



SNAFU for “Nonclassroom-Based” Charter School Funding Determinations

Category: Nonclassroom-Based Schools

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SACRAMENTO — The California Department of Education (CDE) posted harsh funding recommendations for “nonclassroom-based” charter schools late Friday, including recommendations that would strip from 15 to 100 percent of funding from 16 schools. The CDE will present its recommendations to the State Board of Education’s (SBE) Advisory Commission on Charter Schools (ACCS) on February 6th. All nonclassroom-based charter schools should closely monitor these events and those recommended for cuts should carefully review their submissions and prepare to attend the ACCS meeting to defend their schools.

Background

As most of CSDC’s readers know, so-called “nonclassroom-based” charter schools must undergo periodic (every 2-5 years) reviews of their revenues and expenditures by applying for a so-called “funding determination” from the SBE. In general, subject schools must demonstrate that 40 percent of their expenditures are spent on certificated staff compensation and 80 percent of their expenditures on “instruction,” as well as meet other tests. Schools meeting these targets typically receive 100 percent funding determinations, meaning that they are entitled to 100 percent of the funding generated by their students’ average daily attendance. Schools that do not meet these targets may apply for “mitigation,” citing special and/or one-

time circumstances that prevent them from meeting the specified targets and requesting funding at a higher level (usually 100 percent).

For the first several years these spending targets were enforced, most schools were able to meet them, often squeaking through by boosting spending on teacher salaries and bonuses. For the past several years, however, schools find that meeting these spending targets is increasingly difficult, mostly due to the sharp funding cuts and massive funding deferrals.

Specifically, schools find that the following factors make it difficult to hit or exceed the funding targets:

- **Funding Cuts:** While funding rates have declined by as much as 20 percent, the cost of many non-instructional and non-compensation items have remained fixed or “sticky,” requiring schools to spend a higher proportion of their budget on items such as rent, professional services, and utilities—items that generally don’t count toward the spending targets.
- **Funding Volatility:** In many recent years, the state budget has included either explicit or implicit threats of mid-year or late-year funding cuts—often enacted via difficult-to-predict “trigger” mechanisms. Schools with limited cash reserves are forced to assume that these cuts will be enacted and budgeting at these levels can make it difficult to hit the spending targets.
- **Funding Deferrals:** In recent years, the state has deferred massive amounts of funding, with as much as 40+ percent of state aid arriving after the close of the fiscal year. These deferrals also make it difficult to meet the targets for multiple reasons, including (1) they force schools to borrow and the interest costs and fees don’t count toward the spending targets, (2) schools that don’t borrow can’t spend money



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they haven't yet received, and/or (3) schools need to increase their reserves and this also works against meeting the targets.

Schools with unique instructional programs (e.g., schools using virtual instruction programs rather than teacher-intensive ones or schools that use “blended” site and offsite instruction) often experience additional difficulty in meeting the targets. The targets assume a heavy “old school” spending emphasis on teaching staff and penalize spending on facilities and/or instructional technology.

If schools fail to meet the standard 40 and 80 percent spending targets, formulas specified in the law authorize the SBE to cut the school's funding, with formula-driven cuts ranging from 15, to 30, to 100 percent. If schools wish to avoid such cuts, they must request the ACCS and SBE to find what the law calls a “reasonable basis” (colloquially known as “mitigating circumstances”) for funding above the levels otherwise specified in law. Unfortunately, the law does not provide a clear definition of what constitutes a “reasonable basis,” leaving schools to shoot at an unknown and fuzzy target when preparing their requests for “mitigation” (see below for details).

23 Mitigation Requests Pending

In the latest annual round of funding determination requests, 23 schools have experienced difficulty in meeting the spending targets and have requested “mitigation.” CSDC reviewed all 23 of the requests and found that the CDE recommended the following:

- Approval of mitigation requests and full funding for only seven of the 23 schools.
- Denial of 16 of 23 requests.
- Of the 16 denials, CDE recommended eliminating all funding for five schools (a de-facto fiscal death

sentence), cutting six schools by 15 percent, and 4 schools by 30 percent. CDE recommended one of these schools to receive full (100 percent) funding because it met the spending targets without mitigation.

CDE's memorandum lists offer almost no specifics to explain why it recommends denial of the requests. Instead, the memo simply states that “documentation submitted was determined insufficient to support mitigating circumstances” for all 16 of the recommended denials.

CSDC's review of the mitigation requests that CDE recommended for approval yields no apparent consistent or discernible pattern. Some, but by no means all of the requests recommended for approval offered more quantitative justifications (e.g., identifying specific one-time funding sources and explaining how exclusion of such sources would have otherwise led to meeting the standard spending target). The CDE presumably struggled with the fuzzy “mitigation” standards in law and shrewdly offered no details on their justification beyond stating that the information provided by the schools was “insufficient.”

Fuzzy Mitigation Standards

The relevant regulation defines a “reasonable basis” for mitigation as follows:

A reasonable basis . . . may include, but[is] not be limited to, the following [bullet points added]:

- *the information provided by the charter school pursuant to paragraphs (2) through (8), inclusive, of subdivision (b) of section 11963.3, [this list includes all of the key information provided in the standard funding determination form]*
- *documented data regarding individual circumstances of the charter school (e.g., one-time or unique or exceptional expenses for facilities, acquisition of a*



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school bus, acquisition and installation of computer hardware not related to the instructional program, special education charges levied on the charter school by a local educational agency, restricted state, federal, or private grants of funds awarded to the charter school that cannot be expended for teacher salaries, or contracted instructional services other than those for special education),

- *the size of the charter school, and how many years the charter school has been in operation.*
- *The Advisory Commission on Charter Schools shall give charter schools with less than a total of one hundred (100) units of prior year second period average daily attendance or that are in their first year of operation serious consideration of full funding.*

Thus, the law on what constitutes a "reasonable basis" for mitigation is entirely open-ended ("may include, but is not limited to") and then lists a lengthy and equally open-ended laundry list of potential mitigating factors, including nearly all of the key data related to the larger funding determination process. With such a broad array of targets and no further practical definitions or guidance, the definition of what constitutes a "reasonable basis" has no grounding and seems to encourage entirely arbitrary decisions in a high-stakes setting. It also makes it nearly impossible for schools to prepare their mitigation requests.

This unworkable provision is one of many similar flaws that plague this ill-conceived regulatory framework governing "nonclassroom-based" charter schools. In fact, the very definition of "nonclassroom-based" is itself unclear and unworkable. For years, charter school advocates, including CSDC, have recommended various proposals to clarify or eliminate the nonclassroom-based regulatory framework. A few years ago, the ACCS approved a series of recommendations supported by CSDC to substantially relax the spending targets in light of budget cuts and deferrals. The State Board, however, opted not to pursue any amendments. Last year, Governor Brown recommended eliminating the entire framework. The Legislature rejected

this recommendation, in part due to opposition by the CDE's lobbyists. This year, Brown has reiterated the need to revise the law, now calling to eliminate most, but not all of its features.

Now What?

Absent a change to current law, which will take months at a minimum, charter schools must continue to negotiate these ridiculous laws. CSDC can provide extensive and expert technical assistance to member schools and offers the following broad suggestions:

- **Review the underlying accounting.** The laws and accounting definitions that underlie the funding determination process are, as noted above, rather vague and subject to varying interpretation. The definitions are spread across multiple documents, including the governing statutes/regulations, the State School Accounting Manual, the funding determination instructions published by the CDE, as well as the Excel-based funding determination form itself. In many key respects, these definitions are unclear and/or contradictory. The definition of "instructional" in particular is seemingly quite malleable. Shrewd schools can "push the envelope" on their coding of expenditures. When doing so, be sure to stay within the realm of reason and consult with external auditors in advance to avoid breaking through the envelope
- **Review and, if necessary, sharpen your school's mitigation request.** In general, requests that make easy-to-follow, quantitative justifications related to one-time or exceptional circumstances seem to gain the most traction.
- **Amend request and/or submit additional information.** The laws governing the process provide that "Prior to a recommendation by the Advisory Commission on Charter Schools . . . the affected charter school shall be given thirty (30) calendar days in which to amend



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its determination of funding request and/or to provide additional information in support of the request.

Based upon consideration of the amended request or any additional information that may be provided, the Advisory Commission may modify its recommendation to the State Board."

- **Show up at the ACCS meeting and be prepared to advocate for your school.** Identify a skilled spokesperson and start preparing your talking points now.

The **ACCS is slated to review the CDE's recommendations** on February 6th in Sacramento (www.cde.ca.gov/be/cc/cs/accsnotice020613.asp). The ACCS has experienced substantial turnover in recent years and has never had a significant number of members with either substantial experience in nonclassroom-based instruction and/or the complex and arcane funding determination process. Though offered a brief primer on nonclassroom-based matters over a year ago, CSDC anticipates that many ACCS members may struggle to follow the issues due to the complexity of the subject matter and fuzzy nature of the underlying laws. Given the Governor's antipathy toward the bureaucratic funding determination laws, CSDC hopes that both the ACCS and SBE will be favorably inclined to grant mitigation requests. Due to the very high financial stakes, charter schools should not take such support for granted and should sharpen their pencils. CSDC will continue its long track record of advocacy on these matters and our staff is happy to discuss individual member schools' circumstances as needed.