

[Home](#) [Table of Contents](#)**§ 11967.5.1. Criteria for the Review and Approval of Charter School Petitions and Charter Schoo...**

5 CA ADC § 11967.5.1

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Title 5. Education

Division 1. California Department of Education

Chapter 11. Special Programs

Subchapter 19. Charter Schools

Article 2. General Provisions

5 CCR § 11967.5.1

§ 11967.5.1. Criteria for the Review and Approval of Charter School Petitions and Charter School Renewal Petitions by the State Board of Education (SBE).

(a) For purposes of Education Code section 47605(c), a charter petition shall be “consistent with sound educational practice” if, in the SBE’s judgment, it is likely to be of educational benefit to pupils who attend. A charter school need not be designed or intended to meet the educational needs of every student who might possibly seek to enroll in order for the charter to be granted by the SBE.

(b) For purposes of Education Code section 47605(c)(1), a charter petition shall be “an unsound educational program” if it is any of the following:

(1) A program that involves activities that the SBE determines would present the likelihood of physical, educational, or psychological harm to the affected pupils.

(2) A program that the SBE determines not to be likely to be of educational benefit to the pupils who attend.

(c) For purposes of Education Code section 47605(c)(2), the SBE shall take the following factors into consideration in determining whether charter petitioners are “demonstrably unlikely to successfully implement the program.”

(1) If the petitioners have a past history of involvement in charter schools or other education agencies (public or private), the history is one that the SBE regards as unsuccessful, e.g., the petitioners have been associated with a charter school of which the charter has been revoked or a private school that has ceased operation for reasons within the petitioners’ control.

(2) The petitioners are unfamiliar in the SBE’s judgment with the content of the petition or the requirements of law that would apply to the proposed charter school.

(3) The petitioners have presented an unrealistic financial and operational plan for the proposed charter school. An unrealistic financial and operational plan is one to which any or all of the following applies:

(A) In the area of administrative services, the charter or supporting documents do not adequately:

1. Describe the structure for providing administrative services, including, at a minimum, personnel transactions, accounting and payroll that reflects an understanding of school business practices and expertise to carry out the necessary administrative services, or a reasonable plan and time line to develop and assemble such practices and expertise.

2. For any contract services, describe criteria for the selection of a contractor or contractors that demonstrate necessary expertise and the procedure for selection of the contractor or contractors.

(B) In the area of financial administration, the charter or supporting documents do not adequately:

1. Include, at a minimum, the first-year operational budget, start-up costs, and cash flow, and financial projections for the first three years.

2. Include in the operational budget reasonable estimates of all anticipated revenues and expenditures necessary to operate the school, including, but not limited to, special education, based, when possible, on historical data from schools or school districts of similar type, size, and location.

3. Include budget notes that clearly describe assumptions on revenue estimates, including, but not limited to, the basis for average daily attendance estimates and staffing levels.
4. Present a budget that in its totality appears viable and over a period of no less than two years of operations provides for the amassing of a reserve equivalent to that required by law for a school district of similar size to the proposed charter school.
5. Demonstrate an understanding of the timing of the receipt of various revenues and their relative relationship to timing of expenditures that are within reasonable parameters, based, when possible, on historical data from schools or school districts of similar type, size, and location.

(C) In the area of insurance, the charter and supporting documents do not adequately provide for the acquisition of and budgeting for general liability, workers compensations, and other necessary insurance of the type and in the amounts required for an enterprise of similar purpose and circumstance.

(D) In the area of facilities, the charter and supporting documents do not adequately:

1. Describe the types and potential location of facilities needed to operate the size and scope of educational program proposed in the charter.
2. In the event a specific facility has not been secured, provide evidence of the type and projected cost of the facilities that may be available in the location of the proposed charter school.
3. Reflect reasonable costs for the acquisition or leasing of facilities to house the charter school, taking into account the facilities the charter school may be allocated under the provisions of Education Code section 47614.

(4) The petitioners personally lack the necessary background in the following areas critical to the charter school's success, and the petitioners do not have a plan to secure the services of individuals who have the necessary background in these areas:

- (A) Curriculum, instruction, and assessment.
- (B) Finance and business management.

(d) For purposes of Education Code section 47605(c)(3), a charter petition that "does not contain the number of signatures required by subdivision (a)" of Education Code section 47605 shall be a petition that did not contain the requisite number of signatures at the time of the submission of the original charter to a school district governing board pursuant to Education Code section 47605(a). The SBE shall not disregard signatures that may be purported to have been withdrawn or to have been determined to be invalid after the petition was denied by the school district. The signature requirement set forth in Education Code section 47605(a) is not applicable to a petition for renewal.

(e) For purposes of Education Code section 47605(c)(4), a charter petition that "does not contain an affirmation of each of the conditions described in subdivision (e)" of Education Code section 47605 shall be a petition that fails to include a clear, unequivocal affirmation of each such condition, not a general statement of intention to comply. Neither the charter nor any of the supporting documents shall include any evidence that the charter will fail to comply with the conditions described in Education Code section 47605(e).

(f) For purposes of Education Code section 47605(c)(5), the SBE shall take the following factors into consideration in determining whether a charter petition does not contain a "reasonably comprehensive" description of each of the specified elements.

(1) The description of the educational program of the school, as required by Education Code section 47605(c)(5)(A), at a minimum:

(A) Indicates the proposed charter school's target student population, including, at a minimum, grade levels, approximate numbers of pupils, and specific educational interests, backgrounds, or challenges.

(B) Specifies a clear, concise school mission statement with which all elements and programs of the school are in alignment and which conveys the petitioners' definition of an "educated person" in the 21st century, belief of how learning best occurs, and goals consistent with enabling pupils to become or remain self-motivated, competent, and lifelong learners.

(C) Includes a framework for instructional design that is aligned with the needs of the pupils that the charter school has identified as its target student population.

(D) Indicates the basic learning environment or environments (e.g., site-based matriculation, independent study, community-based education, or technology-based education).

(E) Indicates the instructional approach or approaches the charter school will utilize, including, but not limited to, the curriculum and teaching methods (or a process for developing the curriculum and teaching methods) that will enable the school's pupils to master the content standards for the four core curriculum areas adopted by the SBE pursuant to Education Code section 60605 and to achieve the objectives specified in the charter.

(F) Indicates how the charter school will identify and respond to the needs of pupils who are not achieving at or above expected levels.

(G) Indicates how the charter school will meet the needs of students with disabilities, English learners, students achieving substantially above or below grade level expectations, and other special student populations.

(H) Specifies the charter school's special education plan, including, but not limited to, the means by which the charter school will comply with the provisions of Education Code section 47641, the process to be used to identify students who qualify for special education programs and services, how the school will provide or access special education programs and services, the school's understanding of its responsibilities under law for special education pupils, and how the school intends to meet those responsibilities.

(2) Measurable pupil outcomes, as required by Education Code section 47605(c)(5)(B), at a minimum:

(A) Specify skills, knowledge, and attitudes that reflect the school's educational objectives and can be assessed, at a minimum, by objective means that are frequent and sufficiently detailed enough to determine whether pupils are making satisfactory progress. It is intended that the frequency of objective means of measuring pupil outcomes vary according to such factors as grade level, subject matter, the outcome of previous objective measurements, and information that may be collected from anecdotal sources. To be sufficiently detailed, objective means of measuring pupil outcomes must be capable of being used readily to evaluate the effectiveness of and to modify instruction for individual students and for groups of students.

(B) Include the school's Academic Performance Index growth target, if applicable.

(3) The method by which pupil progress is to be measured, as required by Education Code section 47605(c)(5)(C), at a minimum:

(A) Utilizes a variety of assessment tools that are appropriate to the skills, knowledge, or attitudes being assessed, including, at a minimum, tools that employ objective means of assessment consistent with paragraph (2)(A) of subdivision (f) of this section.

(B) Includes the annual assessment results from the Statewide Testing and Reporting (STAR) program.

(C) Outlines a plan for collecting, analyzing, and reporting data on pupil achievement to school staff and to pupils' parents and guardians, and for utilizing the data continuously to monitor and improve the charter school's educational program.

(4) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement in supporting the school's effort on behalf of the school's pupils, as required by Education Code section 47605(c)(5)(D), at a minimum:

(A) Includes evidence of the charter school's incorporation as a non-profit public benefit corporation, if applicable.

(B) Includes evidence that the organizational and technical designs of the governance structure reflect a seriousness of purpose necessary to ensure that:

1. The charter school will become and remain a viable enterprise.
2. There will be active and effective representation of interested parties, including, but not limited to parents (guardians).
3. The educational program will be successful.

(5) The qualifications to be met by individuals to be employed by the school, as required by Education Code section 47605(c)(5)(E), at a minimum:

(A) Identify general qualifications for the various categories of employees the school anticipates (e.g., administrative, instructional, instructional support, non-instructional support). The qualifications shall be sufficient to ensure the health, and safety of the school's faculty, staff, and pupils.

(B) Identify those positions that the charter school regards as key in each category and specify the additional qualifications expected of individuals assigned to those positions.

(C) Specify that the requirements for employment set forth in applicable provisions of law will be met, including, but not limited to credentials as necessary.

(6) The procedures that the school will follow to ensure the health and safety of pupils and staff, as required by Education Code section 47605(c)(5)(F), at a minimum:

(A) Require that each employee of the school furnish the school with a criminal record summary as described in Education Code section 44237.

(B) Include the examination of faculty and staff for tuberculosis as described in Education Code section 49406.

(C) Require immunization of pupils as a condition of school attendance to the same extent as would apply if the pupils attended a non-charter public school.

(D) Provide for the screening of pupils' vision and hearing and the screening of pupils for scoliosis to the same extent as would be required if the pupils attended a non-charter public school.

(7) Recognizing the limitations on admissions to charter schools imposed by Education Code section 47605(e), 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, as required by Education Code section 47605(c)(5)(G), shall be presumed to have been met, absent specific information to the contrary.

(8) To the extent admission requirements are included in keeping with Education Code section 47605(c)(5)(H), the requirements shall be in compliance with the requirements of Education Code section 47605(e) and any other applicable provision of law.

(9) 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, as required by Education Code section 47605(c)(5)(I), at a minimum:

(A) Specify who is responsible for contracting and overseeing the independent audit.

(B) Specify that the auditor will have experience in education finance.

(C) Outline the process of providing audit reports to the SBE, California Department of Education, or other agency as the SBE may direct, and specifying the time line in which audit exceptions will typically be addressed.

(D) Indicate the process that the charter school will follow to address any audit findings and/or resolve any audit exceptions.

(10) The procedures by which pupils can be suspended or expelled, as required by Education Code section 47605(c)(5)(J), at a minimum:

(A) Identify a preliminary list, subject to later revision pursuant to subparagraph (E), of the offenses for which students in the charter school must (where non-discretionary) and may (where discretionary) be suspended and, separately, the offenses for which students in the charter school must (where non-discretionary) or may (where discretionary) be expelled, providing evidence that the petitioners reviewed the offenses for which students must or may be suspended or expelled in non-charter public schools.

(B) Identify the procedures by which pupils can be suspended or expelled.

(C) Identify the procedures by which parents, guardians, and pupils will be informed about reasons for suspension or expulsion and of their due process rights in regard to suspension or expulsion.

(D) Provide evidence that in preparing the lists of offenses specified in subparagraph (A) and the procedures specified in subparagraphs (B) and (C), the petitioners reviewed the lists of offenses and procedures that apply to students attending non-charter public schools, and provide evidence that the charter petitioners believe their proposed lists of offenses and procedures provide adequate safety for students, staff, and visitors to the school and serve the best interests the school's pupils and their parents (guardians).

(E) If not otherwise covered under subparagraphs (A), (B), (C), and (D):

1. Provide for due process for all pupils and demonstrate an understanding of the rights of pupils with disabilities in regard to suspension and expulsion.

2. Outline how detailed policies and procedures regarding suspension and expulsion will be developed and periodically reviewed, including, but not limited to, periodic review and (as necessary) modification of the lists of offenses for which students are subject to suspension or expulsion.

(11) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security, as required by Education Code section 47605(c)(5)(K), at a minimum, specifies the positions to be covered under each system and the staff who will be responsible for ensuring that appropriate arrangements for that coverage have been made.

(12) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools, as required by Education Code section 47605(c)(5)(L), at a minimum, specify that the parent or guardian of each pupil enrolled in the charter school shall be informed that the pupils has no right to admission in a particular school of any local educational agency (LEA) (or program of any LEA) as a consequence of enrollment in the charter school, except to the extent that such a right is extended by the LEA.

(13) The description of the rights of any employees 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, as required by Education Code section 47605(c)(5)(M), at a minimum, specifies that an employee of the charter school shall have the following rights:

(A) Any rights upon leaving the employment of an LEA to work in the charter school that the LEA may specify.

(B) Any rights of return to employment in an LEA after employment in the charter school as the LEA may specify.

(C) Any other rights upon leaving employment to work in the charter school and any rights to return to a previous employer after working in the charter school that the SBE determines to be reasonable and not in conflict with any provisions of law that apply to the charter school or to the employer from which the employee comes to the charter school or to which the employee returns from the charter school.

(14) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter, as required by Education Code section 47605(c)(5)(N), at a minimum:

(A) Include any specific provisions relating to dispute resolution that the SBE determines necessary and appropriate in recognition of the fact that the SBE is not an LEA.

(B) Describe how the costs of the dispute resolution process, if needed, would be funded.

(C) Recognize that, because it is not an LEA, the SBE may choose to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter, provided that if the SBE intends to resolve a dispute directly instead of pursuing the dispute resolution process specified in the charter, it must first hold a public hearing to consider arguments for and against the direct resolution of the dispute instead of pursuing the dispute resolution process specified in the charter.

(D) Recognize that if the substance of a dispute is a matter that could result in the taking of appropriate action, including, but not limited to, revocation of the charter in accordance with Education Code section 47604.5, the matter will be addressed at the SBE's discretion in accordance with that provision of law and any regulations pertaining thereto.

(15) The declaration of 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. Education Code section 47605(c)(6) recognizes that the SBE is not an exclusive public school employer. Therefore, the charter school must be the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (commencing with Government Code section 3540).

(g) A "reasonably comprehensive" description, within the meaning subdivision (f) of this section and Education Code section 47605(c)(5) shall include, but not be limited to, information that:

(1) Is substantive and is not, for example, a listing of topics with little elaboration.

(2) For elements that have multiple aspects, addresses essentially all aspects the elements, not just selected aspects.

(3) Is specific to the charter petition being proposed, not to charter schools or charter petitions generally.

(4) Describes, as applicable among the different elements, how the charter school will:

(A) Improve pupil learning.

(B) Increase learning opportunities for its pupils, particularly pupils who have been identified as academically low achieving.

(C) Provide parents, guardians, and pupils with expanded educational opportunities.

(D) Hold itself accountable for measurable, performance-based pupil outcomes.

(E) Provide vigorous competition with other public school options available to parents, guardians, and students.

Note: Authority cited: Sections 33031 and 47605, Education Code. Reference: Section 47605, Education Code.

HISTORY

1. New section filed 3-1-2002; operative 3-31-2002 (Register 2002, No. 9).

2. Amendment of section heading, section and Note filed 10-24-2011; operative 11-23-2011 (Register 2011, No. 43).

3. Editorial correction of History 2 (Register 2011, No. 44).

4. Change without regulatory effect amending subsections (a) and (b), repealing subsection (b)(3), amending subsections (c), (d), (e), (f)-(f)(1), (f)(3), (f)(4), (f)(5), (f)(6), (f)(7)-(9), (f)(10), (f)(11)-(13), (f)(14) and (f)(15)-(g) filed 9-28-2020 pursuant to section 100, title 1, California Code of Regulations (Register 2020, No. 40).

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