

CHARTER SCHOOL AUTHORIZATION

***Note: The following optional policy may be revised to reflect district practice. Education Code 47600-47616.7 authorize the establishment of a capped number of public charter schools, which are generally exempt from Education Code provisions governing school districts unless otherwise specified in law. To establish a charter school, 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. ***

***Note: Charter petitions also may be submitted to other entities under certain circumstances. 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. ***

***Note: In addition, Education Code 47605.8 authorizes petitioners to submit a petition directly to the State Board of Education (SBE) to approve a "statewide benefit charter school" that may operate at multiple sites throughout the state. 5 CCR 11967.6.1 requires the petitioner to provide prior written notice to the board of each district where the petitioner proposes to locate a school site and to notify the board of the date that the SBE will meet to consider the petition. ***

***Note: For further information regarding the submission and review of charter school petitions, see CSBA's publication Charter Schools: A Guide for Governance Teams. ***

The Governing Board recognizes that charter schools may assist the district in offering diverse learning opportunities for students. In considering any petition to establish a charter school within the district, the Board shall give 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 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 Board also may create a start-up charter school. ***

***Note: The Board may also act as the governing board for what are known as "dependent" charter schools. Although the term does not appear in law, the SBE includes "dependent" charter schools as a separate category in its inventory of charter schools operating in California. A dependent charter school is subject to the same petition requirements and approval process as an "independent" charter school, which is typically formed by parents/guardians, teachers, community members, or a charter management organization. ***

***Note: Pursuant to Education Code 47606, a district may petition the Superintendent of Public Instruction and the 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 charter schools. ***

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One or more persons may submit a petition for a start-up 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. (Education Code 47605, 47606, 53300)

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)

Any petition for a start-up charter school or conversion charter school shall include all components and signatures required by law and shall be submitted to the Board. The Superintendent or designee shall consult with legal counsel, as appropriate, regarding compliance of the charter proposals 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 also may meet with the petitioners to establish workable plans for technical assistance or contracted services which the district may provide to the proposed charter school.

Within 30 days of receiving a petition to establish a charter school, the Board shall hold a public hearing to determine the level of support for the petition by teachers, other employees of the district, and parents/guardians. (Education Code 47605)

(cf. 9320 - Meetings and Notices)

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. (Education Code 47605)

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

The Board shall approve the charter petition if doing so is consistent with sound educational practice. In granting charters, the Board shall give preference to schools best able to provide comprehensive learning experiences for academically low-achieving students according to standards established by the California Department of Education (CDE) under Education Code 54032. (Education Code 47605)

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

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 are not limited to, fiscal accountability systems, multiple measures for evaluating the educational program, including student outcomes aligned with state priorities as described in Education Code 52060, and regular reports to the Board.

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***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. ***

***Note: A sample MOU between the SBE and a state-approved charter school, available on CDE'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.

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)

Denial of Petition

***Note: Education Code 47605 provides that a district cannot approve a charter school serving students in a grade level not offered by the district unless the charter school also serves all the grade levels offered by the district. Thus, an elementary district cannot approve a charter for a high school, but may approve a charter for a K-12 school since it includes all grade levels served by the district. ***

The Board shall deny any petition to authorize the conversion of a private school to a charter school. The Board shall also deny any petition for a charter 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)

***Note: Pursuant to Education Code 47605, a charter petition can be denied only if certain factual findings are made, as specified in items #1-6 below. AB 1360 (Ch. 760, Statutes of 2017) amended Education Code 47605 to add that a petition may be denied if the petition does not include a declaration as to whether or not the charter school will be deemed the exclusive public school employer of the school's employees for purposes of collective bargaining, as provided in item #6 below. 5 CCR 11967.5.1, which contains criteria that the SBE must consider in reviewing charter petitions, may be useful to the district in determining how it might evaluate whether a petition meets the conditions specified in items #1-6 below. ***

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Any other charter petition shall be denied only if the Board makes written factual findings specific to the petition that one or more of the following conditions exist: (Education Code 47605)

1. The charter school presents an unsound educational program 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.
4. The petition does not contain an affirmation of each of the conditions described in Education Code 47605(d).
5. The petition does not contain reasonably comprehensive descriptions of the charter provisions in Education Code 47605(b).
6. The petition does not contain a declaration as to whether or not the charter school shall be deemed the exclusive public school employer of the school's employees for purposes of collective bargaining pursuant to Government Code 3540-3549.3.

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 students with disabilities who reside outside the special education local plan area in which the district participates. (Education Code 47605.7, 47647)

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)

Legal Reference:

EDUCATION CODE

200 Equal rights and opportunities in state educational institutions

220 Nondiscrimination

17078.52-17078.66 Charter schools facility funding; state bond proceeds

17280-17317 Field Act

17365-17374 Field Act, fitness for occupancy

33126 School Accountability Report Card

41365 Charter school revolving loan fund

42238.51-42238.2 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

CHARTER SCHOOLS

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

51745-51749.6 Independent study

52052 Accountability; numerically significant student subgroups

52060-52077 Local control and accountability plan

56026 Special education

56145-56146 Special education services in charter schools

CORPORATIONS CODE

5110-6910 Nonprofit public benefit corporations

GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act

CODE OF REGULATIONS, TITLE 5

11700.1-11705 Independent study

11960-11968.5.5 Charter schools

CODE OF REGULATIONS, TITLE 24

Part 2 California Building Standards Code

UNITED STATES CODE, TITLE 20

7223-7225 Charter schools

COURT DECISIONS

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

ATTORNEY GENERAL OPINIONS

89 Ops. Cal. Atty. Gen. 166 (2006)

80 Ops. Cal. Atty. Gen. 52 (1997)

78 Ops. Cal. Atty. Gen. 297 (1995)