

Fresno Unified School District Administrative Regulation (AR) 7160

Charter School Facilities

Definitions

Average daily classroom attendance or classroom ADA is average daily attendance (ADA) for classroom-based apportionment as used in Education Code 47612.5. (5 CCR 11969.2(a))

In-district classroom ADA is classroom ADA attributable to in-district students. (5 CCR 11969.2)

In-district students are those charter school students who are entitled to attend a district school and could attend a District school. Students eligible to attend district schools base on an interdistrict attendance agreement or parental employment shall be considered students of the district where they reside. (5 CCR 11969.2)

(cf. 5111.1 - District Residency)

(cf. 5117 - Interdistrict Attendance)

Operating in the district means the charter school is either currently providing public education to in-district students or has identified at least 80 in-district students who are meaningfully interested in enrolling in the charter school for the following year, regardless of whether the district is or is proposed to be the authorizing entity for the charter school and whether the charter school has a facility inside the district's boundaries. (Education Code 47614; 5 CCR 11969.2(b))

Reasonably equivalent facilities are facilities sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were other public schools of the district, which shall be determined based on a comparison group of district operated schools with similar grade levels. Furnishing and equipment acquired for a school site with non-District resources are excluded when determining reasonable equivalence. (5 CCR 11969.2, 11969.3)

Furnished and equipped means the facilities include reasonably equivalent furnishings necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the established comparison group schools and have equipment that is reasonably equivalent to the comparison group schools. (5 CCR 11969.2(e))

Equipment means property that does not lose its identity when removed from its location and is not changed materially or consumed immediately (e.g., within one year) by use. Equipment has relatively permanent value, and its purchase increases the total value of the district's physical properties. Examples of equipment include furniture, vehicles, machinery, motion picture film, videotape, furnishings that are not an integral part of the building or building system, and certain intangible assets like major software programs. (5 CCR 11969.2(e))

Contiguous facilities are facilities contained on a school site or immediately adjacent to a school site. If the in-district classroom ADA of the charter school cannot be accommodated on any single district school site, contiguous facilities also include facilities located at more than one site, provided that the district shall minimize the number of sites assigned and consider student safety. (5 CCR 11969.2(d))

Conversion charter school is a charter school converted from an existing public school. (Education Code 47605)

Eligibility for District Facilities

A charter school shall be operating in the district, as defined above, before it submits a request for facilities. A new or proposed new charter school is operating in the district and, therefore, eligible to request facilities for a particular fiscal year only if it submits its charter petition pursuant to Education Code § 47605 on or before November 1 of the fiscal year preceding the year for which facilities are requested. A new charter school is entitled to be allocated and/or provided access to facilities only if it receives approval of its charter petition before March 15 of the fiscal year preceding the year for which facilities are requested. (5 CCR 11969.9(a))

(cf. 0420.4 - Charter School Authorization)

Submission and Review of Facilities Requests

To receive facilities during a particular fiscal year the following procedures shall apply to a charter school's request for facilities: (Education Code 47614; 5 CCR 11969.9(b)-(c)(1))

1. On or before November 1, a charter school shall submit a written request for facilities for the next fiscal year to the Superintendent or designee. The written facilities request shall include:
 - a. Reasonable projections of in-district and total ADA and in-district and total classroom ADA, based on ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year
 - b. A description of the methodology for the projections
 - c. If relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in in-district ADA), documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection, but that need not be verifiable for precise arithmetical accuracy
 - d. The charter school's operational calendar
 - e. Information regarding the district's school site and/or general geographic area in which the charter school wishes to locate
 - f. Information on the charter school's educational program, if any, that is relevant to assignment of facilities, if any

For the written facilities request, projections of in-district ADA, in-district classroom ADA, and the number of in-district students shall be broken down by grade level and by the district school that the students would otherwise attend. (5CCR 11969.9(c)(2))

Nonclassroom-based ADA may be included in the ADA calculation only to the extent of instructional time that students generating nonclassroom-based ADA are actually in the classroom under the direct supervision and control of a charter school employee, and only if the district and the charter school agree upon the time(s) that the facilities devoted to students generating nonclassroom-based ADA will be used. (5CCR 11969.2(a))

In submitting a facilities request, the charter school shall use a form specified by the district. The charter school shall either distribute a reasonable number of copies of the written facilities request for review by other interested parties, such as parents/guardians and school staff, or otherwise make the request available for review. (5CCR 11969.9(c)(3))

2. On or before December 1, the district shall review the charter school's projections of in-district and total ADA and in-district and total classroom ADA and, express any objections in writing, and state the projections the district considers reasonable. If the district does not express objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge and the district shall base its offer of facilities on those projections. (5 CCR 11969.9(d))

3. On or before January 2, the charter school shall respond to any objections expressed by the district and to the district's reasonable attendance projections. The charter school shall reaffirm or modify its previous projections as necessary to respond to the information received from the district. If the charter school does not respond by the deadline, the district's projections are no longer subject to challenge and the district shall base its offer of facilities on those projections. (5 CCR 11969.9(e))

4. The district shall determine the facilities it will offer to the charter school, ensuring that the facilities are sufficient to accommodate the charter school students in conditions reasonably equivalent to those in which students would be accommodated at other district facilities. (5 CCR 11969.3)

If a charter school was established through the conversion of an existing public school pursuant to Education Code 47605(a)(2), the condition of the facility previously used by the district shall be considered to be reasonably equivalent to the condition of district facilities for the first year the charter school uses the facility. (5 CCR 11969.3(c)(2))

For any other charter school, reasonably equivalent shall be based on the following criteria as detailed in 5 CCR 11969.3: (5 CCR 11969.3)

a. Comparison group of district schools-operated schools with similar grade levels

The district shall not be obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration.

b. Capacity, including facilities made available by the district in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the district attending comparison school groups specialized classroom space (such as science laboratories), and nonteaching space commensurate with the in-district classroom ADA of the charter school and the comparison group schools. (5CCR 11969.3(b))

c. Condition of facilities shall be, determined by assessing such factors as age of facilities (from last modernization), quality of materials, and state of maintenance, and all of the factors listed below shall be used:

(1) School site size

(2) Condition of interior and exterior surfaces

(3) Condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes

(4) Availability and condition of technology infrastructure

(5) Condition of the facility as a safe learning environment, including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use

(6) Condition of the facility's furnishing and equipment

(7) Condition of athletic fields and/or play area space

(cf. 7111 - Evaluating Existing Buildings)

5. On or before February 1, the district shall prepare a written preliminary proposal regarding the space to be allocated to the charter school and/or to which the charter school is to be provided access. At a minimum, the preliminary proposal shall include: (5 CCR 11969.2, 11969.3, 11969.9)

a. The projections of in-district classroom ADA on which the proposal is based

b. The specific location(s) of the space

c. All conditions pertaining to the space, including a draft of any proposed agreement pertaining to the

charter school's use of the space

d. The projected pro rata share amount and a description of the methodology used to determine that amount

The district shall also provide a list and description of the comparison group schools used in developing the district's preliminary proposal and a description of the difference between the preliminary proposal and the charter facilities school's request submitted to the district. (5 CCR 11969.9(f))

6. On or before March 1, the charter school shall respond in writing to the district's preliminary proposal and shall express any concerns, address differences between the preliminary proposal and the charter school's facilities request, and/or make counter proposals. (5 CCR 11969.9(g))

7. On or before April 1, having reviewed any concerns and/or counter proposals made by the charter school, the district shall submit, in writing, a final notification of the space offered to the charter school. The notification shall include a response to the charter school's concerns and/or counter proposals, if any. The final notification shall specifically identify: (5 CCR 11969.9)

a. The teaching stations, specialized classroom spaces, and nonteaching station spaces offered for the exclusive use of the charter school and the teaching stations, specialized classroom spaces, and nonteaching station spaces to which the charter school is to be provided access on a shared basis with district-operated programs

b. Arrangements for sharing any shared space

c. 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

d. The specific location(s) of the space

e. All conditions pertaining to the space

f. The pro rata share amount

g. The payment schedule for the pro rata share amount, which shall take into account the timing of revenues from the state and from local property taxes (5 CCR 11969.9(h))

8. By May 1 or within 30 days after the district's final notification of the space to be offered, whichever is later, the charter school shall notify the district in writing whether or not it intends to occupy the offered space. (5 CCR 11969.9)

The charter school's notification can be withdrawn or modified before this deadline. After the deadline, if the charter school has notified the district that it intends to occupy the offered space, the charter school is committed to paying the pro rata share amount as identified. If the charter school does not notify the district by this deadline that it intends to occupy the offered space, then the space shall remain available for district programs and the charter school shall not be entitled to use facilities of the district in the following fiscal year. (5 CCR 11969.9(i))

Availability of Facilities

The space allocated to the charter school by the district, or to which the district provides the charter school access, shall be furnished, equipped, and available for occupancy by the charter school at least ten (10) working days prior to the first day of instruction of the charter school. For good cause, this period of availability is subject to reduction by the district, but no fewer than seven (7) working days. (5 CCR 11969.9(j))

Space allocated for use by the charter school, subject to sharing arrangements, shall be available for the

charter school's entire school year regardless of the district's instructional year or class schedule. The space allocated may not be sublet or used of purposes other than those that are consistent with the district policies and practices for use of other public schools of the district without permission of the Superintendent of designee(5 CCR 11969.5)

For a conversion charter school, the school site identified in the school's charter shall be made available to the charter school for its second year of operation and thereafter upon annual request pursuant to Education Code 47614. If, by material revision of the charter, the location of the conversion charter school is changed, or if the district approves one or more additional sites, then the school is entitled to request, and the district shall provide, for the use of facilities by the school in accordance with, the revised charter, Education Code 47614, and the administrative regulations on facilities of charter schools. (5 CCR 11969.3(d))

Written Agreement Regarding Facilities Operations

The district and charter school shall negotiate an agreement regarding the use of and payment for the space. The agreement shall contain, at a minimum, the information included in the district's final notification of the space to be offered.

The charter shall maintain general liability insurance naming the District as an additional insured to indemnify the District for damage and losses for which the charter school is liable. The District shall maintain first party property insurance for the facilities allocated to the charter school.

A reciprocal hold-harmless/indemnification provision shall be established between the District and the charter school. (5 CCR 11969.9(k))

(cf. 3530 - Risk Management/Insurance)

Operations and Maintenance

Facilities and furnishings and equipment provided to a charter school by the District shall remain the property of the District. (5 CCR 11969.4(a))

Responsibilities for operations and maintenance shall be as follows: (5 CCR 11969.4, 11969.9)

1. The district shall be responsible for:
 - a. Any modifications necessary to maintain the facility in accordance with Education Code 47610(d) or 47610.5
 - b. Replacement of furnishings and equipment supplied by the district in accordance with district schedules and practices
 - c. Projects eligible to be included in the district's deferred maintenance plan established pursuant to Education Code section 17852
2. The charter school shall be responsible for:
 - (a) The ongoing operations and maintenance of facilities
 - (b) Furnishings and equipment

The charter school shall comply with District policies regarding the operations and maintenance of the school facility and furnishings and equipment. (5 CCR §§ 11969.4(b), 11969.9(k))

(cf. 1330 - Use of School Facilities)

Charges For Facilities Costs

The district may charge the charter school, for a pro rata share (based on the ration of space by the district to the charter school divided by the total space of the district) of the district's facilities costs for

the use of facilities. The charges for facilities costs shall be in compliance with 5 CCR 11969.7. Facilities costs are those activities concerned with keeping the physical plant open, comfortable, and safe for use and keeping the grounds, buildings, and equipment in working condition and satisfactory state of repair. These include the activities of maintaining safety in buildings, on grounds, and in the vicinity of schools, as well as plant maintenance and operations, facilities acquisition and construction; and facilities rents and leases. (Education Code 47614; 5 CCR 11969.2(h), 11969.7)

Allocation

Each year the charter school desires facilities from the district, the charter school shall provide the district with a reasonable projection of the charter schools' daily average classroom attendance by in-district students for the following year. If the charter school, during the following year, generates less average daily classroom attendance by in-district students than it projected, the charter school shall reimburse the district for the overallocated space at the rates set by the State Board of Education (SBE): (Education Code 47614)

Space if over-allocated if the charter school's actual in-district classroom ADA is less than the projected in-district classroom ADA upon which the facility allocation was based and the difference is greater than or equal to a threshold ADA amount of 25 ADA or 10 percent of projected in-district classroom ADA, whichever is greater. (5 CCR § 11969.8(a))

The charter school must notify the District when it anticipates it will have over-allocated space that could be used by the District. Upon notification that the charter school anticipates having over-allocated space, the District may elect to use the space for District programs. The District shall notify the charter school whether or not it intends to use the over-allocated space within 30 days of the charter school's notification. 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, at its sole discretion, reduce the amounts owed by the charter school. (5 CCR § 11969.8(b))

Mediation of Disputes

If a dispute arises between the district and a charter school concerning the provisions of Education Code 47614 or the facilities for charter schools regulations (5 CCR 11969.1-11969.10), both parties may agree to subject the dispute to mediation, which shall consist of the following procedures: (5 CCR 11969.10)

1. The initiating party shall select a mediator, subject to the agreement of the responding party. If the parties agree to mediation but are unable to agree upon a mediator, the initiating party shall request the CDE to appoint a mediator within seven days to assist the parties in resolving the dispute. The mediator shall meet with the parties as quickly as possible.
2. Within seven days of the selection or appointment of the mediator, the party initiating the dispute resolution process shall prepare and send to both the responding party and the mediator a notice of dispute that shall include the following information:
 - a. Name, address, and phone numbers of designated representatives of the parties
 - b. A statement of the facts of the dispute, including information regarding the parties' attempts to resolve the dispute
 - c. The specific sections of the statute or regulations that are in dispute
 - d. The specific resolution sought by the initiating party
3. Within seven days of receiving the notice of dispute, the responding party shall file a written response.

4. The mediation procedure shall be entirely informal in nature. However, each party shall share copies of exhibits upon which the party bases its case with the other party. The relevant facts shall be elicited in a narrative fashion to the extent possible, rather than through examination and cross-examination of witnesses. The rules of evidence will not apply and no records of the proceedings will be made.
5. If any agreement is reached by the parties, the agreement shall be reduced to writing and shall be signed by the district and the charter school. The agreement shall not set a precedent for any other case.
6. The mediation shall be terminated if the district and the charter school fail to meet within the specified timeline, the district and charter school have not reached an agreement within 15 days from the first meeting held by the mediator, or if the mediator declares an impasse.
7. The costs of the mediation shall be divided equally between the two parties and paid promptly.

Fresno Unified School District prohibits discrimination, harassment (including sexual harassment), intimidation, and bullying based on actual or perceived race, color, ethnicity, national origin, immigration status, ancestry, age (40 and above), religious creed, religion, political belief or affiliation, gender, gender identity, gender expression, genetic information, mental or physical disability, sex, sexual orientation, marital status, pregnancy or parental status, childbirth, breastfeeding/lactation status, medical condition, military and veteran status, or association with a person or a group with one or more of these actual or perceived characteristics or any other basis protected by law or regulation, in its educational program(s) or employment.

Legal Reference:

EDUCATION CODE

17070.10-17080 Leroy F. Greene School Facilities Act of 1998, including:

17078.52-17078.66 Charter schools facility funding; state bond proceeds

17280-17317 Field Act

46600 Interdistrict attendance agreements

47600-47616.5 Charter Schools Act of 1992, as amended

48204 Residency requirements for school attendance

GOVERNMENT CODE

53094 Authority to render zoning ordinance inapplicable

53097.3 Charter school ordinances

CODE OF REGULATIONS, TITLE 2

1859.160-1859.172 Charter school facilities program, new construction

CODE OF REGULATIONS, TITLE 5

11969.1-11969.9 Charter school facilities

COURT CASES

Sequoia Union High School District v. Aurora Charter High School (2003) 112 Cal.App.4th 185 ATTORNEY GENERAL OPINIONS

80 Ops.Cal.Atty.Gen. 52 (1997) Management Resources:

Regulation FRESNO UNIFIED SCHOOL DISTRICT

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