



November 2016

Governance Brief

Charter Schools in Focus, Issue 1

Managing the Petition Review Process

by Manuel Buenrostro

Introduction

This brief is the first in a series aimed at supporting governing boards to provide effective charter school oversight. School districts and county offices of education are charged with delivering a high-quality educational program for all students that prepares them for college, career, and civic life. Locally elected school boards and county boards of education play a major role in holding the system accountable. When students attend a public charter school that may have a separate governance structure and significant flexibility in the delivery of an educational program, the school board or county board of education that approved the charter maintains ultimate accountability to the community.

This brief focuses on the steps and strategies for governing boards to consider upon receiving a charter petition (i.e., a formal plan to establish and operate a charter school). Many of the processes and criteria for the review of charter petitions are delineated in law. Regardless, there is still considerable discretion for boards to determine whether a proposed charter school meets the legal criteria for approval. By requiring petitioners to engage in careful and comprehensive planning, governing boards can increase the likelihood of a charter school's success in providing a high-quality education.

Charter Schools in California

According to data from the California Department of Education, there were more than 1,200 active charter schools during the 2015-16 school year, serving 572,752 students statewide — or approximately 9% of all K-12 students in California. There are charter schools operating in 53 of California's 58 counties.¹ Since California began to approve charter schools in 1992, growth has been steady. However, the number of charter school approvals

has increased more rapidly over the last few years, growing by more than 400 schools from the 2009-10 to 2015-16 school years. During that same period, enrollment in charter schools has grown by nearly 250,000 students.²

Research has shown mixed academic results for charter schools in California and nationwide. The second brief in this series will provide detailed information on various outcomes for a range of student groups in California.

Governing Board Responsibilities and Recommendations

Governing boards along with the support of the superintendent and staff, have three major oversight responsibilities as charter school authorizers:

1. **To review the charter school petition**, prior to making a decision, to determine compliance with statutory requirements and feasibility of the proposed operations.
2. **To oversee the performance of the charter school**, including that it meets student achievement targets, demonstrates fiscal stability, and complies with state and federal laws — including submission to the authorizer of the Local Control and Accountability Plan (LCAP) and other documents.
3. **To determine whether a charter school should be renewed** or, if needed, revoked in accordance with the law.

Principal among these responsibilities is ensuring that a robust review process is conducted prior to making a decision on a charter petition. This is critical so that only charter schools that are the most likely to be successful are authorized, and that the parameters of their relationship with the school district or county office of education are established ahead of time.

Recommendations in Anticipation of a Charter School Petition

After receiving a complete and properly submitted petition to establish a charter school, a governing board has 60 days to grant or deny the charter contract. This period can be extended an additional 30 days with mutual agreement between the board and the petitioners. The review process is relatively short and moves fast, therefore, it is imperative for governing boards to have their policies, procedures, and key staff in place to meet their obligations and make the best decision for their students and community. The following are recommendations for governing boards to manage charter school petitions more effectively:

- 1. Establish a Charter School Petition Review Team.** To assist the governing board, a team of staff members and if necessary, consultants, should be established to review charter petitions. The team will review petitions and supporting documentation before board action is required. The team should include individuals with expertise including human resources, business, finance, facilities, education services, special education, and curriculum, along with legal counsel. The team will want to provide an explanation for each of its findings on a petition for the board to review. While the superintendent is responsible for establishing this review team, governing boards can ensure sufficient resources for the review process and provide direction on how information should be prepared.
- 2. Establish and Refine Policies Regarding Charter Schools.** Every board should consider establishing a policy outlining requirements for submission and review of charter school petitions. This policy should specify any information that the board will need to evaluate the potential success of a charter. In addition, policies addressing charter school oversight, renewal, and revocation, should be available to petitioners so that they are aware of any requirements if their charter is granted. Subscribers to CSBA's policy services have access to sample board policies, administrative regulations, and exhibits: BP/AR 0420.4–Charter School Authorization, BP/E 0420.41–Charter School Oversight, BP 0420.42–Charter School Renewal, BP 0420.43–Charter School Revocation, and BP/AR 7160–Charter School Facilities.
- 3. Define any Authorizer Preferences.** In accordance with Education Code 47605(h), "the governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving." Governing boards should address this preference in their policies

or guidance documents. For instance, the board may want to encourage petitioners to focus on specific needs, such as targeting English language learners. While petitions do not need to conform to any of the preferences, outlining them in advance might shape potential petitions.

- 4. Determine Support Available to Petitioners.** Some school districts and county offices of education have staff look at petitions prior to submission to allow time to fix deficiencies. Some interact with petitioners during the review period to negotiate changes. Others strongly believe that thorough and complete charter petitions should be submitted without assistance, allowing the board and staff to judge them on their own merits and determine the petitioner's ability to operate a school successfully. However, there could also be issues, such as services to be provided by the school district or county office of education, which can require additional guidance. While the extent of staff support is based on local preferences, the review process should be discussed and approved by governing boards ahead of time.
- 5. Engage the Public and Petitioners.** School districts and county offices of education should make available information regarding charter school applications to any interested party. This information can include school district or county office of education policies related to charter schools, authorizer preferences, additional materials for submission, and the format for submitting that information. This is also an opportunity for the governing board and staff to engage community members, families, and other stakeholders so that there is a common understanding of school district or county office of education goals and vision for charter schools.

Importance of Memorandums of Understanding (MOUs)

Governing boards will want to determine any MOU components it may want to complete with petitioners during the review process. An MOU is a legally binding agreement between the charter school and the school district or county office of education. While charter law does not reference MOUs, they are recommended to establish and clarify operational details when necessary. However, efforts should be made to add any critical details in an original petition where appropriate. Any MOU should be incorporated in a petition as an attachment so that it becomes part of the final charter. Since some of the items may be lengthy, a separate MOU for business operations, facilities, administrative and support services, special education, assessment, and athletics are common. *CSBA's Charter Schools: A Guide for Governance Teams* discusses these items in more detail and is a helpful resource for further guidance.

Key Steps of the Charter School Petition Review Process

Within 60 days of receiving a charter school petition, review teams must provide a robust review of the petition, identify challenges early on, and provide timely information to allow the governing board to make an informed decision. While some school districts and county offices of education will have dedicated staff to do this work, others will need to be creative about staffing during the review process, which might include hiring consultants. The following are key steps that governing boards should keep in mind during the review period.

Day 1: Governing Board Officially Receives and Date Stamps the Petition

Staff should officially submit and date stamp a complete and properly submitted petition at the first board meeting following receipt. This will start the 60-day timeline for review.

By Day 30: Board Holds Public Hearing

Within 30 days of official receipt, the governing board must hold a public hearing. This is an important opportunity for the board to hear from the petitioners, their staff, and the public. The board may choose to hold multiple hearings, provided that they meet all required timelines and public notice requirements. Board members should also seek public

input from relevant participants, including families, unions, and teachers, to identify areas of support and any concerns.

Ongoing: Staff Conducts Internal Review

The internal review of a charter petition is conducted by the petition review team and should begin as soon as the petition is received. During this process, the review team should compile relevant information and report its findings to the board in advance of the public hearing. In some school districts or county offices of education, a checklist or rubric is used to ensure that reviews are consistent and provide adequate information for the board to make a sound decision.

As part of the internal review, legal review of the petition is also critical. For all charter petitions, governing boards should ensure that legal counsel:

- » Confirms that the petition complies with applicable Education Code provisions regarding petition review and all other applicable state and federal laws.
- » Reviews the adequacy of the petitioner's insurance and liability terms.
- » Confirms that the petition addresses any services that will be provided by the school district or county office of education (e.g., testing administration, food, and accounting services).

By Day 60: Take Action

Within 60 days of officially receiving the petition, the board must complete the review process and determine whether to grant or deny the charter. After analyzing the petition, ensuring it complies with the Education Code, and reviewing staff recommendations, the board may take one of the following actions:

- » **Grant the charter for a term of up to five years.** This can include any MOUs detailing operational agreements during the review process, including on special education and facilities.
- » **Grant the charter with conditions to operate.** Conditions can be established in an MOU and require that, within a designated period of time, the petitioners resolve issues raised by the governing board or provide materials not available during the review process (e.g., insurance, leases, corporate filing, human resources manuals, etc.). Failure to comply with established conditions is a violation of the charter and can lead to its rescission or revocation. School districts or county offices of education should consult with legal counsel when determining how to handle these violations.

- » **Ask the petitioners to withdraw the petition** until they can correct deficiencies.
- » **Deny the petition** based on grounds established in Education Code.
- » **Seek the allowed 30-day extension** through written agreement from petitioners, in order to have additional time for consideration.

Components of a Complete Charter School Petition

There are certain requirements for complete charter school petitions delineated in law. Governing boards can establish their own policies for submitting charter school petitions that include these requirements in addition to other information. CSBA recommends that governing boards establish a process for the review of charter school petitions that includes the following information:

- » A petition application letter.
- » A signature page.
- » The petition's 16 required elements.
- » Statutorily required information and affirmations.
- » Locally recommended additional information that may help the board determine whether the petition meets requirements.

The 16 required elements include information ranging from a description of the charter school's educational program, admission requirements, and closure procedures. Additional information at the local level can include the school calendar or board member biographies. For additional information, see Education Code 47605 and *CSBA's Charter Schools: A Guide for Governance Teams*.

What Should Boards Consider in Making their Decision?

When evaluating a petition, governing boards must grant approval unless written factual findings are made that certain, specified requirements have not been met. The board may not deny a petition based on the potential impact of a charter school on the school district's or county office of education's other educational programs, fiscal health, or facilities.

Any one of the following conditions must exist for a petition to be denied, as delineated in Education Code 47605(b):

- » The charter presents an unsound educational program.
- » The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- » The petition does not contain the number of signatures required.
- » The petition does not contain an affirmation of each of the conditions described in Education Code 47605(d).
- » The petition does not contain reasonably comprehensive descriptions of the 16 required elements as described in Education Code 47605(b).

Except for the signature requirement, most criteria for denial require a more rigorous evaluation by the review team. The governing board can be proactive by establishing criteria for an "unsound educational program," the conditions under which a petitioner might be "unlikely to successfully implement the program", and the level of detail required for the affirmations and the 16 required elements.

The State Board of Education (SBE) has approved regulations (5 CCR 11967.5.1) pertaining to original and renewal charter petitions that come before it on appeal. Specifically, these regulations define "unsound educational program" and the terms to measure "unlikely to successfully implement the program." These regulations are not binding for school districts or county offices of education, but may be helpful for reviewing charter petitions and establishing criteria for success. The SBE regulations can be found at <http://bit.ly/2dfEgR>

Grade-Level Restrictions

A petition to establish a charter school may not be approved to serve students in a grade level that is not served by the school district or county office of education considering the petition, unless it proposes to serve all grade levels served by the school district or county office of education. In other words, elementary school districts would be prohibited from approving petitions for charter schools serving only high school students. However, an elementary school district serving K-6 students can approve a petition for a K-12 charter school since the school would be serving students in all of the grade levels served by the school district, plus the additional grade levels of 7-12.

Appeal Considerations

Charter petitions denied by a school board can appeal first to the county board of education and then if necessary, to the SBE.

Appeal to the County Board of Education

Petitioners may submit an appeal to the county board of education within 180 days of denial by the school board. The county board of education has 60 days (plus a possible 30-day extension by mutual agreement) to approve or deny the appeal. Unlike most expulsion appeals, the county board of education reviews the petition anew (i.e., “de novo”) and must make its own factual findings if it decides to deny the petition on appeal. If the county board of education approves the petition on appeal, it becomes the authorizer and is responsible for oversight.

Appeal to the State Board of Education

Petitioners may also submit an appeal to the SBE if the county board of education denies the petition. Just as with an appeal to the county board of education, the SBE also reviews the petition anew. If the SBE approves the petition, then the California Department of Education becomes the oversight agency. By mutual agreement, the SBE may designate the board that originally denied the petition or any local education agency in the county in which the charter school is located as the oversight agency. However, the SBE would retain the authority to revoke the charter.

Note that petitioners have the option to seek a judicial review of the school board’s original decision if the county board of education or SBE fail to act on a petition within 120 days of receipt.

Charter School Petitions Submitted Directly to a County Board of Education

Charter school petitions can be directly submitted to a county board of education under the following circumstances:

Authorization of Charter Schools Serving a Student Population Normally Served by the County Office of Education.

County boards of education may approve a charter petition directly when the county office of education would otherwise be responsible for providing direct education and related services to the students served in the proposal. Denial of these petitions may be appealed to the SBE.

Authorization of Countywide Charter Schools.

A countywide charter school operates at one or more sites within the geographic boundaries of a county and provides instructional services not generally provided by a county office of education. If making a decision to approve such a charter, the county board of education must find (in addition to the other legal requirements) that the charter school will offer educational services to a student population that cannot be served as well by a charter operating in only one school district in the county.

County offices of education should establish a separate process for countywide charter petitions to prevent confusion and legal challenge. The timeline for consideration of countywide charter petitions is 90 days with a possible 30-day mutually agreed extension. The county board of education’s decision to deny a countywide charter petition is final — there is no appeal to the SBE.

Questions for Board Members

Board members can ask the following questions to gain a better understanding of the process for reviewing charter school petitions by their school district or county office of education.

Before a Petition

1. Who are the staff in charge of reviewing charter school petitions? Do they have sufficient time and expertise? Are consultants needed to bring in additional expertise?
2. Who is conducting the legal review? What will be their role in the review process?
3. Has the board approved any policies for establishing charter schools? Are the policies up to date with current law and best practices?
4. What information pertaining to a charter school petition is provided to the board before the public hearing? In what format is this information provided, and is it sufficient to make an informed decision?

During Petition Review

5. What experience do the petitioners have operating a school? Do they have the resources or experience to implement what is proposed in the petition?
6. Does the proposed educational program meet the board's definition of a "sound educational program," and is the program research-based and aligned with the California State Standards?
7. What is the governance structure of the proposed charter? Do the members of the charter governing board have the necessary expertise to successfully support the school and understand the needs of the community?
8. Is the petition (including individual charter board members) affiliated with any other charter school or Charter Management Organization? What are those connections and how do they effect the operation of the proposed school? What have been the student outcomes of the affiliated charter schools?
9. Does the petition include a realistic, balanced budget? How realistic are the enrollment projections?
10. Does the petition clarify the expected role of the governing board, community, and other stakeholders in the LCAP process?

11. Are there clear goals for student achievement for which the charter school will be accountable? Are the goals and indicators for progress measurable and commonly understood by board members, school district staff, community members, and the petitioners?
12. What are the services and other operational aspects of the charter school that should be in the petition or an MOU before approval?

After Petition Review

13. What types of reports and information will staff need to provide for the board to monitor the performance and progress of charter schools? What additional training can be provided to improve how staff monitors the performance and progress of charter schools?
14. How should the school district or county office of education communicate concerns to its charter schools?
15. How can the charter petition review process and charter school policies be improved?

Conclusion

Governing boards have the responsibility to make decisions that provide students with access to a quality education that prepares them for college, career, and civic life. As part of this responsibility, school districts and county offices of education need to carefully review charter school petitions and approve only those with a sound educational program and adequate evidence that points to its successful implementation.

CSBA is committed to supporting the role of governing boards in maintaining and overseeing accountability and improving the quality of education in California schools. This brief, along with subsequent briefs in the series, our sample policies, and *Charter Schools: A Guide for Governance Teams*, are powerful resources to support board members in carrying out their governance responsibilities.

CSBA Resources

Charter Schools: A Guide for Governance Teams (February 2016). CSBA's nuts-and-bolts explanation of charter law and regulations to help school boards and county boards of education negotiate charter petitions, renewals, facility requests, and other topics related to charter school oversight. Available for purchase at www.csba.org/store

Education Insights: Legal Update Webcast, Season 3, Ep.3 (March 2016). This webcast focuses on charter schools and board member responsibilities. Watch as legal and policy experts discuss each governing board's oversight responsibilities and other issues such as facility requests and the petition and appeals process. View the webcast at www.csba.org/EdInsights

Gamut Online. Subscribers to CSBA's policy services have access to the following charter school-specific sample policies and regulations:

- » BP/AR 0420.4 - Charter School Authorization
- » BP/E 0420.41 - Charter School Oversight
- » BP 0420.42 - Charter School Renewal
- » BP 0420.43 - Charter School Revocation
- » BP/AR 7160 - Charter School Facilities

Visit www.gamutonline.net

Endnotes

- 1 California Department of Education. Public schools and districts data files. Downloaded June 20, 2016 from <http://bit.ly/2eicB0C>
- 2 California Department of Education. Enrollment in California public charter schools by ethnic designation, 2009-10 and 2015-16. Downloaded August 3, 2016 from <http://bit.ly/2e991rR>

Manuel Buenrostro is an Education Policy Analyst for California School Boards Association