



## LEGAL UPDATE

### *ADVISORY COMMISSION ON CHARTER SCHOOL'S ADOPTS A PROPOSAL FOR PERMANENT REGULATIONS FOR SENATE BILL 740 TO PRESENT TO THE STATE BOARD OF EDUCATION*

#### *SB740: NONCLASSROOM BASED CHARTER SCHOOLS FUNDING DETERMINATION*

The Advisory Commission on Charter Schools (“ACCS”) adopted a proposal at its meeting of May 23, 2002, for permanent regulations to implement Senate Bill 740 (“SB 740”). The proposal, which was developed by the California Department of Education (“CDE”) shall be presented to the State Board of Education (“SBE”) at its meeting of May 30, 2002. Should the SBE approve of the proposal, or some variation thereof, it shall publish the resulting proposed regulations for a fifteen (15) day public comment period. The proposal may subsequently be reviewed along with public comment by the ACCS for needed revisions and may be ultimately adopted as permanent regulations at the June 27, 2002, meeting of the SBE. If permanent regulations are not adopted by the SBE by its June meeting, the next opportunity for approval by the SBE will not be until mid-September at its next Board meeting. The emergency regulations shall remain in place until permanent regulations are adopted by the SBE and approved by the Office of Administrative Law (“OAL”), or shall lapse naturally on September 11, 2002, unless they are extended at the request of the SBE and approved by the OAL.

The following represents a summary of the proposal adopted by the ACCS for permanent regulations:

#### **FOR THE 2002-03 FISCAL YEAR**

- I. To receive the 80 percent funding level  
A charter school must demonstrate **ALL** of the following:
  1. The charter school’s total expenditures on certificated employee salaries<sup>1</sup> and benefits must be at least 35 percent of the charter school’s total public revenues; **AND**
  2. The charter school’s total expenditures on instruction and instruction-related activities must be at least 55 percent of the charter school’s total revenues<sup>2</sup>.

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<sup>1</sup> The Commission voted to include within the definition of “certificated employee salaries” expenditures for contracted certificated special education instructors (regardless of whether the contract is with the District, the County, the SELPA, or a private company).

<sup>2</sup> Please note the distinctions in the definitions for the phrases “total public revenues” and “total revenue” as used in these criteria (definitions listed below). “Total revenues” would include federal start-up, implementation, and dissemination grant funds, and all local revenue, and total public revenues would only include local in lieu property tax funding and none of the aforementioned grants.

II. To receive full funding

A charter school must demonstrate **ALL** of the following:

1. The charter school's total expenditures on certificated employee salaries and benefits must be at least 50 percent of the charter school's total public revenues.

III. Less than 80 percent funding

If a charter school does not meet **All** of the minimum requirements to receive 80 percent funding, then the funding level is 70 percent unless there are mitigating factors.

Mitigating factors for 2002-2003 include:<sup>3</sup>

1. Facilities
2. The charter school satisfactorily describes the reasons and/or proposed uses of it excess ending balances.
3. The charter school satisfactorily responds to questions 2,3, and 4 of the additional required information, regarding its contracts, conflict of interest policies, and payments to the district.<sup>4</sup>
4. Other individual circumstances of the charter school.
5. Whether the charter school's pupil-teacher ratio as calculated pursuant to Education Code Section 51745.6 is greater than the pupil-teacher ratio of the largest unified school district in the county or counties in which the charter school operates.

**FOR THE 2003-04 FISCAL YEAR AND EACH FISCAL YEAR THEREAFTER**

I. To receive the 70 percent funding level

A charter school must demonstrate **ALL** of the following:

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<sup>3</sup> It is the writers understanding that these mitigating factors (as used in 2002-2003 and 2003-2004) may be used at the Commission's discretion to either boost or lower a charter school's funding level. None of the "criteria" are listed in the proposed regulations without giving the Commission and the State Board some discretion regarding their funding decision.

<sup>4</sup> This would include responses to questions regarding the following:

- a. Entities that received \$50,000 or more of the charter school's total expenditures and whether the contracted services are based upon a fee per specific service rendered or on a percentage of the ADA or charter school's revenues or enrollment
- b. Membership of the charter school governing board, and how those members are selected, and whether the school has adopted a conflict of interest policies and procedures
- c. An Explanation of expenditures to District or County

1. The charter school's total expenditures on certificated employee salaries and benefits must be at least 40 percent of the charter school's total public revenues **AND**
  2. The charter school's total expenditures on instruction and instruction-related activities must be at least 60 percent of the charter school's total revenues.
- II. To receive one-half of the difference between the 70 percent funding level and full funding  
A charter school must demonstrate **ALL** of the following:
1. The charter school's total expenditures on certificated employee salaries and benefits must be at least 50 percent of the charter school's total public revenues; **AND**
  2. The charter school's total expenditures on instruction and instruction-related activities must be at least 70 percent of the charter school's total revenues.
- III. To receive full funding  
A charter school must demonstrate **ALL** of the following:
1. The charter school's total expenditures on certificated employee salaries and benefits must be at least 50 percent of the charter school's total public revenues; **AND**
  2. The charter school's total expenditures on instruction and instruction-related activities must be at least 80 percent of the charter school's total revenues; **AND**
  3. The charter school's pupil-teacher ratio as calculated pursuant to Education Code Section 51745.6 must be no greater than the pupil-teacher ratio of the largest unified school district in the county or counties in which the charter school operates.
- IV. Less than 70 percent funding  
If a charter school does not meet **ALL** of the minimum requirements to receive 70 percent funding, then the funding level is zero, unless there are mitigating factors.

Mitigating Factors for the 2003-2004 fiscal year and fiscal years thereafter include:

1. Facilities
2. The charter school satisfactorily describes the reasons and/or proposed uses of it excess ending balances.
3. The charter school satisfactorily responds to questions 2,3, and 4 of the additional required information, regarding its contracts, conflict of interest policies, and payments to the district.

4. Other individual circumstances of the charter school.
5. Whether the charter school's pupil-teacher ratio as calculated pursuant to Education Code Section 51745.6 is greater than the pupil-teacher ratio of the largest unified school district in the county or counties in which the charter school operates.

#### **DEFINITIONS, ETC.**

Total public revenues - equals the sum of all federal revenue (less federal Public Charter School Grant Program start-up, implementation, and dissemination grant funds), state revenue, and local revenue from in-lieu property taxes.

Total revenues - equals the sum of all federal revenue (including start-up, implementation, and dissemination grant funds), state revenue, and local revenue, but does not include the ending balance from the prior fiscal year.

Small and new schools - serious consideration for full funding shall be given to charter schools with **less than 100 units of average daily attendance** as measured in the preceding year of the application for funding or that are in their **first year of operation**.

Proposed language to clarify charter school "employees" - for the purposes of calculating the certificated employee salary and benefit percentage:

Certificated special education instructors may be counted as "employees" even if they are on contract with the charter school from the District, the County, the SELPA, or a private company.

All other District employees (non-special education) may be considered charter employees if all of the following conditions are met:

1. The district is the employer of all charter staff;
2. The district is the ultimate governing authority for the charter school (i.e. the charter school is not incorporated separately from the district);
3. The district's certificated employees are assigned exclusively to work at the charter school or, if assigned to the charter on a part-time or itinerant basis, only if the charter school pays for the services on a documented fee-for-service basis rather than as part of a master services contract with the district.

Under no circumstances shall certificated employees of the district that provide services as part of a master agreement between the charter and the district be considered charter school employees.

There was a lot of discussion amongst ACCS members as to whether full funding may take into consideration a pending ten percent (10%) budget cut proposed by the governor of non-charter independent study programs. The ACCS considered whether full funding would be 90% if the

budget cut goes through. The ACCS members who supported full funding at 90% if the budget cut is imposed argued that if non-charter independent study programs are cut, non-classroom based charter programs should receive the same cut. Alternatively, the members of the ACCS and the public in attendance at the ACCS meeting who did not support this theory argued that non-charter programs already receive more funding than charter programs, and the SB 740 process is the process by which charter programs may receive an analogous or more severe cut in funding. The ACCS decided to post-pone any decision on this issue until a final determination is made by the State regarding the Governor's proposed budget cut for non-charter independent study programs.

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If you should have any questions regarding this update, please contact Lisa Corr at the Law Offices of Spector, Middleton, Young & Minney, LLP, at (916) 646-1400 or by e-mail at [lcorr@smymlaw.com](mailto:lcorr@smymlaw.com)

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