



 Charter Schools A Manual for Governance Teams





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Preface



School districts are charged with providing a high-quality educational program that challenges all students to succeed. Local school boards are elected to hold the system accountable. When students attend a public charter school that has a separate governance structure and is granted significant freedom from state laws, the school board maintains ultimate accountability if it approved the charter. Thus, the school board must exercise due diligence in fulfilling its responsibilities with regard to charter schools and must act in the best interests of students enrolled in the charter school.

This handbook is a guide to help school districts and county boards of education, and superintendents negotiate the charter petition process and assist boards in their oversight and renewal responsibilities. Many of the processes and criteria for the review of charter petitions are delineated in law, but within those rules there is still considerable discretion for local boards to determine whether a proposed charter school is likely to be successful. In fact, by requiring petitioners to engage in careful, comprehensive and collaborative planning, the board may increase the likelihood of the school's success.

Boards must also receive regular reports on fiscal and educational matters to ensure the school is fulfilling the terms of its charter. Authorizing boards must have accurate information about charter school performance to determine whether to renew a charter when its term expires or whether it is necessary, in some circumstances, to revoke the charter before the end of its term. Reports also allow the disclosure and dissemination of successful practices that might be replicated in other district schools, a major tenet of the original charter school law.

Information contained in this handbook is intended for advisory purposes only. The handbook raises issues that the board should consider, but the board may develop additional procedures or requirements as needed to fit its unique circumstances. This handbook is not intended to provide legal advice. If questions arise about the interpretation of a law, district and county board members are strongly encouraged to seek the advice of legal counsel.

This handbook continues CSBA's efforts, beginning with the passage of the Charter Schools Act in 1992, to examine the governance issues raised by this educational reform strategy and to monitor studies of the effectiveness of charter schools. CSBA provides sample policies and administrative regulations reflecting legal requirements and additional considerations; CSBA's legislative advocates monitor related legislative proposals and advocate on behalf of districts and county offices of education in these matters and, CSBA's Policy Analysis department provides training to governance teams on charter authorizer role and responsibilities.

Introduction

■ ■ ■ Charter Schools Act Provisions

When the Charter Schools Act (Education Code 47600-47616.7) was signed into law in 1992, it provided for the establishment of 100 charter schools in California. These were to be public schools but would be exempted from most state Education Code provisions governing school districts, with the intent of enabling the charter schools to be more innovative and to particularly address the needs of academically low-performing students.

Specifically, the legislature's intent was to provide opportunities for teachers, parents/guardians, pupils and community members to establish and maintain schools that operate independently from the existing school district structure, as a method to accomplish all of the following:

- Improve pupil learning.
- Increase learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low-achieving.
- Encourage the use of different and innovative teaching methods.
- Create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site.

- Provide parents/guardians and pupils with expanded choices in the types of educational opportunities that are available within the public school system.
- Hold the schools established under this part accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems.
- Provide vigorous competition within the public school system to stimulate continual improvements in all public schools (Education Code 47601).

Although the purpose, goals and basic charter school program remain the same, there have been a number of significant changes in the law since the program began.

Introduction

■ ■ ■ ■ Timeline of California Charter School Law

1992

SB 1448

California's original charter school law was authored by Senator Gary Hart and signed into law by Governor Pete Wilson. The law is commonly referred to as The Charter Schools Act of 1992.

1996

AB 2135

Required an interim study of charter schools.

AB 3223

Required that charter schools formed in basic aid districts-of-choice receive revenue limit funding from the state.

AB 3384

Made changes to the Education Code affecting dispute resolution, a charter school revolving loan fund, participation in the state accountability system, and open meeting laws (Brown Act).

SB 1883

Expanded the number of charters permitted in districts with more than 600,000 pupils from 10 to 20.

1998

AB 544

Restricted a district board's ability to deny a petition. Reinforced the intent of the legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. AB 544 put in place restrictions on denial by stating that a school district governing

board shall grant a charter for the operation of a school if it is satisfied that granting the charter is consistent with sound educational practice and the governing board can not deny a petition unless it makes written factual findings which support one, or more, of the following findings:

1. The charter school presents an unsound educational program for the pupils 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.
4. The petition does not contain an affirmation of required conditions
5. The petition does not contain reasonably comprehensive description of the 16 required elements of the charter petition. (See page 19.)

AB 544 also increased the total charter school cap from 100 to 250, with an additional 100 added each year; required the state Board of Education to assign numbers to prospective charters; prevented charters from receiving funding for pupils who are also attending private schools; allowed charters to petition the county for appeal of a denied charter; allowed the state Board of Education to revoke a charter for specific causes; established minimum and maximum ages of attendance; established funding amounts equal to the funding of school districts serving similar populations; gave the superintendent of public instruction authority to make reasonable requests for information; allowed charters to operate as nonprofit public benefit corporations; required charters to meet all statewide performance standards; required all pupils to be admitted as space allows; required teachers to be credentialed in core subject areas; required unused school sites to be available to charter schools; and required independent evaluation of charters by July 1, 2003.

Introduction

■ ■ ■ ■ *Timeline of California charter school law (continued)*

1999

AB 631

Required charters to identify who the public school employer-of-record is pertaining to collective bargaining agreements.

AB 1115

Created a new funding model based upon the “block grant” methodology.

AB 1600

Implemented several sections of “clean-up” language.

SB 267

Provided for greater access to start-up loans and made the authorizing agency (the school board, if it approved the charter) responsible for default on the state loans.

SB 434

Required charter schools to offer minimum instructional minutes and maintain auditable records of attendance. Applied independent study laws and regulations to charters.

2000

Proposition 39

Required districts to provide “reasonably equivalent,” “contiguous, furnished and equipped” school facilities for charter schools.

2001

SB 740

Required the state Board of Education to make funding determinations for non-classroom-based instruction charter schools; established the Charter School Facility Grant Program.

2002

AB 1994

Provided for limitations on the ability of charter schools to apply for charters outside of the boundaries in which they intend to locate; required petitioners to submit petitions to county boards and have them denied before submitting them to the state Board of Education; required an additional element in petitions addressing school closure procedures; required charter schools to report financial data to districts and to the state; added the number of satellite schools to be counted against the statewide charter school cap.

2003

AB 1137

Required each authorizing agency to identify one staff member as a contact person for the charter school; required annual visits of each charter school and monitoring of the fiscal condition of the charter school; required each charter school to submit quarterly financial reports to its chartering authority and county superintendent of schools; provided that the cost of aforementioned duties would be funded with oversight fees; required that charter schools meet specific academic criteria as a condition of renewal; and required a chartering authority to comply with specified oversight responsibilities related to liability.

2005

AB 1610

Extended state Board of Education waiver authority for charters to January 1, 2007; explicitly required charter graduates to pass California High School Exit Exam in order to earn diploma. Required charter schools to

Introduction

■ ■ ■ ■ *Timeline of California charter school law (continued)*

notify the superintendent of the school district of the pupil's last known address within 30 days, and, upon request, to provide that school district with a copy of the cumulative record of the pupil, including a transcript of grades or report card, and health information when a pupil leaves a charter; required charter amendments at renewal to conform to any law changes; allowed 1:25 teacher-to-pupil ratio for independent study in charters and clarified instructional time penalty waiver applicability to charters.

SB 319

Addressed the financial penalty faced by unified districts that have high schools in their district convert to charter schools: any conversions that occurred after July 1, 2005, will result in unified districts only providing the funding they received per ADA in the prior year. The funding increase that existing high school conversions received above the unified district rate is reduced by 50 percent in 2005-06 so that in subsequent years they will receive the same rate that the student generated for the school district.

SB 430

Authorized a county superintendent of schools to review the audit expenditures and internal controls of a charter school operating within the county if he or she believes that fraud, misappropriation of funds, or illegal fiscal practices have occurred. The review is limited to the alleged practices. As is current practice, the superintendent has 45 days to complete the audit and report the findings and recommendations to the charter school. Once the report is received, the charter school has 15 days to respond to the findings and recommendations and notify the superintendent of its proposed actions. Also, authorized the county superintendent to request a review of a charter school's fiscal or administrative condition from the Fiscal Crisis Management and

Assistance Team and allowed FCMAT to provide the same services to charter schools as it provides to districts. This law continued the trend toward increasing oversight of charter schools.

SB 1054

Clarified that charter schools are not exempt from the provisions of the California Building Standards Code as adopted and enforced by local building enforcement agencies. This provision does not apply to charter schools that are already subject to the requirements of the Field Act.

2006

AB 2030

Added provisions to ensure due process for charter revocation proceedings by establishing an appeals process and providing for continuous funding for a charter school while an appeal is pending under specified conditions. Specifically, AB 2030:

- Required a written notice of intent to revoke, and a notice of facts supporting revocation, be provided to the charter school prior to charter revocation (and after a reasonable opportunity to cure alleged violations has occurred).
- Required a public hearing within 30 days of issuing the notice of intent to revoke, and that a final decision to revoke (or not revoke) be issued within another 30 days, unless the charter school and the chartering authority mutually agree to a 30-day extension of the issuance of a decision.
- Required a chartering authority to make written factual findings supported by substantial evidence that is specific to the charter school that support the chartering authority's findings.

Introduction

■ ■ ■ Timeline of California charter school law (continued)

- Established various appeals processes:
 1. If a school district is the chartering authority and it revokes a charter, the charter school may appeal within 30 days to the county board of education.
 2. If the county board either does not issue a decision within 90 days of receipt, or determines to uphold the revocation, the charter school may appeal the revocation to the State Board of Education.
 3. If the county board reverses the school district's revocation, the school district may appeal the reversal to the SBE.
 4. If a county office of education is the chartering authority and the county board revokes a charter, the charter school may appeal within 30 days following the decision of the county board to the SBE.

If the revocation decision of the chartering authority is reversed on appeal, the agency that granted the charter continues to be regarded as the chartering authority.

While an appeal is pending, a charter school whose revocation proceedings are based on a material violation of the charter or failure to meet or pursue any of the pupil outcomes identified in the charter, shall continue to qualify for funding and may continue to hold all existing grants, resources, and facilities.

Required a final decision of a revocation or appeal of a revocation be reported to the chartering authority, the county board and the CDE.

SB 1209

Permitted charter schools to receive Beginning Teacher Support and Assessment Induction Programs funding for their teachers to participate in the program. In order to receive funds for the BTSA Induction

Program through the Teacher Credentialing Block Grant, a LEA or charter school (both direct-funded and locally funded) must either:

1. Become an Approved BTSA Induction Program Sponsor, or
2. Affiliate as a partner with an approved BTSA Induction Program.

AB 2717

Provided that charter schools are eligible for assistance under the California School Finance Authority Act. The CSFA assists school districts and community college districts by providing financing for working capital and capital improvements.

2007

SB 375

The governing board of a school district is allowed to use certain monthly installment (10, 11 and 12 month) and withholding options in making salary payments to the district's certificated employees.

Authorized governing boards of a charter school to use the same monthly installment and withholding options for purposes of making salary payments to its certificated employees as permitted by school districts. Authorized charter schools in which a minor attends to issue a work permit upon receipt of a written request from a parent, guardian, foster parent or other specified person.

AB 766

Added charter schools to the list of educational agencies that may conduct school-related field trips and excursions and may have all claims against them waived for injury, accident, illness or death occurring during the trip.

■■■ How are charter schools structured?

Charter schools currently in operation offer a variety of educational programs and approaches, such as specialized courses of study, a focus on specific curricular areas, a focus on specific student populations, nontraditional school environments, multi-age classrooms, different school schedules, home study or independent study programs, virtual schools, programs that address the needs of the whole child, increased parent/guardian participation and varying governance structures.

By law, charter schools must be nonsectarian in their programs, admission policies, employment practices and all other operations. They must not charge tuition or discriminate against any student on the basis of ethnicity, national origin, gender or disability. Charter schools are subject to other state and federal discrimination laws.

Charter schools are often described as “dependent” and “independent.” While the Charter Schools Act does not recognize the terms “dependent” and “independent” when referencing charter schools, these terms have become shorthand to describe the relationship of the charter to the district. Dependent charters are considered charter schools that have been created by the district board and are an integral part of the district’s portfolio of schools. Independent charter schools are typically those charters that are formed by parents, teachers, community members or charter management organizations.

The law recognizes two “types” of charter schools - **conversion charter schools** and **start-up charter schools**. The difference between the two is in the signature requirement. Conversion charter petitions must have signatures of not less than 50 percent of the permanent status teachers currently employed at the public school to be converted. A “start-up” charter petition must include **either** at least one-half of the number of parents/guardians that the charter school estimates will enroll in the school or at least one-half of the number of teachers that the charter estimates will be employed by the charter school. In 2007-08, approximately 84 percent of charter schools were start-up charters. Sixteen percent were conversion charter schools.

Because the state laws and policies governing charter schools are continually evolving, and because the state Board of Education has established the Advisory Commission on Charter Schools (an advisory body to the state Board of Education that meets bi-monthly to consider issues concerning charter schools), districts and county offices of education are urged to periodically visit the California Department of Education Web site at www.cde.ca.gov/sp/cs and contact CSBA for updates in legislation and regulations.

Charter School/District Facts

There are currently 788 charter schools operating in California.
There are charter schools in 49 of the 58 counties in California.

Charter schools are also distinguished by the way they are funded.

■ **Direct-funded and local funded charters**

Regardless of whether the charter is a conversion or start-up, the charter school may elect to be funded one of two ways.

1. Direct-funded charter schools elect to receive their funding directly from the superintendent of schools of the county in which the authorizing board approved the charter is located. The county superintendent of schools is authorized to establish appropriate funds or accounts in the county treasury for each charter school.

Most direct-funded charter schools are truly independent entities with few or no ties to the authorizing board other than oversight responsibilities. Charters approved since Assembly Bill 544 was passed in 1998 tend to fall into this category. AB 544 allowed charters to operate as nonprofit public benefit corporations. In a direct-funded charter, the charter school is solely responsible for the provision of payroll, human resources, maintenance and operations, legal services and other administrative operations. The authorizing district is entitled to have one representative on the board of directors of the nonprofit public benefit corporation. The authorizing board of a nonprofit charter is not liable for the debts of the charter school.

2. Locally funded charter schools receive their funds through the school district that granted the charter. Most “dependent” charter school receive their funding in this manner.

Should an authorizing board member accept a seat on the charter school’s board?

Although district board members may sit on the charter board, the situation raises a number of conflict of interest concerns (e.g., should a member of the authorizing board vote on issues that he/she will eventually be required to provide oversight for?). It is strongly recommended that districts consult with their legal counsel before allowing a member of the board to sit on the charter board. Because authorizing boards are now required to have a charter school liaison on staff, an alternative may be for the district to designate this person to sit on the charter school board. Having someone serve in this capacity would facilitate relationship building and would allow for sharing of best practices. In choosing a charter school liaison, the district will want to consider setting up periodic meetings between the liaison and a charter representative.

■ **Non-classroom based charters**

One-quarter of all charter schools are non-classroom based schools. Non-classroom based instruction includes home study, work-study, and distance and computer-based education, which are all forms of independent study. Funding for non-classroom based charter schools is determined by the Advisory Commission on Charter Schools and approved by the SBE. *Note: Non-classroom based charter schools must follow the same requirement found in Independent Study statutes as it pertains to enrollment. Non-classroom based charters can enroll students from the county in which it was approved and adjacent counties only.*

Charter school funding model

AB 1115 (1999) created a charter school block grant. The majority of the funds come from the revenue limit. In addition, there is a per-student share of funds from many state categorical funding programs. Categorical block grant funding may be used for any purposes determined by the charter governing board. Charter schools will receive a proportionate share of funding related to new programs, but will remain free to spend the funds as they wish, without being subject to the same restrictions as traditional public schools.

The block grant “formula” is as follows:

revenue limit + state categoricals (proportionate share) =
total funding rate per ADA

AB 740 (2005) brings 28 categorical programs into one single, flexible block grant. This move increased the Charter School Categorical Block Grant to \$400 per student in 2006-07 and \$500 per student in 2007-08, plus additional money for low-income students. It also increased the number of categorical programs charters are eligible to apply for. Included in this new block grant are:

- Home-to-school transportation
- Home-to-school transportation deferral
- Foster youth programs
- Specialized secondary program grants
- Gifted and talented education

- Gifted and talented education deferral
- Mathematics and reading professional program development
- Principal training
- Agricultural vocational education
- Deferred maintenance
- Instructional Materials Block Grant
- Peer Assistance and Review (schedule 2)
- Staff development (schedule 1 and 3)
- Teacher dismissal apportionments
- Year-round schools
- Carl Washington School Safety and Violence Prevention Act
- School safety deferral
- Ninth-grade class-size reduction
- International baccalaureate (schedule 1)
- Pupil Retention Block Grant
- Teacher Credentialing Block Grant
(Beginning teacher support and assessment)
- Professional Development Block Grant
- Targeted Instructional Improvement Block Grant
(voluntary, supplemental)
- Targeted instructional improvement deferral
- School and Library Improvement Block Grant
- School Safety Competitive Block Grant
- English language acquisition program
- Advanced Placement Grant Program

Introduction

■ ■ ■ How are charter schools structured? (continued)

Direct and local funding

Charter schools funded under the direct funding model may receive funds directly (in a fund or account established on their behalf in the county treasury) or through the authorizing board if they elect to be locally funded. There are considerations for charter schools in making these determinations that authorizing boards should bear in mind:

- Charter schools electing to receive funds directly must notify the superintendent of schools of the county in which the charter-granting agency is located by June 1 prior to the affected year. A charter school's election to receive funds directly is not permanent and may be changed annually.
- The choice to receive funds directly applies to funds for all programs. Charter schools may not "pick and choose" among programs, opting to receive funds for some directly and for others through their charter-granting agencies.
- Of all categorical programs not included within the scope of the charter school block grant, Title I funding is the most significantly affected by a charter school's decision to receive funds directly.
- Whether charter schools opt to receive funding directly or through the charter-granting agency, funds would flow from the state through the county treasury. Funding for schools that do not opt for direct funding would be deposited in the county treasury accounts established for their sponsor district. Charter schools and districts would need to negotiate whether the district or the county will provide banking or other fiscal services to the school.

Local revenue sources

The funding model does not address whether local sources such as local parcel and sales taxes, basic aid and local property taxes in excess of the revenue limit should be shared with charter schools. Current law provides that charter schools may negotiate with districts regarding these local sources (Education Code 47636 (b)).

The MOU should delineate the financial rights and responsibilities of each party. For example, the authorizing board may want the right to a percentage of money raised by the public education foundation of the charter school, if any. Or the charter school may want a share of the district's basic aid allotment.

Mandated/reimbursable costs

The authorizing board should use mandated cost sheets, through the district's human resources department, to charge the state for time spent engaged in activities related to the approval of the petition or oversight of the charter school. The authorizing board should track the time spent and the direct and indirect costs of labor, supplies and services incurred in the following activities:

- Responding to information requests from the public regarding the Charter Schools Act of 1992 and the governing board's charter school policy and procedures (including printing and mailing costs).
- Evaluating charter petitions and requesting clarifications and modifications to the petitions.

Introduction

■ ■ ■ ■ *How are charter schools structured? (continued)*

- Participating on a petition appeals panel at the request of the county office of education, conducting the analysis of the school district decision process, responding to review panel inquiries and requests, and reporting to the involved parties.
- Oversight of the charter school for purposes of evaluation, renewal or revocation by the authorizing board.
- Preparation for public hearings for the adoption, review, revision, renewal, evaluation or revocation of charter petitions.

Authorizing boards should review the petition for “hidden” costs that the district might incur as a result of charter school activity. These costs should be recorded and reported under mandatory costs. For example, if a student leaves the charter school during the school year, the district should request a prorated reimbursement of the ADA for that student.

As a general rule, if a district has been provided a fee for its administrative services, it arguably has not incurred a “cost” in administering or “monitoring” this charter. Services provided under an MOU or administrative services agreement should not be included under the “monitoring” component of this reimbursement program (to the extent that the cost is covered by the fee). If there is no fee, then some of these costs may be claimable depending upon how the charter school is configured.

■ ■ ■ ■ What is the governing board's role?

The charter is a contract between the school district board or county board of education and the petitioner that ensures a high-quality education for students. Like parties to any contract, boards need to be aware of their legal rights, responsibilities and obligations under the contract.

■ **The authorizing board and superintendent have three major responsibilities:**

1. To review the charter petition, prior to approval, to ensure compliance with statutory conditions and feasibility of the proposed operations.
2. To continuously review the performance of the charter school in order to ensure fiscal stability and programmatic effectiveness.
3. To periodically determine whether a charter petition should be renewed or revoked in accordance with law.

The authorizing board also has certain rights, including the right to define the terms of services the district may provide the charter school after it has been approved.

This handbook provides information so governance teams can respond to charter petitions in an informed manner. Although the board is responsible for ensuring that all the tasks described are completed, the board may delegate some tasks to the superintendent or his or her designee. Once a charter is approved in a district or county, the superintendent must designate a contact person for the charter school. AB 1137, passed in 2003, requires that each authorizing district identify at least one staff member as a contact person for the charter school. It may be difficult to add on to the staff's responsibilities, particularly in small districts with limited resources, however this requirement exempts the district board from being held liable for any acts, errors or omissions of the charter school.

As local educational agencies and charter schools go through the petition review and oversight processes, it is important that they work together in the best interests of children. It was the intent of the Legislature that chartering entities and charter schools work through and resolve issues at the local level in a way that meets the needs of both parties. Although the state Board of Education can revoke a charter in extreme circumstances, there currently is no statewide charter school agency to which boards or parents/guardians can report problems regarding charter schools. Therefore, it is incumbent upon the local board to hold the charter school accountable for the goals outlined in its charter and those laws as applicable through the Charter Schools Act. The ultimate responsibility for the children's education and safety rests with the authorizing board.

The petition review process

■ ■ ■ ■ **What preliminary steps should be taken in anticipation of a petition?**

The following overview of the charter petition review process is presented in roughly chronological order. Note that the following steps apply to either districts or county offices receiving a petition, except where otherwise noted.

For purposes of describing the charter petition review process, an authorizing board is any district or county board that is capable of or has received a charter school petition, regardless of whether it has approved the petition. Unless otherwise indicated, a petition refers to a charter not yet approved by an authorizing board. One caveat to remember is that the law only requires the petitioner to submit a complete petition with reasonably comprehensive descriptions of the 16 required legal elements for the petition to be approved. The district may and should request or recommend additional information (see pages 30-31), but cannot legally require the petitioner to provide it as a condition for acceptance of the petition. A petition becomes a charter (contract) only upon approval by the authorizing board.

A district or county that has not had a charter petition submitted to it will likely have one in the near future. Be prepared. Even before any charter petition is received by the district, the board should have appropriate processes and information in place. This information should be a part of a package that is given to interested parties. A thorough petition process should be developed by all districts and county offices. Specifically, the board should:

■ **Establish a process for responding to public inquiries and potential charter petitioners.**

This protocol should include priorities for how the district handles the charter school petition process. These messages should be delivered to the media, parents/guardians, businesses and the community. For example, preference points might address:

- **The need for charter schools to be community based.** Those charter schools that are community based, and fulfill a particular need within a community, are more likely to be successfully implemented and best reflect the original intent of the charter school legislation.
- **The school board's role in the development of charter schools.** In assessing the goals and outcomes of the district, governance teams may contemplate creating its own charter school. (See page 45 for more detail.)
- **The school board's role in the process of approval/denial of charter school petitions.** California law states that the "governing board of the school district shall not deny a petition for the establishment of a charter school, unless it makes written factual find-

The petition review process

■ ■ ■ What preliminary steps should be taken in anticipation of a petition? (continued)

ings.” The school board maintains the responsibility of evaluating the soundness of the proposed education program and the likelihood of its successful implementation. If the school board finds any deficiencies in the petition, as stated in the law, it is permitted to deny the petition as long as it can articulate those factual findings in writing. Note that under AB 1994, county boards of education are granted broader discretion in approving or denying petitions for countywide charter schools (see “Petitions submitted to county boards of education” on page 35).

- **District charter school policy.** The policy should include all information necessary to evaluate a prospective school’s potential. Every board that has received or can reasonably foresee receiving a petition to operate a charter school within its boundaries should have policies in place related to charter schools.

CSBA has developed sample policies and administrative regulations pertaining to charter schools, including student expectations. It is important that district policy contain the district’s definition of a sound educational program, because if a board denies a petition for failure to present a sound educational program, the board will need to articulate specific findings based on its own definition. Without a description of the district’s definition of a sound educational program already in place, the authorizing board will have a much more difficult time denying a petition on this basis (See “What should the board consider in approving or denying a petition?” on page 33).

- **List of district preferences for petition.** The district should provide petitioners with its unique preferences for petition approval in addition to all legal requirements. In order to remain proac-

tive, each district should outline their needs to encourage charter petitions that are designed to meet those needs. For instance, the district may want to encourage petitioners to focus on specific needs such as targeting low-performing schools, English language learners, etc.

Also, the intent of the original charter school legislation was that charter schools were to target low-achieving students. In accordance with Education Code 47605 (C)(h), the school district 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 pursuant to the standards established by the CDE under Section 54032. Governance teams will want to ensure that petitioners have a plan to adhere to this intent.

- **The board will also want to determine what support will be given to the petitioners, if any, and the process by which to give that support.** Some districts have staff look at petitions prior to formal submission to allow petitioners time to fix deficiencies before submission. Other districts strongly believe that charter petitioners must submit a thorough and complete petition without assistance from the district. This allows the board and district staff to judge the charter petition on its own merits and determine if they are capable of running a school.

The petition review process

■ ■ ■ ■ *What preliminary steps should be taken in anticipation of a petition? (continued)*

■ **Establish a charter petition review committee.**

The superintendent should establish a committee to review the petition. The committee will review the petition and supporting documentation during the 60-day period before action is required. The committee should include staff with expertise from the human resources department, business/finance department, facilities, education services, special education and curriculum, along with legal counsel. The committee will want to provide an explanation for each of its comments and/or explanations on the petition for the board to review.

■ **Establish a procedure for tracking mandated costs.**

Districts and counties should be aware that there is a charter school mandated reimbursement program. The petition review, renewal and oversight processes result in mandated costs to districts. (For more information on tracking mandated costs incurred during oversight of the charter, see “Administrative and support services plan” on page 39.)

The petition review process

■ ■ ■ ■ What are the required elements of a charter petition?

Complete charter petitions have four required parts: a petition/letter, the proposed charter itself (including 16 required legal elements), a signature page and required additional information. CSBA advises including a fifth section containing recommended additional information.

■ Petition/letter

A petition to establish a charter can be circulated by any person and, after meeting signature requirements (see page 26 for signature requirements) submitted to the governing board for consideration.

CSBA recommends that a completed petition should include, at a minimum, the following information and materials:

- The name, address and phone number of the petitioners, together with a statement signed by them formally applying to the board for approval of the charter school.
- Identification of lead petitioner or petitioners
- A thorough description of the education, work experience, credentials, degrees and certifications of the individual persons circulating the petition and comprising, or proposing to comprise, the board of directors, administrators and managers of the proposed charter school.
- The bylaws, articles of incorporation and other management documents, as applicable, governing or proposed to govern the charter school.
- A list of consultants whom the charter school has engaged, or proposes to engage, for the purpose of developing, operating and evaluating the charter school, together with a thorough description of the experience of such consultants.
- A description of the number of students anticipated to attend the charter school and the grade levels to be included for these students for each year of operation in the charter term.
- An attorney's opinion providing a thorough description of the potential civil liability, if any, of the charter school and school district.
- Any and all policies that the charter school intends to implement, including but not limited to employee handbooks, student handbooks, health and safety policies, student discipline policies, conflict of interest policies and admissions policies.
- A statement setting forth the administrative structure of the school, including detailed job descriptions assigning executive, budget, disciplinary, school district liaison, parent/guardian contact, counseling, special education, maintenance, research, personnel, employee evaluative functions and other responsibilities.
- Documents identifying the facility in which the charter school intends to locate, including all necessary permits, licenses, use agreements and/or other authorization necessary for use and occupation of the site in compliance with law.
- Any other information as specifically requested by the district regarding the charter school petition subsequent to the submission of the charter school petition.

The petition review process

■ ■ ■ ■ *What are the required elements of a charter petition? (continued)*

■ Petition

As stated earlier, a required piece of the charter petition is the petition itself. Education Code 47605 and 47611.5 require the charter to meet the following 16 legal requirements. The charter must have a reasonably comprehensive description of each requirement. The law allows local districts and county offices to determine what is “reasonably comprehensive”. CSBA offers the following recommendations, but districts may expand upon these recommendations based on local needs.

(a) A description of the educational program of the school and its goals, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an “educated person” in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners. If the proposed school will serve high school pupils, a description of how the charter school will inform parents/guardians about the transferability of courses to meet college entrance requirements must be included in the description.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Mission and goals of the proposed charter school.
- Description of the educational program, including how instructional resources will be provided.
- Description of instructional methodology to be used for students at all levels.
- Description of curriculum plan, including method of curriculum planning and process by which best practices can be exchanged (pursuant to charter law intent to create innovative programs).
- Description of the valid evidence provided that supports the program’s objectives and how learning best occurs or, if such evidence is not available, an explanation for the theoretical basis supporting the program’s approach to learning.
- Description of how the proposed school uniquely provides for unmet needs of students in the district.
- Clear identification of which students the charter is attempting to educate and why.
- Description of support and intervention systems that will be available to assist struggling students, including English learners and students with disabilities.
- Description of how the charter school will accomplish the goal that students become “self-motivated, competent and lifelong learners”.
- Description of how any federal dollars will be utilized as a component of the charter’s program.
- Empirical evidence to support successes of the educational program.
- The manner in which a charter school serving high school students will inform parents/guardians about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of

The petition review process

■ ■ ■ ■ What are the required elements of a charter petition? (continued)

Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the “a-g” admissions criteria may be considered to meet college entrance requirements.

- Outreach to students who drop out
- Include, at minimum, a full curriculum for each course or grade level as an attachment.

(b) The measurable pupil outcomes identified for use by the charter school. “Pupil outcomes” means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school’s educational program.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Identification of the measurable student outcomes, including baseline goals that will be utilized.
- Description of how the outcomes are consistent with the skills, knowledge and attitudes expected of the students as described in the program’s goals.
- Evidence that the school’s academic standards meet or exceed statewide standards, as required by Education Code 47605, and those of the district.

(c) The method by which pupil progress in meeting those pupil outcomes is to be measured.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Description of the method(s) and formula for measuring stated student outcomes and clear, attainable goals and criteria for assessing whether pupil outcomes and baseline goals have been achieved.
- Description of how often progress will be measured and how progress will be communicated to authorizer.
- Description of assessment instruments (e.g., standardized tests, AP tests, portfolios, etc.) used by the charter school.
- Description of how the school will comply with testing requirements under the Public School Accountability Act (PSAA), Academic Performance Index and California High School Exit Exam and how students will be assessed to ensure that they are meeting state standards in required subject areas. (The charter school is responsible for administering all state assessments.)
- Name of staff person responsible for administering state assessments.

(d) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- The status of the charter school as a nonprofit public benefit corporation or public school.

The petition review process

■ ■ ■ ■ *What are the required elements of a charter petition? (continued)*

- If the charter school will operate as a nonprofit public benefit corporation, provisions for the liability for the debts and obligations of the charter school and a description of the school's governance structure under the nonprofit public benefit corporation model.
 - Declaration by charter that it declares itself a "separate legal entity" for these purposes.
 - Provide a plan that is void of conflicts of interest and maintains appropriate oversight at the school.
 - Proof of insurance.
 - Copies of bylaws or articles of incorporation.
 - If the charter school will be run by a management company, description of the company's role in the school's operation and oversight, the school's reasons for choosing the specific provider and evidence of positive student achievement results by the company in comparable settings.
 - Description of the charter school governing board, including how many will sit on the board, the selection process, the qualifications and education experience of individual board members, the decision-making process, the length of board members' terms, and how they will be removed, if necessary. The authorizing board's official duties in the governance structure of the charter school, if any, should be delineated. Methods for resolving issues of conflict of interest for members of the governing body should also be addressed. Note: Substantial evidence should be provided that the founding group demonstrates the capacity to establish and sustain a successful school and can manage public funds effectively and responsibly, or will hire staff that has proven experience in managing public funds can. The board will want to take a close look at qualifications and background experience in education as well as fiscal experience.
- Description of how the school will be run on a day-to-day basis, including descriptions of decision-making processes, fiscal controls, and parental involvement.
 - Assurances that the school will regularly consult with parents/guardians and teachers regarding the school's educational program, as required by Education Code 47605.
 - Assurances that conflict of interest rules will be implemented and followed.
 - Protocol for governing board meetings, such as the Brown Act and Robert's Rules of Order (the CDE has determined that meetings of the charter governing board are subject to the Brown Act).
- (e) The qualifications to be met by individuals to be employed by the school.**
- CSBA recommends that a "reasonably comprehensive description" would address the following:*
- The types of credentials, if any, the teachers will be required to hold (e.g., professional clear, preliminary, permit, waiver). Teachers in core subjects (those identified by the charter school) must hold a valid teacher credential, permit or other equivalent document required by public schools.

The petition review process

■ ■ ■ ■ What are the required elements of a charter petition? (continued)

- The process to be used to provide for the inspection of credentials (i.e., a description of the process for handling credential checking and other personnel matters).
- The credentials/qualifications of other charter school staff (e.g., counselors, librarians, administrators, nurses and others).
- Verification that teachers and paraprofessionals who are required to be certified are “highly qualified” as required by the federal No Child Left Behind Act.
- Statement of acknowledgement that all employees, even if not public, are subject to state and federal employment laws.

(f) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237 of the Education Code.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Method for conducting criminal background checks on employee candidates, as required by Education Code 44830.1 and 45122.1, to ensure that the charter school does not hire any person who has been convicted of a violent or serious felony.
- Requirement of a health check for all employees pursuant to state law and district personnel policies, where applicable, such as tuberculosis.
- Assurance that the charter school’s facilities meet state and local building codes, except where exempt.

- Assurance that the charter facilities meet federal requirements, including the Americans with Disabilities Act.
- Description of the charter’s safety plan and disaster preparedness plan.
- Description of efforts to comply with state and federal laws regarding food safety and environmental protection.
- Description of efforts to comply with state and federal laws designed to protect children, including, but not limited to, the proper administration of medication to students in schools and the reporting of child abuse.

Note that federal health and safety laws apply to charter schools and cannot be waived.

(g) The means by which the school will achieve a racial and ethnic balance among its pupils that is reflective of the general population residing within the territorial jurisdiction of the school district to which the charter petition is submitted.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Description of efforts and timelines to ensure racial and ethnic balance.
- Description of a viable plan for recruiting a student population reflective of the population of the surrounding community.

Note that if a charter school is started in a district that operates under a Title VI desegregation plan approved by the Office of Civil

The petition review process

■ ■ ■ ■ What are the required elements of a charter petition? (continued)

Rights, or under a court order requiring desegregation, the charter school must be operated in a way that is consistent with those regulations. The establishment of a charter school cannot adversely affect the racial composition of the schools from which the charter school students will be taken.

(h) Admissions requirements, if applicable.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Description of the specific admissions requirements, if any, of the proposed charter, except that selection must not be based on academic or athletic ability or on place of residence except as described on page 27 under “Required additional information.”
- Method to be used to conduct a public random drawing for admission if more students wish to attend than space permits (Education Code 47605).
- Description of how the admissions requirements are consistent with laws regarding nondiscrimination. Assurances should be made that students requiring special education services will be admitted.

Note that with regard to student recruitment, charter schools cannot recruit students in any way that discriminates against students on the basis of race, gender, color, national origin or disability. In advertising for students, charter schools are required by federal law to distribute materials in ways that effectively reach all segments of the parent community. Charter schools must also be sure to safeguard the rights of parents/guardians who are limited-English proficient, providing

materials in languages other than English in order to communicate effectively with all parent groups. Similarly, in recruiting students of parents/guardians with disabilities, outreach materials should be available upon request in various alternative formats (such as Braille or large print, or in public meetings where interpreters are available).

- Beware of parent or student “contracts” that may seem to discourage enrollment. These are illegal.

(i) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Manner in which the audit will be made public.
- Description of the manner in which the charter school will keep track of financial data and compile information in the prescribed format needed for the annual statement of receipts and expenditures for the prior fiscal year that is due to the authorizing board by Sept. 15 of each year.
- Proof of knowledge of requirement and the process by which charter school will submit quarterly financial reports to its chartering authority and the county superintendent of schools (required by AB 1137).
- Description of services the charter intends to contract out to the district or another provider (if not included in a memorandum of understanding).

The petition review process

■ ■ ■ ■ What are the required elements of a charter petition? (continued)

- Manner in which audit exceptions and deficiencies will be resolved to the satisfaction of the authorizing board.

(j) Procedures by which pupils can be suspended or expelled.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Student code of conduct and process by which this information is given to students and parents/guardians.
- Description of disciplinary steps to be taken prior to suspension or expulsion.
- Grounds for suspension and expulsion and how these are consistent with federal law.
- Suspension and expulsion policies for special education students and how these are consistent with federal law.
- The process by which parents/guardians and students will be informed about the reasons for any such actions and their due process.
- Appeal process.
- Educational alternative, if any, to be provided for students who are suspended/expelled.
- The process by which the charter school will notify the superintendent of the school district of the expelled student’s last known address and send a copy of student’s cumulative record to the school district.

(k) The manner by which staff members of the charter school will be covered by the State Teachers’ Retirement System (STRS), the Public Employees’ Retirement System (PERS), or federal Social Security.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Description of which staff will be covered by which retirement system.
- An account of the costs related to these benefits.

(l) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Description of attendance alternatives that are consistent with district policy relative to intradistrict attendance.

(m) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Relevant provisions of applicable statutes, district policy and/or the district collective bargaining agreement relative to separation of employment from the district and return to district.

The petition review process

■ ■ ■ ■ What are the required elements of a charter petition? (continued)

- Employee policies and procedures, including benefits, hiring procedures, leave rights and copies of employment contracts.
- Description of how these rights will be communicated to prospective employees.

(n) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- The dispute procedure, agreed upon by both parties.
- Relevant timelines for the dispute resolution.
- Method, if any, for appeals.

(o) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- A declaration of whether charter school employees will be part of the collective bargaining unit in the sponsoring district.
- Statement that charter school employees who are part of the sponsoring district’s or county’s employee union will be employed under the terms of the district or county collective bargaining agreement.

- If the petitioners elect not to have charter school employees join the sponsoring district’s or county’s employee union, a declaration as to whether petitioners intend to organize and bargain as a separate unit. Note that charter employees are not required to engage in collective bargaining, but they have that right if they choose as a group to do so.

(p) A description of the procedures to be used if the charter school closes.

CSBA recommends that a “reasonably comprehensive description” would address the following:

- Detailed description of the procedures to be used in the case of a decision by the authorizing board or state Board of Education to revoke the school’s charter, a decision by authorizing board not to renew the charter or a decision by the school to voluntarily close, including plans for the final audit of the school.
- Plans for disposing of any net assets and for the maintenance and transfer of pupil records.

■ **Signature page**

The signature page requires the names, addresses and phone numbers of those persons endorsing the charter school petition, with original signatures of such petitioners. The proposed charter must be attached to the petition as it is circulated for signatures, and may not be substantially altered after signatures are gathered.

- **Signatures.** If the proposed school is a conversion school (petition to convert an existing public school to a charter school), the petition must be signed by at least 50 percent of the permanent teachers at the school to be converted. If the proposed school is a start-up school

The petition review process

■ ■ ■ ■ What are the required elements of a charter petition? (continued)

(petition to create a new start-up charter school), the petition must be signed by a number of parents/guardians equal to at least 50 percent of students projected for first year enrollment, or signed by a number of teachers equal to at least 50 percent of the teachers projected to teach in the first year of operation.

The district staff should verify teacher signatures on the petition, to the extent possible, to ensure that the teachers have the required credentials and are eligible to sign the petition.

- **Certification of interest.** In circulating the petition, the petitioners must include a prominent statement explaining that a signature means that the parent/guardian is “meaningfully interested” in having his/her child attend the charter school or that the teacher is “meaningfully interested” in teaching at the charter school.

The district should examine the signature page to help evaluate “meaningful interest.” The petitioner may be asked to provide declarations or other similar documentation to substantiate “meaningful interest” if questions arise in evaluating the petition.

■ Required additional information

The proposed charter must include all required assurances specified in the Charter Schools Act. A certification of assurances must be completed and submitted with the petition. Pursuant to Education Code 47605, petitioners must provide:

- Assurance that the charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations.

- Assurance that the charter school shall not charge tuition.
- Assurance that the charter school shall not discriminate against any person on the basis of ethnicity, national origin, gender or disability.
- Assurance that the charter school shall offer at least the minimum amount of instructional time at grade level. (A charter school must offer the total annual instructional minutes by grade levels that are required by Education Code Section 46201(a)(3). However, a charter school has scheduling flexibility on how the total annual minute requirement is met within the fiscal year, and there is not a specific number of minutes per day required to be offered.)
- Assurance that admission shall not be determined according to the student’s or parent’s/guardian’s place of residence, except that a conversion school shall give admission preference to students who reside within the former attendance area of the public school. *Note: Community school and independent study average daily attendance shall be claimed by school districts, county superintendents of schools and charter schools only for students who are residents of the county in which the apportionment claim is reported, or who are residents of a county immediately adjacent to the county in which the apportionment claim is reported. Education Code 51747.3(b).*
- Assurance that the charter school shall admit all students who wish to attend. However, when the number of students who wish to attend exceeds the school’s capacity, the school shall conduct a public random drawing. Preference shall be extended to students currently attending the charter school, students who reside in the district, and students who fulfill any other criteria permitted by the authorizing board if consistent with law.

The petition review process

■ ■ ■ ■ *What are the required elements of a charter petition? (continued)*

- Information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be used by the school, including where the school intends to locate, the manner in which administrative services will be provided, and potential civil liability effects, if any, upon the school and authorizing board. (More information is provided under “Administrative and support services plan” on page 39).
- Financial statements that include a proposed first-year operational budget with start-up costs and anticipated revenues and expenditures necessary to operate the school, including special education; and cash-flow and financial projections for the first three years of operation.

■ **Recommended additional information**

Boards may request additional information before issuing a final decision. The following are examples of information that districts might request in reviewing the charter:

- Length of term for charter, as determined by the authorizing board (usually one to five years).
- School calendar, along with class schedule. This information will assist the district in determining whether the charter school meets the instructional minute requirement.
- Transportation arrangements, if any. If charter schools provide transportation to and /or from school or while at school, they may be subject to state and federal laws governing

vehicles, drivers, etc. The district is not obligated to provide transportation unless it is required by an IEP.

- A representative sample of curriculum and materials. This might include at least one grade level or subject area.
- Staff development procedures and materials.
- Names, addresses and biographical information regarding founding members, board members and corporate officers of the school (including historical background information of corporation’s formation and decision to manage public schools if managed by a private firm).
- Assurance that the charter school is prepared to comply with the Individuals with Disabilities Education Act, Section 504, Americans with Disabilities Act, Title VI, IX, and other federal requirements, including written acknowledgement that federal laws are not eligible for waivers.
- Records of claims or lawsuits against the charter school.
- Whether the charter school will participate in the National School Lunch Program. This is relevant information if the charter intends to target students from sociologically disadvantaged backgrounds. It is also a good test of whether they are familiar with school district accounting practices to see if they properly account for this program in their budget.
- Other petitions the petitioners or nonprofit public benefit corporation has submitted to other districts and the disposition of those petitions.

The petition review process

■ ■ ■ ■ *What are the required elements of a charter petition? (continued)*

- Other names used by the nonprofit public benefit corporation or affiliation of the parties in the NPBC.

■ **Petitions for charter districts**

To become a charter district (i.e., all district schools are charter schools), petitioners must have 50 percent of the teachers within the school district sign the petition. A petition for a charter district must be approved by joint action of the superintendent of public instruction and state Board of Education. However, students cannot be required to attend charter schools, and teachers cannot be required to teach in them. Hence, the charter petition must specify alternative public school arrangements for students who choose not to attend charter schools and must provide employment alternatives for teachers who choose not to teach in charter schools.

The petition review process

■ ■ ■ ■ What steps should be taken after receiving a properly submitted petition?

After receiving a properly submitted petition, one that includes all the required signatures, elements and affirmations, the authorizing board should record receipt of the petition, conduct a thorough review of the petition internally, have legal counsel conduct a review to ensure compliance with the Education Code, hold required public hearings, and take action on the petition.

■ Record receipt

Upon receipt of a complete and properly submitted petition, the district should date stamp all pages of the submitted application.

■ Hold public hearings

Within 30 days of receiving a petition, the authorizing board is required by law to hold a public hearing to determine the level of support by teachers, other employees, parents/guardians and the community. This is the opportunity for petitioners to appear and provide testimony to the board. This is an extremely important role for the board. Community support is crucial for the success of the charter school. Absent community support, or in some cases, opposition by community, is an indicator to use in deciding whether to approve or deny a petition because it directly impacts the likely success of the proposed charter school.

Questions to ask:

- Does the community understand the objective of the charter school?

- Are there community agreements with the district to use joint facilities? Will the school be recruiting students from outside the geographical boundaries of district?
- Is the charter facility, if not contiguous to another district school facility, located in a part of the community that raises safety issues for the children?

Also, note that the authorizing board may hold multiple hearings, provided that the district meets all required timelines. In addition to notices required for meetings pursuant to the Brown Act, the district should provide additional notice of the hearing(s) to each bargaining unit representing employees of the district.

■ Conduct internal review

The appropriate district departments, via the review committee mentioned above (human resources, fiscal services, risk management, student services, curriculum, facilities, etc.), should conduct a thorough petition review and compile reports. The superintendent may consider developing a checklist or rubric for review of a charter school petition.

Districts should also advise petitioners on the practicalities of the petition and whether it meets the goals of the district, especially if the petitioners and/or authorizing board have limited resources. Districts should encourage petitioners to identify resources in advance in order to address capacity issues.

Remember that the review and approval process is preferable to the oversight process for purposes of ensuring quality and equity. Districts are encouraged to be as proactive as possible in the early stages of the petition

The petition review process

■ ■ ■ ■ *What steps should be taken after receiving a properly submitted petition? (continued)*

submission, review and approval process in order to avoid pitfalls later. It is extremely difficult to go back and “fix” a petition once it is approved.

■ Conduct legal review

It is imperative that districts consult with legal counsel to ensure compliance of the petition with applicable charter school and other Education Code provisions and applicable laws outside of the Education Code. Charter school petitioners are increasingly retaining legal counsel to assist them in every step of the petition process and so should districts.

- Charter schools are subject to federal civil rights and disability laws, including the Civil Rights Act of 1964, the Americans with Disabilities Act, and the Individuals with Disabilities Education Act.
- If the charter school intends to incorporate as a nonprofit public benefit corporation, the authorizing board/staff should verify that the petitioner has filed a certified copy of the Articles of Incorporation with the California Secretary of State, if necessary, and has included a copy in the petition, along with the corporate bylaws.
- The authorizing board should ensure that the petition addresses how charter school directors and officers will be governed by conflict of interest statutes and regulations. This includes provisions on how the charter school would address potential self-dealing by charter schools directors or officers, as well as potential noncompetition clauses. The authorizing board should request a list of names of the board of directors of the petitioning

nonprofit, as well as a list of board members for any proposed contractors and a description of the relationship between the nonprofit and contractor.

- The petition should also confirm that the charter school will comply with the Brown Act and Public Records Act, both of which apply to charter schools.
- The Fair Political Practices Committee has indicated that the Political Reform Act applies to charter schools. The authorizing board should ask how the petitioners will incorporate the law’s requirements in the petition or conflict of interest policy.
- Charter schools are required to comply with the Field Act for facilities, or the Uniform Building Code provisions applicable to the type of building occupied by the charter school, to ensure the health and safety of students and staff.
- The charter petition should address all insurance and liability issues and must be reviewed for adequacy. Some district and county insurance carriers may automatically cover a charter school within a district, but this needs to be verified with the carrier. Property and liability policies should specify that the chartering agency is an additional insured. If the district or county insurance carrier does not cover the charter school, the authorizing board should ensure that health benefit insurance, workers compensation, property and liability are provided at levels sufficient to meet the chartering agency’s insurance requirements.

The petition review process

■ ■ ■ ■ *What steps should be taken after receiving a properly submitted petition? (continued)*

- Point-of-service issues (e.g. testing administration, food services, accounting services) between the authorizing board and the petitioners need to be addressed. Legal counsel should review all proposed contracts for services to be provided by the district.

■ Extrinsic factors

Charter schools have become a political hot button in many communities. School boards are increasingly facing hostile community members, both supporting and opposing a charter, at board meetings where a charter petition will be heard. The political pressure, from other elected officials and community organizations, is increasing. Media coverage of board meetings when charter petitions are heard is on the rise. Unfortunately, the decision to approve or deny a petition can become about pleasing constituents rather than determining what is best for the students in the district. It is important for school board members to base their decisions on the strength or weakness of the petition and to make a decision about whether the petitioners will deliver a sound education for the students in the district.

■ Take action

Within 60 days after receipt of the petition (90 days if mutually agreed upon), the board must have completed the review process and must determine whether to grant or deny the petition based on the criteria described below.

The petition review process

■ ■ ■ ■ What should the board consider in approving or denying a petition?

■ Legal criteria for approving or denying a petition

There are several questions the district/county board must ask itself in deciding to approve or deny a charter petition: Does the petition present a sound educational program? Are the petitioners demonstrably likely to successfully implement the program set forth in the charter? Does the petition contain a reasonably comprehensive description of the 16 required elements? The authorizing board must grant the charter petition unless certain petition requirements are not met. The board is not allowed to consider the potential impacts a charter school would have on the other educational programs of a district or the district's fiscal health or state of its facilities, among other issues.

The charter law requires that the charter shall be granted unless the authorizing board makes written factual findings, citing specific facts that one or more of the following conditions exist:

- The charter presents an unsound educational program for the students to be enrolled in the charter school.
- 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 charter elements.

The law does not define or give specifics as to what an “unsound educational program” might look like. Nor does the law give a definition of “reasonably comprehensive”. With regard to the first requirement, as previously stated, it is important for the district to have in policy on file a definition of a sound educational program in order to articulate specific findings with regard to a petition’s unsound educational program. As for the second requirement, the finding is usually articulated based on the petitioner’s unsound financial structure; the authorizing board should deny a petition on these grounds in order to avoid liability for a financially unstable charter. It can also be based on the lack of experience of the proposed charter school governing board. Districts should study the backgrounds of each prospective board member for appropriate experience in running a school. If found lacking, the district should determine if the charter board will be hiring people who have the appropriate experience. It should also be noted that county boards and the state board now have greater latitude to approve petitions under AB 1994 when approving countywide and statewide charters respectively (see “What alternative avenues of approval are available to petitioners?” on page 35).

■ 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 of the governing board considering the petition, unless the petition proposes to serve students in all of the grade levels served by that school district. In other words, elementary school districts would be prohibited from approving petitions for charter schools serving high school students.

The petition review process

■ ■ ■ ■ *What should the board consider in approving or denying a petition (continued)*

But an elementary school district serving students K-6 can approve a petition for a K-8 charter school, since the school would be serving students in all of the grade levels served by the K-6 district, plus additional grade levels of 7-8.

■ Possible board actions

After analyzing the petition, weighing it against the legal criteria for accepting or denying a petition, and reviewing staff recommendations, the board may take one of the following actions:

- Grant the charter for a term of up to five years.
- Ask the petitioners to withdraw the petition until they can correct deficiencies.
- Deny the petition based on legal grounds.
- Seek a waiver of timelines in order to have additional time to consider the petition.

The petition review process

■ ■ ■ What alternative avenues of approval are available to petitioners?

■ Petitions for schools outside geographical boundaries of district

In 2002, the governor signed AB 1994 into law, prohibiting, with some exceptions, charter schools from locating outside the jurisdiction of its authorizing agency except in very limited circumstances.

Exceptions. A charter school may locate outside of the district of the authorizing board if the site outside of the district is needed for temporary use during a construction project or expansion project or the charter school is unable to find adequate space within the chartering district to house its entire program. In these circumstances, the charter school may operate one site outside of the district boundaries as long as the site is within the county of the authorizing board and the charter school notifies the county superintendent, the school district and the superintendent of public instruction.

Exclusions. The following schools or programs operating schools are excluded from the jurisdictional requirement altogether:

- Schools operating in compliance with Workforce Investment Act of 1998
- California Conservation Corps, including local Conservation Corps
- Federal job corps
- Youth build programs
- Juvenile court schools

Multiple sites within a district. A charter school may operate multiple sites within a district. Petitioners for new charter schools must state

the desire to operate multiple sites in the petition, and the authorizing board must consider the request as part of the petition approval process. Existing charter school operators must notify the authorizing board and seek an amendment to the charter if they desire to move or add school sites. This includes satellite facilities, resource centers and meeting space. A charter may establish a resource center, meeting space or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met: (a) The facility is used exclusively for the educational support of students who are enrolled in non-classroom based independent study of the charter school and (b) The charter school provides its primary educational services in, and the majority of the students it serves are residents of, the county in which the school is authorized [Education Code 47605.1(c)(1)(2).] Amendments made to charter petitions require the charter schools and the authorizing board's joint approval.

■ Petitions submitted to county boards of education

Original authorizations. Under AB 1994, county boards of education may approve petitions for countywide charter schools. Such schools could operate at multiple sites within a county and must provide “instructional services that are not generally provided by a county office of education,” presumably expanding the student populations that a county-approved charter school may serve. However, the county board may deny the petition if it finds that the charter school can be better served by operating in only one school district in the county, or on any other basis that the board finds justifies denial of the petition in accordance with law. A countywide charter petition that is denied can not appeal to the State Board of Education.

The petition review process

■ ■ ■ ■ *What alternative avenues of approval are available to petitioners? (continued)*

A county board of education that approves a petition for the operation of a countywide charter is responsible for the oversight of the charter school. It may enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor and report to the county board of education on the operations of the charter school.

Appellate authorizations. Petitioners may submit a petition to the county board if the district board has denied the petition. If the county board fails to act on a petition within 120 days of receipt, the original decision of the district board to deny the petition shall be subject to judicial review. If the county approves the petition on appeal, the county becomes the authorizer and responsible for oversight. Under law, the petitioner must first appeal to the county office of education before appealing to the state Board of Education.

A charter school approved on appeal by the county board or state board of education, or a charter school approved as a statewide benefit charter school can submit a Proposition 39 request to the district of residence. The district of residence must provide facilities to the charter school. (*See Proposition 39 section.*)

■ Petitions submitted to the state Board of Education

Under current law, petitioners are allowed to submit a charter petition to the state Board of Education for approval if a district and/or county board has denied the petition. In addition, under AB 1994, charter petitions that can demonstrate a statewide instructional benefit may be submitted directly to the SBE.

Original authorizations. Under AB 1994, the SBE may approve petitions for statewide benefit charter schools, in a manner similar to the process by which county boards can approve countywide charters. Such schools could operate at multiple sites within the state, and the SBE must deny the petition if it finds that the charter school will not provide instructional services of a statewide benefit that cannot be provided by a school operating in only one district or county. The SBE is not required to approve a petition for a statewide charter school, and may deny a petition on the same grounds as a petition submitted to a district or county board.

The SBE may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on the operations of the charter school. The SBE may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the SBE.

The SBE, with input from the Advisory Commission on Charter Schools, adopts regulations concerning SBE approved charter schools. An updated list of charter school regulations is available from the California Department of Education at www.cde.ca.gov/sp/cs/lr.

Appellate authorizations. A charter petition may be submitted to the SBE if the county denies the petition or if the county upholds the district's denial. If the SBE fails to act on a petition within 120 days of receipt, the original decision of the district board to deny the petition shall be subject to judicial review.

■ ■ ■ ■ *What alternative avenues of approval are available to petitioners? (continued)*

If the SBE approves the petition, then the CDE becomes the oversight agency. The SBE may, by mutual agreement, designate as the oversight agency any local educational agency in the county in which the charter school is located or the board that originally denied the petition. The SBE **cannot** require a local school district or county to oversee an SBE approved charter school. Revocation authority, however, remains with the SBE.

Note that when a charter granted by the SBE comes up for renewal, the petition for renewal must first be submitted to the local board that originally denied the charter. If the board denies the petition for renewal, the school may then petition the SBE for renewal.

A charter school approved by the SBE may request Proposition 39 facilities from the district in which they reside. (See page 48.)

The petition review process

■■■■ What should be included in a memorandum of understanding?

A memorandum of understanding is an agreement between the charter school and the authorizing board written to clarify financial and operational issues. An MOU is not required by charter law but is strongly recommended; it is usually negotiated during the petition approval process and is approved after the petition. The MOU should be reviewed annually and adjusted based on need. It provides an opportunity for the authorizing board to spell out anything that was not included in the original charter petition. The district may want to expand on the legally required charter elements or other required parts of the petition, or may want to include some of the items discussed below. The MOU serves as a binding legal agreement between the authorizing board and the charter school to protect both parties. Therefore, it is important to identify any matters for which the district wants to hold the petitioners accountable (timelines, etc.).

Although the authorizing board has other procedures and criteria for monitoring charter school performance and operations, the most effective monitoring occurs via the petition review process, when terms of compliance are described in the MOU. The more clear and comprehensive the district's expectations are spelled out in the MOU, the more smoothly the monitoring process will be once the charter is approved.

Outlined below are recommended elements for the MOU. Since some of the MOU items are lengthy and may need to be spelled out in great detail, separate MOUs for business operations, administrative and support services, special education and assessment should be considered.

■ Business plan

Although some aspects of the charter school's business operations must be addressed in the original charter, the MOU might include an expanded business plan addressing:

- Charter organizational chart
- Governing board activities (process for complying with Brown Act)
- Internal fiscal controls
- Staffing ratios
- Participation in STRS and PERS
- Reporting requirements
- Identification of financial reporting system, manual or automated
- Proposed school calendar
- Liability insurance and hold harmless provisions
- Safety programs
- Health and safety requirements for facilities
- Facilities maintenance, replacement and expansion
- Facilities' ability to accommodate the school's start-up population and projected growth
- Identification of annual/long-term debt
- Budget format
- Estimated revenues, categorical programs
- Expectation to use "best efforts" to apply for grant money
- Estimated expenditures, including start-up costs, salary

The petition review process

■ ■ ■ ■ *What should be included in a memorandum of understanding? (continued)*

- schedules, employee benefits, food services, transportation and other expenditure assumptions
- Budget criteria standards
- Budget reserve positions
- For renewal applications, current financial statements, including a detailed balance sheet and statements of income and expense
- Auditor selection, audit criteria, resolution of audit findings
- Financial stability indicators
- Legal costs to be paid if the school fails
- Procedure to be used to resolve disputes over fiscal management

■ **Facilities plan**

The district and the charter school must negotiate an agreement regarding use and payment for space. The agreement should reflect terms and conditions similar to those found in a commercial lease agreement. The district should ensure that the agreement includes details regarding the following:

- If providing own facility, documents that provide reasonable evidence that the charter school facility is or will be safe and habitable; compliance with all applicable building codes, health and safety codes; and is well-suited for its educational purpose.
- Information included in the final notice of facilities to be provided by the district.
- Agreement on use and payment for space.
- Pro rata share.

- Indemnification and liability insurance.
- Indication that allocated facilities remain district property.
- Provisions that the charter school will comply with district policies regarding the operations and maintenance of school facilities and furnishings and equipment.

The charter school must report actual ADA to the school district every time the charter school reports ADA for apportionment purposes. The reports must include in-district and total ADA and in-district and total classroom ADA. The charter school must maintain records documenting the data contained in the reports. These records shall be available on request by the district.

The charter school and district may negotiate separate agreements and/or reimbursement arrangements for specific services not considered part of facilities costs. Such services may include, but are not limited to, the use of additional space and operations, maintenance and security services.

The authorizing board should delineate in as much detail as possible the facilities use agreements that it has with the charter school. The facilities plan should make it clear that district policies and rules are to be followed when charter students use district facilities.

■ **Administrative and support services plan**

An MOU should detail who will be responsible for the various administrative and support services of the charter school. The business plan should include how these support services will be delivered and how they will be paid for. During the review of a charter petition, discussions must take place and decisions must be made regarding the extent to which the district will provide administrative and support services to the

The petition review process

■ ■ ■ ■ *What should be included in a memorandum of understanding? (continued)*

charter school. Districts are limited by law to one percent actual oversight costs. If the authorizing board is providing substantially rent-free facilities to the charter, it can charge an additional two percent for facilities, which creates a total of three percent that can be charged to the charter. The one percent and three percent limits are for “supervisory oversight” of a charter school. The scope of supervisory oversight has broadened over the past few years; however, those duties are not clearly defined by the law. Therefore, it is important for authorizing board members to attend or ensure that staff attends CSBA workshops and conferences that provide updates to the law. The county offices of education and CSBA’s Policy Services are also good sources for this information.

Examples of reimbursable activities under supervisory oversight (monitoring) include:

- Development of MOUs, such as MOUs for business operations, administrative and support services, special education, facilities and assessment.
- Performance monitoring to ensure the school’s compliance with the terms of the charter, including conducting site visits, reviewing performance data and engaging in ongoing dialogue.
- Legal auditing to ensure that the practices and procedures of the charter school comply with applicable state and federal law.
- Financial monitoring, including reviewing reports regarding the finances of the charter school, and reviewing contracts and long-term obligations of the charter (e.g., leases) for compliance with state law and sound financial practices.

- Site visit protocols.

The actual delivery of services would probably not be considered supervisory oversight for purposes of the law. However, the charter school may contract with the chartering entity and/or outside groups for delivery of administrative and support services beyond the one percent and three percent limits. These services may include but are not limited to:

- Accounting
- Accounts payable
- Attendance accounting
- Audits
- Budgeting
- Payroll
- Personnel/human resources
- Health services, i.e. nursing
- Legal services

Procedures for outreach and recruitment from district schools, as well as access to district students.

- Risk management/insurance
- Purchasing
- Instructional media
- Data processing
- Maintenance of facilities

The petition review process

■ ■ ■ ■ *What should be included in a memorandum of understanding? (continued)*

- Maintenance of equipment
- Utilities
- Custodial services
- Grounds
- Transportation (note that charter schools are not required to provide transportation, even for low-income students)
- Food services
- Athletic programs/extra-curricular activities, i.e., sports, dances, etc. (Are charter students allowed to participate on district teams?)
- Media/library services

The MOU should outline how these, or any other, services will be delivered.

■ **Special education plan**

A charter school can choose to be its own local education agency or choose to be a school of the authorizing district for special education purposes. If the charter chooses to be a school of the district, the authorizing district becomes responsible for delivering special education services to the eligible students in the charter schools it oversees. It is important to note that once an eligible student has enrolled in a charter school, for purposes of the special education law, it no longer matters where the student resides, except in determining how services will be delivered. The California Department of Education holds the authorizer, not the district of residence (unless the two are the same) responsible for ensuring that appropriate services are provided. Therefore, if the charter

chooses to be a school of the authorizing district instead of designating itself as its own LEA, the authorizing district is now responsible for serving all eligible special education students at that charter school, regardless of where these students reside. The authorizing board and charter school should develop an MOU that clarifies how special education services will be provided to charter school students and the charter school's relationship to the special education local plan area. Note that federal special education laws are not eligible for waivers.

If a charter chooses to be its own LEA, it must join a SELPA and deliver all services to its students. A charter school can join any SELPA in the state and is not restricted to joining the same SELPA as the authorizing school district.

Currently, most charter schools are operating as a school of the authorizing district for special education purposes. As such, extensive negotiations are needed between the charter school, the granting agency and the SELPA to work out issues regarding responsibility, oversight and fiscal accountability.

Because some special education expenses are typically not reimbursed, remaining an arm of the district offers less financial risk for charter schools, particularly small charter schools and those serving above-average numbers of special education students. Still, such schools should plan on contributing a significant sum to pay the charter school's fair share of excess special education costs. In drafting budget estimates, charter school petitioners should reserve sufficient funding to address these excess costs, perhaps based on the sponsoring district's estimated level of excess costs.

The petition review process

■ ■ ■ ■ *What should be included in a memorandum of understanding? (continued)*

The following factors should be considered by the authorizing board and charter school in developing a special education MOU:

- The capacity of the charter school to implement and deliver special education services and programs.

Clarification of how services will be provided.

- The financial incentives established by the funding allocation plans of the local SELPA.
- The local district's special education costs and costs in SELPA.

An agreed upon per-pupil amount to cover excess costs of services LEA makes available to charter school (local fund contribution)

- The difference in ADA revenue for special education vs. general education purposes.
- How the charter school will identify special education students.
- How the charter school will provide facilities access for special education students.
- How the charter school will monitor its special education programs.
- The district should include a stipulation in the MOU that no individualized education program meeting will be held without a district representative.

Special education funding model

The statewide special education funding model combines funds from several different sources into a unique rate for each SELPA. Special education funding is generated by the total ADA reported by districts and combined at the SELPA level. Charter schools generate special education revenue by reporting ADA.

Current law excludes special education funding from the charter school block grant and contains extensive provisions regarding special education in charter schools. Charter schools have two options for establishing their relationship with special education laws and funding systems:

1. For special education purposes, charter schools are generally presumed to be an arm of the local educational agency that granted their charter, unless the charter school has established itself as an independent LEA for special education purposes. State and federal special education funding will be allocated in accordance with the SELPA local allocation plan, which is typically to the district's SELPA, not the charter school. The charter-granting agency "shall ensure that all children with disabilities enrolled in the charter school receive special education services." The charter-granting agency is responsible for providing an "equitable share of special education funding and services" to the charter school. The charter school, in return, must "contribute an equitable share of its charter school block grant funding to support district wide special education costs."

The petition review process

■ ■ ■ ■ *What should be included in a memorandum of understanding? (continued)*

2. Charter schools that have established themselves as independent LEAs for special education purposes must provide “verifiable, written assurances” that they will comply with all federal special education laws and that they will join a SELPA. *Note that a charter school operates, by default, as a school of the district for special education purposes until it has been accepted as an LEA member by a SELPA.* Even after the charter school is an LEA member of a SELPA, funds will flow directly to the SELPA, not the charter school, and the charter school will receive funding pursuant to the SELPA’s local allocation plan policies. Charter schools that are independent LEAs for special education purposes may also form their own SELPA, either individually or in partnership with other charter schools.

In September 2002, the California Department of Education released a 10-page document entitled “Special Education and Charter Schools: Questions and Answers.” This document is available on the California Department of Education Web site at www.cde.ca.gov. Authorizing boards are advised to check back with CSBA periodically to obtain the most recent information available.

■ Student assessment, access, data reporting plan

The original charter is required by law to include a description of the proposed assessment program related to the school’s measurable student outcomes. An MOU can be useful in elaborating on these plans, and should address:

- Assessments to be administered. Assessments identified must include state and federally mandated tests at appropriate grade levels, and may include district-determined benchmark assessments at designated years. If the assessments do not include the district-determined assessments, the description should indicate how other assessments are equivalent to those of the district.
- What, if any, role the district will play in charter school testing arrangements. Remember, it is the charter school’s responsibility to administer state and federal assessments to students.
- Whether growth targets for charter school students will be the same as or different than those for other district students. It is recommended that benchmarks for charter school student performance on state-required tests be higher than the district’s Academic Performance Index. That way, the charter school can enhance its credibility, and the district can be assured that the charter school’s mission is fulfilling the intent of the charter school law to improve student achievement. At a minimum, the charter school must demonstrate that it is making “adequate yearly progress” as defined by the No Child Left Behind Act, and meeting its API growth targets.

The petition review process

■ ■ ■ ■ *What should be included in a memorandum of understanding? (continued)*

- Districts should encourage charter schools to refine performance measures after the data from first-year students are collected.

Procedures for providing updates on progress to the authorizing board.

- Districts should decide if they will allow charter school students to participate in district-sponsored activities such as sports, dances, etc. The district should consider insurance and liability issues before making this decision. If allowed, charter school students should be expected to meet the same academic requirements as other district students in order to participate in these activities.
- Reporting of student data. The plan should include the method by which the charter school will report test scores, demographic data and other student data.

A year prior to the renewal of the charter school, the district and charter school should revisit the MOU and develop a plan that will help the charter school accomplish the new requirements needed to renew its charter. (New requirements are listed under “What is the process for renewing a charter?” on page 63.)

■ Additional MOU items to consider

Beyond the suggestions listed above, there are additional items the district may want to consider including in an MOU. These will provide the authorizer with clarification on issues that could be problematic.

- Definition of material amendments to charter
- Procedure and protocol for site visits (pre-opening, periodic, unannounced)
- Conditions for renewal
- Notice to cure/revocation process (This should be included on the actual charter petition but it is helpful to spell out the details in an MOU.)
- Closure procedures (This should be included on the actual charter petition but it is helpful to spell out the details in an MOU.)
- District-created charter schools

The petition review process

■■■■ **Converting or creating charter schools**

The federal No Child Left Behind Act also places extensive requirements on states and districts to respond to academic underperformance in their schools. Specifically, NCLB outlines a system of escalating sanctions for schools that receive federal Title I funding and do not meet “adequate yearly progress” goals. These schools are identified as program improvement schools and after four consecutive years of not meeting AYP benchmarks, districts must create a plan for restructuring the school. After the fifth year, the district must implement that plan. NCLB provides the following list of possible actions for restructuring:

- Reopen the school as a public charter school.
- Replace all or most of the school staff, including the principal, who are relevant to the school’s failure to meet AYP goals.
- Enter into a contract with an entity, such as a private management company with a demonstrated record of effectiveness, to operate the school as a public school.
- Turn the operation of the school over to the state education agency, if permitted under state law and agreed to by the state.
- Any other major restructuring of a school’s governance arrangement.

In California, restructuring strategies have varied at the local level, including the conversion of schools into charters.

The intent and language of California’s charter school law clearly allows for school districts to convert their own schools into charter schools. There are benefits, as well as, risks for districts who wish to go

in that direction. Because NCLB allows for low-performing schools to be converted into charters for fourth- and fifth-year restructuring purposes, districts should look into this option to determine if it is a valid response to the challenges faced at these schools. Research can be done to determine if the programs in place at high- performing charter schools in the state with the same challenges as their own (e.g., poverty rates, English learners, high numbers of special education students, etc.) can be applied to their low-performing schools.

It is important for the board and superintendent to look to the community for support before moving in this direction. The charter school law was designed to give parents/guardians and educators a more proactive role in their children’s education. The most successful charter schools have followed this grassroots approach. Union support is another important factor that plays into the politics of converting charter schools. Successful charter schools often find a way to work with the union leadership in crafting a proposal that will include an opportunity for teachers and classified staff at the site to play a more collaborative role in the creation and leadership of the school.

There are also circumstances when a district feels strongly that a program improvement school needs to be restaffed in order to be successful and may wish to go this route irrespective of union support. However, conversion charter school petitions must be signed by at least fifty percent of the permanent status teachers at the school , so “restaffing” a conversion may be difficult. If a conversion charter is approved, Education Code 47611.5 allows charter schools to declare themselves the exclusive public school employer of the staff of their

The petition review process

■ ■ ■ ■ *Converting or creating charter schools (continued)*

schools. Therefore, the charter school does not need to abide by the collective bargaining agreement of the authorizing district and can staff the school as it sees fit. Boards will want to confer with their legal advisors on this matter.

Converted schools that are operated by an outside entity will have their own governance structure and board. An existing school district board of trustees may govern a charter school but, if so, the charter school should form an advisory body made up of charter school stakeholders to advise the school district governing board on issues such as program implementation, budgets, and facilities.

However charters might fit into restructuring in districts, school boards and district staff will want to be cautious and thoughtful when proceeding down this path.

Conversion charter schools are not the only way that governance teams can incorporate charter schools into their district. A district governance team can also create a start-up charter school. Once again, community sentiment and collaboration with certificated and classified employees is essential to a successful charter school. Governance teams will need to spend time analyzing and evaluating student data to determine if there is a need in the district that a charter school can fill.

Questions to ask might include:

- Are there students whose educational needs have not been met by the traditional schools?
- Would exemption from sections of the Education Code help the district to meet those needs?
- Can the district meet those needs through the creation of innovative programs versus creating a charter school?

A district-created charter school will follow the same petition process as any other proposed charter. The petition requirements remain the same. There has been some discussion and debate regarding the legality of a school board also serving as the board of the charter school pertaining to conflict of interest rules. Legal counsel must be consulted in the creation of any charter school.

Questions to ask legal counsel include:

1. Can a district board also be the board of a charter school?
2. What are the legalities of performing oversight of the charter when the district board is the governance structure of the charter?
3. If problems arise in the charter that lead to revocation, does the district board follow the same laws and regulations it would for an independent charter? (i.e., how does a district board revoke itself?)
4. Can the district apply for the Federal Charter Start Up Grant from CDE if there is not a separate governance structure at the charter?

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ **When did Proposition 39 become effective?**

California voters passed Proposition 39, an initiative statute, on Nov. 8, 2000. The state Board of Education adopted implementing regulations that provide direction to districts on how to implement the provisions of Proposition 39. These regulations are available at the California Department of Education Web site at www.cde.ca.gov/sp/cs/re/csqatoc.asp.

Proposition 39 went into effect in November 2003. As stated in Education Code 47614, the passage of Proposition 39 is indicative of “the intent of the people” that “public schools facilities should be shared fairly among all public school pupils, including those in charter schools.” Essentially, districts are required to provide facilities to charter schools located within their geographical boundaries, subject to certain requirements, and regardless of whether the district approved the charter.

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ What are the district’s obligations under Proposition 39?

■ Service of in-district students

Districts are required to provide facilities, if requested, for charter schools that have an in-district ADA of 80 or more. The facilities must be reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. An “in-district student” is a student entitled to attend the district’s schools. However, a student eligible to attend the district’s schools based on interdistrict attendance or based on parental employment shall be considered a student of the school district where the student resides. Independent study students count as part of in-district ADA unless the charter provides for non-classroom-based instruction. Districts are only required to allocate space for in-district students; districts are not required to allocate space for students who do not reside in the district. The district may choose to negotiate to provide facilities for students who are not in-district at a cost, but such an arrangement is made at the district’s discretion.

Recent court cases have provided direction for districts facing charter school facilities requests.

In August, 2004, another appellate court considered the “reasonable projection” issue in the case of *Environmental Charter High School v. Centinela Valley Union High School District*. This case considered the newly adopted state Board of Education regulations implementing Proposition 39. The Court ruled that when requesting facilities from a school district, the district is within its right to request the names and contact information from the charter school as part of the documentation of the number of in-district students meaningfully

interested in attending the charter school. Centinela Valley Union HSD had denied the facilities request by the Environmental Charter High School based on the schools’ refusal to provide any information about in-district students other than an estimated number. The Court ruled Centinela had every right to deny the request based on incomplete information. It went on to state that when a charter school submits a facilities request, it must make a showing of its enrollment projections with relevant documents. The Court stated it did not expect this showing to be arithmetically precise however, it must be reasonable in the sense that it has some basis in logic, reason and experience.

In July 2005, the California Court of Appeals issued a ruling in the case of *Ridgecrest Charter School v. Sierra Sands Unified School District* which has an enormous impact on school districts and how Proposition 39 charter school facilities requests are handled.

The court held that when considering a request for charter school facilities under Proposition 39, districts must, to the maximum extent practicable, consider the needs of charter students and district students equally. It goes on to state it was the intent of the Legislature via AB 544 to reduce, if not eliminate, the practical distinctions between charter schools and district-run schools. Therefore, according to the court, charter school students are district students and should be treated accordingly. Technically, the holding of this case applies only to districts in the Fifth Appellate District (Central Valley counties), but nonetheless all school districts should take into consideration this court’s perspective of the requirements of Proposition 39.

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ *What are the district's obligations under Proposition 39? (continued)*

In March 2008, revised Proposition 39 regulations were approved. The new regulations are based on some of the court decisions mentioned above. The new regulations go into effect fall 2008 for facilities requests in the 2009-10 school year. The new requirements are folded into the information below. It is imperative that districts consult with legal counsel on all charter school facilities issues.

■ **Timeline**

Facilities requests must be submitted on or before November 1 of the preceding fiscal year. The school district must review the charter school's projection of in-district ADA and total ADA on or before December 1. The district must express any objections in writing by this date and state the ADA projections the district considers reasonable.

The December 1 date is important. If the district does not respond in writing by this date, the charter's projections stand and are not subject to challenge. The charter school then has until January 2 to respond to any objections by the district. If the charter does not respond by this date, the district's projections stand.

On or before February 1, the district will prepare, in writing, a preliminary proposal regarding the space to be allocated to the charter school. On or before March 1, the charter school shall respond in writing, to the district's proposal, expressing any concerns and outlining the differences in the proposed offer and the charter's request.

On or before April 1, the district will submit a final notification of the space offered to the charter school. The charter school must notify the district on whether or not it intends to accept the district's offer of

space. This notification must occur by May 1 or 30 days after the school district notification—whichever is later.

The charter school can withdraw or modify its notification before this deadline. Once the charter school accepts the proposed facilities, however, it is committed to paying the pro rata share amount agreed upon (see "May districts charge the charter school for facilities costs?" on page 53). If the charter school does not respond by the deadline, it forfeits rights to use the facilities for the following fiscal year. If the charter chooses to accept the district's offered space, the district must make space available for occupancy at least 10 working days prior to the start of school.

■ **Providing facilities that are in "reasonably equivalent" conditions**

The regulations require districts to provide a facility in "conditions reasonably equivalent" to those of the district's other public schools. The regulations establish a benchmark for defining "reasonably equivalent" through a comparison group of district-operated schools with similar grade levels. If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility shall be an existing facility that is most consistent with the needs of the students at the charter school.

Districts are to provide facilities in the same ratio of teaching stations to ADA as those provided to students in the comparison group schools. For purposes of determining ratios, the district ADA is calculated using projections for the fiscal year and grade levels for which the facilities are requested by the charter (e.g., a district would calculate the ADA for grades K-3 if the charter petition was seeking to create a K-3 charter). The charter school teaching station ratios

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ *What are the district's obligations under Proposition 39? (continued)*

are then calculated by using a classroom ADA comprised of only that portion of the charter students who reside within the district boundaries with the ratio used by the district.

The number of teaching stations is determined using the classroom inventory prepared pursuant to Sec. 1859.30 of Title 2 of the California Code of Regulations, adjusted to exclude classrooms identified as interim housing portables. If the district's classroom inventory includes specialized classroom space, such as science laboratories, the facilities provided must include a share of specialized classroom space. Districts are also required to provide administrative space, kitchen, multi-purpose room and play area space, and other non-teaching space commensurate with the in-district classroom ADA of the charter school.

Sharing arrangements may allow for space allocated to a charter school to be shared with district-operated programs, at either the same time or at different times. The portion of space that may be shared is calculated based on the space used exclusively by the charter compared to amount of space exclusively used by district-operated programs.

Title 5 regulations require that all of the factors listed below are to be used by the district and the charter school to determine whether the condition of facilities provided is reasonably equivalent to the condition of comparison group schools:

- School site size
- Condition of interior and exterior surfaces
- Condition of mechanical, plumbing, electrical and fire alarm systems

- Conformity of mechanical, plumbing, electrical and fire alarm systems to applicable codes
- Availability and condition of technology infrastructure
- Suitability of facility as a learning environment including, but not limited to, lighting, noise mitigation and size for intended use
- Manner in which the facility is furnished and equipped

■ **Facilities must be contiguous, furnished and equipped**

Facilities are “contiguous” if they are contained on the school site or immediately adjacent to the school site. If the in-district average daily classroom attendance of the charter school cannot be accommodated on any single school district school site, contiguous facilities may also include facilities located at more than one site, provided that the school district minimizes the number of sites assigned, considers student safety and the district governing board first makes a finding that the charter school could not be accommodated at a single site and adopts a written statement of reasons. Also in the new regulations, it is clear that in evaluating a charter school's request for facilities, the district must give the charter's in-district students the same consideration as students in district-run schools.

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ *What are the district's obligations under Proposition 39? (continued)*

The new regulations greatly expand the definition of furnished and equipped to include reasonably equivalent furnishings and equipment necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction. The furnishings and equipment must be reasonably equivalent to that in the comparison group schools.

Equipment

Equipment refers to property that does not lose its identity when removed from its location, has relatively permanent value and its purchase increases the total value of a LEA's physical properties. The new regulations include examples of "equipment" as furniture, vehicles, machinery, film, videotape and major software programs. Furnishings and equipment acquired for a school site with non-district resources are excluded when determining reasonable equivalence. This includes PTA, private donor and foundation purchased equipment.

■ **Conversion charter schools**

New provisions were included in the revised regulations addressing conversion charter schools. Conversion charter schools that remain in the original, existing school site for their first year of operation shall have the same site made available to the charter for each year thereafter upon their annual request for facilities to the district. The district cannot move the conversion charter from its location without a material revision to the charter. Both the authorizing board and the charter school must agree upon any material revision. The district may charge the charter the pro-rata costs for the site and the district is entitled to receive reimbursement for over-allocated space from the charter school. The exception to this is if the conversion charter notifies the district, by February 1 of its first year of operation, that it will have over-allocated space in the following fiscal year, the space identified is not subject to reimbursement for over-allocation space in the following year or thereafter. The district can then use the extra space for its own programs.

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ **What are the operations and maintenance responsibilities of both parties?**

■ **Responsibilities of charter schools**

Charter schools are responsible for ongoing operations and maintenance of facilities, furnishings and equipment in accordance with district policies. Charter schools cannot use facilities for non-school-related activities or permit others to do so without the permission of the district. Facilities, furnishings and equipment provided to a charter school by a district under the regulations remain the property of the district. Therefore, facilities may not be sublet or used, without the district's permission, for purposes other than those that are consistent with district policies and practices for use of other district schools.

■ **Responsibilities of districts**

Districts are responsible for the replacement of furnishings and equipment supplied by the district in accordance with district schedules and practices and for projects eligible to be included in the school district deferred maintenance plan. Districts should note that space allocated for use by the charter school, subject to sharing arrangements, is to be made available for the charter school's entire school year regardless of the district's instructional year or class schedule. Districts are not required to provide facilities outside of the district's geographical boundaries.

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ **May districts charge the charter school for facilities costs?**

Yes. The district providing facilities may charge a pro rata share of its facilities costs for the use of the facilities—essentially an amount equivalent to what the district spent on facilities from unrestricted revenues from the district’s general fund in the year preceding the fiscal year in which facilities were provided. The charge per square footage is to be applied equally by the district to all charter schools that receive facilities. The new regulations require the charter school to report the per-square-foot charge it is paying in the current fiscal year to the CDE. The CDE will post the per-square-foot amounts on its Web site. It is important that districts be vigilant about the pro rata share calculations to ensure they are properly charging charter schools.

■ **Determination of facilities costs**

In order to determine the charter’s pro rata share of facilities costs, a district may include costs associated with plant maintenance and operations, facilities acquisition, construction, rents and leases. They may also include the contribution from unrestricted general fund revenues to the school district’s Ongoing and Major Maintenance Account, Routine Restricted Maintenance Account, and/or deferred maintenance fund, costs from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund, and costs paid from unrestricted general fund revenue for replacement of furnishings and equipment according to district’s schedules and practices. Facilities costs also include debt service costs. Facilities costs do not include costs that are paid by the charter school, including costs associated with operation and maintenance.

■ **Reimbursement for over-allocated space**

The charter school must submit a projection of in-district ADA. If the projection is off by 25 ADA or 10 percent of the projected in-district classroom ADA, whichever is greater, the charter is responsible for reimbursing the district for the allocated space by July 1 (the beginning of the fiscal year in which the charter school intends to open).

A charter school must notify the district when it anticipates it will have over-allocated space. The district may then elect to use the over-allocated space for school district programs, but it must notify the charter school within 30 days of the notification by the charter school. If the district notifies the charter school that it intends to use all or a portion of the over-allocated space, payments for over-allocated space and pro rata share payments shall be reduced accordingly beginning at the time of the district notification to use the space. If the district notifies the charter school that it does not intend to use the space, the charter school must continue to make payments for over-allocated space and pro rata share payments. The district may reduce the amounts owed by the charter school at its discretion.

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ What must be included in a written facilities request?

School districts should have a form available for charter schools to use when submitting a Proposition 39 request. The California Department of Education’s Charter Division form is available on its Web site for district use at www.cde.ca.gov/sp/cs/as/csform.asp. This will ensure that the district will receive all necessary information in a consistent and timely manner. However, the charter school can use its own form as long as it contains all required information. The form should include all applicable Education Code and Title 5 sections. The law requires that the request also include:

- Reasonable projections of in-district and total ADA and in-district and total classroom ADA (the classroom and non-classroom ADA must be separated out, broken down by grade level and by the school in the school district that the student would otherwise attend).
 - Description of the methods for calculating the projections. (In *Sequoia Union High School District v. Aurora Charter High School* the court concluded that a charter school need not show “arithmetical precision in its projection” or provide a level of documentation that would be admissible at trial. The court found that Aurora’s projection based on its past enrollment, its current enrollment, and interest expressed from current and prospective students to attend the next academic year satisfied the reasonable projection requirement.)
- Documentation of the number of in-district students meaningfully interested in attending the charter school.
 - The charter school’s instructional calendar.
 - Information regarding the general geographic area in which the charter school wishes to locate.
 - Information about the charter school’s educational program that is relevant to assignment of facilities.

Districts may require the charter school either to distribute a reasonable number of copies of the written facilities request for review by other interested parties, such as parents/guardians and teachers, or to otherwise make the request available for review.

Allocation of facilities to charter schools – Proposition 39

■ ■ ■ ■ **What must be included in the district's response?**

The district shall prepare a preliminary proposal regarding the space to be allocated to the charter school and the associated pro rata share amount and provide the proposal to the charter school by February 1. The charter must respond to the district's preliminary proposal by March 1. By April 1 of the preceding fiscal year for which facilities are required, the district must provide final notice of facilities to be provided.

In the final notice, the district must identify:

- The teaching station and nonteaching station space offered for the exclusive use of the charter school and the teaching station and nonteaching station space to be shared with the district;
- For shared space, the arrangements for sharing;
- The in-district classroom ADA assumptions for the charter school upon which the allocation is based and, if the assumptions are different than those submitted by the charter school, a written explanation of the reasons for the differences; and
- Pro rata share amount and payment schedule, which shall take into account the timing of revenues from the state and from local property taxes.

The charter must respond in writing whether it intends to accept the district's offer. This response must occur by May 1 or 30 days after school district's submission of offer.

What are other options for charter school facilities funding?

Funding for facilities may also be available to charter schools under the SB 740 Charter School Facility Grant Program (2005-06 is currently the last year for funding unless renewed funding is approved by the Legislature), Proposition 47 (approved by voters in November 2002) and Proposition 55 (approved by voters in 2004). However, as these programs have many additional caveats and requirements, districts are encouraged to visit the California Department of Education Charter Schools home page at www.cde.ca.gov/sp/cs or to contact CSBA for the most recent information available.

Oversight responsibilities of the authorizing board



Recent Federal education policy efforts support the expansion of charter schools, with much emphasis given to accountability and high performance standards. This can be welcome news for local authorizers in their efforts to provide high quality oversight to their charter schools. To ensure that charter schools are held accountable for the taxpayer funds they receive and to demonstrate accountability for the measurable outcomes set forth in their charters, the authorizing entity should develop and implement policies and procedures for academic and fiscal monitoring. It is imperative that authorizing boards ensure that their charter schools are achieving the student outcomes that each school sets forth in its charter agreement. Because the charter agreement for each school specifies measurable student outcomes for gauging the academic performance of the school, districts and county offices of education should have guidelines in place to effectively monitor their charter schools against the agreed-upon student outcomes.

The district can also look to the standards for revocation of a charter school (see page 64) for guidance in oversight. This includes the 16 required elements in the original charter petition.

■ AB 1137

As noted earlier in this handbook, AB 1137 requires each chartering entity to identify one staff member as a contact person for the charter school. The district should develop oversight materials such as checklists and rubrics to assist staff in monitoring the performance of the school. These materials can outline what the district will be looking at while visiting schools and what materials to have ready for district staff. This will also provide clear direction for the charter school as to the expectations

of the authorizing district. An additional section of AB 1137 requires the authorizing entity to annually visit each charter school. The law does not prohibit the district from visiting more often. The district staff should attempt to visit the school two to three times during the school year. This will allow the district to monitor the charter more closely and develop relationships with the staff at the charter school.

AB 1137 also requires the district to monitor the fiscal condition of the charter school and requires the charter school to submit quarterly financial reports to its chartering authority and county superintendent of schools. Districts should evaluate these reports carefully for any discrepancies and to ensure that the charter is financially solid. District staff should regularly

Charter schools must annually submit the following reports to the chartering authority and the county superintendent (or only the county superintendent if it is approved by the county):

1. On or before July 1, a preliminary budget.
2. On or before December 15, an interim financial report that shall reflect changes through October 31.
3. On or before March 15, a second interim financial report that shall reflect changes through January 31.
4. On or before September 15, a final, unaudited report for the full prior year.

These reports should be used by the authorizer to assess the fiscal condition of the charter school [Education code 47604.33 (a).]

Oversight responsibilities of the authorizing board



report results of monitoring to the board. An authorizing entity must follow the requirements of AB 1137 to avoid liability.

■ The authorizing board is also obligated to monitor charter school performance to determine whether the charter school:

- Has implemented the provisions of the charter as approved by the board.
- Is obeying all requirements of federal, state, and local law that apply to charter schools.
- Is being operated prudently in all respects, including, but not limited to, governance, educational program, faculty and staff facilities, business management, and support services.
- Is providing a sound education for all of its students.
- Is meeting its student achievement and organizational performance goals and objectives outlined in the charter.
- Has committed any violations that would subject the charter to possible revocation under Education Code 47607(b).
- Submitted annual audit.
- Is meeting all legal requirements of IDEA and, if it's own local educational agency for special education purposes, administering appropriate services to its students.
- Is fiscally stable.

- Provided timely notification to the CDE if:
 - a renewal of the charter is granted or denied;
 - the charter is revoked; or
 - the charter school will cease operation for any reason.

The extent of a granting authority's monitoring activities of a charter school will depend to a large extent upon the charter, any MOUs in place, any ancillary administrative services agreement, and the relationship between the school district and the charter school. It is important for the district and charter school to develop an amicable relationship so that monitoring and oversight are easily accomplished.

■ Monitoring of academic program

With the renewed focus on charter school accountability at the state and federal level, authorizers must be cognizant of the academic achievement progress being made by the charter school they have approved—whether dependent or independent.

Oversight responsibilities of the authorizing board

■ ■ ■ ■ What are the reporting requirements of a charter school?

AB 1994 requires petitions to describe how a charter school that will serve high school students will inform parents/guardians about the transferability and eligibility of courses to other public high schools and about how students can meet college entrance requirements.

Charter schools are also required to promptly respond to all reasonable inquiries, including but not limited to inquiries regarding its financial records, from its authorizing board or from the superintendent of public instruction and to consult with the authorizing board or the superintendent of public instruction regarding any inquiries.

Governing boards are required to approve an annual statement of all receipts and expenditures for the district for the preceding fiscal year with the county superintendent of schools. Under AB 1994, each charter school is required to prepare, by Sept. 15 and in a format prescribed by the superintendent of public instruction, an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year and to file the statement with the authorizing board.

In addition, AB 1994 vests authority in county superintendents to monitor the operations of a charter school located within that county and to conduct an investigation into the operations of that charter school based on parental complaints or other information that justifies the investigation. The liability of a county superintendent of schools when conducting those activities is limited. Charter schools are required to consult with the county office of education regarding inquiries. If the county superintendent of schools believes that fraud, misappropriation of funds, or illegal fiscal practices have occurred at a charter school operating within the county, he or she may request that

the Fiscal Crisis and Management Assistance Team audit expenditures and internal controls.

Districts should require regular written reports of charter schools. Whether this means annual or quarterly reports depends on the length of the initial charter and whether the charter school is employing experimental methods which would require additional time to see if they positively impact student achievement. The district and the charter school may jointly develop content and evaluation criteria for the reports with the input of parents/guardians of potential enrollees, or the charter school may develop the criteria with district oversight. The charter school's report should provide information that will allow the authorizing board to assess:

- Progress toward educational goals
- Organizational viability
- Legal compliance concerns

Oversight responsibilities of the authorizing board

■ ■ ■ **May charter schools impose site visit limitations?**

No. As stated earlier, authorizing entities are required to visit the charter school annually. Outside of that requirement, the authority that granted the charter may inspect or observe any part of the charter school at any time. It is recommended that district staff visit the charter school at least two to three times during the year. Staff should schedule some of their visits with the charter but also may want to make some unannounced visits. The staff may want to develop an agenda for visits that would include document review, scheduled interviews (with administrators, board, staff, parents/guardians and students) and facility walk-through. As part of the agenda, a document review checklist should be provided to the charter school beforehand that outlines all of the Education Code requirements for oversight. The charter school should have inquiry and visitation procedures in place regarding both the public and district representatives. Board members should follow the same protocol they would use in visiting other district schools (e.g., it is generally not appropriate to visit the school unannounced).

Who oversees a state Board of Education-approved charter school?

The state Board of Education is responsible for the oversight of an SBE-approved charter school. The SBE may, by mutual agreement, designate supervisory and oversight responsibilities for a charter school to any local educational agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition (See “Petitions submitted to the state Board of Education” on page 36).

Are there other tools districts can use to monitor charters?

The Charter Schools Act implicitly allows a granting authority to require, as a condition of granting a charter, that the record keeping, financial reporting, and programmatic review procedures be enumerated in the charter. In addition, a number of charter schools have a memorandum of understanding outlining the delivery of administrative services to the charter school. (See “Administrative and support services plan” on page 39). These agreements may provide an additional basis for proactive oversight of the charter school.

Oversight responsibilities of the authorizing board

■ ■ ■ ■ **To what extent are local boards liable for the fiscal activity of the charter?**

The revocation of a number of insolvent charter schools within the state has provoked heated discussion regarding the potential for fiscal liability of the granting authority.

Prior to AB 1137, a charter-authorizing entity could not be held liable for the debts or obligations of the charter school, or for any claims arising from the performance of acts, errors, or omissions by the charter school, if the charter school was to be operated by or as a nonprofit public benefit corporation. AB 1137 places a caveat on that blanket exemption. Specifically, a charter-authorizing entity is free from liability for the debts or obligations of a charter school that is operated by or as a nonprofit public benefit corporation if the charter authorizer has complied with specific new oversight responsibilities required by AB 1137.

In general, public entities are immune from liability for injuries that arise out of their acts or omissions (Government Code sec. 815(a)). Despite this general immunity, however, public entities (including local boards and county boards) are liable for injuries caused by acts of their employees for which those employees would be liable as individuals (Government Code sec 815.2(a)). Under this authority, a charter school could be liable, as a separate public entity, for the injurious acts of its employees.

In a 1997 legal opinion, obviously not considering subsequent changes in the law relative to district oversight, the California Department of Education stated that an authorizing board should become liable, if at all, only after it has notice of a pattern or series of fiscally irresponsible actions, and fails to prevent further injuries by expeditious revocation of the charter. This theory of district or county office liability would be similar

to the liability of a district for the misconduct of its employees when the district has knowledge of similar prior misconduct and adopts a policy of “deliberate indifference to the consequences” of that misconduct.

Based on the 1997 legal opinion, the California Department of Education issued a memo concluding that:

- Charter schools are not subject to the audit and oversight laws that apply to school districts, including the annual audit under Education Code 41020, a state controller audit under Education Code 14506, and oversight requirements of AB 1200.
- Local educational agencies are generally not the financial guarantors of charter schools that they grant.
- A chartering authority may become liable for the debts and obligations of the charter school if it has notice of a pattern or series of fiscally irresponsible actions and fails to prevent further injuries by expeditious revocation of the charter.

While AB 1994 contains new fiscal reporting requirements for charter schools (see “What are the reporting requirements of a charter school?” on page 58), it is still important for authorizing boards to be proactive with regard to fiscal oversight. In fact, failure to do so could lead to liability. Therefore, to exercise responsible fiscal oversight, the authorizing board should:

- Before the charter petition is approved, ensure that the charter includes the “manner in which an annual audit of the financial and programmatic operations of the school is to be conducted,” as required by law, and a reasonable system for fiscal accountability.

Oversight responsibilities of the authorizing board

■ ■ ■ ■ *To what extent are local boards liable for the fiscal activity of the charter? (continued)*

This should include compliance with the Annual Standards and Procedures for Audits of California K-12 Local Education Agencies issued by the Education Audit Appeals Panel, as applicable. The charter and/or any business plan contained in a memorandum of understanding should state the specific financial standards the charter school is expected to use, as well as insurance requirements and budget reserve minimums. Some problems can be avoided by setting high standards of fiscal accountability at the front end and ensuring that the proposed budget is realistic and balanced.

- Follow current law and annually review the charter school’s audit report, and quarterly review any other financial reports specified in the charter and/or any memorandum of understanding, to determine whether the charter school has acted in accordance with reasonable and prudent business standards. By requiring an audit provision in the original charter, the law implies the duty of the chartering authority to ensure that such procedures are actually in operation and to review the charter school’s audit report.
- Make reasonable inquiries regarding the charter schools financial records, as appropriate. Pursuant to Education Code 47604.3, charter schools must promptly respond to all reasonable inquiries from the authorizing board or the superintendent of public instruction regarding financial records.

Under AB 1994, charter schools are required to file annual statements of all receipts and expenditures with the authorizing board (see “What are the reporting requirements of a charter school?” on page 58). This will most likely require a breakdown of revenues identified by source, and details regarding the amounts spent for certain expenditure categories, such as employee salaries and benefits, books, supplies, equipment, contracted services, other operating expenses, capital outlay, and other outgo. Charter schools should be prepared to provide additional financial information about beginning and ending balances, amounts set aside for reserves, amounts spent for debt service, and specific amounts spent from certain state and federal funding sources.

- Take expeditious action to revoke the charter upon discovery of serious fiscal mismanagement. As noted below (see “Revocation of charters, revocation appeals and closures” on page 64), the authorizing board may revoke the charter if it finds that the charter school failed to meet generally accepted accounting standards of fiscal management. The California Department of Education suggests that at least an annual review of a charter school’s overall fiscal management is required in order to provide minimal safeguards against abuse of public funds by a charter school.

Oversight responsibilities of the authorizing board

■ ■ ■ ■ **Are there special requirements for non-classroom-based charter schools?**

A nonclassroom-based school, is one in which more than 20 percent of instructional time is offered in a location different from the primary school site. Nonclassroom-based charter schools tend to rely on individualized, self-paced student learning plans. Nonclassroom-based instruction includes independent study, home study, distance study, computer-based study, and work-study. Pursuant to SB 740, the state Board of Education has adopted regulations regarding the financial reporting requirements for non-classroom based independent study charter schools. Such schools must submit funding requests to the state Board of Education. The regulations are available on the California Department of Education's Web site at www.cde.ca.gov/sp/cs.

Oversight responsibilities of the authorizing board

■ ■ ■ ■ What is the process for renewing a charter?

Education Code 47607 requires that petitions for renewal be judged by the same standards and criteria as the initial approval of charters. In a move to create more accountability for charter schools, AB 1137 also put in place additional criteria a charter school must meet in order to be renewed. Since Jan. 1, 2005, or after a charter school has been in operation for four years, whichever is later, a charter school's charter may not be renewed unless specific academic performance standards have been met. A charter school must meet at least one of the following performance standards: (1) attainment of the school's Academic Performance Index (API) growth target in two of the last three years or in the aggregate last three years; (2) an API decile ranking of four or better in the prior year or two of last the three years; (3) an API Similar Schools decile ranking of four or better in two of the last three years; (4) documented evidence that the performance of charter school students is at least equal to that of the students in schools of the district that those students would otherwise be attending; or (5) qualification for participation in the Alternative School Accountability Model.

The authorizing board will determine the above standards based on all of the following:

- Documented and clear and convincing data.
- Student achievement data from assessments, including, but not limited to, the Standardized Testing and Reporting Program (STAR) for demographically similar student populations in the comparison schools.
- Information submitted by the charter school.

The authorizing board must submit to the superintendent of public instruction copies of the supporting documentation and written summary of the basis for any renewal determination.

The law does not establish timelines for the renewal process, so the district should establish timelines and procedures ahead of time that consider the needs of the district as well as the students, parents/guardians and staff of the charter school. Such procedures must provide sufficient time for the board to review the renewal petition, notify the charter school of its decision, allow for the possible appeal of the board's decision to the county board or state Board of Education, and enable students to be otherwise accommodated before the start of the school year if the charter renewal is denied.

Each renewal must be for a period of five years. Pursuant to Education Code 47607, the authorizing board and the charter school may mutually agree on modifications to the charter petition. AB 1610, passed in 2005, requires that renewals and material revisions include, but not be limited to, a reasonably comprehensive description of any new requirement of charter schools enacted into law after the charter was originally granted or last renewed.

Revocation of charters, revocation appeals and closure

■ ■ ■ ■ Can the state Board of Education recommend revocation of a charter?

It is the Legislature's intent to "hold the schools established (under the Charter Schools Act) accountable for meeting measurable pupil outcomes, and provide the schools with a method to change from rule-based to performance-based accountability systems." As part of this accountability, state law gives chartering entities the authority to revoke charters under specified conditions.

Yes. Pursuant to Education Code 47604.5, the state Board of Education may take "appropriate action," including revocation, based upon the recommendation of the superintendent of public instruction, when it finds one or more of the following:

- Gross financial mismanagement that jeopardizes the financial stability of the charter school.
- Illegal or substantially improper use of charter school funds for the personal benefit of any officer, director, or fiduciary of the charter school.
- Substantial and sustained departure from measurably successful practices such that continued departure would jeopardize the educational development of the school's students.

The SBE can take such action regardless of whether it is the authority that granted the charter.

Revocation of charters, revocation appeals and closure

■ ■ ■ Under what circumstances can an authorizing board revoke a charter?

A charter may be revoked by the authority that granted the charter if the authority finds that the charter school did any one or more of the following (Education Code 47607):

- Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.
- Failed to meet or pursue any of the pupil outcomes identified in the charter.
- Failed to meet generally accepted accounting principles or engaged in fiscal mismanagement.
- Violated any provision of law.

Process for revocation

Prior to revocation, the authorizing board must notify the charter school of the violation and allow reasonable opportunity to correct the violation, unless the violation is a severe and imminent threat to the health or safety of pupils. This notification to cure must be detailed, clear of its intention and provide a timeline to remedy violations.

In 2006, AB 2030 was signed into law. This legislation addresses the issue of charter school revocations, adding provisions to define due process for revocation proceedings, establish an appeals process, and provide for continued funding for charter schools while an appeal is pending under specified conditions. It is important for governance teams to adhere to the requirements of AB 2030 so that the appellate bodies have legal arguments to uphold the revocation.

Specifically, AB 2030 does the following:

- Requires a written notice of intent to revoke, and a notice of facts supporting revocation, be provided to the charter school prior to charter revocation (and after a reasonable opportunity to cure alleged violations has occurred).
- Requires a public hearing within 30 days of issuing the notice of intent to revoke, and that a final decision to revoke (or not revoke) be issued within another 30 days, unless the charter school and the chartering authority mutually agree to a 30-day extension of the issuance of a decision.
- Requires a chartering authority to make written factual findings supported by substantial evidence that is specific to the charter school that support the chartering authority's findings (Legal representation during this process is vital).

Revocation of charters, revocation appeals and closure

■ ■ ■ ■ *Process for revocation (continued)*

- Establishes various appeals processes:
 1. If a school district is the chartering authority and it revokes a charter, the charter school may appeal within 30 days to the county board of education.
 2. If the county board either does not issue a decision within 90 days of receipt, or determines to uphold the revocation, the charter school may appeal the revocation to the State Board of Education.
 3. If the county board reverses the school district's revocation, the school district may appeal the reversal to the SBE.
 4. If a county office of education is the chartering authority and the county board revokes a charter, the charter school may appeal within 30 days following the decision of the county board to the SBE.

Important note: If the revocation decision of the chartering authority is reversed on appeal, the agency that granted the charter continues to be the chartering authority.

- While an appeal is pending, a charter school whose revocation proceedings are based on a material violation of the charter or failure to meet or pursue any of the pupil outcomes identified in the charter, shall continue to qualify for funding and may continue to hold all existing grants, resources, and facilities.
- Requires a final decision of a revocation or appeal of a revocation be reported to the chartering authority, the county board, and the CDE.

What closure procedures must the charter school have in place?

For a variety of reasons, it may be necessary for a charter school to close. These may range from a voluntary action by the charter school operators to a revocation of the charter school, for cause, by the authorizing entity or the state Board of Education.

As stated in “What are the required elements of a complete charter petition?” on page 19, the charter school must describe procedures to be used if the charter school closes, including provisions for a closeout audit and transfer of student records. A charter school should work closely with the authorizing entity to ensure that clear and practical closure policies are in place. The law contains provisions for the revocation of a charter school, but does not specifically address what happens when a charter school voluntarily ceases to operate, or what becomes of the school's assets when a school is revoked or closed. It is up to the school to establish specific procedures as part of its charter. If the school is a non-profit corporation, the corporation's bylaws and laws governing non-profits may provide additional guidance. Specifically, any policy or procedure on closure should address notification of closure to parents/guardians, students, the California Department of Education, any district that may be receiving students of the charter school and the county office of education of the county where the charter school is located. The closure policy should also address transfer and maintenance of student records and transcripts, a final audit and transfer of assets of the school.