



SCHOOL & COLLEGE LEGAL SERVICES
OF CALIFORNIA

Charter School

Appeals

January 14, 2022

Presented by:

**Jennifer E. Nix, Senior Associate General Counsel
School & College Legal Services of California**

Charter Schools

- Charter schools can be authorized by a two sources:
 - Local school district
 - Local school district, but approved by the county board of education or the state board of education
 - County board of education
 - Charter school that serves students for whom the county office of education would otherwise be responsible for providing direct education and related services
 - Countywide charter school that provides educational services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county
- Option also exists for a school district to convert all of its schools to charter schools. (Educ. Code § 47606)

Procedure – Initial Petition

- Petitioners submit their petition to the school district in which the proposed charter school would be located.
- Following review of the petition and a public hearing, the school district board must grant or deny the petition within 90 days of receipt.
 - This date may be extended to 30 days if both parties agree to the extension.
 - At the public hearing at which the board grants or denies the petition, the petitioners are entitled to equivalent time and procedures to present evidence and testimony to respond to staff recommendations and findings.

Educ. Code § 47605(b)

Charter School Appeals

- Petitioners can appeal denials to the county board of education.
 - Petition must be submitted within 30 days of a denial by the school district.
 - Appeal petition must be simultaneously submitted to the school district and the county board.
 - The county board “shall review the petition pursuant to subdivisions (b) and (c)” of Section 47605.
 - Subdivision (b) provides the timelines for public hearing and granting/denying a petition.
 - Subdivision (c) provides the requirements for granting/denying a petition.
 - The county board of education must remand to the school district any petition submitted on appeal that contains new or different material terms.
 - Reconsideration must occur within 30 days of remand.
 - If the petition is again denied, the petitioners may resubmit to the county board.

Educ. Code § 47605(k)

Charter School Appeals

- If the county board denies an appeal, petitioners may appeal that denial to the SBE.
 - Petitioners must show how the school district and/or county board “abused their discretion.”
- A charter school granted a petition by the county or state board is limited to the geographic location of the chartering authority that originally denied its petition.
- If the county board or SBE fail to act on the petition within 180 days of receipt, the decision of the school district is subject to judicial review.

Educ. Code § 47605(k)

Timelines – Appeals

- Within 60 days of receipt of a petition, the BOE must hold a public hearing on the petition.
 - The public hearing must consider the level of support for the petition by teachers employed by the school district, other employees of the school district, and parents.
 - A petition is deemed “received” by the BOE when it is submitted to the COE with a signed certification that the petitioner deems the petition to be complete.
- At least 15 days prior to the public hearing at which the BOE will grant or deny the charter, the BOE must publish “all staff recommendations, including the recommended findings.”
 - Must also publish any required county superintendent certification.

Educ. Code § 47605(b)

Timelines – Appeals

- Following review of the petition and a public hearing, the BOE must grant or deny the petition within 90 days of receipt.
 - This date may be extended to 30 days if both parties agree to the extension.
 - At the public hearing at which the BOE grants or denies the petition, the petitioners are entitled to equivalent time and procedures to present evidence and testimony to respond to staff recommendations and findings.

Educ. Code § 47605(b)

Petition Review

- The petition will be reviewed by a COE team in addition to the BOE. Team is looking for:
 - Sufficient information that the petitioners are likely to succeed.
 - Information about the proposed facility.
 - Detailed/sound budget, fiscal management processes in place, insurance, cash flow requirements.
 - Adherence to conflict-of-interest standards.
- One individual will review the entire petition to ensure it is compliant with board policy and the law.

Petition Review

- COE team is looking to establish whether:
 - The charter school presents a sound educational program for the pupils to be enrolled; and
 - The petitioners are demonstrably likely to successfully implement the program set forth in the petition.
- Petitions are often hundreds of pages long, but do not contain the information needed to know if granting the charter is consistent with sound educational practice.
 - COE team will discuss the petition with petitioners and get answers to questions that arise from review of the petition.

Petition Review

- Financial review:
 - Charter should provide a proposed first-year budget, including start-up costs, and cash flow and financial projections for the first three years of operation.
 - What assumptions are being made?
 - Is the budget complete, reasonable, based on documented assumptions, and presented according to generally accepted accounting principles?
 - Is the business and operations strategy clear and acceptable?
 - Are the risks and any mitigating strategies clearly identified?

Charter School Petitions

- The petition must contain:
 - Identification of a single charter school that will operate within the geographic boundaries of the school district to which it is submitting the petition
 - Signatures of parents/guardians and/or teachers
 - Reasonably comprehensive descriptions of the “A-O elements” (A-P for countywide charters)
 - Affirmation of required conditions
 - Proposed first-year operational budget, three-year financial projections

Educ. Code § 47605

A-O Elements

- A. Educational Program
- B. Measurable Pupil Outcomes
- C. Measurement of Pupil Outcomes
- D. Governance Structure
- E. Employee Qualifications
- F. Health & Safety Procedures
- G. Means of Achieving Pupil Balance
- H. Admissions Policies and Procedures
- I. Manner for Audits

A-O Elements

- J. Suspension/Expulsion Procedures
- K. Staff Retirement Plan
- L. Public School Alternatives
- M. Related Rights of School District Employees
- N. Dispute Procedures
- O. Closure Procedures

Denying a Petition

- The BOE “shall not” deny a petition unless it makes written factual findings that support a finding that:
 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 required signatures.
 4. The petition does not contain the Four Conditions.
 5. The petition does not contain “reasonably comprehensive descriptions” of the A-O elements.
 6. The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school.
 7. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate.
 8. The school district is not positioned to absorb the fiscal impact of the proposed charter school.

Denying a Petition – Community Interest

- “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 under this paragraph shall detail specific facts and circumstances that analyze and consider the following factors:
 - (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 school district and the existing program has sufficient capacity for the pupils proposed to be served within reasonable proximity to where the charter school intends to locate.”

Educ. Code § 47605(c)(7)

Denying a Petition – Fiscal Impact

- “The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has a qualified interim certification pursuant to Section 42131 and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Section 42131, has a negative interim certification pursuant to Section 42131, or is under state receivership. *Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.*”

Educ. Code § 47605(c)(8)

Denying a Petition

- Granting or denying a charter petition is not discretionary.
- A petition cannot be denied based on the actual or potential costs of serving students with disabilities. (Educ. Code § 47605.7)

Oversight

- Authorizers have five duties under the law:
 1. Identify at least one staff member as a contact person for the charter school.
 2. Visit the charter school at least once per year.
 3. Ensure that the charter school under its authority complies with all reports required of charter schools by law.
 4. Monitor the fiscal condition of the charter school.
 5. Notify the CDE if:
 - A renewal of the charter is granted or denied;
 - A charter is revoked; and/or
 - A charter will cease operation for any reason.

Educ. Code § 47604.32(a)

Oversight

- The authorizing agency should ensure that the charter school is living up to its MOU obligations and meeting its accountability goals.
 - Someone should be proactively monitoring the school's pupil performance, fiscal accountability, and legal compliance.
 - Examine the annual, independent financial audits of the charter school.
 - Periodic site visits.
- Sign a Memorandum of Understanding (MOU) with each charter school.
 - This should be unique to each school, not a boilerplate agreement.
 - Should be approved at the same time as the charter.
- Publish application timelines and materials.
- Establish renewal and revocation criteria.

Oversight Fee

- Authorizing entity can charge an “oversight fee” for the actual costs of supervision, not to exceed 1% of the charter school’s applicable revenues.
 - Authorizing entity can charge up to 3% if the charter school obtains substantially rent-free facilities from the authorizer (cannot exceed actual costs)
- 1% and 3% limits are based on the revenue of the charter school, defined as the amount received in the current fiscal year from the Local Control Funding Formula (LCFF) (base grant + supplemental grant + concentration grant + Targeted Instructional Improvement Grant + Home-to-School Transportation) (Educ. Code § 47613)

Charter School MOU

- Should outline financial and operational terms.
- Usually negotiated during the petition approval process, approved by the board after the petition is approved.
- Should be reviewed annually, and adjusted based on need.
- Can negotiate anything not in the charter petition.
 - Expand on the legal charter school requirements.
 - Provide more detail on the petition.
 - Fix an inconsistent or vague language in the petition.
- Separate MOUs might be needed for business operations, facilities plan, administrative/support services, special education, student assessment/access/data reporting plan.

Other Support Services

- Some charter schools contract for LEA services such as:
 - Accounting
 - Accounts Payable
 - Attendance Accounting
 - Audits
 - Budgeting
 - Payroll
 - Personnel/Human Resources
 - Health Services
 - Purchasing
 - Staff Development
 - Legal Services

Appeal – Remand

- “If the petition submitted on appeal contains new or different material terms, the county board of education shall immediately remand the petition to the governing board of the school district for reconsideration, which shall grant or deny the petition within 30 days. If the governing board of the school district denies a petition after reconsideration, the petitioner may elect to resubmit the petition for the establishment of a charter school to the county board of education.”
 - “As used in this subdivision, “material terms” of the petition means the signatures, affirmations, disclosures, documents, and descriptions described in subdivisions (a), (b), (c), and (h), but shall not include minor administrative updates to the petition or related documents due to changes in circumstances based on the passage of time related to fiscal affairs, facilities arrangements, or state law, or to reflect the county board of education as the chartering authority.”

Educ. Code § 47605(k)(1)(A)

Questions?



Information in this presentation, including but not limited to PowerPoint handouts and presenters' comments, is summary only and not legal advice. We advise you consult with legal counsel to determine how this information may apply to your specific facts and circumstances.

Jennifer E. Nix, Senior Associate General Counsel
jnix@sclscal.org

School & College Legal Services of California
5350 Skylane Boulevard
Santa Rosa, CA 95403
(707) 524-2690
www.sclscal.org