Almost two months into the 2002-03 fiscal year, California finally enacted a state budget that was signed into law by the governor on September 5th. Though the new state budget largely spares the K-12 education sector from cuts, Governor Davis used his line-item veto authority to sharply reduce funding for the charter school categorical block grant. The anticipated result for charter schools is a modest increase in general-purpose funding and a precipitous decline in the charter categorical block grant. This article provides an update on the status of charter school funding matters. First it reviews the current (2002-03) budget year, and then it reviews adjustments to prior year (2001-02) funding rates.

Continued on page 6

Prop 39 Facilities Deadline Fast Approaching

As most charter school folks are well aware, finding and funding adequate facilities for charter schools is an ongoing struggle. Two pieces of legislation recently passed that help charter schools in this effort. Proposition 39 requires districts to provide facilities for eligible charter schools, and Senate Bill 740 provides reimbursements for up to 75% of facilities costs for schools in low-income areas. Both measures are being implemented for the first time this year.

The deadline for charter schools to submit facilities requests to districts under Proposition 39 is rapidly approaching. Eligible, currently operating charter schools must submit detailed requests for facilities by October 1, pursuant to detailed timeline and other processes outlined in recently adopted regulations and described in more detail below. New charter schools must submit their charters by November 14 and submit facility requests by December 31, 2002.
Meanwhile, funding for the SB 740 charter school facilities aid program survived the state budget adoption process, with the full $10 million approved. According to the Department of Education, most eligible schools that submitted applications for funding this past fiscal year can expect to be fully or almost fully funded once applications are processed, which may take several more months.

Following is an update on the status of each of these facilities initiatives, along with practical guidance for those who seek facilities or facilities funding under these measures. For more detailed information, please join us at one of our “Proposition 39 & 4th Annual Legal/Fiscal Briefing” workshops, held at various locations around the state on September 16, 18 and 19 (see our website, www.cacharterschools.org, under “Workshops” for more detailed registration information). See also the Facilities section of the CSDC website at www.csus.edu/ier/charter/facilities.html for more detailed information about SB 740 and Prop 39, including links to the legislative text and final regulations.

**Proposition 39**

**Background**

Passed in November 2000, this measure will take effect in November 2003 for most districts. (For those districts that pass facilities bond measures before November 2003, the new facilities provisions are effective on the July 1st following the passage of the bond.) Final regulations, including a separate set of regulations addressing the resolution of disputes between districts and charter schools, have now been approved. For a copy of these regulations and other details on all of the following elements of Prop 39, please see the Facilities section of the CSDC website, referenced above.

**Who is Eligible? What must the Districts Provide?**

Proposition 39 directs school districts to provide facilities for charter schools who have an in-district ADA (average daily attendance) of 80 or more. “In-district” refers to students who would be otherwise eligible to attend the districts’ schools, with the exception of in-district transfers and parental employment-based eligibility. Significantly, the charter school does not need to be currently located within that district, nor does the charter have to have been granted by the district where the eligible students live. For example, a charter granted by District A may be located in, and draw its students from, District B. District B would then be responsible for facilities under this law.

Charter schools that accept students from several districts are in a difficult situation, as they may not have 80 students (or more precisely, an ADA of at least 80) from one district. Moreover, the district is only required to provide space for the in-district students. There is no requirement that they house the others. However, if a district has room and is so inclined, they may choose to negotiate a separate agreement for additional space with the charter school. Presumably, the price for that additional space would be negotiated between the two parties.

The law also states that facilities must be “reasonably equivalent” to facilities which the students would otherwise attend in a non-charter school in that district. Specifically, the regulations state that they need to have the same basic number of desks, chairs, and blackboards, as well as the same proportion of classroom, administrative, laboratory, kitchen, multipurpose and play space as schools in the same attendance area as the majority of in-district charter school students. Aside from the minimal requirement for desks, chairs, and blackboards, the regulations are vague on how this space is to be equipped. They do mention that schools may take into account the “manner in which the facility is furnished and equipped” and the “availability and condition of technology infrastructure” in determining whether the facilities are “reasonably equivalent.”

It is also important to note that districts must only provide the number of classrooms that would be provided for those students in a regular district school. In other words, if the average district class size for the
relevant grades is 32, and there are 96 eligible students in the charter school, only three classrooms must be provided, although the district is free to tailor facilities more closely to a charter school’s needs. This may prove troublesome for charter schools that feature smaller class sizes or non-traditional class groupings.

When and How Do Schools Apply?

Currently operating charter schools must submit a written request for facilities to their district by October 1 of the year preceding the school year for which it is requesting facilities. **Thus, a school requesting facilities for the 2003-04 school year needs to submit a request by October 1 of this year.** The request must include, among other things:

- “Reasonable projections” of in-district and total ADA, separating classroom ADA from non-classroom-based ADA, broken down by grade level and by the school in the district that the student would otherwise attend
- Methods for projecting that ADA
- An instructional calendar
- Information on the geographic area in which the school wishes to locate
- Information on the educational program that is relevant to the provision of facilities

The district then has until April 1 to notify the charter school of the facilities it will provide, although it must inform the charter school ahead of time if it has concerns with the request that was submitted. The school must let the district know by May 1 whether it intends to occupy that space.

New charter schools are also eligible under this law if their charters were submitted for approval by November 14 of the year preceding the year for which facilities are desired. **Those charter school developers that wish to open their schools in the 2003-04 school year must submit their charters to their charter-granting agencies (district, county or state) by November 14 of this year.** Charters must be approved no later than February 28, 2003 to remain eligible.

Written facilities requests, including documentation of the number of in-district students meaningfully interested in attending the school, as well as the same information required of operating schools, must be submitted by December 31, 2002. **Note that this may be before the charter itself is approved.** Districts must make their offers by April 1, 2003, as with operating schools. Developers should estimate their facilities needs with extreme care, as overestimates of in-district ADA will result in reimbursements to the district once actual ADA is reported.

Both new and currently operating charter schools may need to submit their requests on a form provided by the district or, if available, from the state. While the state has no plans to develop a form at this time, schools should contact their districts to find out whether they have developed a form yet. If not, charter schools should simply be sure to include all required information in writing and be prepared to copy and share that request with parents, teachers, or other interested parties.

In the case of disputes, the dispute resolution process described in the school’s charter may be used; however, an alternative dispute resolution process is also provided in Section 11969.10 of the Prop 39 regulations, accessible through our website (above). Ultimately, if the two parties cannot resolve their dispute, the issue will be submitted to binding arbitration. These regulations, although approved by the State Board of Education and the Office of Administrative Law, are not yet effective and may be withdrawn.

**How Much Will the Facilities Cost?**

The facilities are not, in fact, to be provided at no cost to the charter schools. Districts may charge the charter school an amount equivalent to what they spend per student on facilities from their general fund. Since most districts pay facilities construction costs from non-general funds, however, the general fund share is likely to include only maintenance and upkeep costs, which should be relatively modest. The exception is in over-
crowded or otherwise fiscally over-burdened districts, where limited general fund monies may have been expended on facilities. In those cases, charter schools will be expected to bear a share of the costs.

In addition, charter schools are responsible for providing ongoing maintenance and upkeep, which the districts may insist conform to their own policies in these areas. Districts may also require charter schools to provide their own liability insurance, indemnifying the district. Nonetheless, these costs should prove to be significantly less than market or even discounted lease rates for most schools, and thus should provide substantial relief to schools struggling under crippling facilities costs.

Implications: Will this Work for My School?

For those schools that are able to work with their districts to find space that will accommodate their needs, Proposition 39 could allow a significant portion of that school’s funding to be directed toward teachers, computers, textbooks, or other instructional program needs, rather than facilities. Schools benefiting the most include those where the vast majority of students reside in one district and those whose programs will work well in a traditional school facility, for example, classroom-based programs with traditional desk-and-chair set-ups. Charter schools that will have more difficulty accommodating their facilities needs through Prop 39 include those that need larger spaces for projects or significant outdoor space or those that need more numerous but smaller classrooms to accommodate a smaller class size.

Space Crunch for School Districts

Proposition 39 provides no exceptions for districts that are overcrowded or otherwise strapped for space; they must find or even build the facilities to house their charter schools. The reasoning behind this is that all public school students, whether they go to a “regular” or a charter public school, deserve to be housed in adequate facilities. However, many districts - particularly those with an already overburdened facilities infrastructure - are, understandably, at wit’s end about how to comply with this law, as the state has provided no extra money to districts to fund the mandate. As a consequence, charter schools may run into resistance in some districts, and some districts may even choose to fight this battle in court. One case, involving the Sequoia Union High School District and the Aurora Charter High School, has recently been tried in court and decided in favor of the charter school (see sidebar).

Charter School Scores

Proposition 39 Court Victory

After the passage of the Proposition 39 regulations, Sequoia Union High School District sued one of the four charter schools within its district boundaries, Aurora Charter High School, disputing its need to provide facilities to Aurora under the terms of Proposition 39 and the new regulations. The district contended that it was not obligated to provide facilities because the charter was granted by a nearby elementary district rather than a high school district. The district also alleged that the charter school’s enrollment documents were insufficient to establish that the school would have 80 in-district students. Aurora prevailed in the litigation before San Mateo County Superior Court Judge Quentin Kopp on August 30.

Though obviously a boon for Aurora Charter High School, Kopp’s Superior Court decision is only binding regarding this dispute and does not establish statewide legal precedent unless the district appeals and an appellate court decision is issued. However, the decision does provide some indication of how other courts may interpret and enforce other districts’ obligations to provide facilities to charter schools. Therefore, news of the decision will hopefully encourage districts and charter schools to work out their facilities disputes more amicably. For a more in-depth analysis of the court’s decision and how it may impact other charter school facility disputes, see CSDC’s website at www.csus.edu/ier/charter/facilities.html.

— Eric Premack
New school developers should be aware that the mandate to house all eligible charter schools might make some districts hesitant to approve new charters. While districts are not legally allowed to reject a charter petition based upon difficulty in complying with Prop 39, many districts have begun to scrutinize charter petitions more closely, and some have begun to apply the legal denial criteria to more minor petition flaws within this context. CSDC recommends that charter school developers work closely with their potential charter-granting agencies throughout the charter drafting process to ensure that all concerns of the district or county board are met before submitting the petition.

**SB 740: Facilities Reimbursement**

Senate Bill 740 (O’Connell, 2001) is another legislative measure designed to alleviate some of the facilities burden on charter schools. In this case, the legislation created a small charter facilities aid program for schools located in low-income areas. (The same bill authorized cuts to non-classroom-based programs; see “SB 740 Funding Determinations: Round Two” in this issue). Relief for eligible schools comes in the form of a cash reimbursement after the close of the fiscal year. Applications for charter schools that operated in 2001-02 were due on July 19, 2002 and are being processed now. Future deadlines have not been posted. (Application forms for SB 740 funds can be found online at www.cde.ca.gov/charter/grant/rembursefy0102.htm. The law itself is in Education Code section 47614.5. An annotated version of the Charter Schools Act can be found on CSDC’s web site at www.csus.edu/ier/charter/charteract.html.)

Who is Eligible?

As the law is currently written, only schools that are “physically located in the attendance area of a public elementary school in which 70 percent or more of pupil enrollment is eligible for free or reduced price meals are eligible for funding.” Thus, a charter school that serves a primarily low-income student population but is not located near a regular public elementary school with 70% or more low-income students would not be eligible. A bill which recently passed the legislature (SB 2039, authored by Senator O’Connell) would change this language to make schools in which more than 70% of the charter school students were eligible for free or reduced lunch eligible for this funding. It is unclear whether this change would be retroactive to schools applying for reimbursement for the 2001-02 school year or whether it would only apply for future years. Those schools that occupy district- or county-owned facilities, either provided under Proposition 39 or otherwise, are not eligible for these funds.

**How Much Money is Available?**

For those schools who are eligible, $750 per classroom-based ADA, as reported in the second appropriation period, would be available, up to but not exceeding 75% of the school’s facilities rent and lease costs. However, there is an important caveat: this funding is entirely dependent on each year’s state budget. If enough funds are not appropriated to meet all eligible schools needs, each school’s funding will be cut in a proportional manner. Last year, for example, $10 million was appropriated, but later cut entirely, presumably because the state decided the appropriation was unnecessary due to the “after the fact” reimbursement schedule. This year, the full $10 million was approved, and the CDE believes that all eligible schools that applied will receive at least partial funding, and likely full funding.

Ironically, while this money was intended to alleviate facilities financing difficulties, the current funding schedule actually makes it quite difficult for schools to use the money to effectively offset facilities costs. Since money for this reimbursement program will not be appropriated by the legislature until the following fiscal year budget is passed, schools cannot budget ahead of time for these funds. Thus, there is no way for schools to responsibly budget monies that may not even be available. Consequently, schools must find a way to fund their facilities costs ahead of time, and only later, after the close of the fiscal year, will they know if some of that money may be reimbursed.

-Jennifer Feller
Current Year Funding Picture

CSDC estimates that charter schools’ general-purpose funding rates for the current, 2002-03 fiscal year will increase by just over two percent, largely due to the two percent cost-of-living adjustment provided to school districts in the recently-adopted state budget, plus a few dollars per ADA due to minor changes in district funding rates. Estimated categorical block grant rates, however, will suffer a steep decline, due to several factors explained in more detail below.

Though the official statutory cost-of-living adjustment (COLA) for K-12 general-purpose funding was 1.66 percent, the state budget provides school districts with a 2 percent adjustment for the general-purpose (Revenue Limit) funding system and state-funded categorical programs. (School employee lobbies sought the 2 percent COLA because school districts are prohibited from laying-off staff when the COLA is at that level or higher.) Since charter school general-purpose funding is based on amounts received by districts, the general-purpose share of charter school’s funding entitlements should increase by a like amount. A few small additional adjustments to the Revenue Limit system could generate a small additional net increase. Our general-purpose funding estimates shown below are based on a simple 2 percent increase, pending other adjustments, and we believe that actual rates will be very close to or slightly above our projections.

Despite a 2 percent COLA for state categorical programs, CSDC estimates that the charter school categorical block grant will suffer a major decline due to several factors, including the following:

- Removing instructional materials funding from the block grant and requiring charter schools to apply separately for such funding.
- Shifting funding for several categorical programs for school districts across fiscal years, including delaying funding for several key programs into the 2003-04 fiscal year-a bookkeeping trick used by the state to help balance the state’s budget. Several such programs are constituents of the block grant.
- Expiration of or reductions to other programs that previously contributed toward the block grant.
- Re-benching the methodology used to calculate the block grant.

The net result is an estimated 35 percent ($80 to over $110/ADA) decline in the charter school categorical block grant. (The block grant was the centerpiece of legislation enacted in 1998 and 1999 that intended to provide charter schools with funding that is comparable with that provided to school districts, but free of regu-

Table 1

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<th>7-8</th>
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<td>General-Purpose Grant (“Revenue Limit”)</td>
<td>$4,510</td>
<td>$4,568</td>
<td>$4,692</td>
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<td>Categorical Block Grant</td>
<td>$201</td>
<td>$206</td>
<td>$150</td>
<td>$191</td>
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<tr>
<td>Total</td>
<td>$4,711</td>
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</table>
latory constraints and cumbersome application and compliance requirements.) The following table summarizes CSDC’s estimated funding rates. We believe that the categorical block grant estimates are very conservative. Unlike the general-purpose grant estimates, we believe that our categorical block grant estimates could vary widely. Major revisions to the laws governing the categorical block grant, combined with the complex budgetary maneuvers (deferrals and the like) make estimating the block grant both difficult and subject to varying interpretation. CSDC will provide additional updates to these estimates in the future (see Table 1).

We’ll gladly pay you Tuesday for a hamburger today . . .

The budget package delays part or all of the funding for four major school district categorical funding programs into the 2003-04 fiscal year. Two of the four programs, Target Instructional Improvement Grants (formerly desegregation funding) and Home-to-School Transportation are not provided to charter schools. Two others, however, contribute toward the charter categorical block grant, including the School Improvement Program and Supplemental Grants. The deferrals may not be all bad news. Assuming these funds are indeed provided to school districts next year, charter schools should receive a share of them, albeit late, in the 2003-04 block grant. Whether the state will be able to afford to provide these funds next year given its severe and ongoing budget crisis remains unclear.

Many school districts are planning to accrue (an accounting term generally meaning the revenue is booked even though the cash hasn’t arrived) and spend funding for these deferred programs in their 2002-03 budgets even though the cash won’t arrive until after the end of the fiscal year. Many districts have little choice because much of the funding is already being spent and cannot be cut without mid-year staff layoffs, cutting transportation services, or halting court-ordered desegregation programs, etc. To pay for this, districts will presumably tap their cash reserves until the state funding arrives in 2003-04. We caution against this practice in the charter sector unless (1) the charter school’s independent auditor approves of the revenue accrual and (2) the school’s end-of-year cash reserves would be sufficient to cover the expenditures.

Apply and comply for instructional materials?

The instructional materials changes could be much more problematic, and perhaps financially devastating—especially for those charter schools that do not use state-adopted texts/materials, have already purchased non-adopted materials for this school year, and were counting on block grant funding to help pay for them.

The changes are part of a major overhaul of California’s instructional materials funding programs initially proposed by Governor Davis. The apparent intent is to force all schools, including charter schools, to purchase instructional materials adopted by the State Board aligned with California’s academic content standards for all core content areas within 24 months. New legislation, AB 1871, would sunset three existing programs, create new ones in their stead, and specifically require charter schools to apply separately for all. Specifically, these new laws would:

- Continue to fund the existing K-14 library materials program, but at a much reduced funding level relative to last year (roughly estimated as low as $5.32 per student, which may not be worth the trouble of developing the required library plan and associated paperwork). This program had been an application-based one for charter schools and would continue as such.

- Eliminate the classroom library materials program. This had also been an application-based program
for charters.

- Eliminate the Schiff-Bustamante standards-based instructional materials program that had been slated to sunset. Funding for this program previously had been incorporated into the charter block grant.

- Sunset the existing K-8 and 9-12 instructional materials programs, both of which had previously been in the charter block grant.

- Create a new “Instructional Materials Realignment Program.”

Under the new program, charter schools could receive an estimated $40.67 per student from an ongoing appropriation plus an estimated $24.42 per student from a “one time” grant. Funding is based on prior year enrollment (as reported through the CBEDS system). New schools and schools that have added grade levels to their schoolsite(s) may be funded using estimates of current year enrollment, provided district and county officials concur with the estimates. The funds must be used “to ensure that each pupil is provided with a standards-aligned textbook.” Schools would be expected to provide such materials to all students in the four major core content areas within 24 months, presumably requiring a major contribution from non-textbook funds.

Though AB 1781 is still pending action on the governor’s desk, we presume that he will sign it into law since it is largely based on his proposal. By unanimous votes in both houses, the legislature had approved legislation to exempt charter schools from this new requirement and adopted a budget that included instructional materials funding in the categorical block grant. The governor, however, used his line-item veto authority to cut the funding. In his terse veto message to the legislature, the governor wrote: “I am reducing the item to reflect my objection to the Legislature’s intent to include the Instructional Materials Realignment Program (IMRP) in the block grant. I believe that allowing charter schools to use equivalent funding intended for IMRP purposes in any manner they choose would both undermine the Administration’s objective to ensure availability of standards-aligned instructional materials for all students and unnecessarily increase state costs. Charter schools would still be eligible to receive their share of over $400,000,000 available for

<table>
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<tr>
<th>2002-03 Estimated Funding Rates for Major Charter School Categorical and Special Purpose Funding Programs</th>
</tr>
</thead>
<tbody>
<tr>
<td>(author’s estimates, subject to change)</td>
</tr>
</tbody>
</table>

| Grades K-3 Class Size Reduction | $906/student |
| “In-Lieu” Economic Impact Aid   |
| (minimum funding for 1-10 students) | $106/qualifying student |
| (minimum funding for 10+ students) | $4,901 |
| $7,355 |
| Staff Development “Buy Out”     |
| $299.28/teacher-day |
| $155.18/instructional aide-day |
| Supplemental Hourly Instruction (“summer school”) | $3.45/Student Hour |
IMRP remaining in the Budget.”

The new instructional materials requirements account for roughly half of this year’s estimated decline in the categorical block grant. Presumably some charter schools will be able to recoup some of this by applying separately for the funding and purchasing state-adopted texts and materials. Charter schools offering unique or non-conventional programs, however, would presumably have to forego such funding. The legislation also calls for increases in funding for this restricted instructional materials program in future years, which would presumably continue the erosion of the charter block grant.

Estimates for categorical and other programs

Charter schools will remain eligible to also apply and/or receive funding from several other sources, including, but not limited to the ones summarized in Table 2.

The California Department of Education is estimating 2002-03 lottery funding at $125/ADA, based on the Lottery Commission’s sales projections for the year.

Independent study spared

The legislature rejected the governor’s proposed 10 percent cut for independent study programs. School district advocates successfully lobbied to protect their programs. Charter schools, however, remain subject to the separate funding determination process for “non classroom-based” schools.

All charter schools now under “new” charter funding system

Almost all charter schools (except for some schools operating under district-wide charters and some schools serving special county office populations) are now funded under the laws governing the “new” charter school funding system that was introduced in 1999. An optional three-year “grandfathering” provision expired at the end of the 2001-02 fiscal year. Though there was some discussion of extending the expired grandfathering provision, no legislation was ever introduced and thus most charter schools are now funded under the same formulas and provisions.

Cash flows despite lack of budget

Despite the absence of an adopted budget, California’s public schools, including charter schools, have been receiving most of their funds from the state since July. The CDE’s legal staff reviewed the state’s education funding laws and determined that the State Superintendent had the authority to apportion funds to K-12 schools despite the lack of an adopted budget. The State Controller’s Office and State Treasurer concurred with this and transferred the funds apportioned by CDE to district and charter accounts in local county treasuries. CDE calculated the Advance Apportionment for pre-existing charter schools based on adjusted prior-year data starting in July.

Advance apportionment for pre-existing schools

Due to the lack of an adopted budget, CDE estimated general purpose funding rates for the Advance Apportionment based on 2001-02 rates, adjusted to reflect a 2 percent COLA and estimates in offsetting increases in local property tax revenues. In the absence of an adopted budget to provide definite categorical block grant figures, the department simply used prior year categorical block grant funding rates. The resulting rates are likely much higher than what schools will be entitled to receive due to the factors noted above.

These estimates will be used to calculate monthly state aid apportionments until February, when updated attendance and funding data are available. At that time, schools can anticipate adjustments to reflect updated rates. Thus, schools should not assume that the funding rates currently used to calculate their advance apportionments reflect what they will ultimately receive.

Special advance apportionment for new schools

Due to the lack of prior year attendance data, existing law provides for a so-called “Special Advance Apportion-
Estimation” for new charter schools based on estimated attendance data. This estimated data is reported by the school and jointly certified by the charter-granting district and county superintendent via a survey form distributed by the department last May. CDE staff completed the review of these forms and apportioned funds for these schools in late August. Several new schools have called CSDC when they received their state aid and found that it was far short of what they thought they were due. We believe that such schools may not have received the local share of their entitlement from their district in the form of “in lieu property tax funds” (sponsoring districts are required to share a per-ADA share of local property tax receipts with charter schools and provide a specified share on the 15th of each month, starting in August). Both new and pre-existing charter schools should have begun to receive their first 2002-03 local “in lieu” property tax funding share on August 15th.

Revisions to 2001-02 Funding Rates

Apportionment background

The California Department of Education calculates and re-calculates (“apportions” in their official terminology) the amount of funding due to charter schools and school districts four times per year. These apportionments are as follows:

- **Advance Apportionment**, calculated in July at the beginning of the fiscal year, governs cash flow for the months of July through January.
- **First Principal Apportionment** (“P-1”), calculated in January and based on actual attendance data through December, governs cash flow for the months of February through May.
- **Second Principal Apportionment** (“P-2”), calculated in May, governs June cash flow.
- **Annual Apportionment**, also calculated in July after the close of the fiscal year, affects July apportionments, usually with minor adjustments to the just ended fiscal year amounts due.

Since general-purpose funding for charter schools is based on statewide average school district funding levels, this portion of charter school funding varies at each of the above-listed apportionments. CDE revises the general-purpose funding rates for the final time in May following the close of the fiscal year. Thus, charter schools cannot be absolutely certain of their general-purpose funding rates until almost a year after

Table 3

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<th>4-6</th>
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<tr>
<td>General-Purpose Grant (“Revenue Limit”)</td>
<td>$4,421</td>
<td>$4,478</td>
<td>$4,600</td>
<td>$5,341</td>
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<tr>
<td>Categorical Block Grant</td>
<td>$309</td>
<td>$317</td>
<td>$232</td>
<td>$294</td>
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<td><strong>Total</strong></td>
<td><strong>$4,730</strong></td>
<td><strong>$4,795</strong></td>
<td><strong>$4,832</strong></td>
<td><strong>$5,635</strong></td>
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the close of their fiscal year. Fortunately, adjustments after the so-called “Second Principal Apportionment” are typically minor. This year is a case in point, with estimated charter school general purpose funding rates for 2001-02 dropping slightly at both the Second Principal (May) and Annual (July) apportionments. Funding rates for the charter school categorical block grant, in contrast, were fixed at levels in the Governor’s May Budget Revision proposal prior to the start of the fiscal year and these rates have therefore remained static (as noted above, new legislation provides that in the 2002-03 and future years the block grant will be “locked-in” shortly after adoption of the budget).

Current estimated funding rates for the 2001-02 fiscal year are summarized in Table 3. The general-purpose portion of the block grant may be revised again next May, though any adjustments are likely to be minor.

**2001-02 Estimated Funding Rates for Major Charter School Categorical and Special Purpose Funding Programs**

<table>
<thead>
<tr>
<th>Program</th>
<th>Rate</th>
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<tr>
<td>Grades K-3 Class Size Reduction</td>
<td>$888/student (plus federal funds)</td>
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<tr>
<td>“In-Lieu” Economic Impact Aid</td>
<td>$104/qualifying student</td>
</tr>
<tr>
<td>(minimum funding for 1-10 students)</td>
<td>$4,805</td>
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<tr>
<td>(minimum funding for 10+ students)</td>
<td>$7,211</td>
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<tr>
<td>Staff Development “Buy Out”</td>
<td>$293.41/teacher-day</td>
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<tr>
<td></td>
<td>$152.14/instructional aide-day</td>
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<tr>
<td>Supplemental Hourly Instruction (“summer school”)</td>
<td>$3.38/ student hour</td>
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The recently-enacted state budget is widely regarded as “balanced” only on paper, supported by a mix of deferrals, loans, one-time savings, and other fiscal tricks. State tax revenues continue to come in at levels far below those assumed by the budget. As such, it is likely that the 2003-04 state budget will be much more difficult to balance. As charter schools lay their long-term budget plans, we generally anticipate low to no growth in funding rates and bracing for potential cuts.

- Eric Premack

The California Department of Education is estimating 2001-02 lottery funding at $134.93/ADA. This figure is subject to change and adjustments.

As noted in the SB 740 article on page 27, charter schools should receive their full 2001-02 entitlements for SB 740 facilities lease aid. Whether funding will be sufficient and available for the 2002-03 fiscal year is unknown and CSDC urges caution in budgeting for such funds.

**Looking forward into 2002-04**
Legislature Approves Radical Charter Reform Legislation

In the final days of the legislative session, AB 1994, originally a bill designed to limit the geographic boundaries in which charter schools could operate, was amended to add the most substantial changes to the Charter Schools Act since 1998. These changes are likely to raise substantial concerns for all charter schools and school developers. Several other charter school bills passed the legislature, and all are awaiting action by Governor Davis. Although it is unclear as of press time which bills the governor will sign, we summarize the potential impact of all of the major bills below because CSDC anticipates that most, if not all of them are likely to become law. For most of the bills described below, the governor has until September 30th to either (1) sign the bill into law, (2) do nothing and allow the bill to become law without his signature, or (3) return the bill to the legislature without his signature (“veto”).

**AB 1994 (Reyes, D-Fresno)**

AB 1994 would introduce three sets of major changes to the Charter Schools Act. First, the bill would generally prohibit charter schools from locating outside the boundaries of their charter granting districts except in very limited circumstances. Second, the bill would make major changes to the charter granting and “appeal” processes. Third, the bill would overturn the results of recent litigation regarding fiscal reporting and mandate that charter schools report fiscal information to the state. In addition, AB 1994 would impose several other new restrictions on charter schools. Each of these is outlined in detail below.

**Geographic Restrictions**

The bill would generally require charter schools to locate within the geographic boundaries of their charter-granting district. The bill contains a few exceptions to this general rule, and includes various “grandfathering” provisions. A school could locate outside the granting agency’s boundaries if either (1) a site outside of the district is needed for temporary use during a construction or expansion project or (2) the school has attempted to locate a facility to house the entire program but it was unavailable to do so in the area in which the school chose to locate. If the school can meet these criteria, it is allowed to operate one site outside the boundaries of the charter granting district so long as it is within the county of the charter granting district and the charter school notifies both the county superintendent and the school district. This new restriction could pose a major burden on those charter schools that have sought sponsorship outside of their local district due to district hostility or other factors.

One potential bright spot under these circumstances is that charter schools could generally operate in as many locations within a charter-granting district as they like without running afoul of the provisions of the bill. This will grant charter schools granted by large districts such as Los Angeles Unified School District to operate satellite sites over a very broad territory. The revised law would also require all sites operated by the charter school to be identified in the school’s charter. If the school seeks to move or add sites, it would need to amend its charter to name the new sites.

The bill would establish a complex set of “grandfathering” provisions for schools that already have multiple sites outside a district or are affiliated with specified organizations, as follows:

- For a school that had its charter approved prior to July 1, 2002 and provided educational services to students prior to July 1, 2002, the bill’s geographic restrictions would not be imposed on those sites that
were established or acquired prior to July 1, 2002 until June 30, 2005, or upon expiration of a charter that is in existence on January 1, 2003, whichever is later. Sites acquired by such schools after July 1, 2002 are prohibited from continuing in operation. If enforced, this could have a devastating, retroactive effect on several schools that opened new sites this summer or fall prior to the introduction of this proposed new restriction.

• For a school that was granted approval of its charter before July 1, 2002 but did not provide educational services prior to this date, the geographic restrictions must be complied with upon expiration of the charter that is in existence as of January 1, 2003.

Representatives of politically well-connected charter schools successfully lobbied for a “carve out” for their clients. Charter schools that provide instruction exclusively in partnership with the California Conservation Corps, local Conservation Corps, federal job corps, Youth Build programs, juvenile court schools, or in compliance with the federal Workforce Investment Act of 1998 do not have to comply with any of the geographic restrictions in the act. These programs would be permanently grandfathered under the bill.

Independent study schools may also operate “resource centers, meeting space[s], or other satellite” locations in adjacent counties. Such facilities must be “exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study.” Though this definition is far from clear, presumably it would be broad enough to address the needs of most such programs. To qualify, such schools would also have to both (1) provide their “primary educational services” and (2) serve a majority of students who reside in the county where the charter was granted.

CSDC strongly urges charter schools operating multiple sites and/or sites that are located outside of the geographic jurisdiction of their charter-granting district to carefully review the terms of AB 1994 if it becomes law. Many schools would doubtlessly want to seek renewal of their charter prior to the end of this calendar year if doing so would extend any of the above-listed “grandfathering” provisions applicable to their school. Alternatively, they may want to seek a new charter. Two other potential options include county or state-granted charters pursuant to either of two new charter-granting routes as described below.

Charter Granting and Oversight
This bill would create new countywide and statewide chartering authority for county boards and the state board respectively and also change the process for appealing denials of charter petitions by local school boards.

If the bill becomes law, it would require groups to first “appeal” to the county office of education before going to the State Board of Education to request a charter. Under current law, the charter developers may “appeal” to either board, presumably anticipating that some county boards are hostile to charters and that appealing to them is a futile, time-consuming prospect. The practical effect of this may be to substantially delay the appeal process in counties that are hostile to charter-granting.

One potentially helpful feature in the bill is that the authority of county boards of education to grant charters would be expanded. Currently, their authority to grant charters is limited to schools that serve student populations that are traditionally served by county offices of education. Under this proposed law, county boards of education would also be permitted to grant countywide charters. Such schools could operate multiple sites within a county and must provide “instructional services that are not generally provided by a county office of education.” Since county offices typically serve special needs, adjudicated, and other “niche” populations, this new authority would presumably apply to schools serving “mainstream” students. This option, however, appears almost entirely discre-
tionary on the part of the county board and permits the county to “impose any additional requirements” it wants on the school. Thus, this option is likely only to be useful in “charter friendly” counties where the charter petitioners enjoy strong support from the county board. This bill would grant very similar authority to the State Board of Education (SBE). It could grant statewide charters that allow charter schools to operate in multiple locations within the state.

Under pressure from the California Teachers Association, an amendment was made so that some “satellite” campuses would count as separate schools toward the statewide charter school cap. The current law caps the number of charter schools that may operate at 650, with an additional 100 permitted each year. Though there is currently plenty of “room” under the cap, this change will likely consume additional charters. Because these laws are vaguely drafted, it is difficult to estimate the impact of this change. The change appears to be prospective in nature because it affects charters granted after January 1, 2003. It also permits schools with multiple sites to count as only one school if the sites “share educational programs and serve similar pupil populations.” Presumably the State Board of Education, which is required to number charter schools, would have to decide how to implement these vague new provisions.

Another CTA-backed amendment to this bill would prohibit school districts from granting charters that serve grades not normally served by the district (e.g., it would prohibit elementary districts from granting charters to schools that would serve high school students). It would, however, permit districts to grant such charters if the charter proposes to serve all of the grades served by the district plus additional grades (e.g., a K-6 elementary district could grant a K-8 charter). This amendment appears to be prospective in nature and would presumably not affect any existing schools.

Fiscal Reporting
Charter schools would also be required to report financial data to the State Superintendent and the charter-granting agency in a format prescribed by the State Superintendent. This language was added by the Senate at the request of the California Department of Education (CDE), which was seeking authority to require fiscal reporting. This is presumably in response to a recent court ruling that the CDE lacked the authority to require fiscal reporting by charter schools. The forms would have to be adopted as regulatory law, which would require approval by the State Board of Education and Office of Administrative Law. This new requirement would likely generate a substantial amount of additional paperwork for charter schools, depending on the level of specificity and detail required.

New Powers for County Superintendents
County superintendents and offices of education would be given broad new powers to investigate the operation of charter schools that locate within their jurisdiction. First, county offices of education would enjoy the same power as is currently granted to the state superintendent to make inquiries of charter schools. In addition, county superintendents would be given the authority to investigate or monitor the operations of a charter school located within their county if they receive written complaints that justify an investigation. At this time, the legislation does not specify any power to withhold apportionment or force any other compliance activity-powers some county superintendents are currently said to be usurping. Though this may enable well-intentioned counties to address cases of poor oversight by charter-granting districts, some fear that this new power will be utilized by hostile county superintendents to harass charter schools.

School Closure Procedures
School development groups would be required to include an additional element in their charter addressing school closure procedures. Specifically, they would
have to address how a final audit would be done, how the assets and liabilities of the school would be disposed of, and how pupil records would be maintained and transferred. Presumably, existing schools would be required to add this element at charter renewal as well. This provision was also requested by the California Department of Education.

**Students Over Age 19**
Under current law, charter schools students over the age of 19 must remain continuously enrolled and must make “satisfactory progress” toward a high school diploma. Here too, the bill creates a special carve-out for influential organizations and would exempt schools that are exclusively serving Conservation Corps, Job Corps, federally affiliated Youth Build programs and programs affiliated with the federal Workforce Investment Act from these existing restrictions.

**September 30 Deadline**
All new charter schools would be required to start school by September 30 in order to receive funding under provisions of the bill. The California Department of Education sought this amendment to prohibit charter schools from opening mid-year, as many have done in the past, usually due to delays in securing or preparing facilities.

**High School Course Credit**
Charter schools that propose to serve high school students would have to describe in their charter how they would “inform parents about the transferability of courses [presumably course credit] to other public high schools and the eligibility of courses to meet college entrance requirements.” The practical effect of this change, requested by the California Department of Education, is difficult to gauge. It provides that “courses...that are accredited by the Western Association of Schools and Colleges may be considered transferable.” It will be interesting to see if this is binding on school districts since districts are currently free to reject credit transfer without regard to accreditation status and WASC accredits schools/institutions, not particular courses. Courses approved by the University of California or California State University as meeting the “A” through “G” admissions requirements would be considered as meeting college admissions requirements under the terms of the bill.

A summary of most of the remaining charter school related bills are listed below. Bills related to the budget are detailed in our state budget update, see page 1.

**AB 1781 (Hertzberg, D-Los Angeles)**
The Legislature sent two bills to the governor’s desk relating to instructional materials funding. The first, AB 1781, would sunset existing instructional materials funding programs, create new ones, and would require charters to apply for the funds and use the funds to purchase state-adopted texts. Under current law, charter schools receive a “no strings attached,” pro-rata share of instructional materials funds through the categorical block grant and need not purchase state-adopted materials. To preserve charter school flexibility, a second bill would remove charters from this new system and put the funding back into the block grant. The governor has used his line item veto authority to reduce the charter schools categorical block grant by the amount that would have been included for instructional materials funding. If the governor wins this issue, it could severely restrict charter schools’ instructional flexibility or require them to forego instructional materials funding. For additional information on the effect of this on charter schools, see state budget article on page 1.

**AB 14 (Goldberg, D-Los Angeles)**
This bill would create a charter school facilities funding pilot program funded out of proceeds of this November’s proposed state school facilities bond measure. Specifically, the bill would:
- Set-aside $100 million from this November’s bond proceeds for charter schools, assuming the voters approve the bond measure.
• Authorize the school district or charter schools to apply for state facilities bond funds.
• Require a 50 percent local match to the state funds, which could be paid through low-interest lease payments.
• Empower the State Allocation Board (SAB) to allocate funds from this pool, upon recommendation of the California School Finance Authority (CSFA).

Though this pilot program is a promising development in an otherwise challenging area, enthusiasm for this program is tempered by the many restrictions associated with it, including the following:

• The local school district would hold title to the facility, thereby making it difficult, if not impossible, for charter schools to build equity, even if the charter school pays the local match.
• The projects funded would need to comply with virtually all laws governing public school plan review, toxics review, site selection and approval, and the Field Act.
• Eligible charter schools must have established a track record for sound finances for at least 24 months prior to application.
• Projects could only be funded in districts that are otherwise eligible for state facilities funding.
• Though $100 million is a welcome addition to otherwise parched territory, it will likely only fund a handful of projects given California’s high real estate costs.

This bill would also permit school districts to claim the ADA of charter schools located in their boundaries toward the district’s eligibility for the non-charter portion of state facilities bond funding, unless the charter school receives funding from the charter portion. This provision seems inconsistent with the terms of Proposition 39, which places the obligation for providing facilities on the district of the pupils’ residence.

Perhaps most troubling, the bill prohibits local school districts from using their existing authority to waive local building ordinances on behalf of charter schools when the school is located outside of the boundaries of the district. It is unclear whether this provision would have a retroactive effect. If so, it could have a devastating effect on a few charter schools that enjoy exemptions based on this authority.

If this legislation becomes law, and if the voters approve the bond funds in November, the first round of applications would be due by next March 31. CSDC plans to offer guidance and/or special workshops on how to apply for funding under this program if it is implemented. Charter schools that are interested in this new program and who meet the above-outlined criteria should monitor the November election, review AB 14 in detail, perhaps begin the process of searching for a suitable facility project, start assembling related financial projections, etc., in order to be in a strong position to apply for funding under short deadlines.

SB 2039 (O’Connell, D-Carpenteria)
Current law provides that charter schools may receive reimbursement for facilities costs if they are located in the school attendance area of a public elementary school in which 70 percent or more of the pupils are eligible to receive a free or reduced price lunch. This bill expands eligibility for reimbursements to include charter schools in which 70 percent or more of the charter school’s student population is eligible for free and reduced price lunch, even if the local elementary school’s population does not meet the current eligibility requirement. It also seeks to require charter schools to grant admissions preference to students enrolled at that public elementary school and other students in that attendance area in order to qualify for facilities reim-
bursement. This amendment to last year’s SB 740 was designed to help a school that is located in a very low-income area, serves a high proportion of free lunch kids, but does not meet current eligibility criteria because many low-income pupils in the comparison district school are bussed to other schools.

The bill would also permit charter schools located in the attendance area of a public elementary school where at least 50 percent of the students are eligible to receive free and reduced price lunch to grant admissions preferences to students if they attend that elementary school or live in that attendance area.

Since this bill is an urgency measure, if the bill becomes law we presume that it will permit reimbursement of 2001-02 claims that will be funded out of funds from the current-year state budget (see the State Budget article, page 1).

**SB 1708 (Poochigian, R-Fresno)**
This bill, signed by Governor Davis earlier this year, clarifies that a charter school may claim ADA for special education students who require extended year services pursuant to a special education individualized education plan. This law should assist a number of charter schools that have had to provide services during the summer months and winter breaks without receiving any funding for the child. Presumably the J-18/19 attendance reporting forms for charter schools will be modified to include a line to report this extended year ADA.

**SB 1709 (Poochigian, R-Fresno)**
This bill, which has also been signed into law, requires charter schools to submit their annual audits to the State Controller and county superintendents of schools in the county where the charter school is sited. This bill is presumably designed to provide greater fiscal oversight of charter schools, however, it is unclear what the State Controller or county superintendents will do with the information once they have it. Presently, state law does not empower either to regulate charter schools. Given the strict compliance orientation of some State Controllers Office staff and some county superintendents toward charter schools, charter advocates fear that this reporting requirement may lead to increased conflict. (For related information, see Audit Preparations, page 32.)

**SB 1453 (Alpert, D-Coronado)**
This bill would require the State Board of Education to contract with a vendor to develop and maintain a data system that would allow the State to track longitudinal data on student achievement as measured by the STAR test, English language development tests, and the high school exit examination. Once this data system is implemented, it would presumably allow charter and other public schools and the state to track progress of individual students over time. The state currently lacks the capacity to track student data in this format, which is seen by many as one of several major statistical flaws in the current API and related accountability systems. Fixing this could be especially important for the many charter schools that enroll large numbers of underperforming students from other public schools and/or experience rapid turnover of their student populations. Under this new system, charter schools could more readily demonstrate the effectiveness of their academic program even when admitting new, low-performing students who drag schoolwide averages down. The bill contains a disturbing, and probably illegal provision declaring that the bill does not impose a state-reimbursable mandate, presumably a gesture designed to help the bill pass despite the state’s dire fiscal condition.

**SB 1671 (Escutia, D-Whittier) & AB 2130 (Simitian, D-Palo Alto)**
These bills would extend the current ability of school districts and charter schools to offer supplemental instruction that is designed to assist students in grades two through nine who have been recommended for retention or who are at risk for being retained and
would remove caps on funding.

**SB 2363 (Firebaugh, D-East Los Angeles)**

Under this bill, the composition of the State Board of Education would be altered such that it would include 11 members: two would represent the general public, two would be parents/legal guardians with children enrolled in the public school system at the time of appointment, one public school administrator who has successfully improved the performance of a low-performing school, one governing board member of a local school district, three public school teachers, one public school student, and one member to represent classified employees. The board members would also be required to be selected from distinct geographic regions of the state.

The bill seems to be partially a reaction against the SBE’s hard-line stances against some bilingual education practices and other issues, and also an attempt to get more union and school practitioner representation on the board. This change in membership could be important to the charter school community because of SBE’s increasingly important role in granting charters, adopting regulations relating to charter schools, and the SBE’s authority to revoke charters. Increased power of employee unions and other groups who oppose charter schools could present a major political challenge.

Though we anticipate that the Governor will veto the bill, a veto may trigger tighter scrutiny of the governor’s appointees to the board by the state senate, which must consent to each member.

**AB 1100 (Simitian, D-Palo Alto)**

This bill would require so-called “basic aid” school districts to provide a share of local property tax funds for their resident students when they attend charter schools sponsored by non-basic aid districts. “Basic aid” districts are those that generate per-student property tax revenues that are above the state’s general-purpose funding entitlements. Some such districts generate thousands of dollars per student above the usual state funding formulas. This bill is presumably intended to end the current practice of the Sequoia Union High School District whereby the district “encourages” charter school developers to obtain charters from non-basic aid districts. The funding requirement would be phased-in over the next three years, eventually requiring basic aid districts to provide the lesser of either (1) 70 percent of the district’s per-ADA property tax receipts, or (2) the charter school’s per-student general-purpose funding entitlement. Though this provision will save the state millions of dollars, charter schools could end up with the short end of the stick because there is no explicit statutory requirement that basic aid districts share their “excess” property tax receipts with charter schools (though the Charter Act funding provisions permit the practice). Implementing this bill would presumably require ongoing, detailed tracking of attendance data by charter schools using relational databases that can track attendance by residency, including complex attendance reporting forms used by the state to collect attendance data.

**Other Legislation of Interest**

The legislature also considered, but declined to pass, legislation that would have allowed charters to have 15-year terms after the first term, a bill that would have allowed charter schools to be considered public agencies for purposes of participating in a joint powers agreement, a bill that would have dramatically expanded the scope of collective bargaining in all K-12 schools (including charters), and a bill that would have allowed small school districts to utilize the charter funding model for categorical programs.

For more information on these and other bills impacting California charter schools, as well as the governor’s actions on these bills, please attend our CSDC Proposition 39 and 4th Annual Legislative Update and monitor future issues of Currents. Information can be found online at www.cacharterschools.org under “workshops.”

-Jerry Simmons and Eric Premack
According to the California charter schools law, charter schools are to be held tightly accountable for educational and operational success. In practice, some charter-granting agencies have been closely monitoring their charter schools; others have been monitoring primarily fiscal and compliance issues; still others have been arguably “asleep at the switch.” Over recent years, the state has amplified its role in monitoring charter and other public schools, ever increasing the stakes for those schools that do not perform well under its assessment and accountability system.

Recent preliminary draft regulations would ratchet up the stakes for charter schools one notch higher, by proposing that charter schools with low API rankings be subject to various sanctions, including revocation. The draft discussion regulations also aim to impose sanctions, including potential closure, on charter schools that do not maintain a minimum fiscal reserve. If adopted, these regulations would mark a significant change in the State Board of Education’s current oversight role of closing only “bad apple” charter schools engaging in gross instances of abuse and extend SBE authority to impose accountability requirements on all charter schools. This would mean that all charter schools, not only those engaging in gross abuses, would fall under increased scrutiny by the state.

Background

Over the past several years, the California legislature has developed an increasingly high stakes accountability system for the K-12 public school system. With seemingly little discussion or debate, charter schools have been included in this evolving system. Since the inception of the California charter school law, charter schools have been responsible for administering assessments to ensure that their students are meeting measurable student performance goals. Under the original charter law of 1992, a charter school and its charter-granting agency were free to establish their own student performance goals, determining locally which assessments were most relevant to measuring student growth and monitoring the charter school’s performance.

In 1998, Assembly Bill 544 amended the law to require charter schools to meet the not-yet-developed state standards and administer applicable state assessments, including those within the emerging Standardized Testing and Reporting (STAR) program. The number of these mandatory state assessments has been increasing, from a single measure (the CLAS test) to multiple measures, including a norm-referenced test (the SAT-9, now CAT-6, and SABE/2 for native Spanish speakers), a criterion-referenced test (the California Standards Test, including writing tests for grades 4 and 7), the California English Language Development Test for English Language Learners, the California High School Exit Exam, and a forthcoming alternative assessment for special needs students (the CAPA).

Up until this point, charter schools’ academic performance was primarily being monitored by the districts or county offices of education that granted their charters. Even with these new state standards and assessments requirements, charter oversight was still left at the local level. It was up to the charter-granting agency to ensure that the charter school was administering the mandatory state tests and to review test results with the school to ensure that its students, even if performing poorly on the state tests, were demonstrating growth and achievement of the state and school standards through other assessment measures.

In 1999, the Governor signed legislation (Senate Bill 1X, the Public Schools Accountability Act) that shifted charter school accountability from the local to state level. All public schools, including charters, would now be ranked based primarily on their state test scores under a system known as the Academic Performance Index (“API”). Schools are currently given an API score between 200-1000 points, with a requirement to
reach 800 points or make 5% growth each year toward 800 points. They are then given two ranks (both on a 1-10 scale), an overall state rank and a “similar schools” rank that compares their API score to that of other “similar” schools in the state.

Based on their API scores, high performing schools are given rewards, including substantial monetary awards when there are enough state funds to support these reward programs. Low-ranking schools may apply for a grant and are given two years to dramatically improve their scores, or else face sanctions, including school closure. For very small schools (less than 11 valid test scores) or those serving a majority (51% or more) of students who are educationally or behaviorally “at risk,” there is an alternative accountability system known as the “Alternative Schools Accountability Model” (ASAM), also sometimes referred to as the “Alternative API.”

With the creation of the new state ranking system, emphasis on the state achievement tests increased dramatically, and focus on other student and school assessment measures has fallen largely out of the spotlight. Thus, charter school accountability shifted from locally determined goals and assessments to a state-defined system.

In addition to being held accountable to academic performance measures, charter schools must also be fiscally managed well, maintain legal operations, and meet the goals and terms written in their charters. If they fail to do any of the above, their charters can be revoked by their charter-granting agencies (Education Code section 47607(b)). Assembly Bill 544 (1998) further amended the law to allow the State Board of Education (SBE), upon recommendation of the Superintendent of Public Instruction, to take appropriate action, including charter revocation, in cases of extreme abuse. These grossly negligent practices include “engaging in substantial and sustained departure from measurably successful practices that jeopardize the educational development of the school’s pupils,” “gross fiscal mismanagement” or “illegal or improper use of charter school funds” (Education Code section 47604.5(c)).

In addition to the existing legal provisions allowing for grantor and state oversight of charter schools, Assembly Bill 1994, currently pending signature with the governor, would extend inspection authority to the county. County superintendents and offices of education would be given broad new powers to investigate the operation of charter schools that locate within their jurisdiction. County offices of education would enjoy the same power as is currently granted to the state superintendent to make inquiries of charter schools. In addition, county superintendents would be given the authority to investigate or monitor the operations of a charter school located within their county if they receive written complaints that justify an investigation. The legislation does not currently specify any power to withhold apportionment or force any other compliance activity based upon these inspections. (For more information, see “Legislature Approves Radical Charter Reform Legislation” in this issue.)

Thus, charter schools can be closed for ineffective or illegal practice, a much higher accountability standard than for the regular public schools. In addition to being accountable to their granting agencies, the state, and perhaps soon their counties, charter schools are also continually answerable to their parents, students, communities, and other constituents for their performance.

Current Discussion Draft

In addition to the ever-increasing accountability measures that are described above, charter schools may now face yet even higher accountability than in the past and than their regular public school counterparts. Citing the state revocation authority described above, SBE staff recently developed for discussion draft regulations and accompanying board policy that would extend the role of the State Board of Education oversight beyond the original task of weeding out “bad apples” and impose new state accountability require-
ments on all charter schools. According to these draft revocation regulations, schools that could find themselves on the state chopping block include those that perform poorly on the API and those that do not maintain a minimum fiscal reserve.

Low-Performing Schools Closure and New Annual Educational Report

If approved in their current form, the draft regulations would authorize the state to impose various sanctions, including revocation, of those charter schools that have failed to meet or exceed their API or alternative API growth targets for two consecutive years and in the second year, have a similar schools ranking of 5 or below. Charter schools could also face sanctions for other indicators of “substantial and sustained departure from measurably successful educational practices,” including:

• failing for two consecutive years to meet or exceed other academic indicators specified in the charter,

• engaging in activities that the SBE judges to be physically, educationally, or psychologically harmful to the students, or

• employing teachers who do not meet the teacher credentialing provisions of Education Code section 47605(l).

In order to monitor a charter school’s academic performance, charter schools would now be required to prepare an annual educational report. This new reporting requirement would be listed as a mandatory element of a school’s charter. The report would need to be reviewed and approved by the charter school’s governing board and charter-granting agency, then submitted to the California Department of Education (CDE). Under the authority of Education Code Section 47604.3, which requires charter schools to promptly respond to “all reasonable inquiries” from the Superintendent of Public Instruction, the CDE would be responsible for developing the form of this report and for subsequently preparing, distributing, and collecting it.

The preliminary draft regulations state that “the form shall be of reasonable length, and the Department shall set a reasonable time for its completion and return.” The State Board would approve the initial form and submission timeline and any substantive changes. The CDE would be required to review all annual educational reports and to bring to the State Board’s attention any of concern with regard to these new accountability provisions.

As mentioned above, heretofore, charter schools and their granting agencies have developed processes and criteria locally for reviewing a charter school’s educational performance. This new proposal could potentially undo many of these local accountability mechanisms as the state creates its own criteria, with severe consequences for those that do not measure up.

Mandatory Fiscal Reserve and Additional Financial Reporting

The State Board’s draft regulations and policy also address revocation due to “gross fiscal mismanagement.” According to the draft, charter schools will face potential closure if they do not maintain a certain minimum budget reserve, which is defined as the reserve for a school district of similar size to the charter school under Education Code section 33127. New charter schools would be granted up to two fiscal years to build up this reserve.

In addition, new fiscal reporting requirements would be added to the charter, specifically:

• two interim reports per fiscal year certifying that the school will meet its financial obligations for the current and two following fiscal years while maintaining the minimum required reserve, and

• a year-end financial report of the type that a school district of similar size is required to prepare.

These requirements appear to be a re-imposition of
much of the so-called “AB 1200” fiscal oversight requirements imposed on school districts. Charter schools would submit these reports to their governing boards and charter-granting agencies to review the accuracy of the data and reasonableness of the revenue and expenditure projections.

As with the new educational reporting requirements, the CDE would develop, distribute, and collect the new fiscal reporting forms and specify “reasonable” reporting times. The SBE would approve the initial forms and any subsequent significant changes. Charter schools enrolling fewer than 100 students would fill out an abbreviated form.

After the charter school board and grantor approve the report, it would be forwarded to CDE staff for their review, using “reasonable estimates of revenues and expenditures.” The CDE would immediately dispatch a warning notice in cases where it believes gross fiscal mismanagement to have occurred, would investigate such cases, and would make recommendations for correction to the State Board of Education.

Both the new annual educational report and the new fiscal reporting requirements outlined in these proposed regulations highlight recent trends toward mandatory data reporting to the state. In the last legislative session, the charter school law was amended to require charter schools to report their annual fiscal audit findings to the state as well as to their charter grantors. Several months ago, the CDE sought to require charter schools to report financial data to the state using financial systems that were compatible with state systems, a requirement that was halted by a lawsuit. Legislation currently pending on the governor’s desk (AB 1994) would re-impose these financial reporting requirements.

**Revocation Process and other Corrective Actions**

Education Code 47604.5 gives the State Board of Education the authority not only to revoke a school’s charter for the above educational, fiscal, and legal reasons, but also to take “other appropriate action.” Accordingly, the draft regulations describe other potential corrective actions, including requiring the charter school to:

- cease any activity that jeopardizes the students’ education,
- modify the charter,
- pay for an audit and submit the audit findings to the SBE,
- hire and perhaps retain for multiple years any individual or organization the SBE deems necessary to make the appropriate corrections, with the service provider reporting directly to the SBE as to the school’s progress.

The SBE could also direct the Superintendent of Public Instruction not to apportion funds and/or to take back funds that have already been apportioned to the charter school.

The revocation or corrective action process would proceed as follows. Prior to recommending revocation or other appropriate action, the Superintendent would notify the charter school of the violation(s) and give the school “reasonable opportunity” to respond and appropriately modify its operations, unless the Superintendent determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils (Education Code section 47607(c)). In addition, prior to revocation or other appropriate action, the Board would hold a public hearing. Taking into account all of the information it receives from both the Superintendent’s recommendations and the public hearing, the Board would make an independent decision for corrective action or revocation.

The draft policy states that the Board’s decision to revoke a school’s charter would be based primarily on the school’s failure to achieve measurable goals for student achievement. However, the policy also describes some limited individual charter school circum-
stances and other contingencies that might cause the Board to choose a course of action short of revocation. For example, the policy acknowledges that “whether measurable goals of student achievement have been reached may be open to question” and that “an appropriate independent review of student achievement” might be in order. The policy also recognizes that additional financial audits or reviews might be necessary to review a charter school’s financial practices with respect to the law or its charter.

In addition, the policy recognizes that while a charter school may be reaching its student achievement goals, other aspects of its performance might warrant further inspection. For example, certain aspects of the school’s operation (e.g. safety of its facilities) might need independent evaluation or consultation. Moreover, a charter school may have claimed state funding for instructional time or services that did not comply with applicable provisions of law.

Implications for Charter Schools and Charter-Granting Agencies

These draft regulations and board policy will be reviewed and discussed by the Advisory Commission on Charter Schools, a committee formed in fall 2001 to advise the SBE on all matters relating to charter schools. If promulgated in their current form, these new regulations would have a deep impact on California’s charter schools and charter-granting agencies. All charter schools, even those that are performing well on the state academic measures, will have increased reporting to their governing boards, charter-granting agencies, and to the state. Charter-granting agencies, meanwhile, will have increased monitoring requirements, from the

How many charter schools would be affected if the preliminary discussion draft regulations were passed in their current form?

Based on API scores from the last two years (1999-2000 and 2000-01), currently, 8 schools would meet the criteria for sanctions/closure (5 or below on similar schools rank and did not meet their growth targets two years in a row).

Of those schools that currently have only 2001 API scores, 34 schools should be considered “on alert” for sanctions/closure if they continue to receive similar schools rankings of 5 or below and do not meet their growth targets again in 2002.

Which types of schools would be targeted under the draft regulations?

All 8 schools that currently meet the sanction/closure criteria primarily serve low-income students.

Of the 8 schools that currently meet the sanctions/closure criteria, 7 are “conversion” schools (i.e. those that converted from regular to charter public schools).

Are these scores and rankings a valid indicator of underperforming schools?

At least 4 schools on the “on alert” list appear to have inaccurate free/reduced price lunch data, and consequently may have been placed in incorrect comparison groups for the similar schools ranking.

Do the scores actually reflect unusually poor performance?

Almost one-quarter of the schools “on alert” (24%, or 8 of the 34 schools) have raw API scores of 700 or above, generally considered a high score. Of the rest, 13 scored between 500 and 699, and 12 scored below 500.
current annual fiscal audit review to reviewing multiple fiscal documents per year as well as an annual educational report. For those charter schools and granting agencies that are already submitting and reviewing multiple performance reports, they may have to scrap or revise their existing accountability systems as they adjust to the state-developed reports.

The minimal fiscal reserve requirement may also cause some complications. While district budgets are usually static due to predictable enrollment, revenue streams, and costs, charter school budgets are more volatile. Thus, this minimal reserve requirement may increase “back and forth” financial negotiations between charter schools and their grantors, potentially increasing oversight costs and potentially leading to increased friction.

Meanwhile, instructional emphasis will continue to shift even more toward performing well on the state tests and away from other critical measures of student achievement. For those charter schools that perform well on the state tests and therefore rank high on the API, the API has been yet another measure to brag about their success. However, for those charter schools serving educationally disadvantaged students who are severely below grade level in their academic skills and not allowed to take “out of level” assessments (i.e. those that reflect their skill level but not their age/grade level), the state tests and therefore API are frequently inaccurate reflections of their students’ growth and performance.

Ironically, the Charter Schools Act states that one of the legislature’s intentions in creating charter schools is to “increase learning opportunities...for pupils who are identified as academically low achieving” (Education Code section 47601(b)). Yet, as illustrated above, the charter schools that are serving these very students may likely be the ones most heavily penalized for low API scores should these regulations be approved. In essence, the legislature may end up closing many of the very schools the charter law was designed to create.

Another irony is that due to the focus on similar schools ranking, the new regulations may also punish charter schools that are performing well on the state tests and receiving high API scores. For example, a school that has an API score of 810 points (above the state target) in year one, but then drops to 799 in years 2 and 3 is not meeting its growth target. If that school is compared to other high scoring schools in the similar schools ranking, it may receive a low similar schools rank. However, while that school may be in the lower half of the high-scoring schools, it is still a high-scoring school. See “Vital Statistics” for a detailed analysis of the charter schools that could be affected by these preliminary draft regulations.

What Charter Schools and Charter Grantors Can Do

- Check your charter school’s API scores and growth targets to determine whether it is meeting its growth target each year and what its similar schools ranking is.

- Accurately and precisely fill out the STAR test header sheets and CBEDS surveys regarding such information as parents’ level of education, free and reduced price lunch counts, English Language Learners, etc. These indicators are used to determine which other schools are “similar” for purposes of the similar schools ranking. Many charter schools are not reporting or misreporting this information, leading to incorrect comparisons with non-similar schools.

- Develop and implement other, multiple ways of measuring student achievement besides just API growth targets and the similar schools rank. CSDC recommends “value-added” measures that demonstrate student growth over time. If these regulations do pass, and your school is on the chopping block, you may be able to receive an “independent performance review,” but will need valid, reliable data demonstrating your student growth and achieve-
Conclusion

While there is much existing legislation to hold charter schools accountable for student performance and sound legal, fiscal, and operational management, these new draft regulations propose to hold charter schools to an even higher standard of accountability, one that is much more rigorous than that of their peer public schools. Charter schools would in essence become the “cream of the crop,” always placing in the upper cohort (rank 5 or above) of similar schools, or else facing sanctions, even closure. Unfortunately, as mentioned above, this API similar schools benchmark could penalize many of those charter schools that serve the most needy students in the state and/or those that are performing well on the state assessments and receiving high API scores. It could also provide a powerful incentive for charter schools to drop low-performing students from their enrollment and to “teach to the test.”

This new draft also represents an ever-increasing trend toward state regulation of charter schools. Many within and outside the charter school community believe that charter schools should demonstrate academic success and maintain a minimum fiscal reserve. Many believe that they should monitor their educational and fiscal/operational performance on an ongoing basis and report it to their governing boards and charter-granting agencies. There is widespread disagreement, however, as to whether accountability belongs on the state or local level.

-Laurie Gardner

SB 740 Funding Determinations: Round Two

The California Department of Education mailed so-called “determination of funding” forms to charter schools in mid-August, announcing the second round of an evolving and controversial process for cutting funding for “non classroom-based” charter schools. The forms will gather a broad range of data to inform the State Board of Education (SBE) and its Advisory Commission on Charter Schools (ACCS) as it decides whether to cut funding for the affected schools. Charter schools subject to the funding determination process should complete the forms with great care, in tandem with a detailed review of the underlying regulations, because this year’s funding cuts could be much more severe than last year’s cuts (which were capped at 5 percent), potentially cutting 30 percent of a school’s revenue this year. This article provides a brief summary of the funding determination process and general tips on how to survive it.

Background

In response to ongoing controversies surrounding several charter schools, SB 740 of the 2000 legislative session authorized the State Board of Education to cut the funding for so-called “non classroom-based” charter schools. (The measure also created a related facilities funding program for more conventional “classroom based” schools.) The hastily drafted legislation left much to be defined through the regulatory process. Permanent regulations were promulgated earlier this year (see Charter Currents, Spring 2002, page 3.) The regulations establish a range of spending, operational, and other criteria that non classroom-based schools must meet in order to receive full funding.

To receive full funding, non classroom-based charter schools must (1) spend at least a specified proportion of their public revenues on “instruction and related activities,” (2) meet separate spending targets for “certificated salaries and benefits,” (3) maintain ADA-to-teacher ratios below relevant comparison district averages, and (4) pass the equivalent of an organizational “smell test” regarding conflicts of interest and governing board composition.

The spending targets are phased in as illustrated in the
The formulas are based on the percent of a school’s “public revenues” that are expended on “certificated staff salaries and benefits” and on “instruction and related services.” Each of these terms has a specific definition and schools should pay close attention to these when completing their forms. The recommended funding levels become more stringent over time and are designed to force a high level of spending on certificated staff and instructional services. Funding for schools that fail to meet these targets could be draconian: up to 30 percent in the current year and complete elimination in 2003-04.

The below-listed expenditure guidelines are merely advisory to the SBE and it may cut funding for schools based on other factors, as described below.

### 2002-03 Recommended Funding Levels for “Non Classroom-Based” Schools*
(by school expenditure targets)

<table>
<thead>
<tr>
<th>Recommended Funding Level</th>
<th>Percent of public revenues expended on certified staff salaries and benefits</th>
<th>Percent of public revenues expended on instruction and related services</th>
</tr>
</thead>
<tbody>
<tr>
<td>70 Percent</td>
<td>&lt;35 Percent, or 35 to 50 Percent, and &gt;/= 50 Percent</td>
<td>&lt;55 Percent, &gt;/= 55 Percent</td>
</tr>
<tr>
<td>80 Percent</td>
<td>&gt;/= 50 Percent</td>
<td></td>
</tr>
<tr>
<td>Full Funding</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

* Pursuant to California Administrative Code of Regulations, Title V, §11963.4

### 2003-04 Recommended Funding Levels for “Non Classroom-Based” Schools*
(by school expenditure targets)

<table>
<thead>
<tr>
<th>Recommended Funding Level</th>
<th>Percent of public revenues expended on certified staff salaries and benefits</th>
<th>Percent of public revenues expended on instruction and related services</th>
</tr>
</thead>
<tbody>
<tr>
<td>No Funding</td>
<td>&lt;40 Percent, or 40 to 50 Percent, and &gt;/= 50 Percent, and</td>
<td>&lt;60 Percent, 60 to 70 Percent, and</td>
</tr>
<tr>
<td>70 Percent</td>
<td>&gt;/= 50 Percent</td>
<td>70 to 80 Percent</td>
</tr>
<tr>
<td>85 Percent</td>
<td>&gt;/= 50 Percent, and</td>
<td>&gt;/= 80 Percent</td>
</tr>
<tr>
<td>Full Funding</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Schools must list the percentage of funding they request and the number of years for which they are requesting the determination (up to a maximum of five years). We recommend that schools that already meet the 2003-04 spending targets and otherwise present

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The Forms (This will only hurt for a moment.)

The funding determination forms distributed by the CDE are far more detailed than last year’s forms and no longer offer the brief “E-Z” reporting option available last year. (If your school did not receive the forms, they are available on the CDE’s web site: www.cde.ca.gov/charter/sb740.htm). Specifically, schools must report two pages of detailed budgetary data along with a signed certification form certifying that (1) the information is correct, (2) the school’s non classroom-based instruction is conducted for the benefit of students (presumably as distinguished from someone’s personal financial gain), (3) the school has adopted and implements conflict-of-interest policies, and (4) all of the school’s transactions are in the school’s best interest and reflect reasonable market rates for goods or services rendered.
“clean” data on the forms should strongly consider applying for a multi-year determination through the end of their current charter term (multi-year determinations may not last longer than the existing charter). A positive multi-year determination would presumably spare a school of undergoing the process in future years and give the school more confidence in its long-term survival.

The financial data (based on prior year data for pre-existing schools, current year estimates for new schools) include a mix of revenue and expenditure data designed to provide information related to the funding cut formulas listed above and also probe other miscellaneous financial matters. The data are also to be based on the definitions contained in the regulations and used in the California School Accounting Manual (CSAM). Schools that do not currently use CSAM coding in their accounting systems may need to engage in extensive re-coding of their prior year financial transactions in order to complete the forms. For some schools, this may present a major workload.

When completing the forms, schools should strive to ensure that they can accurately reflect their revenues and expenditures in a fashion that enables their school to meet the spending targets outlined above, ideally showing that their school meets the targets listed in the above tables. Schools should be aware of at least the following when completing the forms:

- The definition of “total public revenue” (the denominator used when calculating the percent of budget expended) includes all federal revenues (minus federal charter school grants), all state revenues, and local revenues from “in lieu” property taxes. (Line 1a, minus 1a(i), plus line 1b, plus line 1c(i)). There is little “wiggle room” for schools in this definition. Note that while some federal grant funds are excluded, all state grant funds are included. Thus, obtaining state grant funds that do not support certificated staff costs (e.g., a digital high school grant) can work against a school in this process. Local revenues from fundraisers, private grants, etc., do not count and should not hurt a school. The form asks for prior year balances, but these should not count in the formulas, but large ones may raise the reviewers’ eyebrows and prompt further inquiries.

- The definition of certificated staff salaries and benefits varies a bit from the CSAM and appears narrower than last year. It includes all employees “who possess a valid certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold.” Schools should ensure that they maximize their eligible reported expenditures on all such staff, even those who may not serve in a position requiring a credential (e.g., a school director or principal). Contracted certificated special education staff may also be counted. Presumably the contractor will need to provide the school with salary and benefit data, which the contractor may find intrusive. The definition places very strict restrictions on counting school district staff costs. These strict restrictions may sharply penalize schools that hire certificated district employees to work at their schools unless they meet the strict criteria. The school should seek to ensure that their certificated staff expenditures comprise at least 50 percent of “total public school revenues.”

- The definition of “instruction and related services” is perhaps the most subject to interpretation. It is potentially very broad and includes all “activities dealing with the interaction between teaching staff and . . . students, without regard to the instructional location or medium.” It also includes “services that provide administrative, technical, and logistical support to facilitate and enhance instruction.” Don’t forget to include items such as special education encroachment charges, instructional technology costs, etc., that are presumably within the definition of “instruction and related.” Many such costs will doubtless require a certain amount of accounting “hair splitting” and consulting with an experienced auditor or school finance expert may be helpful. School principals/directors may want to document what proportion of
their time is spent on “instruction and related” activities if they believe it exceeds the standard 70 percent generally permitted by the CSAM. Schools’ expenditures on these items must reach the levels specified in the tables to receive full funding.

The form also asks for a separate itemization of “supervisory oversight” fees charged by the charter-granting agencies. To avoid scrutiny, such charges should not exceed the statutory 1 to 3 percent cap on such charges as a percent of the school’s revenues. The form lacks a specific line to identify amounts extorted or “skimmed” by the granting agency. Presumably these should be identified under either line 4b (transfers to district or county) or 3c (other operating costs).

Schools with high levels of “excess” revenues should be prepared to persuasively defend them. Designating the excess as reserves for a specific, ideally instruction-related purpose (e.g., adoption of instructional materials or instructional technology purchase) may be one such strategy. The unpredictability of the funding determination process presents schools with a bit of a Catch-22. Fiscal prudence would seem to dictate that schools should set-aside a substantial reserve in the event that the school’s budget is cut in the funding determination process. Such large reserves, however, work against the school in the process, thereby encouraging the school to have no reserves. The evolving form and process present many such difficult choices.

Schools whose data present potential problems should consider attaching a brief, persuasive explanation of any mitigating factors that could persuade the reviewers to deviate from the funding guidelines. The regulations permit the reviewers to take “data regarding individual circumstances of the charter school” into account when making the funding determinations. Such schools should also consider attending the ACCS meeting during which their funding determination is reviewed to ensure that they can address any questions or concerns on the spot.

The funding determination forms must be submitted no later than February 1. CDE is encouraging schools to submit as early as possible. The regulations require the ACCS to provide reasons justifying funding cuts. They also permit schools to submit one additional funding determination request; presumably permitting schools to correct any deficiencies in their submission or present additional relevant data that may mitigate a prior cut.

The regulations call for new and small schools to be granted “serious consideration” for full funding, presumably meaning that the review of such schools may be somewhat lenient. Due to the potentially drastic consequences of a funding cut for such schools, we encourage such schools to take the process seriously and not rely on this vague regulatory provision.

The Smell Test

In addition to the detailed budget information, the form also probes for several additional types of information, including:

- The schools “pupil-teacher ratio (technically an ADA to teacher ratio). This ratio should be calculated pursuant to detailed guidelines issued by CDE (www.cde.ca.gov/spbranch/essdiv/is_ratio.html). Schools with ratios in excess of those of their relevant comparison district can expect scrutiny and likely a funding cut. The relevant comparison district is the largest unified (K-12) district in the counties served by the school, not necessarily the district that granted the charter.

- A listing of entities receiving $50,000 or more of the school’s revenues. This appears to be a probe for illegitimate or “profiteering” relationships with outside
In order to avoid causing any confusion or anger among parents, as well as to remain within the confines of the law, you should have a clearly defined procedure for admitting new students both before and during the school year. Schools that are oversubscribed (i.e., have more applicants than available spots) must conduct a lottery (public random drawing). Although not legally required, many charter schools also generate a waiting list from those that were not admitted through the lottery and those who apply after the lottery in order to fill subsequent vacancies as they arise.

If your school previously generated a waiting list, you can simply work down that list to fill the five open spots. If, however, your school does not have a waiting list, CSDC recommends announcing a new enrollment period for accepting applications for the remaining spots, then reapplying your admissions procedures. This includes advertising the dates of the new enrollment window through all appropriate recruitment vehicles that will attract a diverse student population reflective of the district, distributing all necessary enrollment information, reviewing applications based on your school’s established admissions requirements and preferences (if applicable), conducting a public lottery if the number of qualified applicants exceeds the number of openings, and creating a waiting list for all who are interested but do not get selected from the drawing.

Because the admissions process for even a limited number of openings can be just as competitive as that for vendors, presumably including the charter-granting district.

- The membership of the governing board. This appears to be a probe into whether any of the board’s members are conflicted in their financial dealings with the school, including a specific inquiry as to whether any board members are affiliated with vendors. We anticipate that any serious conflicts of interest could lead to very negative results, including complete denial of a determination of funding.

- An explanation of any revenue transfers to a district or county office of education. This is presumably probing for any illegal “skimming” or funds by the charter-granting agency.

- An explanation of the school’s reserves.

- Information about the school’s facilities, including total square footage, the proportion used for instruction, etc.

Based on last year’s review process, some schools can expect a wide-ranging inquiry into any of the information provided on the form. Since the funding determination guidelines are often very subjective, schools should consider their responses carefully—ideally providing just enough detail to be persuasive without offering extraneous information that might lead to unnecessary additional probes or inquiries.

-Q:

My school year has just begun, and I have five student spots that have opened up. Do I need to do a lottery again?

-A:

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-Eric Premack

-Frequently Asked Questions-
Waiting List Tips

1) Decide how a waiting list will be created at the time of the public lottery (e.g. after the slots are filled, names are placed on the waiting list in the order they are pulled out of the hat).

2) Define the time period for the waiting list (e.g. only for the current academic year).

3) Decide how students who apply during the school year are added to the waiting list (i.e. Are they put at the bottom of the list?).

4) Address how applicants who have the opportunity to enroll in the school from the waiting list will be contacted and how long they will have to respond to an enrollment invitation.

5) Define how to handle applicants that do not respond or decline admission. Are they removed from the waiting list or sent to the bottom of the list?

Legal Reminders:

- Review your admissions policies and practices to ensure they are not discriminatory, either overtly or in practice, with regard to ethnicity, national origin, gender, or disability [Education Code section 47605(d)(1)].

- Ensure that your recruitment and admission policies and procedures follow those outlined in your charter regarding “...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 granting agency [EC 47605(b)(5)(G)].” In order to achieve this balance, it is advisable to “cast a wide net” early on when announcing application windows. This may require posting admissions information in several different languages, publications, and locations. By attracting a large and diverse group of applicants, your school should be able to enroll students that accurately represent the local population.

- Ensure your students fall between the minimum and maximum ages for enrollment (EC 47610/47612), have not concurrently enrolled in a private school (EC 47602), meet California state resident requirements [EC 47612(b)], and do not pay tuition [EC 47605(d)(1)].

- Create policies and procedures for selecting students according to a public random drawing in the event that the number of pupils who wish to attend the charter school exceeds the school’s capacity [EC Section 47605(d)]. CSDC recommends that a third party assist with the lottery process to prevent any questions as to the fairness of the drawing.

Despite the inclusive nature of most charter school admission laws, charter schools may set both admissions requirements and admissions preferences so long as they are consistent with the law. Admissions requirements are defined as requirements a student must meet to be admitted to the charter school, such as attending an orientation or agreeing with the school’s mission and philosophy. These requirements must be listed in your charter.

Admissions preferences, meanwhile, apply to those applicants who have met the admissions requirements. Preferences must be consistent with the law and approved by the charter-granting agency. Conversion schools (i.e. those converting from regular to charter public schools) must give preference to students residing in the former attendance area. Schools that are oversubscribed and therefore subject to a lottery must give preference to students currently attending the charter school and those residing within the district. Other common preferences include siblings of current students.
students, the children of the founders or staff, and children on the waiting list.

CSDC recommends that schools that wish to have admissions preferences rank those preferences. That way, if they have an overabundance of applicants, the schools can then apply a lottery within each preference. For example, if the school’s first preference is for siblings of current students and the second preference is for founders’ children, the school would first do a public random drawing selecting from all applicants that are siblings. If there were still slots remaining, they would then draw names of founders’ children, and so forth.

Below is a detailed checklist to help you remember the numerous tasks that you will want to complete during the admissions process.

Before the enrollment process begins:

☐ Set the capacity of your school in writing by grade level (if applicable).

☐ Develop an enrollment packet that includes information about the school’s mission and program, admissions requirements, preferences, timelines, procedures, etc.

☐ Set an open enrollment window (e.g. February 1-30).

☐ Advertise admissions information and disseminate enrollment packets broadly, as outlined above, ensuring consistency with your charter provisions.

During the enrollment process:

☐ Review applications for completeness and timeliness. Date and time stamp each one upon receipt.

☐ Apply admissions requirements to applications. Document with specific findings those that do not meet the admissions requirements.

☐ If the number of qualified applicants meeting the requirements exceeds the capacity of any grade level, conduct a lottery within each grade level, assigning a number to each applicant until all spots are filled. If the school has admissions preferences, begin drawing names within your first preference.

☐ Continue to draw names after filling capacity, assigning a waiting list number to each additional applicant. For those with preferences: apply all remaining preferences (in order of the hierarchy) and assign waiting list numbers in consecutive order per grade level for all remaining applicants.

☐ Notify parents of non-admitted students that they have been placed on a waiting list and distribute waiting list policies.

After the initial enrollment process:

☐ Should vacancies still remain or arise subsequent to the initial lottery, and there are no wait-listed students, develop a secondary enrollment application window and reapply admissions procedures. (Secondary enrollment windows can be shorter).

☐ Regularly review your admissions policies to ensure that your process is both legally compliant and fairly administered to meet the needs of all of your potential students and families.

-Michael Agostini
New laws requiring charter schools to submit their audits to the California Department of Education by December 15 of each year may result in increased scrutiny of charter school’s financial status and management practices. (New legislation, Senate Bill 1709, will require additional submission to the State Controller and county superintendent next year.) In preparation for this potential additional scrutiny, and to meet the reporting deadline, charter schools should review their audit practices and ensure that their audit is conducted well in advance of the submission deadline.

Background: Charter School Audit Requirements
California’s charter school laws currently require that charter schools have an “annual, independent” financial audit “which shall employ generally accepted accounting principles” (Education Code Section 57605(b)(5)(I)). The manner in which the audit is conducted should be described in each school’s charter, as mandated by the Charter Act. In practice, the level of specificity in charters regarding the “manner” in which audits are conducted varies widely, often addressing such matters as:

• how the auditor is selected, and by whom
• the timing of the audit
• the scope of the audit

Findings from these annual financial audits must be reported both to the charter-granting agency and to the state. Charter schools must also describe in their charters “the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority” (Education Code Section 57605(b)(5)(I)).

Unlike school districts, charter schools are generally exempt from laws that govern school district audits. With one exception (see below), charter school audits need not be conducted in accord with the State Controller’s Standards and Procedures for Audits of California K-12 Local Educational Agencies, a 200+ page set of guidelines governing how auditors must review school districts and county offices of education. Colloquially known as the “Controller’s Audit Guide,” this guide has increasingly become a lightning rod for controversy, as many school districts feel that this guide has been used as a tool to restrict their operational flexibility. Pending legislation, Assembly Bill 2834 (Migden, D-San Francisco) would overhaul many of the laws governing school district audits, including subjecting the Audit Guide to review by the Office of Administrative Law.

One exception to charter schools’ exemption from being audited according to the Audit Guide is an amendment to the Charter Act inserted last year by Senate Bill 740. This amendment includes a narrow, and technically flawed, link between charter schools and the State Controller’s Audit Guide. The apparent intent of this link was to require a review of some elements of non-classroom-based charter schools’ SB 740-related financial reports by the State Board of Education. (See also “SB 740 Funding Determinations: Round Two,” on page 27) The Audit Guide, however, does not address SB 740, and no corrective legislation has been proposed to correct the technical flaws.

Preparing for Scrutiny
California Department of Education (CDE) staff have not yet decided whether or how closely they will review audit reports submitted to the state by charter schools. CDE staff have indicated, however, that “non-classroom-based” charter schools subject to the SB 740 determination of funding process may have their audits reviewed for consistency with data reported in the schools’ requests for determination of funding.

While no official decision has yet been made regarding state review of charter school audits, ongoing controversy regarding “cooked books” in private industry, changes in school district audit laws, ongoing allegations of fiscal abuse by a handful of charter schools, an ongoing audit of charter schools by the Legislative Auditor, and other factors all indicate that charter schools’ audits are likely to garner increased technical and political scrutiny.

In preparation for this scrutiny, CSDC offers the following general suggestions:
Review your charter. Schools should review the audit-related terms of their charter to ensure that they are conducting their audit in compliance with these provisions.

Select the auditor with care. The governing board of the charter school should, either directly or through a “disinterested” audit committee, assume primary responsibility for selecting the independent auditor, ideally many months prior to the end of the fiscal year. To encourage a genuinely independent audit, the school’s administrative staff should not assume primary responsibility for this step. Charter schools should also select an auditor that understands that charter schools are not subject to the same guidelines as school district audits and ideally that has experience auditing charter schools (see below).

Charter experience. Take care to hire an audit firm with experience in charter school matters (very few currently exist) or a firm that is willing to invest considerable time in reviewing charter school laws. Too many existing school district audit firms who are expanding into the charter market are unwilling or unable to do the necessary “homework” to be able to competently perform charter audits. Worse yet, many others use the Controller’s Audit Guide or other protocols designed for school districts that may not apply to charter schools. If the school is incorporated, the auditor should also have experience in auditing corporations, but should also understand the charter school-specific elements that differ from a standard corporate audit.

Audit scope. Clearly identify the scope of the audit, consulting both applicable laws and ensuring that the audit provides information to the school’s governing board that confirms the school’s fiscal standing. Though the Charter Act appears to only require a “financial” audit, CSDC recommends that charter schools consider a broader audit that also confirms the school’s compliance with so-called “conditions of apportionment” (laws that are required conditions of earning state funds). CSDC generally recommends that these include a review of the school’s internal controls, attendance accounting practices, independent study legal compliance (if applicable), compliance with other major categorical programs (e.g., class size reduction), and other “hot button” matters. Schools receiving over $300,000 per year in federal funding will also likely need to review detailed federal audit requirements. “Non-classroom-based” schools should consider having their auditors verify the accuracy of their requests for determination of funding as submitted to the State Board of Education, as well as the consistency between the determination of funding form and audit report.

Timing. Ensure timely closing of the school’s books following the close of the fiscal year so that the auditors may begin their work in a timely fashion.

Preparation. Meet with the audit staff prior to their site visit to identify all of the records and materials they will need, and ensure that knowledgeable school staff is available and on-site to provide access to the records in a timely fashion.

Keep it neutral. Though apparently permitted by law, exercise caution if retaining the same audit firm that the district engages, or when incorporating the charter’s audit within the district’s. In some cases, this has posed a difficult conflict-of-interest where a disputed audit finding may be of benefit to the district, and the auditor is more interested in the district’s welfare as a larger client.

Monitor auditor’s work. Remain in close contact with the auditor throughout the audit process. Many audit exceptions/deficiencies stem from the auditor’s inability to access or interpret information and can be avoided by providing timely guidance.

Ideally, charter schools will have already closed the books on the 2001-02 fiscal year and are already preparing their financial records for review. A thorough and well-performed audit can help schools to ensure that their financial affairs are in good order and help protect a school from allegations of illegal or improper financial practices. This protection is especially important in an era of increased scrutiny and ongoing debates over the meaning and applicability of various laws governing the financial affairs of charter schools.

-Eric Premack
Welcome!

A warm welcome to Michael Agostini, CSDC’s new Project Manager. Michael comes to us with experience as a teacher and as an educational consultant. He earned his undergraduate degree from Yale University and a Master’s Degree from the Harvard Graduate School of Education. Welcome also to Monica Fernandez, our new student assistant. We are excited to have them join our team!