



California Charter School Policy Update: Legislators focus on facilities, financing, and governance

CALIFORNIA'S CHARTER SCHOOLS ACT

of 1992 covered a wide range of issues, such as the charter petitioning and approval process, the duration of a charter, criteria for revoking a charter, funding policies, and a state-level evaluation requirement. Yet it was also brief and nonspecific.

This lack of specificity was in part by design. In a state as diverse as California, with more than 1,000 school districts and county offices of education that vary dramatically in size and situation, many issues have to be worked out locally between charter-granting entities and charter schools. But legislators might have provided a more detailed blueprint if they could have foreseen the myriad of concerns that have surfaced over time. Since the first California charter school opened in 1993, the Legislature has continued to add and fine-tune its policy direction.

In some cases, new statutes have provided more freedom or resources to charter schools. In other instances, legislators have reacted to reported abuses by tightening the regulations and reporting requirements. Further, the state's standards-based reforms related to testing and accountability have included charters. The accumulation of this body of law and policy has resulted in a fairly sophisticated set of rules for how charters are authorized, operated, governed, and staffed.

Today, the portion of the state's Education Code that is dedicated to charter schools is more than twice as long as the original Act. Still, both the charter school community and the districts and county offices of education (referred to collectively as "local education agencies" or "LEAs") that oversee charter schools say that more changes are needed. In general, charter school operators and supporters tend to desire one set of changes and LEAs want other—sometimes opposing—revisions.

Charter advocates prefer to maintain or expand charter schools' independence, flexibility,

and access to resources. They would like to minimize statutory and regulatory requirements and be able to readily seek waivers from the State Board of Education. On the other side, LEAs would like compensation for funding lost when their students enroll in charters.

Some of these issues—facilities, financial impacts, and governance—provide ongoing sources of friction and have provoked intermittent calls for policy solutions.

Facilities remain a central issue for charters and local education agencies (LEAs)

California's foray into charter schools was meant to be revenue-neutral, meaning that operational funding would follow a student who chose a charter school instead of a traditional public school. In accordance with revenue neutrality, the state did not originally provide additional funding for modifying or building facilities for charter schools. But that has changed over time. In 1996, the state established the Charter School Revolving Loan Fund to help cover start-up costs, which could include facilities. Within a few years, the state was issuing five-year loans for up to \$250,000.

In 1998, Assembly Bill (AB) 544 said that charter schools could have facilities that the districts were not using for instructional or administrative purposes—or that had not been historically used as rentals—provided the charter took responsibility for maintaining those facilities.

Three years later, the state enacted Senate Bill 740, which created the Charter Schools Facility Grant Program. Under that program, charter schools in high-poverty areas can receive as much as \$750 per pupil for leasing costs.

Proposition 39 gives charters access to facilities but creates potential for conflicts

Before policymakers created that program, however, state voters in November 2000 passed Proposition 39, which replaced AB 544's requirements with terms more favorable

to charter schools. Proposition 39 requires districts to provide facilities sufficient for each local charter school to accommodate all its in-district students (if there are at least 80 such students). Such facilities must be in a condition "reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district." Furthermore, Proposition 39 requires these facilities, which remain the property of the district, to be contiguous, furnished, and equipped. The district must make reasonable efforts to provide the charter school with facilities near to where it wishes to locate and may not move the charter unnecessarily. The district may not charge the charter rent unless the district has been paying for the facility with general fund dollars (rather than with bond funds earmarked for facilities). The district must also compute rent charges according to a specified formula.

Although key terms from the proposition were detailed in administrative regulations, many charter schools and their districts have butted heads over the interpretation and implementation of the law. Many charters say that their districts have not fulfilled their duties under Proposition 39. However, some districts are struggling to build, modernize, or equip the facilities needed to house "their own" students and have difficulty adapting their facilities plans to the wishes of charter schools. The State Board of Education built into the regulations a dispute-resolution process. However, that process was removed from the regulations because the Department of Finance thought it would create costs for local governmental entities that the state would have to reimburse.

After four years of observing how charters and their local districts have implemented the regulations, state leaders decided they wanted to revise them based on lessons learned. Key stakeholders have formed work groups to help with the revisions.

In general, the proposed revisions provide added explanation, detail, or examples. Many are controversial, including some opposed by major education organizations. They say that much of the proposed new regulatory language exceeds the scope of Proposition 39 and deals with issues that would be more appropriately addressed by the Legislature. One example is a revision that would require a “furnished and equipped” facility to be sufficient not only for instruction, but also for student services that directly support instruction.

Other issues that the proposed regulations would cover follow:

- Including the time that primarily nonclassroom-based pupils spend in the classroom in computing average daily attendance;
- What the district must do if it does not accommodate the charter at a single site;
- The “comparison group” of district-run schools that the parties look to for reasonable equivalence of facilities;
- Obligations of the district and the charter school when the school has been established at an existing public school site;
- The rate that charter schools must reimburse districts for “over-allocated” space;
- The basis for facilities requests (projections of attendance).

Charters' financial impact on LEAs' operating funds is raising concerns

Another major policy issue centers on how schools are funded. The bulk of schools' operational funding is based on the average daily attendance of students, and that money “follows the student” who opts for a charter school. As a result, many LEAs see charters as draining money from their coffers. Charter supporters say that this creates an incentive for both district-run and charter schools to provide the services that the student is looking for and that healthy competition improves quality. But the loss of

funding is tough for districts to handle because schools have fixed costs that do not decrease commensurately with the loss of each student. For example, if 10 students of a district-run school transfer to a charter school, the district loses funding for 10 students but must still keep its teachers, maintain its facilities, and so forth.

LEAs point to Massachusetts and New York as examples of states that cushion districts' financial losses. It may just be a matter of time before a California legislator proposes a similar policy. Already there have been several legislative attempts to support districts facing declining enrollments due to larger demographic forces.

Another issue is the cost borne by LEAs—including personnel time—for overseeing charter schools. The law allows chartering agencies to charge fees for this oversight—up to 1% of the charter's state revenues or up to 3% if the chartering agency is providing substantially rent-free facilities. Some LEAs say these fees do not cover the full cost of oversight or even the cost of reviewing the charter petition before the school opens. They see charter schools as costing them not only the operational funding that follows the student, but also staff time for which they are not fully compensated.

But charter advocates say that some charter schools pay more than their fair share of Special Education costs, have to use operational funds to pay for facilities, and do not have access to equal categorical funding because districts do not share it equally or because charters cannot afford the personnel time or do not have the expertise needed to pursue those funding sources.

State Sen. Joe Simitian has introduced Senate Bill 537, which calls for a study by January 2009 of whether oversight fees are set at the appropriate level.

Charter governance issues create conflicts

In addition to the financial concerns, there are some key governance issues.

Some LEAs find that the grounds for approving a charter are subjective and inconsistent both throughout the state and between districts and their county offices. In addition, state policy holds that if a district denies the charter, the petitioner can seek approval from the local county office of education (COE). The COE can complain that its district was wrong to deny the charter and has created unnecessary work for the COE. If the charter is approved by the COE, the district can say that it has to work with a charter school that should not have been allowed to open.

Another governance issue concerns oversight and accountability. Some districts say that they are put in a difficult position when a local charter school's statistics—such as academic performance scores or the percent of teachers that meet federal “highly qualified” criteria—are rolled into the district total because the district has little power over the charter school's operations. In addition, a district's oversight duties can become onerous if it has multiple charter schools that are not affiliated with each other and have very different procedures and policies.

Local problem solving is key to charter schools' independence and flexibility

This update focuses on the major policy issues concerning charter school facilities, financial impacts, and governance. However, there are many more complaints and pitfalls that charter schools and their chartering authorities face every day. If LEAs and charters can work together to reach consensus, they will help reduce their reliance on legislators' ability to fine-tune regulations. Local problem solving might also help charter schools stay independent and flexible so they can continue providing options and choice within California's public school system. ■■

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