_\_\_ 6. Was the proposed charter attached to the petition when the parents or teachers signed the petition? Education Code section 47605(a)(3) requires that the proposed charter be attached to the petition.
- \_\_\_\_\_ 7. Does the Charter School present an unsound educational program for the students to be enrolled in the Charter School?
- \_\_\_\_\_ 8. Are the petitioners demonstrably unlikely to successfully implement the program set forth in the petition?
- \_\_\_\_\_ 9. Does the petition contain an affirmation of each of the conditions described in Education Code section 47605(d)?
- \_\_\_\_\_ 10. Does the petition contain reasonably comprehensive descriptions of all the following required by Education Code section 47605(b)(5):

\_\_\_\_\_ A description of the educational program of the school, designed, among other things, to identify those who the school is attempting to educate, what it means to be an educated person in the 21<sup>st</sup> century and how learning best occurs. The goals identified in that program shall include the objective of enabling students to become self-motivated, competent, and lifelong learners. A description of how the Charter School will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements must also be included.

\_\_\_\_\_ The measurable student outcomes identified for use by the Charter School.

\_\_\_\_\_ The method by which student progress and meeting those pupil outcomes is to be measured.

\_\_\_\_\_ The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

\_\_\_\_\_ The qualifications to be met by individuals to be employed by the school.

\_\_\_\_\_ The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.

\_\_\_\_\_ The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

\_\_\_\_\_ Admission requirements, if applicable.

\_\_\_\_\_ The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

- \_\_\_\_\_ The procedures by which pupils can be suspended or expelled.
  
- \_\_\_\_\_ The manner by which staff members of the Charter School will be covered by the State Teachers Retirement System, the Public Employees Retirement System, or federal social security.
  
- \_\_\_\_\_ The public school attendance alternatives for pupils residing within the school district who choose not to attend Charter Schools.
  
- \_\_\_\_\_ A description of the rights of any employee of the school district upon leaving the employment of the school district to work in the Charter School, and of any rights of return to the school district after employment at the Charter School.
  
- \_\_\_\_\_ The procedures to be followed by the Charter School and the entity granting the charter to resolve disputes relating to provisions of the charter.
  
- \_\_\_\_\_ A declaration whether or not the Charter School shall be deemed the exclusive public school employer of the employees of the Charter School for the purpose of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).
  
- \_\_\_\_\_ A description of the procedures to be used if the Charter School closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the Charter School, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

## APPENDIX C

### CALIFORNIA CHARTER ACADEMY AUDIT REPORT

The California Department of Education, in cooperation with the Orange County Superintendent of Schools and the San Bernardino County Superintendent of Schools, released an audit of the California Charter Academy prepared by Fiscal Crisis Management Assistance Team (FCMAT) and MGT of America. The audit report outlined a pattern of conflict of interest, lack of fiscal oversight, inappropriate claiming of state funds, and unauthorized transfer of funds by the Charter School.

Specifically, the audit report found the following:

- The charter school boards did not exercise adequate oversight over charter school funds and Steven Cox, the Chief Executive Officer of the charter school.
- The charter school boards did not review and approve all expenditures.
- Charter school funds were used to pay one staff person \$375,000 for few measurable services.
- Employees from a private management company established by Steven Cox were transferred to the charter school payroll without justification.
- Two charter school board members received funding from the charter school for programs that they administered.
- Three charter school board members accepted political campaign contributions from the private management company established by Steven Cox while serving on the charter school board.
- One charter school board member received a contract from three of the charter schools while sitting on the board of a fourth charter school.
- One charter school board member sold her family business to Steven Cox, the Chief Executive Officer of all four charter schools and the private management company, while serving on the charter school board.
- Seven board members served in incompatible offices by concurrently serving on more than one charter board.
- California Charter Academy operated 15 sites outside the boundaries of the authorizing districts and inappropriately received at least \$8.3 million in charter school funds.

- Contrary to the Education Code, California Charter Academy operated eight schools that were private school conversions for which the California Charter Academy improperly claimed \$14.8 million in charter school funds.
- There was no functional separation between the finances of the California Charter Academy and the private management corporation established by Steven Cox, which resulted in improper transfers of funds.

In addition, the audit report cited specific conduct of the Chief Executive Officer, Steven Cox, which indicated a conflict of interest:

- Mr. Cox transferred \$3.5 million from the California Charter Academy bank accounts to his private corporation without the approval of the charter school boards.
- Mr. Cox inappropriately directed more than \$920,000 of charter school funds to one of his private subsidiary companies.
- Mr. Cox used \$1.2 million of charter school funds to employ members of his family and grant them generous retroactive pay increases.
- Mr. Cox's private corporation charged the charter schools high administrative fees.
- Mr. Cox increased the charter schools' administrative costs by charging the charter schools for certain administrative costs that should have been covered under the administrative service fees already paid to the private corporation.
- Mr. Cox used \$1.2 million in charter school funds for questionable contracts and expenditures without competitive bids and without sufficient evidence that the goods and services were actually received, including payments to firms owned by former employees of his private corporation and charter school board members.

The audit report makes a number of recommendations for legislation to improve the oversight of charter schools. The report recommends clarification of the oversight responsibilities and authority given to school districts with clear authority to prevent fiscal mismanagement. The report also recommends an audit guide for charter schools and limits on loans by charter schools. Clarification of conflict of interest laws as explicitly applying to charter schools would also be helpful.