



Opportunities For Learning – Duarte Charter School
Request For Waiver to Portions of CA Education Code Sections 47605(a) and 47605.1

As you may be aware, on October 17, 2016, a decision was rendered in the case of *Anderson Union High School District v. Shasta Secondary Home School* which interpreted California Education Code Sections 47605 and 47605.1 concerning geographical limitations on where a charter school may operate a resource center. We disagree with the decision as do other charter school networks, as it may displace many of our students and detrimentally affect our program. Although Opportunities For Learning Duarte Charter School (“OFL-Duarte”) was not a party to this lawsuit, we have been informed that the charter school that was a party is actively pursuing all available legal options, including seeking review of the decision by the California Supreme Court. We are also actively pursuing several avenues to keep and maintain our resource centers in their current locations, including seeking a waiver from the State Board of Education.

Generally speaking, a school district may request that the State Board of Education waive parts of the California Education Code and regulations to provide flexibility in a school district without undermining the basic intent of the law. In order for a charter school to seek a waiver, the charter school’s authorizing school district board must submit the waiver request on behalf of the charter school. A charter school cannot submit a general waiver request on its own behalf.

The Waiver Submission document for approval by the Duarte Unified School District (“DUSD”) Board of Education is attached. It seeks a waiver of certain portions of California Education Code Sections 47605(a) and 47605.1 to remove the geographic limitations on where charter schools may operate resource centers. This waiver is necessary to allow the continued operation of OFL-Duarte’s existing resource centers which provide a location for state mandated standardized testing, wet labs for A-G requirements, teacher/student meetings, special education services, and intervention services.

The waiver is consistent with public policy and avoids the detrimental impact on the communities served by OFL-Duarte. OFL-Duarte provides at-risk students with educational opportunities they otherwise may not have if our program is not readily available to them by way of our resource centers strategically placed in the areas of greatest need and in gang-neutral zones. If the waiver is not granted by the State Board of Education, approximately 316 students may be displaced with many of them forced to go back into a traditional educational program where they were previously unsuccessful. Additionally, OFL-Duarte is forecasted to pay approximately \$92,900 to DUSD in district oversight fees over the next year, plus an adjustment for 3% growth each year thereafter during the charter term. Closure of those resource centers may also cause 32 full-time credentialed teachers and 7 additional support staff and administrators to be out of jobs.

Waiver Request Process and Timeline

- The District’s Board will need to vote on approval of the waiver request at a scheduled board meeting. In order to be included on the State Board of Education’s agenda for 1st Quarter 2017, the matter should be placed on DUSD’s Board meeting agenda for its regular December 2016 meeting. OFL-Duarte will provide District Staff with the completed waiver request and accompanying documents in a timely manner to be included in the Board’s agenda and packet.

- Once approved by the District's Board, District staff will be responsible for entering the waiver request "data elements" into the SBE's online Waiver Request System, which can be accessed through the following link: <https://www2.cde.ca.gov/waiverweb/logon.aspx>. District Staff will set up a username and password to access the system. After submission of the online waiver request, there will be a "Confirmation Page," which serves as a receipt that the waiver has been received by the SBE Waiver Office. A copy will be provided to OFL-Duarte for our records.
- The SBE Waiver Office staff will review and process the waiver request and place it on the SBE agenda for approval. The Waiver Office has provided the following guidance: "A waiver request normally takes approximately ten to twelve weeks to analyze and process. Submission of an incomplete waiver request will delay the analysis and processing of the waiver request." In order for the waiver request to be placed on the March 8-9, 2017 SBE meeting agenda, District Staff should submit the waiver request into the SBE's online Waiver Request System by **Friday, December 23, 2016**.

The educational success of our students is our highest priority. We are diligently making every effort to minimize any impact of the *Anderson* decision on our authorizing districts, our students, staff members and the communities we serve. Should you have any questions, please do not hesitate to contact Richard Rundhaug, Superintendent of OFL-Duarte, by email at rrundhaug@emsofl.com or by phone at (626) 921-8239. We truly appreciate and thank you for your continued support.

OPPORTUNITIES FOR LEARNING – DUARTE CHARTER SCHOOL

**California Department of Education
WAIVER SUBMISSION - General**

Local Education Agency: Duarte Unified School District
Address: 1620 Huntington Drive, Duarte, CA 91010-2534

Start: 7/1/2016 End: 6/30/2020
Waiver Renewal: N

Waiver Topic: Geographic Restrictions on Resource Center Locations for Nonclassroom-Based Charter Schools
Ed Code Title: Charter School Locations
Ed Code Section: Portions of EC Sections 47605(a) and 47605.1
Ed Code Authority: 33050

Ed Code or CCR to Waive: Portions of California Education Code Sections 47605(a)(1), 47605(a)(5), and 47605.1(d) as follows:

Education Code section 47605:

(a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school [within a school district] may be circulated by one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school [that will operate within the geographic boundaries of that school district]. A charter school may propose to operate at multiple sites [within the school district] if each location is identified in the charter school petition.

....

(5) [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 in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent are notified of the location of the charter school before it commences operations, and either of the following circumstances exists]:

Education Code Section 47605.1:

(d) [Notwithstanding subdivision (a) or subdivision (a) of Section 47605, 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 within the county within which that school district is located, if the school district in which 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 either of the following circumstances exist]:

Outcome Rational:

Opportunities for Learning Duarte Charter School (“OFL-Duarte”) was first awarded a charter by Los Angeles County’s Duarte Unified School District in 2013. OFL-Duarte started operating the school on July 1, 2013 and has continuously been operating since then. OFL-Duarte’s current charter term commenced on July 1, 2015 and expires on June 30, 2020. OFL-Duarte serves students in grades 7-12, the majority of whom are drop-out recovery students, students at risk of dropping out of school, foster youth, English learners and low income students. OFL-Duarte offers a year-around blended learning program (240 days) including guided independent study with strong, common core standards aligned academic content. There is a focus on high expectations, personal goal setting and on developing self-discipline and responsibility.

The Duarte Unified School District has provided supervisory oversight and performance monitoring services for OFL-Duarte, including monitoring school and student performance data, reviewing the school’s audit reports, performing annual visits to the school facilities and resource centers, and considering charter amendment and renewal requests. The Duarte Unified School District affirms that at all times OFL-Duarte has operated its resource centers consistent with the advice and written guidance issued by the California Department of Education since 2002 (see Attachment).

In school year 2015-2016 OFL-Duarte served 4,057 students. Of those students, OFL-Duarte served 2,086 students who are eligible for free and reduced meals, 195 special education students, 61 homeless students, 23 pregnant and parenting students, and 5 foster youth. OFL-Duarte recovers students from dropping out of school, some of whom go on to graduate from OFL-Duarte, but also supports students in credit recovery before returning to their comprehensive high school in their district of residence. OFL-Duarte has been highly successful in increasing the numbers of these students who graduate from high school or who attain a high school equivalency certificate, formerly the GED, and who look forward to being contributing citizens. OFL-Duarte also provides services and instruction to homeless and transient youth including those receiving services from the Los Angeles Homeless Services Authority, students in group homes, and other mental or behavioral care facilities. Parent participation, resources and supports are also a part of OFL-Duarte’s comprehensive program.

OFL-Duarte meets the University of California A-G requirements—all 9th grade students are enrolled in an A-G track. OFL-Duarte also offers its students 3-4 day college tours, vocational education, ranch and farm learning experiences, sports programs, community service opportunities, field trips and social and leadership activities.

On October 16, 2016, the 3rd District Court of Appeals ruled in *AUHSD v. Shasta Secondary Home School* that independent study charter schools may not have resource centers outside of the boundaries of the school district in which the charter school is authorized, but within the same county. Currently, the OFL-Duarte has three (3) resource centers located within Los Angeles County that are affected by the ruling. This waiver is necessary to allow the continued operation of OFL-Duarte’s existing resource centers which provide a location for state mandated standardized testing, wet labs for A-G requirements, teacher/student meetings, special education services, and intervention services.

The waiver is consistent with public policy and avoids the detrimental impact on Duarte Unified School District, the communities served by OFL-Duarte, and society at large that would occur from closure of the affected resource centers. OFL-Duarte is forecasted to pay approximately \$92,900 in district oversight fees over the next year to Duarte Unified School District, plus an

adjustment for 3% growth each year thereafter. Additionally, in a 2010 study, Dr. James S. Catterall of the University of California Los Angeles found that the dropout recovery work of Opportunities For Learning and its sister network of charter schools, Options For Youth, had a societal economic benefit of 3 to 1. Meaning, that for every one dollar invested in the program there would be an estimated \$3.00 returned in societal benefits. (Catterall, J. S. (2011). The societal benefits and costs of school dropout recovery. *Education Research International*, 2011.) OFL-Duarte provides at-risk students with educational opportunities they otherwise would not have if the program was not readily available to them by way of its resource centers. Also, prior to opening its resource centers, OFL- Duarte researches local gang activity in order to open its resource centers in areas identified as gang-neutral zones and to allow students living in high gang activity areas the opportunity to attend school without fear. This is done in an effort to protect its students and to give them a safe environment to focus on their educational advancement.

If the waiver is not granted, approximately 316 students who are enrolled with OFL-Duarte so far this school year would be displaced with many of them forced to go back into a traditional educational program where they were previously unsuccessful and also to schools located in unsafe gang-zone areas. Closure of those three resource centers would also cause 32 full-time credentialed teachers and 7 support staff and administrators to be out of jobs. Moreover, all three of the affected centers are leased from third-party landlords. OFL-Duarte would be obligated to continue paying rent on those leases through the end of their lease terms even though it would no longer be able to operate resource centers in those facilities. This would cause OFL-Duarte to spend public dollars on empty facilities when those funds should be spent on serving students in the community.

Student Population: 316

City Type: City

Public Hearing Date: Thursday, December 8, 2016

Public Hearing Advertised: Notice posted at the District main office

Local Board Approval Date: **[TBD]**

Committee/Council Reviewed By: Opportunities for Learning-Duarte Charter School Board

Committee/Council Review Date: **[TBD]**

Committee/Council Objection: N

Committee/Council Objection Explanation:

Bargaining Units: N

Audit Penalty: N

Categorical Program Monitoring: N

Contact Person Name: Dr. Allan Mucerino

Position: Superintendent, Duarte Unified School District

E-mail: amucerino@duarteusd.org

Telephone: (626) 599-5036

Fax: (626) 599-5078

District or County Certification: The district or county office of education Superintendent or designee must certify to the accuracy of the information and date the request.



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Charter Schools FAQ Section 8

Frequently asked questions regarding independent study and nonclassroom-based programs.

Independent Study and Nonclassroom-Based Programs

Responses to these frequently asked questions are advisory only. Charter schools and authorizers are encouraged to review the actual laws and regulations that provide the basis for these responses and consult with their own legal counsel regarding the application of any of these issues to a specific situation.

- [Q.1. Are there geographic restrictions on the operation of nonclassroom-based charter schools?](#)
 - [Q.2. What are the pupil-teacher ratio requirements for offering nonclassroom-based instruction in a charter school?](#)
-

Question 1: Are there geographic restrictions on the operation of nonclassroom-based charter schools?

Yes. [California Education Code Section 47605.1\(c\)](#)

[https://leginfo.legislature.ca.gov/faces/codes_displayText.xhtml?lawCode=EDC&division=4.&title=2.&part=26.8.&chapter=2.&article=]

allows a nonclassroom-based charter school to establish a resource center, meeting space, or other satellite facility in a county adjacent to that in which the charter school is located, provided (1) the facility is used exclusively to serve nonclassroom-based pupils and (2) the school's primary educational services are provided in, and a majority of the school's pupils are residents of, the county in which the school's charter is approved.

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Question 2: What are the pupil-teacher ratio requirements for offering nonclassroom-based instruction in a charter school?

Information regarding the method for [calculating pupil to teacher ratio](#) for non classroom based charter schools can be found on the Educational Options Web page.

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Questions: Charter School Staff | charters@cde.ca.gov | 916-322-6029

Last Reviewed: Tuesday, February 16, 2016



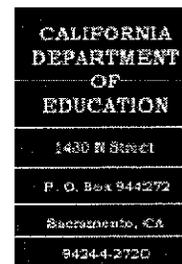
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DELAINÉ EASTIN
State Superintendent of Public Instruction



November 14, 2002

To: County and District Superintendents
County and District Chief Business Officials
Charter School Administrators

From: Janet Sterling, Director
School Fiscal Services Division

Subject: **Update of Recent Charter School Legislation**

Significant changes in charter school law occurred in the recent legislative session. This letter is intended to give you an overview of those changes. Charter schools and authorizing entities are encouraged to review the actual text of each bill. Chaptered versions of each of these bills may be found on the Internet.

Over the next several months, the California Department of Education (CDE) will be working closely with the State Board of Education (SBE) and the SBE's Advisory Commission on Charter Schools (ACCS) to interpret and implement these new laws. Summaries of significant charter school legislation are grouped by major topics below. All new laws are effective beginning January 1, 2003, unless otherwise noted.

Charter School Approvals and Operations

Assembly Bill (AB) 1994 (Reyes), Chapter 1058/02 .

This bill, the most comprehensive charter legislation this year, makes significant revisions to charter school law regarding charter petitions and approvals, financial reporting, and the location of charter school operations. Over the next several months, the SBE, in cooperation with the CDE and the ACCS will be working to interpret and implement the bill's provisions through regulation. The key provisions of AB 1994 include:

New Geographic Restrictions on Charter Schools-

- Permits a charter school to operate only within the geographic jurisdiction of the school district that authorized it, except as specified.
- Allows a charter school to operate one site outside of the district of authorization, but within the county in which the authorizing district is located, under specified conditions.

WAIVER SUBMISSION - General (Attachments)

- ⌘ Requires a charter petition to identify each site where the school will operate.
- ⌘ Permits a charter school to establish additional sites only with the approval of the authorizing entity as a material revision to the charter.
- ⌘ Requires a petition that is approved on appeal to a county office of education (COE) or the SBE to meet the geographic restrictions that would have applied to the charter school in the district that denied it.
- ⌘ Establishes various time lines and exemptions for compliance with the geographic restrictions imposed:
- ⌘ The site restrictions apply to any school authorized after July 1, 2002.
- ⌘ For any school authorized prior to July 1, 2002, but that does not commence instruction until July 1, 2002 or later, the restrictions apply upon expiration of the charter that is in effect on January 1, 2003.
- ⌘ Existing schools cannot establish any additional sites after July 1, 2002, unless the site is authorized in accordance with the restrictions established in the bill.?? Existing schools must come into compliance with the geographic restrictions by the expiration of the charter term or July 1, 2005, whichever is later.
- ⌘ The site restrictions do not apply to facilities used as resource centers, meeting spaces, or satellite sites used exclusively for non-classroom based independent study if a majority of the charter school pupils are residents of the county in which the charter is authorized.
- ⌘ The site restrictions do not apply to charter schools that provide services exclusively to pupils enrolled in specified federal or state programs such as the California Conservation Corp.

New Requirements for Charter Proposals and the Chartering Process-

- ⌘ Requires a charter petition for a school that will serve high school pupils to include a description of how the school will notify parents about the transferability of its courses to other public high schools and the eligibility of courses to meet college entrance requirements.
- ⌘ Requires a charter petition to include specified procedures to be used if the school closes.
- ⌘ Requires charter petitioners to provide a copy of their approved charter to the COE and the CDE.
- ⌘ Requires a charter petitioner whose petition has been denied, to appeal to the COE prior to bringing the petition to the SBE on appeal.
- ⌘ Prohibits charter schools approved after January 1, 2003, from serving grade levels not served by the authorizing entity unless it serves all of the grades offered by the authorizing entity.
- ⌘ Requires a new charter school to commence operation by September 30 of a fiscal year.

New Financial Reporting Requirements and Fiscal Provisions-

Requires charter schools to provide to their chartering entity an annual financial report in a format prescribed by the Superintendent of Public Instruction (SPI). This information will then be transmitted to the SPI.

Requires a charter school to submit its annual audit to the State Controller and the COE in addition to the CDE and the charter authorizing entity.

Makes technical and clarifying changes related to apportionments for SBE-authorized charter schools and all-charter districts.

New Authority for County Offices of Education-

Authorizes COEs to investigate complaints and monitor charter schools, and requires a charter school to respond to information requests from COEs.

Establishes new authority for county boards of education to approve charter schools that may operate multiple sites within the county if the county board finds the charter could not serve the pupils through a district-approved charter. A county board may also impose any other requirements that it deems necessary for sound operation of the school or deny a charter of this type for any reason it finds justified. A denial by a county board under this section cannot be appealed to the SBE. Any charter school approved under this authority must notify each school district in the county where the charter school will operate.

WAIVER SUBMISSION - General (Attachments)

New Authority for the State Board of Education-

Requires the SBE to assign separate charter numbers to each site of a multi-site charter school if the sites do not share a common educational program.

Establishes new authority for the SBE to approve charter schools that propose to operate multiple sites throughout the State. Requires the SBE to adopt regulations to implement these provisions. The SBE must find that the school will provide instructional services of a statewide benefit that cannot be met by a district-or county authorized charter. The SBE may deny a charter of this type for any reason it finds justified. Any charter school approved under this authority must notify each school district where the charter school will operate.

(*Education Code* sections 1628, 42100, and 47602 through 47612.1.)

Charter School Facilities Issues

Senate Bill (SB) 2039 (O'Connell), Chapter 586/02

This bill, an urgency measure effective September 14, 2002, makes changes to the charter school facilities grant program that was established last year in SB 740 (Chapter 892/01). Specifically, this bill expands eligibility for a facilities reimbursement grant to charter schools in which at least 70 percent of the pupil population is eligible for free or reduced price meals. This bill also clarifies the types of facilities costs that are eligible for reimbursement. The new eligibility criteria will be applied to reimbursements of 2001-02 costs. Therefore, charter schools that believe they met the new criteria during the 2001-02 fiscal year should submit an application to the CDE. Applications are available on the Internet. Specific application materials that reflect the changes in the law have been mailed to each eligible charter school in a separate mailing. The 2002 Budget Act contains \$10 million to reimburse eligible applicants for costs incurred during 2001-02. If the program is oversubscribed, a proportional reduction will be made.

Funds for reimbursement of costs incurred during the 2002-03 fiscal year have not been appropriated, but are expected to be included in the 2003-04 Governor's Budget. (*Education Code* sections 47614.5 and 47605.3.)

Assembly Bill 14 (Goldberg), Chapter 935/02

This bill establishes a charter school facilities program to allocate state school facilities bond funds. The school bond measure adopted by Proposition 47, on the November ballot, specifically includes up to \$100 million for charter school facilities. This bill establishes the program to allocate these funds. Specifically, the law allows 'financially sound' charter schools to apply for funding to build, purchase, or retrofit facilities for

use by the charter school. An eligible charter school must be located in a school district that has school building program eligibility and may apply directly or through the school district. One-half of the project cost would be provided as a grant, and the charter school, through 'lease' payments or in a lump sum, would pay the other half. Projects approved under this program must meet all Field Act requirements and all other reviews and approvals required of traditional schools in the state school building program. The CDE will not have a direct role in implementing this program. It will be administered through the California School Finance Authority and the State Allocation Board (*Education Code* sections 17078.50 through 17180.5.)

Charter School Fiscal and Block Grant Issues

Assembly Bill 168 (Nation), Chapter 36/02

This is an urgency bill that was effective May 10, 2002. It extends the sunset for the continuous appropriation for the charter school block grant. This bill is necessary to provide the CDE with authority to disburse block grant funds to charter schools. (*Education Code* Section 47612.)

Assembly Bill 1781 (Hertzberg), Chapter 802/02

WAIVER SUBMISSION - General (Attachments)

This bill consolidates various existing instructional materials programs and funding into the Instructional materials Funding Realignment Program. The impact on charter schools of this realignment is that instructional materials programs included in the charter school categorical block grant have been removed and merged into the new instructional materials program, which is not included in the block grant calculation. As a result, charter schools must now apply separately for funding for the Instructional Materials Funding Realignment Program and comply with program requirements. (*Education Code* sections 60240 through 60247.5.)

Assembly Bill 2781 (Oropeza), Chapter 1167/02

This is the Education Trailer Bill to the 2002 Budget Act and is an urgency statute effective for the 2002-03 fiscal year. Section 10 of the bill revises the calculation method used to determine the growth rate for the charter school categorical block grant to base it on final State Budget Act data rather than May Revision date. (*Education Code* Section 47634.5.)

Assembly Bill 2912 (Florez), Chapter 930/02

This bill allows all-charter districts that are not funded through the charter school block grant to receive declining enrollment funding for average daily attendance (ADA) generated by students who reside in the district. (*Education Code* sections 42238.5, 42238.52, and 42238.53.)

Senate Bill 1708 (Poochigian), Chapter 117/02

This bill allows charter schools to report ADA and receive funding if they are providing extended year services to special education students pursuant to an individualized education program (IEP). This is a technical correction to ensure charter schools receive the funding for services provided. This change will be reflected in CDE's ADA data collection process for the 2002-03 fiscal year. (*Education Code* Section 47646.)

Senate Bill 1709 (Poochigian), Chapter 209/02

This bill requires a charter school to transmit a copy of its annual audit to the State Controller and the COE where the charter school is located. This provision is also contained in AB 1994. (*Education Code* Section 47605.)

The information contained in this memorandum is advisory only. Charter schools and authorizing entities are encouraged to review the actual laws that provide the basis for this memo and consult with their own legal counsel regarding the application of any of these issues to a specific situation.

This memo is also available on the CDE web site. If you have general questions about charter schools, please visit our web site or contact our Charter Schools Office at (916) 322-6029.

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