

PHILOSOPHIES, GOALS, OBJECTIVES AND COMPREHENSIVE PLANS
CHARTER SCHOOL AUTHORIZATION

Note: The following optional policy may be revised to reflect district practice. Education Code 47600-47616.7 authorize the establishment of public charter schools, which are generally exempt from the Education Code unless otherwise specified in law. To establish a charter school within the district, petitioners must submit to the Governing Board for approval a petition which includes all components required by law as described in the accompanying administrative regulation. The following policy reflects the criteria and procedures required by Education Code 47605 as amended by AB 1505 (Ch. 486, Statutes of 2019) and AB 1595 (Ch. 543, Statutes of 2019).

Under certain circumstances, charter petitions may also be approved by other governmental entities. For example, Education Code 47605.5-47605.6 authorize petitioners to submit a petition directly to the County Board of Education when (1) the charter school will serve students for whom the county office of education would otherwise be responsible for providing direct education and related services or (2) the countywide program will provide educational services to a student population that cannot be served as well by a charter school operating in only one district in the county. Education Code 47605.8, which authorized petitioners to submit a petition directly to the State Board of Education (SBE) to approve a statewide benefit charter school, was repealed by AB 1505.

Pursuant to Education Code 47606, a district may petition the Superintendent of Public Instruction and SBE to convert all its schools to charter schools, provided that 50 percent of the district's teachers sign the petition, the petition contains all specified components, and arrangements are made for alternative attendance of students residing within the district who choose not to attend a charter schools. For further information regarding the submission and review of charter school petitions, see CSBA's publication Charter Schools: A Guide for Governance Teams.

The Board of Trustees recognizes that charter schools may assist the District in offering diverse learning opportunities for District students. In considering any petition to establish a charter school within the District, the Board shall give careful thoughtful consideration to the potential of the charter school to provide students with a high-quality education that enables them to achieve to their fullest potential.

Note: Education Code 47605 allows for Board approval of a start-up charter school or the conversion of an existing public school into a charter school, provided that the school adopts and maintains a policy giving admission preference to students who reside within the former attendance area of that public school. The signature requirement differs for each type of charter school; see the accompanying administrative regulation.

One or more persons may submit a petition for a start-up or the conversion charter school to be established within the District. In addition, an existing District school may be converted to a charter school when deemed beneficial by the District and community or when state or federal law requires restructuring of the school because of low performance.

(cf. 0520.2 - Title I Program Improvement Schools)

Any petition for a start-up charter school or conversion charter school shall include all components, and signatures, and statements required by law, as specified in the accompanying administrative regulation and shall be submitted to the Board. The proposed charter school shall be attached to the petition. (Education Code 47605)

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The Superintendent or designee shall consult with legal counsel, as appropriate, regarding compliance of the charter petition with legal requirements.

The superintendent or designee may work with charter school petitioners prior to the formal submission of the petition in order to ensure compliance of the petition with legal requirements. As needed, ~~he/she~~ the Superintendent or designee also may also meet with the petitioners to establish workable plans for technical assistance or contracted services which the District may provide to the proposed charter school.

~~The Board shall not require any district student to attend the charter school nor shall it require any district employee to work at the charter school. (Education Code 47605)~~

Note: Pursuant to Education Code 47605, as amended by AB 1505 and AB 1595, upon receiving a charter petition, the Board is required to hold a public hearing within 60 days to determine the level of support for the petition and to hold a public hearing within 90 days to take final action on the petition. As amended, Education Code 47605 also requires the district to publish, at least 15 days prior to the public hearing at which the Board will grant or deny the petition, staff recommendations regarding the petition and, if applicable, the certification from the County Superintendent of Schools regarding the potential fiscal impact of the charter school on the district.

To provide adequate opportunity for public input and thoughtful consideration of the charter petition, it is recommended that the Board conduct two public hearings -- one hearing to determine the level of support for the petition and, following the publication of staff recommendations, a second hearing to grant or deny the petition. However, the law does not explicitly require two hearings, and it may be BP 0420.4(c) CHARTER SCHOOL AUTHORIZATION (continued) possible to hold one public hearing for both determining the level of support for the petition and granting or denying the petition, provided that staff recommendations are published 15 days prior to the hearing, the hearing is held within 60 days of receipt of the petition, and the petitioners have equal time and opportunity to present evidence and testimony. Legal counsel should be consulted as needed to ensure that all requirements are met.

Within ~~30~~ 60 days of receiving a petition to establish a charter school, the Board shall hold a public hearing on the charter provisions, at which time the Board shall consider ~~to determine~~ the level of support for the petition by teachers, other district employees of the District, and parents/guardians. A petition is deemed received on the day the petitioner submits a petition to the district office, along with a signed certification that the petitioner deems the petition to be complete. (Education Code 47605)

~~Within 60 days of receiving a petition, or within 90 days with mutual consent of the petitioners and the Board, the Board shall either approve or deny the request to establish the charter school.~~ The Board shall either grant or deny the petition at a public hearing held within 90 days of receiving the petition, or within 120 days with the consent of both the petitioner and the Board. (Education Code 47605)

(cf. 9320 - Meetings and Notices)

At least 15 days before the public hearing at which the Board will grant or deny the charter, the district shall publish all staff recommendations regarding the petition, including any recommended findings and, if applicable, certification from the County Superintendent of Schools regarding the potential fiscal impact of the charter school on the district. During the public hearing, the petitioners shall have equal time and

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opportunity to present evidence and testimony in response to the staff recommendations and findings.
 (Education Code 47605)

Note: The following paragraph is optional and may be revised to reflect district practice. As amended by AB 1505 and AB 1595, Education Code 47605 requires that, in the event that a petition is denied and the matter is appealed, the Board must provide a documentary record to the petitioner, including a transcript of the public hearing at which the Board denied the hearing. See section on "Appeals" below. Thus, it may be useful to have a transcription of the hearing(s) in the event that the petitioners later appeal the decision of the Board.

The Superintendent or designee shall maintain accurate records, in relation to each charter petition, of documents submitted, the Board's proceedings, and the findings upon which the Board's decision is made.

The approval or denial of a charter petition shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board. (Education Code 47611.5)

Approval of Petition

Note: Education Code 47605 requires the Board to give preference to charter petitions that demonstrate the capability to provide comprehensive learning experiences to students identified by the petitioner as academically low achieving based on the standards established by the California Department of Education (CDE) pursuant to Education Code 54032, as that section read before July 19, 2006. Prior to its repeal on that date, Education Code 54032 required CDE to develop standards to identify students as academically low achieving for purposes of allocating Economic Impact Aid funds to school sites. However, the Economic Impact Aid program is no longer funded or administered by CDE. Pursuant to Education Code 47605, as amended by AB 1505 and AB 1595, the Board must also consider the interests of the community in which the school is proposing to locate.

~~The Board shall approve the charter petition if~~ A charter petition shall be granted only if the Board is satisfied that doing so is consistent with sound educational practice and the interests of the community in which the school is proposing to locate. In granting charters, the Board shall consider the academic needs of the students the charter school proposes to serve and shall give preference to schools best able to provide comprehensive learning experiences for academically low-achieving, based on standards established by California Department of Education (CDE) ~~students according to standards established by the California Department of Education (CDE) under Education Code 54032.~~ (Education Code 47605)

Note: Pursuant to Education Code 47604.1, as added by SB 126 (Ch. 3, Statutes of 2019), charter schools are subject to the Brown Act (Government Code 54950-54963), California Public Records Act (Government Code 6250-6270), conflict of interest laws (Government Code 1090-1099), and the Political Reform Act (Government Code 81000-91014).

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Prior to authorizing any charter, the Board shall verify that the charter includes adequate processes and measures for monitoring and holding the school accountable for fulfilling the terms of its charter and complying with all applicable laws, including Education Code 47604.1. Such processes and measures shall include, but are not limited to, fiscal accountability systems, multiple measures for evaluating the educational program, inspection and observations of any part of the charter school, and regular reports to the Board.

(cf. 0420.41 - Charter School Oversight)

~~The approval or denial of a charter petition shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board. (Education Code 47611.5)~~

Note: The following optional paragraph may be revised to reflect district practice. Although not required by law, CSBA's publication Charter Schools: A Guide for Governance Teams recommends one or more memoranda of understanding (MOUs) to address matters that are related to the charter petition but are not included in the petition, and to establish expectations for which the charter school can be held accountable. CSBA's manual provides examples of issues pertaining to business operations, administrative and support services, special education, and student assessment that might be addressed in an MOU. A sample MOU between SBE and a state-approved charter school, available on the California Department of Education's web site, may be adapted for use by districts.

~~The Board may approve one or more memoranda of understanding to clarify the financial and operational agreements between the district and the charter school. Any such memorandum of understanding shall be annually reviewed by the Board and charter school governing body and amended as necessary.~~

The Board may initially grant a charter for a specified term not to exceed five years. (Education Code 47607)

(cf. 0420.42 - Charter School Renewal)

(cf. 0420.43 - Charter School Revocation)

~~The Board shall ensure that any approved charter contains adequate processes and measures for holding the school accountable for fulfilling the terms of its charter. These shall include, but not be limited to, fiscal accountability systems, multiple measures for evaluating the educational program, and regular reports to the Board.~~

(cf. 0420.41 - Charter School Oversight)

~~The District shall not require any District student to attend the charter school nor shall it require any District employee to work at the charter school. (Education Code 47605)~~

~~The Board may approve one or more memoranda of understanding to clarify the financial and operational agreements between the district and the charter school. Any such memorandum of understanding shall be annually reviewed by the Board and charter school governing body and amended as necessary.~~

‡ When a petition is approved by the Board, it shall be the responsibility of the petitioners to provide written notice of the Board's approval and a copy of the charter to the County Superintendent of Schools, the CDE, and the State Board of Education (SBE). (Education Code 47605)

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Denial of Petition

The Board shall summarily deny any charter petition that proposes to:

1. Operate a charter school as or by a for-profit corporation, a for-profit educational management organization, or a for-profit charter management organization (Education Code 47604)
2. Convert a private school to a charter school (Education Code 47602)

Note: Pursuant to Education Code 47605, the Board may approve a charter school serving students in a grade level not offered by the district only when the charter school will also serve all the grade levels offered by the district. Thus, an elementary district's board cannot approve a charter for a high school, but may approve a charter for a K-12 school it includes the charter school will serve all grade levels served by the elementary school district.

3. Proposes to serve students in a grade level that is not served by the district, unless the petition proposes to serve students in all the grade levels served by the district (Education Code 47605)

Note: Pursuant to Education Code 47612.7, as added by AB 1505, until January 1, 2022, the Board is prohibited from approving a petition for the establishment of a new charter school offering nonclassroom-based instruction. A charter school approved before October 1, 2019 which had started providing educational services as of that date may continue to offer nonclassroom-based instruction under the circumstances specified in Education Code 47612.7.

4. Offer nonclassroom-based instruction (Education Code 47612.7)

Note: Pursuant to Education Code 47605, a charter petition can be denied only if certain factual findings are made. 5 CCR 11967.5.1 contains criteria for SBE's review of charter petitions, which may be useful to the district in determining how it might evaluate whether a petition meets the conditions specified below.

~~The Board shall deny any petition to authorize the conversion of a private school to a charter school or that proposes to serve students in a grade level that is not served by the District, unless the petition proposes to serve students in all the grade levels served by the District. (Education Code 47602, 47605; 5 CCR 11965)~~

Regarding all other charter petitions, Any other charter petition shall be denied only if the Board shall deny a petition only if the Board makes presents written factual findings specific to the petition that one or more of the following conditions exist: (Education Code 47605); 5 CCR 11967.5.1)

1. The charter school presents an unsound educational program that has a likelihood of physical, educational, or psychological harm to, or which is not likely to provide an educational benefit for, the students to be enrolled in the charter school.
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.

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4. The petition does not contain ~~an affirmation of each of the conditions described in Education Code 47605(d)~~ a clear, unequivocal statement described in Education Code 47605(e), including that the charter school will be nonsectarian and that the school shall not charge tuition or discriminate against any student based on the characteristics specified in Education Code 220.
5. The petition does not contain reasonably comprehensive descriptions of the charter provisions in Education Code 47605(bc).
6. The petition does not contain a declaration as to whether or not the charter school shall be deemed the exclusive public employer of the school's employees for purposes of collective bargaining pursuant to Government Code 3540-3549.3.

Note: As amended by AB 1505 and AB 1595, Education Code 47605 expands the grounds for denial of a charter petition to include those specified in items #7-8 below.

7. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school. A written factual finding shall detail specific facts and circumstances regarding:
 - a. The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings
 - b. Whether the proposed charter school would duplicate a program currently offered within the district, when the existing program has sufficient capacity for the students proposed to be served within reasonable proximity to where the charter school intends to locate
8. The district is not positioned to absorb the fiscal impact of the proposed charter school. The district meets this criterion if it has a negative interim certification, or has a qualified interim certification and the County Superintendent certifies that approving the charter school would result in the district having a negative interim certification.

The Board shall not deny a petition based on the actual or potential costs of serving students with disabilities, nor shall it deny a petition solely because the charter school might enroll disabled students who reside outside the special education local plan area in which the District participates. (Education Code 47605.7, 47647)

(cf. 0430 - Comprehensive Local Plan for Special Education)

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Appeals

Note: Pursuant to Education Code 47605, if the Board denies a charter petition, the petitioner may, within 30 days of the denial, submit the petition to the County Board. If the County Board denies a petition on appeal, the petitioner may, within 30 days of the denial, appeal to SBE.

If the Board denies a petition, the petitioners may choose to submit the petition to the County Board of Education and, if then denied by the County Board, to the SBE. (Education Code 47605)

At the request of the petitioner, the Board shall prepare the documentary record, including a transcript of the public hearing at which the Board denied the charter, no later than 10 business days after the petitioner makes the request. (Education Code 47605)

Within 30 days of receipt of an appeal submitted to SBE, the Board may submit a written opposition to SBE detailing, with specific citations to the documentary record, how the Board did not abuse its discretion in denying the petition. (Education Code 47605)

If either the County Board or SBE remands the petition to the Board because the petition on appeal contains new or different material terms, the Board shall reconsider the petition and grant shall or deny the petition within 30 days. (Education Code 47605)

LEGAL REFERENCE:

EDUCATION CODE

200 Equal rights and opportunities in state educational institutions

220 Nondiscrimination

1240 Duties of County Superintendent

17078.52-17078.66 Charter schools facility funding; state bond proceeds

17280-17317 Field Act

17365-17374 Field Act, fitness for occupancy

41365 Charter school revolving loan fund

42131 Interim certification

42238.51-42238.53 Funding for charter districts

44237 Criminal record summary

44830.1 Certificated employees, conviction of a violent or serious felony

45122.1 Classified employees, conviction of a violent or serious felony

46201 Instructional minutes

47600-47616.7 Charter Schools Act of 1992

47640-47647 Special education funding for charter schools

47650-47652 Funding of charter schools

49011 Student fees

51745-51749.3 Independent study

52052 Accountability: numerically significant student subgroups

52060-52077 Local control and accountability plan

~~53300-53303 Parent Empowerment Act~~

56026 Special education

56145-56146 Special education services in charter schools

CORPORATIONS CODE

5110-6910 Nonprofit public benefit corporations

GOVERNMENT CODE

1090-1099 Prohibitions applicable to specified officers

3540-3549.3 Educational Employment Relations Act

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6250-6270 California Public Records Act
 54950-54963 Ralph M. Brown Act
 81000-91014 Political Reform Act of 1974

CODE OF REGULATIONS, TITLE 5

4800-4808 Parent Empowerment Act
 11700.1-11705 Independent study
 11960-11969 Charter schools

CODE OF REGULATIONS, TITLE 24

401 et seq. California Building Standards Code

UNITED STATES CODE, TITLE 20

6316 Program improvement
 7223-7225 Charter schools

COURT DECISIONS

Ridgecrest Charter School v. Sierra Sands Unified School District, (2005) 130 Cal.App.4th 986

ATTORNEY GENERAL OPINIONS

Opinion No. 11-201 (2018)
 89 Ops.Cal.Atty.Gen. 166 (2006)
 80 Ops.Cal.Atty.Gen. 52 (1997)
 78 Ops.Cal.Atty.Gen. 297 (1995)

Management Resources:

CSBA PUBLICATIONS

Uncharted Waters: Recommendations for Prioritizing Student Achievement and Effective Governance in California's Charter Schools, September 2018
 Charter Schools in Focus, Issue 1: Managing the Petition Review Process, Governance Brief, November 2016
 Charter Schools and Board Member Responsibilities, Education Insights Legal Update Webcast, March 2016
 Charter Schools: A Guide for Governance Teams, rev. February 2016

CALIFORNIA DEPARTMENT OF EDUCATION PUBLICATIONS

Sample Copy of a Memorandum of Understanding

U.S. DEPARTMENT OF EDUCATION PUBLICATIONS

Dear Colleague Letter: Guidance Regarding the Oversight of Charter Schools Program and Regulatory Requirements, including the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, August 2016
 Charter Schools Program: Title V, Part B of the ESEA, Nonregulatory Guidance, January 2014 Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools, December 2011

WEB SITES

CSBA: <http://www.csba.org>
 California Charter Schools Association: <http://www.ccsa.org>
 California Department of Education, Charter Schools: <http://www.cde.ca.gov/sp/cs>
 National Association of Charter School Authorizers: <http://www.qualitycharters.org>
 U.S. Department of Education: <http://www.ed.gov>

POLICY ADOPTION:

Policy Adopted: 09/18/07
 Policy Revised: ~~03/19/13~~ 06/02/20

(Policy Share/BP 0420.4)