During its May meeting, the State Board of Education (SBE) unanimously approved the first set of regulations designed to implement Proposition 39’s requirement that school districts provide facilities to charter schools, including key definitions and a process and timeline for making facilities requests. They postponed action until their June meeting on a second set of regulations that would mandate binding arbitration to resolve disputes between charter schools and school districts over facilities obligations of the school districts under Proposition 39.

The first set of regulations has been sent to the Office of Administrative Law (OAL), which must review and approve them prior to them having the force and effect of law. We anticipate that the OAL will approve the regulations because they appear to have the support of all major constituencies within the education community.

Assuming OAL approves the regulations, the first set of regulations establishes a few key deadlines for both developers of new schools and pre-existing schools. For a complete overview of the deadlines and definitions of all key terms that were defined in the regulations, please see page five of the Winter 2002 issue of Charter Currents, which is available for download on our website (www.cacharterschools.org) under “News.” The March 2001 and October 2000 editions also contain background information on the regulations and Proposition 39.

The second set of regulations relating to dispute resolution has faced opposition from the California School Boards Association, Association of California School Administrators, and others in the education community. The major school facilities lobby, the Coalition for Adequate School Housing (CASH) has also opposed the dispute resolution regulations unless amended to have arbitration as only one option available to districts and charter schools. Charter schools have found an unlikely ally in the California Teacher’s Association, however, whose lobbyist testified in favor of the second set of regulations at a prior State Board of Education meeting. Although the CTA and charter school proponents are often at odds on other matters, both groups favor
binding arbitration as a means of getting fast resolution to problems and preventing school districts from forcing others to spend money on litigation costs.

It is unclear whether the second set of regulations will be approved by the State Board of Education at its June meeting, though the State Board did vote unanimously to send the second set of regulations out for public comment at its last meeting.

Impact on Developers
In order to be eligible to receive facilities from a school district, charter school developers must submit their charter petition to the school district prior to November 15 of the year preceding the academic year in which facilities are requested. Then the developers must submit their facilities request no later than January 1. Finally, the charter petition must be approved prior to March 1.

Thus, if a development group plans to open a school in Fall of 2003 and needs facilities provided by the school district, it must submit its charter document to a local district by November 14 of this year. School developers that will not be requesting facilities support need not comply with these deadlines. Developers may wish to consider submitting their charter substantially in advance of the November 14 deadline so that they can accommodate any district concerns and prepare for final submission of the charter petition. A school district can advance this deadline by as much as two months if it notifies the charter schools of the changes. This does not change the other dates for submission of facilities requests, and charter schools have the same amount of time to respond to the school district’s offer of space.

If the development group meets the deadline for submission of the charter, the January deadline must be met for submitting a facilities request. There are no standard forms provided for making such requests, though there is some discussion that the California Department of Education may provide a sample form that some districts may choose to adopt. The regulations, however, do specify several data items that must be included in the request.

Impact on Existing Schools
Schools that are already open or already have an approved charter must submit a written facilities request by October 1 of the fiscal year preceding the year in which they require facilities. Failure to request facilities by the deadline might mean the charter school will be ineligible to receive any facilities whatsoever from the district.

It appears that developers and existing charter schools who can meet these deadlines this year will be able to obtain facilities no later than November 8, 2003. Since most schools open well before this date, it is unclear how charter schools and school districts are supposed to address facilities needs between the beginning of the school year and the November date that Proposition 39 goes into effect. Presumably this is supposed to be worked out at the local level by each district and charter school.

Although Proposition 39’s requirement that districts provide charter schools with facilities does not go into effect statewide until November of 2003, it is already in effect in many districts which have passed bond measures since November of 2000. The State Board’s approval of the regulations creates some ambiguity for districts that have already approved local bond measures because it is unclear whether they will be able to avoid their obligation to provide facilities in the 2002-03 academic year if a charter school developer or existing school did not request facilities in accordance with the timelines in the regulations. We presume no retroactive effect and that the details will be addressed locally.

Binding Arbitration
District response to the charter-related provisions of Proposition 39 appears to vary widely. While some districts are already moving aggressively to provide facilities, others have yet to consider their options or are pursuing legal remedies.

Proponents of the mandated arbitration noted that one school district, the Sequoia Union High School District, is suing the Aurora Charter School to try to avoid its responsibilities under Proposition 39. The school’s
current facilities must be vacated at the end of this school year and the school argues that the district, which recently passed a local facilities bond measure, is obligated to provide it with facilities this coming school year. If the school cannot obtain such facilities or if the school faces expensive and protracted litigation, it may be forced to close due to being located in one of California’s most costly real estate markets. Proponents argued that this case is just the first of many that charter schools will face if binding arbitration is not implemented.

SBE member Don Fisher also indicated that adopting the binding arbitration would facilitate the voters’ intent by ensuring that school districts could not avoid their obligations under the proposition for one or more years simply by saying “No. Sue me.” The proposition, he said, was designed to provide facilities to charter schools in one year or less from the time of their request to the school district. Fisher says that courts cannot deliver opinions in such a short time frame.

A representative from the California School Boards Association and a representative of several school districts argued against adoption of the binding arbitration regulations because they felt that the SBE does not have authority to adopt such regulations and that the language regarding judicial review was “vague and uncertain.”

In order to prevent a lawsuit over this controversial portion of the regulations from holding up implementation of the rest of the regulations, the SBE’s legal counsel has advised the SBE to adopt the controversial regulations separately. This ensures that all of the regulations that establish the process and timelines for facilities requests will remain in force even while the other controversial sections might be challenged in the courts.

CSDC will offer additional guidance on Proposition 39 implementation in upcoming workshops and publications. Please feel free to contact us with questions or to share innovative local approaches to implementation.

—Jerry Simmons

**State Board Approves SB740 Regulations Authorizing Deep Cuts to Non Classroom-Based Schools**

The State Board of Education (SBE) adopted without revision the highly controversial permanent regulations for implementing SB740 which were proposed by its Advisory Commission on Charter Schools, setting the stage for potentially major funding cuts to non classroom-based charter schools and increasing the possibility that litigation may be filed to challenge the statute and the regulations. These regulations substantially raise the bar on the percentage of a school’s budget that must be spent on items and functions that the regulations define as being “instruction” and “instructionally-related.” Background information on SB740 can be found in the Fall 2001 and Winter 2002 issues of Charter Currents, which are available for download on our website at www.charterschools.org under “news.”

The ACCS did not discuss several alternate proposals for regulations presented by members of the public, CSDC, or CANEC. The proposal that it recommended for SBE adoption included several provisions that were adopted on split votes.

Although the apparent legislative intent behind SB740 was to target a handful of non classroom-based charter schools that were engaging in profiteering, the regulations appear to have sidestepped that issue almost entirely. Instead, the regulations force all charter schools operating non classroom-based instructional programs (e.g., independent study, home schooling, distance learning, computer-based learning, or schools with substantial internship or workplace-based instruction) to justify the percentage of funds they spend on certificated employee salaries and benefits and the percentage of funds spent on things that the regulations define as “instruction” or “instruction-related.” In addition, such schools would need to meet strict teacher/student ratio caps. This shift in focus appears to have resulted from a desire to provide clear criteria to all schools on what level of profit would be acceptable.

**Regulations Authorize Deep Cuts**

In 2002-03, the regulations allow cuts to reduce a school’s funding down to 70 percent of what a school would otherwise receive, but the typical funding level
would be 80 percent if minimum criteria in the regulations can be met. In 2003-04 and thereafter, cuts could reduce a school’s funding to zero, but 70 percent would be the typical funding level if minimum criteria in the regulations could be met. This is the first time that a funding level of zero would be permitted.

The proposal significantly raises the bar for full funding in 2003-04 from the requirements in 2002-03. In 2002-03, the charter school must demonstrate that 50 percent of its total public revenues are spent on certificated salaries and benefits. To receive full funding in future years, the charter school’s total expenditures on certificated employee salaries and benefits must be at least 50 percent of the charter school’s total public revenues, the charter school’s total expenditures on instruction and instruction-related activities must be at least 80 percent of the charter school’s total revenues, and the charter school’s pupil-teacher ratio as calculated pursuant to Education Code Section 51745.6 must be no more than the pupil-teacher ratio of the largest unified school district in the county or counties in which the charter school operates. For a copy of the detailed criteria that will be used by the SBE to make funding cuts in 2002-03 and future fiscal years, please see our website at www.cacharterschools.org under “What’s New.”

After the SBE voted to approve the regulations and send them out for the 15-day public comment period required by law, SBE President Reed Hastings indicated that it would be “intolerable” for charter school independent study programs to get funded at a higher rate than school district independent study programs. Governor Davis has proposed a 10 percent cut of school district (not charter school) independent study programs. Though the status of the Governor’s proposed cut remains undecided (see below), Hastings requested that staff return with an amendment to the regulations that would make full funding for charter school independent study programs equal to that of school district independent study program funding. Staff is expected to bring forward such language at the SBE’s June meeting.

Governor’s Proposed Cut Could Cut Deeper
If both the Governor’s and Hastings proposals are adopted, it would result in an automatic 10 percent cut to charter school independent study programs, a cut that could be compounded by the SB 740-related cuts. If full funding is set at 90 percent per the Governor’s proposal, and a charter school only received 70 percent of full funding per the SB 740 regulations, it would be 70 percent of the 90 percent, not 70 percent of the full 100 percent funding that a charter school has been accustomed.

As of the time this article went to press, the budget committees in both houses of the Legislature have rejected the Governor’s proposal to cut school district independent studies programs. The Governor may get his proposal approved during the budget negotiations, however, so it is unclear at this time what the impact on charter school programs might be.

Appeal for Charter School Denied
In related action, the SBE rejected an appeal by Gold Rush Charter School to adjust its funding determination from 95 percent to 100 percent based on the fact that the Advisory Commission and the SBE had previously relied on rumors contained in a newspaper article that indicated their school was a reincarnation of the controversial One Step Up charter schools that have previously had their funding frozen by the State. The SBE’s failure to reverse its funding determination in this case has elevated concerns among charter operators that decisions may be based on rumors and that the process will not be implemented in a fair and reasonable way even if schools can meet all of the criteria outlined in the regulations.

The Advisory Commission was unable to muster a majority of its members to recommend either 100 percent funding or 95 percent funding for this charter school on appeal. Some charter operators have speculated that this is at least in part due to the fact that some of the Commission member’s schools might stand to gain facilities funding from the cuts that they make in non classroom-based schools. The proposed Budget Act provides that the funding cuts are intended to fund facilities for classroom-based charter schools located in areas that are socio-economically disadvantaged.

Most Grant Funding to be Included in Calculations
Despite pleas from several speakers and support from a minority of Advisory Commission members, the SBE
was unsympathetic to the request to exclude grant revenues in the definition of total public revenues and total revenues. Several charter school operators sought the change to prevent the bizarre result that a small school receiving a substantial grant for some restricted purpose other than teacher salaries would actually result in cuts to their budget.

For example, if a school had a budget of $500,000 per year and was spending half of it on certificated salaries and benefits, it would clear the tests. If it subsequently were awarded a grant for $200,000 for one-time (non-salary) purposes, the school revenues would increase to $750,000. This would then require a school to spend a minimum of $375,000 on certificated employee salaries and benefits. This amount is equivalent to 75 percent of the school’s discretionary budget, an amount far in excess of what school districts spend on certificated salaries and benefits and far in excess of the standards the SBE has set for spending on salaries and benefits.

Several speakers indicated that the regulations would result in funding cuts to some schools that receive substantial grant funding, and many of these schools are being awarded grants because they are exceptionally high in quality. The SBE only excluded charter school start-up, implementation and dissemination grants from their calculations. All remaining grants and their impact on the school’s budget must be noted as a mitigating factor for the ACCS to consider during the funding determination process.

Mitigating Factors
Mitigating factors that might allow a charter school to reach full funding even though it doesn’t meet all of the above tests could include:

- Facilities expenditures,
- The charter school satisfactorily describes the reasons and/or proposed uses of its “excess” ending balances,
- The charter school satisfactorily responds to questions regarding its contracts, conflict of interest policies and payments to a charter-granting district,
- Other individual circumstances of the charter school, or
- The charter school’s pupil-teacher ratio is lower than that of the comparison school district.

Legal Challenge Coming?
Now that the permanent regulations have been adopted and schools have gotten a sense of what they may lose through the funding determination process, speculation is rising that a legal challenge may be filed to overturn the statute and/or the regulations. Several law firms are already researching the possibility of filing a challenge for various clients, and we will provide updates in future issues of Charter Currents if litigation is filed. If your school operates a nonclassroom-based program, see related implementation tips on page 16.

—Jerry Simmons

Performance-Based Pay at the Vaughn Next Century Learning Center

One of the first things that business people say when recommending improvements in the school system is “reform the pay scale.” While raising overall pay for teachers is a critical step toward improving the quality of our teachers nationwide, an equally important step, these critics assert, is ending the “equal pay for all, regardless of skill” system that prevails in almost all of our district-run schools. Charter schools, who often have more freedom to hire and fire at will and to set their own pay scales, are in a unique position to do just that, and the Vaughn Next Century Learning Center in Los Angeles is at the forefront of this reform.

Traditional vs. Performance-Based Systems

Traditionally, public schools have paid teachers according to the district-wide pay scale or “salary schedule,” usually negotiated between the district and the bargaining unit that represents the teachers. Teachers move up the pay scale each year, with added steps for an advanced degree or, in some cases, a certain number of credits earned from advanced study. California’s Education Code requires school districts to adopt a certificated staff salary schedule.
In contrast, performance-based pay is based on the idea that teachers should be paid according to their skill, their students’ performance, their leadership roles, or other factors related to the success of the overall organization. Advocates are quick to point out that this is different from “merit pay,” which has traditionally rewarded the best teachers in a school by measuring one against the other, thus promoting competition. Carefully designed performance-based pay systems include clearly defined goals that every teacher can reach, with rewards available to all who reach them.

Beyond that, performance-based pay actually includes many different systems, each based on a different belief about how teachers work and learn best. Outcome-based pay rewards teachers for gains in student achievement, usually measured quantitatively by test scores, and sometimes also factoring in other data such as student attendance and graduation rates. In some cases, teachers are rewarded only for gains made by students in their own classrooms. Schools using this type of system must have confidence that individual teachers have a high degree of control over the test scores of their students. In other systems, all teachers are rewarded if the school reaches an overall performance goal. Either way, teachers and administration must believe that the tests used actually reflect important skills, and that they accurately measure achievement. Critics argue that outcome-based rewards encourage “teaching to the test,” rather than a more in-depth or balanced approach.

Skill-based or knowledge-based pay systems reward teachers who demonstrate designated best practices, such as collaboration with fellow teachers, or use of multiple assessment methods, or who demonstrate in-depth knowledge of their subject matter or specialty area, such as literacy or special education. Teachers are usually evaluated by administrators, often in combination with peer input and self-evaluation, and sometimes including parent and student input as well. Rubrics are often used so that teachers are well aware of the skills that they are expected to master. Schools that use these systems believe that by changing teacher behavior and knowledge, student achievement will inevitably rise.

**Doing it All: The Innovations at Vaughn**

The Vaughn Next Century Learning Center is a Los Angeles elementary school that converted to charter status in 1997. Ninety nine percent of Vaughn’s 1,111 students are eligible for free and reduced lunch, 89% are English language learners, and test scores have historically been in the lowest percentiles. After charter conversion, Vaughn’s dynamic principal, Yvonne Chan, instituted an inclusive, decentralized governance system that gave both teachers and parents significant leadership roles and decision-making power. Thus, when Chan introduced the idea of performance-based pay, it was in the context of a school where shared decision-making was the norm. Rather than being “imposed from above,” the idea was referred to the various governing committees for feedback and revision.

What emerged was a truly innovative system, combining elements of traditional and several kinds of performance-based systems. Vaughn teachers receive a base salary that increases each year, as in a traditional school. As in a traditional district school, teachers earn more if they have earned an advanced degree; additionally, Vaughn pays more to teachers who are nationally certified. Veteran teachers have the choice of remaining on this more traditional system.

New hires and veterans who choose to do so can opt for the newer system, which starts them at a slightly lower base salary, but allows them to earn specified “bonuses” for clearly defined skills and content knowledge, such as expertise in special needs inclusion or technology. In addition, teachers are rewarded for “contingency-based” results, such as high student attendance and parent participation. In general, the rewards attached to this category are somewhat lower than the rewards attached to the skill and knowledge-based category. Teachers are also rewarded for leadership roles, with specific reward amounts attached to being a committee chair, a teacher mentor, or other school leadership roles. Finally, teachers are also eligible for what Vaughn calls “gainsharing”: a bonus if the school achieves certain economic targets, such as a low number substitute days over the year.

Equally innovative, Vaughn has instituted a school-wide student achievement bonus: if the school’s Academic Performance Index growth target is met, every teacher receives a substantial bonus — $2,000 per
Criminal Background Checks: Doing Your Homework on Employees

It is once again that time of year for charter schools to hire new employees and confirm existing staff for the upcoming academic year. In addition to ensuring that the school hires and retains employees that match the school’s mission and meet the desired job qualifications, charter school employers must also check to see if the employee has any criminal history that would preclude him or her from working in a charter school. These background checks are performed through a fingerprinting service coordinated by the California Department of Justice (DOJ). Before offering employment to any prospective staff or rehiring existing staff, charter school employers must obtain and review the results of their employees’ criminal background checks.

Legal Background

The Charter Schools Act requires charter schools to have procedures to ensure the health and safety of pupils and staff, including the requirement that “each employee of the school furnish the school with a criminal record summary” (Education Code section 47605 (b)(F)). Charter schools were also written into more complex criminal background check laws enacted after the murder of Sacramento-area high school student Michelle Montoya by a school district janitor in 1997. Interestingly, the laws that charter schools are tied to are those that address criminal record information for private school employees (Education Code section 44237). Even though charter schools are public, not private schools, the Charter Schools Act thus applies the same standards for criminal background checks in private schools to charter schools.

—Jennifer Feller
Section 44237(e)(1) also states that private schools shall not employ a person who would be prohibited from employment by a public school district, thereby additionally tying charter schools to the criminal background laws for public school district employees.

According to these laws (Section 44237(a)), fingerprints must be submitted for each applicant who has contact with minor pupils and who does not possess a valid credential issued by the Commission on Teacher Credentialing (CTC) or another state agency that has equivalent criminal record requirements. Two types of criminal record information must be provided for each employee: (1) an investigation by the Department of Justice (DOJ) on crimes committed within the state of California and (2) an investigation by the Federal Bureau of Investigation (FBI) on crimes committed in other states within the United States. If the employee’s background check reveals that s/he has a conviction or an arrest pending final adjudication for any sex offense (defined in Education Code section 44010), crime of violence, controlled substance offense (defined in Education Code section 44011), or serious or violent felony (listed in Penal Code sections 667.5(c) and 1192.7(c)), that person may not be hired or retained for employment at the school.

Who Needs to be Fingerprinted?

Within these legal guidelines, several questions arise as to who at the charter school needs to be fingerprinted. First, do credentialed teachers need to be fingerprinted again when charter schools hire them? The law requires the CTC to perform both a DOJ and FBI criminal background check before issuing a California teaching credential and also requires them to send a monthly update list to each school of all teachers who have had their state teaching credential revoked or suspended. However, there are several reasons why charter school employers may still want to fingerprint their credentialed employees. For example, charter school employers may not want to wait a whole month to find out that one of their staff has committed a violent or serious felony. If the charter school employer fingerprints its employees, it can sign up for a service with the DOJ to send a “Notification of Subsequent Arrest” to the school as soon as an arrest occurs. Furthermore, the CTC notification only notifies the employer that a credential has been revoked; it does not list the reason why. In addition, many charter-granting agencies require proof of a criminal background check on all charter school employees, including those with a CTC credential.

Another question arises regarding which staff should be defined as employees for fingerprinting purposes: full-time staff, part-time staff, permanent staff, all of the above? Education Code section 44237(b)(2) defines employees broadly, including those who are hired on a paid, regular or seasonal, full- or part-time basis. But what about contract employees and unpaid volunteers; do they need to be fingerprinted? Education Code Section 33192 defines contract services as school and classroom janitorial, school-site administrative, school-site grounds and landscape maintenance, pupil transportation, and school-site food-related services. According to this section, contract employees who are called in for an emergency situation or those who have “limited contact with pupils” need not be fingerprinted. Those that have more than limited contact must be fingerprinted and checked by both the DOJ and FBI. If the results of the criminal background check indicate that the contract employee has been convicted or has a pending criminal proceeding for a violent or serious felony, s/he may not come in contact with pupils. Thus, depending upon the amount of contact their contract workers have with pupils, in many charter schools, the vast majority of contract staff must also have a criminal background check.

Many charter schools also make use of unpaid volunteer staff, including parent volunteers, instructional aides, Americorps volunteers, etc. Although the law is unclear as to criminal background requirements for volunteers in charter schools, CSDC recommends that the same standards for contract workers be applied for unpaid volunteers. In other words, those volunteers who have more than limited contact with pupils should be fingerprinted.

When deciding whether or not to fingerprint credentialed employees, contract employees, and/or volunteers, charter school employers should consider both the legal and political ramifications. Although the law may provide some ambiguity as to whether or not these staff should be fingerprinted by the charter school, politically, what will reassure the school parents, teachers, pupils, granting-agency, and others is a different answer.
Many charter schools find that it is worth the small fee (see below) to fingerprint all those who come into contact with their pupils to reassure all constituents at the school and in the community that their pupils are in safe hands. Charter school employers could also use the “front page of the paper test,” i.e., considering what would happen if one of their contract or other employees assaulted one of their students and turned out to have a criminal record. If in doubt, the CSDC recommends that charter schools take the conservative route, doing both a DOJ and FBI criminal record check for all staff, including contract employees and volunteers, that have contact with their pupils.

Fingerprinting Process
In California, the Department of Justice (DOJ) coordinates criminal background checks. There are two ways to get fingerprinted: manually, by placing your finger on an inkpad and then onto an 8” x 8” card, or electronically, through an electronic fingerprint scanner called a “Live Scan.” Most employers today use the Live Scan process since it is significantly quicker. However, it is still possible to do the manual prints. For more information on manual fingerprinting, call (916) 322-2209. For information on Live Scans, see the DOJ website at http://caag.state.ca.us/fingerprints/publications/livescan.pdf.

The fingerprinting process works as follows. First, employees must fill out a “Request for Live Scan Service” form (available on the above DOJ website). In order to get both a state and federal background check done, employees must check both the DOJ and FBI boxes on this form. Next, they must go to a Live Scan location to get fingerprinted. Live Scan locations include local police departments, county sheriff’s offices, school district offices, and county offices of education. For a list of Live Scan locations near you, see http://ag.ca.gov/fingerprints/publications/contact.pdf. In most locations, you need to make an appointment, although some take walk-ins. All employees will need to bring photo identification.

Fingerprinting fees range from no cost (for volunteers) to $35 for the DOJ check, with additional fees for FBI checks and other clearances. Some charter schools have negotiated with their school districts to cover these costs, especially “dependent” charter schools whose employees are district employees. Other charter schools, usually legally “independent” charters that hire their own staff, must cover these costs out of their budget. The DOJ website has various billing options on its Fingerprint Services Billing Account Application, allowing the charter school to either get billed by the DOJ for the fingerprinting fees or have employees pay the applicable fees at the live scan agency at the time fingerprinting services are rendered. Many charter schools write one check for all employees payable to the local Live Scan agency, with a list of those employees to be fingerprinted and scheduled appointment times.

For Live Scans, it takes an average of 7 business days to get results, and fingerprinting cards have an average turnaround time of 30 days. If the employee has no criminal background history, results can be returned more quickly. However, if the print did not scan clearly, if there is extensive federal criminal activity, or if there are other logistical “red tape” issues within the DOJ, this process can take longer. Those charter schools not receiving fingerprinting results within the above timelines should fill out the “Applicant Fingerprint Transaction Follow-up Request” form, available at www.caag.state.ca.us/fingerprints/forms.htm. The CSDC recommends having employees fingerprinted well in advance of their projected first day of work so that there is plenty of time to receive and review the criminal history results. We also recommend including provisions in employment applications, staff policy manuals, and employment contracts requiring criminal background check clearance as a condition of hire and continued employment.

Reviewing the Rap Sheet
The results from the Live Scans and manual fingerprints are officially called CORI (Criminal Offender Record Information) and colloquially referred to as “rap sheets.” Employers will receive a rap sheet on each employee that has been fingerprinted. The rap sheet will either indicate that there is no criminal record or will list all arrests resulting in a conviction and those that indicate active prosecution. This record includes only crimes committed after age 18, unless the person was tried at the time as an adult. Charges or arrests that do not result in conviction will not show up on the rap sheet. However, plea bargains (usually from felonies
Over the past year, the Charter Schools Development Center has been creating a comprehensive database of every charter school in California. Data is drawn from school surveys, the charter petitions themselves, and state data, such as CBEDS and API reports, the language census, and Calworks data. A subset of this data can be viewed on our web site (www.cacharterschools.org). Click on “School Data” to search the database.

A full analysis of the data is not yet complete, but initial data reveal:

° There are 360 active charter schools in California.

° There are approximately 131,000 students enrolled in California charter schools.

° Most California charter schools (70 percent) are “start ups,” meaning that they were founded as charter schools. Only 30% are conversion schools, meaning that they converted to charter status from “regular” district schools.

° The vast majority (85 percent) of California charter schools operate site-based programs. Of these, 20 percent also operate some type of off-site program, such as a home-study component or independent study program. Only 15 percent of California charter schools operate completely off-site programs.

° Almost 70 percent of California charter schools are small, enrolling under 400 students. About a third of those small schools (92 schools) enroll fewer than 100 students.

° Only 8 percent of California charter schools enroll over 1000 students. About half of these very large schools are conversion schools; most of the others operate independent study programs.

—Jennifer Feller
Charter Bills Progress Across Legislative Radar Screen

Though the state budget is currently dominating Sacramento’s legislative discussions, several bills addressing key charter-related topics, including “out of district” charters, charter audits, funding, and other matters are winding their way through the legislative process. The following provides a summary of several of the more prominent bills and their status in the legislative process.

AB 168 (Nation, D-San Rafael)
This bill, which has been passed by both houses of the legislature and signed into law by Governor Davis, extends a “sunset” of a key provision of the charter school funding system. Three years ago, legislation created a new funding system for charter schools. That legislation contained a three-year “sunset” of a key provision of the funding model. This new law extends the charter school funding model for two more years, through the end of the 2003-04 fiscal year.

“Out-of-District” Charters
Ostensibly in response to alleged abuses by a few charter schools, legislators have introduced several bills to impose a variety of new restrictions and obligations on charter schools. Earlier this year, the GateWay charter school established in Fresno (not to be confused with the well-regarded Gateway High School in San Francisco) was hit with several allegations including offering sectarian instruction, links to Islamic terrorists, failure to perform criminal background checks on staff, and fraudulent attendance accounting. Some of the abuses allegedly occurred at “satellite” campuses of the GateWay school, including one located in Oakland (175 miles distant from Fresno). After a brief investigation, the Fresno Unified School District revoked the school’s charter earlier this year.

Another Fresno area charter school, the One Step Up Academy, is also alleged to have engaged in illegal and/or inappropriate activity and has established distant, “satellite” campuses. Some of these satellites were said to have been previously associated with the Sierra Summit Academy Charter School, whose charter had been recently revoked after long-festering allegations of sectarian instruction and other abuses had come to a head. The fact that such satellite campuses could switch from one revoked charter school to another exposed a loophole in California’s charter oversight processes. The State Superintendent has withheld funding for the One Step Up Academy. The Fresno County superintendent of schools, Pete Mehas, is involved in an ongoing, and at times nasty fight with the charter-granting West Fresno Unified School District. He has also taken an active role in advocating for new restrictions on charter schools and expanding county superintendents’ powers over charters.

Shortly after these allegations surfaced, several bills appeared in legislative hoppers. Fresno-area assemblymember Sarah Reyes (D—Fresno) introduced AB 1994 and San Jose-area Democrat Manny Diaz (D—San Jose) introduced AB 2503. AB 1994 contains an odd mix of “reforms” including the following:

— Mandating new charter elements that address (1) academic credit transfer, (2) course eligibility for college entrance requirements, and (3) miscellaneous school closure issues (final audit, disposition of assets, and pupil records).

— Requiring charter petitioners to describe their proposed facilities, school locations, and whether the school plans to operate on multiple sites.

— Prohibiting charter schools that commence operation after July 1, 2002 from operating outside of the county in which the charter-granting district is located. By June of 2005, all charter schools would need to be located in the county.

— Various technical and substantive changes to the method for calculating the charter school categorical block grant, including a “re-benching” of the calculation of the grant level.

— Prohibiting new charter schools from starting their school year after September 30 of any school year. This provision is presumably intended to preclude mid-year starts of charter schools.

The Diaz bill is somewhat more restrictive in terms of...
the geographic location of the school. It would require the school to be located within the geographic boundaries of the charter-granting district. It would also, however, exempt (1) pre-existing schools (those established prior to the effective date of the legislation), (2) independent study charter schools (which are governed by a pre-existing limitation to the adjacent county), (3) schools affiliated with the California Conservation Corps, and (4) charter schools affiliated with the Job Corps.

The odd “laundry list” of issues in the Reyes bill and the narrow focus of the Diaz measure bear little apparent relation to the alleged abuses of the Fresno-area charter schools. Their real target may be to help brace local school districts to gain control over charter schools with the forthcoming implementation of Proposition 39 facilities requirements. Proposition 39 (see related article in this issue of Charter Currents) will require school districts to provide facilities for charter schools. The California School Boards Association is aggressively lobbying for the Diaz and Reyes measures because many local districts are troubled by the prospect of being required to provide facilities for schools whose charters were granted by other districts. Both the Reyes and Diaz bills have passed the Assembly (largely on party line votes) and are pending action in the Senate.

**AB 2628 (Leach, R-Walnut Creek)**
This bill would grant county superintendents of schools the authority to “monitor” the operations of charter schools “based upon written parental complaints or other information that justifies the investigations.” It would also require charter schools to notify county superintendents of their locations. The bill has passed two Assembly committees and is pending action by the full house. A related Leach bill, AB 2608, which contained a vague call for better oversight of charter schools, has not been heard and is presumably dead.

**SB 1708 (Poochigian, R-Fresno)**
This helpful measure would permit charter schools to receive so-called “extended year” funding for special education students. Under current law, school districts may receive extra funding for special needs students for extended year services when their individualized education plan calls for such instruction. This measure has passed the Senate with no opposition and is pending action in the Assembly.

**SB 1709 (Poochigian, R-Fresno)**
This bill would require charter schools to forward a copy of their annual financial audits to the State Controller and local county superintendent of schools. New laws authored by Poochigian last year require charter schools to forward copies of their audits to their charter granting agency and the California Department of Education. This bill expands the lists of recipients. The bill does not specify what the Controller and/or county superintendents are supposed to do with the audit reports. Doubtless they will find them fascinating reading.

**AB 16 (Hertzberg, D-Van Nuys)**
This measure, which has passed and has been signed by the Governor, will place two major school facilities bond measures on the November 2002 and March 2004 state ballots. If approved by the voters, the measures would authorize a combined $25 billion in facilities bonds, most of which would be available for K-12 education, including up to $400 million for charter school facilities pursuant to yet-to-be-adopted legislation. The charter set-aside has been advocated by EdVoice, which is currently working toward enacting legislation to add more specifics to the proposed charter school set-aside.

**SB 1474 (Alpert, D-Coronado)**
This bill would enact several technical changes intended to clarify and streamline paperwork requirements for independent study programs (both traditional and charter schools), including calling for the California Department of Education to develop model independent study agreements—presumably in an effort to reduce the number of controversial audit exceptions regarding such agreements.

CSDC will monitor the progress of these and related measures and provide a comprehensive updates later in the legislative session.

— Eric Premack
Governor Davis’ “May Revise” proposals for the upcoming (2002-03) fiscal year state budget would continue to spare the K-12 education sector, despite massive cuts in the non-education side of the state budget. His proposals, however, contain a few sharp corners for charter schools, including cutting charter facilities funding and cutting key programs from the charter school categorical block grant. His overall state budget proposal outlines a mixture of spending cuts, revenue enhancements (tax increases), one-time deferrals, and other book keeping maneuvers to bridge a massive, estimated $23.6 billion gap in the state’s budget. Legislative budget committees have concurred with most of the Governor’s proposals, with a few exceptions noted below.

While other sectors of the state budget are subject to massive cuts, the K-12 sector would receive funding adequate to pay for growth in student populations, fully fund statutory cost-of-living adjustments (COLAs), and even provide above-minimum COLAs for general-purpose funding entitlements. Predictions that the Governor would propose to suspend constitutionally mandated (“Proposition 98”) education funding requirements did not prove accurate. Instead, the Governor proposes fully funding the Proposition 98 guarantee level, albeit with considerable “book keeping” adjustments in how the guarantee is calculated.

COLA Plus

The Governor proposes providing a 2.0 percent COLA for the general-purpose (revenue limit) funding system. This is above the 1.66 percent adjustment called for by formulas specified in the Education Code. The above-minimum COLA for the general-purpose program is seen as a “bone” tossed by the Governor to the California Teachers Association to protect teachers from layoffs. Education Code provisions prohibit school districts from laying-off teachers unless they were notified by mid-March, except when funding increases to the general-purpose revenue limit system are below a 2 percent threshold. By granting a 2 percent COLA, the Governor may be hoping to block school districts’ ability to balance their budgets through reductions in their teaching ranks. (Charter schools generally are not subject to this limitation contained in Education Code Section 44955.5.)

The above-minimum COLA, however, would not extend to other state-funded categorical funding programs, which would receive the 1.66 percent adjustment specified in law under the Governor’s May Revise proposals. Legislative budget committees, in contrast, have opted for a 2 percent COLA on all programs.

Since charter school’s funding entitlements are largely based on these growing sources, charter schools should also benefit from this general increase in education funding, subject to several significant caveats explained below. Based on the Governor’s proposals, our preliminary estimates of charter school funding entitlements for the 2002-03 fiscal year are shown below. These estimates are still very preliminary in nature and are subject to change due to many variables, including:

— Whether the legislature adopts the Governor’s proposals on cost-of-living adjustments and other school district funding issues. (This seems likely, though the Legislature may opt for a 2 percent COLA on categorical programs too.)

— Whether the Governor’s proposal to remove several programs from the charter school categorical block grant (e.g., instructional materials funding) are enacted. The Governor continues his January proposal to remove instructional materials funding from the charter block grant and require charter schools to apply for the funds separately, purchase state-approved reading texts, and comply with the associated “red tape.”
Whether the Governor’s proposed legislation to change the basis for calculating the charter school categorical block grant is adopted. He is proposing to revise the method for calculating the block grant and base it on prior-year data. Though this proposal would have a modest effect in the current year, it could have a larger negative impact in future years, especially when state education spending grows rapidly. The Legislative Analyst has proposed a similar change, though based on current budget data. Legislative budget committees have opted to concur with the Analyst’s proposal.

The general purpose funding rates listed above could inch slightly higher if the Legislature restores funding for various funding adjustments (PERS reduction, equalization) to school district general purpose funding. The Governor does not propose funding these adjustments while the budget subcommittees both propose to fund them.

Based on a 1.66 percent statutory COLA as proposed by the Governor, we estimate the following funding rates for major state-funded categorical programs that are not included in the above-referenced categorical block grant: (See Figure 2 on next page)

The Governor proposes to continue current levels of state funding for the popular grades K-3 class size reduction program. This program, however, has been subject to considerable criticism from school district finance experts of late because the funding provided by the program has not kept pace with districts’ large increases in teacher salaries and benefit costs. In an apparent attempt to address this issue, the Governor calls for directing over $200 million in federal funds toward this program. It appears, however, that this amounts to a very modest increase over the amount of federal funds currently directed toward class size reduction. Due to the many and increasing restrictions on federal education funding, including growing compliance requirements and “non-supplanting” restrictions, we urge charter schools to use caution in budgeting federal revenues for class size reduction. Legislative subcommittees have rejected much of the Governor’s proposals as noted below.

<table>
<thead>
<tr>
<th></th>
<th>K-3</th>
<th>4-6</th>
<th>7-8</th>
<th>9-12</th>
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<td>General Purpose Grant (“Revenue Limit”)</td>
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<td>Categorical Block Grant</td>
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<tr>
<td>Totals</td>
<td>$4,782</td>
<td>$4,854</td>
<td>$4,912</td>
<td>$5,710</td>
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</tbody>
</table>

Budget Committees Oppose Governor’s Independent Study Cuts

The Governor continues his January proposal for a 10 percent reduction in funding for independent study programs. Thus far, both legislative education finance subcommittees have rejected this proposal. School district and county office lobbyists are working to block the cuts and are discussing various “reforms” to potentially garner support for blocking the cuts. These “reform” concepts are in only the most general draft form, but include the following:

- Requiring alignment of independent study to locally approved standards.
- Proctored, end-of-course assessment to ensure equivalency with “site based” programs.
- Documentation of high school independent study access to courses approved for University of California “A-G” requirements.
— Documentation of satisfactory student academic progress.

Whether any of these reform concepts or the Governor’s proposals will take hold is unknown. The Governor is rumored to be willing to drop his proposal to cut independent study if the legislature opposes it and cuts other education expenditures to cover the costs. Both legislative budget subcommittees have rejected the Governor’s independent study cuts. Even if the proposal is dropped, however, charter school independent study programs presumably will still need to consider the impact of SB 740’s restrictions on “non classroom-based” programs. Regulations to implement SB 740 have been adopted and information on them is available on the CSDC web site.

**Governor Proposes Prescriptive, Standards-Based Expenditure of New Federal Funds**

Recent increases in federal education funding (accompanied by a massive increase in federal laws and restrictions) will provide an estimated additional $700 to $800 million in funding for California’s schools, according to the Governor. California, like most states, is struggling to both interpret these newly expanded federal education funding laws and figure out whether and how to comply with them. The Governor is proposing to direct much of the increase in federal funding toward teacher and staff training and professional development, K-3 class size reduction (as referenced above) and other

| Estimated Funding Rates for Major Charter School Categorical and Special |
|---|---|
| Grades K-3 Class Size Reduction | $902/ student (plus federal funds) |
| “In-Lieu” Economic Impact Aid | $110/ qualifying student |
| (minimum funding for 1-10 students) | $7,200 |
| (minimum funding for 10+ students) | $4,800 |
| Staff Development “Buy Out” | $298/ teacher-day |
| Supplemental Hourly Instruction (summer school) | $3.43/ student-hour |

### Charter Facilities Funding

The Governor proposes eliminating the $5 million in current year (2001-02) funding for charter school facilities lease reimbursements. The current year state budget originally contained $10 million for this purpose, which was already cut in half to $5 million during mid-year budget cuts enacted earlier this year. The Governor’s proposal would eliminate the remaining $5 million from the current year, but would provide $10 million in the upcoming (2002-03) fiscal year. Both legislative budget committees have proposed maintaining the $5 million in current funding plus $10 million in the upcoming year.
information database, including a unique student identifier. California currently lacks such a database, making the state’s current Academic Performance Index statistically unsound.

- $7 million to refine the High School exit Exam, state standards tests, English Language Development Test, and alternative testing programs for special education students.

- $18 million for over 60 staff in the California Department of Education to administer new federal programs and compliance restrictions.

- $19 million to address looming questions over how the state will “take over”, or “assist” schools that fail to post adequate student performance gains.

We anticipate that proposals to spend federal funds will continue to evolve over the next several weeks as additional information on new federal requirements becomes available and a new state application for federal funds is drafted. Both legislative committees have rejected most of the Governor’s proposals and have opted to give districts (and charter schools that apply for federal funds) more flexibility.

**Toward an Adopted State Budget**

The Legislative Analyst, the Legislature’s non-partisan fiscal advisor, termed the May Revision “a credible framework for addressing what has become an enormous budget problem.” At press time, the legislative budget conference committee was ironing-out differences in the Senate and Assembly budget proposals, hopefully leading to timely adoption of a final budget by late June. Due to the severity of budget cuts proposed for the non-education side of the state budget, it is unknown whether the budget will be adopted on time. If the budget is extremely late, it is possible the July apportionments to charter schools could be delayed. CSDC will provide a comprehensive overview of the budget after it is adopted.

—Eric Premack

**SB740 Regulation Implementation Tips**

Due to the high stakes involved in this process, we advise charter schools to budget conservatively and offer the following practical suggestions:

1. Because funding cuts are always determined based upon prior year’s data, charter schools should make all possible adjustments now to their 2002-03 budgets to ensure that they can meet all of the standards for full funding in the 2003-04 fiscal year.

2. Charter schools should request a multi-year funding determination that will last them until their charter comes up for renewal or until they make a material change in their charter so as to avoid coming before the Commission each year.

3. Avoid making materials changes in the charter unless absolutely necessary as this will trigger another review by the Commission.

4. Adopt clear budget policies that designate reserves for specific purposes such as facilities acquisition, and which restrict the expenditure of these funds for these purposes.

5. Submit any information your school has that relates to mitigating factors that the Advisory Commission must consider in making its recommendation for funding cuts to the SBE.

6. The Advisory Commission seems particularly concerned with conflicts on interest on the school’s governing board and with large management and service contracts. Consider renegotiating these contracts, putting them out to public bid, and eliminating or mitigating any potential conflicts of interest.

7. Increase the number of certificated employees that you have at your school, even if they are not teaching, so as to increase the percentage of funds being spent on certificated personnel. Many charter school administrators and instructional support staff, for example, could pursue credentials.

8. Ensure that your student-teacher ratio is no greater than that of the largest unified district in the county. You might consider making it less that the ratio of the largest unified district, so that you can qualify for full funding in 2003-04 and thereafter. Detailed instructions on how to calculate this ratio are available on the CDE web site (www.cde.ca.gov/spbranch/essdiv/is_ratio.html).
or private schools only includes pending criminal proceedings or convictions for violent or serious felonies. Contract employee rap sheets will only indicate that the person fingerprinted either passed or did not pass the criminal background check; it will not give the reason why.

Doing a criminal background check is legally optional for non-profit corporation employees and volunteers. Whether background checks are optional or mandatory when the corporation is operating a charter school is legally unclear. The rap sheet for non-profit employees only indicates convictions or arrests pending adjudication for certain sex offenses and other crimes listed in Penal Code section 11105.3(h)(1). Should the rap sheet indicate that the prospective or current employee or volunteer has been convicted of any of these crimes, the organization must notify the parents or guardians of the children who will be supervised or disciplined by the employee or volunteer at least 10 days prior to the day the employee or volunteer begins his or her duties (Penal Code 11105.3(c)(1)).

Although charter schools that are incorporated as non-profit corporations could choose to follow the looser criminal background standards for non-profits, the CSDC recommends that, since they are also public schools, incorporated charter schools follow the more conservative standards for criminal background checks that are applicable to public and private school employees. The CSDC also recommends that charter school employers sign up for the DOJ’s “Subsequent Arrest Notification Service” (available at www.caag.state.ca.us/fingerprints/forms.htm), so that they will be immediately notified upon any employee arrests subsequent to the criminal record that was furnished at the time of initial fingerprinting. This service only tracks crimes within California, not in other states. Unfortunately, the FBI does not provide a federal subsequent arrest notification service. Thus, charter schools may still want to do FBI fingerprints for rehired staff on a regular basis (perhaps annually) to ensure continued federal criminal clearance.

Storage and Access to Criminal Records
The California Constitution (Article 1, Section 1) grants California citizens the right to privacy. Penal Code sections 11105 and 13300 allow access and limited release of criminal history information. Specifically, employers can request an individual’s criminal history only for determining the person’s suitability for hiring; the information cannot be used for other purposes or shared with others. For example, the CTC cannot share criminal record information on credentialed teachers with the schools that seek to hire the teachers.

Live Scan responses are sent to a secure electronic mailbox from which employers can retrieve messages. Staff with access to this information need to have been trained and counseled on how to handle the information and must have signed forms acknowledging their understanding of the criminal penalties for misuse of this data. The employer must also make a reasonable effort to locate computers and faxes in secure area so that unauthorized personnel do not see this information.

Once obtained, the rap sheets should be stored in a locked file while hiring decisions are being made. Once the decision is made, the DOJ Bureau of Criminal Identification and Information recommends that criminal history records be destroyed, at least to the point where the individual’s identity cannot be discerned. Those wanting to retain criminal records should document the need in writing and cite the appropriate legal statutes. Any retained records must be stored in a confidential file with a designated, trained person in charge. While the DOJ recommends that the rap sheets be destroyed, they also recommend that the employer retain the employee’s state identity number in case the employee is no longer working at the school, and the employer decides to cancel the subsequent arrest notifications for that employee. Since many charter-granting agencies require proof of criminal background checks of charter school employees as part of their monitoring and oversight, CSDC recommends keeping copies of the “Request for Live Scan Service” form for each employee to prove that fingerprinting was done, then destroy the rap sheets after hiring decisions are made. This allows the charter school to prove that it is performing the required background checks while protecting the employees’ privacy rights.

Conclusion
Alleged failure to perform criminal background checks has triggered or contributed to revocations of at least two California charters. Charter schools should con-
Updated Tool Kits
We recently updated our Charter School Accountability and Charter Granting Agencies Tool Kits. These and other valuable resources are available through our website. www.cacharterschools.org

4th Annual Charter School Leadership Institute
50 participants from 42 charter schools will be joining CSDC and other charter school experts from around the country for a six-day, intensive leadership “boot camp” at Lake Tahoe from June 23-28. Topics covered will include charter school finance, law, personnel, facilities, student performance, special education, governance, and conflict resolution. Applications far exceeded the number of spots available. For those of you whom we were unable to accommodate at this year’s institute, we welcome you to reapply next year, and hope to see you at our upcoming monthly workshops.

Upcoming Workshops
CSDC will be offering all of our most popular workshops and “boot camps” as well as several new sessions this coming academic year. Tentative Summer/Fall workshop topics are as follows:

- August:
  - Charter School Development
  - Fiscal Management (3 days)

- September:
  - Charter School Design (2 days)
  - Proposition 39

- October:
  - Charter School Governance
  - Charter Drafting (2 days)
  - Financial Planning
  - Legislative Leadership Update

Check our website for an updated schedule, workshop dates and locations.

Angell no more!
Kerri Angell, our Administrative Associate, was married this spring. Her new name is Kerri Neidlinger. Please join us in congratulating her!

— Kerri Neidlinger