

PHILOSOPHY, GOALS, OBJECTIVES, AND COMPREHENSIVE PLANS

BOARD POLICY – APPEALS OF DISTRICT DECISIONS REGARDING CHARTER SCHOOLS

BP 0420.44

Introduction

The County Board subscribes to the belief that properly established and operated charter schools, which are staffed by dedicated teachers and experienced educators, are an integral part of our educational system.

Petitions to establish charter schools coming before the Board are reviewed pursuant to the requirements contained in the Charter Schools Act of 1992 (Education Code 47600 et. seq.), Title 5, California Code of Regulations, and relevant policies and regulations of the County Education Office. Once established, charter schools are likewise operated under and subject to these same laws, regulations and policies.

It is the policy of the Board to always adhere to the governing provisions of state law as respects the establishment and operation of charter schools. This policy is intended to implement state law, and to provide petitioners, staff, school districts and the public with a description of the process and way the Board will address charter school appeal petitions. In the event of any conflicts with state law, the provisions of the Education Code and Title 5, California Code of Regulations shall apply.

The County Board shall consider any appeal of a decision made by the governing board of a school district within the County Board's jurisdiction to deny a petition for the establishment of a charter school, deny the renewal of a charter, or revoke a charter that was originally authorized by the district, provided that the request for the appeal meets the requirements described below. (Education Code 47605, 47607; 5 CCR 11967)

Appeal of District Denial of Charter Authorization or Renewal

If the governing board of a school district denies a petition for the establishment or renewal of a charter school, the petitioners may submit an appeal to the County Board within 30 calendar days of the denial. Any petition submitted to the County Board after this time may be denied. (Education Code 47605)

A petition to the County Board to establish or renew a charter school that has been denied by a school district governing board shall be submitted in the format as prescribed by the County Board/County Superintendent of Schools (see Charter School Handbook for instructions), and shall include: (Education Code 47605; 5 CCR 11966.5, 11967)

1. A complete copy of the charter petition as denied, including, but not limited to, the signatures required by Education Code 47605 and the identification of the proposed site(s) where the charter school will operate
2. Evidence of the school district governing board's action to deny the petition, such as meeting minutes
3. Any written factual findings from the school district governing board setting forth specific facts to support the grounds for denial
4. A signed certification stating that the petitioner(s) will comply with all applicable law
5. A description of any changes to the petition necessary to reflect the County Board as the chartering entity

If the petition submitted on appeal contains new or different material terms, the County Board shall immediately remand the petition to the governing board of the school district for reconsideration. If the governing board of the school district denies a petition after reconsideration, the petitioner may elect to resubmit the petition for the establishment of a charter school to the County Board. (Education Code 47605)

Upon receipt of a petition and before the petition is officially submitted, the County Superintendent or designee shall verify that all required content has been received in the correct format. A petition will not be considered officially received until all required content in the correct format is received. Once verified, the County Superintendent or designee shall date the official receipt of the petition.

Within 60 days of the receipt of the petition, the County Board shall hold a public hearing to review documentation and obtain public input.

In considering the charter petition, the County Board is not limited to a review based solely on the reasons for denial stated by school district. The County Board shall review and approve or deny a petition based on the criteria specified in Education Code 47605. (Education Code 47605; 5 CCR 11967)

The Board shall deny a petition only if the Board makes written factual findings setting forth specific facts to 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 required by the Education Code 47605(a).
4. The petition does not contain an affirmation of each of the conditions set forth in Education Code 47605(e).
5. The petition does not contain reasonably comprehensive descriptions of all the information required by Education Code 47605(c)(5)(A)-(O).
6. The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the employees of the charter school for purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code.
7. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school. A written factual finding under this paragraph shall detail specific facts and circumstances that analyze and consider the factors discussed in the Education Code 47605(c)(7)(A)-(B).
8. The school district is not positioned to absorb the financial impact of the proposed charter school. A school district satisfies this paragraph if it has a qualified interim certification pursuant to Section 42131 and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Education Code Section 42131, has a negative interim certification pursuant to Section 42131, or is under state receivership. Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

Following review of the petition and the public hearing, the County Board shall either grant or deny the charter within 90 days of receipt of the petition, or within 120 days if the petitioner and County Board agree to the extension. (Education Code 47605)

A charter school authorized by the County Board on appeal shall be subject to the same requirements concerning geographic location to which it would otherwise be subject if it received approval from the school district to which it originally submitted its petition. (Education Code 47605, 47605.1)

A charter school authorized by the County Board on an appeal shall operate under the provisions of its charter, relevant policies and regulations adopted by the County Board, any memorandum of understanding (MOU) between the County Board and the charter school, and applicable state and federal laws. The County Board may approve one or more MOUs with the charter school to clarify the financial and operational

arrangements, such as how and when the charter school will establish governing bylaws, policies, and procedures or implement additional requirements that the County Board considers necessary for the sound operation of a charter school. Any such MOU may, at the option of the County Board, be annually reviewed by the County Board and the charter school governing body and be amended as necessary.

Any charter petition appealed to and denied by the County Board may be submitted to the State Board of Education (SBE) within 30 days of the denial. Upon request by the petitioner, the County Board shall prepare a documentary record, including transcripts of the public hearing at which the petition was denied, no later than 10 business days of the request. Within 30 days of receipt of the appeal submitted to SBE, the County Board may submit a written opposition and supporting documentation or evidence that was considered by the County Board in reviewing and denying the petition. (Education Code 47605)

Appeal of District Charter School Revocations

If a school district governing board revokes the charter of the charter school it authorized, the charter school may appeal the revocation by delivering a written Notice of Appeal to the County Board within 30 days the district's final decision. (Education Code 47607; 5 CCR 11968.5.4)

The Notice of Appeal shall include all the following: (5 CCR 11968.5.4)

1. A copy of the district's Notice of Violation, Notice of Intent to Revoke, and the Final Decision, unless the school district did not provide them to the charter school as required pursuant to 5 CCR 11968.5.2
2. Evidence of the final vote of the school district governing board, if available
3. All evidence relied upon by the school district in determining whether substantial evidence existed that the charter school failed to remedy one or more violations identified in the Notice(s) of Violation
4. All evidence and correspondence submitted by the charter school's governing body in response to the school district's Notice of Violation and Notice of Intent to Revoke
5. Minutes of any public meeting at which the school district governing board considered or made its decision to revoke the charter, if available
6. A written statement from the charter school explaining why it does not believe that the school district's factual findings are supported by substantial evidence
7. Identification of any procedural omissions or errors the charter school alleges to have occurred in the revocation process

The County Board shall consider the following when determining whether school district's factual findings are supported by substantial evidence: (5 CCR 11968.5.4)

1. Whether the district provided the charter school a Notice of Violation and a reasonable opportunity to remedy the identified violation(s)
2. If the charter school submitted a response to the Notice of Violation, whether the charter school complied with the procedures set forth for that response
3. Whether the district provided the charter school a Notice of Intent to Revoke, a public hearing, and Final Decision
4. Whether the school district provided the charter school a Notice of Revocation by Determination of a Severe and Imminent Threat to Pupil Health or Safety, if applicable
5. Whether an alleged procedural deficiency negatively impacted the charter school's ability to refute or remedy the alleged violation(s) or the school district's ability to comply with its procedural obligations or authorizing duties

The County Board shall provide the California Department of Education and the school district a copy of its written decision within 10 calendar days of its action. (5 CCR 11968.5.4)

The County Board may reverse the district's decision if it determines the district's findings are not supported by substantial evidence. If the district's decision is reversed on appeal, the district shall continue to be regarded as the chartering authority. The school district may appeal the reversal to SBE. (Education Code 47607)

If the County Board does not issue a decision within 90 days of receiving the Notice of Appeal, or if the County Board upholds the district's decision to revoke the charter, the charter school may appeal to SBE. (Education Code 47607)

Legal Reference:

EDUCATION CODE

220 Nondiscrimination

33054 Waivers

47600-47616.7 Charter Schools Act of 1992, as amended

60600-60649 Assessment of academic achievement, including:

60605 Academic content and performance standards; assessments

60640-60649 Assessment of academic achievement

GOVERNMENT CODE

3540-3549.3 Educational Employment Relations Act

54950-54963 The Ralph M. Brown Act

CODE OF REGULATIONS, TITLE 5

11960-11969 Charter schools
UNITED STATES CODE, TITLE 20
7223-7225 Charter schools
CODE OF FEDERAL REGULATIONS, TITLE 34
200.1-200.78 Accountability
ATTORNEY GENERAL OPINIONS
80 Ops.Cal.Atty.Gen. 52 (1997)
78 Ops.Cal.Atty.Gen. 297 (1995)

Management Resources:

CSBA PUBLICATIONS

Charter Schools: A Guide for Governance Teams, 2016

WEB SITES

CSBA: <http://www.csba.org>

California Department of Education: <http://www.cde.ca.gov/sp/cs>

Education Commission of the States: <http://www.ecs.org>

National School Boards Association: <http://www.nsba.org>

U.S. Department of Education: <http://www.ed.gov>

ADOPTED BY COUNTY BOARD:

September 7, 2006

REVISED:

December 2, 2010, May 6, 2021