

Initial Statement of Reasons Facilities for Charter Schools

SECTION 11969.1 PURPOSE.

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**SECTION 11969.9. PROEDUCRES AND TIMELINES FOR THE REQUEST FOR,
REIMBURSEMENT FOR, AND PROVISION OF, FACILITIES.**

**SECTION 11969.10. PROCEDURES AND TIMELINES FOR DISPUTE
RESOLUTION REGARDING FACILITIES FOR CHARTER SCHOOLS.**

SPECIFIC PURPOSE OF THE REGULATION

The proposed amendments will clarify and expand existing provisions and add content to the section pertaining to procedures and timelines for dispute resolution.

NECESSITY/RATIONALE

Education Code (EC) sections 47605 and 47605.6 authorize the establishment of charter schools upon the approval of charter petitions that meet specified requirements. Depending on particular circumstances, petitions may be approved by school district governing boards, county boards of education, or the State Board of Education (SBE). The body approving a petition is known as the charter authorizer.

Proposition 39 (November 2000) lowered the percentage necessary to pass local school bonds from two-thirds to 55 percent. The change has led to the approval of some \$30 billion in additional local school bonds over the past six years. Along with this substantial benefit to school districts, Proposition 39 established *EC* Section 47614. Regardless of the charter authorizer, *EC* Section 47614 requires each school district to make available to each charter school operating within the 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.” *EC* Section 47614 also requires that facilities made available to a charter school be “contiguous, furnished, and equipped” and that the district “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 facilities “remain the property of the school district.”

When a school district makes facilities available to a charter school, the district may charge the school for the facilities costs paid for by the district with unrestricted general fund revenues. The charge is to be pro rata, i.e., based upon the ratio of the space allocated to the charter school divided by the district's total space. When a charter school desires to be allocated space, it must annually submit a reasonable projection of average daily attendance generated by in-district students. If a charter school that has been allocated space generates less average daily attendance than projected, the charter school must reimburse the district for the over-allocated space.

In 2002, the State Board of the Education adopted regulations to implement the provisions of *EC* Section 47614. The regulations are located in *California Code of Regulations*, Title 5, Division 1, Chapter 11, Subchapter 19, Article 3 (commencing with Section 11969.1). These regulations were developed with assistance from a workgroup broadly representative of the education community, including charter schools, school administrators, school boards, and teachers. A key provision of the regulations (*CCR*, Title 5, Section 11969.10) related to dispute resolution procedures. Though in effect temporarily, this section was ultimately rejected by the Office of Administrative Law because the Department of Finance disagreed with the State Board's finding that the dispute resolution provision would impose no costs on governmental entities. However, all of the other provisions of the regulations have been and continue to be operative.

California Department of Education (CDE) staff received direction to review the existing regulations with the assistance of a similarly representative workgroup. The specific objective was to identify amendments that would update, clarify, or enhance the existing regulations based on the past four years' experience, including pertinent published appellate level decisions. The workgroup process commenced in January 2006 and ended in August 2006. The workgroup members were exceedingly generous in contributing their time and expertise to develop ideas for consideration. The workgroup was not convened with the expectation of reaching complete consensus, nor were its members (or the organizations they represented) bound in any way to support the final package in whole or in part.

Using the workgroup input and other sources of information, including the knowledge and expertise of staff, proposed regulatory amendments were prepared by the CDE and presented to the Advisory Commission on Charter Schools (ACCS) on November 27, 2006. The ACCS recommended that the SBE proceed with initiation of the rulemaking process following further review and incorporation of changes as necessary.

Specifically, the proposed regulatory additions and amendments do the following:

Section 11969.1. Currently, this section consists solely of a general purpose statement indicating that the article governs the provision of facilities by school districts to charter schools.

- An additional subdivision stipulates that nothing in the article shall prohibit, by mutual agreement, an alternative to specific compliance. The workgroup process revealed that some charter schools and school districts viewed the regulations' existence as precluding any alternative except where narrowly and specifically allowed within the regulations themselves. The additional subdivision addresses that issue, specifying that, if a charter school and a school district mutually agree to an alternative to specific compliance, nothing in the article shall prohibit implementation of the alternative (without limitation).

Section 11969.2. This section defines certain terms used in Education Code section 47614.

- Subdivision (a) currently defines "average daily classroom attendance" as being only average daily attendance (ADA) claimed for classroom-based apportionments. The addition states that nothing prohibits a school district from allowing a charter school to also include nonclassroom-based ADA in average daily classroom attendance, but only to the extent of the instructional time that the students generating the nonclassroom-based ADA are actually in the classroom under the direct supervision and control of an employee of the charter school, and only if the school district and the charter school agree upon the time(s) that facilities devoted to the students generating nonclassroom-based ADA will be used.

Some nonclassroom-based charter schools (known as "hybrid" or "personalized learning" schools) serve students in the classroom for a portion of the students' total instructional time. However, the portion of in-classroom time is less than 80 percent of the affected students' total instructional time. Therefore, pursuant to Education Code section 47612.5, the students do not generate ADA for classroom-based apportionments. The workgroup process revealed that some districts felt obligated to prohibit the inclusion of nonclassroom-based ADA in average daily classroom attendance regardless of circumstance. The addition makes clear that a school district is not prohibited from allowing the inclusion of nonclassroom-based ADA to the extent students generating the ADA are actually served in the classroom, provided the school district and charter school agree upon the time(s) that facilities devoted to students generating nonclassroom-based will be used.

- Subdivisions (b) and (c) define, respectively, “operating in the school district” and “in-district students.” No changes are proposed.
- Subdivision (d) defines “contiguous.” In *Ridgecrest Charter School v. Sierra Sands Unified School District* (30 Cal.Rptr.3d 648), the Court of Appeal addressed the issue of a school district making facilities available to a charter school at multiple locations. Review of the *Ridgecrest* decision in the workgroup process revealed an addition that would be beneficial to this subdivision. Under the addition, in reviewing a charter school’s request for facilities, a school district is required to give the charter school’s in-district students the same consideration as students in the district-run schools, subject to the requirement that the facilities provided to the charter school must be contiguous. In other words, a school district (1) is not permitted to treat a charter school’s in-district students with less consideration than students in the district-run schools and (2) in allocating and providing access to facilities to a charter school, a school district must begin from the premise that the facilities are to be on a single school site, except where the district is unable to accommodate the students on a single site. In moving along the continuum away from a single site, the obligations of a school district are to minimize the number of sites and to consider student safety. The process the school district follows to meet these obligations should be documented in the public record.
- Subdivision (e) defines “furnished and equipped.” The proposed changes are as follows:
 - (1) The reference to “all” furnishings and equipment is modified to “reasonably equivalent” furnishings and equipment and tied back to “the comparison group schools.” Input received in the workgroup process indicated that both changes would make the subdivision more amenable to practical administration.
 - (2) The reference “conduct classroom-based instruction” is divided into two component parts: “conduct classroom instruction” and “provide for student services that directly support classroom instruction.” The division into the two components makes the reference clearer, and brings this subdivision into alignment with Section 11969.3 which provides (in addition to teaching station space) for the inclusion of specialized classroom space and non-teaching station space. This reorganization more clearly reflects the intent of Education Code section 47614 that the facilities made available to a charter school (whether teaching station space, specialized classroom space, or non-teaching station space) be furnished and equipped.

- (3) The subdivision does not currently reference to the use of the terms “furnishings and equipment” in the California School Accounting Manual (CSAM). A reference to CSAM, which is a reliable and reasonably exhaustive source document, is added. The CSAM reference replaces a limited, partial list of examples of furnishings and equipment.
- (4) The subdivision does not currently exclude furnishings and equipment acquired with non-district resources. That oversight is rectified. A school district should not be obligated to provide furnishings and equipment that have been acquired in comparison group schools by non-district resources, such as parent fundraising, grants, or donations from businesses.

Section 11969.3. This section addresses “conditions reasonably equivalent” within the meaning of Education Code section 47614. The section currently consists of three subdivisions. Changes to these existing subdivisions are described below, along with the addition of a fourth subdivision.

- Subdivision (a) describes the creation of a comparison group of schools. Following consideration of input received through the workgroup process, two sentences have been added to paragraph (1). These added sentences address the situation in which a comparison group as envisioned in the existing regulations cannot be assembled. In such a situation, the comparison group includes all of the district-operated schools serving any of the grade levels served by the charter school. A contiguous facility in such a situation is a facility that is most consistent with the needs of students in the grade levels served at the charter school.

An example of a situation in which this might be applicable is a charter school that serves kindergarten through grade eight in a school district that is configured solely of sites that are either for elementary grades (kindergarten through grade five) or for middle grades (grades six through eight). In such a situation, the issue of a “contiguous” facility as required by law is to be determined based on consistency with the needs of students in the grade levels served at the charter school, recognizing that modification of a site may be necessary to serve the charter school’s students.

A fourth paragraph is added to address the situation in which space allocated to a charter school needs modifications to meet the needs of the school’s students. This additional paragraph makes it clear that the school district is not obligated to pay for the modifications. The modifications may

be paid for exclusively by the charter school, by the district, or under a collaborative arrangement between the district and the school.

- Subdivision (b) addresses capacity of facilities. It currently consists of four paragraphs.
 - Paragraph (b)(1) addresses teaching station space. No change is proposed.
 - Paragraph (b)(2) addresses specialized classroom space. A technical change provides for consistency in the use of the term “access.” Another technical change clarifies that the paragraph references “in-district” students. Finally, a third factor is added to the determination of specialized classroom space that a charter school is allocated (or to which it is provided access). The third factor is the per-student amount of specialized classroom space in the comparison group schools. This factor, which emerged from input received in the workgroup process, provides an important tie back to the comparison group schools concept.
 - Paragraph (b)(3) addresses non-teaching station space. A technical change provides for consistency in the use of the term “access.” Another technical change clarifies that non-teaching space is the remainder after taking away both teaching station space and specialized classroom space. Finally, an added requirement specifies that good faith consultation will take place to establish time allocations for the sharing of non-teaching station space, if necessary. For example, if a school site is being shared, use of the kitchen facilities would need to be scheduled to ensure that the charter school’s pupils and the pupils in district-run programs are served meals efficiently. In some cases (e.g., where a charter school occupies a whole school site), good faith consultation on time allocations would not be necessary.
 - Paragraph (b)(4) is permissive and, thus, not in appropriate form. Moreover, pertinent aspects of this paragraph have been consolidated into paragraph (3). Thus, this paragraph is proposed for elimination.
- Subdivision (c) addresses condition of facilities. It consists of two paragraphs.
 - Paragraph (c)(1) lists factors to be used in determining whether the condition of facilities provided to a charter school is reasonably equivalent to the condition of facilities in comparison group schools.

One change provides for general guidance that the listed factors are to be viewed in association with overriding factors such as the facilities' age (from latest modernization), quality of materials, and state of maintenance. Within the workgroup process, it was revealed that the listed factors have been narrowly reviewed in some instances. For example, the focus would be whether an exterior surface is painted, without regard to the age of the paint, the quality of the paint, and the maintenance of the painted surface.

A group of technical changes modifies subparagraphs (D), (F), and (G) to be consistent in structure.

Subparagraph (H) is added to include athletic fields and/or play area space in the listing of factors to be used. The workgroup process revealed that athletic fields and/or play area space was not necessarily being considered in all instances, but that they are essential to evaluating the condition of facilities.

- Paragraph (c)(2) addresses charter schools that are established at an existing public school site pursuant to specified provisions of the Education Code and that are in their first year of operation.

Technical changes incorporate all of the Education Code sections under which such charter schools may be established.

An additional sentence specifies that charter schools established under the specified Education Code section can be charged pro rata for facilities costs during their first year of operation, but are not subject to reimbursement for over-allocated space. In the workgroup process, the lack of specificity was noted concerning the status of these types of charter schools in their first year of operation as regards charges for pro rata costs and reimbursement for over-allocated space. This change addresses the issue. It is appropriate not to subject a conversion charter school in its first year of operation to reimbursement for over-allocated space, given that the retention of prior-year students in the circumstance of first-year operation is inherently problematic.

- Subdivision (d) is proposed to address on a continuing basis the school sites at which charter schools are established pursuant to the Education Code sections identified in paragraph (2) of subdivision (c). The proposed subdivision consists of three paragraphs. The workgroup process revealed that the existing body of regulations lacks specificity regarding conversion charter schools beyond the first year of operation.

- Paragraph (d)(1) takes account of the special status of these types of charter schools, which are specifically tied to particular school sites by their charters. The paragraph states that an affected charter school retains its site if so requested annually pursuant to Education Code section 47614. The paragraph also states that the charter school is subject to pro rata charges for facilities costs and is subject to reimbursement for over-allocated space after its first year of operation.
- Paragraph (d)(2) indicates that such a charter school can be assigned the use of different or additional sites based on the school's application, but only if a material revision to the charter changes the school's location.
- Paragraph (d)(3) addresses the circumstance where such a charter school does not fully utilize its site. The charter school is exempt from over-allocated space reimbursement in its first year of operation. However, under this paragraph, the school is obligated to report over-allocated space by February 1 of that first year of operation. Once identified as over-allocated, the space is permanently exempt from over-allocated space reimbursement, but the school district is empowered to occupy space for its own programs. Recovery of surrendered space requires the affected charter school to request the space in the annual process of requesting the use of space from the school district.

Section 11969.4. This section addresses operations and maintenance. The section consists of two subdivisions. No changes are proposed in subdivision (a) which declares that facilities, furnishings, and equipment made available to charter schools under Education Code section 47614 remain the property of the school district. Technical changes are proposed in subdivision (b) to eliminate permissive phrasing.

Section 11969.5. This section addresses the availability of facilities. No changes are proposed.

Section 11969.6. This section addresses the location of facilities made available to charter schools pursuant to Education Code section 47614. A technical change is made to account for restrictions on the location of charter schools enacted since the existing body of regulations was adopted.

Section 11969.7. This section addresses charges for facilities costs. The opening paragraph is technically restructured to eliminate the permissive phrasing and to provide a lead-in sentence for the subdivisions that follow. In addition, the specific reference to the California School Accounting Manual is updated, though substantively it is the same.

- Subdivision (a) addresses what is included in facilities costs. The specific reference to the California School Accounting Manual is updated, though substantively it is the same. Specific references are included to contributions of unrestricted general fund monies to the Ongoing and Major Maintenance Account and the Routine Restricted Maintenance Account (in addition to the deferred maintenance fund). Finally, a paragraph is added concerning the exclusion of costs paid by the charter school, as well as the value of tangible items paid for by the charter school (which are to be depreciated). For example, if the charter school were to pay for resurfacing of the play area, the depreciated value of the resurfacing would be annually deducted from facilities costs.
- Subdivision (b) addresses debt service costs. No changes are proposed.
- Subdivision (c) addresses shared space. A technical change eliminates permissive phrasing in one sentence.
- Subdivision (d) addresses determination of the per-square-foot charge on which the charter school's pro rata share is based. No changes are proposed.
- Subdivision (e) addresses application of the per-square-foot charge. An addition to this subdivision requires charter schools that use school district facilities pursuant to Education Code section 47614 to annually report their per-square foot charge to the California Department of Education, beginning in 2008-09. The report is made on the charter schools' annual funding survey pursuant to Education Code section 47630.5(b). The California Department of Education is required to Web post all per-square-foot charges so that the information is publicly accessible. The workgroup process revealed considerable variation in per-square-foot charges. This proposed change allows for public scrutiny of the variations at virtually no cost. School districts are provided the opportunity to submit explanatory information of Web posting as they see fit.
- Subdivision (f) is added to coordinate Education Code section 47614 with the pre-existing provisions of Education Code section 47613. Under Education Code section 47613, a school district (which authorizes a charter) may collect actual costs of supervisory oversight of up to 3 percent of a charter school's revenue if the district provides the charter school substantially rent free facilities. This subdivision states that if a school district collects facilities costs pursuant to this article, the facilities are not substantially rent free, and the district may only charge for the actual costs of supervisory oversight not to exceed 1 percent of the school's revenue.

Section 11969.8. This section addresses reimbursement rates for over-allocated space. It is currently comprised of two subdivisions. No change is proposed in either. A third subdivision is proposed for the technical purpose of conforming this section to the provisions added to Section 11969.3 relating to conversion charter schools.

Section 11969.9. This section addresses procedures and timelines for the request for, reimbursement for, and provision of facilities to charter schools. This section is revised extensively to provide for a revised timeline and revised procedures.

- Subdivision (a) includes several technical changes to (1) more specifically identify when a new or proposed new charter school is operating in the school district for purposes of Education Code section 47614, (2) include new or proposed new countywide benefit and statewide benefit charters, and (3) reference the provisions of access to space. Submission of facilities requests by new or proposed new charter schools is advanced from “before November 15” to “on or before November 1,” thus placing new, proposed new, and continuing charter schools on the same time line for submission of facilities requests. Finally, to qualify for facilities, a new or proposed new charter school must be approved before March 15, instead of being approved before March 1.
- Subdivision (b) addresses the submission of facilities requests by charter schools that were in operation in the preceding year. The submission date is delayed from “before October 1” to “on or before November 1.” The delay will enable the school to prepare more accurate projections of in-district classroom ADA for the forthcoming year. Technical amendments ensure alignment of this subdivision with subdivision (a). Finally, an outdated sentence in the existing regulations (pertaining to local school bonds) is eliminated.
- Subdivision (c) addresses the written facilities request. It consists of three subdivisions.
 - Paragraph (c)(1) lists the required content of a facilities request. No changes are proposed.
 - Paragraph (c)(2) elaborates on ADA projections to be included in the facilities request. No changes are proposed.
 - Paragraph (c)(3) currently addresses a template form, prepared by the California Department of Education (CDE) in consultation with the Advisory Commission on Charter Schools) that school district may

require charter schools to use. The paragraph is changed to require the submission of facilities requests on the CDE-prepared beginning the request for facilities to be used in 2008-09. Input received in the workgroup process suggested that a common, standardized form for submission of facilities requests would greatly assist with implementation of Education Code section 47614.

- Subdivision (d) is rewritten to introduce a new step in the process of considering facilities requests. On or before December 1, the school district is provided the opportunity to object to the charter school's projections of ADA and state its own projections. If the district fails to respond and to state its own projections, the district must base its offer on the charter school's projections. ADA projections are arguably the most essential single element in creating offers of facilities. Thus, focusing attention on the ADA projections separate from all other aspects of a facilities request is appropriate.
- Subdivision (e) is added to complete the step of reviewing ADA projections. By January 2, the charter school is provided the opportunity to respond to the district's objections and ADA projections and reaffirm or modify its previous ADA projections. If the charter school fails to respond, the district's ADA projections are the base for the offer of facilities.
- Subdivision (f) is added to require, on or before February 1, that the school district provide the charter school a preliminary proposal for space allocation and access. The preliminary proposal must address, at a minimum, ADA projections, location or locations of the space, all conditions pertaining to the space, and the projected pro rata share (i.e., the cost of the facilities to be paid by the charter school), including a description of the methodology for determining the pro rata share, as well as a list of the comparable schools on which the preliminary proposal is based. Currently, this section calls for preparation of a preliminary proposal, but establishes no deadline for its submission to the charter school.
- Subdivision (g) is added to require, on or before March 1, that the charter school respond to the school district's preliminary proposal, expressing any concerns and/or making counter proposals. Currently, this section sets no deadline for the charter school to respond to the school district's preliminary proposal.
- Subdivision (h) replaces existing subdivision (e) and requires the school district to submit a final notification to the charter school on or before April 1 and to identify the elements to be included in the final notification. The

elements include a response in writing to the charter school's concerns and/or counter proposals (regarding the district's preliminary proposal). The list of other elements is largely the same as the existing regulations, except for technical changes, and the addition of the location or locations of the space and all conditions pertaining to the space.

- Subdivision (i) replaces existing subdivision (f) with one technical addition.
- Subdivision (j) replaces existing subdivision (g). However, the timeline for the charter school to occupy space is modified from the existing "at least seven days" to "at least ten working days," although a provision is added that for good cause the period may be lessened to no fewer than seven working days.
- Subdivision (k) replaces existing subdivision (h). It includes technical changes for clarity. It also adds requirements for establishment of a reciprocal hold-harmless/indemnification provisions between the school district and the charter school, as well as stating that the school district shall be responsible for modifications of the facilities necessary to meet the California Building Code as locally adopted and enforced in accordance with Education Code section 47610(d).
- Subdivision (l) replaces existing subdivision (i) with no change in the text.
- Existing subdivisions (j) and (k) are eliminated because they are permissive and unnecessary.

Section 11969.10. This section is added to address procedures and timelines for dispute resolution regarding facilities for charter schools. It consists of three subdivisions.

- Subdivision (a) specifies when a charter school has standing to invoke the dispute resolution process.
- Subdivision (b) specifies when a school district has standing to invoke the dispute resolution process.
- Subdivision (c) describes the dispute resolution process.
 - The subdivision begins by recognizing that the school's charter specifies a dispute resolution mechanism that shall be used unless either party does not want to use it.
 - The subdivision next outlines a first step of dispute resolution as the initiating party bringing the dispute before the governing board or

authority of the responding party. The governing board or authority is given 30 days to respond.

- If the governing board or authority does not resolve the dispute, then a second step (mediation) is offered. Mediation is bypassed unless both parties agree.
- Mediation involves selection of a mediator by the initiating party with the agreement of the responding party. If agreement on a mediator cannot be reached, the California Department of Education (CDE) is to be called upon to appoint a mediator. Mediation is to begin as quickly as possible. If, within 15 days of beginning mediation, no resolution is reached or if the mediator declares impasse, the parties proceed to the third and final step of the dispute resolution process. Costs of mediation are divided equally by the two parties.
- The third and final step in the dispute resolution process is immediate resolution. Under immediate resolution, the CDE (at its option) arranges for the matter to be heard before an administrative law judge within the Office of Administrative Hearings or before an independent arbitrator selected by a specified process.
- The administrative law judge or arbitrator is to hold a hearing or arbitration as quickly as possible and render a decision, including the award of any remedies determined reasonable, proper, and in compliance with Education Code section 47614 and this article. The parties shall comply with the decision.
- The costs of the administrative hearing or arbitration, unless otherwise specified by the administrative law judge or the arbitrator, shall be divided equally between the school district and the charter school.
- Judicial review of disputes is prohibited until the administrative process of the article have been exhausted. If judicial review of the decision of an administrative law judge or arbitrator is sought, the burden of the party initiating the judicial review is to establish conclusively that the decision does not comply with Education Code section 47614 or this article.

TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDY, REPORTS, OR DOCUMENTS

The SBE did not rely upon any technical, theoretical or empirical studies, reports or documents in proposing the adoption of this regulation.

REASONABLE ALTERNATIVE TO THE REGULATION AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES

No other alternatives were presented to or considered by the SBE.

REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.

The SBE has not identified any alternatives that would lessen any adverse impact on small business.

EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS

The proposed regulations would not have a significant adverse economic impact on any business because the regulations only apply to charter schools, school district, and the California Department of Education.