

CHARTER SCHOOL FACILITIES**Definitions**

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

(cf. 5111.1 - District Residency)

(cf. 5117 - Interdistrict Attendance)

An eligible charter school *operating in the district* is one that 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 chartering entity and whether or not the charter school has a facility inside the district's boundaries. (Education Code 47614; 5 CCR 11969.2)

Contiguous facilities are those contained on a school site or immediately adjacent to a school site. If the charter school's students cannot be accommodated on any single district school site, contiguous facilities also include facilities located at more than one site, provided that the district minimizes the number of sites assigned and considers student safety. (5 CCR 11969.2)

Reasonably equivalent conditions shall be determined on the basis of: (5 CCR 11969.3)

1. A comparison group of district schools with similar grade levels, selected in accordance with 5 CCR 11969.3
2. Capacity, in accordance with 5 CCR 11969.3, including equivalency of the ratio of teaching stations to average daily attendance as those provided to students in the school district attending comparison group schools, allocation of specialized classroom space and access to nonteaching station space
3. Condition of facilities, including:
 - a. School site size
 - b. Condition of interior and exterior surfaces
 - c. Condition of mechanical, plumbing, electrical and fire alarm systems
 - d. Conformity of mechanical, plumbing, electrical and fire alarm systems to applicable codes
 - e. Availability and condition of technology infrastructure

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- f. Suitability of the facility as a learning environment, including but not limited to lighting, noise mitigation, and size for intended use
- g. The manner in which the facility is furnished and equipped

(cf. 7111 - Evaluating Existing Buildings)

Provision of Facilities by District

As of November 8, 2003, or on the first day of July following the passage of a local school bond measure, the district shall make available to a charter school operating in the district facilities within the district sufficient for the charter school to accommodate all of its in-district students in conditions reasonably equivalent to those in other district schools. Facilities provided to charter schools shall be contiguous and shall be furnished and equipped as necessary to conduct classroom-based instruction. (Education Code 47614; 5 CCR 11969.2, 11969.4)

(cf. 0420.4 - Charter Schools)
(cf. 7110 - Facilities Master Plan)

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

The district shall not be required to use unrestricted general fund revenues to rent, buy or lease facilities for charter schools. The district may charge the charter school a pro rata share of its facilities costs that the district pays with unrestricted general fund revenues. (Education Code 47614; 5 CCR 11969.7)

Procedures for requesting facilities shall include the following steps:

1. A charter school must be operating in the district as defined in Education Code 47614 before it submits a request for facilities. A new or proposed charter school is eligible to request facilities for a particular fiscal year only if it submitted its charter petition before November 15 of the fiscal year preceding the year for which facilities are requested. A new charter school is entitled to receive facilities only if its petition was approved before March 1 of the fiscal year preceding the year for which facilities are requested. (5 CCR 11969.9)
2. The charter school shall submit a written facilities request to the Governing Board by October 1 of the preceding fiscal year. A new charter school, as defined in 5 CCR 11969.9, shall submit its request by January 1 of the preceding fiscal year. The request shall include: (Education Code 47614; 5 CCR 11969.9)

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- a. Reasonable projections of in-district and total average daily attendance and total classroom average daily attendance, broken down by grade level and by the schools that the students would otherwise attend
- b. A description of the methodology for the projections
- c. If relevant, documentation of the number of in-district students meaningfully interested in attending the charter school
- d. The charter school's instructional calendar
- e. Information regarding the general geographic area in which the charter school wishes to locate
- f. Information on the charter school's educational program that is relevant to assignment of facilities

In submitting a facilities request, the charter school shall use a form specified by the district. The charter school shall distribute, or otherwise make available for review, the written request to interested parties, including but not limited to parents/guardians and school staff.

3. The Board shall review the charter school's projections of in-district and total average daily attendance and in-district and total classroom average daily attendance, and shall provide the charter school a reasonable opportunity to respond to any concerns raised by the district. (5 CCR 11969.9)
4. The district may deny a facilities request when the projected average daily attendance for the year is less than 80. (Education Code 47614)
5. The Board shall prepare a preliminary proposal regarding the space to be allocated to the charter school and the pro rata share amount, and shall provide the charter school a reasonable opportunity to review and comment on the proposal. (5 CCR 11969.9)
6. The Board shall provide a final notification of the space offered to the charter school by April 1 preceding the fiscal year for which facilities are requested. The notification shall identify: (5 CCR 11969.9)
 - a. The teaching station and nonteaching station space offered for the exclusive use of the charter school and that to be shared with district-operated programs
 - b. Arrangements for sharing any shared space

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- c. The assumptions of in-district classroom average daily attendance upon which the allocation is based, and a written explanation of the reasons for any differences than those submitted by the charter school
 - d. The pro rata share amount
 - e. The payment schedule for the pro rata amount, which shall take into account the timing of revenues from the state and from local property taxes
7. The charter school shall provide written notification to the Board, by May 1 or within 30 days after the district notification, whichever is later, whether or not it intends to occupy the offered space. (5 CCR 11969.9)

The district and charter school shall negotiate an agreement regarding the use of and payment for the space. The agreement shall contain the information included in item #6 above. (5 CCR 11969.9)

The agreement also shall require the charter school to maintain liability insurance naming the district as an additional insured, in the amount of two million dollars, in order to indemnify the district for any damage or loss for which the charter school is liable, and that the charter school shall comply with Board policies regarding the operations and maintenance of school facilities, furnishings and equipment.

(cf. 3530 - Risk Management/Insurance)

The space allocated to the charter school shall be furnished, equipped and available for occupancy at least seven days prior to the first day of instruction of the charter school. (5 CCR 11969.9)

Space allocated for use by the charter school shall not be sublet or used for purposes other than those that are consistent with Board policies and district practices without permission of the Superintendent or designee. (5 CCR 11969.5)

(cf. 1330 - Use of School Facilities)

Facilities, furnishings and equipment provided to a charter school by the district shall remain the property of the district. The district shall be responsible for projects eligible to be included in the district's deferred maintenance plan and the replacement of district-provided furnishings and equipment in accordance with district schedules and practices. The ongoing operations and maintenance of facilities, furnishings and equipment shall be the responsibility of the charter school. (Education Code 47614; 5 CCR 11969.2, 11969.4)

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The charter school shall report actual in-district and total average daily attendance and classroom average daily attendance to the district every time that the charter school reports average daily attendance for apportionment purposes. If the charter school generates less average daily attendance than projected, the charter school shall reimburse the district for the over-allocated space at rates set by the State Board of Education. (Education Code 47614; 5 CCR 11969.9)

Funding for New Construction

Applications for facilities funding for new construction pursuant to Education Code 17078.52-17078.62 may be submitted by either: (Education Code 17078.53)

1. The district on behalf of a charter school that is physically located within the geographical boundaries of the district
2. A charter school on its own behalf, if the charter school has provided written notification of its intent to both the Board and Superintendent at least 30 days prior to submitting the preliminary application that had demonstrated construction grant eligibility based on current enrollment data

Any project applying for such funding shall: (Education Code 17078.54)

1. Meet all the requirements for public school construction, including Field Act, plan approvals, toxic substance review, site selection and site approval that apply to noncharter school projects

(cf. 7150 - Site Selection and Development)

2. Fund only new construction to be physically located within the geographical jurisdiction of the district

If a charter school ceases to use any facilities funded through this program, the facility may be used for other purposes in accordance with the priorities established in Education Code 17078.62.

Zoning Ordinances

Upon a two-thirds vote, the Board may render a city or county ordinance inapplicable to a charter school facility if the facility is physically located within the district's geographical jurisdiction. (Government Code 53097.3)

(cf. 9323.2 - Actions by the Board)

Legal Reference: (see next page)

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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

1859.160-1859.171 *Charter school facilities program, new construction*

CODE OF REGULATIONS, TITLE 5

11969.1-11969.9 *Charter school facilities*

COURT DECISIONS

Ridgecrest Charter School v. Sierra Sands Unified School District, (2005) 130 Cal.App.4th 986

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:

WEB SITES

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

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

Coalition for Adequate School Housing: <http://www.cashnet.org>

Office of Public School Construction: <http://www.opsc.dgs.ca.gov>