ITEM 5

TEST CLAIM

FINAL STAFF ANALYSIS

AND PROPOSED STATEMENT OF DECISION

Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47626, 47652

Government Code Section 3540.1

Statutes 1999, Chapter 828, Statutes 2002, Chapter 1058

Charter Schools IV

03-TC-03

San Diego Unified School District, Claimant

TABLE OF CONTENTS

district chief business officials, and charter school administrators, April 5, 2004.
California Department of Education, Charter Schools (website).
California Department of Education, 2011 Financial Reporting Calendar-Summary (website).

Assembly Committee on Education, Analysis of AB 1137 (2003-2004 Reg. Sess.) as amended March 27, 2003,
Senate Committee on Education, Analysis of AB 1994 (2001-2002 Reg. Sess.) as amended June 19, 2002

Bureau of State Audits, "California's Charter Schools: Oversight at All Levels Could Be Stronger to Ensure Charter Schools' Accountability" November 2002

Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004)

EXHIBIT A

SAN DIEGO CITY SCHOOLS

EUGENE BRUCKER EDUCATION CENTER
4100 Normal Street, San Diego, CA 92103-8363

(619) 725-7565
Fax (619) 725-7569

OFFICE OF SCHOOL SITE SUPPORT
Mandated Cost Unit, Room 3159
apalkowitz@sandi.net

September 22, 2003

Paula Higashi, Executive Director
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, Ca. 95814

Re: TEST CLAIM of San Diego Unified School District
Chapter 828, Statutes of 1999
Chapter 1058, Statutes of 2002
Charter Schools IV

Dear Ms. Higashi:

Enclosed are the original and seven copies of the San Diego Unified School District Test Claim for the above reference mandate. I have included the items requested in your September 8, 2003 letter.

The Commission regulations provide for an informal conference of the interested parties within thirty days. If this meeting is deemed necessary, I request that it be conducted in conjunction with a regularly scheduled Commission hearing.

Sincerely,

Arthur M. Palkowitz

AMP/jt
Enclosure

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47620, 47626, and 47652; Government Code Section 3540.1 as added or amended by Statutes 1999, Chapter 828 and Statutes 2002, Chapter 1058 Filed on August 29, 2003 By San Diego Unified School District, Claimant	No. 03-TC-03 ***Charter Schools IV*** NOTICE OF COMPLETE TEST CLAIM FILING AND SCHEDULE FOR COMMENTS (Gov. Code § 17500 et seq.; Cal. Code Regs., Tit. 2, §§ 1183, subd.(g) & 1183.02)

TO: San Diego Unified School District
Department of Finance
State Controller's Office
Department of Education
Interested Parties

On August 29, 2003, San Diego Unified School District, Claimant, filed an incomplete test claim on the above-described statutes alleging a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. The test claim is now complete. The test claim will be heard and determined by the Commission on State Mandates pursuant to article XIII B, section 6, Government Code section 17500 et seq., and case law. The procedures for hearing and determining this claim are prescribed in the Commission's regulations, California Code of Regulations, title 2,chapter 2.5, section 1181, et seq.

COMMENT PERIOD

The key issues before the Commission are:

- Do the provisions listed above impose a new program or higher level of service within an existing program upon local entities within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to section 17514 of the Government Code?
- Does Government Code section 17556 preclude the Commission from finding that any of the test claim provisions impose costs mandated by the state?
- Have funds been appropriated for this program (e.g., state budget) or are there any other sources of funding available? If so, what is the source?

State Agency Review of Test Claim - State agencies are requested to analyze the test claim merits and to file written comments within 30 days, or no later than **November 5, 2003.** Requests for extensions of time may be filed in accordance with sections 1183.01, subdivision (c) and 1181.1, subdivision (g) of the regulations.

Claimant Rebuttal - The claimant and interested parties may file rebuttals to state agencies' comments under section 1183.03 of the regulations. The rebuttal is due 30 days from the actual service date of written comments from any state agencies.

Mailing Lists - Under section 1181.2 of the regulations, the Commission will promulgate a mailing list of parties, interested parties, and interested persons for each test claim and provide the list to those included on the list, and to anyone who requests a copy. Any written material filed with the Commission on this claim shall be simultaneously served on the other parties listed on the mailing list provided by the Commission.

Consolidating Test Claims - Pursuant to Commission regulations, the executive director may consolidate part or all of any test claim with another test claim. See sections 1183.05 and 1183.06 of the regulations. This test claim will be evaluated for consolidation with *Charter School Collective Bargaining* (99-TC-05) filed by Western Placer Unified School District and *Charter Schools III* (99-TC-14) filed by Western Placer Unified School District and Fenton Avenue Charter School.

ADDITIONAL FILINGS ON THE SAME STATUTE OR EXECUTIVE ORDER

Under section 1183, subdivision (i) of the regulations, more than one test claim on the same statute or executive order may be filed with the Commission. The test claim must be filed within 60 days of the date the first test claim was filed. Claimants may designate a single claimant within 90 days from the date the first test claim was filed. If the Commission does not receive notice from the claimants designating a lead claimant, the executive director will designate the claimant who filed the first test claim as the lead claimant.

INFORMAL/PREHEARING CONFERENCE

An informal conference or prehearing conference may be scheduled if requested by any party. See sections 1183.04 and 1187.4 of the regulations.

HEARING AND STAFF ANALYSIS

A tentative hearing date for the test claim will be set when the draft staff analysis of the claim is being prepared. At least eight weeks before a hearing is conducted, the draft staff analysis will be issued to parties, interested parties, and interested persons for comment. Comments are due at least five weeks prior to the hearing or on the date set by the Executive Director, pursuant to section 1183.07 of the regulations. Before the hearing, a final staff analysis will be issued.

Dismissal of Test Claims - Under section 1183.09 of the regulations, test claims may be dismissed when postponed or placed on inactive status by the claimant for more than one year. Before dismissing a test claim, the Commission will provide 60 days notice and opportunity for other parties to take over the claim.

Parameters and Guidelines - If the Commission determines that a reimbursable state mandate exists, the claimant is responsible for submitting proposed parameters and guidelines for reimbursing all eligible local entities. See section 1183.1 of the regulations. All interested parties and affected state agencies will be given an opportunity to comment on the claimant's proposal before consideration and adoption by the Commission.

Statewide Cost Estimate - The Commission is required to adopt a statewide cost estimate of the reimbursable state-mandated program within 12 months of receipt of a test claim. This deadline may be extended for up to six months upon the request of either the claimant or the Commission.

Dated: October 6, 2003

PAULA HIGASHI, Executive Director

State of California
COMMISSION ON STATE MANDATES
980 Ninth Street, Suite 300
Sacramento, CA 95814
916-323-3562
CSM

For Official Use Only

RECEIVED

OCT 0 1 2003

COMMISSION ON STATE MANDATES

Original Filing Date Aug. 29, 2003

TEST CLAIM FORM

Claim No. 03-TC-03

Local Agency of School District Submitting Claim

SAN DIEGO UNIFIED SCHOOL DISTRICT

Contact Person

Arthur M. Palkowitz

Telephone No: 619-725-7565
Fax: 619-725-7569

Address

San Diego Unified School District
4100 Normal St., Room 3159
San Diego, CA 92103

Representative Organization to be Notified

Dr. Carol Berg, Consultant, Education Mandated Cost Network
c/o School Services of California
1121 L Street, Suite 1060
Sacramento, CA 95814

Voice: 916-446-7517
Fax: 916-446-2011

This test claim alleges the existence of "costs mandated by the state" within the meaning of section 17514 of the Government Code and section 6, article XIII B of the California Constitution. This test claim is filed pursuant to section 17551(a) of the Government Code.

Identify specific section(s) of the chaptered bill or executive order alleged to contain a mandate, including the particular statutory code section(s) within he chaptered bill, if applicable.

Charter IV

Chapter 828, Statutes of 1999 — Education Code Sections 47605, 47611.5, 47620, 47626, Gov't. Code 3540.1

Chapter 1058, Statutes of 2002 — Education Code Sections 1628, 42100, 47602, 47604.3, 47605, 47613.1, 47652
Education Code Sections 47604.4, 47605.1, 47605.6, 47605.8, 47612.1

IMPORTANT: PLEASE SEE INSTRUCTIONS AND FILING REQUIREMENTS FOR COMPLETING A TEST CLAIM ON THE REVERSE SIDE.

Name and Title of Authorized Representative

Gamy Rayburn
Accounting Director

Telephone No: 619-725-7560
Fax: 619-725-7564

Signature of Authorized Representative

G.M. Rayburn

Date: September 29, 2003

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

Test Claim of:	)	No. CSM _____
	)	
San Diego Unified	)	Chapter 828, Statutes of 1999
School District	)	Chapter 1058, Statutes of 2002
	)	Education Code Sections 1628, 42100, 47602,
	)	47604.3, 47604.4, 47605, 47605.1, 47605.6,
	)	47605.8, 47611.5, 47612.1, 47613.1,
	)	47620, 47626, 47652
	)	Government Code Section 3540.1
	)	
	)	
	)	*Charter Schools IV*
	)	

AUTHORITY FOR THE CLAIM

The Commission on State Mandates ("Commission") has the authority pursuant to Government Code Section 17551(a) to hear and decide upon a claim by a local agency or school district that the local agency or school district is entitled to be reimbursed by the state for costs mandated by the state as required by section 6 of article XIII B of the California Constitution. San Diego Unified School District ("Claimant") is a school district as defined in Government Code section 17519. This test claim is filed pursuant to Title 2, California Code of Regulations section 1183.

Test Claim of San Diego Unified School District
Chapter 828, Statutes of 1999
Chapter 1058, Statutes of 2002, *et al.*
Charter Schools IV

STATEMENT OF THE CLAIM

This test claim alleges reimbursable costs mandated by the state by Chapter 828 Statutes of 1999 ("Chapter 828/99").[1] This bill would require (1) provisions of existing law related to

---

[1] Chapter 828/99

SECTION 1. Section 47605 of the Education Code is amended to read:

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one, or more, of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) 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 school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits
shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment
Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 4 of Title 1 of the Government Code.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations,
shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a

charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly to the State Board of Education. The county board of education or the State Board of Education, as the case may be, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education.

(2) A charter school for which a charter is granted by either the county board of education or the State Board of Education pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(3) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny a petition shall, thereafter, be subject to judicial review.

(4) The State Board of Education shall adopt regulations implementing this subdivision.

(5) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter by the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(l) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

SEC. 2. Section 47611.5 is added to the Education Code, to read:

47611.5. (a) Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code shall apply to charter schools.

(b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section
3540) of Division 4 of the Government Code.

(c) If the charter of a charter school does not specify that it shall comply with those statutes and regulations governing public school employers that establish and regulate tenure or a merit or
civil service system, the scope of representation for that charter school shall also include discipline and dismissal of charter school employees.

(d) The Public Employment Relations Board shall take into account the Charter Schools Act of 1992 (Part 26.8 (commencing with Section 47600)) when deciding cases brought before it related to charter schools.

(e) The approval or a denial of a charter petition by a granting agency pursuant subdivision (b) of Section 47605 shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board.

(f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

SEC. 3. An article heading is added to Chapter 5 (commencing with Section 47620) of Part 26.8, to read:

Article 1. University of California at Los Angeles Elementary Charter School

SEC. 4. Article 2 (commencing with Section 47626) is added to Chapter 5 of Part 26.8 of the Education Code, to read:

Article 2. Employer

47626. (a) Notwithstanding Section 47611.5, a charter school operated by the University of California in facilities owned by the Regents of the University of California shall declare in its charter that it is the employer of the employees at the charter school for the purposes of Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code. The provisions of Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the
Government Code shall apply to the charter school. A charter school operated by the University of California in facilities owned by the Regents of the University of California may not be deemed a public school employer for the purposes of this chapter.

(b) By March 31, 2000, an existing charter school operated by the University of California shall amend its charter to comply with this section.

SEC. 5. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so
substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating

district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the
Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing
for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person
employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(l) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 5.5. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization that has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) "Employee organization" means any organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person that organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so
substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing
for the duration of the written agreement. However, that arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code, or a joint powers agency, except a joint powers agency established to provide services pursuant to Sections 990.4 and 990.8, provided that all of the following apply to the joint powers agency:

(1) It is created as an agency or entity that is separate from the parties to the joint powers agreement pursuant to Section 6503.5.

(2) It has its own employees separate from employees of the parties to the joint powers agreement.

(3) Any of the following are true:

(A) It provides services primarily performed by a school district, county board of education, or county superintendent of schools.

(B) A school district, county board of education, or county superintendent of schools is designated in the joint powers agreement pursuant to Section 6509.

(C) It is comprised solely of school agencies.

(l) "Recognized organization" or "recognized employee organization" means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to
assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 3540.1 of the Government Code proposed by both this bill and AB 91. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 3540.1 of the Government Code, and (3) this bill is enacted after AB 91, in which case Section 5 of this bill shall not become operative.

collective bargaining in public education employment apply to charter schools, (2) the charter school charter to declare whether the charter school is the exclusive public school employer of the employees at the charter school for this purpose, (3) a charter school, operated by the University of California in university facilities, to declare in its charter that it is the employer of the employees at the charter school for the purposes of provisions of law relating to collective bargaining for employees of public institutions of higher education, (4) if the charter of a charter school does not specify that it will comply with statutory and regulatory provisions that govern public school employers relating to tenure and merit or civil service, then discipline and dismissal of employees will be included within the scope of representation.

This test claim also alleges reimbursable costs mandated by the state by Chapter 1058, Statutes of 2002 ("Chapter 1058/02"),[2] which requires (1) the governing board of each school

---

[2] Chapter 1058/02 SECTION ONE amended Section 1628 of the Education Code to read: On or before September 15 each year, the county superintendent of schools shall prepare and file with the Superintendent of Public Instruction, along with the statements received pursuant to subdivision (b) of Section 42100, a statement of all receipts and expenditures of the county office of education for the preceding fiscal year. The statement shall be in a format or on forms prescribed by the Superintendent of Public Instruction, in accordance with regulations adopted by the State Board of Education. These forms may be amended periodically by the Superintendent of Public Instruction to accommodate changes in statute or government reporting standards.

Chapter 1058/02 SECTION 2. Section 42100 of the Education Code is amended to read:
On or before September 15, the governing board of each school district shall approve, in a format prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the district for the preceding fiscal year and shall file the statement, along with the statement received pursuant to subdivision (b), with the county superintendent of schools. On or before October 15, the county superintendent of schools shall verify the mathematical accuracy of the statements and shall transmit a copy to the Superintendent of Public Instruction.

(b) On or before September 15, each charter school shall approve, in a format prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year and shall file the statement with the entity that approved the charter school.

(c) The forms prescribed by the Superintendent of Public Instruction shall be adopted as regulations by the State Board of Education, and may be amended periodically to accommodate changes in statute or government reporting standards.

Chapter 1058/02 SECTION FOUR. Section 47604.3 of the Education Code is amended read: A charter school shall promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority, the county office of education that has jurisdiction over the school's chartering authority, or from the Superintendent of Public Instruction and shall consult with the chartering authority, the county office of education, or the Superintendent of Public Instruction regarding any inquiries.

Chapter 1058/02 SECTION FIVE amended Section 47604.4 of the Education Code to read: In addition to the authority granted by Section 47604.3, a county superintendent of schools may, based upon written complaints by

parents or other information that justifies the investigation, monitor the operations of a charter school located within that county and conduct an investigation into the operations of that charter school. If a county superintendent of schools monitors or investigates a charter school pursuant to this section, the county office of education shall not incur any liability beyond the cost of the investigation. (b) A charter school shall notify the county superintendent of schools of the county in which it is located of the location of the charter school, including the location of each site, if applicable, prior to commencing operations.

Chapter 1058/02 SECTION SIX amended Section 47605 of the Education Code to read: Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district, as long as each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend
the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the
petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the governing board of the school district of those additional locations. The governing board of the school district shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved by the governing board of the school districts, they shall be a material revision to the charter school's charter.

(5) Notwithstanding subdivision (a), a charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations and either of the following circumstances exist:

(A) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing

petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A" to "G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) 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 school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7

(commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(P) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the State Department of Education, and the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education, and the state board may approve the petition, in accordance with subdivision (b). Any charter school that receives approval of its petition from a county board of education or from the State Board of Education on appeal shall be subject to the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition. A charter petition that is submitted to either a county board of

education or to the State Board of Education shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(2) In assuming its role as a chartering agency, the State Board of Education shall develop criteria to be used for the review and approval of charter school petitions presented to the State Board of Education. The criteria shall address all elements required for charter approval, as identified in subdivision (b) of Section 47605 and shall define "reasonably comprehensive" as used in paragraph (5) of subdivision (b) of Section 47605 in a way that is consistent with
the intent of the Charter Schools Act of 1992. Upon satisfactory completion of the criteria, the State Board of Education shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the State Board of Education based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district, to deny a petition shall, thereafter, be subject to judicial review.

(5) The State Board of Education shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Department of Education and the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter through an appeal to the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(l) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to non-core, non-college preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

SEC. 7. Section 47605.1 is added to the Education Code, to read: (a) (1) Notwithstanding any other provision of law, a charter school that is granted a charter from the governing board of a school district or county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, shall locate in accordance with the geographic and site limitations of this part.

(2) Notwithstanding any other provision of law, a charter school that is granted a charter by the State Board of Education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, based on the denial of a petition by the governing board of a school district or county board of education, as described in paragraphs (1) and (2) of subdivision (j) of Section 47605, may locate only within the geographic boundaries of the chartering entity that initially denied the petition for the charter, (3) A

charter school that receives approval of its charter from a governing board of a school district, a county office of education, or the State Board of Education prior to July 1, 2002, but does not commence operations until after January 1, 2003, shall be subject to
the geographic limitations of the part, in accordance with subdivision (e), (b) Nothing in this section is intended to affect the admission requirements contained in subdivision (d) of Section 47605.

SEC. 8. Section 47605.6 is added to the Education Code, to read: 47605.6. (a) (1) In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may only approve a countywide charter if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. A petition for the establishment of a countywide charter school pursuant to this subdivision may be circulated throughout the county by any one or more persons seeking to establish the charter school. The petition may be submitted to the county board of education for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils residing within the county that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(2) An existing public school may not be converted to a charter school in accordance with this section.

(3) After receiving approval of its petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education shall notify the school districts where those sites will be located. The charter school shall also request a material revision of its charter by the county board of education that approved its charter and the county board shall consider whether to approve those additional locations at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located. If approved, the location of the approved sites shall be a material revision of the school's approved charter.

(4) A petition shall include a prominent statement indicating that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 60 days after receiving a petition, in accordance with subdivision (a), the county board of education shall hold a public hearing on the provisions of the charter, at which time the county board of education shall consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. Following review of the petition and the public hearing, the county board of education shall either grant or deny the charter within 90 days of receipt of the petition. However, this date may be extended by an additional 30 days if both parties agree to the extension. A county board of education may impose any additional requirements beyond those required by this section that it considers necessary for the sound operation of a countywide charter school. A county board of education may grant a charter for the operation of a school under this part only if the board is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Section 47605. The county board of education shall deny a petition for the establishment of a charter school if the board finds, one or more of the following:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom

the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The location of each charter school facility that the petitioner proposes to operate.

(E) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(F) The qualifications to be met by individuals to be employed by the school.

(G) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(H) 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 school district to which the charter petition is submitted.

(I) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.

(M) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(6) Any other basis that the board finds justifies the denial of the petition.

(c) A county board of education that approves a petition for the operation of a countywide charter may, as a condition of charter approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report to the county board of education on the operations of the charter school. The county board of education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the county board of education.

(d) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(e) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the county except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the county board of education shall make reasonable efforts to accommodate the

growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(f) No county board of education shall require any employee of the county or a school district to be employed in a charter school.

(g) No county board of education shall require any pupil enrolled in a county program to attend a charter school.

(h) The county board of education shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(i) In reviewing petitions for the establishment of charter schools within the county, the county board of education shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Section 54032.

(j) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the school districts within the county, the Superintendent of Public Instruction and to the State Board of Education.

(k) If a county board of education denies a petition, the petitioner may not elect to submit the petition for the establishment of the charter school to the State Board of Education.

(l) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to the County Office of Education, State Controller and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

Section 9 Chapter 1058/02 added Section 47605.8 of the Education Code to read: (a) A petition for the operation of a state charter school may be submitted directly to the State Board of Education, and the board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board of Education shall adopt regulations, pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) for the implementation of this section. Any regulations adopted pursuant to this section shall ensure that a charter school approved pursuant to this section meets all requirements otherwise imposed on charter schools pursuant to this part, except that a charter school approved pursuant to this section shall not be subject to the geographic and site limitations otherwise imposed on charter schools.

(b) The State Board of Education may not approve a petition for the operation of a state charter school under this section unless the State Board of Education finds that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. The finding of the board in this regard shall be made part of the public record of the board's proceedings and shall precede the approval of the charter.

(c) The State Board of Education may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on, the operations of the charter school. The State Board of Education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the State Board of Education.

(d) The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision.

Section 10 Chapter 1058/02 added Section 47612.1 of the Education Code to read: Except for the requirement that a pupil be a California resident, subdivision (b) of Section 47612 shall not apply to a charter school program that provides instruction exclusively in partnership with any of the following:

district shall approve the annual statement of all receipts and expenditures for the preceding fiscal year and submit it to the entity that approved the charter school and would make other related changes; (2) in its petition for the establishment of a charter school that is submitted to a chartering agency, or for which a renewal is sought, on or after January 1, 2003, identify a single charter school and specify the geographic and site requirements for the establishment of a charter school; (3) modify the process by which a petitioner appeals the denial of a charter petition, to require a petitioner to appeal to a County Board of Education or directly to the State Board of

---

(a) The federal Workforce Investment Act of 1998 (Pub. L. No. 105-220; 29 U.S.C. Sec. 2801, et seq.).
(b) Federally affiliated Youth Build programs.
(c) Federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider.
(d) The California Conservation Corps or local conservation corps certified by the California Conservation Corps pursuant to Sections 14406 or 14507.5 of the Public Resources Code.

SEC. 11. Chapter 1058/02 amended added Section 47613.1 of the Education Code to read: The Superintendent of Public Instruction shall make all of the following apportionments on behalf of a charter school in a school district in which all schools have been converted to charter schools pursuant to Section 47606, and that elects not to be funded pursuant to the block grant funding model set forth in Section 47633 in each fiscal year that the charter school so elects:

(a) From funds appropriated to Section A of the State School Fund for apportionment for that fiscal year pursuant to Article 2 (commencing with Section 42238) of Chapter 7 of Part 24, an amount for each unit of current fiscal year regular average daily attendance in the charter school that is equal to the current fiscal year base revenue limit for the school district to which the charter petition was submitted.

(b) For each pupil enrolled in the charter school who is entitled to special education services, the state and federal funds for special education services for that pupil that would have been apportioned for that pupil to the school district to which the charter petition was submitted.

(c) Funds for the programs described in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761, and Sections 63000 and 64000, to the extent that any pupil enrolled in the charter school is eligible to participate.

SEC. 12. Section 47652 of the Education Code is amended to read: (a) Notwithstanding Section 41330, a charter school in its first year of operation shall be eligible to receive funding for the advance apportionment based on an estimate of average daily attendance for the current fiscal year, as approved by the local educational agency that granted its charter and the county office of education in which the charter-granting agency is located. For charter schools approved by the State Board of Education, estimated average daily attendance shall be approved by, and submitted directly to, and approved by, the State Department of Education. Not later than five business days following the end of the first 20 schooldays, a charter school receiving funding pursuant to this section shall report to the Department of Education its actual average daily attendance for that first month, and the Superintendent of Public Instruction shall adjust immediately, but not later than 45 days, the amount of its advance apportionment accordingly.

(b) A charter school in its first year of operation may only commence instruction within the first three months of the fiscal year beginning July 1 of that year. A charter school shall not be eligible for an apportionment pursuant to subdivision (a), or any other apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year.

Education; (4) describe specified elements, including, among others, the educational program of the school and information on the facilities to be used by the charter school; how a charter school that will serve high school pupils will inform parents about the transferability and eligibility of courses to other public high schools and to meet college entrance requirements, the procedures to be used if the charter school class, and would prescribe related matters in its petition for the establishment of a charter school; (5) grant general authority to the county superintendent of schools to monitor the operations of a charter school located within that county, to conduct an investigation into the operations of that charter school, based on parental complaints or other information that justifies the investigation, and would limit the liability of a county superintendent of schools when conducting those activities, (6) consult with the chartering authority or Superintendent of Public Instruction regarding inquiries and respond promptly, (7) authorize a county board of education to approve a charter for the operation of a charter school that would operate at multiple sites throughout the county, (8) for a charter school that is granted a charter from the governing board of a school district or from a county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, locate within the geographic and site limitations specified in the act, except as specified, and would prescribe related matters, (9) a charter school in its first year of operation to commence instruction within the first 3 months of the fiscal year beginning July 1 of that year, would make a charter school ineligible for an apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year, and would prescribe related matters.

A. ACTIVITIES REQUIRED UNDER PRIOR LAW

1. Activities Required Prior to 1975.

No statute or executive order in effect on December 31, 1974 provided for the existence of charter schools.

2. Post-1974 Requirements.

Chapter 781, Statutes of 1992 ("Chapter 781/92")[3] allowed one or more persons to petition school districts for the establishment of charter schools. On July 21, 1994, the Commission approved a Statement of Decision finding that certain provisions of Chapter 781/92 imposed a reimbursable state-mandated new program or higher level of service upon school districts.[4] In the Parameters and Guidelines for the *Charter Schools* mandate adopted by the Commission on October 18, 1994, the Commission determined that school districts are eligible to claim reimbursement for the direct and indirect costs of (1) responding to information requests regarding charter school law and the governing board's charter policies and procedures, (2) evaluating charter school petitions, (3) preparing for and conducting public hearings related to charter petitions, (4) reviewing, analyzing, and reporting on a charter school's performance for the purpose of charter reconsideration, renewal, revision, evaluation, or revocation, and (5) responding to, preparing for, and participating in appeals of decisions to deny charter school petitions and, if required to reconsider the charter petition.

The Commission also determined that county offices of education which receive an appeal of the denial of a charter school petition by a school district are eligible to claim

---

[3]Chapter 781/92 was the subject of a prior test claim, CSM-4437 *Charter Schools*. Chapter 781/92 is not attached as an exhibit to this test claim. This statute is part of the Commission's administrative record in CSM-4437.
[4]This test claim does not request reconsideration of CSM-4437. However, if the Commission determines that Chapter 34/98, Chapter 673/98, and the Executive Orders impose a reimbursable state-mandated new program or higher level of service, the Claimants will request that the Commission amend the Parameters and Guidelines for the

reimbursement for the direct and indirect costs of selecting and convening a review panel of three governing board members and three teachers from other school districts to determine if the school district governing board acted properly in denying the petition, and if necessary, requesting the school district governing board to reconsider the charter petition. The Commission found that school districts which had personnel selected to take part in the review panel convened by the county superintendent of schools are eligible to claim reimbursement for the direct and indirect costs of the participation of those personnel in the review panel.

B. ACTIVITIES REQUIRED UNDER STATUTE AND EXECUTIVE ORDERS CONTAINING MANDATES.

1. Chapter 828/99.

This bill would require (1) provisions of existing law related to collective bargaining in public education employment apply to charter schools, (2) the charter school charter to declare whether the charter school is the exclusive public school employer of the employees at the charter school for this purpose, (3) a charter school, operated by the University of California in university facilities, to declare in its charter that it is the employer of the employees at the charter school for the purposes of provisions of law relating to collective bargaining for employees of public institutions of higher education, (4) if the charter of a charter school does not specify that it will comply with statutory and regulatory provisions that govern public school employers relating to tenure and merit or civil service, then discipline and dismissal of employees will be included within the scope of representation.

Charter Schools mandate to include the new reimbursable activities required by these statutes and executive orders.

2. Chapter 1058/02.

The sponsoring local educational agency[5] (school district or county office of education) are required to calculate the estimated property taxes per unit of average daily attendance ("ADA") and to transfer to each charter school the average amount of property taxes per ADA that is attributable to the charter school's ADA. In most instances, the transfers must be made prior to the school district's or county office of education's receipt of the property taxes. Thus, school districts and county offices of education are effectively financing the advance of property taxes to charter schools and incur costs of financing these advances.

3. Summary of Activities.

Chapter 1058/02 imposes the following new activities:

(1) approve the annual statement of all receipts and expenditures for the preceding fiscal year and submit it to the entity that approved the charter school;

(2) except as specified, that each petition for the establishment of a charter school that is submitted to a chartering agency, or for which a renewal is sought, on or after January 1, 2003, identify a single charter school and will specify the geographic and site requirements for the establishment of a charter school;

[5]"'Sponsoring local educational agency' means the local educational agency that granted the charter. For purposes of the funding model, in cases where a charter was granted by a county office of education after having been previously denied by a school district, the sponsoring local educational agency would be deemed to be the school district that initially denied the charter petition. In cases where a charter was granted by the State Board of Education after having been previously denied by a local educational agency, the sponsoring local educational agency would be deemed to be either the local educational agency that initially denied the charter petition or, alternatively, a local educational agency designated by the State Board of Education pursuant to Education Code section 47605(k)(1)."

(3) modify the process by which a petitioner appeals the denial of a charter petition, to require a petitioner to appeal to a county office of education before appealing to the State Board of Education;

(4) grant general authority to the county superintendent of schools to monitor the operations of a charter school located within that county, to conduct an investigation into the operations of that charter school, based on parental complaints or other information that justifies the investigation, and would limit the liability of a county superintendent of schools when conducting those activities,

(5) require a charter school to consult with the county office of education regarding inquiries,

(6) authorize a county board of education to approve a charter for the operation of a charter school that would operate at multiple sites throughout the county,

(7) authorize a petition for the operation of a charter school to be submitted directly to the State Board of Education, would authorize the state board to approve a petition for a charter school that would operate at multiple sites throughout the state, and would prescribe related matters,

(8) require that a charter school that is granted a charter from the governing board of a school district or from a county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, locate within the geographic and site limitations specified in the act, except as specified, and would prescribe related matters,

(9) authorize a charter school in its first year of operation to commence instruction within the first 3 months of the fiscal year beginning July 1 of that year, would make a charter school ineligible for an apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year, and would prescribe related matters. Chapter 1058/02 and the Executive Orders impose new activities on school districts to respond to, prepare for, and participate in any judicial proceeding filed by a charter petitioner challenging a decision by a school district to deny a charter petition.

C. COSTS INCURRED OR EXPECTED TO BE INCURRED FROM MANDATE.

School districts and county offices of education have incurred or will incur costs in excess of $1000 per fiscal year to perform the activities described in section B above.

D. OTHER PROVISIONS IMPACTING THE MANDATE.

1. None of the Government Code section 17556 statutory exceptions to a finding of costs mandated by the state apply to this statute.

2. There are no other federal or state constitutional provisions, statutes or executive orders impacted.

3. No funds were appropriated by Chapter 828/99 and Chapter 1058/02 for reimbursement of the costs mandated by the state.

EXHIBITS

The following exhibits are attached to and incorporated into this test claim:

Exhibit A: Chapter 828, Statutes of 1999

Exhibit B: Chapter 1058, Statutes of 2002

Exhibit C: Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47620, 47626, 47652
Government Code Section 3540.1

Exhibit D: Declaration of Jose Gonzales

CERTIFICATION

I certify by my signature below that the statements made in this document are true and correct of my own knowledge, and as to all other matters, I believe them to be true and correct based upon information and belief.

Executed on August 21, 2003, at San Diego, California

J. M. Rayburn

Gamy Rayburn, Accounting Director
San Diego Unified School District

EXHIBIT A
Chapter 828, Statutes of 1999

CHAPTER 828

A.B. No. 631

AN ACT to amend Section 47605 of, and to add Section 47611.5 to, to add an article heading (commencing with Section 47620) to Chapter 5 of, and to add Article 2 (commencing with Section 47626) to Chapter 5 of, Part 26.8 of, the Education Code, and to amend Section 3540.1 of the Government Code, relating to charter schools.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 631, Migden. Charter schools: collective bargaining.

Existing law, the Charter Schools Act of 1992, permits teachers, parents, pupils, and community members to petition a school district governing board to approve a charter school to operate independently from the existing school district structure as a method of accomplishing, among other things, improved pupil learning. Existing law, with certain exceptions, generally exempts charter schools from the provisions of the Education Code applicable to school districts.

This bill would require that provisions of existing law related to collective bargaining in public education employment apply to charter schools, thereby imposing a state-mandated local program. The bill would require the charter school charter to declare whether the charter school is the exclusive public school employer of the employees at the charter school for this purpose. The bill would require a charter school, operated by the University of California in university facilities, to declare in its charter that it is the employer of the employees at the charter school for the purposes of provisions of law relating to collective bargaining for employees of public institutions of higher education. This bill would require that, if the charter of a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employers relating to tenure and merit or civil service, then discipline and dismissal of employees would be included within the scope of representation.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

This bill would incorporate additional changes in Section 3540.1 of the Government Code proposed by AB 91, to be operative only if that bill and this bill are enacted and become effective on or before January 1, 2000, and this bill is enacted last.

The people of the State of California do enact as follows:

SECTION 1. Section 47605 of the Education Code is amended to read:

47605. (a)(1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons

seeking to establish the charter school. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one, or more, of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) 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 school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 4 of Title 1 of the Government Code.

(c)(1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(d)(1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2)(A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the ev
accommodate th
impede the char

(e) No govern
to be employed i

(f) No govern
district to attend

(g) The gover
provide informat
including, but no
administrative se
any, upon the sch
required to provi
including startup
operation.

(h) In reviewin
the school distric
capability to prov
or petitioners as
State Department

(i) Upon the ap
petitioner or petit
petition, to the Sta

(j)(1) If the gov
to submit the peti
education or direc
State Board of E
subdivision (b). I
school to the count
the petitioner may
Education.

(2) A charter sch
or the State Board
school for all fundi

(3) If either the
petition within 120
deny a petition shal

(4) The State Bo

(5) Upon the app
petitioners shall pro
State Board of Edu

(k)(1) The State
and oversight respo
to any local educati
governing board of

(2) The designat
authority of a charte
Section 47607, excep
Education.

(3) A charter scho
elects to seek renew
petition for renewal
charter. If the gove
the school may petiti

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

(j)(1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly to the State Board of Education. The county board of education or the State Board of Education, as the case may be, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education.

(2) A charter school for which a charter is granted by either the county board of education or the State Board of Education pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(3) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny a petition shall, thereafter, be subject to judicial review.

(4) The State Board of Education shall adopt regulations implementing this subdivision.

(5) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Board of Education.

(k)(1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter by the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(*l*) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

SEC. 2. Section 47611.5 is added to the Education Code, to read:

47611.5. (a) Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code shall apply to charter schools.

(b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of the Government Code.

(c) If the charter of a charter school does not specify that it shall comply with those statutes and regulations governing public school employers that establish and regulate tenure or a merit or civil service system, the scope of representation for that charter school shall also include discipline and dismissal of charter school employees.

(d) The Public Employment Relations Board shall take into account the Charter Schools Act of 1992 (Part 26.8 (commencing with Section 47600)) when deciding cases brought before it related to charter schools.

(e) The approval or a denial of a charter petition by a granting agency pursuant subdivision (b) of Section 47605 shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board.

(f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

SEC. 3. An article heading is added to Chapter 5 (commencing with Section 47620) of Part 26.8, to read:

Article 1. University of California at Los Angeles Elementary Charter School

SEC. 4. Article 2 (commencing with Section 47626) is added to Chapter 5 of Part 26.8 of the Education Code, to read:

Article 2. Employer

47626. (a) Notwithstanding Section 47611.5, a charter school operated by the University of California in facilities owned by the Regents of the University of California shall declare in its charter that it is the employer of the employees at the charter school for the purposes of Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code. The provisions of Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code shall apply to the charter school. A charter school operated by the University of California in facilities owned by the Regents of the University of California may not be deemed a public school employer for the purposes of this chapter.

(b) By March 31, 2000, an existing charter school operated by the University of California shall amend its charter to comply with this section.

SEC. 5. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization which has been certified by the board as the exclusive representative of the public school

employees in an a
Section 3544).

(c) "Confidential
duties, has access t
employee relations.

(d) "Employee or
school employer and
in their relations wi
any person such an

(e) "Exclusive re
the exclusive negoti
ate unit of a public s

(f) "Impasse" me
representation have
positions are so subs

(g) "Management
bilities for formulat
positions shall be de
Employment Relatio

(h) "Meeting and
the exclusive repres
agreement on matte
either party, of a wr
shall, when accepted
binding upon both
subdivision 2 of Secti
exceed three years.

(i) "Organizational

(1) An arrangemen
to join an employee
employment, if he or
the duration of the
employee of the right
period of 30 days follo

(2) An arrangemen
either to join the rec
service fee in an amo
assessments of the or
from the effective dat

(j) "Public school e
school employer exce
of this state, managem

(k) "Public school e
a school district, a cou
charter school that ha
Section 47611.5 of the

(*l*) "Recognized org
organization which ha
pursuant to Article 5 (

(m) "Supervisory en
authority in the intere
discharge, assign, rewa
to and direct them, or
connection with the fo
routine or clerical natu

employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, * * * a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(l) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 5.5. Section 3540.1 of the Government Code is amended to read:

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization that has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) "Employee organization" means any organization that includes employees of a public school employer and that has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person * * * that organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, * * * that arrangement shall not deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code, or a joint powers agency, except a joint powers agency established to provide services pursuant to Sections 990.4 and 990.8, provided that all of the following apply to the joint powers agency:

(1) It is created
agreement pursuan
(2) It has its ow
agreement.
(3) Any of the fo
(A) It provides
cation, or county su
(B) A school dis
designated in the j
(C) It is compris
(l) "Recognized
organization that
pursuant to Article
(m) "Supervisor
authority in the in
discharge, assign,
to and direct them
connection with th
routine or clerical
SEC. 6. Notwi
State Mandates de
to local agencies
(commencing with
statewide cost of t
reimbursement sha
SEC. 7. Sectic
Government Code
both bills are enac
Section 3540.1 of t
Section 5 of this bi

EM

AN ACT to add Art
Unemployment

AB 643, Wessor
Existing law pr
job training and p
This bill would
ment Department
conjunction with
very low income
Director of Empl
who would recruit

Ad

(1) It is created as an agency or entity that is separate from the parties to the joint powers agreement pursuant to Section 6503.5.

(2) It has its own employees separate from employees of the parties to the joint powers agreement.

(3) Any of the following are true:

(A) It provides services primarily performed by a school district, county board of education, or county superintendent of schools.

(B) A school district, county board of education, or county superintendent of schools is designated in the joint powers agreement pursuant to Section 6509.

(C) It is comprised solely of school agencies.

(*l*) "Recognized organization" or "recognized employee organization" means an employee organization that has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend that action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 7. Section 5.5 of this bill incorporates amendments to Section 3540.1 of the Government Code proposed by both this bill and AB 91. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2000, (2) each bill amends Section 3540.1 of the Government Code, and (3) this bill is enacted after AB 91, in which case Section 5 of this bill shall not become operative.

EMPLOYMENT DEVELOPMENT DEPARTMENT—YOUTHBUILD PROGRAM—GRANTS

CHAPTER 829

A.B. No. 643

AN ACT to add Article 4 (commencing with Section 9800) to Chapter 2 of Part 1 of Division 3 of the Unemployment Insurance Code, relating to job training.

[Filed with Secretary of State October 10, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

AB 643, Wesson. Job training: California YouthBuild Program.

Existing law provides for the Employment Development Department to administer various job training and placement programs and services.

This bill would create the California YouthBuild Program within the Employment Development Department to help disadvantaged youth obtain education and employment skills in conjunction with the construction or rehabilitation of housing for special need populations, very low income households, and low-income households. This bill would provide for the Director of Employment Development to make grants to public or private nonprofit entities, who would recruit and select eligible participants for a program. This bill would specify the

EXHIBIT B
Chapter 1058, Statutes of 2002

in whose jurisdiction the nuisance is located. The actual amount of rent being received for the rental of the building or place, or the existence of any vacancy therein, may be considered, but shall not be the sole determinant of the fair market rental value. Expert testimony may be used to determine the fair market rental value.

(2) While * * * the order remains in effect as to closing, the building or place is and shall remain in the custody of the court.

(3) For removing and selling the movable property, the officer is entitled to charge and receive the same fees as he or she would for levying upon and selling like property on execution.

(4) For closing the premises and keeping them closed, a reasonable sum shall be allowed by the court.

* * *

(b) The court may assess a civil penalty not to exceed twenty-five thousand dollars ($25,000) against any and all of the defendants, based upon the severity of the nuisance and its duration.

(c) One-half of the civil penalties collected pursuant to this section shall be deposited in the Restitution Fund in the State Treasury, the proceeds of which shall be available for appropriation by the Legislature to indemnify persons filing claims pursuant to Article 1 (commencing with Section 13959) of Chapter 5 of Part 4 of Division 3 of Title 2 of the Government Code and one-half of the civil penalties collected shall be paid to the city in which the judgment was entered, if the action was brought by the city attorney or city prosecutor. If the action was brought by a district attorney, one-half of the civil penalties collected shall be paid to the treasurer of the county in which the judgment was entered.

EDUCATION—CHARTER SCHOOLS—PETITION FOR ESTABLISHMENT

CHAPTER 1058

A.B. No. 1994

AN ACT to amend Sections 1628, 42100, 47602, 47604.3, 47605, 47613.1, and 47652 of, and to add Sections 47604.4, 47605.1, 47605.6, 47605.8, and 47612.1 to, the Education Code, relating to charter schools.

[Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1994, Reyes. Charter schools: operation.

(1) Existing law requires the governing board of each school district to approve an annual statement of all receipts and expenditures for the district for the preceding fiscal year with the county superintendent of schools.

This bill would require each charter school to approve that statement and submit it to the entity that approved the charter school and would make other, related changes, thereby imposing a state-mandated local program.

(2) The Charter Schools Act of 1992 authorizes a limited number of charter schools to operate in the state each school year, and for purposes of implementing that provision, requires the State Board of Education to assign a number to each charter petition that it grants under the act.

This bill would require that each number assigned by the state board, on or after January 1, 2003, correspond to a single petition that identifies a single charter school. The bill would provide that schoolsites shall not be considered separate schools if they share a common educational program.

(3) Existing law permits the governing board of a school district to approve a charter school to operate independently from the existing school district structure as a method of accomplishing, among other things, improved pupil learning. Under the act, if the governing board of a school district denies a petition for the establishment of a charter school, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly to the State Board of Education. The act does not expressly authorize a school district to approve a petition for a charter school that would operate outside the boundaries of the school district. Under the act, a petition for the establishment of a charter school is required to describe specified elements, including, among others, the educational program of the school and information on the facilities to be used by the charter school.

This bill would require, except as specified, that each petition for the establishment of a charter school that is submitted to a chartering agency, or for which a renewal is sought, on or after January 1, 2003, identify a single charter school and would specify the geographic and site requirements for the establishment of a charter school. The bill would modify the process by which a petitioner appeals the denial of a charter petition, to require a petitioner to appeal to a county office of education before appealing to the State Board of Education.

The bill would require the petition for the establishment of a charter school to describe how a charter school that will serve high school pupils will inform parents about the transferability and eligibility of courses to other public high schools and to meet college entrance requirements, the procedures to be used if the charter school closes, and would prescribe related matters.

(4) The act requires a charter school to respond promptly to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority or from the Superintendent of Public Instruction and to consult with the chartering authority or the Superintendent of Public Instruction regarding those inquiries.

This bill would grant general authority to the county superintendent of schools to monitor the operations of a charter school located within that county, to conduct an investigation into the operations of that charter school, based on parental complaints or other information that justifies the investigation, and would limit the liability of a county superintendent of schools when conducting those activities. The bill would, in addition, require a charter school to consult with the county office of education regarding inquiries.

(5) Existing law authorizes a petition to be submitted directly to a county board of education for a charter school that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and services.

This bill would also authorize a county board of education to approve a charter for the operation of a charter school that would operate at multiple sites throughout the county. The bill would prescribe the petition and approval process for such a school, the applicable requirements for operation, and other related matters.

(6) The bill would authorize a petition for the operation of a charter school to be submitted directly to the State Board of Education, would authorize the state board to approve a petition for a charter school that would operate at multiple sites throughout the state, and would prescribe related matters.

(7) The bill would require that a charter school that is granted a charter from the governing board of a school district or from a county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, locate within the geographic and site limitations specified in the act, except as specified, and would prescribe related matters.

(8) The act provides that average daily attendance may not be generated by a pupil who is not continuously enrolled in public school and who makes satisfactory progress toward a high school diploma.

This bill would declare that these conditions do not apply to certain specified charter schools.

(9) The act requires the Superintendent of Public Instruction, in the 1999–2000, 2000–01, and 2001–02 fiscal years, to make apportionments to a charter school that elects not to be

funded pursuant to the block grant funding model set forth in the act in each fiscal year that the charter school so elects.

This bill would require the Superintendent of Public Instruction to make those apportionments in a school district in which all schools have been converted to charter school in each fiscal year that a charter school so elects.

(10) The act requires that a charter school in its first year of operation be eligible to receive funding for an advanced apportionment based on an estimate of average daily attendance for the current fiscal year, approved as specified.

This bill would authorize a charter school in its first year of operation to commence instruction within the first 3 months of the fiscal year beginning July 1 of that year, would make a charter school ineligible for an apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year, and would prescribe related matters.

(11) By imposing new duties on school districts county offices of education, and charter schools, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed $1,000,000 statewide and other procedures for claims whose statewide costs exceed $1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

The people of the State of California do enact as follows:

SECTION 1. Section 1628 of the Education Code is amended to read:

1628. On or before September 15 each year, the county superintendent of schools shall prepare and file with the Superintendent of Public Instruction, along with the statements received pursuant to subdivision (b) of Section 42100, a statement of all receipts and expenditures of the county office of education for the preceding fiscal year. The statement shall be in a format or on forms prescribed by the Superintendent of Public Instruction, in accordance with regulations adopted by the State Board of Education. These forms may be amended periodically by the Superintendent of Public Instruction to accommodate changes in statute or government reporting standards.

SEC. 2. Section 42100 of the Education Code is amended to read:

42100. (a) On or before September 15, the governing board of each school district shall approve, * * * in a format prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the district for the preceding fiscal year and shall file the statement, along with the statement received pursuant to subdivision (b), with the county superintendent of schools. On or before October 15, the county superintendent of schools shall verify the mathematical accuracy of the statements and shall transmit a copy to the Superintendent of Public Instruction.

(b) On or before September 15, each charter school shall approve, in a format prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year and shall file the statement with the entity that approved the charter school.

(c) The forms prescribed by the Superintendent of Public Instruction shall be adopted as regulations by the State Board of Education, and may be amended periodically to accommodate changes in statute or government reporting standards.

SEC. 3. Section 47602 of the Education Code is amended to read:

47602. (a)(1) In the 1998–99 school year, the maximum total number of charter schools authorized to operate in this state shall be 250. In the 1999–2000 school year, and in each successive school year thereafter, an additional 100 charter schools are authorized to operate in this state each successive school year. For the purposes of implementing this section, the State Board of Education shall assign a number to each charter petition that it grants

pursuant to subdivision (j) of Section 47605 or Section 47605.8 and to each charter notice it receives pursuant to * * * this part, based on the chronological order in which the notice is received. Each number assigned by the state board on or after January 1, 2003, shall correspond to a single petition that identifies a charter school that will operate within the geographic and site limitations of this part. The State Board of Education shall develop a numbering system for charter schools that identifies each school associated with a charter and that operates within the existing limit on the number of charter schools that can be approved each year. For purposes of this section, sites that share educational programs and serve similar pupil populations may not be counted as separate schools. Sites that do not share a common educational program shall be considered separate schools for purposes of this section. The limits contained in this paragraph may not be waived by the State Board of Education pursuant to Section 33050 or any other provision of law.

(2) By July 1, 2003, the Legislative Analyst shall, pursuant to the criteria in Section 47616.5, report to the Legislature on the effectiveness of the charter school approach authorized under this part and recommend whether to expand or reduce the annual rate of growth of charter schools authorized pursuant to this section.

(b) No charter shall be granted under this part that authorizes the conversion of any private school to a charter school. No charter school shall receive any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition. The State Board of Education shall adopt regulations to implement this section.

SEC. 4. Section 47604.3 of the Education Code is amended to read:

47604.3. A charter school shall promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority, the county office of education that has jurisdiction over the school's chartering authority, or from the Superintendent of Public Instruction and shall consult with the chartering authority, the county office of education, or the Superintendent of Public Instruction regarding any inquiries.

SEC. 5. Section 46704.4 [1] is added to the Education Code, to read:

47604.4. (a) In addition to the authority granted by Section 47604.3, a county superintendent of schools may, based upon written complaints by parents or other information that justifies the investigation, monitor the operations of a charter school located within that county and conduct an investigation into the operations of that charter school. If a county superintendent of schools monitors or investigates a charter school pursuant to this section, the county office of education shall not incur any liability beyond the cost of the investigation.

(b) A charter school shall notify the county superintendent of schools of the county in which it is located of the location of the charter school, including the location of each site, if applicable, prior to commencing operations.

SEC. 6. Section 47605 of the Education Code is amended to read:

47605. (a)(1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district, as long as each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

[1] So in enrolled bill. Probably should be Education Code § 47604.4

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the governing board of the school district of those additional locations. The governing board of the school district shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved by the governing board of the school districts, they shall be a material revision to the charter school's charter.

(5) Notwithstanding subdivision (a), a charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations and either of the following circumstances exist:

(A) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A)(i) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A" to "G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) 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 school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(P) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(c)(1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents and teachers regarding the school's educational programs.

(d)(1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2)(A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the State Department of Education, and the State Board of Education.

(j)(1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to * * * the county board of education * * *. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education, and the state board may approve the petition, in accordance with subdivision (b). Any charter school that receives approval of its petition from a county board of education or from the State Board of Education on appeal shall be subject to the same requirements concerning geographic location that it would otherwise be subject to if it receives approval

from the entity to whom it originally submits its petition. A charter petition that is submitted to either a county board of education or to the State Board of Education shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(2) In assuming its role as a chartering agency, the State Board of Education shall develop criteria to be used for the review and approval of charter school petitions presented to the State Board of Education. The criteria shall address all elements required for charter approval, as identified in subdivision (b) of Section 47605 and shall define "reasonably comprehensive" as used in paragraph (5) of subdivision (b) of Section 47605 in a way that is consistent with the intent of the Charter Schools Act of 1992. Upon satisfactory completion of the criteria, the State Board of Education shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the State Board of Education based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district, to deny a petition shall, thereafter, be subject to judicial review.

(5) The State Board of Education shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Department of Education and the State Board of Education.

(k)(1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter * * * through an appeal to the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(*l*) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

SEC. 7. Section 47605.1 is added to the Education Code, to read:

47605.1. (a)(1) Notwithstanding any other provision of law, a charter school that is granted a charter from the governing board of a school district or county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, shall locate in accordance with the geographic and site limitations of this part.

(2) Notwithstanding any other provision of law, a charter school that is granted a charter by the State Board of Education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, based on the denial of a petition by the governing board of a school district or county board of education, as described in paragraphs (1) and (2) of subdivision (j) of Section 47605, may locate only within the geographic boundaries of the chartering entity that initially denied the petition for the charter.

(3) A charter school that receives approval of its charter from a governing board of a school district, a county office of education, or the State Board of Education prior to July 1, 2002, but does not commence operations until after January 1, 2003, shall be subject to the geographic limitations of the part, in accordance with subdivision (e).

(b) Nothing in this section is intended to affect the admission requirements contained in subdivision (d) of Section 47605.

(c) Notwithstanding any other provision, a charter school may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met:

(1) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school.

(2) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized.

(d) Notwithstanding subdivision (a) or subdivision (a) of Section 47605, a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist:

(1) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

(2) The site is needed for temporary use during a construction or expansion project.

(e)(1) For a charter school that was granted approval of its charter prior to July 1, 2002, and provided educational services to pupils before July 1, 2002, this section shall only apply to any new educational services or schoolsites established or acquired by the charter school on or after July 1, 2002.

(2) For a charter school that was granted approval of its charter prior to July 1, 2002, but did not provide educational services to pupils before July 1, 2002, this section shall only apply upon the expiration of a charter that is in existence on January 1, 2003.

(3) Notwithstanding other implementation timelines in this section, by June 30, 2005, or upon the expiration of a charter that is in existence on January 1, 2003, whichever is later, all charter schools shall be required to comply with this section for schoolsites at which education services are provided to pupils prior to or after July 1, 2002, regardless of whether the charter school initially received approval of its charter school petition prior to July 1, 2002. To achieve compliance with this section, a charter school shall be required to receive approval of a charter petition in accordance with this section and Section 47605.

(4) Nothing in this section is intended to affect the authority of a governmental entity to revoke a charter that is granted on or before the effective date of this section.

(f) A charter school that submits its petition directly to a county board of education, as authorized by Sections 47605.5 or 47605.6, may establish charter school operations only within the geographical boundaries of the county in which that county board of education has jurisdiction.

(g) Notwithstanding any other provision of law, the jurisdictional limitations set forth in this section do not apply to a charter school that provides instruction exclusively in partnership with any of the following:

(1) The federal Workforce Investment Act of 1998 (29 U.S.C. Sec. 2801 et seq.).

(2) Federally affiliated Youth Build programs.

(3) Federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider.

(4) The California Conservation Corps or local conservation corps certified by the California Conservation Corps pursuant to Sections 14507.5 or 14406 of the Public Resources Code.

(5) Instruction provided to juvenile court school pupils pursuant to subdivision (c) of Section 42238.18 or pursuant to Section 1981 for individuals who are placed in a residential facility.

SEC. 8. Section 47605.6 is added to the Education Code, to read:

47605.6. (a)(1) In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may only approve a countywide charter if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. A petition for the establishment of a countywide charter school pursuant to this subdivision may be circulated throughout the county by any one or more persons seeking to establish the charter school. The petition may be submitted to the county board of education for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils residing within the county that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(2) An existing public school may not be converted to a charter school in accordance with this section.

(3) After receiving approval of its petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education shall notify the school districts where those sites will be located. The charter school shall also request a material revision of its charter by the county board of education that approved its charter and the county board shall consider whether to approve those additional locations at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located. If approved, the location of the approved sites shall be a material revision of the school's approved charter.

(4) A petition shall include a prominent statement indicating that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 60 days after receiving a petition, in accordance with subdivision (a), the county board of education shall hold a public hearing on the provisions of the charter, at which time the county board of education shall consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. Following review of the petition and the public hearing, the county board of education shall either grant or deny the charter within 90 days of receipt of the petition. However, this date may be extended by an additional 30 days if both parties agree to the extension. A county board of education may impose any additional requirements beyond those required by this section that it considers necessary for the sound operation of a countywide charter school. A county board of education may grant a charter for the operation of a school under this part only if the board is satisfied that granting the charter is

consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Section 47605. The county board of education shall deny a petition for the establishment of a charter school if the board finds, one or more of the following:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The location of each charter school facility that the petitioner proposes to operate.

(E) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(F) The qualifications to be met by individuals to be employed by the school.

(G) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(H) 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 school district to which the charter petition is submitted.

(I) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.

(M) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(6) Any other basis that the board finds justifies the denial of the petition.

(c) A county board of education that approves a petition for the operation of a countywide charter may, as a condition of charter approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report to the county board of education on the operations of the charter school. The county board of education may prescribe the aspects of the charter school's operations to be monitored by the third party

and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the county board of education.

(d)(1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(e)(1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state.

(2)(A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the county except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the county board of education shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(f) No county board of education shall require any employee of the county or a school district to be employed in a charter school.

(g) No county board of education shall require any pupil enrolled in a county program to attend a charter school.

(h) The county board of education shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(i) In reviewing petitions for the establishment of charter schools within the county, the county board of education shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Section 54032.

(j) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the school districts within the county, the Superintendent of Public Instruction and to the State Board of Education.

(k) If a county board of education denies a petition, the petitioner may not elect to submit the petition for the establishment of the charter school to the State Board of Education.

(*l*) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to the County Office of Education, State Controller and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

SEC. 9. Section 47605.8 is added to the Education Code, to read:

47605.8. (a) A petition for the operation of a state charter school may be submitted directly to the State Board of Education, and the board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board of Education shall adopt regulations, pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) for the implementation of this section. Any regulations adopted pursuant to this section shall ensure that a charter school approved pursuant to this section meets all requirements otherwise imposed on charter schools pursuant to this part, except that a charter school approved pursuant to this section shall not be subject to the geographic and site limitations otherwise imposed on charter schools.

(b) The State Board of Education may not approve a petition for the operation of a state charter school under this section unless the State Board of Education finds that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. The finding of the board in this regard shall be made part of the public record of the board's proceedings and shall precede the approval of the charter.

(c) The State Board of Education may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on, the operations of the charter school. The State Board of Education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the State Board of Education.

(d) The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.

SEC. 10. Section 47612.1 is added to the Education Code, to read:

47612.1. Except for the requirement that a pupil be a California resident, subdivision (b) of Section 47612 shall not apply to a charter school program that provides instruction exclusively in partnership with any of the following:

(a) The federal Workforce Investment Act of 1998 (Pub. L. No. 105–220; 29 U.S.C. Sec. 2801, et seq.).

(b) Federally affiliated Youth Build programs.

(c) Federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider.

(d) The California Conservation Corps or local conservation corps certified by the California Conservation Corps pursuant to Sections 14406 or 14507.5 of the Public Resources Code.

SEC. 11. Section 47613.1 of the Education Code is amended to read:

47613.1. * * * The Superintendent of Public Instruction shall make all of the following apportionments on behalf of a charter school in a school district in which all schools have been converted to charter schools pursuant to Section 47606, and that elects not to be funded pursuant to the block grant funding model set forth in Section 47633 in each fiscal year that the charter school so elects:

(a) From funds appropriated to Section A of the State School Fund for apportionment for that fiscal year pursuant to Article 2 (commencing with Section 42238) of Chapter 7 of Part 24, an amount for each unit of current fiscal year regular average daily attendance in the charter school that is equal to the current fiscal year base revenue limit for the school district to which the charter petition was submitted.

(b) For each pupil enrolled in the charter school who is entitled to special education services, the state and federal funds for special education services for that pupil that would have been apportioned for that pupil to the school district to which the charter petition was submitted.

(c) Funds for the programs described in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761, and Sections 63000 and 64000, to the extent that any pupil enrolled in the charter school is eligible to participate.

SEC. 12. Section 47652 of the Education Code is amended to read:

47652. (a) Notwithstanding Section 41330, a charter school in its first year of operation shall be eligible to receive funding for the advance apportionment based on an estimate of average daily attendance for the current fiscal year, as approved by the local educational agency that granted its charter and the county office of education in which the charter-granting agency is located. For charter schools approved by the State Board of Education, estimated average daily attendance shall be approved by, and submitted directly to, and approved by, the State Department of Education. Not later than five business days following the end of the first 20 schooldays, a charter school receiving funding pursuant to this section shall report to the Department of Education its actual average daily attendance for that first month, and the Superintendent of Public Instruction shall adjust immediately, but not later than 45 days, the amount of its advance apportionment accordingly.

(b) A charter school in its first year of operation may only commence instruction within the first three months of the fiscal year beginning July 1 of that year. A charter school shall not be eligible for an apportionment pursuant to subdivision (a), or any other apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year.

SEC. 13. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

PROFESSIONS AND OCCUPATIONS—ATTORNEYS—WORK MATERIAL

CHAPTER 1059

A.B. No. 2055

AN ACT to amend Section 2018 of the Code of Civil Procedure, and to amend Sections 803 and 1524 of the Penal Code, relating to attorney work product, and declaring the urgency thereof, to take effect immediately.

[Filed with Secretary of State September 29, 2002.]

LEGISLATIVE COUNSEL'S DIGEST

AB 2055, Robert Pacheco. Attorney work product.

(1) Under existing law, an attorney's work product, material prepared by or for a lawyer for planned or pending litigation, is generally exempt from discovery or compelled disclosure unless a court finds prejudice to a party seeking discovery or injustice. Under existing law, the work product protection for an attorney's impressions, conclusions, opinions, or legal research or theories is complete. However, existing law places certain matters outside of the work product rule, as where work product is relevant in an action between an attorney and client, or when the State Bar is investigating an attorney discipline case, as provided. Under existing law, although attorneys suspected of criminal activity are not entitled to the protection of the work product doctrine directly, they are obligated to assert it on behalf of their clients, when appropriate.

This bill would eliminate the protection of work product in existing law when a lawyer is suspected of knowingly participating in a crime or fraud in any official investigation or proceeding or action brought by a public prosecutor in the name of the People of the State of California, if the services of the lawyer were sought or obtained to enable or aid anyone to commit or plan to commit a crime or fraud.

EXHIBIT C
Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47620, 47626, 47652, Government Code Section 3540.1

1628. On or before September 15 each year, the county superintendent of schools shall prepare and file with the Superintendent of Public Instruction, along with the statements received pursuant to subdivision (b) of Section 42100, a statement of all receipts and expenditures of the county office of education for the preceding fiscal year. The statement shall be in a format or on forms prescribed by the Superintendent of Public Instruction, in accordance with regulations adopted by the State Board of Education. These forms may be amended periodically by the Superintendent of Public Instruction to accommodate changes in statute or government reporting standards.

42100. (a) On or before September 15, the governing board of each school district shall approve, in a format prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the district for the preceding fiscal year and shall file the statement, along with the statement received pursuant to subdivision (b), with the county superintendent of schools. On or before October 15, the county superintendent of schools shall verify the mathematical accuracy of the statements and shall transmit a copy to the Superintendent of Public Instruction.

(b) On or before September 15, each charter school shall approve, in a format prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year and shall file the statement with the entity that approved the charter school.

(c) The forms prescribed by the Superintendent of Public Instruction shall be adopted as regulations by the State Board of Education, and may be amended periodically to accommodate changes in statute or government reporting standards.

47602. (a) (1) In the 1998-99 school year, the maximum total number of charter schools authorized to operate in this state shall be 250.

In the 1999-2000 school year, and in each successive school year thereafter, an additional 100 charter schools are authorized to operate in this state each successive school year. For the purposes of implementing this section, the State Board of Education shall assign a number to each charter petition that it grants pursuant to subdivision (j) of Section 47605 or Section 47605.8 and to each charter notice it receives pursuant to this part, based on the chronological order in which the notice is received. Each number assigned by the state board on or after January 1, 2003, shall correspond to a single petition that identifies a charter school that will operate within the geographic and site limitations of this part. The State Board of Education shall develop a numbering system for charter schools that identifies each school associated with a charter and that operates within the existing limit on the number of charter schools that can be approved each year. For purposes of this section, sites that share educational programs and serve similar pupil populations may not be counted as separate schools. Sites that do not share a common educational program shall be considered separate schools for purposes of this section. The limits contained in this paragraph may not be waived by the State Board of Education pursuant to Section 33050 or any other provision of law.

(2) By July 1, 2003, the Legislative Analyst shall, pursuant to the criteria in Section 47616.5, report to the Legislature on the effectiveness of the charter school approach authorized under this part and recommend whether to expand or reduce the annual rate of growth of charter schools authorized pursuant to this section.

(b) No charter shall be granted under this part that authorizes the conversion of any private school to a charter school. No charter school shall receive any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition.

The State Board of Education shall adopt regulations to implement this section.

47604.3. A charter school shall promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority, the county office of education that has jurisdiction over the school's chartering authority, or from the Superintendent of Public Instruction and shall consult with the chartering authority, the county office of education, or the Superintendent of Public Instruction regarding any inquiries.

47604.4. (a) In addition to the authority granted by Section 47604.3, a county superintendent of schools may, based upon written complaints by parents or other information that justifies the investigation, monitor the operations of a charter school located within that county and conduct an investigation into the operations of that charter school. If a county superintendent of schools monitors or investigates a charter school pursuant to this section, the county office of education shall not incur any liability beyond the cost of the investigation.

(b) A charter school shall notify the county superintendent of schools of the county in which it is located of the location of the charter school, including the location of each site, if applicable, prior to commencing operations.

47605. (a) (1) Except as set forth in paragraph (2), a petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. A petition for the establishment of a charter school shall identify a single charter school that will operate within the geographic boundaries of that school district. A charter school may propose to operate at multiple sites within the school district, as long as each location is identified in the charter school petition. The petition may be submitted to the governing board of the school district for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(2) In the case of a petition for the establishment of a charter school through the conversion of an existing public school, that would not be eligible for a loan pursuant to subdivision (b) of Section 41365, the petition may be circulated by any one or more persons seeking to establish the converted charter school. The petition may be submitted to the governing board of the school district for review after the petition has been signed by not less than 50 percent of the permanent status teachers currently employed at the public school to be converted.

(3) A petition shall include a prominent statement that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child, or ward, attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(4) After receiving approval of its petition, a charter school that proposes to establish operations at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the governing board of the school district of those additional locations.

The governing board of the school district shall consider whether to approve those additional locations at an open, public meeting. If the additional locations are approved by the governing board of the school districts, they shall be a material revision to the charter school's charter.

(5) Notwithstanding subdivision (a), a charter school that is unable to locate within the jurisdiction of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations and either of the following circumstances exist:

(A) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

(B) The site is needed for temporary use during a construction or expansion project.

(6) Commencing January 1, 2003, a petition to establish a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district.

(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. In reviewing petitions for the establishment of charter schools pursuant to this section, the chartering authority shall be guided by the intent of the Legislature that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged. A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) (i) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(ii) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements. Courses offered by the charter school that are accredited by the Western Association of Schools and Colleges may be considered transferable and courses approved by the University of California or the California State University as creditable under the "A" to "G" admissions criteria may be considered to meet college entrance requirements.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(E) The qualifications to be met by individuals to be employed by the school.

(F) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(G) 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 school district to which the charter petition is submitted.

(H) Admission requirements, if applicable.

(I) The manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

(M) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.

(N) The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter.

(O) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(P) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.

(c) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall, on a regular basis, consult with their parents and teachers regarding the school's educational programs.

(d) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the district except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the chartering authority shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

(g) The governing board of a school district shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school and upon the school district. The description of the facilities to be used by the charter school shall specify where the school intends to locate. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cashflow and financial projections for the first three years of operation.

(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the applicable county superintendent of schools, the State Department of Education, and the State Board of Education.

(j) (1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to the county board of education. The county board of education shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education, and the state board may approve the petition, in accordance with subdivision (b). Any charter school that receives approval of its petition from a county board of education or from the State Board of Education on appeal shall be subject to the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition. A charter petition that is submitted to either a county board of education or to the State Board of Education shall meet all otherwise applicable petition requirements, including the identification of the proposed site or sites where the charter school will operate.

(2) In assuming its role as a chartering agency, the State Board of Education shall develop criteria to be used for the review and approval of charter school petitions presented to the State Board of Education. The criteria shall address all elements required for charter approval, as identified in subdivision (b) of Section 47605 and shall define "reasonably comprehensive" as used in paragraph (5) of subdivision (b) of Section 47605 in a way that is consistent with the intent of the Charter Schools Act of 1992. Upon satisfactory completion of the criteria, the State Board of Education shall adopt the criteria on or before June 30, 2001.

(3) A charter school for which a charter is granted by either the county board of education or the State Board of Education based on an appeal pursuant to this subdivision shall qualify fully as a charter school for all funding and other purposes of this part.

(4) If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district, to deny a petition shall, thereafter, be subject to judicial review.

(5) The State Board of Education shall adopt regulations implementing this subdivision.

(6) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition to the State Department of Education and the State Board of Education.

(k) (1) The State Board of Education may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

(2) The designated local education agency shall have all monitoring and supervising authority of a chartering agency, including, but not limited to, powers and duties set forth in Section 47607, except the power of revocation, which shall remain with the State Board of Education.

(3) A charter school that has been granted its charter through an appeal to the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter. If the governing board of the school district denies the school's petition for renewal, the school may petition the State Board of Education for renewal of its charter.

(l) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority. It is the intent of the Legislature that charter schools be given flexibility with regard to noncore, noncollege preparatory courses.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, unless the county board of education of the county in which the charter school is sited is the chartering entity, and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section 41020.

47605.1. (a) (1) Notwithstanding any other provision of law, a charter school that is granted a charter from the governing board of a school district or county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, shall locate in accordance with the geographic and site limitations of this part.

(2) Notwithstanding any other provision of law, a charter school that is granted a charter by the State Board of Education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, based on the denial of a petition by the governing board of a school district or county board of education, as described in paragraphs (1) and (2) of subdivision (j) of Section 47605, may locate only within the geographic boundaries of the chartering entity that initially denied the petition for the charter.

(3) A charter school that receives approval of its charter from a governing board of a school district, a county office of education, or the State Board of Education prior to July 1, 2002, but does not commence operations until after January 1, 2003, shall be subject to the geographic limitations of the part, in accordance with subdivision (e).

(b) Nothing in this section is intended to affect the admission requirements contained in subdivision (d) of Section 47605.

(c) Notwithstanding any other provision, a charter school may establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met:

(1) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school.

(2) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized.

(d) Notwithstanding subdivision (a) or subdivision (a) of Section 47605, a charter school that is unable to locate within the geographic boundaries of the chartering school district may establish one site outside the boundaries of the school district, but within the county within which that school district is located, if the school district where the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist:

(1) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

(2) The site is needed for temporary use during a construction or expansion project.

(e) (1) For a charter school that was granted approval of its charter prior to July 1, 2002, and provided educational services to pupils before July 1, 2002, this section shall only apply to any new educational services or schoolsites established or acquired by the charter school on or after July 1, 2002.

47605.6. (a) (1) In addition to the authority provided by Section 47605.5, a county board of education may also approve a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education. A county board of education may only approve a countywide charter if it finds, in addition to the other requirements of this section, that the educational services to be provided by the charter school will offer services to a pupil population that will benefit from those services and that cannot be served as well by a charter school that operates in only one school district in the county. A petition for the establishment of a countywide charter school pursuant to this subdivision may be circulated throughout the county by any one or more persons seeking to establish the charter school. The petition may be submitted to the county board of education for review after either of the following conditions are met:

(A) The petition has been signed by a number of parents or guardians of pupils residing within the county that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(B) The petition has been signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation and each of the school districts where the charter school petitioner proposes to operate a facility has received at least 30 days notice of the petitioner's intent to operate a school pursuant to this section.

(2) An existing public school may not be converted to a charter school in accordance with this section.

(3) After receiving approval of its petition, a charter school that proposes to establish operations at additional sites within the geographic boundaries of the county board of education shall notify the school districts where those sites will be located. The charter school shall also request a material revision of its charter by the county board of education that approved its charter and the county board shall consider whether to approve those additional locations at an open, public meeting, held no sooner than 30 days following notification of the school districts where the sites will be located. If approved, the location of the approved sites shall be a material revision of the school's approved charter.

(4) A petition shall include a prominent statement indicating that a signature on the petition means that the parent or guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school. The proposed charter shall be attached to the petition.

(b) No later than 60 days after receiving a petition, in accordance with subdivision (a), the county board of education shall hold a public hearing on the provisions of the charter, at which time the county board of education shall consider the level of support for the petition by teachers, parents or guardians, and the school districts where the charter school petitioner proposes to place school facilities. Following review of the petition and the public hearing, the county board of education shall either grant or deny the charter within 90 days of receipt of the petition. However, this date may be extended by an additional 30 days if both parties agree to the extension. A county board of education may impose any additional requirements beyond those required by this section that it considers necessary for the sound operation of a countywide charter school. A county board of education may grant a charter for the operation of a school under this part only if the board is satisfied that granting the charter is consistent with sound educational practice and that the charter school has reasonable justification for why it could not be established by petition to a school district pursuant to Section 47605. The county board of education shall deny a petition for the establishment of a charter school if the board finds, one or more of the following:

(1) The charter school presents an unsound educational program for the pupils to be enrolled in the charter school.

(2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

(3) The petition does not contain the number of signatures required by subdivision (a).

(4) The petition does not contain an affirmation of each of the conditions described in subdivision (d).

(5) The petition does not contain reasonably comprehensive descriptions of all of the following:

(A) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an "educated person" in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

(B) The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes," for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

(C) The method by which pupil progress in meeting those pupil outcomes is to be measured.

(D) The location of each charter school facility that the petitioner proposes to operate.

(E) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

(F) The qualifications to be met by individuals to be employed by the school.

(G) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

(H) 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 school district to which the charter petition is submitted.

(I) The manner in which annual, independent, financial audits shall be conducted, in accordance with regulations established by the State Board of Education, and the manner in which audit exceptions and deficiencies shall be resolved.

(J) The procedures by which pupils can be suspended or expelled.

(K) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

(L) The procedures to be followed by the charter school and the county board of education to resolve disputes relating to provisions of the charter.

(M) A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for the purposes of the Educational Employment Relations Act (Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code).

(6) Any other basis that the board finds justifies the denial of the petition.

(c) A county board of education that approves a petition for the operation of a countywide charter may, as a condition of charter approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report to the county board of education on the operations of the charter school. The county board of education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the county board of education.

(d) (1) Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools.

(2) Charter schools shall on a regular basis consult with their parents and teachers regarding the school's educational programs.

(e) (1) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Except as provided in paragraph (2), admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state.

(2) (A) A charter school shall admit all pupils who wish to attend the school.

(B) However, if the number of pupils who wish to attend the charter school exceeds the school's capacity, attendance, except for existing pupils of the charter school, shall be determined by a public random drawing. Preference shall be extended to pupils currently attending the charter school and pupils who reside in the county except as provided for in Section 47614.5. Other preferences may be permitted by the chartering authority on an individual school basis and only if consistent with the law.

(C) In the event of a drawing, the county board of education shall make reasonable efforts to accommodate the growth of the charter school and, in no event, shall take any action to impede the charter school from expanding enrollment to meet pupil demand.

(f) No county board of education shall require any employee of the county or a school district to be employed in a charter school.

(g) No county board of education shall require any pupil enrolled in a county program to attend a charter school.

(h) The county board of education shall require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects, if any, upon the school, any school district where the charter school may operate and upon the county board of education. The petitioner or petitioners shall also be required to provide financial statements that include a proposed first-year operational budget, including startup costs, and cash-flow and financial projections for the first three years of operation.

(i) In reviewing petitions for the establishment of charter schools within the county, the county board of education shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low-achieving pursuant to the standards established by the State Department of Education under Section 54032.

(j) Upon the approval of the petition by the county board of education, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the school districts within the county, the Superintendent of Public Instruction and to the State Board of Education.

(k) If a county board of education denies a petition, the petitioner may not elect to submit the petition for the establishment of the charter school to the State Board of Education.

(l) Teachers in charter schools shall be required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. These documents shall be maintained on file at the charter school and shall be subject to periodic inspection by the chartering authority.

(m) A charter school shall transmit a copy of its annual, independent, financial audit report for the preceding fiscal year, as described in subparagraph (I) of paragraph (5) of subdivision (b), to the County Office of Education, State Controller and the State Department of Education by December 15 of each year. This subdivision shall not apply if the audit of the charter school is encompassed in the audit of the chartering entity pursuant to Section
41020.

47605.8. (a) A petition for the operation of a state charter school may be submitted directly to the State Board of Education, and the board shall have the authority to approve a charter for the operation of a state charter school that may operate at multiple sites throughout the state. The State Board of Education shall adopt regulations, pursuant to the Administrative Procedure Act (Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code) for the implementation of this section. Any regulations adopted pursuant to this section shall ensure that a charter school approved pursuant to this section meets all requirements otherwise imposed on charter schools pursuant to this part, except that a charter school approved pursuant to this section shall not be subject to the geographic and site limitations otherwise imposed on charter schools.

(b) The State Board of Education may not approve a petition for the operation of a state charter school under this section unless the State Board of Education finds that the proposed state charter school will provide instructional services of statewide benefit that cannot be provided by a charter school operating in only one school district, or only in one county. The finding of the board in this regard shall be made part of the public record of the board's proceedings and shall precede the approval of the charter.

(c) The State Board of Education may, as a condition of charter petition approval, enter into an agreement with a third party, at the expense of the charter school, to oversee, monitor, and report on, the operations of the charter school. The State Board of Education may prescribe the aspects of the charter school's operations to be monitored by the third party and may prescribe appropriate requirements regarding the reporting of information concerning the operations of the charter school to the State Board of Education.

(d) The State Board of Education shall not be required to approve a petition for the operation of a statewide charter school, and may deny approval based on any of the reasons set forth in subdivision (b) of Section 47605.6.

47611.5. (a) Chapter 10.7 (commencing with Section 3540) of Division 4 of Title 1 of the Government Code shall apply to charter schools.

(b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 (commencing with Section 3540) of Division 4 of the Government Code.

(c) If the charter of a charter school does not specify that it shall comply with those statutes and regulations governing public school employers that establish and regulate tenure or a merit or civil service system, the scope of representation for that charter school shall also include discipline and dismissal of charter school employees.

(d) The Public Employment Relations Board shall take into account the Charter Schools Act of 1992 (Part 26.8 (commencing with Section 47600)) when deciding cases brought before it related to charter schools.

(e) The approval or a denial of a charter petition by a granting agency pursuant to subdivision (b) of Section 47605 shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board.

(f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

47612.1. Except for the requirement that a pupil be a California resident, subdivision (b) of Section 47612 shall not apply to a charter school program that provides instruction exclusively in partnership with any of the following:

(a) The federal Workforce Investment Act of 1998 (Pub. L. No. 105-220; 29 U.S.C. Sec. 2801, et seq.).

(b) Federally affiliated Youth Build programs.

(c) Federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider.

(d) The California Conservation Corps or local conservation corps certified by the California Conservation Corps pursuant to Sections 14406 or 14507.5 of the Public Resources Code.

47613.1. The Superintendent of Public Instruction shall make all of the following apportionments on behalf of a charter school in a school district in which all schools have been converted to charter schools pursuant to Section 47606, and that elects not to be funded pursuant to the block grant funding model set forth in Section 47633 in each fiscal year that the charter school so elects:

(a) From funds appropriated to Section A of the State School Fund for apportionment for that fiscal year pursuant to Article 2 (commencing with Section 42238) of Chapter 7 of Part 24, an amount for each unit of current fiscal year regular average daily attendance in the charter school that is equal to the current fiscal year base revenue limit for the school district to which the charter petition was submitted.

(b) For each pupil enrolled in the charter school who is entitled to special education services, the state and federal funds for special education services for that pupil that would have been apportioned for that pupil to the school district to which the charter petition was submitted.

(c) Funds for the programs described in clause (i) of subparagraph (B) of paragraph (1) of subdivision (a) of Section 54761, and Sections 63000 and 64000, to the extent that any pupil enrolled in the charter school is eligible to participate.

47620. An elementary school that has been operated by the University of California at the Los Angeles campus prior to January 1, 1994, may apply to become a charter school under this chapter. The school may apply under either Section 47621 or Section 47622. If a charter is granted under this chapter, the resulting charter school shall be part of the public school system.

47626. (a) Notwithstanding Section 47611.5, a charter school operated by the University of California in facilities owned by the Regents of the University of California shall declare in its charter that it is the employer of the employees at the charter school for the purposes of Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code. The provisions of Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code shall apply to the charter school. A charter school operated by the University of California in facilities owned by the Regents of the University of California may not be deemed a public school employer for the purposes of this chapter.

(b) By March 31, 2000, an existing charter school operated by the University of California shall amend its charter to comply with this section.

47652. (a) Notwithstanding Section 41330, a charter school in its first year of operation shall be eligible to receive funding for the advance apportionment based on an estimate of average daily attendance for the current fiscal year, as approved by the local educational agency that granted its charter and the county office of education in which the charter-granting agency is located. For charter schools approved by the State Board of Education, estimated average daily attendance shall be approved by, and submitted directly to, and approved by, the State Department of Education. Not later than five business days following the end of the first 20 schooldays, a charter school receiving funding pursuant to this section shall report to the Department of Education its actual average daily attendance for that first month, and the Superintendent of Public Instruction shall adjust immediately, but not later than 45 days, the amount of its advance apportionment accordingly.

(b) A charter school in its first year of operation may only commence instruction within the first three months of the fiscal year beginning July 1 of that year. A charter school shall not be eligible for an apportionment pursuant to subdivision (a), or any other apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year.

3540.1. As used in this chapter:

(a) "Board" means the Public Employment Relations Board created pursuant to Section 3541.

(b) "Certified organization" or "certified employee organization" means an organization which has been certified by the board as the exclusive representative of the public school employees in an appropriate unit after a proceeding under Article 5 (commencing with Section 3544).

(c) "Confidential employee" means any employee who, in the regular course of his or her duties, has access to, or possesses information relating to, his or her employer's employer-employee relations.

(d) "Employee organization" means any organization which includes employees of a public school employer and which has as one of its primary purposes representing those employees in their relations with that public school employer. "Employee organization" shall also include any person such an organization authorizes to act on its behalf.

(e) "Exclusive representative" means the employee organization recognized or certified as the exclusive negotiating representative of certificated or classified employees in an appropriate unit of a public school employer.

(f) "Impasse" means that the parties to a dispute over matters within the scope of representation have reached a point in meeting and negotiating at which their differences in positions are so substantial or prolonged that future meetings would be futile.

(g) "Management employee" means any employee in a position having significant responsibilities for formulating district policies or administering district programs. Management positions shall be designated by the public school employer subject to review by the Public Employment Relations Board.

(h) "Meeting and negotiating" means meeting, conferring, negotiating, and discussing by the exclusive representative and the public school employer in a good faith effort to reach agreement on matters within the scope of representation and the execution, if requested by either party, of a written document incorporating any agreements reached, which document shall, when accepted by the exclusive representative and the public school employer, become binding upon both parties and, notwithstanding Section 3543.7, shall not be subject to subdivision 2 of Section 1667 of the Civil Code. The agreement may be for a period of not to exceed three years.

(i) "Organizational security" is within the scope of representation, and means either of the following:

(1) An arrangement pursuant to which a public school employee may decide whether or not to join an employee organization, but which requires him or her, as a condition of continued employment, if he or she does join, to maintain his or her membership in good standing for the duration of the written agreement. However, no such arrangement shall deprive the employee of the right to terminate his or her obligation to the employee organization within a period of 30 days following the expiration of a written agreement.

(2) An arrangement that requires an employee, as a condition of continued employment, either to join the recognized or certified employee organization, or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the organization for the duration of the agreement, or a period of three years from the effective date of the agreement, whichever comes first.

(j) "Public school employee" or "employee" means any person employed by any public school employer except persons elected by popular vote, persons appointed by the Governor of this state, management employees, and confidential employees.

(k) "Public school employer" or "employer" means the governing board of a school district, a school district, a county board of education, a county superintendent of schools, or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code.

(l) "Recognized organization" or "recognized employee organization" means an employee organization which has been recognized by an employer as the exclusive representative pursuant to Article 5 (commencing with Section 3544).

(m) "Supervisory employee" means any employee, regardless of job description, having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

EXHIBIT D

DECLARATION OF JOSE GONZALES

Chapter 828, Statutes of 1999
Chapter 1058, Statutes of 2002
Charter Schools IV

DECLARATION OF

SAN DIEGO UNIFIED SCHOOL DISTRICT

I, Jose Gonzales, make the following declaration and statement:

1. I am the Assistant General Counsel for the San Diego Unified School District (the "District") and I have held that position since September 1982.

2. I am familiar with the provisions and requirements of Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47620, 47626, 47652 Government Code Section 3540.1 as added by Chapter 828, Statutes of 1999 ("Chapter 828/99") and Chapter 1058, Statutes of 2002 ("Chapter 1058/02").

3. Legislative Counsel's Digest states in "Chapter 828/99" "provisions of existing law related to collective bargaining in public education employment apply to charter schools", "require the charter school charter to declare whether the charter school is the exclusive public school employer of the employees at the charter school for this purpose, require a charter school", "operated by the University of California in university facilities, to declare in its charter that it is the employer of the employees at the charter school for the purposes of provisions of law relating to collective bargaining for employees of public institutions of higher education", "require that, if the charter of a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employers relating to tenure and merit or civil

service, then discipline and dismissal of employees would be included within the scope of representation".

3. Legislative Counsel's Digest states in "Chapter 1058/02" each charter school is to submit an annual statement of all receipts and expenditures to the district for the preceding fiscal year with to the entity that approved the charter school; would require, "except as specified, that each petition for the establishment of a charter school that is submitted to a chartering agency, or for which a renewal is sought, on or after January 1, 2003, identify a single charter school and would specify the geographic and site requirements for the establishment of a charter school". "The bill would modify the process by which a petitioner appeals the denial of a charter petition, to require a petitioner to appeal to a county office of education before appealing to the State Board of Education; would require the petition for the establishment of a charter school to describe how a charter school that will serve high school pupils will inform parents about the transferability and eligibility of courses to other public high schools and to meet college entrance requirements, the procedures to be used if the charter school closes, and would prescribe related matters".

5. Legislative Counsel's Digest states in "Chapter 1058/02" to further "grant general authority to the county superintendent of schools to monitor the operations of a charter school located within that county, to conduct an investigation into the operations of that charter school, based on parental complaints or other information that justifies the investigation, and would limit the liability of a county superintendent of schools when conducting those activities". The bill would, "in addition, require a charter

school to consult with the chartering authority or Superintendent of Public Instruction regarding inquiries and respond promptly".

6. Legislative Counsel's Digest states in "Chapter 1058/02" the authority of a county board of education to approve a charter for the operation of a charter school that would operate at multiple sites throughout the county and would prescribe the petition and approval process for such a school, the applicable requirements for operation, and other related matters.

7. Legislative Counsel's Digest states in "Chapter 1058/02" that "a petition for the operation of a charter school to be submitted directly to the State Board of Education, would authorize the state board to approve a petition for a charter school that would operate at multiple sites throughout the state, and would prescribe related matters. Commencing January 1, 2003, a petition to establish a charter school may not be approved to serve pupils in a grade level that is not served by the school district of the governing board considering the petition, unless the petition proposes to serve pupils in all of the grade levels served by that school district".

8. Legislative Counsel's Digest states in "Chapter 1058/02" that "a charter school that is granted a charter from the governing board of a school district or from a county office of education after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, locate within the geographic and site limitations specified in the act, except as specified, and would prescribe related matters". The act provides that average daily attendance may not be generated by a pupil who is not continuously enrolled in public school and who makes satisfactory progress toward a high

school diploma. This bill would declare that these conditions do not apply to certain specified charter schools".

9. Legislative Counsel's Digest states in "Chapter 1058/02" "the Superintendent of Public Instruction, in the 1999-2000, 2000-01, and 2001-02 fiscal years, to make apportionments to a charter school that elects not to be funded pursuant to the block grant funding model set forth in the act in each fiscal year that the charter school so elects. This bill would require the Superintendent of Public Instruction to make those apportionments in a school district in which all schools have been converted to charter school in each fiscal year that a charter school so elects".

9. Legislative Counsel's Digest states in "Chapter 1058/02" "that a charter school in its first year of operation be eligible to receive funding for an advanced apportionment based on an estimate of average daily attendance for the current fiscal year, approved as specified. This bill would authorize a charter school in its first year of operation to commence instruction within the first 3 months of the fiscal year beginning July 1 of that year, would make a charter school ineligible for an apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year, and would prescribe related matters; a description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records".

///

///

///

The foregoing facts are known to me personally and if so required, I could testify to the statements made herein. I hereby declare under penalty of perjury that the foregoing is true and correct except where stated upon information and belief and where so stated I declare that I believe them to be true.

EXECUTED August 05, 2003 in San Diego, California.

Jose Gonzales

DEPARTMENT OF FINANCE
ARNOLD SCHWARZENEGGER, GOVERNOR
915 L STREET ■ SACRAMENTO CA ■ 95814-3706 ■ WWW.DOF.CA.GOV

January 20, 2004

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

As requested in your letter of October 6, 2003, the Department of Finance has reviewed the test claim submitted by the San Diego Unified School District (claimant) asking the Commission to determine whether specified costs incurred under Chapter 828, Statutes of 1999 (AB 631, Midgen) and Chapter 1058, Statutes of 2002 (AB 1994, Reyes) are reimbursable State mandated costs (Claim No. CSM-03-TC-03 "Charter School IV"). This letter summarizes the claimant's assertions and provides the Department of Finance's response to the test claim.

Claimant's Assertions

Commencing with Section B—Activities Required Under Statute and Executive Orders Containing Mandates—of the test claim, the claimant asserts that the following activities are reimbursable State mandates:

Chapter 828, Statutes of 1999

- Makes provisions of existing law related to collective bargaining in public education employment applicable to charter schools.
- Requires charter schools to declare whether the charter school is the exclusive public school employer.
- Requires a charter school operated by the University of California to declare that it is the employer of charter school employees for collective bargaining purposes.
- Requires a charter school to include the discipline and dismissal of employees within scope of representation if the school's charter does not specify that the school will comply with statutory and regulatory provisions related to tenure and merit.

Chapter 10582, Statutes of 2002

- Requires a charter school to approve an annual financial statement and submit it to the chartering entity.
- Requires charter school petitions or renewals submitted after January 1, 2003, to identify a single charter school and to specify geographic and site requirements.
- Modifies the process by which a petitioner appeals the denial of a charter petition by requiring an appeal to the county office of education before appeal to the State Board of Education.

- Authorizes the county superintendent to monitor charter school operations within the county.
- Requires a charter school to promptly respond to inquiries, including financial information requests, from the chartering entity, county office of education, or Superintendent of Public Instruction and to consult with these entities.
- Authorizes a county board of education to approve a charter operating at multiple sites throughout the county.
- Authorizes a charter petition to be submitted directly to the State Board of Education and would allow statewide operation of a charter approved by the State Board of Education.
- Requires a charter school commencing operation after July 1, 2002, to locate within specified geographic and site limitations.
- Authorizes a charter school to commence instruction between July 1 through September 30 and prohibits apportionment for a charter school that commences operation after September 30.
- Requires school districts to respond to, prepare for, and participate in any judicial proceeding filed by a charter petitioner challenging the denial of a charter petition.

Test Claim Should Be Denied Due to Lack of Specificity

We note that the test claim consists of a summary of the entirety of the two chaptered bills and is ambiguous as to precisely which activities are alleged to be reimbursable mandates and as to whether the test claim asserts that charter schools, chartering entities, or county offices of education are eligible claimants. We believe that the Commission and the respondents are entitled to a specific and complete identification of the activities that are being claimed as reimbursable and that denial of this claim is appropriate due to lack of specificity in the test claim.

Department of Finance Test Claim Review

Although we believe the test claim should be denied due to lack of specificity, we have reviewed the test claim. Our analysis follows below.

Discretionary Acts—As more fully explained in our comments related to the Charter III test claim (99-TC-14), charter schools are not eligible claimants because establishing and maintaining a charter school is a discretionary act. State law allows, but does not require, the establishment of charter schools and therefore no reimbursable mandate for charter schools can exist. This reasoning is affirmed by the California Supreme Court decision in *Department of Finance v. Commission on State Mandates* related to school site councils.

Similarly, the test claim legislation contains authorization for chartering entities to complete certain activities, but does not require these activities. For example, charter schools are required to respond to inquiries from the chartering entity, the county office of education, or the Superintendent of Public Instruction. It is discretionary on the part of the local oversight agencies to request the specified information and therefore no reimbursable mandate exists for these entities. Charter schools are required to promptly respond to these requests, but because charter schools themselves are discretionary, no reimbursable mandate exists for the charter schools.

Additionally, the test claim legislation does not support the claimant's assertion that school districts are required to prepare for and participate in judicial proceedings when a charter claim

is denied and subsequently appealed. Although a district may elect to do so because it determines that doing so is in its best interest, nothing in the test claim legislation requires such action. Any decision to do so is clearly a discretionary act not required by the State and therefore not reimbursable.

Pre-1975 Requirements—In addition to the discretionary nature of charter schools, we note that school districts have always had the responsibility to oversee individual schools within their purview. Indeed, this is one of the most basic functions of a school district. As a result, any pre-existing oversight responsibilities that the chartering entity already has with regular district schools, such as financial reporting, do not result in new requirements or a higher level of service compared to 1975, as these duties are and have always been a responsibility of the school district.

Reimbursable Oversight Costs—Education Code Section 47613 authorizes chartering entities to generally charge for actual oversight costs up to 1 percent of charter school revenue. Chartering entities are allowed to charge up to 3 percent if the chartering agency provides substantially rent-free facilities to the charter school. Therefore, even if the test claim legislation were to result in costs to chartering entities, those costs are not reimbursable by the State because the chartering entity is authorized to charge fees to cover those costs.

The claimant has offered no evidence that mandated oversight activities cost more than can be recovered by these fees. Since the fee recovery provision was an integral part of charter oversight legislation, we view it as further defining the maximum level of activity and cost that the Legislature was requiring. Therefore, we believe no costs above the fees are State mandated.

Section 17556(d) of the Government Code provides that the Commission on State Mandates shall not find a reimbursable mandate in a statute or executive order if the affected local agencies have authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program in the statute or executive order. In its April 1991 decision in *County of Fresno v. State of California* (53 Cal 3D, 482, 1991), the State Supreme Court held that this code section is facially valid under Section 6 of Article XIII B of the California Constitution. The court reasoned that Article XIII B was not intended to "reach beyond taxation", i.e., the article requires reimbursement only for those expenses that are recoverable solely from tax revenues.

Charter Petition Review—If a school district reviews a charter petition and subsequently approves the charter, we believe that costs associated with charter petition reviews are not reimbursable because the chartering entity could charge fees to recoup costs from the charter school pursuant to Education Code Section 47613, as outlined above.

If a school district reviews and denies a charter petition, there may be minor reimbursable mandated activities to review the new petition information required by the test claim legislation, such as whether the charter will be considered an exclusive public school employer for collective bargaining purposes and whether the petition complies with statutory geographic limitations. However, these activities represent a very minor incremental change to the existing petition review process and are likely already incorporated into claims submitted for existing petition reviews. If the Commission were to find a reimbursable mandate for these minor activities, we would expect a very tight definition of new requirements.

As required by the Commission's regulations, we are including a "Proof of Service" indicating that the parties included on the mailing list which accompanied your October 6, 2003, letter have been provided with copies of this letter via either United States Mail or, in the case of other State agencies, Interagency Mail Service.

If you have any questions regarding this letter, please contact Dan Troy, Principal Program Budget Analyst at (916) 445-0328.

Sincerely,

Jeannie Oropeza

Jeannie Oropeza
Program Budget Manager

Attachment

Attachment A

DECLARATION OF MARK HILL
DEPARTMENT OF FINANCE
CLAIM NO. CSM-03-TC-03

1. I am currently employed by the State of California, Department of Finance, am familiar with the duties of Finance, and am authorized to make this declaration on behalf of Finance.

2. We concur that the Chapter 828, Statutes of 1999, (AB 631, Midgen) and Chapter 1058, Statutes of 2002 (AB 1994, Reyes) sections relevant to this claim are accurately quoted in exhibits A and B of the test claim submitted by claimants and, therefore, we do not restate them in this declaration.

I certify under penalty of perjury that the facts set forth in the foregoing are true and correct of my own knowledge except as to the matters therein stated as information or belief and, as to those matters, I believe them to be true.

January 20, 2004
at Sacramento, CA

Mark Hill

PROOF OF SERVICE

Test Claim Name: Charter School IV
Test Claim Number: CSM-03-TC-03

I, the undersigned, declare as follows:
I am employed in the County of Sacramento, State of California, I am 18 years of age or older and not a party to the within entitled cause; my business address is 915 L Street, 7th Floor, Sacramento, CA 95814.

On January 20, 2004, I served the attached recommendation of the Department of Finance in said cause, by facsimile to the Commission on State Mandates and by placing a true copy thereof: (1) to claimants and nonstate agencies enclosed in a sealed envelope with postage thereon fully prepaid in the United States Mail at Sacramento, California; and (2) to State agencies in the normal pickup location at 915 L Street, 7th Floor, for Interagency Mail Service, addressed as follows:

A-16
Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814
Facsimile No. 445-0278

B-29
Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Sixten & Associates
Attention: Keith Petersen
5252 Balboa Avenue, Suite 807
San Diego, CA 92117

Mandated Cost Systems, Inc.
Attention: Steve Smith
2275 Watt Avenue, Suite C
Sacramento, CA 95825

E-8
State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

B-8
State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

E-8
Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

San Diego Unified School District
Attention: Arthur Palkowitz
4100 Normal Street, Room 3159
San Diego, CA 92103-2682

California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Ms. Sandy Reynolds
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City, CA 92586

Mr. Jay Stewart
Western Placer Unified School District
1400 First Street
Lincoln, CA 95648

D-8
Ms. Jennifer Rockwell
Office of the Attorney General
1300 I Street, 17th Floor
P.O. Box 944255
Sacramento, CA 95814

E-8
Gerald Shelton
California Department of Education
Fiscal and Administrative Services Division
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. Joe Lucente
Fenton Avenue Charter School
11828 Gain Street
Lake View Terrace, CA 91342

B-8
Mr. Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Fil Guzman
BWG Educational Consultants, LLC
1055 Copper Court
Vacaville, CA 95687

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

Mr. Steve Shields
Shields Consulting Group, Inc.
1536 36th Street
Sacramento, CA 95816

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on January 20, 2004, at Sacramento, California.

Chad Rohrs for JN

Jennifer Nelson

EXHIBIT C

SAN DIEGO CITY SCHOOLS

EUGENE BRUCKER EDUCATION CENTER
4100 Normal Street, San Diego, CA 92103-8363

(619) 725-7785
Fax (619) 725-7564

OFFICE OF RESOURCE DEVELOPMENT
apalkowitz@sandi.net

May 7, 2004

Ms. Paula Higashi
Executive Director
Commission on State Mandates
980 Ninth Street, Suite 300
Sacramento, CA 95814

Dear Ms. Higashi:

SUBJECT: CLAIM NO. CSM-03-TC-03 "CHARTER SCHOOL IV"

This letter is in response to the letter you received from the Department of Finance dated January 20, 2004 containing their comments in response to the Charter School IV test claim.

I

THE COMMENTS OF THE DEPARTMENT OF FINANCE MUST BE EXCLUDED

Test claimant objects to the comments of the Department of Finance as being legally incompetent and move they be excluded from the record. Title 2, California Code of Regulations, Section 1183.02(d) requires that any:

> "...written response, opposition, or recommendations and supporting documentation shall be signed at the end of the document, under penalty of perjury by an authorized representative of the state agency, with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief."

Further, the test claimant objects to any and all assertions or representation of the fact made in the response since the Department of Finance failed to comply with Title 2, California Code of Regulations, Section 1183.02(c)(1) which requires:

> "If assertions or representations of fact are made (in a response), they must be supported by documentary evidence which shall be submitted with the state agency's response, opposition, or recommendations. All documentary evidence shall be authenticated by declarations under penalty of perjury signed by persons who are authorized and competent to do so and must be based on the declarant's personal knowledge or information or belief."

The comments of the Department of Finance do not comply with these essential requirements. Test claimant requests that the comments and assertions of the Department of Finance not be included in the Staff's analysis, since the Commission must not use unsworn comments or comments unsupported by declarations.

II

TEST CLAIM STATES ACTIVITIES WITH SPECIFICITY

Below are specific and complete identification of the activities being claimed.

Chartering Agencies (School Districts and County Offices of Education)

A. Review that the following declarations are included in the charter petition.
   (1) How a charter petition for charter schools which serve high school pupils will inform parents about the transferability and eligibility of courses to other public high schools and to meet college entrance requirements.
   (2) Procedures to be used if the charter school closes.

B. Declarations regarding collective bargaining in public education employment.
   (1) Whether or not the charter school shall be deemed the exclusive public school employer of the employees. (47611.5(b))
   (2) That the charter is the employer of the employees at the charter for the purpose of provisions of law relating to collective bargaining for employees of public institutions of higher education, if the charter school intends to be operated by the University of California in University facilities. (47626(a))
   (3) The discipline and dismissal of charter school employees, if a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employees. (47611.5(c))

C. Review of the annual statement of all receipts and expenditures for the preceding fiscal year for fiscal soundness.

Charter Schools

A. In its petition a declaration include the following.
   (1) Whether the charter school is the exclusive public school employer of the employees at the charter school. (47611.5(b))
   (2) That it is the employer of the employees at the charter school for the purposes of provisions of law relating to collective bargaining for employees of public institutions of higher education, if the charter school is operated by the University of California in university facilities. (47626(a))
   (3) The discipline and dismissal of charter school employees, if a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employees. (47611.5(c))

B. Fiscal and geographic reporting
   (1) Approve the annual statement of all receipts and expenditures for the preceding fiscal year and submit it to the chartering agency.
   (2) Identify a single charter school and specify the geographic and site requirements for the establishment of a charter school renewal or petition sought on or after January 1, 2003.

C. Respond promptly to all reasonable inquiries from its chartering authority.
   (1) Respond to inquiries including but not limited to, inquiries regarding its financial records.
   (2) Consult and respond to county office of educations inquires regarding investigations or monitoring by the county office.

County Superintendent of Schools
(1) Monitoring the operations of charter schools.
(2) Conducting investigations based on parental complaints or other information that justifies an investigation.

III

DISCRETIONARY ACTS

The Department of Finance sites the California Supreme Court decision in *Department of Finance v. Commission on State Mandates* claiming that "charter schools are not eligible claimants because establishing and maintaining a charter school is a discretionary act." This contention is not supported by the Commission on State Mandates prior approval of *Charter School I.* Furthermore, the test claim and the California Supreme Court decision are distinguished since the program in *Department of Finance* involved a funded program and the establishing and maintaining of Charter Schools is not a funded program.

IV

GRANTING CHARTERS IS NOT DISCRETIONARY

Education Code Section 47605(b) reads that a school district or county superintendent of schools "shall" grant a charter if "the charter is consistent with sound educational practice" and meets all the other requirements specified in the Charter School Act. Section 47605(b) also reveals the intent of the legislature—"that charter schools are and should become an integral part of the California educational system and that establishment of charter schools should be encouraged."

A school district or county superintendent of schools must grant the charter petition unless the petition lacks a sound educational program and/or does not meet the other specified requirements of the Charter Schools Act.

V

ELIGIBLE CLAIMANTS

A. SCHOOL DISTRICTS

The Parameters and Guidelines for *Charter Schools* adopted October 18, 1994 issued by the Commission on State Mandates states, "(a)ny 'school district', as defined in Government Code section 17519, except for community colleges, which incurs increased cost is eligible to claim reimbursement and the right to amend its comments after the Commissions decides *Charter Schools III.*

B. COUNTY SUPERINTENDENT OF SCHOOLS

County superintendent of schools are also included in Government Code section 17519 definition of 'school district(s).' Thus county superintendent of schools are also eligible claimants.

C. CHARTERING ENTITIES

Pending the passage of AB 2764 chartering entities may also include universities and community colleges. The District reserves the right to amend our response if future legislation broadens the privilege to grant charters to other entities.

VI

OVERSEEING CHARTER SCHOOLS IS AN INCREASE LEVEL OF SERVICE

The Department of Finance contends "school districts have always had the responsibility to oversee individual schools within their purview." The oversight responsibility of district schools and charter schools differs. The foundation of charter schools is to move in the direction of a performance-based standard. Consequently, the governing district policies and procedures do not generally apply to charter schools. The District must create Memorandums of Understandings to establish an agreement between the District and the charter school outlining the District's requirements from the charter school (i.e. financial reports). Accordingly, overseeing a charter school is at a higher level than that of a non-charter school site. The Commission recognized the increased level of service required to monitor charter schools in the Parameters and Guidelines issued for *Charter Schools*. The Parameters and Guidelines for *Charter Schools* states, a reimbursable cost is "Monitoring the Charter: Subsequent administrative review, analysis and reporting on the charter school's performance for purposes of charter reconsideration, renewal, revision, evaluation or revocation by the governing body." To remain consistent with the intent of Article XIII the increased level of service provided to charter schools must be reimbursed under the state mandate reimbursement process.

VII

REIMBURSABLE OVERSIGHT COSTS

The District disagrees with the Department of Finance's assertion that the cost of overseeing chartering entities is covered by the 1% or 3% oversight fee.

The reimbursable activities outlined in the test claim are unrelated to the authorized 1% or 3% of the charter school revenue charged by the chartering entities. The test claim illustrates essential elements to be in the charter petition. Approving or denying a charter petition is outside the chartering agencies' oversight capacity.

Comments from the Department of Finance omit the renewal of charter schools. A charter may only be approved for five years. The charter must submit a renewal petition once the five years has expired. Additionally, any material revisions to a charter petition must be approved by the chartering agency. Education Code Section 47607(a)(1) reads, "(r)enewals and material revisions of charters shall be governed by the standards and criteria in Section 47605". Reviewing renewal for new charter schools' petition is a time consuming and costly process. The Commission recognized this when it approved the Parameters and Guidelines for *Charter Schools*.

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information or belief.

Sincerely,

Art Palkowitz
Manager, Office of Resource Development

PROOF OF SERVICE

RE: *Charter Schools IV, 03-TC-03*

I am employed in the County of San Diego, State of California. I am over 18 years of age and not a party to the within entitled action; my business address is 4100 Normal Street, Room 3159, San Diego, California 92103.

On May 7, 2004, I served the foregoing document(s) described as:

Response to Department of Finance Analysis Dated January 20, 2004

On the person/parties in this action by placing a true and correct copy thereof enclosed in a sealed envelope(s) with postage thereon fully prepaid in the United States Mail at San Diego, California, with first-class postage thereon fully prepaid.

Ms. Paula Higashi, Executive Director
Commission on State Mandates
980 Ninth Street, Suite #300
Sacramento, CA 95814

State Controller's Office
Division of Accounting & Reporting
Attention: William Ashby
3301 C Street, Room 500
Sacramento, CA 95816

Legislative Analyst's Office
Attention Marianne O'Malley
925 L Street, Suite 1000
Sacramento, CA 95814

Education Mandated Cost Network
C/O School Services of California
Attention: Dr. Carol Berg, PhD
1121 L Street, Suite 1060
Sacramento, CA 95814

Department of Education
School Business Services
Attention: Marie Johnson
560 J Street, Suite 170
Sacramento, CA 95814

State Board of Education
Attention: Bill Lucia, Executive Director
721 Capitol Mall, Room 532
Sacramento, CA 95814

California Teachers Association
Attention: Steve DePue
2921 Greenwood Road
Greenwood, CA 95635

Mr. Keith Petersen
SixTen & Associates
5252 Balboa Avenue Suite 807
San Diego CA 92117

Ms. Sandy Reynolds, President
Reynolds Consulting Group, Inc.
P.O. Box 987
Sun City CA 92586

Girard & Vinson
Attention: Paul Minney
1676 N. California Blvd., Suite 450
Walnut Creek, CA 95496

Mr. Gerald Shelton, Administrator (E-8)
California Department of Education
Fiscal and Administrative Services
1430 N Street, Suite 2213
Sacramento, CA 95814

Mr. Steve Shields,
Shields Consulting Group, Inc.
1536 36th Street
Sacramento CA 95816

Mr. Steve Smith, CEO
Mandated Cost Systems, Inc.
2275 Watt Avenue, Suite C
Sacramento, CA 95825

Ms. Harmeet Barkschat
Mandate Resource Services
5325 Elkhorn Blvd. #307
Sacramento, CA 95842

Mr. Jay Stewart
Western Placer Unified School District
1400 First Street
Lincoln, CA 95648

Ms. Jennifer Rockwell
Office of the Attorney General
1300 I Street, 17th Floor
P.O. Box 944255
Sacramento, CA 95814

Mr. Joe Lucente
Fenton Avenue Charter School
11828 Gain Street
Lake View Terrace, CA 91342

Mr. Michael Havey
State Controller's Office
Division of Accounting & Reporting
3301 C Street, Suite 500
Sacramento, CA 95816

Mr. Fil Guzman
BWG Educational Consultants, LLC
1055 Copper Court
Vacaville, CA 95687

Ms. Beth Hunter
Centration, Inc.
8316 Red Oak Street, Suite 101
Rancho Cucamonga, CA 91730

I declare, under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 7, 2004, in San Diego, California.

Tenya Rushing

Hearing: January 27, 2011
J:\Mandates\2003\03-TC-03\Charter Schools IV\TC\dsa.doc

ITEM___

TEST CLAIM
DRAFT STAFF ANALYSIS

Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47626, 47652

Government Code Section 3540.1

Statutes 1999, Chapter 828, Statutes 2002, Chapter 1058

Charter Schools IV
03-TC-03

San Diego Unified School District, Claimant

EXECUTIVE SUMMARY

Overview

This test claim addresses statutory amendments relating to charter schools. The test claim statutes enacted in 1999 subject charter schools to the Educational Employment Relations Act (EERA). Since 1976, the EERA has governed labor relations in California public schools with the following stated purpose:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems . . . by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers …and to afford certificated employees a voice in the formulation of educational policy.

The EERA creates a process for groups of school district employees to organize and become represented by an employee organization, and states the scope of representation is "limited to matters relating to wages, hours of employment, and other terms and conditions of employment." The EERA also defines the rules for negotiations, mediation, and dispute of grievances, and it establishes the Public Employment Relations Board to administer the EERA and referee labor disputes.

The test claim statutes require each charter school charter to contain, "[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school…." The EERA defines "public school employer" as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, *or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code*."

If the charter school is not deemed a public school employer, the school district where the charter is located is deemed the public school employer for the purposes of the EERA.

The 2002 test claim statutes were enacted to increase the oversight and accountability of charter schools. Under these statutes, each charter school is required to approve an annual statement of

its receipts and expenditures and file it with the entity that approved the charter, which files it with the county office of education, which verifies its mathematical accuracy and submits it to the Superintendent of Public Instruction (SPI). Charter schools are required to respond to reasonable inquiries from a county office of education regarding financial records, and county offices of education are authorized to monitor the operations of a charter school located within that county and investigate the charter school's operations. Annual audits are required to be submitted to the State Controller and the county office of education.

The charter school petition requirements were also amended by the 2002 statute to require the petition to include identification of a single charter school that will operate in the geographic boundaries of the school district, except as specified. If the charter school is to operate at multiple sites in the district, it must identify those sites in the petition, which is subject to approval by the school district governing board. If the charter school is to serve high school pupils, the charter must also include a description of how the school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements, as specified. Petitions must also include a description of the procedures to be used if the charter school closes, including a final audit of the school to determine the disposal of assets and liabilities and the transfer of pupil records.

The 2002 legislation also restricted the geographic location of a charter school, allowing it to locate outside its school district, but within the county of the district, only under specified circumstances.

Procedural History

The test claim was filed on August 29, 2003 by the San Diego Unified School District. The Department of Finance filed comments on January 23, 2004. The claimant filed rebuttal comments on May 12, 2004.

Positions of Parties and Interested Parties

Claimant Position

Claimant alleges that the test claim statutes impose a reimbursable state mandate for school districts, county offices of education, and charter schools.

State Agency Position

The Department of Finance argues that charter schools are not eligible claimants because establishing and maintaining charter schools is a discretionary act that is not mandated by the state, as is responding to inquiries from the chartering entity that granted the charter, and participating in judicial proceedings. Finance argues that school district oversight of schools in their districts has been a district responsibility since before 1975, so the oversight of charter schools is not a new program or higher level of service. Moreover, chartering entities have fee authority to recover costs for oversight and charter petition review. (Ed. Code, § 47613.)[1]

According to Finance, there may be minor reimbursable activities to review new petition information if a school district reviews and denies a charter petition, but "these activities

[1] All references are to the Education Code unless otherwise indicated.

represent a very minor incremental change to the existing petition review process and are likely already incorporated into claims submitted for existing petition reviews."

Commission Responsibilities

Under article XIII B, section 6 of the California Constitution, local agencies and school districts (i.e., local governments) are entitled to reimbursement for the costs of state-mandated new programs or higher levels of service. In order for local governments to be eligible for reimbursement, one or more similarly situated local governments must file a test claim with the Commission. "Test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. Test claims function similarly to class actions and all members of the class have the opportunity to participate in the test claim process and all are bound by the final decision of the Commission for purposes of that test claim.

The Commission is the quasi-judicial body vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6. In making its decisions, the Commission cannot apply article XIII B as an equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities.

Claims

Claim	Description	Issues	Recommendation
Education Code sections 47605 & 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828.)	These provisions make charter schools subject to the EERA.	At its July 2006 hearing, the Commission issued a prior final decision in the *Charter Schools Collective Bargaining* test claim on these statutes.	Deny. The Commission does not have jurisdiction to reconsider these statutes.
Education Code sections 1628, 42100(a), 47604.4(a), 47605(j)(1) and 47605.6, (Stats. 2002, ch. 1058)	Claimant seeks reimbursement for oversight and reporting activities for county office of education or county superintendents of schools or county boards of education.	Claimant, SDUSD, files no evidence in the record regarding costs incurred by the county school agencies for these activities.	Deny. There is no evidence in the record of costs mandated by the state incurred by county school agencies for these activities.

Education Code sections 42100(b), 47604.3, 47604.4(b), 47605(a)(4), 47605(j)(1), 47605(m), 47605.1, 47652 (Stats. 2002, ch. 1058) and section 47626 (Stats. 1999, ch. 828).	Claimant seeks reimbursement for notification, reporting, and information-providing activities for charter schools.	Claimant, SDUSD, files no evidence in the record regarding costs incurred by charter schools for these activities.	Deny. There is no evidence in the record of costs mandated by the state incurred by charter schools for these activities.
Education Code sections 47605(a)(1), (a)(5), (b)(5)(A)(ii), (b)(5)(P), (g), (i), (j)(6), 47605.6 (a)(1)(A) & (B), (a)(3) & (a)(4) (Stats. 2002, ch. 1058).	Claimant seeks reimbursement for activities of charter petitioners in obtaining approval for charter schools	Charter school petitioners are not local governments. Charter school petitions can be filed by anyone and are often organized by a group of teachers, parents and community leaders, or by a community-based organization.	Deny. Only local governments that are subject to the tax and spend provisions of article XIII B are eligible for reimbursement under article XIII B, section 6.
Education Code sections 1628, 42100 (c), 47602 (a)(1), 47605.8, 47612.1, 47613.1, 47652 (a) (Stats. 2002, ch. 1058).	Claimant's test claim pleads statutes that apply solely to state agencies.	The statutes impose no requirements on school districts or local agencies.	Deny. These statutes do not mandate a school district activity.
Education Code section 47605 (Stats. 2002, ch. 1058).	Claimant seeks reimbursement to review additional information in the charter petition, receive notification and consider at an open meeting proposed material revisions to an already approved charter to establish operations at one or more additional sites within	Claimant alleges that these activities are reimbursable. Finance asserts that school districts have fee authority for these review activities.	Approve. These activities constitute a reimbursable state mandated program. The fee authority in Education Code section 47613 does not cover the costs incurred to review additional information required to be included in a new charter petition. While the fee

	the jurisdictional boundaries of the school district.		authority is intended to pay the "supervisorial oversight of a charter school, which includes the cost of considering proposed revisions to an existing petition, there is no evidence in the record that the revenue is sufficient to cover the costs incurred.
Education Code section 42100(a) (Stats. 2002, ch. 1058).	Claimant seeks reimbursement to include with its annual statement of receipts and expenditures, the charter school's annual statement of receipts and expenditures and file it with the county superintendent of schools by September 15.	Claimant alleges this activity is reimbursable. Finance argues that school districts have fee authority for this activity.	Approve. This is a reimbursable state-mandated activity. Although the fee authority in Education Code section 47613 is intended to cover the costs for "supervisorial oversight" of a charter school, which includes this activity, there is no evidence in the record that the fee authority is sufficient to pay for the state mandated activities.

Staff Analysis

Commission Jurisdiction

Education Code sections 47605 and 47611.5, and Government Code section 3540.1 as added and amended by Statutes 1999, chapter 828, make the charter school, or the designated public school employer, subject to collective bargaining under the EERA (Gov. Code, § 3540 et seq.) At its July 28, 2006 hearing, the Commission decided the *Charter Schools Collective Bargaining* test claim (99-TC-05), which determined that these statutes do not constitute a reimbursable mandate. Because the Commission does not have jurisdiction to reconsider its prior final decision, staff recommends that the Commission deny Education Code sections 47605 and 47611.5, and Government Code section 3540.1. (Stats. 1999, ch. 828.)

County Offices of Education and Charter Schools

Claimant has filed no evidence of costs mandated by the state incurred by county offices of education (including county boards of education and county superintendents of schools) or by charter schools for the activities in the test claim statutes that are unique to those entities.

The claimant has the burden to prove that new mandated activities result in increased costs mandated by the state in an amount of at least $1,000. The Commission's regulations require that all assertions or representations of fact: (1) be supported with documentary evidence authenticated by a declaration signed under penalty of perjury by persons authorized and competent to do so, and (2) be based on the declarant's personal knowledge, information, or belief.

Although the test claim includes a declaration of costs for school districts and county offices of education, which would satisfy evidentiary requirements for activities common to both school districts and county offices of education, there is no declaration of costs mandated by the state for activities in the test claim statutes that are unique to county offices or charter schools.

Due to the lack of evidence, staff finds that Education Code sections 1628, 42100 (a), 47604.4(a), 47605 (j)(1) and 47605.6, (Stats. 2002, ch. 1058) as they affect county offices of education do not impose a reimbursable state-mandated new program or higher level of service. For the same reason, staff finds that the following Education Code sections do not impose a reimbursable state-mandated new program or higher level of service as they apply to charter schools: Education Code sections 42100(b), 47604.3, 47604.4(b), 47605(a)(4), 47605(j)(1), 47605(m), 47605.1, 47605.6(a)(3), 47626, and 47652, as amended by Statutes 2002, chapter 1058, and Education Code section 47626 as added by Statutes 1999, chapter 828. Staff makes no findings whether these statutes constitute a state-mandated new program or higher level of service under article XIII B, section 6.

Charter School Petitioners

The test claim statutes amended the petition process to require that charter school petitioners provide additional information, as specified in the analysis. Staff recommends that these activities be denied because a school district, such as claimant SDUSD, is not a charter school petitioner. Anyone may file a charter school petition. Charter school petitioners are not local governments or school districts until the charter is approved, and thus, activities required of petitioners are not eligible for reimbursement under article XIII B, section 6.

Accordingly, staff finds that Education Code section 47605s(a)(1), (a)(5), (b)(5)(A)(ii), (b)(5)(P), (g), (i), (j)(6), and section 47605.6(a)(1)(A) & (B), (a)(3), and (a)(4), do not impose a reimbursable state-mandated program.

State Agency Activities

Some of the test claim statutes impose requirements on state agencies, but not on school districts. Thus, staff finds that Education Code sections 1628, 42100(c), 47602(a)(1), 47605.8, 47612.1, 47613.1, and 47652(a), as added or amended by Statutes 2002, chapter 1058, are not a reimbursable state-mandate subject to article XIII B, section 6.

Review and Consider Charter School Petitions Submitted to School Districts (§ 47605)

Education Code section 47605, as amended in 2002, requires school districts to perform the following new activities:

1. Review and consider at a public hearing the following additional information in the charter school petition:
    a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.[2]
    b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.[3]
    c) A description of where the charter school intends to locate in its description of facilities.[4]
    d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:
        (1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
        (2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
        (3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.[5]
2. If, after review, the school district denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.[6]
3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.[7]

---

[2] Education Code section 47605(b)(5)(A)(ii).

[3] Education Code section 47605(b)(5)(P).

[4] Education Code section 47605(g).

[5] Education Code section 47605(a)(1) and (5).

[6] Education Code section 47605(b).

Staff finds that these activities are a state-mandated new program or higher level of service.

School District's Filing of Charter School Annual Statement of Receipts and Expenditures (§ 42100(a))

Education Code section 42100 (a), as amended in 2002, requires a school district governing board to include the charter school's annual statement of all receipts and expenditures for the preceding fiscal year with its own annual filing and file them with the county superintendent of schools on or before September 15 each year. Because this was not required by prior law, staff finds that this activity constitutes a state-mandated new program or higher level of service.

Education Code Sections 47605 and 42100, as Amended in 2002, Impose Costs Mandated by the State

Government Code section 17556 (d) provides that the Commission shall not find costs mandated by the state if "[t]he … school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

Education Code section 47613 authorizes school districts to charge fees to charter schools based on a small percentage of the charter school's revenue (either 1% or 3% depending on whether the charter school can obtain rent-free facilities from the chartering authority) "for the actual costs of supervisorial oversight."

Staff finds that the fee authority in section 47613 does not apply to the activities identified in 1. and 2. above to review and consider at a public hearing the additional information required by Education Code section 47605 to be included in the charter school petition since the proposed charter has not yet been approved. The plain language of Education Code section 47613 states that the fee may be charged against the revenue of a charter school. Charter school petitioners are not yet a charter school and cannot receive revenue until the charter is approved. Thus, Government Code section 17556(d) does not apply to deny this claim with respect to the activities required by section 47605 to review and consider additional information in the charter school petition, or to make specific findings supporting a denial of the petition based on the additional information. Thus, staff finds that the activities mandated by Education Code section 47605 and listed in 1. and 2. above impose costs mandated by the state within the meaning of Government Codes section 17514.

However, staff finds that the fee authority for "supervisorial oversight" applies to the remaining activities mandated by Education Code section 42100(a) and 47605(a)(4); to consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district, and to include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.

However, there is no evidence in the record that the one or three percent fee revenue is sufficient to pay for these mandated activities, as required by Government Code section 17556 (d). There

[7] Education Code section 47605(a)(4).

is no evidence showing the actual costs of the two mandated activities, or the amount of revenue received. At the time this test claim was filed, claimants only had to estimate costs for all claimed activities to be at least $1,000. Moreover, the fee revenue applies to many other oversight activities that are not included in this test claim.

Accordingly, staff finds that the activities mandated by Education Code sections 42100(a) and 47605(a)(4) impose costs mandated by the state. If this test claim is approved, any fee revenue received by a school district pursuant to Education Code section 47613 and applied to these activities will be identified as offsetting revenue in the parameters and guidelines.

Conclusion and Recommendation

Staff finds that sections 42100 and 47605 (Stats. 2002, ch. 1058) constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution for school districts to perform the activities listed in the conclusion at the end of this document.

Staff recommends that the Commission adopt this analysis to partially approve the test claim for these activities.

STAFF ANALYSIS

Claimant

San Diego Unified School District

Chronology

08/29/2003 Test claim 03-TC-03 filed by the San Diego Unified School District

12/24/2003 Department of Finance requests extension of time to file comments

01/23/2004 Department of Finance files comments

05/12/2004 Claimant files rebuttal comments

I. Background

Charter schools are publicly funded K-12 schools that enroll pupils based on parental choice rather than residential assignment. In order to encourage innovation and provide expanded educational choices,[8] charter schools are exempt from most laws governing school districts.[9] California was the second state in the nation to authorize charter schools in 1992, and they have steadily increased in number and enrollment since then.[10]

Labor Relations (EERA) Statutes

The test claim statutes enacted in 1999 (Stats. 1999, ch. 828) subject charter schools to the Educational Employment Relations Act (EERA) or "Rodda Act."[11] Since 1976, the EERA has governed labor relations in California public schools with the following stated purpose:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems . . . by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers …and to afford certificated employees a voice in the formulation of educational policy.[12]

[8] Education Code section 47601 includes these reasons, among others, in the legislative intent for establishing charter schools.

[9] Education Code section 47610. Exceptions to the exemption in section 47610 include teachers' retirement, the Charter School Revolving Loan Fund, and laws establishing minimum age for public school attendance. Other areas in which charter schools are subject to the Education Code include pupil assessments (§ 47605(c)(1)) and teacher credentials (§ 47605(l)).

[10] Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004); <http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm> as of November 15, 2011.

[11] The EERA is Government Code section 3540 et seq. (Stats. 1975, ch. 961, eff. July 1, 1976).

[12] Government Code section 3540.

The EERA creates a process for groups of school district employees to organize and become represented by an employee organization,[13] and states the scope of representation is "limited to matters relating to wages, hours of employment, and other terms and conditions of employment."[14] The EERA also defines the rules for negotiations,[15] mediation,[16] and dispute of grievances,[17] and it establishes the Public Employment Relations Board to administer the EERA and referee labor disputes.[18]

The test claim statutes require each charter school charter to contain, "[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school…."[19] The EERA defines "public school employer" as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, *or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code*."[20]

If the charter school is not deemed a public school employer, the school district where the charter is located is deemed the public school employer for the purposes of the EERA.[21] This section also requires, "By March 31, 2000, all existing charter schools …[to] declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter."[22]

The scope of representation for charter school employees may include discipline and dismissal, "if the charter … does not specify that it shall comply with those statutes and regulations … that establish and regulate tenure or a merit or civil service system."[23]

---

[13] Government Code section 3543.

[14] Government Code section 3543.2. "Terms and conditions of employment" is defined broadly to include health and welfare benefits, leave, transfer and reassignment policies, safety conditions of employment, class size, procedures to be used for employee evaluation, organizational security, grievance procedures, layoff of probationary certificated employees, et cetera.

[15] Government Code section 3543.3.

[16] Government Code section 3548.

[17] Government Code section 3543.

[18] Government Code section 3541.

[19] Education Code section 47605(b)(5)(O), Statutes 1998, chapter 828. References herein are to the Education Code unless otherwise indicated.

[20] Government Code section 3540.1, as amended by Statutes 1999, chapter 828. Emphasis added.

[21] Education Code section 47611.5(b), Statutes 1999, chapter 828.

[22] Education Code section 47611.5(f), Statutes 1999, chapter 828.

[23] Education Code section 47611.5(c), Statutes 1999, chapter 828.

Oversight and Accountability Reform Statutes

The 2002 test claim statutes were enacted because, according to the legislative history of AB 1994 (Stats. 2002, ch. 1058), "charter schools lack the oversight and accountability required of other public schools."[24] The catalyst was the Gateway Academy Charter School, which was approved by the Fresno Unified School District in 1998 and began operations in fall 1999.

> However, the [Gateway Academy] charter was revoked by the Fresno Unified School District Board . . . after it learned that the 600-student statewide school had accumulated a $1.3 million debt in one year, hired teachers without credentials, and employed individuals who did not pass criminal background checks. The large debt triggered many questions including how Gateway used state and federal funding and questions about its enrollment. Inquiries suggested that one of Gateway's satellites, the Silicon Valley Academy, was providing sectarian studies and charging tuition. Numerous other accounts of violations involving Gateway have been alleged over the last several months. AB 1994 provides several key common sense reforms so charter schools are more accountable to taxpayers.
>
> [¶]…[¶] Gateway's charter was revoked by the district governing board who cited the difficulties of keeping track of remote (satellite) operations as a reason why various anomalies were not discovered sooner.[25]

Under the 2002 test claim statute, each charter school is required to approve an annual statement of its receipts and expenditures and file it with the entity that approved the charter, which files it with the county superintendent of schools, who verifies its mathematical accuracy and submits it to the Superintendent of Public Instruction (SPI). [26] Charter schools are required to respond to reasonable inquiries from a county office of education regarding financial records[27] and county offices of education are authorized to monitor the operations of a charter school located within that county and investigate the charter school's operations.[28] Annual audits are required to be submitted to the State Controller and the county superintendent of schools unless the county superintendent is the chartering entity.[29]

The charter school petition requirements were amended by the 2002 statute to require the petition to include identification of a single charter school that will operate in the geographic boundaries of the school district, except as specified. If the charter school is to operate at multiple sites in

---

[24] Senate Committee on Education, Analysis of AB 1994 (2001-2002 Reg. Sess.) as amended June 19, 2002, page 1.

[25] Senate Committee on Education, Analysis of AB 1994 (2001-2002 Reg. Sess.) as amended June 19, 2002, pages 2-3.

[26] Education Code section 42100.

[27] Education Code section 47604.3.

[28] Education Code section 47604.4.

[29] Education Code section 47605(m).

the district, it must identify those sites in the petition, which is subject to approval by the school district governing board.[30] If the charter school is to serve high school pupils, the charter must also include a description of how the school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements, as specified.[31] Petitions must also include a description of the procedures to be used if the charter school closes, including a final audit of the school to determine the disposal of assets and liabilities and the transfer of pupil records.[32]

The 2002 legislation restricted the geographic location of a charter school, allowing it to locate outside its school district, but within the county of the district, only under specified circumstances.[33] And other petition and public hearing requirements were imposed before establishing these "county-wide" charter schools, i.e., those that operate in more than one school district in the county.[34] A charter petition for a state-wide charter school may be submitted to the State Board of Education (SBE).[35]

The 2002 test claim statute also modified the appeal process so that when a charter school petition is denied, an appeal to the county board of education is required first before appealing to the State Board of Education. Prior law allowed petitioners to appeal to either the county board or the State Board.

Related Commission Decisions on Charter Schools

On May 26, 1994, the Commission heard and decided the *Charter Schools* (CSM-4437) test claim, finding that Statutes 1992, chapter 781 (§§ 47605 & 47607) imposes a reimbursable state-mandated program for school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

On November 21, 2002, the Commission adopted its statement of decision for the *Charter Schools II* test claim (99-TC-03) finding that Statutes 1998, chapters 34 and 673 (§§ 47605, (j)(1) & (k)(3), 47605.5, 47607, & 47614) require reimbursable state-mandated activities for school districts and county offices of education for activities related to reviewing renewal petitions and permitting charter schools to use school district facilities.

On December 2, 2003, the Commission adopted consolidated parameters and guidelines for the *Charter Schools* and *Charter Schools II* decisions (hereafter *Charter Schools* parameters and guidelines). School districts may charge a fee from one to three percent of the charter school's

[30] Education Code section 47605(a)(1) & (a)(4).

[31] Education Code section 47605(b)(5)(A)(ii).

[32] Education Code section 47605(b)(5)(P).

[33] Education Code section 47605.1(d).

[34] Education Code section 47605.6.

[35] Education Code section 47605.8.

revenue for "supervisorial oversight" of the charter school. (§ 47613.) This fee is a recognized offset in the *Charter Schools* parameters and guidelines.

On May 25, 2006, the Commission decided the *Charter Schools III* test claim (99-TC-14)[36] that alleged various activities related to charter school funding and accountability, and was filed on behalf of both school districts and charter schools. The Commission found that charter schools are not eligible claimants, but found the claim partially reimbursable for school districts.

On July 28, 2006, the Commission decided the *Charter Schools Collective Bargaining* test claim (99-TC-05) that alleged statutes that extended the collective bargaining provisions of the EERA to charter schools. The Commission denied the test claim, finding that a school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school, and that charter schools are not eligible claimants under article XIII B, section 6 of the California Constitution. The Commission also found that subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.

Claimant Position

Claimant, San Diego Unified School District (SDUSD), alleges that the test claim statutes impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. The claimant seeks reimbursement for the activities alleged to be reimbursable for chartering agencies (county offices of education and school districts), charter schools, and county offices of education, as follows:

Chartering Agencies (School Districts and County Offices of Education)

A. Review that the following declarations are included in the charter petition:
    1. How a charter petition for charter schools which serve high school pupils will inform parents about the transferability and eligibility of courses to other public high schools and to meet college entrance requirements;
    2. Procedures to be used if the charter school closes.
B. Review declarations regarding collective bargaining in public education employment:
    1. Whether or not the charter school shall be deemed the exclusive public school employer of the employees (§ 47611.5(b));
    2. That the charter is the employer of the employees at the charter for the purpose of provisions of law relating to collective bargaining for employees of public institutions of higher education, if the charter school intends to be operated by the University of California in University facilities (§ 47626(a));

[36] Filed on Education Code Sections 41365, 47605(b),(c),(d), (j) and (l), 47604.3, 47607(c), 47612.5, 47613 (former § 47613.7), and 47630-47664; Statutes 1996, chapter 786, Statutes 1998, chapter 34, Statutes 1998, chapter 673, Statutes 1999, chapter 162, Statutes 1999, chapter 736, Statutes 1999, chapter 78, California Department of Education Memo (May 22, 2000).

3. The discipline and dismissal of charter school employees, if a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employees (§ 47611.5(c)); and

C. Review of the annual statement of all receipts and expenditures for the preceding fiscal year for fiscal soundness.

Charter Schools

A. Include a declaration regarding the following in the charter petition:

1. Whether the charter school is the exclusive public school employer of the employees at the charter school (§ 47611.5(b));

2. That the charter school is the employer for the purpose collective bargaining for employees of public institutions of higher education, if the charter school is operated by the University of California in university facilities (§ 47626(a));

3. The discipline and dismissal of charter school employees, if a charter school does not specify that it would comply with statutory and regulatory provisions that govern public school employees (§ 47611.5(c));

B. Fiscal and geographic reporting:

1. Approve the annual statement of all receipts and expenditures for the preceding fiscal year and submit it to the chartering agency;

2. Identify a single charter school and specify the geographic and site requirements for the establishment of a charter school renewal or petition sought on or after January 1, 2003;

C. Respond promptly to all reasonable inquiries from its chartering authority:

1. Respond to inquiries including but not limited to, inquiries regarding its financial records;

2. Consult and respond to county office of education's inquiries regarding investigations or monitoring by the county office of education.

County Superintendent of Schools

1. Monitor the operations of charter schools; and

2. Conduct investigations based on parental complaints or other information that justifies an investigation.

Claimant SDUSD alleges that school districts and county offices of education have incurred or will incur costs in excess of $1,000 per fiscal year to perform these activities.[37]

[37] In its May 2004 rebuttal to the state agency comments, claimant asserts that the comments of the Department of Finance are incompetent and should be excluded from the record because they are not signed under penalty of perjury "with the declaration that it is true and complete to the best of the representative's personal knowledge or information or belief." (Cal. Code Regs.,

State Agency Position

The Department of Finance asserts that charter schools are not eligible claimants because establishing and maintaining charter schools is a discretionary act that is not mandated by the state. Finance also states that other activities are discretionary and not reimbursable, such as responding to inquiries from the chartering entity (because it is discretionary for local oversight entities to request the specified information) and participating in judicial proceedings. Finance argues that school district's overseeing district schools has been a district responsibility since before 1975, so are not a new program or higher level of service. And chartering entities have fee authority to recover costs for oversight and charter petition review (§ 47613).

According to Finance, there may be minor reimbursable activities to review new petition information if a school district reviews and denies a charter petition, but "these activities represent a very minor incremental change to the existing petition review process and are likely already incorporated into claims submitted for existing petition reviews."

II. DISCUSSION

Article XIII B, section 6 of the California Constitution provides in relevant part the following:

> Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such programs or increased level of service.

The purpose of article XIII B, section 6 is to "preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[38] Thus, the subvention requirement of section 6 is "directed to state mandated increases in the services provided by [local government] …"[39]

Reimbursement under article XIII B, section 6 is required when the following elements are met:

1. A state statute or executive order requires or "mandates" local agencies or school districts to perform an activity.[40]

---

tit. 2, § 1183.02 (c)). While the claimant correctly states the Commission's regulation, staff disagrees with the request to exclude Finance's comments from the official record. Most of the comments from Finance argue an interpretation of the law, rather than constitute a representation of fact. If this case were to proceed to court on a challenge to the Commission's decision, the court would not require sworn testimony for argument on the law. The ultimate determination whether a reimbursable state-mandated program exists is a question of law. (*County of San Diego v. State of California* (1997) 15 Cal.4th 68, 89.)

[38] *County of San Diego, supra,* 15 Cal.4th 68, 81.

[39] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[40] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 874.

2. The mandated activity either:

    a. Carries out the governmental function of providing a service to the public; or

    b. Imposes unique requirements on local agencies or school districts and does not apply generally to all residents and entities in the state.[41]

3. The mandated activity is new when compared with the legal requirements in effect immediately before the enactment of the test claim statute or executive order and it increases the level of service provided to the public.[42]

4. The mandated activity results in the local agency or school district incurring increased costs. Increased costs, however, are not reimbursable if an exception identified in Government Code section 17556 applies to the activity. [43]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[44] The determination whether a statute or executive order imposes a reimbursable state-mandated program is a question of law.[45] In making its decisions, the Commission must strictly construe article XIII B, section 6, and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[46]

Issue 1: The Commission does not have jurisdiction to reconsider Education Code sections 47605 and 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828).

As discussed above, the test claim pleads Education Code sections 47605 and 47611.5, and Government Code section 3540.1, as added and amended by Statutes 1999, chapter 828. These statutes make the charter school, or the designated public school employer, subject to collective bargaining under the EERA (Gov. Code, § 3540 et seq.) These code sections, however, as amended by Statutes 1999, chapter 828, were the subject of a prior Commission decision. Thus, the Commission does not have jurisdiction to reconsider its prior final decision on these statutes.

---

[41] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875 (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56.

[42] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874-875, 878; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[43] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284; Government Code sections 17514 and 17556.

[44] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551 and 17552.

[45] *County of San Diego, supra,* 15 Cal.4th 68, 109.

[46] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

At its July 28, 2006 hearing, the Commission decided the *Charter Schools Collective Bargaining* test claim (99-TC-05), which alleged these same statutes that extend the collective bargaining provisions of the EERA to charter schools. The test claim statutes require each charter school petition to contain, "[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school…."[47] Moreover, the scope of representation under the EERA for charter school employees may include discipline and dismissal, "if the charter … does not specify that it shall comply with those statutes and regulations … that establish and regulate tenure or a merit or civil service system."[48]

The Commission denied the *Charter Schools Collective Bargaining* test claim based on the following findings:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as a declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5(b) & (f)) are not activities subject to article XIII B, section 6.
- The test claim statutes do not mandate an activity on county boards of education.
- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state (within the meaning of Government Code sections 17514 and 17556) to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605(b)(5)(O).)

The claimant did not request reconsideration of the Commission's decision in *Charter Schools Collective Bargaining* (99-TC-05), nor was the decision challenged in court.[49] Thus, the Commission's decision in 99-TC-05 is a final, binding decision. Once a decision of the Commission becomes final and has not been set aside by a court it cannot be reconsidered.[50]

---

[47] Education Code section 47605(b)(5)(O), Statutes 1998, chapter 828.

[48] Education Code section 47611.5(c), Statutes 1999, chapter 828.

[49] Government Code section 17559 authorizes any party to request reconsideration within 30 days after the statement of decision is delivered or mailed to the claimant, and authorizes the parties to challenge the Commission's decision under Code of Civil Procedure section 1094.5.

[50] *California School Boards Assoc. v. State of California* (2009) 171 Cal.App.4th 1183, 1200.

Staff finds, therefore, that the Commission does not have jurisdiction to reconsider Education Code sections 47605 and 47611.5, and Government Code section 3540.1 (Stats. 1999, ch. 828).

Thus, the "test claim statutes" over which the Commission has jurisdiction in this claim (and as used in the remainder this analysis) are the following Education Code sections: 1628, 42100, 47602, 47604.3, 47605, 47613.1, 47652, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47612.1 (Stats. 2002, ch. 1058) and 47626 (Stats. 1999, ch. 828).

Issue 2: Do the remaining test claim statutes impose a reimbursable state-mandated program subject to article XIII B, section 6 of the California Constitution?

A. There is no evidence in the record that county offices of education, county superintendents of schools, or county boards of education have incurred costs mandated by the state for the activities imposed uniquely on counties.

The claimant, SDUSD, is seeking reimbursement for the costs incurred by school districts and county offices of education as a result of the test claim statutes. The test claim documents, however, provide no evidence of costs mandated by the state for the county offices of education (including the county superintendents of schools or county boards of education) activities in the test claim.

The claimant has the burden to prove that new mandated activities result in increased costs mandated by the state in an amount of at least $1,000.[51] At the time this test claim was filed in 2003, the Commission's regulations required that all assertions or representations of fact: (1) be supported with documentary evidence authenticated by a declaration signed under penalty of perjury by persons authorized and competent to do so; and (2) be based on the declarant's personal knowledge, information, or belief.[52] The requirement is still in the law today.[53]

The test claim, signed and certified by the claimant's accounting director that the statements in the test claim are true and correct, includes the following statement: "School districts and county offices of education have incurred or will incur costs in excess of $1000 per fiscal year to perform the activities described in section B above." This statement may be sufficient to show costs incurred by county offices of education for those requirements that apply equally to both school districts and county offices.

Claimant has filed no evidence, however, regarding the alleged costs mandated by the state for the activities that apply solely to county offices of education. The activities unique to county offices of education in this test claim include the following:

- Receive from each school district an approved annual statement of all receipts and expenditures of the charter school for the preceding fiscal year, and verify its

[51] Government Code sections 17514, 17564.

[52] Former California Code of Regulations, title 2, section 1183(d)(3)(C)(4).

[53] Government Code section 17553(b)(2); California Code of Regulations, title 2, sections 1183.03, 1187.5.

mathematical accuracy, and transmit the annual statement to the Superintendent of Public Instruction.[54]

- Review, require information, hold a public hearing, and approve or deny a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education.[55]
- Initially review appeals of a charter petition denied by the school district, after which a petitioner could appeal to the State Board of Education.[56]

In addition, county superintendents of schools are authorized by the test claim statutes to monitor the operations of a charter school and investigate its operations.[57]

The declaration from SDUSD does not satisfy the evidentiary requirement that county offices of education have incurred costs mandated by the state for these activities. Such an assertion would have to be supported by documentary evidence authenticated by declarations from employees of a county office of education or persons authorized by a county office who are competent to make assertions of the facts based on personal knowledge, information, or belief. Since that evidence has not been filed with the Commission, staff finds that the activities required to be performed by county office of education or county superintendent of schools pursuant to Education Code sections 1628, 42100(a), 47604.4(a), 47605(j)(1) and 47605.6, (Stats. 2002, ch. 1058) do not impose a reimbursable state-mandated program. Staff makes no findings on whether these statutes constitute a state-mandated new program or higher level of service on county offices of education, county superintendents of schools or county boards of education.

B. There is no evidence in the record that charter schools have incurred costs mandated by the state.

The test claim also seeks reimbursement for activities required of charter schools.

As stated above, claimant has the burden when filing a test claim to prove that new mandated activities result in increased costs mandated by the state in an amount of at least $1,000.[58] In doing so, claimant must comply with the Commission's regulations that require assertions or representation of fact be supported with documentary evidence authenticated by a declaration

[54] Education Code sections 1628 and 42100(a), (Stats. 2002, ch. 1058).

[55] Education Code section 47605.6, (Stats. 2002, ch. 1058).

[56] Education Code section § 47605(j)(1). Before the 2002 test claim statute, petitioners whose charter petitions were denied by the school district could choose to appeal the decision to either the COE or directly to the State Board of Education. (former § 47605(j)(1).)

[57] Education Code section 47604.4(a), (Stats. 2002, ch. 1058).

[58] Government Code sections 17514, 17564.

signed under penalty of perjury by persons authorized and competent to do so. The assertions in the declaration must be based on the declarant's personal knowledge, information, or belief.[59]

The only evidence in the record of costs mandated by the state is the declaration from the accounting director of SDUSD, which states: "School districts and county offices of education have incurred or will incur costs in excess of $1000 per fiscal year to perform the activities described in section B above."

There is no documentary evidence in the record authenticated by declarations from employees of a charter school, or from persons authorized by a charter school who are competent to make assertions based on personal knowledge, information, or belief that charter schools have incurred costs mandated by the state for the following activities that apply to charter schools themselves:

- Approve an annual statement of all receipts and expenditures for the preceding fiscal year and file it with the entity that approved the charter school.[60]
- Promptly respond to all reasonable inquiries from a county office of education that has jurisdiction over the school's chartering authority, including, but not limited to, inquiries regarding its financial records, and to consult with the county office regarding any inquiries.[61]
- Notify the county superintendent of schools of the county in which the charter school is located of the location of the charter school, including the location of each site, if applicable, prior to commencing operations.[62]
- After receiving approval for its petition, a charter school that proposes to establish operations at one or more additional sites within the jurisdictional boundaries of the school district shall request a material revision to its charter and shall notify the school district governing board of the additional locations.[63]
- For charter schools that receive approval of their petitions upon appeal to the county board of education or State Board of Education to be subject to all the same requirements concerning geographic location that it would otherwise be subject to if it receives approval from the entity to whom it originally submits its petition.[64]

---

[59] Former California Code of Regulations, title 2, section 1183(d)(3)(C)(4). Government Code section 17553(b)(2); California Code of Regulations, title 2, sections 1183.03, 1187.5.

[60] Education Code section 42100(b), (Stats. 2002, ch. 1058).

[61] Education Code section 47604.3, (Stats. 2002, ch. 1058.)

[62] Education Code section 47604.4(b), (Stats. 2002, ch. 1058).

[63] Education Code section 47605(a)(4) (Stats. 2002, ch. 1058). This is also true of a charter school petition approved by a county board of education. (Ed. Code, § 47605.6 (a)(3), Stats. 2002, ch. 1058.)

[64] Education Code section 47605(j)(1), (Stats. 2002, ch. 1058).

- Submit the annual financial audit reports for the preceding fiscal year to the Controller and, unless the county board of education is the chartering entity, the county superintendent of schools of the county in which the charter school is sited.[65]
- For a charter school that is granted a charter from the governing board of a school district on or after July 1, 2002, and commences providing educational services to pupils on or after July 1, 2002, to locate in accordance with the geographic and site limitations, as specified.[66]
- For charter schools approved by the State Board of Education (SBE) to have their average daily attendance approved by and submitted to the SBE.[67]
- For charter schools operated by the University of California, as specified, to declare in their charters that they are the employer of the charter school employees for the purposes of the EERA, as specified, and to amend their charters as specified.[68]

Accordingly, staff finds that the following Education Code sections do not impose a reimbursable state-mandated program: Education Code sections 42100 (b), 47604.3, 47604.4(b), 47605(a)(4), 47605(j)(1), 47605(m), 47605.1, 47652, as amended by Statutes 2002, chapter 1058, and Education Code section 47626 as added by Statutes 1999, chapter 828. Staff makes no findings whether charter schools are eligible to claim reimbursement pursuant to article XIII B, section 6 of the California Constitution, or whether these statutes constitute a state-mandated new program or higher level of service.

C. Activities required of charter school petitioners are not eligible for reimbursement under article XIII B, section 6 of the California Constitution.

Before a charter school can be established as a local entity, a petition to establish the school must be filed with an existing school district, county office of education, or the State Board of Education. The petition can be organized by one or more persons seeking to establish a charter school, and is often organized by a group of teachers, parents and community leaders or by a community-based organization.[69] The test claim statutes amended the petition process, and require that the petition include additional information as follows:

- Identify a single charter school that will operate within the geographical boundaries of the district. If proposing to establish operations at additional sites, petitioners identify each location in the petition.[70]

---

[65] Education Code section 47605(m), (Stats. 2002, ch. 1058).

[66] Education Code section 47605.1 (Stats. 2002, ch. 1058).

[67] Education Code section 47652, (Stats. 2002, ch. 1058.)

[68] Education Code section 47626, (Stats. 1999, ch. 828.)

[69] Education Code section 47605(a); California Department of Education website <http://www.cde.ca.gov/sp/cs/> as of November 14, 2011.

[70] Education Code section 47605(a)(1), (Stats 2002, ch. 1058).

- If the charter school is unable to locate within the jurisdiction of the chartering school district, to establish one site outside the boundaries of the school district but within the county within which that school district is located. If the school district where the charter proposed to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations and either: (A) the school has attempted to locate in a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the charter school chooses to locate; or (B) the site is needed for temporary use during a construction or expansion project.[71]
- If the charter school will serve high school pupils, include in the petition a description of how the school will inform parents about the transferability of courses to meet college entrance requirements, as specified.[72]
- Include a description of the procedures to be used if the charter school closes, as specified.[73]
- The description of the charter school's facilities shall specify where the school intends to locate.[74]
- For petitioners to provide written notice of the charter's approval and a copy of the petition to the applicable county superintendent of schools and the California Department of Education.[75]
- For a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education, to comply with the signature requirements[76] and petition notice[77] and petition format requirements,[78] as specified.

The claimant is seeking reimbursement for these activities.

However, a school district, such as SDUSD, is not a charter school petitioner. Charter school petitioners are teachers, parents, community leaders and organizations or any individual seeking to petition for a charter school.

Moreover, charter school petitioners cannot seek reimbursement under article XIII B, section 6, because petitioners are not a local governmental entity. Article XIII B, section 6 provides the

---

[71] Education Code section 47605(a)(5), (Stats. 2002, ch. 1058).

[72] Education Code section 47605(b)(5)(A)(ii), (Stats. 2002, ch. 1058).

[73] Education Code section 47605(b)(5)(P), (Stats. 2002, ch. 1058).

[74] Education Code section 47605(g), (Stats. 2002, ch. 1058).

[75] Education Code section 47605(i) & (j)(6), (Stats. 2002, ch. 1058).

[76] Education Code section 47605.6(a)(1)(A) & (B), (Stats. 2002, ch. 1058).

[77] Education Code sections 47605.6(a)(3) (Stats. 2002, ch. 1058).

[78] Education Code section 47605.6(a)(4) (Stats. 2002, ch. 1058).

right to reimbursement only for local governmental entities that are subject to the tax and spend provisions of article XIII B. The Constitution does not provide mandate reimbursement rights to individuals either as taxpayers or recipients of governmental benefits and services.[79]

Accordingly, staff finds that Education Code sections 47605(a)(1), (a)(5), (b)(5)(A)(ii), (b)(5)(P), (g), (i), (j)(6), 47605.6(a)(1)(A) & (B), (a)(3), and (a)(4) (Stats. 2002, ch. 1058), do not impose a reimbursable state-mandated program.

D. Activities imposed on state agencies do not result in a state-mandated new program or higher level of service on school districts.

The following provisions in the test claim statutes apply solely to state agencies and do not mandate school districts to perform any activities.

- Authorize the SPI to amend reporting forms for the charter school's statement of all receipts and expenditures to accommodate changes in statute or government reporting standards,[80] and requires the forms to be adopted by the SBE as regulations.[81]
- Specifies how the charter school numbering system developed by the SBE works.[82]
- Authorizes the SBE to review and approve petitions for state charter schools that operate at multiple sites throughout the state, and requires the SBE to adopt regulations regarding charter petition review.[83]
- For average daily attendance generation, makes the pupil age and continuous enrollment requirements inapplicable to charter school programs in partnership with any of the following; the federal Workforce Investment Act of 1998, federally affiliated Youth Build programs, federal job corps training or instruction provided pursuant to a memorandum of understanding with the federal provider, or the California Conservation Corps or local conversation corps certified by the California Conservation Corps, as specified.[84]
- Amends the requirements for the SPI to make apportionments on behalf of charter schools that elect not to be funded with charter school block grants to apply to school districts in which all schools have been converted to charter schools.[85]
- Requires, for charter schools approved by the SBE, the estimated average daily attendance to be approved by and submitted to the California Department of Education.[86]

---

[79] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 334.

[80] Education Code section 1628 (Stats. 2002, ch. 1058.)

[81] Education Code section 42100(c) (Stats. 2002, ch. 1058.)

[82] Education Code section 47602(a)(1) (Stats. 2002, ch. 1058.)

[83] Education Code section 47605.8 (Stats. 2002, ch. 1058.)

[84] Education Code section 47612.1 (Stats. 2002, ch.; 1058.)

[85] Education Code section 47613.1 (Stats. 2002, ch. 1058.)

[86] Education Code section 47652(a) (Stats. 2002, ch. 1058.)

Thus, staff finds that Education Code sections 1628, 42100(c), 47602(a)(1), 47605.8, 47612.1, 47613.1, 47652(a), as added or amended by Statutes 2002, chapter 1058, do not impose a state-mandated new program or higher level of service under article XIII B, section 6.

E. Education Code sections 47605 and 42100 impose a state-mandated new program or higher level of service on school districts.

Review and Consider Charter School Petitions Submitted to School Districts (§ 47605)

In the *Charter Schools* statement of decision, the Commission found that section 47605 (Stats. 1992, ch. 781) imposes a reimbursable state-mandated program on school districts for activities related to processing initial charter school petitions. School districts are required to review charter school petitions according to the standards and instructions in section 47605 (b). A school district is required to grant a charter school petition if the district is satisfied that the charter is consistent with sound educational practice. School districts must cite facts and make written findings in accordance with the statute in order to reject a charter petition (§ 47605(b)). When the *Charter Schools* test claim was approved, Education Code section 47605 (b) stated in relevant part the following:

> (b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the governing board of the school district shall consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents. Following review of the petition and the public hearing, the governing board of the school district shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. . . A school district governing board shall grant a charter for the operation of a school under this part if it is satisfied that granting the charter is consistent with sound educational practice. The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings:
>
> (1) the charter school presents an unsound educational program for the pupils in the charter school.
>
> (2) The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
>
> (3) The petition does not contain the number of signatures required by subdivision (a) [from parents or guardians, and teachers]
>
> (4) The petition does not contain an affirmation of each of the conditions described in subdivision (d) [i.e., that the charter school is nonsectarian, will not charge tuition, and will not discriminate against any pupil].
>
> (5) The petition does not contain reasonably comprehensive descriptions of all the following:

> . . . . [listing A through P categories, including for example, a description of the governance structure, suspension and expulsion procedures, employee qualifications and rights, and measurable pupil outcomes].

The school district governing board must require the petitioner(s) to provide information regarding the proposed operation and potential effects of the school, including the facilities to be used, the manner in which administrative services are to be provided, and potential civil liability effects upon the school and the district, for the district's review and consideration. The petitioner shall also provide financial statements that include a proposed first-year operational budget, including startup costs, and financial projections for the first three years of operation (§ 47605 (g)).

These provisions are still in the law today. Although school districts retain discretion in the manner of the review and approval or denial of a charter petition, the review itself and the findings required on review are not discretionary.

Thus, the parameters and guidelines for *Charter Schools* include the following reimbursable activities:

> Review and evaluate qualified charter petitions for compliance with criteria for the granting of charters. (§ 47605.)
>
> Prepare for public hearings, to be done within thirty days of receiving the petition, to consider the level of community support for a charter school petition, and grant or deny the charter school petition within sixty days of receiving the petition, subject to one thirty-day continuance by agreement of the parties. (§ 47605.)

The 2002 test claim statute made several amendments to the charter school petition requirements. The test claim statute amended section 47605(b)(5) by requiring school districts to review and consider at a public hearing the following additional information in the petition:

- If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.[87]
- A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.[88]

The test claim statute also amended section 47605(a) and (g) by requiring school districts to require charter school petitioners to provide the following additional information for the school district's review and consideration:

[87] Education Code section 47605(b)(5)(A)(ii).

[88] Education Code section 47605(b)(5)(P).

- A description of where the charter school intends to locate in its description of facilities.[89] The test claim statute allows charter petitioners to propose to operate at multiple sites within a school district as long as each location is identified in the charter school petition. Charter school petitioners are also now authorized to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located, if the following conditions are satisfied:
    - Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;
    - Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and
    - Either the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.[90]

If the school district denies the petition based on this additional information (for example, because the petitioners are demonstrably unlikely to successfully implement the program set forth in the petition), the district is required to make written factual findings, specific to the particular petition, setting forth facts to support the findings.

The 2002 test claim statute also added subdivisions (a)(4) to section 47605 to require school districts to:

- Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.

Based on the plain language of the statute,[91] staff finds that these requirements are mandated by the state. Since these activities were not required by prior law, they constitute a new program or higher level of service. In addition, these activities are unique to school districts and carry out the governmental function of providing a service to the public by providing additional notification and oversight in order to prevent the kind of problems that occurred with the Gateway Academy charter school discussed in the legislative history of the test claim statute. [92]

---

[89] Education Code section 47605(g).

[90] Education Code section 47605(a)(1) and (5). There is no requirement in the statute that the school district that reviews the proposed charter petition issue the notices authorized by statute. The requirement for the school district chartering authority is to review the petition to determine if proper notice has been provided.

[91] Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

[92] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

Accordingly, staff finds that Education Code section 47605, as amended by Statutes 2002, chapter 1058, mandates a new program or higher level of service for school districts for the activities described above.

School District's Filing of Charter School Annual Statement of Receipts and Expenditures (§ 42100(a))

Education Code section 42100, as amended by Statutes 2002, chapter 1058, requires each charter school to approve an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year and file the statement with the entity that approved the charter school.[93] As indicated in the discussion above, the governing board of the school district where the charter school is located approves the charter. Section 42100(a), as amended by the test claim statute, then requires the governing board of the school district to include with its annual statement of receipts and expenditures the statement received from the charter school, and file both statements with the county superintendent of schools on or before September 15 of each year.[94] The county superintendent of schools is required to verify the mathematical accuracy of the statements, prepare its own statement of receipts and expenditures, and transmit all statements (from the charter school, the school district, and the county) to the State Superintendent of Public Instruction.[95]

Under prior law, school districts were not required to include the charter school's annual statement of receipts and expenditures with its own annual statement, or file the charter school's statement with the county superintendent of schools. School districts were only required by prior law to prepare and file their own annual statement of receipts and expenditures.

Based on section 42100's use of the word "shall"[96] staff finds that section 42100(a) is a state mandate on school districts to include the charter school's annual statement of receipts and expenditures with the annual statement of the district, and to file the charter school's statement with the county superintendent of schools by September 15 each year. .

Staff further finds that this section is a new program or higher level of service. Under a May 22, 2000 letter from the California Department of Education (CDE), charter granting agencies were required to include charter school financial information in the granting agency's annual statement of all receipts and expenditures. This letter was found to be a reimbursable "executive order" in the *Charter Schools III* (99-TC-14) statement of decision, but only for the

[93] Education Code section 42100(b).

[94] School districts are also required by law to assess the fiscal condition of the charter school pursuant to Education Code sections 47604.32 and 47604.33. Statutory fee authority is available for this and other supervisorial oversight activities pursuant to Education Code section 47613. These statutes, however, have not been pled in this test claim, and staff makes no findings on these statutes or activities.

[95] Education Code sections 1628, 42100(a).

[96] Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

period between May 22, 2000 and June 30, 2001. This is because the CDE sent another letter to county superintendents dated April 5, 2004, that states:

> The submission of charter school financial data to CDE has been optional for the past two fiscal years. Now that the regulations and reporting formats required by *Education Code* sections 1628 and 42100 (as amended by AB 1994) are in place, **charter school financial reporting is required for fiscal year 2003-2004 and for subsequent fiscal years**.[97] [Emphasis in original.]

According to the CDE letter, for the two fiscal years prior to the test claim statute (2001-2003), it was optional for a charter school to prepare an annual statement of all its receipts and expenditures for the preceding fiscal year.[98] The school district was not required to include a charter school's annual statement with its own and file the statement with the county superintendent of schools, before the 2002 test claim statute.

Staff further finds that section 42100(a) is a program within the meaning of article XIII B, section 6 because it carries out the governmental function of providing a service to the public, and imposes unique requirements on school districts that do not apply generally to all residents and entities in the state.[99] The public receives a benefit from charter school financial reports that are forwarded to and verified by county superintendent of schools because the reporting advances the goal of fiscal responsibility in charter school expenditures of taxpayer dollars.

Thus, staff finds that, effective January 1, 2003, section 42100(a) (Stats. 2002, ch. 1058) is a state-mandated new program or higher level of service for a school district to include the charter school's annual statement of all receipts and expenditures for the preceding fiscal year with its own annual statement and file it, by September 15 each year, with the county superintendent of schools.

F. Education Code sections 47605 and 42100 impose costs mandated by the state on school districts within the meaning of Government Code sections 17514 and 17556.

As described above, the 2002 test claim statute mandates the following new activities on K-12 school districts:

---

[97] California Department of Education, letter to county and district superintendents, county and district chief business officials, and charter school administrators, April 5, 2004. See <http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp> as of November 14, 2011. .

[98] Although Statutes 2001, chapter 344, added section 47605(m) to require charter schools to transmit a copy of their annual, independent financial audit reports for the preceding fiscal year to their chartering entities and CDE, this report is not the same as the annual statement of all receipts and expenditures.

[99] *San Diego Unified School Dist., supra*, 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra*, 44 Cal.3d 830, 835.)

1. Review and consider at a public hearing the following additional information in the charter school petition:

   a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.[100]

   b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.[101]

   c) A description of where the charter school intends to locate in its description of facilities.[102]

   d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:

      (1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;

      (2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and

      (3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.[103]

2. If, after review, the school district denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.[104]

3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.[105]

---

[100] Education Code section 47605(b)(5)(A)(ii).

[101] Education Code section 47605(b)(5)(P).

[102] Education Code section 47605(g).

[103] Education Code section 47605(a)(1) and (5).

[104] Education Code section 47605(b).

[105] Education Code section 47605(a)(4).

4. Include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.[106]

The issue is whether the school districts have incurred costs mandated by the state within the meaning of Government Code section 17514 for these activities, and whether any exceptions to reimbursement in Government Code section 17556 apply in this case.

Government code section 17514 defines "costs mandated by the state" as any increased cost that a local agency or school district incurs as a result of any statute or executive order that mandates a new program or higher level of service.

The claimant contends that all activities required by the statutes result in increased costs mandated by the state within the meaning of Government Code section 17514. The claimant's declaration of costs is intended to cover all activities claimed, and asserts that no exception to reimbursement identified in Government Code section 17556 applies to this claim.

The Department of Finance contends that school districts have fee authority provided by Education Code section 47613 sufficient to pay for the mandated activities and, thus, this test claim should be denied pursuant to Government Code section 17556 (d). Education Code section 47613 authorizes school districts to charge fees to charter schools based on a small percentage of the charter school's revenue (either 1% or 3% depending on whether the charter school can obtain rent-free facilities from the chartering authority) "for the actual costs of supervisorial oversight." It states in relevant part the following:

> (a) Except as set forth in subdivision (b), a chartering authority may charge for the actual costs of supervisorial oversight of a charter school not to exceed 1 percent of the revenue of the charter school.
>
> (b) A chartering authority may charge for the actual costs of supervisorial oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.
>
> [¶]…[¶]
>
> (e) For the purposes of this section, a chartering authority means a school district, county board of education, or the state board, that granted the charter to the charter school.
>
> (f) For purposes of this section, "revenue of the charter school" means the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of Section 47632.[107]

---

[106] Education Code section 42100(a).

[107] "A charter school is eligible for its share of state and local public education funds, which share is calculated primarily, as with all public schools, on the basis of its ADA. (Ed. Code, § 47612; see also *id.,* § 47630 et seq.)" *Wells v. One2One Learning Foundation* (2006) 39 Cal.4th 1164, 1186.

Government Code section 17556 (d) provides that the Commission cannot find costs mandated by the state if "[t]he … school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service."

The issue is whether the fee authority in section 47613 for "supervisorial oversight" applies to the activities mandated by Education Code section 42100(a) and 47605, as amended by the 2002 test claim statute, and if so, whether the revenue from the fee authority is sufficient to pay for the mandated activities.

First, staff finds that the fee authority in section 47613 does not apply to the activities identified in 1. and 2. above to review and consider at a public hearing the additional information required by Education Code section 47605 to be included in the charter school petition since the proposed charter has not yet been approved. The plain language of Education Code section 47613 states that the fee may be charged against the revenue of a charter school. Charter school petitioners are not yet a charter school and cannot receive revenue until the charter is approved. Thus, Government Code section 17556(d) does not apply to deny this claim with respect to the activities required by section 47605 to review and consider additional information in the charter school petition, or to make specific findings supporting a denial of the petition based on the additional information. Nor is there any evidence in the law or the record that other exceptions identified in Government Code section 17556 apply to deny these activities. Thus, staff finds that the activities mandated by Education Code section 47605 and listed in 1. and 2. above impose costs mandated by the state within the meaning of Government Codes section 17514.

However, staff finds that the fee authority for "supervisorial oversight" applies to the remaining activities identified in 3 and 4 above; to consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district, and to include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.

"Supervisorial oversight" is not expressly defined in section 47613, but it has been interpreted broadly. The fee authority in section 47613 was originally enacted in 1998 as section 47613.7.[108] In *Wilson v. State Board of Education*, the court determined the validity of the Charter Schools Act and recognized in its analysis that the chartering authority – whether the authority is a school district, county, or the state – has supervisorial oversight over their charter schools based on Education Code sections 47604.3, 47607, and 47613.7.[109] Section 47613.7 was the fee authority statute at the time, and provided the same authority to school districts and other chartering authorities to charge either one or three percent of the charter school's revenue for "supervisorial oversight." Section 47604.3 requires the charter school to respond to and consult with the chartering authority regarding "all reasonable inquiries," including financial inquiries, of the chartering authority. Section 47607 further provides that "the authority that granted the charter may inspect or observe any part of the charter school at any time." That section also requires

[108] Statutes 1998, chapter 34.

[109] *Wilson v. State Board of Education* (1999) 75 Cal.App.4th 1125, 1142.

that a renewal or material revision to the charter is governed by the standards and criteria identified in section 47605. Section 47605(a)(4) imposes the mandate to consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.

In 2003, sections 47604.32 and 47604.33 were added to the Education Code to clarify that the school district's "supervisorial oversight" fee authority is for chartering entities such as school districts to, among other things, "monitor the fiscal condition of each charter school under its authority" and to "ensure that each charter school under its authority complies with all reports required of charter schools by law."[110] One of the reports required of the charter school is the final unaudited report for the full prior year, which is the report that triggers the school districts mandate provided in Education Code section 42100 to include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.[111] These statutes were enacted as a result of an audit by the Bureau of State Audits that recommended making the chartering entities' oversight roles and responsibilities explicit.[112]

Thus, staff finds that the fee authority provided in Education Code section 47613 applies to the mandated activities in sections 42100(a) and 47605(a)(4) to consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district, and to include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.

However, there is no evidence in the record that the one or three percent fee revenue is sufficient to pay for the mandated activities, as required by Government Code section 17556(d). There is no evidence showing the actual costs of the two mandated activities, or the amount of revenue

---

[110] Education Code section 47604.32(c) & (d).

[111] Education Code sections 42100 and 47604.33. See also, CDE's published summary financial reporting calendar, which states that the report required by Education Code section 42100 will satisfy the report requirement in section 47604.33: < http://www.cde.ca.gov/fg/sf/fr/calendar11summary.asp > as of November 14, 2011.

[112] Assembly Committee on Education, Analysis of AB 1137 (2003-2004 Reg. Sess.) as amended March 27, 2003, p. 6. The Bureau of State Audits found that the chartering entities they reviewed could not document that the fees they charged corresponded to the actual costs of oversight. (Bureau of State Audits, "California's Charter Schools: Oversight At All Levels Could Be Stronger to Ensure Charter Schools' Accountability" November 2002, page 3.)

In 2007, the Legislature amended Education Code section 47613 to require the California Research Bureau to "prepare and submit to the Legislature . . . a report on the key elements and actual costs of charter school oversight" for purposes of the supervisorial oversight fee in section 47613. (§ 47613(g), Stats. 2007, ch. 650.) That report has not yet been issued.

received. At the time this test claim was filed, claimants only had to estimate costs for all claimed activities to be at least $1,000.[113] Moreover, the fee revenue applies to many other oversight activities that are not included in this test claim.[114]

Accordingly, staff finds that the activities mandated by Education Code sections 42100(a) and 47605(a)(4) impose costs mandated by the state. If this test claim is approved, any fee revenue received by a school district pursuant to Education Code section 47613 and applied to these activities will be identified as offsetting revenue in the parameters and guidelines.

III. Conclusion and Recommendation

Staff finds that Education Code sections 42100 and 47605 (Stats. 2002, ch. 1058) constitute a reimbursable state-mandated program within the meaning of article XIII B, section 6, of the California Constitution for school districts to do as follows:

1. Review and consider at a public hearing the following additional information in the charter school petition:

   a) If the proposed school will serve high school pupils, a description of how the charter school will inform parents about the transferability of courses to other public high schools and the eligibility of courses to meet college entrance requirements.[115]

   b) A description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records.[116]

   c) A description of where the charter school intends to locate in its description of facilities.[117]

   d) That the notices described below have been provided when the charter school petition proposes to operate one site outside the jurisdictional boundaries of the school district, but within the county where that school district is located:

      (1) Notice is provided to the school district where the charter school proposes to operate before the charter petition is approved;

---

[113] Government Code section 17564.

[114] For example, Education Code section 47604.32 requires chartering authorities to visit each charter school at least annually; ensure that the charter school complies with all reports required by law; monitor the fiscal condition of each charter school; and provide timely notification to the state when a renewal of a charter is granted or denied, the charter is revoked, or the charter school ceases operation.

[115] Education Code section 47605(b)(5)(A)(ii).

[116] Education Code section 47605(b)(5)(P).

[117] Education Code section 47605(g).

(2) Notice of the location is provided to the Superintendent of Public Instruction and the county superintendent of schools before the charter school commences operations; and

(3) Notice that the school has attempted to locate a single site or facility to house the entire program, but such facility or site is unavailable, or the site is needed for temporary use during a construction or expansion project.[118]

2. If, after review, the school district denies the charter school petition based on the information provided in 1. above, make written factual findings setting forth facts to support the finding.[119]
3. Consider at an open and public meeting, proposed material revisions to an already approved charter to establish operations at one or more additional sites within the jurisdictional boundaries of the school district.[120]
4. Include the charter school's annual statement of receipts and expenditures for the preceding fiscal year with the school district's own annual statement and file it with the county superintendent of schools by September 15 each year.[121]

The fee authority provided in Education Code section 47613 applies to activities 3 and 4, and will be identified in the parameters and guidelines as offsetting revenue.

Staff recommends that the Commission adopt this analysis to partially approve the test claim for the activities listed above.

[118] Education Code section 47605(a)(1) and (5).

[119] Education Code section 47605(b).

[120] Education Code section 47605(a)(4).

[121] Education Code section 42100(a).

EXHIBIT E

2488 Historic Decatur Road
Suite 200
San Diego, CA 92106-6113
619.232.3122
Fax 619.232.3264
www.stutzartiano.com

Stutz Artiano Shinoff & Holtz
A Professional Corporation

Arthur M. Palkowitz
apalkowitz@stutzartiano.com

December 13, 2011

VIA EMAIL

Ms. Nancy Patton
Interim Executive Director
Commission on State Mandates
980 9th Street, Suite 300
Sacramento, CA 95814

Re: Charter School IV
03-TC-03

Dear Ms. Patton:

Please be advised claimant submits the following comments in response to the Draft Staff Analysis ("DSA").

The draft staff analysis recommends several activities be approved by the Commission as a reimbursable state mandate. The following comments address the activities not recommended to be approved as a reimbursable state mandate.

On page six of the DSA staff concludes, "Due to the lack of evidence, staff finds that Education Code sections 1628, 42100(a), 47604.4(a), 47605(j)(1) and 47605.6, (Statutes 2002, ch. 1058) as they effect County Offices of Education do not impose a reimbursable state-mandated new program or higher level of service." A declaration was submitted with the test claim that staff concluded failed to include costs "that are unique to county of offices or charter schools."

Please be advised we submit the attached Declaration from Keith Butler, employee of the San Diego County of Education. The Declaration supports Claimant's allegations the test claim statutes impose unique activities that affect County Offices of Education and such activities impose state mandated new programs or a high level of service.[1]

The test claim includes the following, Education Code 47605 "Section (P) a description of the procedures to be used if the charter school closes. The procedures shall ensure a final audit of

[1] Education Code sections 1628, 42108, 47604.48, 47605(j)(1) and 47605.6, (Statutes 2002, ch. 1058)

G:\DATA\4655\1\CO\S0075802.WPD

Charter School IV
03-TC-03

the school to determine the disposition of all assets and liabilities of the charter school, including plans for disposing of any net assets and for the maintenance and transfer of pupil records."

Section P may be considered "activities of charter school petitioners in obtaining approval of charter schools." However, claimant seeks reimbursement to review the additional information in the charter petition that is required by the test claim statutes. Claimant further seeks reimbursement to review the additional **cash flow** information requested.[2]

CERTIFICATION

I certify by my signature below, under penalty of perjury under the laws of the State of California, that the statements made in this document are true and complete to the best of my own personal knowledge or information and belief.

Arthur M. Palkowitz
Attorney for the Claimant

[2] Education Code 47605, Section D "The petitioner or petitioners shall also be required to provide financial statements that include a proposed first year operational budget, including start up costs, and **cash flow** and financial projections for the first three years of operation."

STUTZ ARTIANO SHINOFF & HOLTZ
A Professional Corporation
Arthur M. Palkowitz, Esq. (State Bar No. 106141)
2488 Historic Decatur Road, Suite 200
San Diego, CA 92106-6113
Tel: (619) 232-3122
Fax: (619) 232-3264

Attorneys for Claimant, San Diego Unified School District

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Charter Schools IV Education Code Sections 1628, 42100, 47602, 47604.3, 47604.4, 47605, 47605.1, 47605.6, 47605.8, 47611.5, 47612.1, 47613.1, 47626, 47652 Government Code Section 3540.1 Statutes 1999, Chapter 828, Statutes 2002, Chapter 1058 San Diego Unified School District, Claimant	Case No: 03-TC-03

DECLARATION OF KEITH BUTLER

I, Keith Butler, declare as follows:

1. I am Consultant, Business Advisory Services for San Diego County of Education.

2. I have personal knowledge of the facts stated herein. If called as a witness, I could and would competently testify thereto.

3. The activities performed by the San Diego County of Education related to Charter Schools are as follows:

///

(a) Receive from each school district an approved annual statement of all receipts and expenditures of the charter school for the preceding fiscal year, review the contents, and transmit the annual statement to the Superintendent of Public Instruction.

(b) Review, require information, hold a public hearing, and approve or deny a petition for the operation of a charter school that operates at one or more sites within the geographic boundaries of the county and that provides instructional services that are not generally provided by a county office of education.

(c) Review appeals of a charter petition denied by the school district, after which a petitioner could appeal to the State Board of Education.

(d) Review appeals of a charter revoked by the school district, after which a petitioner could appeal to the State Board of Education.

(e) In addition, county offices of education may monitor the operations of a charter school and investigate its operations.

(e) It is my experience that other County Offices of Education in California perform the same and/or similar activities stated above.

The mandated state activities performed have resulted in increased costs in an amount greatly exceeding $1,000.

I declare under penalty of perjury that the foregoing is true and correct under the laws of the State of California.

Executed this 12th day of December in San Diego, California.

KEITH BUTLER 12/12/2011

Hearing: July 21, 1994
File Number: CSM-4437
Staff: Steve Zimmerman
g:\sfz\charter\stmtdec2.pro

PROPOSED STATEMENT OF DECISION
ADOPTED MANDATE
Education Code Sections 47605 and 47607
Chapter 781, Statutes of 1992
Charter Schools

Executive Summary

The Commission on State Mandates at its hearing of May 26, 1994, determined that reimbursable state mandated programs exist under certain provisions of Education Code sections 47605 and 47607, enacted by Chapter 781, Statutes of 1992. In addition, the Commission determined that other changes made to Education Code sections 47605 and 47607, enacted by Chapter 781, Statutes of 1992, do not impose reimbursable state mandated programs upon school districts.

Member Dorn moved to adopt the staff recommendation. Member Sherwood seconded the motion. The vote on the motion was unanimous. The motion carried.

Staff has prepared the attached proposed statement of decision which identifies the basis for the Commission's decision.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

Claim of:	)	No. CSM-4437 Education Code Sections 47605 and 47607 Chapter 781, Statutes of 1992
San Diego Unified School District, Claimant	)	Charter Schools

PROPOSED STATEMENT OF DECISION

This claim was heard by the Commission on State Mandates (Commission) on May 26, 1994, in Sacramento, California, during a regularly scheduled hearing.

Mr. Keith Petersen appeared on behalf of the San Diego Unified School District, Ms. Carol Miller appeared on behalf of the Education Mandated Cost Network, and Mr. James Apps appeared on behalf of the Department of Finance. Evidence both oral and documentary having been introduced, the matter submitted, and vote taken, the Commission finds:

ISSUE

Do the provisions of Education Code sections 47605 and 47607 of Chapter 781, Statutes of 1992 (Chapter 781/92), require school districts to implement a new program or provide a higher level of service in an existing program, within the meaning of section 6, article XIIIB of the California Constitution and Government Code section 17514?

BACKGROUND AND FINDINGS OF FACT

The test claim was filed with the Commission on December 1, 1993, by the San Diego

Unified School District.

The elements for filing a test claim, as specified in section 1183 of Title 2 of the California Code of Regulations, were satisfied.

Chapter 781/92 added Education Code section 47605 as follows:

"(a) A petition for the establishment of a charter school within any school district may be circulated by any one or more persons seeking to establish the charter school. After the petition has been signed by not less than 10 percent of the teachers currently employed by the school district, or by not less that 50 percent of the teachers currently employed at one school of the district, it may be submitted to the governing board of the school district for review.

"(b) No later than 30 days after receiving a petition, in accordance with subdivision (a), the governing board of the school district shall hold a public hearing on the provisions of the charter, at which time the board shall consider the level of employee and parental support for the petition. Following review of the petition and the public hearing, the governing board shall either grant or deny the charter within 60 days of receipt of the petition, provided, however, that the date may be extended by an additional 30 days if both parties agree to the extension. A school district governing board may grant a charter for the operation of a school under this part if it determines that the petition contains the number of signatures required by subdivision (a), a statement of each of the conditions described in subdivision (d), and descriptions of all of the following:

"(1) A description of the educational program of the school, designed, among other things, to identify those whom the school is attempting to educate, what it means to be an 'educated person' in the 21st century, and how learning best occurs. The goals identified in that program shall include the objective of enabling pupils to become self-motivated, competent, and lifelong learners.

//

"(2) The measurable pupil outcomes identified for use by the charter school. 'Pupil outcomes,' for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the skills, knowledge, and attitudes specified as goals in the school's educational program.

"(3) The method by which pupil progress in meeting those pupil outcomes is to be measured.

"(4) The governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement.

"(5) The qualifications to be met by individuals to be employed by the school.

"(6) The procedures that the school will follow to ensure the health and safety of pupils and staff. These procedures shall include the requirement that each employee of the school furnish the school with a criminal record summary as described in Section 44237.

"(7) 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 school district to which the charter petition is submitted.

"(8) Admission requirements, if applicable.

"(9) The manner in which an annual audit of the financial and programmatic operations of the school is to be conducted.

"(10) The procedures by which pupils can be suspended or expelled.

"(11) The manner by which staff members of the charter schools will be covered by the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.

"(12) The public school attendance alternatives for pupils residing within the school district who choose not to attend charter schools.

"(13) A description of the rights of any employee of the school district upon leaving the employment of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.
//

//
"(c) Charter schools shall meet the statewide performance standards and conduct the pupil assessments required pursuant to Section 60602.5.

"(d) In addition to any other requirement imposed under this part, a charter school shall be nonsectarian in its programs, admission policies, employment practices, and all other operations, shall not charge tuition, and shall not discriminate against any pupil on the basis of ethnicity, national origin, gender, or disability. Admission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state, except that any existing public school converting partially or entirely to a charter school under this part shall adopt and maintain a policy giving admission preference to pupils who reside within the former attendance area of that public school.

"(e) No governing board of a school district shall require any employee of the school district to be employed in a charter school.

"(f) No governing board of a school district shall require any pupil enrolled in the school district to attend a charter school.

"(g) The governing board may require that the petitioner or petitioners provide information regarding the proposed operation and potential effects of the school, including, but not limited to, the facilities to be utilized by the school, the manner in which administrative services of the school are to be provided, and potential civil liability effects upon the school and upon the school district.

"(h) In reviewing petitions for the establishment of charter schools within the school district, the school district governing board shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences to pupils identified by the petitioner or petitioners as academically low achieving pursuant to the standards established by the State Department of Education under Section 54032.

"(i) Upon the approval of the petition by the governing board of the school district, the petitioner or petitioners shall provide written notice of that approval, including a copy of the petition, to the State Board of Education.

"(j) (1) If the governing board of the school district denies a charter, the county superintendent of schools, at the request of the petitioner or petitioners, shall select and convene a review panel to review the action of the governing board. The review panel shall consist of three governing board members from other school districts in the county and three teachers from other school districts in the county unless only one school district is located in the county, in which case the panel members shall be selected from school districts in adjoining counties.

"(2) If the review panel determines that the governing board failed to appropriately consider the charter request, or acted in an arbitrary manner in denying the request, the review panel shall request the governing board to reconsider the charter request. In the case of a tie vote of the panel, the county superintendent of schools shall vote to break the tie.

"(3) If, upon reconsideration, the governing board denies a charter, the county board of education, at the request of the petitioner or petitioners, shall hold a public hearing in the manner described in subdivision (b) and, accordingly, may grant a charter. A charter school for which a charter is granted by a county board of education pursuant to this paragraph shall qualify fully as a charter school for all funding and other purposes of the part."

The Commission observed that Education Code section 47605 does not contain a requirement for school districts or county boards of education to plan and prepare procedures for implementation of the Charter Schools Act of 1992 prior to the receipt by the school district or county board of education of a charter school petition.

The Commission found that the State Board of Education and the California Department of Education have distributed advisory bulletins to school districts and county boards of education, and that these bulletins provide a framework to school districts which will enable them to respond to a charter petition in a timely manner.

The Commission observed that Education Code section 47605 does not contain a requirement for school districts or county boards of education to disseminate information regarding charter school programs to staff, students, parents, and the community.

The Commission noted that Education Code Section 47615 requires the State Board of Education to distribute information announcing the availability of the charter school process to each school district, county office of education, and public postsecondary educational institution, and, through press releases, to each major newspaper in the state.

The Commission noted that, in many cases, questions will be directed to the school district or county board of education as the local point of contact with the charter school petition process.

Further, the Commission found that responding to direct inquiries from the public for information regarding charter schools, although limited in scope, is an implicit requirement.

The Commission observed that Education Code section 47605, subdivision (b), established requirements for school districts to conduct a public hearing within thirty days of receipt of a petition to determine community support for the petition.

The Commission observed that Education Code section 47605, subdivision (b), established requirements for school districts to grant or deny the petition within sixty days of receipt, subject to a thirty-day extension upon agreement of the parties.

//

The Commission observed that Education Code section 47605, subdivision (j), established requirements for school districts to respond to the request of the review panel selected and convened by the county superintendent of schools, pursuant to an appeal of any petition denied by the district.

The Commission found that, while section 47605 phrases this as a request, it is clear that a school district cannot simply ignore such a request from the review panel.

The Commission further found, since the school district must respond, this request for reconsideration is an integral part of the appeals process established by Education Code section 47605, subdivision (j).

The Commission recognized that Education Code section 47605 established requirements for county boards of education to hear a petition following a denial on reconsideration by the governing board of a school district, to conduct a public hearing within thirty days of receipt of a petition to determine community support for the petition, when the petition has been denied by the school district, and to grant or deny the petition within sixty days of receipt, subject to a thirty-day extension upon agreement of the parties, when the petition has been denied by the school district.

The Commission found that the activities required in Education Code section 47605 were not required under prior law.

//

Chapter 781/92 added Education Code section 47607 as follows:

"(a) A charter may be granted pursuant to Sections 47605 and 47606 for a period not to exceed five years. A charter granted by a school district governing board or county board of education may be granted one or more subsequent renewals by that entity. Each renewal shall be for a period not to exceed five years. A material revision of the provisions of a charter petition may be made only with the approval of the authority that granted the charter.

"(b) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds that the charter school did any of the following:

"(1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter petition.

"(2) Failed to meet or pursue any of the pupil outcomes identified in the charter petition.

"(3) Failed to meet generally accepted accounting standards of fiscal management.

"(4) Violated any provision of law.

The Commission observed that Education Code section 47607 established requirements for school districts or county boards of education to monitor the charter school performance to determine if it has achieved its goals and objectives.

The Commission noted that Education Code section 47607 authorizes the authority that granted the charter (i.e., school districts or county boards of education) to determine if the charter school is or is not in compliance with Education Code section 47607, subdivision (b).

The Commission recognized that Education Code section 47607, subdivision (b), lists four grounds on which the charter granting authority may revoke the charter. The authority that granted the charter cannot know if any of these grounds applies without in some way monitoring what is going on at the charter school.

Further, the Commission noted that Education Code section 47610 requires that a charter school comply with all of the provisions set forth in its charter petition.

Therefore, the Commission found that monitoring by the granting authority is implicit in Education Code section 47607, which permits revocation of the charter for specified actions or omissions on the part of the charter school.

The Commission observed that Education Code section 47607 established requirements for school districts or county boards of education to decide upon requests for revision or extension of approved charters.

The Commission found that school districts or county boards of education will engage in renewal activities only if they have previously granted a charter in response to a petition for the establishment of a charter school.

The Commission further noted that, while there is no express statutory requirement that a petition be granted if specified criteria are met, governing boards of school districts or county boards of education lack unfettered discretion to deny charter school petitions which meet or exceed all of the criteria set forth in Education Code section 47605 for such a petition, without leaving themselves open to charges of acting in an arbitrary manner in denying the request.

The Commission observed that, while Education Code section 47607, subdivision (a), does not lay out an explicit renewal process, it requires by its language that the renewal process, as well as the material revision process, take place. It is clear that the granting authority is not required to automatically grant renewal or material revision, and that the charter school must request that its charter be renewed or materially revised. Even so, the granting authority has no choice but to entertain requests for renewal or material revision of a charter.

The Commission found that, since granting authorities cannot refuse to receive a petition for the establishment of a charter school, and lack unfettered discretion to deny charter school petitions, they also cannot refuse to receive a request for renewal or material revision of the charter.

The Commission found that the activities required in Education Code section 47607 were not required under prior law.

APPLICABLE LAW RELEVANT TO THE DETERMINATION OF A REIMBURSABLE STATE MANDATED PROGRAM

Government Code section 17500 and following, and section 6, article XIIIB of the California Constitution and related case law.

CONCLUSION

The Commission determines that it has the authority to decide this claim under the provisions of Government Code sections 17500 and 17551, subdivision (a).

The Commission concludes that the provisions of Education Code section 47605, of Chapter 781/92, do not impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514 by requiring school districts or county boards of education to plan and prepare procedures for implementation of the Charter Schools Act of 1992 or to disseminate information regarding charter schools to staff, students, parents, and the community.

The Commission concludes that the provisions of Education Code section 47605, of Chapter 781/92, do impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514 by requiring school districts to respond to requests from the public for information on the charter school program; conduct a public hearing within thirty days of receipt of a petition to determine community support for the petition; grant or deny the petition within sixty days of receipt, subject to a thirty-day extension upon agreement of the parties; provide persons to take part in a review panel to review the decision of the governing board of the school district and, if necessary, request the governing board of the school district to reconsider the charter request; and, respond to any request of the review panel selected and convened by the county superintendent of schools pursuant to an appeal of any petition denied by the school district.

The Commission concludes that the provisions of Education Code section 47605, of Chapter 781/92, do impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514 by requiring county boards of education to select and convene a review panel to review the decision of the governing

board of the school district and, if necessary, request the governing board of the school district to reconsider the charter request; hear a petition following a denial on reconsideration by the governing board of a school district; conduct a public hearing within thirty days of receipt of a petition to determine community support for the petition; and, grant or deny the petition within sixty days of receipt, subject to a thirty-day extension upon agreement of the parties.

The Commission concludes that the provisions of Education Code section 47607, of Chapter 781/92, do impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514 by requiring school districts to monitor the performance of charter schools for which they have granted charters to determine if they have achieved their goals and objectives and to evaluate and decide upon requests for revision or extension of approved charters.

The Commission concludes that the provisions of Education Code section 47607, of Chapter 781/92, do impose a new program or higher level of service in an existing program within the meaning of section 6 of article XIIIB of the California Constitution and Government Code section 17514 by requiring county boards of education to monitor the performance of charter schools for which they have granted charters to determine if they have achieved their goals and objectives and to evaluate and decide upon requests for revision or extension of approved charters.

Accordingly, costs incurred related to the aforementioned reimbursable state mandated programs contained in Education Code sections 47605 and 47607, are costs mandated by the state and are subject to reimbursement within the meaning of section 6, article XIIIB of the California Constitution. Therefore, the claimant

is directed to submit parameters and guidelines, pursuant to Government Code section 17557 and Title 2, California Code of Regulations, section 1183.1, to the Commission for its consideration.

The foregoing conclusions pertaining to the requirements contained in Education Code sections 47605 and 47607, are subject to the following conditions:

The determination of a reimbursable state mandated program does not mean that all increased costs claimed will be reimbursed. Reimbursement, if any, is subject to Commission approval of parameters and guidelines for reimbursement of the mandated program; approval of a statewide cost estimate; a specific legislative appropriation for such purpose; a timely-filed claim for reimbursement; and subsequent review of the claim by the State Controller's Office.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129, 33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9, 42128, 42129, 42130, 42131, 42133, and 42637 and Government Code Section 3540.2, as amended by Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 36; Statutes of 1979, Chapters 221 and 282; Statutes of 1980, Chapter 1354; Statutes of 1981, Chapters 100 and 1093; Statutes of 1984, Chapter 134; Statutes of 1985, Chapters 185 and 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapter 917, 1025 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapters 525 and 530; Statutes of 1996, Chapters 227 and 1071; and California Code of Regulations, Title 5, Sections 15440-15466 Filed on December 30, 1997 By the Alameda County Office of Education, Claimant.	No. 97-TC-19 *School District Budget Process, Financial Statements, and County Office Oversight* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on October 26, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on October 31, 2000.

_____

Paula Higashi, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 1241.5, 17150/17850, 33127, 33128, 33129, 33132, 35035, 42100, 42101, 42103, 42122, 42123, 42124, 42125, 42126, 42127, 42127.1, 42127.2, 42127.3, 42127.4, 42127.5, 42127.6, 42127.9, 42128, 42129, 42130, 42131, 42133, and 42637 and Government Code Section 3540.2, as amended by Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 36; Statutes of 1979, Chapters 221 and 282; Statutes of 1980, Chapter 1354; Statutes of 1981, Chapters 100 and 1093; Statutes of 1984, Chapter 134; Statutes of 1985, Chapters 185 and 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapter 917, 1025 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 525; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapters 525 and 530; Statutes of 1996, Chapters 227 and 1071; and California Code of Regulations, Title 5, Sections 15440-15466 Filed on December 30, 1997 By the Alameda County Office of Education, Claimant.	No. 97-TC-19 *School District Budget Process, Financial Statements, and County Office Oversight* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on October 26, 2000)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on September 28, 2000 during a regularly scheduled hearing. Keith B. Peterson appeared for claimant Alameda County Office of Education. Leslie R. Lopez and Dan Troy appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 4-2 approved this test claim.

BACKGROUND AND FINDINGS

The test claim alleges reimbursable state mandated costs for the activities performed by school districts and county offices of education for periodically preparing and submitting various budget and financial reports to the state, and for the county office of education to ensure the reporting compliance of school districts in their jurisdiction.

The claim arises from enactments or amendments to numerous budget-related Education Code sections, Government Code section 3540.2, and California Code of Regulations, Title 5, sections 15440-15466, referred to collectively as the test claim legislation. Several of the named statutes were already denied in previous test claims, *CSM-4354, California School Accounting Requirements* and *CSM-4389, Budgeting Criteria and Standards*.

Claimant also originally alleged seventeen California Department of Education (CDE) management advisory letters published between 1986 and 1996 all constituted executive orders imposing a reimbursable state mandate. However, at the September 28, 2000 hearing, the claimant withdrew all remaining management advisory letters from the test claim. A separate Statement of Decision documents the Commission's dismissal of this material from the original test claim.

Issue:

> Do the subject statutes and executive orders, which include regulations and fiscal management advisories, impose a new program or higher level of service within an existing program upon school districts within the meaning of section 6, article XIII B of the California Constitution[1] and costs mandated by the state pursuant to Government Code section 17514[2] by requiring new or additional budgetary, financial statement, and related fiscal management procedures?

A test claim statute or executive order may impose a reimbursable state mandated program if statutory and regulatory language directs or obligates an activity or task upon local governmental entities. In addition, the required activity or task must be new, constituting a "new program," or create an increased or "higher level of service" over the previously required level of service. The courts have defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy but does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be drawn between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim

[1] Section 6, article XIII B of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[2] Government Code section 17514 provides: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.[3]

The test claim legislation and regulations involve the administration of the school district budget process, financial statements and county office of education oversight. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public.[4] Moreover, the test claim legislation, which requires school districts and county offices of education to administer the budget process, imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Thus, the Commission finds the administration of the school district budget process by school districts and county offices of education constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.[5]

However, the inquiry must continue to determine if the activities are new or impose a higher level of service and if so, if there are costs mandated by the state, as defined by Government Code section 17514. The claimant contends that all of the test claim legislation and regulations impose new programs or higher levels of service upon school districts and county offices of education by requiring specific activities related to the adoption and administration of school district budgets.

Under prior law, school districts and county offices of education were required to engage in annual budget activities.[6] The subject test claim legislation makes some changes to school district budget requirements as compared to prior law. The individual issues addressed by this claim are numerous but all meet the test of imposing unique requirements that do not apply generally to all residents and entities in the state. The analysis of whether the individual provisions are reimbursable state mandates generally hinges on whether the claimed section requires a local agency to perform a new activity or higher level service than that required under prior law.

---

[3] *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 56; *Carmel Valley Fire Protection Dist.* v. *State of California* (1987) 190 Cal.App.3d 521, 537; *Lucia Mar Unified School Dist.* v. *Honig* (1988) 44 Cal.3d 830, 835.

[4] *Long Beach Unified School Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 172 states "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public."

[5] *Id.*

[6] Renumbered and reenacted by Statutes of 1976, Chapter 1010, from 1959 Education Code sections 939, 20501 et seq., and 20601 et seq.

The test claim analysis is presented in four sections to categorize the test claim provisions in manageable components, as follows:

I. Test Claim Legislation Severed To Consolidate With Overlapping Test Claims

II. Test Claim Legislation Previously Heard By The Commission

III. Remaining Test Claim Legislation

IV. Test Claim Executive Orders

I. Test Claim Legislation Severed To Consolidate With Overlapping Test Claims

Claimant requested that the Commission sever and consolidate some of the test claim allegations into two other pending test claims:

- Statutes of 1993, Chapter 237, Statutes of 1995, Chapter 525, sections 12 and 13, and CDE Management Advisories 94-01 and 95-04 were severed and consolidated into test claim *97-TC-17, Standardized Account Code Structure*, filed by Brentwood Union School District.
- Education Code sections 42140, 42141, and 42142, as amended by Statutes of 1994, Chapter 650, Statutes of 1995, Chapter 525, section 11, and Statutes of 1996, Chapter 1158, and CDE Management Advisories 95-03 and 95-07 were severed and consolidated into test claim *CSM-4502, Employee Benefits Disclosure*, filed by Clovis Unified School District.

Accordingly, the Commission finds that these code sections are severed and need not be addressed in the analysis of this test claim.

II. Test Claim Legislation Previously Heard By The Commission

Under Government Code section 17521, "test claim" means the first claim filed with the Commission alleging that a particular statute or executive order imposes costs mandated by the state. The issue of whether Education Code sections 33127, 33128, 33129, 33132, 42122, 42125, 42126, 42127, and 42637 constituted reimbursable state mandates was already heard and denied by the Commission in two earlier test claims.[7] Except for section 42127, no substantive amendments were made to these sections since the decisions were issued; therefore, the Commission finds these code sections need not be addressed as part of this test claim. However, they will be discussed briefly.

Claimant asserts that the previous Commission decisions are not applicable because they "were based on code sections since amended, repealed or replaced."[8] In fact, the Commission finds that the Legislature repealed section 33132 in its entirety in Statutes of 1994, Chapter 840; therefore this code section could not impose a mandate during the reimbursement period for the present test claim. Of the remaining eight statutes previously heard under other test claims, all but Education Code sections 33128 and 42127 are entirely unchanged as compared to when the original test claims were filed and ultimately decided. Amended section 33128 remains a directive to the State Board of Education and does not impose any new obligations.

---

[7] *CSM-4354, California School Accounting Requirements* and *CSM-4389, Budgeting Criteria and Standards*, found in attachments to DOF's response to the test claim.

[8] Test Claim, page 114.

Amendments made to section 42127 subsequent to the issuance of the Commission's Statement of Decision in *CSM-4389, Budgeting Criteria and Standards* will be analyzed in the next section.

In addition, regarding the previously decided test claims, claimant asserts that:

> "each decision was based on the conclusion that a "program" had not changed, rather than measuring the "increased costs" or "higher level of service" of an existing program, which constitutes a palpable error of law."[9]

The Commission addressed the issues of higher level of service and increased costs in both of the earlier test claims, finding that no higher level of service existed under the claimed statutes. The Commission's Statements of Decision were determined in accordance with the California Supreme Court's decision in *County of Los Angeles* which held that increased costs are not tantamount to an increased level of service.[10] Based on the foregoing, the Commission finds Education Code sections 33127, 33128, 33129, 33132, 42122, 42125, 42126, and 42637 are not properly included in this current test claim.

III. Remaining Test Claim Legislation

A. Renumbering, Reenactment, Restatements

At the outset the Commission notes that many of the code sections included in the test claim legislation were in effect well before the enactment of the test claim legislation, but as a result of the test claim legislation were either renumbered or restated in a "newly enacted" code section. The Commission makes an overall finding, in accordance with Education Code section 3, that under these circumstances a renumbered or restated statute, originally enacted prior to the enactment of the test claim legislation will not be considered to be a newly enacted provision. Education Code section 3 provides:

> "The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments."

The rationale behind Education Code section 3 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

> "Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time."[11]

The holding of *In re Martin's Estate* is consistent with a California Attorney General Opinion[12] which explains that where there is express repeal of existing statute and re-enactment of it at the same time, re-enactment neutralizes repeal as far as the old law continues in force, and it operates without interruption where reenactment takes effect at the same time.

---

[9] *Id.*

[10] *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, as discussed in the *CSM-4354* statement of decision, page 10, and the *CSM-4389* statement of decision, page 12, found in attachments to DOF's response.

[11] *In re Martin's Estate* (1908) 153 Cal. 225, 229.

[12] 15 Ops.Cal.Atty.Gen. 49 (1950).

Based upon the foregoing rules of statutory construction, the Commission finds that a renumbering, reenactment or restatement of prior law does not constitute a reimbursable state mandate to the extent that the provisions and associated activities remain unchanged.

B. Analyses of the Remaining Test Claim Legislation

Each of the remaining claimed code sections are analyzed individually below to determine if they are new or impose a higher level of service and if so, if there are costs mandated by the state.

1. Education Code section 1241.5.[13] This section provides that the county superintendent of schools may audit the expenditures and internal controls of school districts and shall report findings and recommendations to the district governing board. Within 15 days of receipt of the report, the governing board shall notify the county superintendent of its response. Upon review of the governing board's response, the county superintendent has discretion to revoke the district's authority to issue warrants pursuant to Education Code section 42650.

The Commission notes that the language of the statute is optional in terms of activities imposed on the county superintendent, i.e. "the county superintendent *may* audit;" "*If*" the county superintendent chooses to make an audit of a school district, "*then*" the superintendent has certain reporting and follow-up duties. DOF asserts that the duties imposed by this section are voluntary, not mandatory. The Commission agrees, insofar as the statute impacts county superintendents but disagrees as to the impact on school districts. However, the Commission finds that the school district governing board had a duty under prior law to respond to audit reports made under section 1241.5, as provided for in Education Code section 42637:

> "If at any time during a fiscal year the county superintendent of schools concludes that the expenditures of any school district within his jurisdiction are likely to exceed the anticipated income for the district for that fiscal year, he shall notify such district in writing of such conclusion and he may conduct a comprehensive review of the financial and budgetary conditions of the district. The superintendent shall report his finding and recommendation to the governing board of the district … at a public meeting of the governing board. The governing board shall, no later than 15 days after the receipt of such report, notify the county superintendent of schools of its proposed actions on his recommendations."[14]

Therefore, the Commission finds that duties under section 1241.5 for school districts to respond within 15 days to any comprehensive review of the financial and budgetary conditions of the district were required under prior law. Based on the foregoing, the Commission finds Education Code section 1241.5 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

2. Education Code section 17150.[15] This section provides that the school district shall notify the county superintendent of schools and the county auditor, upon approval of the district governing

[13] Statutes of 1976, Chapter 273, enacted Education Code section 21107.6, later renumbered as section 42637.5. Statutes of 1987, Chapter 1452 amended and renumbered section 42637.5 as section 1241.5.

[14] Statutes of 1976, Chapter 1010, which renumbered and reenacted former Education Code section 21107.5 as section 42637.

[15] Education Code section 17150 is construed as a restatement of existing provisions in former Education Code section 17850.

board, to proceed with issuing revenue bonds, including repayment schedules and evidence of ability to repay the debt. Upon approval by the county board of education to issue bonds, the county superintendent of schools shall provide notice to the Superintendent of Public Instruction.

Education Code section 17150 only describes activities that a district or county superintendent of schools must perform in order to issue revenue bonds. The activity of approving and issuing revenue bonds is not mandated, but is undertaken at the discretion of local educational agencies. Thus, the Commission finds that any follow-up notification required by Education Code section 17150, stems from the undertaking of an optional activity and does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

3. Education Code sections 35035, subdivision (g) and 42130. Section 35035, subdivision (g) provides that the superintendent of each school district shall submit financial and budgetary reports to the governing board as required by section 42130. Section 42130 provides that the superintendent of each school district shall submit two annual financial and budgetary status reports to be approved by the district governing board and maintained for public review.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 939 as Education Code section 35035. Under section 939 the superintendent of each school district, in addition to any other powers and duties granted, was required to submit reports showing the financial and budgetary conditions of the district, including outstanding obligations, to the governing board of the school district at least once every three months during the school year. Section 35035, as amended by Statutes of 1991, Chapter 1213, now requires the submission of financial and budgetary reports as required by section 42130. Section 42130 requires the superintendent of each school district to submit two reports to the governing board each fiscal year in a format prescribed by the Superintendent of Public Instruction, based upon the standards and criteria developed by the State Board of Education. The Commission finds that none of these requirements exceeds prior law, and in fact, the amendments actually reduce the number of reports required. Accordingly, the Commission finds that Education Code section 35035 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

Section 42130, although added by Statutes of 1991, Chapter 1213, is substantially a restatement and consolidation of prior law found in section 35035 and related code sections. For example, Education Code section 42100,[16] further discussed below, provided that:

> "the governing board of each school district shall prepare and keep on file for public inspection a statement of all receipts and expenditures of the district for the preceding fiscal year and a statement of the estimated total expenses for the district for the current fiscal year."

In addition, prior law, under Education Code section 42101[17] also discussed further below, required that the statements of receipts and expenditures be in the form prescribed by the Superintendent of Public Instruction. Therefore, the Commission finds that none of the requirements of section 42130 exceeds prior law. Accordingly, the Commission finds that the activities required under sections 35035, subdivision (g) and 42130 do not constitute a new program or higher level of service, and do not impose costs mandated by the state.

[16] Former Education Code section 20501, as renumbered and reenacted by Statutes of 1976, Chapter 1010.

[17] Former Education Code section 20502, as renumbered and reenacted by Statutes of 1976, Chapter 1010.

4. Education Code section 42100. This section provides that on or before September 15, the governing board of each school district shall approve, on a form prescribed by the Superintendent of Public Instruction, an annual statement of all receipts and expenditures of the district for the preceding fiscal year and shall file the statement with the county superintendent of schools. This section further provides that on or before October 15, the county superintendent of schools shall verify the mathematical accuracy of the statement and shall transmit a copy to the Superintendent of Public Instruction.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20501 as Education Code section 42100. Under former Education Code section 20501 the law required that:

> "On or before the 15th day of August of each year the governing board of each school district shall prepare and keep on file for public inspection a statement of all receipts and expenditures of the district for the preceding fiscal year and a statement of the estimated total expenses for the district for the current fiscal year."

Education Code section 42100 was amended by Statutes of 1988, Chapter 1461, which added the requirements that the annual statement be in the form prescribed by the Superintendent of Public Instruction, filed with the county superintendent of schools and that the county superintendent of schools must verify the accuracy of the statement and transmit a copy to the Superintendent of Public Instruction. As will be explained further in the following section, the Commission finds that this requirement that the annual statement be in the form prescribed by the Superintendent of Public Instruction was not new, but resulted from a consolidation of the prior law found under Education Code section 42101.

Thus, the Commission finds that the basic activity of the district governing board preparing a statement of receipts and expenditures on a form prescribed by the Superintendent of Public Instruction does not constitute a new program or higher level of service, and does not impose costs mandated by the state. The Commission further finds that the change in deadline from August 15 to September 15 is in favor of the districts and does not impose increased costs. However, the Commission does find that Education Code section 42100 imposes a new program or higher level of service, and costs mandated by the state, for the following activities:

School District Activity:

- Sending a statement of receipts and expenditures for the preceding fiscal year to their county superintendent of schools.

County Office of Education Activities:

- Verifying the mathematical accuracy of the school district statement of receipts and expenditures for the preceding fiscal year.
- Sending a copy of the verified school district statement of receipts and expenditures for the preceding fiscal year to the Superintendent of Public Instruction.

5. Education Code section 42101. This section provided that the annual statement of receipts and expenditures shall be in the form prescribed by the Superintendent of Public Instruction.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20502 as Education Code section 42101. Section 42101 was repealed by Statutes of 1999, Chapter 646. The repeal was to eliminate the duplicative provision created when Education Code section 42100 was amended by Statutes of 1988, Chapter 1461, adding the requirement that the annual statement be in the form prescribed by the Superintendent of Public Instruction. The Commission finds the provisions of section 42101 existed under prior law and continue under section 42100. Thus, the Commission finds that section 42101 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

6. Education Code section 42103. This section provides that the governing board of each school district shall hold a public hearing on the proposed budget on or before the date specified in section 42127, but not less than three working days following availability of the proposed budget for public inspection. In addition, this section provides that the proposed budget shall show expenditures, cash balances, and all revenues as required to be tabulated in sections 42122 and 42123, and shall also include an estimate of those figures for the preceding fiscal year. This section further provides that any tax statement submitted by the governing board, district tax requirement or superintendent budget recommendations shall be made available for public inspection. With the requirement that notification of the date, time and location of the public hearing, as well as the location of the public copy of the proposed budget shall be published in a newspaper of general circulation.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20504 as Education Code section 42103. Section 42103 was repealed and reenacted by Statutes of 1981, Chapter 100; however, the substance of the statute, describing the requirements for public hearing and publication of the proposed school district budget, remained largely unchanged. Prior law required publication and public hearing on the budget for the ensuing school year, showing program expenditures, cash balances, and all appropriations from the state as required to be tabulated in sections 42122 and 42123 for the ensuing and last preceding fiscal year, and the district tax requirement for the school year to which the budget is intended to apply. The deadline for budget publication was the last week in July of each year, and the hearing was to be held during the first week in August at a place conveniently accessible to the residents of the district. Prior law also provided that the budget shall not be finally adopted by the district governing board until after the public hearing.

Prior law required publication of the entire budget in a newspaper of general circulation, plus a notice of the date and location of the public hearing. Current law requires publication of the notice of public hearing, plus notification of the location and times where the budget is available for public inspection. The Commission finds that the amendments to section 42103 reduced school district activities, as the district no longer has to pay for newspaper publication of the entire budget, but instead now must only provide for a smaller notice and make one copy of the budget available for public inspection before the public hearing. The deadlines for publication and hearing were changed by amendment to correspond with dates listed in Education Code section 42127, all of which are later than the deadlines established by prior law, and therefore allows the districts additional time to comply with the notice requirements. Based on the foregoing, the Commission finds that Education Code section 42103 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

7. Education Code section 42123. This section provides that each budget shall be itemized to set forth the necessary revenues and expenditures in each fund to operate the public schools of

the district as authorized by law and on forms prescribed by the Superintendent of Public Instruction.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20603 as Education Code section 42123. Statutes of 1980, Chapter 1354 added a second paragraph to section 42123. However, the second paragraph was subsequently deleted by Statutes of 1986, Chapter 1150, a decade before the test claim reimbursement period, leaving section 42123 with no substantive changes to prior law. Thus, the Commission finds that the requirement for each school district budget to be itemized and prepared on state forms is identical to prior law. Therefore, the Commission finds Education Code section 42123 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

8. Education Code section 42124. This section provides that the school district budget may contain an amount known as the general reserve.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20604 as current Education Code section 42124 with no amendments to the language of the law. Thus, the Commission finds that the provision allowing for a general reserve fund as part of the district budget is not a new program or higher level of service than what was required under prior law, nor does the language of the provision create a mandatory program. Thus, the Commission finds Education Code section 42124 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

9. Education Code section 42127. This section provides that the governing board of each school district shall accomplish a number of activities on or before July 1 of each year, including holding a public hearing on the budget to be adopted for the subsequent fiscal year, and adopt and file a budget.

In addition, this section requires that the county superintendent of schools shall examine the adopted budget to determine whether it complies with the standards and criteria adopted by the State Board of Education. The superintendent shall identify, if necessary, any technical corrections that must be made to bring the budget into compliance with those standards and criteria. The county superintendent must also determine whether the adopted budget will allow the district to meet its financial obligations during the fiscal year and is consistent with a financial plan that will enable the district to satisfy its multiyear financial commitments. On or before August 15, the county superintendent of schools shall approve or disapprove the adopted budget for each school district. Upon disapproval of a budget, specific follow-up activities are required.

This code section was the subject of a previous Commission decision. In the Statement of Decision for *CSM-4389, Budgeting Criteria and Standards,* the Commission determined that section 42127 was substantively the same as prior law and therefore did not impose a new program or higher level of service. Specifically, the Commission found that "Education Code section 42127 states in pertinent part:

> "(a) On or before the first day in July in each year, each school district shall file a tentative budget with the county superintendent of schools ...
>
> "(b) On or before August 1, in each year, based on standards and criteria for fiscal stability established pursuant to Section 33127, the county superintendent of schools:
>
> "(1) Shall examine and make technical corrections to the tentative budget...

"(2) Shall make any recommendations he or she deems necessary to ensure that the district's budget complies with the standards and criteria ... [established pursuant to Section 33127, and shall transmit to the governing board a written explanation of the reasons for those recommended changes.]

"(d) On or before September 15, the governing board of each school district shall adopt a final budget including any tax requirements ...

"(e) On or before November 1, the county superintendent shall approve or disapprove the adopted final budget for each school district after doing the following:

"(1) Examining the adopted final budget to determine whether it complies with the standards and criteria established pursuant to Section 33127.

"(f) If, after examining the adopted final budget of a school district, it is the opinion of the county superintendent that it does not comply with the standards and criteria established pursuant to Section 33127, he or she shall, by November 1, transmit to the governing board, in writing, [his] or her recommendations and the reasons therefor."

[(g) The superintendent and governing board, shall, by November 30, do all of the following: (1) Review the recommendations of the county superintendent of schools at a regularly scheduled meeting of the governing board. (2) Respond to the recommendations of the county superintendent. The response shall include the proposed actions to be taken, if any, as a result of the county superintendent's recommendations.]

The Commission's decision states that "the Commission found that the requirements of Education Code section 42127 are substantially the same as the requirements contained in Education Code sections 20601, subdivision (a), 20605 and 20651 of Chapter 2/59."

However, due to the fact that Education Code section 42127 has been substantively amended since the decision on *CSM-4389*, the Commission finds several new activities have been created. In particular, Statutes of 1991, Chapter 1213 made a number of significant changes to section 42127. Prior to this amendment of section 42127, school district governing boards had to provide an annual budget, and county offices of education had supervisory and budget approval activities, but they did not have to engage in some of the specific reporting to the state and other budgetary follow-up activities that the statute now requires. However, the Commission does find that any changes in the language from requiring adoption and review of a "tentative budget" and then a "final budget," to a "budget" and, if necessary, a "revised budget," merely reflect a change in terminology and are not substantive, and therefore not new. The Commission notes that school districts for which the county board of education also serves as the governing board are not subject to most of the new requirements of this statute. The Commission finds that the following activities do impose a new program or higher level of service, and costs mandated by the state upon all other school districts and county offices of education, to the extent that they are required:

School District Activities:

- Adjusting for the change in deadline for adopting of the revised school district budget, from on or before September 15, to on or before September 8.

- Making available for public review, not later than 45 days after the Governor signs the annual Budget Act, any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act.

County Office of Education Activities:

- Adjusting for the change in deadline for approval of the revised school district budget, from on or before November 1, to on or before October 8.
- Providing a list to the Superintendent of Public Instruction, on or before September 22, identifying all school districts for which budgets may be disapproved.
- Providing a report to the Superintendent of Public Instruction, on or before October 8, identifying all school districts for which budgets have been disapproved. This report shall include a copy of the written response transmitted to each of those districts when their budget was disapproved.

10. Education Code sections 42127.1 and 42127.2. [18] Section 42127.1 provides that, upon the disapproval of a school district budget by a county superintendent, the county superintendent shall call for the formation of a budget review committee comprised of members selected from a candidate list provided by the Superintendent of Public Instruction. With the approval of the Superintendent of Public Instruction, the district may select a regional review committee instead. This section further provides that members of the budget review committee shall be reimbursed for services and expenses by the CDE. Section 42127.2 provides that the governing board of a school district shall, no later than five days after the receipt of a candidate list from the Superintendent of Public Instruction, select a budget review committee, to be convened within five days by the Superintendent of Public Instruction. If the governing board fails to select a committee, the Superintendent of Public Instruction shall select and convene the committee. This committee shall review the proposed district budget and transmit recommendations on approving the budget or needed revisions. In addition, under section 42127.2, upon request of the county superintendent, the SCO may conduct an audit or review of the fiscal condition of the school district in order to assist a budget review committee for the purposes of this section.

The Commission finds that the state has the primary responsibility for the formation of the budget review committee and paying their expenses. Section 42127.1 provides that if a county superintendent disapproves a school district budget, then the county superintendent is to call for the formation of a budget review committee. This section provides that the committee is to be comprised of members selected from *a candidate list provided by the Superintendent of Public Instruction* and that the charges for the expenses and services of this committee *will be reimbursed by the State Department of Education.* Under section 42127.2, if the school district governing board fails to select a committee within five days, then the Superintendent of Public Instruction is required to assemble the committee. Thus, the district board can choose to stay out of the process by failing to take a responsive action to select a committee within five days after receipt of the Superintendent of Public Instruction's candidate list. Also, the Commission finds that despite the manner in which the committee is created, the costs of the services and expenses of the budget review committee are reimbursed by the CDE.

[18] Sections 42127.1 and 42127.2 were added by Statutes of 1988, Chapter 1462.

Also under section 42127.2, the SCO may conduct an additional audit upon a school district at the request of a county superintendent. Government Code section 12410, enacted in 1945, states that the Controller shall superintend the fiscal concerns of the state, and may make such audit of any claim or disbursement of state money as may be appropriate. Although section 42127.2 specifically allows the SCO to perform a special school district audit, the general authority for the SCO to perform audits of entities utilizing state funds is not new. Accordingly, the Commission finds associated audit costs incurred by a district would not be reimbursable. Thus, the Commission finds that Education Code sections 42127.1 and 42127.2 do not constitute new programs or higher levels of service, and do not impose costs mandated by the state.

11. Education Code section 42127.3.[19] This section provides that if the budget review committee described above recommends approval of the school district budget, the county superintendent shall accept the recommendation and approve the budget. If the committee disapproves the budget, the district governing board may submit a response within five days to the Superintendent of Public Instruction. Based on all of the reports and responses, the Superintendent of Public Instruction shall either approve or disapprove the budget. If the Superintendent of Public Instruction disapproves the budget, the county superintendent shall engage in fiscal budgeting, monitoring and review on behalf of the district, as necessary, for the remainder of the fiscal year. This section provides that the school district shall pay 75 percent and the county office of education shall pay 25 percent of the administrative costs associated with improving the district's financial practices.

DOF contends that the provisions of Education Code section 42127.3 constitute "clarifications and establishment of particular procedures already required under section 42127, which the Commission has previously held does not constitute a state mandate." The Commission disagrees with this interpretation and finds that prior to the enactment of the test claim legislation Education Code section 42127 provided a date by which the county superintendent "shall approve the adopted budget for each school district," but did not provide for the eventuality of *disapproval* of a district budget.

County Offices of Education. Claimant contends that all of the provisions of section 42127.3 are new and impose costs mandated by the state. However, the Commission finds, under prior law, Education Code section 1240 provided that the county superintendent of schools shall "[s]uperintend the schools of his county." In addition, the Commission finds that the specific provisions of Education Code section 42127.3 are only to be imposed "as necessary," as determined by the county superintendent, not the state. To the extent that the fiscal management activities listed under section 42127.3 may be necessary to solve the financial problems of the school district, the Commission finds they are undertaken at the discretion of the county superintendent of schools. In addition, such suggested activities do not go beyond the traditional duty of county offices of education or the county superintendent to "superintend" fiscal management of their school districts. Thus, the Commission finds that under these circumstances Education Code section 42127.3 does not impose a new program or higher level of service upon county offices of education and costs mandated by the state.

School Districts. However, a question remains whether the provision that the school district shall pay seventy-five percent of the administrative costs associated with improving the district's

[19] Section 42127.3 was added by Statutes of 1988, Chapter 1462.

financial practices constitute a new program or higher level of service and impose costs mandated by the state.

Prior to the test claim legislation there was no specific requirement imposed by the state for school districts to pay county offices of education for seventy-five percent of the administrative costs for improving the district's financial practices. However, the California Supreme Court in *County of Los Angeles*[20] held that additional costs alone do not equate to a reimbursable state mandate under section 6, article XIII B. The court held rather, it is paramount that additional costs result from new programs or increased levels of service mandated by the state, stating that:

> "If the Legislature had intended to continue to equate 'increased level of service' with 'additional costs,' then the provision would be circular: 'costs mandated by the state' are defined as 'increased costs' due to an 'increased level of service,' which, in turn, would be defined as 'additional costs.' We decline to accept such an interpretation."[21]

The California Supreme Court affirmed its holding in *County of Los Angeles* in a subsequent case, *Lucia Mar Unified School Dist.* v. *Honig,* stating:

> "We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state."[22]

In *City of San Jose* v. *State of California*[23] as well as in *County of Los Angeles*, a new program or higher level of service does not exist when a shift in costs occurs between local entities. The court stated the following:

> *"[N]othing in article XIII B prohibits the shifting of costs between local governmental entities."* [24] [Emphasis added.]

The Commission finds the test claim statute merely shifted the portion of the costs of fiscal management, formerly borne by a county office of education, a local agency, on to a school district, another local agency, a shift, which does *not* require reimbursement under section 6, article XIII B. Although school districts can show additional costs corresponding to the absorption of seventy-five percent of county offices of education's administrative costs for engaging in fiscal management activities, there is *no* new service or activity imposed upon school districts by the test claim statute.

Therefore, in accordance with the foregoing authorities, the Commission finds that Education Code section 42127.3 does not impose a new program or higher level of service, and does not impose costs mandated by the state.

---

[20] *County of Los Angeles, supra*, 43 Cal.3d 46, at 55, 56.

[21] *Id.*

[22] *Lucia Mar, supra*, 44 Cal.3d 830, at 835.

[23] *City of San Jose* v. *State of California* (1996) 45 Cal.App.4th 1802.

[24] *Id*. at 1815.

12. Education Code section 42127.4.[25] This section provides that until a school district budget is approved, the district shall continue to operate under its last adopted budget or under the unapproved budget for the current fiscal year, whichever provides a lower spending authority.

School districts were required by prior law to adopt and operate under an annual budget. The provisions of section 42127.4 require that, in the event that the school district does not have an approved annual budget, they continue to operate under their previous year's approved budget, or under the newer unapproved budget, if it provides for a lower level of spending. There is no evidence that this section imposes a new program or higher level of service, as it requires that the school district continue to operate in the most fiscally responsible manner until a new budget is adopted. It is also unclear as to how this section imposes costs upon a school district or county office of education, as it simply requires utilization of whichever school district budget provides for a lower level of spending. Accordingly, the Commission finds, based upon its review of the record, Education Code section 42127.4 does not impose a new program or higher level of service, and does not impose costs mandated by the state.

13. Education Code section 42127.5.[26] This section provides that the governing board of a district reporting a negative unrestricted fund balance or a negative cash balance shall include a statement with the budget explaining the reason for the negative balance and the steps taken to ensure that by the end of the current fiscal year there will not be a negative balance.

Prior to the enactment of section 42127.5, the governing board of a district did not have a specified legal requirement to include a statement with the budget explaining a negative balance and the steps taken to change the situation by the end of the current year. The statutory requirement imposes a new duty upon school district governing boards that have a reportable negative balance. Therefore, the Commission finds that Education Code section 42127.5 imposes a new program or higher level of service, and costs mandated by the state upon school districts, for the following activity:

- Drafting a statement of correction when the district incurs a negative balance.

14. Education Code section 42127.6.[27] This section provides that if a county superintendent of schools determines that the district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to section 42131, as further discussed below, the county superintendent shall notify the Superintendent of Public Instruction in writing of the determination and engage in studies, assign experts, report, monitor and review district financial practices, as necessary. This section further provides that the school district shall pay 75 percent and county offices of education shall pay 25 percent of the administrative costs associated with improving the district's financial management practices. This section also allows a school district to appeal the decisions of the county superintendent to the Superintendent of Public Instruction.

The Commission finds under prior law, Education Code section 1240 provided that the county superintendent of schools shall "[s]uperintend the schools of his county." The Commission finds this general directive does not encompass the specific new activity required for notifying the

[25] Section 42127.4 was added by Statutes of 1988, Chapter 1462.

[26] Section 42127.5 was added by Statutes of 1986, Chapter 1150.

[27] Section 42127.6 was added by Statutes of 1993, Chapter 924, replacing a similar section added by Statutes of 1991, Chapter 1213.

school district governing board and the Superintendent of Public Instruction, in writing, of the determination that the district is unable to meet its financial obligations. Therefore, the Commission finds that section 42127.6 imposes a new program or higher level of service, and costs mandated by the state for the notification activity described above.

However, the Commission finds that the other provisions of Education Code section 42127.6 are only to be imposed "as necessary," as determined by the county superintendent, not the state. To the extent that the fiscal management activities listed under section 42127.6 may be necessary to solve the financial problems of the school district, they are undertaken at the discretion of the county superintendent of schools. Such activities do not go beyond the traditional duty of county offices of education or county superintendents to "superintend" fiscal management of their school districts. Thus, the Commission finds that a reimbursable state mandate is imposed on county offices of education only for the initial notification activities required by section 42127.6, and that all other activities described under the section are undertaken at the discretion of the county superintendent of schools, and do not extend beyond their fundamental duty to superintend. Therefore, the remaining provisions of section 42127.6 do not impose new programs or higher levels of service, and do not impose costs mandated by the state.

Prior to the test claim legislation there was no specific requirement imposed by the state for school districts to reimburse county offices of education for seventy-five percent of administrative costs associated with improving the district's financial practices. This issue was fully analyzed above in respect to section 42127.3, but in brief, the Commission finds that the test claim statute does not impose a reimbursable state mandated program upon school districts because "local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state."[28] Although school districts can show additional costs corresponding to the absorption of seventy-five percent of county offices of education's administrative costs for engaging in fiscal management activities, there is *no* new service or activity imposed upon school districts by the test claim statute.

Thus, the Commission finds that Education Code section 42127.6 imposes a new program or higher level of service, and costs mandated by the state upon county offices of education, for the following activity:

- Notifying the Superintendent of Public Instruction in writing if a county superintendent of schools determines that a school district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to Section 42131.

15. Education Code section 42127.9.[29] This section provides that, no later than five days after a school district receives notice of any changes in the district's budget adopted by the county superintendent of schools, the governing board of the district may appeal to the Superintendent of Public Instruction.

Section 42127.9 provides the school district governing board with a timeframe and *the right to file an appeal* with the state regarding certain actions taken by a county superintendent. This code section *allows* for an appeal but does not *require* the appeal or any activity or particular

[28] *Lucia Mar, supra*, 44 Cal.3d 830, at 835.

[29] Section 42127.9 was added by Statutes of 1991, Chapter 1213.

course of action associated with filing an appeal by a school district governing board or by county offices of education. Therefore, the Commission finds that section 42127.9 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

16. Education Code section 42128. This section provides that if the governing board of any school district neglects or refuses to make a school district budget as prescribed by this article, or neglects to file interim reports pursuant to Section 42130, the county superintendent shall not make any apportionment of state or county school money for the particular school district for the current school year, and the county superintendent shall notify the appropriate county official that he or she shall not approve any warrants issued by the school district.

Statutes of 1976, Chapter 1010, renumbered and reenacted former Education Code section 20608 as Education Code section 42128. There have been two subsequent amendments to prior law. Statutes of 1993, Chapter 924 added the clause requiring the county superintendent to notify the appropriate county official that the county official shall not approve warrants issued by the school district. Statutes of 1995, Chapter 525 added the clause "or neglects to file interim reports pursuant to Section 42130." The primary language of section 42128, requiring a county superintendent to refuse to make an apportionment to school districts out of compliance with certain budget requirements, is the same as prior law.

However, under prior law there was no requirement for the county superintendent to notify "the appropriate county official" not to approve warrants issued by the school district. Accordingly, the Commission finds the amendment of section 42128 by Statutes of 1993, Chapter 924 imposes a new program or higher level of service, and imposes costs mandated by the state upon county offices of education for the following new activity:

- Notifying appropriate county officials that he or she shall not approve any warrants issued by the school district, whenever a school district has not made a budget or filed the interim reports required by section 42130.

17. Education Code section 42129.[30] This section provides that school districts and county offices of education shall timely transmit to the CDE all budget and financial reports required by statute. If the reports are not submitted within 14 days after the due date, the Superintendent of Public Instruction may direct the county auditor to withhold payment of any stipend, expenses or salaries to the district superintendent, county superintendent, or governing board members, as appropriate. The withholding shall continue only until the delinquent reports have been submitted to the Superintendent of Public Instruction.

Section 42129 provides for a possible penalty upon district and county office of education officials if statutorily required budget and financial reports are not submitted to the state in a timely manner. The law allows the Superintendent of Public Instruction to withhold payroll and expense payments to local superintendents and/or board members until the required reports are submitted. The Commission finds that this penalty provision does not require a new activity or impose a new duty, and the penalty to the officials may be avoided or reversed by submittal of the budgetary reports. Therefore, the Commission finds that Education Code section 42129 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

[30] Section 42129 was added by Statutes of 1986, Chapter 1150.

18. Education Code section 42131.[31] This section provides that the governing board of each school district shall positively, qualifiedly, or negatively certify, in writing, within 45 days after the close of the reporting period, whether or not the district is able to meet its financial obligations for the remainder of the fiscal year and the subsequent fiscal year. These certifications shall be sent to the county office of education. If the county office of education receives a positive certification, but determines that a negative or qualified certification should have been filed, the county superintendent shall change the certification, as appropriate, and notify the district and the Superintendent of Public Instruction within 75 days of the close of the reporting period.

DOF argues that this section does not mandate any new program or higher level of service, but instead constitutes part of the long-standing traditional duties of school districts and county offices of education to report financial and fiscal information to the Superintendent of Public Instruction. The Commission disagrees and finds that Education Code section 42131, as added by Statutes of 1987, Chapter 1452, while associated with traditional budget activities, constitutes an entirely new program. Before the enactment of this section, school district governing boards had to provide an annual budget, as well as create and provide financial and budgetary status reports, but they did not have to specifically certify and report to the county office of education regarding their ability to meet future financial obligations. The reporting activities associated with the certification process are new to both the school district and the county office of education. There are additional activities associated with a qualified or negative certification that also exceed the traditional duties of local educational agencies. The Commission notes that school districts for which the county board of education also serves as the governing board are not subject to the requirements of this statute. The Commission finds that the following activities impose a new program or higher level of service, and costs mandated by the state on all other school districts and county offices of education, to the extent that they are required:

School District Activities:

- Certifying in writing, either positively, qualifiedly or negatively, within 45 days after the close of the period being reported, whether the school district is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year.
- Filing with the county superintendent of schools a copy of the financial obligation certification, and a copy of the report submitted to the district governing board pursuant to Section 42130.
- Providing to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction, no later than June 1, financial statement projections of the district's fund and cash balances through June 30 for the period ending April 30. This is only applicable to a school district that has a qualified or negative financial certification.

County Office of Education Activities:

- Changing the school district financial certification to negative or qualified, as appropriate, if a county office of education receives a positive certification from school

[31] Section 42133 was added by Statutes of 1987, Chapter 1452 as section 35014, amended by Statutes of 1988, Chapter 1462 and amended and renumbered by Statutes of 1991, Chapter 1213.

district, when a negative or qualified certification should have been filed. Providing notice of that action to the governing board of the school district and to the Superintendent of Public Instruction, within 75 days after the close of the applicable reporting period.

- Sending copies of any certification in which the governing board is unable to certify unqualifiedly that financial obligations will be met, and a copy of the report submitted to the governing board pursuant to Section 42130 to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction.
- Submitting to the Superintendent of Public Instruction and the Controller the county superintendent's comments on those school district financial certifications that are classified as qualified or negative, and reporting any action proposed or taken, within 75 days after the close of the applicable reporting period.
- Reporting to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under their jurisdiction has submitted the certification required, within 75 days after the close of the applicable reporting period. That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district.

19. Education Code section 42133.[32] This section provides that a school district or county office of education that has a qualified or negative certification in any fiscal year may not issue, in that fiscal year or in the next succeeding fiscal year, certificates of participation, tax anticipation notes, revenue bonds, or any other debt instruments without voter approval, nor may the local educational agency submit an information report regarding the debt instrument unless the county superintendent, or in the case of county offices of education, the Superintendent of Public Instruction, determines that repayment of the debt is probable.

The Commission finds that section 42133 does not impose any new activities, duties or requirements; rather it prohibits school districts or county offices of education, found to be unable to meet current financial obligations, from incurring further debt without prior voter approval or state approval. Therefore, the Commission finds Education Code section 42133 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

20. Government Code section 3540.2.[33] This section provides that a school district that has a qualified or negative certification is to allow the county office of education at least six working days to review and comment on any proposed agreement made between the exclusive representative and the public school employer or the employer's representatives. The school district shall provide the county superintendent of schools with all information relevant to the financial impact of any collective bargaining agreement. The Superintendent of Public Instruction shall develop a format for use by the appropriate parties in generating the financial information required. The county superintendent of schools shall notify the school district

[32] Section 42133 was added by Statutes of 1991, Chapter 1213.

[33] Government Code section 3540.2 was added by Statutes of 1993, Chapter 924 and amended by Statutes of 1994, Chapter 650.

publicly within those six days, if in his or her opinion, the agreement reviewed would endanger the fiscal well being of the school district.

The language of the code section allows the county office of education, at the county office of education's discretion, to review and comment on any proposed agreement made between the exclusive representative and the public school employer or the employer's representatives, but does not require it. If the county office of education decides to review the collective bargaining agreement as provided for in this section, then the section requires that the county superintendent of schools *shall* notify the school district publicly within those six days, if in his or her opinion, the agreement reviewed would endanger the fiscal well-being of the school district. Since any public notification stems from a discretionary review, the Commission finds the activity is not a reimbursable state mandate to county offices of education. To the extent that a school district is required under this section to provide additional information relevant to the financial impact of a collective bargaining agreement, in a format developed by the Superintendent of Public Instruction, the Commission finds a new program has been created. Accordingly, the Commission finds Government Code section 3540.2 imposes a new program or higher level of service, and costs mandated by the state upon school districts for the following new activity:

- Providing the county superintendent of schools with all information relevant to the financial impact of any collective bargaining agreement, in the format developed by the Superintendent of Public Instruction, as specifically requested by the county office of education. This is only applicable to a school district that has a qualified or negative certification pursuant to Education Code section 42131.

IV. Test Claim Executive Orders: California Code of Regulations, Title 5, Sections 15440-15446

In addition to the test claim statutes, claimant also maintains that California Code of Regulations, Title 5 sections 15440-15466 impose reimbursable mandates. Under Government Code section 17516, an "executive order" may include "any order, plan, requirement, rule, or regulation issued by . . . any agency, department, board, or commission of state government." Thus, pursuant to Government Code section 17516, regulations issued or promulgated by the CDE are included in the definition of an executive order. However, the Commission must still determine if the executive order imposes a new program or higher level of service, or costs mandated by the state.

Claimant alleges that sections 15440-15446 of Title 5 of the California Code of Regulations, effective July 1, 1991, constitute executive orders, which impose a new program or higher level of service and impose costs mandated by the state. The Commission notes that these regulations are a restatement of Advisories 89-02 and 90-4[34] which set forth a two-tiered approach for review of budgets and financial reports required to be filed with the Superintendent of Public Instruction.

These two Advisories, which were never included in this present test claim, were considered by the Commission in *CSM-4389, Budgeting Criteria and Standards.* In the Commission's Statement of Decision for *Budgeting Criteria and Standards*, adopted August 22, 1991, the Commission found that the criteria and standards set forth in Advisories 89-02 and 90-4 met the standards of an executive order. However, after comparing these Advisories with the budget forms in place before the issuance of these Advisories, the Commission concluded that the

[34] These Advisories are attached as Exhibits L and M, respectively.

standards and criteria set forth in these Advisories were developed from forms which the school districts had previously used. The Commission further noted that the criteria and standards contained in these Advisories reflected the "standardization of a review process agreed to by representatives from districts, county offices, teachers unions and other state agencies."[35] Accordingly, the Commission concluded these Advisories did not constitute a new program or higher level of service.[36] Additionally, the Commission found that fiscal accountability by school districts is not a new program or higher level of service.[37]

Based on the foregoing, the Commission concludes that the duties imposed under Title 5, sections 15440-15446 were required prior to their adoption and accordingly, they do not constitute a new program or higher level of service, and do not impose costs mandated by the state.

Conclusion

The Commission concludes that Education Code sections 42100, 42127, 42127.5, 42127.6, 42128 and 42131 and Government Code section 3540.2 require some new activities, as specified, which constitute new programs or higher levels of service within existing programs upon school districts and/or county offices of education within the meaning of section 6, article XIII B of the California Constitution and impose costs mandated by the state pursuant to Government Code section 17514. Accordingly, the Commission approves this test claim for the following specific new activities required to comply with the budget process:

School District Activities:

- Sending a statement of receipts and expenditures for the preceding fiscal year to the county superintendent of schools. (Ed. Code, § 42100.)[38]
- Adjusting for the change in deadline for adopting the revised school district budget, from on or before September 15, to on or before September 8. (Ed. Code, § 42127.)[39]
- Making available for public review, not later than 45 days after the Governor signs the annual Budget Act, any revisions in revenues and expenditures that it has made to its budget to reflect the funding made available by that Budget Act. (Ed. Code, § 42127.)
- Drafting a statement of correction when the district incurs a negative balance. (Ed. Code, § 42127.5.)[40]
- Certifying in writing, either positively, qualifiedly or negatively, within 45 days after the close of the period being reported, whether the school district is able to meet its financial

[35] *CSM-4389, Budgeting Criteria and Standards*, statement of decision, page 12.

[36] *Id*., at 13.

[37] *Id*., at 13.

[38] As amended by Statutes of 1981, Chapter 100.

[39] As amended by Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323, Statutes of 1993, Chapter 923.

[40] As added by Statutes of 1986, Chapter 1150.

obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent fiscal year. (Ed. Code, § 42131.)[41]

- Filing with the county superintendent of schools a copy of the financial obligation certification, and a copy of the report submitted to the district governing board pursuant to Section 42130. (Ed. Code, § 42131.)
- Providing to the county superintendent of schools, the Controller, and the Superintendent of Public Instruction, no later than June 1, financial statement projections of the district's fund and cash balances through June 30 for the period ending April 30. This is only applicable to a school district that has a qualified or negative financial certification. (Ed. Code, § 42131.)
- Providing the county superintendent of schools with all information relevant to the financial impact of any collective bargaining agreement, in the format developed by the Superintendent of Public Instruction, as specifically requested by the county office of education. This is only applicable to a school district that has a qualified or negative financial certification. (Gov. Code, § 3540.2.)[42]

County Office of Education Activities:

- Verifying the mathematical accuracy of the school district statement of receipts and expenditures for the preceding fiscal year. (Ed. Code, § 42100.)
- Sending a copy of the verified school district statement of receipts and expenditures for the preceding fiscal year to the Superintendent of Public Instruction. (Ed. Code, § 42100.)
- Adjusting for the change in deadline for approval of the revised school district budget, from on or before November 1, to on or before October 8. (Ed. Code, § 42127.)
- Providing a list to the Superintendent of Public Instruction, on or before September 22, identifying all school districts for which budgets may be disapproved. (Ed. Code, § 42127.)
- Providing a report to the Superintendent of Public Instruction, on or before October 8, identifying all school districts for which budgets have been disapproved. This report shall include a copy of the written response transmitted to each of those districts when their budget was disapproved. (Ed. Code, § 42127.)
- Notifying the Superintendent of Public Instruction in writing if a county superintendent of schools determines that a school district is unable to meet its financial obligations for the current or two subsequent fiscal years, or if the district has a qualified or negative certification pursuant to Section 42131. (Ed. Code, § 42127.6.)[43]

[41] As added by Statutes of 1987, Chapter 1452, and amended by Statutes of 1988, Chapter 1462; Statutes of 1991, Chapter 1213; Statutes of 1993, Chapter 923; Statutes of 1994, Chapter 1002; and Statutes of 1995, Chapter 525.

[42] As added by Statutes of 1993, Chapter 924 and amended by Statutes of 1994, Chapter 650.

[43] As added by Statutes of 1993, Chapter 924.

- Notifying appropriate county officials that he or she shall not approve any warrants issued by the school district, whenever a school district has not made a budget or filed the interim reports required by section 42130. (Ed. Code, § 42128.)[44]
- Changing the school district financial certification to negative or qualified, as appropriate, if a county office of education receives a positive certification from school district, when a negative or qualified certification should have been filed. Providing notice of that action to the governing board of the school district and to the Superintendent of Public Instruction, within 75 days after the close of the applicable reporting period. (Ed. Code, § 42131.)
- Sending copies of any certification in which the governing board is unable to certify unqualifiedly that financial obligations will be met, and a copy of the report submitted to the governing board pursuant to Section 42130 to the Controller and the Superintendent of Public Instruction at the time of the certification, together with a completed transmittal form provided by the Superintendent of Public Instruction. (Ed. Code, § 42131.)
- Submitting to the Superintendent of Public Instruction and the Controller the county superintendent's comments on those school district financial certifications that are classified as qualified or negative, and reporting any action proposed or taken, within 75 days after the close of the applicable reporting period. (Ed. Code, § 42131.)
- Reporting to the Controller and the Superintendent of Public Instruction as to whether the governing board of each of the school districts under their jurisdiction has submitted the certification required, within 75 days after the close of the applicable reporting period. That report shall account for all districts under the jurisdiction of the county office of education and indicate the type of certification filed by each district. (Ed. Code, § 42131.)

The Commission denies all remaining test claim issues, code sections and executive orders because they do not constitute a new program or higher level of service, and do not impose costs mandated by the state.

[44] As amended by Statutes of 1993, Chapter 924.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 1040, 1240, 1240.2, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1628, 1630, 14050, 33127, 33128, 33129, 33132, 42120, 42129, and 42133; Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 843; Statutes of 1979, Chapters 10 and 221; Statutes of 1983, Chapter 1276; Statutes of 1985, Chapter 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525; and California Code of Regulations, Title 5, Sections 15467-15493 Filed on December 30, 1997 By the Alameda County Office of Education, Claimant.	No. 97-TC-20 *County Office Budget Process and Financial Statements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on October 26, 2000)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on October 31, 2000.

_____
Paula Higashi, Executive Director

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 1040, 1240, 1240.2, 1620, 1621, 1622, 1623, 1624, 1625, 1626, 1628, 1630, 14050, 33127, 33128, 33129, 33132, 42120, 42129, and 42133; Statutes of 1975, Chapter 125; Statutes of 1977, Chapter 843; Statutes of 1979, Chapters 10 and 221; Statutes of 1983, Chapter 1276; Statutes of 1985, Chapter 741; Statutes of 1986, Chapter 1150; Statutes of 1987, Chapters 917 and 1452; Statutes of 1988, Chapters 1461 and 1462; Statutes of 1989, Chapter 1256; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1992, Chapter 323; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapters 650 and 1002; Statutes of 1995, Chapter 525; and California Code of Regulations, Title 5, Sections 15467-15493 Filed on December 30, 1997 By the Alameda County Office of Education, Claimant.	No. 97-TC-20 *County Office Budget Process and Financial Statements* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on October 26, 2000)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim on September 28, 2000 during a regularly scheduled hearing. Keith B. Peterson appeared for claimant Alameda County Office of Education. Leslie R. Lopez and Dan Troy appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state mandated program is Government Code section 17500 et seq., article XIII B, section 6 of the California Constitution and related case law.

The Commission, by a vote of 4-2 approved this test claim.

BACKGROUND AND FINDINGS

The test claim alleges reimbursable state mandated costs for activities associated with the preparation and submission of various county offices of education budget and financial reports to the state.

The claim arises from enactments or amendments to twenty budget-related Education Code sections and California Code of Regulations, Title 5, sections 15467-15493. The Commission has heard previous test claims related to school district and county office of education budget processes. There is also significant overlap between this test claim and another filed simultaneously by the same claimant: *97-TC-19, School District Budget Process, Financial Statements, and County Office Oversight*.

Claimant also originally alleged seventeen California Department of Education (CDE) management advisory letters published between 1986 and 1996 all constituted executive orders imposing a reimbursable state mandate. However, at the September 28, 2000 hearing, the claimant withdrew all remaining management advisory letters from the test claim. A separate Statement of Decision documents the Commission's approval of claimant's withdrawal and dismissal of this portion of the original test claim.

Issue:

> Do the subject statutes, regulations and fiscal management advisories impose a new program or higher level of service within an existing program upon county offices of education within the meaning of section 6, article XIII B of the California Constitution[1] and costs mandated by the state pursuant to Government Code section 17514[2] by requiring new or additional budgetary, financial statement, and related fiscal management procedures?

A test claim statute or executive order may impose a reimbursable state mandated program if statutory and regulatory language directs or obligates an activity or task upon local governmental entities. In addition, the required activity or task must be new, constituting a "new program," or create an increased or "higher level of service" over the previously required level of service. The courts have defined a "new program" or "higher level of service" as a program that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy but does not apply generally to all residents and entities in the state. To determine if a required activity is new or imposes a higher level of service, a comparison must be drawn between the test claim legislation and the legal requirements in effect immediately before the enactment of the test claim

---

[1] Section 6, article XIII B of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[2] Government Code section 17514 provides: "Costs mandated by the state means any increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution."

28

legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.[3]

The test claim legislation and regulations involve the administration of the county office of education budget process and financial statements. Public education in California is a peculiarly governmental function administered by local agencies as a service to the public.[4] Moreover, the test claim legislation, which requires school districts to administer the school district budget process, imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Thus, the Commission finds the administration of the budget process by county offices of education constitutes a "program" within the meaning of section 6, article XIII B of the California Constitution.[5]

However, the inquiry must continue to determine if the activities are new or impose a higher level of service and if so, if there are costs mandated by the state. The claimant contends that all of the test claim legislation and regulations impose new programs or higher levels of service upon county offices of education by requiring specific activities related to annual budgets and financial statements.

Before the enactment of the test claim legislation, county offices of education were required to engage in annual budget activities.[6] The subject test claim legislation makes some changes to annual budget reporting requirements as compared to prior law. The individual issues addressed by this claim are numerous. The analysis of whether the individual provisions are reimbursable state mandates generally hinges on whether the claimed section requires a local agency to perform a new activity or higher level of service than that required under prior law.

The test claim analysis is presented in three sections to categorize the test claim provisions in manageable components, as follows:

I. Test Claim Legislation Consolidated With Overlapping Test Claim

II. Remaining Test Claim Legislation

III. Test Claim Executive Orders

[3] *County of Los Angeles* v. *State of California* (1987) 43 Cal.3d 46, 56; Carmel Valley Fire Protection Dist. v. State of California (1987) 190 Cal.App.3d 521, 537; Lucia Mar Unified School Dist. v. Honig (1988) 44 Cal.3d 830, 835.

[4] *Long Beach Unified School Dist.* v. *State of California* (1990) 225 Cal.App.3d 155, 172 states "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public."

[5] *Id.*

[6] Prior Education Code sections 801 through 806, 18351 et seq., and 20400 through 20405 (1959).

I. Test Claim Legislation Consolidated With Overlapping Test Claim

There is significant overlap between this test claim and another filed simultaneously by the same claimant: *97-TC-19, School District Budget Process, Financial Statements, and County Office Oversight*. The current test claim is specific to county offices of education, while *97-TC-19* includes budget activities for individual school districts, as well as activities equally pertinent to county offices of education when engaging in the annual budget process. Both claims allege reimbursable state mandates under Education Code sections 33127, 33128, 33129, 33132, 42129, and 42133. These overlapping code sections were evaluated for their effects upon both school districts and county offices of education in the Statement of Decision for test claim *97-TC-19, School District Budget Process*. Accordingly, the analysis of these code sections will not be restated as part of this Statement of Decision.

II. Remaining Test Claim Legislation

A. Renumbering, Reenactment, Restatements:

At the outset the Commission notes that many of the code sections included in the test claim legislation were in effect well before the enactment of the test claim legislation, but as a result of the test claim legislation were either renumbered or restated in a "newly enacted" code section. The Commission makes an overall finding, in accordance with Education Code section 3, that under these circumstances a renumbered or restated statute, originally enacted prior to the enactment of the test claim legislation will not be considered to be a newly enacted provision. Education Code section 3 provides:

> "The provisions of this code, insofar as they are substantially the same as existing statutory provisions relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments."

The rationale behind Education Code section 3 is in accordance with the holding of *In re Martin's Estate* (1908) 153 Cal. 225, 229, which explains the general rule of statutory construction for repeal, replacement and renumbering, as follows:

> "Where there is an express repeal of an existing statute, and a re-enactment of it at the same time, or a repeal and a re-enactment of a portion of it, the re-enactment neutralizes the repeal so far as the old law is continued in force. It operates without interruption where the re-enactment takes effect at the same time."[7]

The holding of *In re Martin's Estate* is consistent with a California Attorney General Opinion[8] which explains that where there is express repeal of existing statute and re-enactment of it at the same time, re-enactment neutralizes repeal as far as the old law continues in force, and it operates without interruption where re-enactment takes effect at the same time.

Based upon the foregoing rules of statutory construction, the Commission finds that a renumbering, reenactment or restatement of prior law does not constitute a reimbursable state mandate to the extent that the provisions and associated activities remain unchanged.

B. Analyses of the Remaining Code Sections

[7] *In re Martin's Estate* (1908) 153 Cal. 225, 229.

[8] 15 Ops.Cal.Atty.Gen. 49 (1950).

Each of the remaining claimed code sections are analyzed individually below to determine if they are new or impose a higher level of service and if so, if there are costs mandated by the state.

1. Education Code section 1040. This section provides that county boards of education shall approve the annual budget and the annual county school service fund budget of the county superintendent of schools.

Statutes of 1976, Chapter 1010, renumbered and re-enacted former Education Code section 651 as Education Code section 1040. Section 1040 was later amended by Statutes of 1985, Chapter 741, which added subdivision (e), requiring the review of the annual audit at a public meeting of the board. Section 1040, as amended by Statutes of 1985, Chapter 741, was a subject of test claim *CSM-4498/4498A, Financial and Compliance Audits*. However, claimant is not re-alleging subdivision (e), rather claimant is alleging a reimbursable state mandate for the requirements imposed under subdivisions (a) through (d). Since these subdivisions were in effect under prior section 651, and were re-enacted in 1976 under section 1040, the Commission finds that the activities imposed under these subdivisions do not impose new programs or higher levels of service, and do not impose costs mandated by the state.

2. Education Code section 1240, subdivision (j). This subdivision provides that the county superintendent of schools shall submit two annual reports on the financial and budgetary status of the county office of education. The reports shall be reviewed by the county board of education and approved by the county superintendent of schools no later than 45 days after the close of the reporting period. The county superintendent shall certify in writing, either positively, qualifiedly or negatively, that the county office of education is able to meet its financial obligations for the two subsequent fiscal years, pursuant to the state standards prescribed in section 1241.1. Copies of each budget status report and certification shall be sent to the Superintendent of Public Instruction. Any qualified or negative certification shall be also sent to the SCO. All reports and certifications shall be in a format or on forms prescribed by the Superintendent of Public Instruction.

Statutes of 1976, Chapter 1010, renumbered and re-enacted former Education Code section 801 as Education Code section 1240. Statutes of 1987, Chapter 1452 added section 1240, subdivision (j)[9]. Before the enactment of section 1240, subdivision (j), county boards of education had to provide annual tentative and final budgets, but they did not have to submit two additional annual reports on the current county office of education financial and budgetary status, nor did they have to specifically certify and report to the Superintendent of Public Instruction regarding their ability to meet future financial obligations. The reporting activities associated with the certification process are new to county offices of education.

DOF maintains that subdivision (j) does not mandate any new program or higher level of service, but instead the 1997 amendment restated the long-standing traditional duties of school districts and county offices of education to report financial and fiscal information to the Superintendent of

[9] This provision was first added to the code by Statutes of 1985, Chapter 741 to Education Code section 1241. The pertinent language of section 1241 was then added to section 1240 by Statutes of 1987, Chapter 1452, which was simultaneously repealed section 1241.

Public Instruction. In addition, DOF contends that Education Code section 1245[10] reflects this long-standing duty to make reports as follows:

> "Each county superintendent of schools shall submit the reports as may from time to time be required by the Superintendent of Public Instruction."

The Commission disagrees with DOF's position and finds that Education Code section 1240, subdivision (j), as added by Statutes of 1987, Chapter 1452, while associated with traditional budget activities, constitutes an entirely new program. The Commission notes that under section 1245, entitled "Additional reports," which is part of the test claim, provides for an eventuality in which the Superintendent of Public Instruction may require "from time to time" a special report of a county superintendent that is not otherwise provided for in the code, such as a survey further information regarding a regular budget, financial, or attendance report. The requirements of section 1240 extend beyond the requirements of section 1245 by setting forth specified periods in which budget reports must be filed.

Based on the foregoing, the absence of evidence demonstrating that these activities were required by prior law, the Commission finds that the following activities impose a new program or higher level of service, and impose costs mandated by the state to county offices of education, to the extent that they are required:

- Preparing, reviewing, approving and submitting, in the format or on forms prescribed by the Superintendent of Public Instruction, financial and budgetary status reports, one within 45 days of the conclusion of the period ending October 31, and one within 45 days of the period ending January 31. Certifying in writing, either positively, qualifiedly or negatively, within 45 days after the close of the period being reported, whether the county office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent two fiscal years.
- Sending a copy of each county office of education budget status report and financial certification to the Superintendent of Public Instruction.
- Sending a copy of any negative or qualified county office of education financial certification to the SCO.

3. Education Code section 1240.2.[11] This section provides that a county superintendent of schools who files a qualified or negative certification for the second report required pursuant to subdivision (j) of Section 1240 and a county office of education that is classified as qualified or negative by the Superintendent of Public Instruction shall provide to the Superintendent of Public Instruction and the Controller, no later than June 1, a financial statement that covers the financial and budgetary status of the county office of education for the period ending April 30 and projects the fund and cash balances of the county office of education as of June 30.

DOF argues that this section does not mandate any new program or higher level of service, but instead constitutes part of the long-standing traditional duties of school districts and county offices of education to report financial and fiscal information to the Superintendent of Public

[10] Statutes of 1976, Chapter 1010, renumbered and re-enacted former Education Code section 806 as Education Code section 1245.

[11] Education Code section 1240.2 was added by Statutes of 1995, Chapter 525.

Instruction. The Commission disagrees and finds that Education Code section 1240.2, as added by Statutes of 1995, Chapter 525, while associated with traditional budget activities, constitutes an entirely new program. Before the enactment of this section, county boards of education had to provide an annual budget, but they did not have to specifically certify and report their ability to meet future financial obligations to the Superintendent of Public Instruction. Accordingly, the Commission finds that the following activity, as required by Education Code section 1240.2, imposes a new program or higher level of service, and costs mandated by the state to county offices of education:

- Providing to the Controller and the Superintendent of Public Instruction, no later than June 1, a financial statement that covers the financial and budgetary status of the county office of education for the period ending April 30 and projects the fund and cash balances of the county office of education as of June 30. This is only applicable to a county office of education that has a qualified or negative financial certification.

4. Education Code section 1620.[12] This section provides that on or before July 1 of each fiscal year, the county board of education shall hold a public hearing on the proposed county school service fund budget for that fiscal year. The public hearing shall be held prior to the adoption of the budget by the county board of education, and shall occur not less than three days following the availability of the proposed budget for public inspection. The agenda for that hearing shall be posted at least 72 hours prior to the hearing and shall include the location of where the budget will be available for inspection. At the hearing, any taxpayer directly affected by the county school service fund budget may appear and speak.

Under prior law Education Code section 1623[13] provided that:

> "On or before August 10, the county board of education shall hold a public hearing on the county school service fund budget. Notice of the public hearing shall be published at least once in a newspaper of general circulation published within the county not less than 10 days prior to the date set for the hearing. The cost of publication shall be a proper and legal charge against the county school service fund … The published notice shall include the time, place, and purpose of the public hearing, and such other information as may be determined by the county board of education, and shall state that any taxpayer directly affected by the county school service fund budget may appear before the county board of education and speak to the proposed budget item or any item therein."

Although prior law is substantially similar, there are two significant changes. The first change is the earlier deadline for holding the public hearing, now on or before July 1, instead of on or before August 10; the other change is the specification that the budget is to be made available for public inspection. The Commission finds that there is a reimbursable activity resulting in a *one-time* administrative cost for adjusting to the earlier deadline of holding the public hearing by July 1 instead of by August 10. However, the Commission notes that the statutory requirement for the earlier deadline was enacted by Statutes of 1991, Chapter 1213, effective January 1, 1992.

[12] Added by Statutes of 1991, Chapter 1213; amended by Statutes of 1992, Chapter 323.

[13] Former Education Code section 20403 was renumbered and re-enacted by Statutes of 1976, Chapter 1010. It was later repealed by Statutes of 1991, Chapter 1213, which enacted the similar Education Code section 1620.

The reimbursement period for this test claim began July 1, 1996; therefore, county offices of education should have incurred their one-time costs before the reimbursement period.

The Commission finds that the requirement to make a copy of the budget available for public inspection was covered under prior law, Government Code section 6253,[14] which provides that public records of local agencies are open to inspection at all times during the office hours of the agency. The Commission further finds that other activities in section 1620, such as having a public hearing on the budget, or posting or publishing the agenda in advance of the hearing were also included in prior law. Therefore, the Commission finds that Education Code section 1620 imposes a new program or higher level of service, and costs mandated by the state upon county offices of education for the following one-time activity:

- Adjusting for the earlier deadline of holding the public hearing by July 1, (one-time, if costs were incurred within reimbursement period.)

5. Education Code section 1621. This section provides that a single-fund budget shall be prepared in the form prescribed and furnished by the Superintendent of Public Instruction and shall be the county school service fund budget. This budget shall show a complete plan and itemized statement of all proposed expenditures in each fund of the county office of education, of estimated cash balances, and of all estimated revenues for the budget year, and shall include an estimate of those figures, unaudited, for the fiscal year immediately preceding the budget year. The budget may contain an amount to be known as the general reserve, in such sum as the county board of education may deem sufficient to meet the cash requirements of the fiscal year next succeeding the budget year until adequate proceeds of the taxes levied or of the apportionment of state funds are available. The budget may contain a fund balance designated for any specific purpose as determined by the county board of education. Those funds shall be available for appropriation by a majority vote of the members of the county board of education.

Statutes of 1976, Chapter 1010, renumbered and re-enacted former Education Code section 20401 as Education Code section 1621 which was later amended by Statutes of 1987, Chapter 917, Statutes of 1988, Chapter 1462, and later repealed and re-enacted by Statutes of 1991, Chapter 1213. Despite this history, the provisions of section 1621 are substantially similar to that under prior law. The only significant change in this section is the allowance for the appropriation of the undesignated fund balance by a *majority vote* of the members of the county board of education. Whereas, under prior law the undistributed reserve was available for appropriation by a *two-thirds vote* of the members. The Commission finds that this change is less restrictive than prior law in that it allows county offices of education to lower the voting threshold for miscellaneous appropriations. Accordingly, the Commission finds there are no provisions of this code section that increase the activities or duties imposed on county offices of education. Thus, the Commission finds Education Code section 1621 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

6. Education Code section 1622.[15] This section provides that, on or before July 1 of each fiscal year, the county board of education shall adopt an annual budget for the budget year and shall file that budget with the Superintendent of Public Instruction, the county board of supervisors,

[14] Added by Statutes of 1968, Chapter 1473.

[15] Added by Statutes of 1991, Chapter 1213; amended by Statutes of 1992, Chapter 323 and Statutes of 1993, Chapter 923.

and the county auditor. The budget, and supporting data, shall be maintained and made available for public review. The budget shall indicate the date, time, and location at which the county board of education held the public hearing as required under Section 1620.

Section 1622 further provides that, on or before September 8, the county board of education shall revise the county office of education budget to reflect changes in projected income or expenditures subsequent to July 1, and to include any response to the recommendations of the Superintendent of Public Instruction, shall adopt the revised budget, and shall file the revised budget with the Superintendent of Public Instruction, the county board of supervisors, and the county auditor. Prior to revising the budget, the county board of education shall hold a public hearing regarding the proposed revisions, which shall be made available for public inspection not less than three working days prior to the hearing. The agenda for that hearing shall be posted at least 72 hours prior to the public hearing and shall include the location where the revised budget and supporting data will be available for public inspection. The Superintendent of Public Instruction, no later than October 8, shall approve or disapprove the revised budget. If the Superintendent of Public Instruction disapproves the budget, he or she shall call for the formation of a budget review committee pursuant to Section 1623. Not later than 45 days after the Governor signs the annual Budget Act, the county office of education shall make available for public review any budget revisions to reflect the funding made available by that Budget Act.

The basic activities of county offices of education preparation and submission of tentative and final annual budgets, holding a public hearing, and approving the budget were set forth in prior law under Education Code sections 18351, 20401, 20402, and 20403, later renumbered and re-enacted by Statutes of 1976, Chapter 1010 as sections 14050, 1621, 1622 and 1623, respectively. These budget requirements under prior law are described and more fully explained in this Statement of Decision under the headings for Education Code sections 1621, 1623 and 14050. Education Code section 1622, prior to its repeal and re-enactment by Statutes of 1991, Chapter 1213, previously provided,

> "The single-fund budget shall be prepared in the form prescribed and furnished by the Superintendent of Public Instruction and shall be the county school service fund budget."

Current Education Code section 1622 is primarily a consolidation of the prior law as discussed above. In addition to section 1620, Education Code section 1040[16] also requires that the county office of education budget be submitted to the county board of supervisors, and Government Code section 53901[17] requires that every local agency shall file its budget with its county auditor. While the Commission finds most of the requirements set forth in section 1622 are included in prior law, the Commission finds the provision for requiring the budget revision and holding a second public hearing prior to adoption of the revised budget imposes a new duty. Accordingly, the Commission finds that Education Code section 1622 imposes a new program or higher level of service, and costs mandated by the state upon county offices of education only for the following activities:

[16] Statutes of 1976, Chapter 1010, renumbered and re-enacted former Education Code section 651 as Education Code section 1040.

[17] Added by Statutes of 1969, Chapter 1170.

- Revising the county office of education budget to reflect changes in projected income or expenditures subsequent to July 1, including any response to the recommendations of the Superintendent of Public Instruction.
- Posting the agenda at least 72 hours prior to the public hearing regarding the budget revisions, including the location where the revised budget and supporting data will be available for public inspection, (only when not reimbursable under the Open Meetings Act Parameters and Guidelines.)
- Holding a second public hearing prior to finalizing the revised the budget.
- Filing the revised budget with the county board of supervisors and the county auditor.

7. Education Code section 1623.[18] This section provides that the budget review committee shall be composed of three persons, selected by the county superintendent of schools and the county board of education, solely from a list of no fewer than five candidates provided by the Superintendent of Public Instruction. No later than five working days after the receipt of the candidate list, the county superintendent of schools and the county board of education shall select the budget review committee. If the county superintendent of schools and the county board of education fail to select a committee within the period of time permitted by this subdivision, the Superintendent of Public Instruction instead shall select and convene the budget review committee no later than 10 working days after the receipt by the county superintendent of schools and the county board of education of the candidate list. This section provides that the members of the budget review committee shall be reimbursed for their services and associated expenses while on official business, at rates established by the State Board of Education.

The Commission finds that section 1623, on its face, places the primary responsibility for forming the budget review committee upon the state. Pursuant to section 1622, if the state Superintendent of Public Instruction disapproves the county office of education budget, then the Superintendent of Public Instruction is required to call for the formation of a budget review committee. By the terms of section 1623, if the county board of education fails to name members to the committee within the specified time frame, the state Superintendent of Public Instruction is responsible for assembling the committee, which leaves the state with the administrative costs for forming the budget review committee. Thus, by the terms of section 1623, the county office of education board is not required to participate in the process, rather it has the option of participating closely in the process, or letting the state take on all activities, responsibilities and associated administrative costs of the budget review committee. Accordingly, the Commission finds that any costs incurred by a county office of education attributable to a budget committee are discretionary and thus, not reimbursable and that Education Code section 1623 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

8. Education Code section 1624.[19] This section provides that if the budget review committee, described above, disapproves the budget of the county office of education, the county superintendent of schools and the county board of education, within five working days following

[18] Added by Statutes of 1991, Chapter 1213.

[19] Added by Statutes of 1991, Chapter 1213; amended by Statutes of 1993, Chapter 924 and Statutes of 1994, Chapter 1002.

the receipt of the committee's report, may submit a response to the Superintendent of Public Instruction, including any revisions to the adopted budget and any other proposed action to be taken as a result of the recommendations of the budget review committee. Based upon the recommendations of the budget review committee, and any response provided, the Superintendent of Public Instruction shall either approve or disapprove the budget of the county office of education. If the Superintendent of Public Instruction disapproves the budget, the Superintendent of Public Instruction or his or her designee may create a fiscal plan and new budget and engage in various fiscal management and review practices.

Section 1624 also provides that the Superintendent of Public Instruction may employ, at county office of education expense, short-term analytical assistance or expertise to validate financial information if the county does not have the expertise or the Commission. The Superintendent of Public Instruction may also require the county office of education to encumber all contracts and other obligations, prepare appropriate cash flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables; determine whether there are any financial problem areas and may employ, at county office of education expense, a certified public accounting firm to investigate; withhold compensation of the members of the county board of education and the county superintendent for failure to provide requested financial information. The county office of education shall pay reasonable fees charged by the Superintendent of Public Instruction for actual administrative expenses incurred or associated with improving the county office of education's financial management practices. This section further provides that the Superintendent of Public Instruction may seek from the county office of education, or otherwise obtain, additional information regarding the budget or operations of the county office of education, through a financial or management review of the county office of education, a cash-flow projection, or other appropriate means.

This section was added in its entirety by Statutes of 1991, Chapter 1213. Former section 1624 was unrelated. DOF maintains that the requirements under this section do not create a new program or higher level of service, but instead codify or re-state the long-standing requirements of county offices of education and school districts to prepare a budget and report and account on that budget to the Superintendent of Public Instruction.

The Commission generally agrees with DOF's assessment of section 1624. However, the question remains whether there is a reimbursable state mandated program under circumstances where the Superintendent of Public Instruction employs, at a county office of education's expense, either short term analytical assistance or a certified public accounting firm to assist the Superintendent of Public Instruction in the analysis and review of the county office of education's budget.

The California Supreme Court in *County of Los Angeles*[20] held that additional costs alone do not equate to a reimbursable state mandate under section 6, article XIII B. The *County of Los Angeles* court held rather, it is paramount that additional costs result from new programs or increased levels of service mandated by the state, stating:

> "If the Legislature had intended to continue to equate 'increased level of service' with 'additional costs,' then the provision would be circular: 'costs mandated by the state' are defined as 'increased costs' due to an 'increased level of service,'

[20] *County of Los Angeles, supra*, 43 Cal.3d 46, at 55, 56.

> which, in turn, would be defined as 'additional costs.' We decline to accept such an interpretation."[21]

The California Supreme Court affirmed its holding in *County of Los Angeles* in a subsequent case, *Lucia Mar Unified School Dist.* v. *Honig,* stating:

> "We recognize that, as is made indisputably clear from the language of the constitutional provision, local entities are not entitled to reimbursement for all increased costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state."[22]

The Commission finds the test claim statute merely imposed a portion of the costs of the Superintendent of Public Instruction's analysis and review of the county office of education's budget without requiring the county office of education to perform any additional activities. Thus, in accordance with *County of Los Angeles*, the Commission finds that any costs to a county office of education under section 1624 are not reimbursable under section 6, article XIII B of the California Constitution. Accordingly, the Commission finds that the Education Code section 1624 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

9. Education Code section 1625.[23] This section provides that the county superintendent of schools of any county office of education reporting a negative unrestricted fund balance or a negative cash balance shall include a statement with the budget identifying the reasons for the negative balance and the steps that will be taken to ensure that the negative balance will not occur at the end of the budget year.

Prior to the enactment of section 1625, the county superintendent of schools did not have a specified legal requirement to include a statement with the budget explaining a negative balance and the steps taken to change the situation by the end of the current year. The Commission finds this statutory requirement imposes a new duty upon county offices of education that have a reportable negative balance. Accordingly, the Commission finds that Education Code section 1625 imposes a new program or higher level of service, and costs mandated by the state upon county offices of education for the following activity:

- Drafting a statement of correction when the county office of education incurs a negative balance.

10. Education Code section 1626.[24] This section provides that until the time the county office of education receives approval of its budget under this article, the county office of education shall continue to operate on the basis of the last budget adopted or revised for the county office of education for the fiscal year immediately preceding the budget year.

---

[21] *Id.*

[22] *Lucia Mar, supra*, 44 Cal.3d 830, at 835.

[23] Added by Statutes of 1991, Chapter 1213, amended by Statutes of 1992, Chapter 323 and Statutes of 1993, Chapter 923. Formerly Education Code section 1623.5, as enacted by Statutes of 1986, Chapter 1150.

[24] Added by Statutes of 1991, Chapter 1213. Formerly Education Code section 1623.6, as enacted by Statutes of 1986, Chapter 1150.

Prior law, under Education Code section 1621 required county offices of education to adopt and operate under an annual budget. The provisions of section 1626 require that, in the event that the county office of education does not have an approved annual budget, they continue to operate under the previous year's approved budget. The Commission finds there is no evidence that this section imposes a new program or higher level of service, as it merely requires that the county office of education continue to operate in the most fiscally responsible manner until a new budget is adopted. Accordingly, the Commission finds, based upon its review of the record, Education Code section 1626 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

11. Education Code section 1628.[25] This section provides that, on or before September 15 each year, the county superintendent of schools shall prepare and file with the Superintendent of Public Instruction a statement of all receipts and expenditures of the county office of education for the preceding fiscal year. The statement shall be in a format or on forms prescribed by the Superintendent of Public Instruction.

Prior law required filing of an annual budget, but the requirement for submitting a report on the prior year's receipts and expenditures is entirely new. Therefore, the Commission finds that Education Code section 1628 imposes a new program or higher level of service, and costs mandated by the state upon county offices of education, for the following activity:

- Preparing and filing with the Superintendent of Public Instruction a statement of all receipts and expenditures of the county office of education for the preceding fiscal year, in a format or on forms prescribed by the Superintendent of Public Instruction.

12. Education Code section 1630.[26] This section provides that if, at any time during the fiscal year, the Superintendent of Public Instruction determines that the county office of education may be unable to meet its financial obligations for the current or two subsequent fiscal years, or if the county office of education has a qualified certification pursuant to Section 1240, he or she shall notify the county board of education and the county superintendent in writing of the basis for the determination.

Section 1630 further provides that the Superintendent of Public Instruction shall do the following, as necessary, to ensure that the county office of education meets its financial obligations: assign a fiscal expert, paid for by the Superintendent of Public Instruction, to advise the county office of education on its financial problems; and conduct a study of the financial and budgetary conditions of the county office of education. If, in the course of this review, the Superintendent of Public Instruction determines that additional analytical assistance or expertise is needed, he or she may employ expert the Commission on a short-term basis, at county office of education expense. The Superintendent of Public Instruction may also direct the county office of education to submit a financial projection of all fund and cash balances of the county office of education as of June 30 of the current year and subsequent fiscal years as he or she requires; require the county office of education to encumber all contracts and other obligations, to prepare

[25] Added by Statutes of 1991, Chapter 1213. Formerly Education Code section 1626, as enacted by Statutes of 1988, Chapter 1461.

[26] Added by Statutes of 1993, Chapter 924; amended by Statutes of 1994, Chapter 1002 and Statutes of 1995, Chapter 525. Similar to former Education Code section 1630, as enacted by Statutes of 1991, Chapter 1213.

appropriate cash-flow analyses and monthly or quarterly budget revisions, and to appropriately record all receivables and payables; direct the county office of education to submit a proposal for addressing the fiscal conditions that resulted in the determination that the county office of education may not be able to meet its financial obligations; and withhold compensation of the county board of education and the county superintendent for failure to provide requested financial information. If, after taking the above actions, the Superintendent of Public Instruction determines that a county office of education will be unable to meet its financial obligations for the current or subsequent fiscal year, he or she shall notify the county office of education in writing of the basis for that determination, then, the Superintendent of Public Instruction, shall, as necessary, engage in further fiscal management and advisory activities to enable the county office of education to meet its financial obligations. The county office of education shall pay reasonable fees charged by the Superintendent of Public Instruction for any administrative costs associated with improving the county office of education's financial management practices.

The requirements of section 1630 are new. Consistent with its position on section 1624, DOF maintains that the requirements under this section do not create a new program or higher level of service, rather they codify or re-state the long-standing requirements of county offices of education and school districts to prepare a budget and report and account on that budget to the Superintendent of Public Instruction. The Commission finds that while the activities under section 1630 are generally directed to the Superintendent of Public Instruction, this section gives the Superintendent of Public Instruction the authority to assign a fiscal expert *at the Superintendent of Public Instruction's cost* to analyze the county office of education's financial situation, to require the county office of education to perform specified activities to assist the Superintendent of Public Instruction in determining whether the county office of education is able to meet its financial obligations, and to engage, at the county office of education's expense, in fiscal management and advisory activities to enable the county office of education to meet its financial obligations.

The Commission finds that the activities of the county office of education, in response to the Superintendent of Public Instruction's request: to submit a financial projection of all fund and cash balances; to encumber all contracts and other obligations; to prepare appropriate cash-flow analyses and monthly or quarterly budget revisions; to record all receivables and payables; and to submit a proposal for addressing the fiscal conditions that resulted in the county office of education's inability to meet its financial obligations constitute activities that impose a new program or higher level of service on county offices of education.

However, the question remains whether the imposition of the Superintendent of Public Instruction's administrative costs of employing a expert the Commission on a short term basis and/or improving the district's financial practices on the county office of education constitutes a new program or higher level of service, and imposes costs mandated by the state. This issue was fully analyzed above in respect to section 1624, but in brief, the Commission finds that this portion of section 1630 does not impose a reimbursable state mandated program upon county offices of education because "local entities are not entitled to reimbursement for all costs mandated by state law, but only those costs resulting from a new program or an increased level of service imposed upon them by the state."[27] Although county offices of education can show additional costs corresponding to the absorption of the Superintendent of Public Instruction's

[27] *Lucia Mar, supra*, 44 Cal.3d 830, at 835.

administrative costs, there is *no* new service or activity imposed upon county offices of education by this portion of section 1630.

Thus, the Commission finds that Education Code section 1630 imposes a new program or higher level of service, and costs mandated by the state upon county offices of education, but only for the following activities:

- Submitting to the Superintendent of Public Instruction, in response to a request pursuant to Education Code section 1630, subdivision (a)(4), financial projection of all fund and cash balances.
- Encumbering all contracts and other obligations, but only when performed in compliance with Education Code section 1630, subdivision (a)(4).
- Preparing for the Superintendent of Public Instruction, in response to a request pursuant to Education Code section 1630, subdivision (a)(4), an appropriate cash-flow analyses and monthly or quarterly budget revisions.
- Recording all receivables and payables, but only when performed in compliance with Education Code section 1630, subdivision (a)(4).
- Submitting a proposal to the Superintendent of Public Instruction, in response to a request pursuant to Education Code section 1630, subdivision (a)(4), for addressing the fiscal conditions that resulted in the determination that the county office of education may not meet its financial obligations.

13. Education Code section 14050. This section provides that the county superintendent of schools shall, on or before June 30 of each year, submit a tentative budget and, on or before October 1 of each year, a final budget to the Superintendent of Public Instruction for the succeeding fiscal year. The budget shall be in the form prescribed by the Superintendent of Public Instruction, setting forth all known and estimated revenues of the county school service fund for the succeeding fiscal year from all sources, and the proposed expenditures from the county school service fund for the succeeding fiscal year. The budget shall be approved by the Superintendent of Public Instruction. Upon the approval of the budget by the Superintendent of Public Instruction, he or she shall note his or her approval thereon and transmit one copy thereof to the county superintendent of schools and one copy to the county auditor of the county.

Statutes of 1976, Chapter 1010, renumbered and re-enacted former Education Code section 18351 as Education Code section 14050. Prior law of section 14050 provided that:

> "The county superintendent of schools shall on or before April 1st of each year submit to the Superintendent of Public Instruction a budget for the succeeding fiscal year, in such form as the (Superintendent of Public Instruction) shall prescribe, setting forth all known and estimated revenues of the county school service fund for such fiscal year from all sources, and the proposed expenditures from the county school service fund for such fiscal year. The budget shall be approved by the (Superintendent of Public Instruction)."

The earlier requirements of section 14050 continue with nearly identical language to the current section.[28] The Commission finds the only significant change between the current and the previous Education Code section 14050 is the requirement for submission of a tentative budget on or before June 30, followed by a finalized budget on or before October 1 of each year. However, the Commission notes that former Education Code section 1621[29] provided that:

> "On or before the date specified by the Superintendent of Public Instruction each year, the county board of education shall file with the [Superintendent of Public Instruction] a single fund tentative budget showing all the purposes for which the county school service fund will need money."

This version of section 1621 was in effect when section 14050 was amended to specify the deadlines for the tentative and final budget submissions. Thus, the Commission finds the requirement to submit tentative and final budgets to the Superintendent of Public Instruction each year, on or before deadlines, is not a new activity, and therefore not a reimbursable state mandate. The Commission finds the remainder of the section 14050 constitutes a directive to the Superintendent of Public Instruction, and therefore does not impose duties or activities upon local educational agencies. Therefore, the Commission finds that Education Code section 14050 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

14. Education Code section 42120.[30] This section provides that if the county board of education neglects or refuses to prepare a budget in the manner as prescribed by this article, or neglects to file interim reports pursuant to subdivision (j) of Section 1240, the Superintendent of Public Instruction shall notify the appropriate county official that they shall not approve any warrants issued by the county office of education.

Section 42120 sets forth the consequence for county offices of education that do not follow the budget and financial reporting requirements of other sections. That consequence is the inability to have further warrants approved until the required reports are filed. This section does not require any new duties or activities to be performed by local education agencies; the only directives are to a state official. Therefore, the Commission finds that Education Code section 42120 does not constitute a new program or higher level of service, and does not impose costs mandated by the state.

III. Test Claim Executive Orders: Title 5, California Code of Regulations, Sections 15467-15493

In addition to the test legislation claimant also maintains that California Code of Regulations, Title 5, sections 15467-15493 promulgated by the CDE impose reimbursable mandates. Under Government Code section 17516, an "executive order" may include "any order, plan, requirement, rule, or regulation issued by . . . any agency, department, board, or commission of

---

[28] Section 14050 was amended by Statutes of 1978, Chapter 843 which deleted a clause. Statutes of 1979, Chapter 10 changed the deadline for submitting the budget from April 1 to June 30. Statutes of 1987, Chapter 1452 added the word tentative in reference to the budget due by June 30, and added the requirement for submitting a final budget by October 1 of each year.

[29] Statutes of 1976, Chapter 1010, renumbered and re-enacted former Education Code section 20401 as Education Code section 1621. Section 1621 was repealed and re-enacted by Statutes of 1991, Chapter 1213.

[30] Added by Statutes of 1993, Chapter 924; amended by Statutes of 1995, Chapter 525.

state government." Thus, pursuant to Government Code section 17516, regulations promulgated by the CDE are included in the definition of an executive order. However, the Commission must still determine if the executive order imposes a new program or higher level of service, or costs mandated by the state.

Claimant alleges that sections 15467-15493 of Title 5 of the California Code of Regulations, effective July 1, 1991, constitute executive orders which impose a new program or higher level of service and impose costs mandated by the state. The Commission notes that these regulations are a restatement of Fiscal Management Advisories (Advisories) 89-02 and 90-4[31] which set forth a two-tiered approach for review of budgets and financial required to be filed with the Superintendent of Public Instruction.

These two Advisories, which were never included in this present test claim, were considered by the Commission in *CSM-4389, Budgeting Criteria and Standards.* In the Commission's Statement of Decision for *Budgeting Criteria and Standards*, adopted August 22, 1991, the Commission found that the criteria and standards set forth in Advisories 89-02 and 90-4 met the standards of an executive order. However, after comparing these Advisories with the budget forms in place before the issuance of these Advisories, the Commission concluded that the standards and criteria set forth in these Advisories were developed from forms that the school districts had previously been using. The Commission further noted that the criteria and standards contained in these Advisories reflected the "standardization of a review process agreed to by representatives from districts, county offices, teachers unions and other state agencies."[32] Accordingly, the Commission concluded these Advisories did not constitute a new program or higher level of service.[33] Additionally, the Commission found that fiscal accountability by school districts is not a new program or higher level of service.[34]

Based on the foregoing, the Commission concludes that the duties imposed under Regulations 15467-15493 were required prior to their adoption and accordingly, they do not constitute new programs or higher levels of service, and do not impose costs mandated by the state.

Conclusion

The Commission concludes that Education Code sections 1240, subdivision (j), 1240.2, 1622, 1625, 1628 and 1630 impose a new program or higher level of service within an existing program upon county offices of education within the meaning of section 6, article XIII B of the California Constitution and costs mandated by the state pursuant to Government Code section 17514. Accordingly, the Commission approves this test claim for the following activities necessary for county offices of education to comply with annual budget reporting requirements:

- Preparing, reviewing, approving and submitting, in the format or on forms prescribed by the Superintendent of Public Instruction, financial and budgetary status reports, one within 45 days of the conclusion of the period ending October 31, and one within 45 days of the period ending January 31. Certifying in writing either positively, qualifiedly or negatively, within 45 days after the close of the period being reported, whether the county

[31] These advisories are attached as Exhibits I and J, respectively.

[32] CSM-4389, Budgeting Criteria and Standards, Statement of Decision, page 12.

[33] *Id.*, at 13.

[34] *Id.*

office of education is able to meet its financial obligations for the remainder of the fiscal year and, based on current forecasts, for the subsequent two fiscal years. (Ed. Code, § 1240, subd. (j).)[35]

- Sending a copy of each county office of education budget status report and financial certification to the Superintendent of Public Instruction. (Ed. Code, § 1240, subd. (j).)
- Sending a copy of any negative or qualified county office of education financial certification to the SCO. (Ed. Code, § 1240, subd. (j).)
- Providing to the Controller and the Superintendent of Public Instruction, no later than June 1, a financial statement that covers the financial and budgetary status of the county office of education for the period ending April 30 and projects the fund and cash balances of the county office of education as of June 30. This is only applicable to a county office of education that has a qualified or negative financial certification. (Ed. Code, § 1240.2.)[36]
- Adjusting for the earlier deadline of holding the public hearing by July 1, (one-time, if costs were incurred within reimbursement period.) (Ed. Code, § 1620.)[37]
- Revising the county office of education budget to reflect changes in projected income or expenditures subsequent to July 1, including any response to the recommendations of the Superintendent of Public Instruction. (Ed. Code, § 1622.)[38]
- Posting the agenda at least 72 hours prior to the public hearing regarding the budget revisions, including the location where the revised budget and supporting data will be available for public inspection, (only when not reimbursable under the Open Meetings Act Parameters and Guidelines.) (Ed. Code, § 1622.)
- Holding a second public hearing prior to finalizing the revised the budget, (only when not reimbursable under the Open Meetings Act Parameters and Guidelines.) (Ed. Code, § 1622.)
- Filing the revised budget with the county board of supervisors and the county auditor. (Ed. Code, § 1622.)
- Drafting a statement of correction when the county office of education incurs a negative balance. (Ed. Code, § 1625.)[39]
- Preparing and filing with the Superintendent of Public Instruction a statement of all receipts and expenditures of the county office of education for the preceding fiscal year,

[35] Added to the code by Statutes of 1985, Chapter 741, and amended by Statutes of 1987, Chapter 1452; Statutes of 1988, Chapter 1461; Statutes of 1990, Chapter 1372; Statutes of 1991, Chapter 1213; Statutes of 1993, Chapters 923 and 924; Statutes of 1994, Chapter 650.

[36] Added by Statutes of 1995, Chapter 525.

[37] Added by Statutes of 1991, Chapter 1213; amended by Statutes of 1992, Chapter 323.

[38] Added by Statutes of 1991, Chapter 1213; amended by Statutes of 1992, Chapter 323; Statutes of 1993, Chapter 923.

[39] Added by Statutes of 1991, Chapter 1213; amended by Statutes of 1992, Chapter 323; Statutes of 1993, Chapter 923.

in a format or on forms prescribed by the Superintendent of Public Instruction. (Ed. Code, § 1628.)[40]

- Submitting to the Superintendent of Public Instruction, in response to a request pursuant to Education Code section 1630, subdivision (a)(4), financial projection of all fund and cash balances. (Ed. Code, § 1630.)[41]
- Encumbering all contracts and other obligations, but only when performed in compliance with Education Code section 1630, subdivision (a)(4). (Ed. Code, § 1630.)
- Preparing for the Superintendent of Public Instruction, in response to a request pursuant to Education Code section 1630, subdivision (a)(4), an appropriate cash-flow analyses and monthly or quarterly budget revisions. (Ed. Code, § 1630.)
- Recording all receivables and payables, but only when performed in compliance with Education Code section 1630, subdivision (a)(4). (Ed. Code, § 1630.)
- Submitting a proposal to the Superintendent of Public Instruction, in response to a request pursuant to Education Code section 1630, subdivision (a)(4), for addressing the fiscal conditions that resulted in the determination that the county office of education may not meet its financial obligations. (Ed. Code, § 1630.)

The Commission denies all remaining test claim issues, code sections and executive orders because they do not constitute a new program or higher level of service, and do not impose costs mandated by the state.

[40] As added by Statutes of 1988, Chapter 1461; renumbered and re-enacted by Statutes of 1991, Chapter 1213.

[41] Added by Statutes of 1993, Chapter 924; amended by Statutes of 1994, Chapter 1002 and Statutes of 1995, Chapter 525.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 47602, 47604, 47605, 47605.5, 47607, 47613 (formerly 47613.7), 47613.5, and 47614; Statutes 1998, Chapters 34 and 673; California Code of Regulations, Title 5, Sections 15410-15428; California Department of Education Memorandum dated April 28, 1999, Filed on June 29, 1999, By Los Angeles County Office of Education and San Diego Unified School District, Claimants.	No. 99-TC-03 *Charter Schools II* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on November 21, 2002)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

This Decision shall become effective on November 22, 2002.

_____

PAULA HIGASHI, Executive Director

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 47602, 47604, 47605, 47605.5, 47607, 47613 (formerly 47613.7), 47613.5, and 47614; Statutes 1998, Chapters 34 and 673; California Code of Regulations, Title 5, Sections 15410-15428; California Department of Education Memorandum dated April 28, 1999, Filed on June 29, 1999, By Los Angeles County Office of Education and San Diego Unified School District, Claimants.	No. 99-TC-03 *Charter Schools II* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on November 21, 2002)*

STATEMENT OF DECISION

The Commission on State Mandates (Commission) heard and decided this test claim during a regularly scheduled hearing on October 24, 2002. Art Palkowitz and Brian Bennett appeared on behalf of claimant San Diego Unified School District. Gayle Windom appeared on behalf of claimant Los Angeles County Office of Education. Dan Troy, Heather Carlson and Susan Geanacou appeared on behalf of the Department of Finance (DOF). At the hearing testimony was given, the test claim was submitted, and the vote was taken.

The law applicable to the Commission's determination of a reimbursable state mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission approved the staff analysis for the test claim presented by a 5-0 vote.

BACKGROUND

On August 24, 1999, claimants, Los Angeles County Office of Education and San Diego Unified School District, submitted a test claim alleging a reimbursable state mandate for county offices of education and school districts to provide supervisory oversight and reporting services to charter schools, and various other activities related to the establishment and fiscal management of charter schools.[1] The claim arises from enactments or amendments to Education Code sections 47602, 47604, 47605, 47605.5, 47607, 47613 (formerly 47613.7), 47613.5, and 47614 by Statutes 1998, chapters 34 and 673, and the adoption of California Code of Regulations, title 5, sections 15410 through 15428. Claimants also assert that California Department of Education

[1] The reimbursement period for this test claim begins no earlier than July 1, 1998. (Gov. Code, § 17557, subd. (c).)

(CDE) memorandum dated April 28, 1999 constitutes an executive order resulting in a reimbursable state mandate.

On May 26, 1994, the Commission heard and decided a related test claim, *Charter Schools*, CSM-4437.[2] The Commission found that Statutes 1992, chapter 781, by enacting Education Code sections 47605 and 47607, imposed a reimbursable state mandated program for school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters. The claimants indicate intent to request a parameters and guidelines amendment to incorporate any new activities from the *Charter Schools II* claim into the existing *Charter Schools* parameters and guidelines.

Claimants' Position

Claimants allege reimbursable costs mandated by the state for test claim legislation requiring the following activities of school districts:

> (1) provide notice and an opportunity to cure to charter schools prior to any proposed revocation of the charter, (2) allow charter schools to use certain facilities free of charge, (3) respond to, prepare for, and participate in court proceedings challenging a decision to deny a charter, (4) evaluate petitions for renewals of charter school petitions originally granted by the State Board of Education and prepare for and conduct hearings related to proposed renewals of those charter petitions, (5) calculate, process, and advance payments of property taxes to charter schools, and (6) provide administrative services to charter schools without full reimbursement.

Claimants allege similar activities are newly required of county offices of education, and also that county offices of education are now required to evaluate certain charter school petitions and conduct some of the same activities found to be reimbursable for school districts in the original *Charter Schools* test claim.

Claimants conclude that none of the Government Code section 17556 exceptions to finding costs mandated by the state apply to this test claim. Claimants specifically assert that there are no other federal or state constitutional provisions, statutes or executive orders impacted, and that Statutes 1998, chapters 34 and 643 appropriated no funds for the reimbursable activities alleged.

State Agency Position

DOF's July 28, 2000 response to the test claim allegations states agreement in part with claimants on some of the identified new activities, however it argues that:

- Some of the claimed activities are discretionary or permissive;
- Some of the claimed activities are not new;
- Fee authority is given for the district to charge the charter school for expenses of supervisory oversight; or
- Other offsetting savings are established as part of the test claim legislation.

[2] *Charter Schools*, CSM-4437, Statement of Decision adopted on July 21, 1994; Parameters and Guidelines adopted October 18, 1994.

DOF agrees with claimants that Education Code sections 47605, subdivision (k), 47605.5, and 47607 include new activities or higher levels of service.

COMMISSION FINDINGS

A test claim statute or executive order may impose a reimbursable state mandated program if it orders or commands a local agency or school district to engage in an activity or task.[3] In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service. The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[4] To determine if the program is new or imposes a higher level of service, the analysis must compare the test claim legislation with the legal requirements in effect immediately before the enactment of the test claim legislation. Finally, the newly required activity or increased level of service must impose costs mandated by the state.[5]

Test Claim Executive Orders: California Code of Regulations:

As part of the test claim filings, claimants allege, "The State Board of Education adopted title 5, California Code of Regulations section 15410 et seq. as emergency regulations to implement Education Code section 47613.5." Claimants' test claim Exhibit C is identified as including "Title 5 California Code of Regulations §§ 15410-15428," however, the exhibit is a printout from the California Department of Education's (CDE's) website and does not provide any indication of an operative date. The regulations are not in the current version of *Barclays Official California Code of Regulations*, and there are no historical notes indicating that any regulations were ever filed or operative for those section numbers.[6]

As noted below, Education Code section 47613.5 was repealed by Statutes 1999, chapter 78, effective July 7, 1999. Claimants' exhibit from the CDE website may be of proposed regulations that were never published or operative prior to the repeal of the implementing Education Code section. Without evidence presented of the operative dates of the claimed regulations, the Commission finds that the claimed regulations are not properly included in this test claim. Any further references to "test claim legislation" do not include California Code of Regulations, title 5, sections 15410 through 15428.

---

[3] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[4] *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar Unified School Dist. v. Honig* (1988) 44 Cal.3d 830, 835.

[5] Government Code section 17514.

[6] *Barclays Official California Code of Regulations* is certified by the Office of Administrative Law as the official regulation publication of the State of California for purposes of judicial notice. (Gov. Code, § 11344.6 and Cal. Code Regs., tit. 1, § 190.)

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?[7]

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program." In *County of Los Angeles v. State of California*, the California Supreme Court defined the word "program" within the meaning of article XIII B, section 6 as one that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[8] The court has held that only one of these findings is necessary.[9]

The Commission finds that the test claim legislation constitutes a program within the meaning of article XIII B, section 6 of the California Constitution under both tests. First, it constitutes a program that carries out the governmental function of providing a service to the public, to the extent the test claim legislation requires school districts and county offices of education to engage in supervisory, funding and reporting activities related to charter schools. The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public.[10]

The test claim legislation also satisfies the second test that triggers article XIII B, section 6, to the extent that the test claim legislation requires school districts and county offices of education to engage in charter school supervisory, funding and reporting activities solely applicable to public school administration. The test claim legislation imposes unique requirements upon school districts that do not apply generally to all residents and entities of the state. Accordingly, the Commission finds that supervisory, funding and reporting activities related to charter schools constitute a "program" and, thus, are subject to article XIII B, section 6 of the California Constitution.

Issue 2: Does the test claim legislation impose a new program or higher level of service within an existing program upon school districts within the meaning of article XIII B, section 6 of the California Constitution by requiring new or additional activities related to charter school supervision and reporting?

The claimants contend that the test claim legislation imposes a new program or higher level of service upon school districts by requiring specific new activities related to charter school supervision and reporting. Under prior law, school districts were required to engage in activities

---

[7] Article XIII B, section 6 of the California Constitution provides: "Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the state shall provide a subvention of funds to reimburse such local government for the costs of such program or increased level of service, except that the Legislature may, but need not, provide such subvention of funds for the following mandates:
(a) Legislative mandates requested by the local agency affected; (b) Legislation defining a new crime or changing an existing definition of a crime; or (c) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975."

[8] *County of Los Angeles, supra*, 43 Cal.3d at 56.

[9] *Carmel Valley Fire Protection Dist. v. State of California* (1987) 190 Cal.App.3d 521, 537.

[10] *Long Beach Unified School Dist., supra*, 225 Cal.App.3d at 172 states "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public."

related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.[11] The test claim legislation makes changes to some of the requirements as compared to prior law. The analysis for finding a new program or higher level of service must examine whether the test claim legislation requires a school district to engage in activities, and whether such activities constitute a new program or higher level of service when compared to prior law.

***Test Claim Statutes*:**

Education Code section 47602.

This Education Code section, as added by Statutes 1992, chapter 781, and amended by Statutes 1993, chapter 589, Statutes 1996, chapter 849, Statutes 1998, chapter 34, and Statutes 1998, chapter 673 provides:

> (a)(1) In the 1998-99 school year, the maximum total number of charter schools authorized to operate in this state shall be 250. In the 1999-2000 school year, and in each successive school year thereafter, an additional 100 charter schools are authorized to operate in this state each successive school year. For the purposes of implementing this section, the State Board of Education shall assign a number to each charter petition that it grants pursuant to subdivision (j) of Section 47605 and to each charter notice it receives pursuant to subdivision (i) and paragraph (5) of subdivision (j) of Section 47605, based on the chronological order in which the notice is received. The limits contained in this paragraph may not be waived pursuant to Section 33050 or any other provision of law.
>
> (2) By July 1, 2003, the Legislative Analyst shall, pursuant to the criteria in Section 47616.5, report to the Legislature on the effectiveness of the charter school approach authorized under this part and recommend whether to expand or reduce the annual rate of growth of charter schools authorized pursuant to this section.
>
> (b) No charter shall be granted under this part that authorizes the conversion of any private school to a charter school. No charter school shall receive any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition. The State Board of Education shall adopt regulations to implement this section.

Claimants identify that Education Code section 47602, subdivision (a), as amended by Statutes 1998, chapter 673, "increases the number of charter schools that are authorized to operate in the state." The statutory language is directed to the State Board of Education and the state Legislative Analyst's Office, and claimants do not specifically identify any new reimbursable activities or duties imposed upon local educational agencies by this amended Education Code section. Therefore, the Commission finds that Education Code section 47602 does not impose a new program or higher level of service upon school districts or county offices of education.

[11] Statutes 1992, chapter 781, enacting Education Code sections 47605 and 47607. See previously approved test claim *Charter Schools*, CSM-4437.

Education Code section 47604.

This Education Code section, as added by Statutes 1998, chapter 34, provides:

> (a) Charter schools may elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1) of the Corporations Code).
>
> (b) The governing board of a school district that grants a charter for the establishment of a charter school formed and organized pursuant to this section shall be entitled to a single representative on the board of directors of the nonprofit public benefit corporation.
>
> (c) It is the intent of the Legislature that an authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation shall not be liable for the debts or obligations of the charter school.

Claimants allege that, despite the language of subdivision (c), the school district or county office of education granting a charter,

> may be liable for the acts or obligations of the charter school due to the granting authority's statutory oversight responsibilities or because the nonprofit corporation laws may shield the charter school, but not the granting authority, from liability. County offices of education and school districts must determine the impact of section 47604 on self-provided or purchased insurance. Further, county offices of education and school districts may incur additional costs for such insurance as the result of the election of a charter school to operate as or by a nonprofit public benefit corporation.

Claimants have not offered legal support for this contention. Alternatively, DOF, in its response of July 28, 2000, argues:

> Districts have a choice as to whether or not to buy more liability insurance. Further, the law makes the districts and county offices better off than before by specifying in statute that they should have no liability. Indeed, the district's need for such coverage would seem to decrease, as they are now responsible for fewer students. The Department of Education's legal opinion, [test claim Attachment 1, dated June 12, 1997], similarly concludes the chartering agency has no liability for charter school activities.

The CDE's June 12, 1997 legal opinion, *Charter School Liability and Accountability*, provides extensive statutory and case law analysis on public sector imputed and vicarious liability law, and concludes, "Given the purpose of the enabling legislation, we believe the better view is that chartering entities are completely immune from liability incurred by charter schools under existing law." Following this opinion, the Legislature enacted Education Code section 47604, subdivision (c), to confirm that chartering entities, including school districts and county offices of education, are not to be liable for the debts or obligations of a charter school, when operated as, or by, a non-profit.

In claimant San Diego Unified School District's September 30, 2002 comments on the draft staff analysis, the claimant expresses agreement "with staff's recommendation regarding the purchase

of insurance for charter schools established as nonprofit public benefit corporation[s]." Claimant then goes on to argue that:

> However, charter schools not operating as a nonprofit corporation have been the sponsoring entity's responsibility for acts or obligations.
>
> DOF contends under Education Code section 47604 "districts have a choice as to whether or not to buy more liability insurance." Given that school districts *shall* purchase insurance in accordance with Education Code section 35208 (a)[12] there is no reasonable alternative for the sponsoring district of a charter but to purchase insurance for charter schools that are not a nonprofit public benefit corporation.
>
> Education Code section 47604 for the first time determined the responsibility of sponsoring districts with charter schools not operating as nonprofit corporations. Therefore, in accordance with Education Code section 35208 (a) purchasing insurance for the charter school is mandatory as it would be for other school sites.

It is unclear about how this new argument connects with the test claim legislation. First, Education Code section 35208, subdivision (a), which requires school districts to carry liability insurance, was not pled as part of the test claim allegations. Second, even if the section was properly pled and before the Commission now, it does not fall within the jurisdiction of the Commission under article XIII B, section 6, subdivision (c) of the California Constitution, because Education Code section 35208 was enacted prior to 1975.[13] Claimant raises a new argument for reimbursement of a chartering entity's costs of purchasing liability insurance to cover a charter school not run as a non-profit. The Commission finds no connection from the test claim legislation pled, namely Education Code section 47604, to this newly asserted expense. Education Code section 47604, as cited in its entirety above, simply allows a charter school to operate as a non-profit. It has nothing to do with purchasing liability insurance, or for determining "the responsibility of sponsoring districts with charter schools *not operating* as nonprofit corporations." [Emphasis added.]

The Commission finds that Education Code section 47604 does not require any new activities on the part of school districts or county offices of education. As discussed in *Long Beach*, "mandates" is to be understood "in the ordinary sense of 'orders' or 'commands.'"[14] The state, by permitting charter schools to operate as a nonprofit public benefit corporation, in no way is ordering school districts to purchase additional insurance, therefore the statute does not impose a new program or higher level of service upon school districts or county offices of education for the alleged costs and activities.

---

[12] Claimant's footnote contains complete text of the cited code section.

[13] Former Education Code of 1959, section 1017 was renumbered by Statutes 1976, chapter 1010 as section 35208.

[14] *Long Beach Unified School Dist. v. State of California*, *supra*, 225 Cal.App.3d at 174.

Education Code section 47605.

This Education Code section, as added by Statutes 1992, chapter 781, and amended by Statutes 1993, chapter 589, Statutes 1996, chapter 786, Statutes 1998, chapters 34 and 673,[15] provides the standards and instructions for filing and reviewing a petition to establish a charter school. This code section, as added by Statutes 1992, chapter 781, was the subject of the prior test claim, *Charter Schools*, and was found to impose a reimbursable state mandate for school districts for new activities related to processing initial charter school petitions. Claimants allege new reimbursable state mandates are imposed by amended subdivision (j) and new subdivision (k). Each subdivision will be analyzed individually below. Amended subdivision (j)(1) provides:

> (j)(1) If the governing board of a school district denies a petition, the petitioner may elect to submit the petition for the establishment of a charter school to either the county board of education or directly to the State Board of Education. The county board of education or the State Board of Education, as the case may be, shall review the petition pursuant to subdivision (b). If the petitioner elects to submit a petition for establishment of a charter school to the county board of education and the county board of education denies the petition, the petitioner may file a petition for establishment of a charter school with the State Board of Education.

Claimants allege "subdivision (j) now allows a charter petitioner to submit a charter petition directly with the county board of education … whenever a school district denies a charter petition." By replacing subdivision (j), the Legislature eliminated the previously approved mandate activities for county superintendents to convene a review panel to evaluate a denied charter petition and substituted a new review procedure.

Claimants indicate intent to request a parameters and guidelines amendment to incorporate any new activities into the existing *Charter Schools* parameters and guidelines. The reimbursable activities of former subdivision (j), as added by Statutes 1992, chapter 781, should be eliminated from the *Charter Schools* parameters and guidelines, effective January 1, 1999, and replaced with the new requirements of subdivision (j)(1). The Commission finds that Education Code section 47605, subdivision (j)(1), as amended by Statutes 1998, chapter 673, imposes a new program or higher level of service upon county offices of education for the following activity:

- After the governing board of a school district denies a charter school petition and the charter school petitioner submits the petition to the county board of education, the county board of education shall review the petition pursuant to Education Code section 47605, subdivision (b).

Claimants also allege that Statutes 1998, chapter 673 further amended

> subdivision (j) to allow a charter petitioner to file a judicial action challenging a school district's denial of the petition if the county board of education or the State Board of Education fails to act on a direct petition within 120 days. Thus, school districts must respond to, prepare for, and participate in a judicial proceeding,

[15] This statute has been further amended by Statutes 1999, chapter 828, Statutes 2000, chapter 580, and Statutes 2001, chapter 344, none of which are included or amended into the present test claim allegations. Nor did claimants include the amendments made by Statutes 1993, chapter 589, or Statutes 1996, chapter 786 in the test claim allegations.

> rather than a county board of education review, if the charter petitioner challenges a decision by a school district to deny a charter petition.

Claimants refer to subdivision (j)(3):

> If either the county board of education or the State Board of Education fails to act on a petition within 120 days of receipt, the decision of the governing board of the school district to deny a petition shall, thereafter, be subject to judicial review.

DOF argues, "No new mandate is established as charters always had a right to file a judicial action. The Education Code is permissive; as long as an action is not prohibited, it is permitted." In addition, the Commission notes that response to judicial review is not imposed by state action, but by the action of a member of the public filing a lawsuit. Subdivision (j)(3) merely sets a time period after which the charter petitioner can demonstrate to a court that they have exhausted all statutory administrative remedies. Therefore, the Commission finds that Education Code section 47605, subdivision (j)(3), as amended by Statutes 1998, chapter 673, does not impose a new program or higher level of service upon school districts.

Finally, claimants allege a reimbursable state mandate is imposed by Education Code section 47605, subdivision (k)(3), in pertinent part:

> A charter school that has been granted its charter by the State Board of Education and elects to seek renewal of its charter shall, prior to expiration of the charter, submit its petition for renewal to the governing board of the school district that initially denied the charter.

DOF's response "concur[s] that the law imposes new duties on the agency that previously denied a charter." The Commission agrees, and finds that Education Code section 47605, subdivision (k)(3), as added by Statutes 1998, chapter 673, imposes a new program or higher level of service upon school districts for the following activity:

- Review charter school petitions for renewal, when submitted directly to the governing board of the school district that initially denied the charter, prior to expiration of the charter granted by the State Board of Education.

Education Code section 47605.5.

This Education Code section, as added by Statutes 1998, chapter 34, provides:

> A petition may be submitted directly to a county board of education in the same manner as set forth in Section 47605 for charter schools that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services. Any denial of a petition shall be subject to the same process for any other county board of education denial of a charter school petition pursuant to this part.

Claimants allege that this code section imposes "new requirements for responding to information requests, evaluating charter school petitions, conducting public hearings, monitoring charter school performance, and responding to appeals of decisions with respect to charter school petitions made directly to the county board of education."

Prior law of Education Code section 47605, as added by Statutes 1992, chapter 781, only permitted proponents of a charter school to apply to a county office of education for review when

the governing board of a school district denied a petition. New Education Code section 47605.5 sets up a requirement for county boards of education to review submitted charter school petitions under the criteria of section 47605, if the proposed charter school is designed to "serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services." This requires county boards of education to incur expenses for activities previously found reimbursable to school districts under the *Charter Schools* parameters and guidelines. The Commission finds that Education Code section 47605.5, as added by Statutes 1998, chapter 34, imposes a new program or higher level of service upon county offices of education for the following new activity:

- Review charter school petitions submitted directly to the county board of education, in the same manner as set forth in Education Code section 47605, for charter schools that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services.

Education Code section 47607.

This Education Code section, as added by Statutes 1992, chapter 781, and amended by Statutes 1998, chapter 34, provides,

> (a)(1) A charter may be granted pursuant to Sections 47605, 47605.5, and 47606 for a period not to exceed five years. A charter granted by a school district governing board, a county board of education or the State Board of Education, may be granted one or more subsequent renewals by that entity. Each renewal shall be for a period of five years. A material revision of the provisions of a charter petition may be made only with the approval of the authority that granted the charter. The authority that granted the charter may inspect or observe any part of the charter school at any time.
>
> (2) Renewals and material revisions of charters shall be governed by the standards and criteria in Section 47605.
>
> (b) A charter may be revoked by the authority that granted the charter under this chapter if the authority finds that the charter school did any of the following:
>
> (1) Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.
>
> (2) Failed to meet or pursue any of the pupil outcomes identified in the charter.
>
> (3) Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.
>
> (4) Violated any provision of law.
>
> (c) Prior to revocation, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

This statute was included in the original *Charter Schools* test claim filed on the enactment of Statutes 1992, chapter 781. The primary amendment by Statutes 1998, chapter 34 was the addition of subdivision (c).

Claimants allege that Education Code section 47607, as amended, requires the school district or county office of education granting a charter school petition to "provide notice to that charter school prior to any proposed charter revocation … and also requires the charter granting authority to give the charter school a reasonable opportunity to cure" violations that do not pose a threat to health and safety. DOF agrees "that the cost of preparing a written notification is new." Claimants acknowledge that other activities required by Education Code section 47607 are already reimbursable through the original *Charter Schools* claims process.

Under the provisions of Education Code section 47605, subdivision (b), school districts, and county offices of education required to review charter school petitions, "*shall* grant a charter for the operation of a school under this part if it is satisfied that the charter is consistent with sound educational practice." Under the statute, local educational agencies must cite facts and make specific written findings in order to reject a charter application; the rejection cannot be arbitrary. Thus, acceptance and approval of a complete charter petition is not a discretionary act on the part of school districts and county offices of education.

Once a charter school petition is approved the chartering agency maintains some oversight responsibilities. For example, Education Code section 47613 states, "a chartering agency may charge for the actual costs of supervisorial oversight of a charter school." If in the course of that oversight, the school district or county office of education determines that the standards or criteria of the approved charter are not being met, the chartering agency has a duty to revoke the charter by following the mandatory procedure described in Education Code section 47607, subdivision (c). Therefore, the Commission finds that Education Code section 47607, as amended by Statutes 1998, chapter 34, imposes a new program or higher level of service upon school districts and county offices of education for the following new activity:

- Prior to revocation of a charter, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils.

Education Code section 47613 (formerly 47613.7).

When the test claim was filed, the test claim statute was Education Code section 47613.7, as added by Statutes 1998, chapter 34. The section was renumbered Education Code section 47613 by Statutes 1999, chapter 78, effective July 7, 1999. No amendments were made to the statutory language.

> (a) Except as set forth in subdivision (b), a chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 1 percent of the revenue of the charter school.
>
> (b) A chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.

(c) A local agency that is given the responsibility for supervisorial oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the costs of supervisorial oversight, and administrative costs necessary to secure charter school funding, not to exceed 3 percent of the revenue of the charter school. A charter school that is charged for costs under this subdivision shall not be charged pursuant to subdivision (a) or (b).

(d) This section shall not prevent the charter school from separately purchasing administrative or other services from the chartering agency or any other source.

(e) For the purposes of this section, a chartering agency means a school district, county department of education, or the State Board of Education, that granted the charter to the charter school.

Claimants allege that although the code section allows school districts to charge a charter school for the actual costs of supervisorial oversight, the maximum charge of one percent (or three percent if the school district provides substantially rent-free facilities to the charter school) of charter school revenue, is insufficient to pay for the oversight costs.

DOF argues "that if the Legislature had intended that chartering agencies' requirements should be more costly, they would not have imposed a limit on the reimbursements. On the contrary, we believe this limitation was in keeping with the intent of the Charter law that oversight be just that and was intended to discourage micromanagement."

The Commission notes that this statute alone does not impose a new program or higher level of service, but instead establishes a fee system for which the chartering agency can impose a maximum charge of one or three percent of the charter school revenue for the actual costs of supervisorial oversight. Supervisorial oversight is a reimbursable activity in the original *Charter Schools* Parameters and Guidelines, as follows:

4. Monitoring the charter

Subsequent administrative review, analysis, and reporting on the charter school's performance for purposes of charter reconsideration, renewal, revision, evaluation, or revocation by the governing body.

In comments on the draft staff analysis, claimant San Diego Unified School District states that they are "unable to locate in the Parameters and Guidelines or in the Claiming Instructions the term 'Supervisorial oversight.'" The Commission agrees that this is not the exact language utilized, however, claimant has not cited any other definition of "supervisorial oversight" in the Education Code indicating that the term should not be read as comparable to the "Monitoring the charter" activity allowed for in *Charter Schools* Parameters and Guidelines.

Claimant argues that "the supervisorial oversight activities are a new program or higher level of service that is required to be performed by the sponsoring entity and must be a reimbursable [sic] for any amounts exceeding 1% or 3%." Again, supervisorial oversight is not a *new activity* required by the law claimed in the present test claim allegations. Claimant cannot make a successful claim for subvention for the costs of supervisorial oversight without first pleading and establishing that a new law or executive order imposed a new program or higher level of service upon school districts or county offices of education. The laws relating to supervisorial oversight as *an activity* were pled in the original *Charter Schools* test claim based upon the enactment of Statutes 1992, chapter 781, and have already been found by the Commission to impose certain

reimbursable costs mandated by the state. The Commission finds that Education Code section 47613 does not require any new activities, but rather establishes a fee authority to be used by a school district or county office of education to offset any costs of charter school supervisorial oversight.[16]

The Commission finds that Education Code section 47613, as added by Statutes 1998, chapter 34, renumbered by Statutes 1999, chapter 78, does not impose a new program or higher level of service upon school districts or county offices of education.

Education Code section 47613.5.

Education Code section 47613.5, as added by Statutes 1998, chapter 34, effective January 1, 1999, and repealed by Statutes 1999, chapter 78, effective July 7, 1999, follows, in pertinent part:

> (a) Notwithstanding Sections 47612 and 47613, commencing with the 1999-2000 school year and only upon adoption of regulations pursuant to subdivision (b), charter school operational funding shall be equal to the total funding that would be available to a similar school district serving a similar pupil population, provided that a charter school shall not be funded as a necessary small school or a necessary small high school, nor receive revenue limit funding that exceeds the statewide average for a school district of a similar type.
>
> (b) The State Department of Education shall propose, and the State Board of Education may adopt, regulations to implement subdivision (a) and, to the extent possible and consistent with federal law, provide for simple and, at the option of the charter school, local or direct allocation of funding to charter schools.

Claimants allege that "Education Code section 47613.5 required the State Department of Education to propose, and the State Board of Education to adopt, regulations that provide for these alternative methods of funding." The statutory language is directed exclusively to the CDE and the State Board of Education and does not impose any activities or duties upon school districts.

In addition, as discussed above, it appears that the proposed regulations were never published or operative prior to the repeal of this implementing Education Code section, effective July 9, 1999. Any potential activities for local educational agencies would have resulted from the implementation of the regulations originally required by this statute, not from the statute alone. Therefore, the Commission finds that Education Code section 47613.5 did not impose a new program or higher level of service upon school districts or county offices of education.

Education Code section 47614.

This Education Code section was added by Statutes 1998, chapter 34, operative January 1, 1999.

> A school district in which a charter school operates shall permit a charter school to use, at no charge, facilities not currently being used by the school district for instructional or administrative purposes, or that have not been historically used for

[16] Government Code section 17514 defines "costs mandated by the state" as increased costs a district is "required to incur," therefore any costs that are recoverable through sources other than district tax revenues are not reimbursable costs mandated by the state.

> rental purposes provided the charter school shall be responsible for reasonable maintenance of those facilities.

Education Code section 47614 was replaced by language from Initiative Measure, Proposition 39, section 6, effective November 8, 2000, as follows in part:

> The intent of the people in amending Section 47614 is that public school facilities should be shared fairly among all public school pupils, including those in charter schools.
>
> Each school district shall make available, to each charter school operating in the school district, facilities sufficient for the charter school to accommodate all of the charter school's in-district students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. Facilities provided shall be contiguous, furnished, and equipped, and shall remain the property of the school district. The school district shall make reasonable efforts to provide the charter school with facilities near to where the charter school wishes to locate, and shall not move the charter school unnecessarily.

The statutory language of Education Code section 47614, as added by Statutes 1998, chapter 34 was replaced by vote of the people upon the approval of Proposition 39, and thus is no longer subject to article XIII B, section 6 of the California Constitution, which only requires subvention when "the Legislature or any state agency mandates a new program or higher level of service." Therefore, the Commission finds that any potential reimbursement period for Education Code section 47614 begins on January 1, 1999, and concludes on November 8, 2000.

Claimants allege that Education Code section 47614 imposes a reimbursable state mandate, including "the fair rental value of the facility as determined by the school district governing board plus other direct and indirect costs associated with the charter school's use of the facility."

DOF's July 28, 2000 response to the test claim allegations concludes:

> The law specifically states that the district must provide facilities only if they are excess facilities or are not already being rented. As such, there is no loss of rent to the district, as the "fair rental value" of an unrented property is zero. However, there could be minor, one-time administrative costs in establishing a free use agreement with the charter. Additionally, even if there were a revenue loss, it would not appear to constitute a reimbursable new program nor higher level of service within the meaning of the mandate law. Finally, the law also provides offsetting savings, because the law requires that any facilities provided for use by the charter be maintained by the charter, thus relieving the chartering agency from the costs of maintenance on the surplus facility.

The Commission also disagrees with the claim for state subvention for any lost rental value of a facility utilized by a charter school under this section as it contradicts the court's holding in *County of Sonoma v. Commission on State Mandates*. In *County of Sonoma*, the court concluded that lost revenue is not reimbursable under article XIII B, section 6 of the California Constitution.[17]

[17] *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1264, 1285.

In *County of Sonoma*, the counties contended that reduced allocation of tax revenues was a reimbursable cost under article XIII B, section 6. The court disagreed. After analyzing Supreme Court cases on mandates, reviewing Government Code section 17500 et seq. and other Constitutional provisions differentiating "costs" from "lost revenue," the court came to the following conclusions:

> [I]t is the expenditure of tax revenues of local governments that is the appropriate focus of section 6 (*County of Fresno v. State of California* [citation omitted]) [stating that section 6 was "designed to protect the tax revenues of local governments from state mandates that would require expenditure of such revenues."][18]
>
> No state duty of subvention is triggered where the local agency is not required to expend its proceeds of taxes.[19]
>
> The obvious view of the Legislature is that reimbursement is intended to replace actual costs incurred, not as compensation for revenue that was never received.[20]
>
> The presence of these references to reimbursement for lost revenue in article XIII supports a conclusion that by using the word "cost" in section 6 the voters meant the common meaning of cost as an expenditure or expense actually incurred.[21]

And finally, the court held that "we cannot extend the provisions of section 6 to include concepts such as lost revenue."[22] Accordingly, the Commission finds that the claim for the lost fair rental value is not subject to article XIII B, section 6, because lost revenue, such as rental income, does not constitute a cost.

As for associated "direct and indirect costs" of providing property to charter schools, Statutes 1998, chapter 34 only required that school districts provide property if it was not being currently used for instructional or administrative purposes, *and*, if it had not been historically rented. In other words, the statute only required school districts to provide truly vacant, unutilized property. There was no state requirement to evict current tenants, establish a lease agreement, or prepare property for a charter school in any way. In return for use of the unutilized property, charter schools "shall be responsible for reasonable maintenance of those facilities," thus, providing a potential benefit to school districts, not a cost.

However, any potential offsetting savings does not preclude finding that a new program or higher level of service was imposed upon school districts for the administrative expenses resulting directly from the statutory requirement to permit charter schools to utilize unused district facilities, such as "one-time administrative costs in establishing a free use agreement with the charter," as proposed by DOF.

---

[18] *Id.* at 1283.

[19] *Id.* at 1284.

[20] *Ibid.*

[21] *Id.* at 1285.

[22] *Ibid.*

Thus, the Commission finds that Education Code section 47614, as added by Statutes 1998, chapter 34, imposes a new program or higher level of service upon school districts from January 1, 1999 to November 8, 2000, for the following new activity:

- Permitting a charter school to use, at no charge, facilities not currently being used by the school district for instructional or administrative purposes, or that have not been historically used for rental purposes provided the charter school shall be responsible for reasonable maintenance of those facilities. (Reimbursement for this activity is limited to administrative expenses resulting directly from the requirement to permit charter schools to utilize unused district facilities. Rental value of the facility is specifically excluded as a reimbursable expense.)

Test Claim Executive Orders: California Department of Education Memorandum:

Implementation of New Charter School Funding Model, dated April 28, 1999.

Claimants allege the memorandum is an executive order imposing a reimbursable state mandated program for the processing of payments of property tax from school districts to charter schools. The April 28, 1999 document is a letter "intended to help charter schools make" decisions on the new funding model options described in Education Code section 47613.5. The memorandum discusses the plan for implementation of Education Code section 47613.5, however the code section was repealed on July 7, 1999, and thus the memorandum was no longer of use.

Under Government Code section 17516, an "executive order" may include "any order, plan, requirement, rule, or regulation issued by . . . any agency, department, board, or commission of state government." For the period of time the memorandum applied, it was informational regarding the new charter school funding model, however, the Commission finds that the memorandum did not meet the definition of an executive order for school districts and county offices of education, as it did not issue any directives or require any activities on the part of such local educational agencies. The Commission finds that the CDE memorandum dated April 28,1999, did not impose a new program or higher level of service upon school districts or county offices of education.

Issue 3: Does the test claim legislation found to contain a new program or higher level of service also impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

Reimbursement under article XIII B, section 6 is required only if any new program or higher-level of service is also found to impose "costs mandated by the state." Government Code section 17514 defines "costs mandated by the state" as any *increased* cost a local agency is required to incur as a result of a statute that mandates a new program or higher level of service.

DOF makes an argument against subvention for the part of the test claim legislation, based upon the exception of Government Code section 17556, subdivision (e): that there are no costs mandated by the state if the statute or executive order provides *offsetting savings* to local agencies or school districts which result in no net costs to the local agencies or school districts, or includes additional revenue that was specifically intended to fund the costs of the state mandate in an amount sufficient to fund the cost of the state mandate.

DOF contends that Statutes 1998, chapter 673, in amending Education Code section 47605, subdivision (j), the Legislature eliminated a mandate that county offices of education "convene a

review panel to determine if a district acted properly in denying a petition. However, it also: a) adds a requirement that county offices review petitions directly submitted to them; and b) allows charter schools to file judicial action against a district in the case of a denial if the entity fails to act on a petition within 120 days."

DOF argues, "There would seem to be considerable offsetting savings resulting from the elimination of the earlier mandate. We believe these alternative activities to be comparable and therefore no reimbursable mandate exists."

DOF's analysis does not comport with the complete description of offsetting savings in the exception to reimbursement described in Government Code section 17556, subdivision (e). Because the prior requirements in Education Code section 47605 were found to constitute a reimbursable state mandated program as part of the original *Charter Schools* test claim, the elimination of part of the mandate and the substitution of other requirements does not provide *offsetting savings which result in no net costs* to the school district. Following the program evolution in a timeline: first, there is no program prior to the development of charter schools legislation; next, there is a new program in Statutes 1992, chapter 781, resulting in a reimbursable state mandate; finally, part of the new program activities are eliminated and substituted with alternative activities by Statutes 1998, chapter 673. But, under DOF's argument, because the newest program is comparable, suddenly "no reimbursable mandate exists." This does not follow – if the previous program activities were reimbursable, the substituted activities must be as well, unless another exception to subvention exists.

In addition, the test claim legislation does not include additional revenue that was specifically intended to fund the entire cost of the state mandate. Accordingly, the Commission finds that Government Code section 17556, subdivision (e), does not apply to deny a finding of costs mandated by the state for the activities identified as imposing a reimbursable state mandated program.

The Commission finds none of the other exceptions to finding a reimbursable state mandate under Government Code section 17556 apply here. Accordingly, the Commission finds that the activities identified in the conclusion, below, qualify for reimbursement because the activities impose costs mandated by the state within the meaning of Government Code section 17514.

CONCLUSION

The Commission concludes that Education Code sections 47605, subdivision (j)(1) and (k)(3), 47605.5, 47607, and 47614 contain new programs or higher levels of service for school districts and/or county offices of education within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514, for the following specific new activities:

School Districts:

- Review charter school petitions for renewal, when submitted directly to the governing board of the school district that initially denied the charter, prior to expiration of the charter granted by the State Board of Education. (Ed. Code, § 47605, subd.(k)(3).)[23]

[23] As amended by Statutes 1998, chapter 673, operative January 1, 1999.

- Prior to revocation of a charter, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils. (Ed. Code, § 47607.)[24]
- Permitting a charter school to use, at no charge, facilities not currently being used by the school district for instructional or administrative purposes, or that have not been historically used for rental purposes, provided the charter school shall be responsible for reasonable maintenance of those facilities. (Reimbursement for this activity is limited to administrative expenses resulting directly from the requirement to permit charter schools to utilize unused district facilities. Rental value of the facility is specifically excluded as a reimbursable expense.) (Ed. Code, § 47614.)[25]

County Offices of Education:

- Review charter school petitions submitted directly to the county board of education, pursuant to Education Code section 47605, subdivision (b), when the governing board of a school district denies a charter school petition and the charter school petitioner submits the petition to the county board of education. (Ed. Code, § 47605, subd. (j)(1).)[26]
- Review charter school petitions submitted directly to the county board of education, in the same manner as set forth in Education Code section 47605, for charter schools that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services. (Ed. Code, § 47605.5.)[27]
- Prior to revocation of a charter, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils. (Ed. Code, § 47607.)[28]

The Commission finds that Education Code section 47613[29] establishes a fee authority that must be used by a school district or county office of education to offset any claimed reimbursement

[24] As amended by Statutes 1998, chapter 34, operative January 1, 1999.

[25] As added by Statutes 1998, chapter 34, operative January 1, 1999. Mandate eliminated by voter approval of Proposition 39, which replaced Education Code section 47614, operative November 8, 2000.

[26] As amended by Statutes 1998, chapter 673, operative January 1, 1999. This mandate replaces the previously approved mandate in *Charter Schools* for a review process for denied charter petitions. (Ed. Code, § 47605, subd. (j), as added by Stats. 1992, ch. 781; replaced by Stats. 1998, ch. 673.)

[27] As added by Statutes 1998, chapter 34, operative January 1, 1999.

[28] As amended by Statutes 1998, chapter 34, operative January 1, 1999.

[29] As added by Statutes 1998, chapter 34, operative January 1, 1999, and renumbered by Statutes 1999, chapter 78.

for the costs of charter school supervisorial oversight under the *Charter Schools* parameters and guidelines.

The Commission finds that Education Code sections 47602, 47604, 47613, 47613.5, 47614 and CDE Memorandum dated April 28, 1999, do not require any additional mandatory activities of school districts or county offices of education, and therefore do not impose a new program or higher level of service.

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Section 47605, Subdivision (b), and former Subdivisions (j)(1), (j)(2), and (j)(3); Education Code Section 47607, Subdivisions (a) and (b); Statutes 1992, Chapter 781; Filed on December 1, 1993; By San Diego Unified School District; and Education Code Sections 47602, 47604, 47605, 47605.5, 47607, 47613 (formerly 47613.7), 47613.5, and 47614; Statutes 1998, Chapters 34 and 673; California Code of Regulations, Title 5, Sections 15410-15428; California Department of Education Memorandum dated April 28, 1999; Filed on June 29, 1999; By Los Angeles County Office of Education and San Diego Unified School District, Claimants.	No. CSM 4437 ***Charter Schools*** and No. 99-TC-03 ***Charter Schools II*** ADOPTION OF PARAMETERS AND GUIDELINES PURSUANT TO GOVERNMENT CODE SECTION 17557 AND CALIFORNIA CODE OF REGULATIONS, TITLE 2, SECTION 1183.12 *(Adopted on December 2, 2003)*

CONSOLIDATED PARAMETERS AND GUIDELINES

On December 2, 2003, the Commission on State Mandates adopted the attached Consolidated Parameters and Guidelines.

_____ _____

PAULA HIGASHI, Executive Director Date

Adopted: December 2, 2003

CONSOLIDATION OF PARAMETERS AND GUIDELINES

Education Code Section 47605, Subdivision (b), and
former Subdivisions (j)(1), (j)(2), and (j)(3)
Education Code Section 47607, Subdivisions (a) and (b)

Statutes 1992, Chapter 781

Charter Schools (CSM 4437)

and

Education Code Sections 47605, Subdivisions (j)(1) and (k)(3),
47605.5, 47607, and 47614

Statutes 1998, Chapters 34 and 673

Charter Schools II (99-TC-03)

I. SUMMARY OF THE MANDATE

Charter Schools

On July 21, 1994, the Commission on State Mandates (Commission) adopted its Statement of Decision finding that Education Code sections 47605 and 47607, as added by Statutes 1992, chapter 781, require new activities related to initial charter school petitions and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters, which constitute a new program or higher level of service for school districts and/or county offices of education within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514. Specifically, the Commission approved the *Charter Schools* test claim for the increased costs of performing the following activities:

School Districts

- Respond to requests from the public for information on the charter school program. (Ed. Code, § 47605.)
- Conduct a public hearing within thirty days of receipt of a petition to determine community support for the petition. (Ed. Code, § 47605, subd. (b).)
- Grant or deny the petition within sixty days of receipt, subject to a thirty-day extension upon agreement of the parties. (Ed. Code, § 47605, subd. (b).)
- Provide persons to take part in a review panel to review the decision of the governing board of the school district and, if necessary, request the governing board of the school district to reconsider the charter request. (Former Ed. Code, § 47605, subd. (j).)[1]

[1] Effective January 1, 1999, this activity was replaced with the new requirements of Education Code section 47605, subdivision (j)(1), as amended by Statutes 1998, chapter 673.

- Respond to any request of the review panel selected and convened by the county superintendent of schools pursuant to an appeal of any petition denied by the school district. (Former Ed. Code, § 47605, subd. (j).)[2]
- Monitor the performance of charter schools for which they have granted charters to determine if they have achieved their goals and objectives. (Ed. Code, § 47607.)
- Evaluate and decide upon requests for revision or extension of approved charters. (Ed. Code, § 47607.)

County Boards of Education

- Select and convene a review panel to review the decision of the governing board of the school district and, if necessary, request the governing board of the school district to reconsider the charter request. (Former Ed. Code, § 47605, subds. (j)(1) and (j)(2).)[3]
- Hear a petition following a denial on reconsideration by the governing board of a school district. (Former Ed. Code, § 47605, subd. (j)(3).)[4]
- Conduct a public hearing within thirty days of receipt of a petition to determine community support for the petition. (Former Ed. Code, § 47605, subd. (j)(3).)[5]
- Grant or deny the petition within sixty days of receipt, subject to a thirty-day extension upon agreement of the parties. (Former Ed. Code, § 47605, subd. (j)(3).)[6]
- Monitor the performance of charter schools for which they have granted charters to determine if they have achieved their goals and objectives. (Ed. Code, § 47607.)
- Evaluate and decide upon requests for revision or extension of approved charters. (Ed. Code, § 47607.)

The Commission determined that the following provisions of Education Code sections 47605 and 47607 did not impose a new program or higher level of service within the meaning of article XIII B, section 6 of the California Constitution and Government Code section 17514, for school districts and county boards of education to:

- Plan and prepare procedures for implementation of the Charter Schools Act of 1992.

---

[2] Effective January 1, 1999, this activity was replaced with the new requirements of Education Code section 47605, subdivision (j)(1), as amended by Statutes 1998, chapter 673.

[3] Effective January 1, 1999, this activity was replaced with the new requirements of Education Code section 47605, subdivision (j)(1), as amended by Statutes 1998, chapter 673.

[4] Effective January 1, 1999, this activity was replaced with the new requirements of Education Code section 47605, subdivision (j)(1), as amended by Statutes 1998, chapter 673.

[5] Effective January 1, 1999, this activity was replaced with the new requirements of Education Code section 47605, subdivision (j)(1), as amended by Statutes 1998, chapter 673.

[6] Effective January 1, 1999, this activity was replaced with the new requirements of Education Code section 47605, subdivision (j)(1), as amended by Statutes 1998, chapter 673.

- Disseminate information regarding charter schools to staff, students, parents, and the community.

Charter Schools II

On November 21, 2002, the Commission adopted its Statement of Decision finding that Education Code sections 47605, subdivisions (j)(1) and (k)(3), 47605.5, 47607, and 47614 require new activities, as specified below, which constitute new programs or higher levels of service for school districts and/or county offices of education within the meaning of article XIII B, section 6 of the California Constitution, and impose costs mandated by the state pursuant to Government Code section 17514:

School Districts

- Review charter school petitions for renewal, when submitted directly to the governing board of the school district that initially denied the charter, prior to expiration of the charter granted by the State Board of Education. (Ed. Code, § 47605, subd. (k)(3).)
- Prior to revocation of a charter, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils. (Ed. Code, § 47607, subd. (c).)
- Permit a charter school to use, at no charge, facilities not currently being used by the school district for instructional or administrative purposes, or that have not been historically used for rental purposes, provided the charter school shall be responsible for reasonable maintenance of those facilities. (Reimbursement for this activity is limited to administrative expenses resulting directly from the requirement to permit charter schools to utilize unused district facilities. Rental value of the facility is specifically excluded as a reimbursable expense.) (Ed. Code, § 47614.)

County Offices of Education

- Review charter school petitions submitted directly to the county board of education, pursuant to Education Code section 47605, subdivision (b), when the governing board of a school district denies a charter school petition and the charter school petitioner submits the petition to the county board of education. (Ed. Code, § 47605, subd. (j)(1).)
- Review charter school petitions submitted directly to the county board of education, in the same manner as set forth in Education Code section 47605, for charter schools that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services. (Ed. Code, § 47605.5.)
- Prior to revocation of a charter, the authority that granted the charter shall notify the charter public school of any violation of this section and give the school a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils. (Ed. Code, § 47607, subd. (c).)

The Commission also found that Education Code section 47613 establishes a fee authority that must be used by a school district or county office of education to offset any claimed reimbursement for the costs of charter school supervisorial oversight under the *Charter Schools* Parameters and Guidelines.

In addition, the Commission found that Education Code sections 47602, 47604, 47613, 47613.5, 47614 and California Department of Education Memorandum dated April 28, 1999, do not require any additional mandatory activities of school districts or county offices of education, and therefore, do not impose a new program or higher level of service.

II. ELIGIBLE CLAIMANTS

Any "school district," as defined in Government Code section 17519, except for community colleges, which incurs increased costs as a result of this mandate, is eligible to claim reimbursement. Charter schools are not eligible claimants.

III. PERIOD OF REIMBURSEMENT

Government Code section 17557 states that a test claim must be submitted on or before June 30 following a given fiscal year to establish eligibility for that fiscal year. Although the *Charter Schools II* test claim was filed on August 24, 1999, which establishes a reimbursement period beginning July 1, 1998, the test claim legislation was not operative until January 1, 1999. Therefore, this consolidated set of parameters and guidelines is operative for costs incurred from January 1, 1999, and beyond.

Education Code section 47614, as added by Statutes 1998, chapter 34, was replaced by voter approval of Proposition 39, which was operative November 8, 2000. Therefore, costs incurred for compliance with Education Code section 47614 is only reimbursable for the period January 1, 1999, through November 7, 2000.

Costs for *Charter Schools* (CSM 4437) that have been claimed for fiscal years 1998-1999, 1999-2000, 2000-2001, 2001-2002, and 2002-2003 as of the effective date of these parameters and guidelines pursuant to the State Controller's claiming instructions for Program 140 may not be claimed and are not reimbursable under these parameters and guidelines.

Actual costs for one fiscal year should be included in each claim. Estimated costs for the subsequent year may be included on the same claim, if applicable. Pursuant to Government Code section 17561, subdivision (d)(1), all claims for reimbursement of initial years' costs shall be submitted within 120 days of the issuance of the State Controller's claiming instructions.

If total costs for a given year do not exceed $1,000, no reimbursement shall be allowed, except as otherwise allowed by Government Code section 17564.

IV. REIMBURSABLE ACTIVITIES

To be eligible for mandated cost reimbursement for any fiscal year, only actual costs may be claimed. Actual costs are those costs actually incurred to implement the mandated activities. Actual costs must be traceable and supported by source documents that show the validity of such costs, when they were incurred, and their relationship to the reimbursable activities. A source document is a document created at or near the same time the actual cost was incurred for the event or activity in question. Source documents may include, but are not limited to, employee time records or time logs, sign-in sheets, invoices, and receipts.

Evidence corroborating the source documents may include, but is not limited to, worksheets, cost allocation reports (system generated), purchase orders, contracts, agendas, and declarations. Declarations must include a certification or declaration stating, "I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct," and must further comply with the requirements of Code of Civil Procedure section 2015.5. Evidence corroborating the source documents may include data relevant to the reimbursable activities otherwise in compliance with local, state, and federal government requirements. However, corroborating documents cannot be substituted for source documents.

The claimant is only allowed to claim and be reimbursed for increased costs for reimbursable activities identified below. Increased cost is limited to the cost of an activity that the claimant is required to incur as a result of the mandate.

For each eligible claimant, the following activities are reimbursable:

Charter Schools[7]

A. School Districts

1. Responding to information requests

   Provide information, upon request, to the community regarding the Charter Schools Act of 1992 and governing board's charter policy and procedures. (Ed. Code, § 47605.)[8]

2. Evaluating petitions

   Review and evaluate qualified charter petitions for compliance with criteria for the granting of charters. (Ed. Code, § 47605.)[9]

3. Public hearings

   Prepare for public hearings, to be done within thirty days of receiving the petition, to consider the level of community support for a charter school petition, and grant or deny the charter school petition within sixty days of receiving the petition, subject to one thirty-day continuance by agreement of the parties, pursuant to Education Code section 47605. (Ed. Code, § 47605.)[10]

[7] Effective January 1, 1999, many activities from the original *Charter Schools* Parameters and Guidelines were amended by Statutes 1998, chapters 34 and 673, and are reflected in the *Charter Schools II* activities.)

[8] As added by Statutes 1992, chapter 781.

[9] As added by Statutes 1992, chapter 781.

[10] As added by Statutes 1992, chapter 781.

B. School Districts and County Offices of Education[11]

1. Monitoring: Renewal, Material Revision, and Revocation of the Charter[12]

   a. Review, analyze, and report on the charter school's performance for purposes of charter reconsideration, renewal, revision, evaluation, or revocation by the governing body. (Ed. Code, § 47607, subds. (a) and (b).)[13]

   b. Evaluate and decide upon material revisions, renewals, or revocations of charters. (Ed. Code, § 47607, subds. (a) and (b).)[14]

Charter Schools II

A. School Districts

1. Review charter school petitions for renewal that are submitted directly to the governing board of the school district that initially denied the charter.[15] Pursuant to Education Code section 47605, subdivision (k)(3), the petition must be submitted prior to expiration of the charter granted by the State Board of Education. (Ed. Code, § 47605, subd. (k)(3).)[16]

2. Notify the charter public school of any violation of Education Code section 47607, subdivision (b), prior to revocation of a charter. Pursuant to Education Code section 47607, subdivision (c), the school shall be given a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils. (Ed. Code, § 47607, subd. (c).)[17]

B. County Offices of Education

1. Review charter school petitions submitted directly to the county board of education, pursuant to Education Code section 47605, subdivision (b):

   a. When the governing board of a school district denies a charter school petition and the charter school petitioner submits the petition to the county board of education. (Ed. Code, § 47605, subd. (j)(1).)[18]

---

[11] See section VII. Offsetting Savings and Reimbursements.

[12] The fee authority established by Education Code section 47613 must be used by a school district or county office of education to offset any claimed reimbursement for the cost of these activities.

[13] As added by Statutes 1992, chapter 781.

[14] As added by Statutes 1992, chapter 781.

[15] Each renewal is for a period of five years.

[16] As amended by Statutes 1998, chapter 673.

[17] As amended by Statutes 1998, chapter 34.

[18] As amended by Statutes 1998, chapter 673. As amended by Statutes 1998, chapter 673. This replaces the previously approved activity in the original *Charter Schools* Parameters and Guidelines related to "Petition Appeals." (Ed. Code, § 47605, subd. (j), as added by Stats. 1992, ch. 781; replaced by Stats. 1998, ch. 673.)

b. For charter schools that will serve pupils for whom the county office of education would otherwise be responsible for providing direct education and related services. (Ed. Code, § 47605.5.)[19]

2. Notify the charter public school of any violation of Education Code section 47607, subdivision (b), prior to revocation of a charter. Pursuant to Education Code section 47607, subdivision (c), the school shall be given a reasonable opportunity to cure the violation, unless the authority determines, in writing, that the violation constitutes a severe and imminent threat to the health or safety of the pupils. (Ed. Code, § 47607, subd. (c).)[20]

V. CLAIM PREPARATION AND SUBMISSION

Each of the following cost elements must be identified for each reimbursable activity identified in Section IV, Reimbursable Activities, of this document. Each claimed reimbursable cost must be supported by source documentation as described in Section IV. Additionally, each reimbursement claim must be filed in a timely manner.

A. Direct Cost Reporting

Direct costs are those costs incurred specifically for the reimbursable activities. Direct costs that are eligible for reimbursement are:

1. Salaries and Benefits

Report each employee implementing the reimbursable activities by name, job classification, and productive hourly rate (total wages and related benefits divided by productive hours). Describe the specific reimbursable activities performed and the hours devoted to each reimbursable activity performed.

2. Materials and Supplies

Report the cost of materials and supplies that have been consumed or expended for the purpose of the reimbursable activities. Purchases shall be claimed at the actual price after deducting discounts, rebates, and allowances received by the claimant. Supplies that are withdrawn from inventory shall be charged on an appropriate and recognized method of costing, consistently applied.

3. Contracted Services

Report the name of the contractor and services performed to implement the reimbursable activities. Attach a copy of the contract to the claim. If the contractor bills for time and materials, report the number of hours spent on the activities and all costs charged. If the contract is a fixed price, report the dates when services were performed and itemize all costs for those services.

4. Fixed Assets and Equipment

Report the purchase price paid for fixed assets and equipment (including computers) necessary to implement the reimbursable activities. The purchase price includes taxes, delivery costs, and installation costs. If the fixed asset or equipment is also used for

[19] As added by Statutes 1998, chapter 34.

[20] As amended by Statutes 1998, chapter 34.

purposes other than the reimbursable activities, only the pro-rata portion of the purchase price used to implement the reimbursable activities can be claimed.

5. Travel

Report the name of the employee traveling for the purpose of the reimbursable activities. Include the date of travel, destination point, the specific reimbursable activity requiring travel, and related travel expenses reimbursed to the employee in compliance with the rules of the local jurisdiction. Report employee travel time according to the rules of cost element A.1, Salaries and Benefits, for each applicable reimbursable activity.

B. Indirect Cost Rates

Indirect costs are costs that have been incurred for common or joint purposes. These costs benefit more than one cost objective and cannot be readily identified with a particular final cost objective without effort disproportionate to the results achieved. After direct costs have been determined and assigned to other activities, as appropriate, indirect costs are those remaining to be allocated to benefited cost objectives. A cost may not be allocated as an indirect cost if any other cost incurred for the same purpose, in like circumstances, has been claimed as a direct cost.

Indirect costs include: (a) the indirect costs originating in each department or agency of the governmental unit carrying out state mandated programs, and (b) the costs of central governmental services distributed through the central service cost allocation plan and not otherwise treated as direct costs.

School districts must use the J-380 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

County offices of education must use the J-580 (or subsequent replacement) non-restrictive indirect cost rate provisionally approved by the California Department of Education.

VI. RECORD RETENTION

Pursuant to Government Code section 17558.5, subdivision (a), a reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter[21] is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. All documents used to support the reimbursable activities, as described in Section IV, must be retained during the period subject to audit. If an audit has been initiated by the Controller during the period subject to audit, the retention period is extended until the ultimate resolution of any audit findings.

VII. OFFSETTING SAVINGS AND REIMBURSEMENTS

Any offsetting savings the claimant experiences in the same program as a result of the same statutes or executive orders found to contain the mandate shall be deducted from the costs claimed. In addition, reimbursement for this mandate received from any source, including but

[21] This refers to Title 2, division 4, part 7, chapter 4 of the Government Code.

not limited to, service fees collected, federal funds, and other state funds, shall be identified and deducted from this claim.

Education Code section 47613 establishes a fee authority that must be used by a school district or county office of education to offset any claimed reimbursement for the costs of charter school supervisorial oversight under the *Charter Schools* Parameters and Guidelines. This refers to activity B. 1. under *Charter Schools* in section IV. of these parameters and guidelines.

VIII. STATE CONTROLLER'S CLAIMING INSTRUCTIONS

Pursuant to Government Code section 17558, subdivision (b), the Controller shall issue claiming instructions for each mandate that requires state reimbursement not later than 60 days after receiving the adopted parameters and guidelines from the Commission, to assist local agencies and school districts in claiming costs to be reimbursed. The claiming instructions shall be derived from the statute or executive order creating the mandate and the parameters and guidelines adopted by the Commission.

Pursuant to Government Code section 17561, subdivision (d)(1), issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the Commission.

IX. REMEDIES BEFORE THE COMMISSION

Upon request of a local agency or school district, the Commission shall review the claiming instructions issued by the State Controller or any other authorized state agency for reimbursement of mandated costs pursuant to Government Code section 17571. If the Commission determines that the claiming instructions do not conform to the parameters and guidelines, the Commission shall direct the Controller to modify the claiming instructions and the Controller shall modify the claiming instructions to conform to the parameters and guidelines as directed by the Commission.

In addition, requests may be made to amend parameters and guidelines pursuant to Government Code section 17557, subdivision (a), and California Code of Regulations, title 2, section 1183.2.

X. LEGAL AND FACTUAL BASIS FOR THE PARAMETERS AND GUIDELINES

The Statement of Decision is legally binding on all parties and provides the legal and factual basis for the parameters and guidelines. The support for the legal and factual findings is found in the administrative record for the test claim. The administrative record, including the Statement of Decision, is on file with the Commission.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 41365, 47605, subdivisions (b),(c),(d), (j) and (l), 47604.3, 47607, subdivision (c), 47612.5, 47613 (former § 47613.7), and 47630-47664 Statutes 1996, Chapter 786, Statutes 1998, Chapter 34, Statutes 1998, Chapter 673, Statutes 1999, Chapter 162, Statutes 1999, Chapter 736, Statutes 1999, Chapter 78, California Department of Education Letter (May 22, 2000) Filed on June 29, 2000 by Western Placer Unified School District and Fenton Avenue Charter School, Claimants.	No. 99-TC-14 *Charter Schools III* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on May 25, 2006)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

_____ _____

PAULA HIGASHI, Executive Director Date

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM: Education Code Sections 41365, 47605, subdivisions (b),(c),(d), (j) and (l), 47604.3, 47607, subdivision (c), 47612.5, 47613 (former § 47613.7), and 47630-47664 Statutes 1996, Chapter 786, Statutes 1998, Chapter 34, Statutes 1998, Chapter 673, Statutes 1999, Chapter 162, Statutes 1999, Chapter 736, Statutes 1999, Chapter 78, California Department of Education Letter (May 22, 2000) Filed on June 29, 2000 by Western Placer Unified School District and Fenton Avenue Charter School, Claimants.	Case No.: 99-TC-14 *Charter Schools III* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; CALIFORNIA CODE OF REGULATIONS, TITLE 2, DIVISION 2, CHAPTER 2.5, ARTICLE 7 (*Adopted on May 25, 2006*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during a regularly scheduled hearing on May 25, 2006. David Scribner and Eric Premack appeared on behalf of claimants. Dan Troy appeared on behalf of the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to partially approve the test claim at the hearing by a vote of 5-2.

Summary of Findings

The Commission finds that charter schools are not eligible claimants under article XIII B, section 6 of the California Constitution and applicable statutes. The Commission also finds that the test claim statutes impose a reimbursable state-mandated program on school districts or county offices of education within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:

- **Findings on denial:** Upon denial of a charter petition, a school district makes written findings of fact to support one or more of the following findings: (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not

contain reasonably comprehensive descriptions, as specified in statute (§ 47605, subd. (b), amended by Stats. 1998, ch. 34).[1]

- **Transfer funds in lieu of property taxes:** except for local educational agencies that charge fees under Education Code section 47613, subdivision (c), a school district or county office of education that sponsors a charter school and transfers funds in lieu of property taxes to the charter school (§ 47635, added by Stats. 1999, ch. 78).
- **Financial information:** for school districts or county offices of education that are chartering authorities, including the revenues and expenditures generated by the charter school in the in the school district's or county office of education's annual statement, in a CDE-specified format. This activity is only reimbursable from May 22, 2000 until June 30, 2001.

The Commission also finds that, except for statutes over which it lacks jurisdiction because they were decided in a prior test claim, all other test claim statutes and executive orders pled by claimants do not contain a reimbursable state-mandated program.

Background

Charter schools are publicly funded K-12 schools that enroll pupils based on parental choice rather than residential assignment. In order to encourage innovation and provide expanded educational choices,[2] charter schools are exempt from most laws governing public education.[3] California was the second state in the nation to authorize charter schools in 1992, and they have steadily increased in number and enrollment since then.[4]

Enacted between 1996 and 1999, the test claim statutes make various changes to the charter school funding and accountability laws. This test claim seeks reimbursement for charter schools and school districts.

Statutes 1996, chapter 786 created the Charter School Revolving Loan Fund to loan money to school districts for charter schools that are not conversions of existing schools, and modified the requirements for the charter document.

Another test claim statute (Stats. 1998, ch. 34) added former section 47613.5, subdivision (a), to the Education Code,[5] providing that, subject to certain exceptions, "charter school operational

[1] This activity does not apply to a county office of education.

[2] Education Code section 47601 includes these reasons, among others, in the Legislature's intent behind establishing charter schools.

[3] Education Code section 47610. Exceptions to the exemption in section 47610 include teachers' retirement, the Charter School Revolving Loan Fund, and laws establishing minimum age for public school attendance. Other areas in which charter schools are subject to the Education Code include pupil assessments (§ 47605, subd. (c)(1)), and teacher credentials ((§ 47605, subd. (l)).

[4] Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004); See <http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm> [as of January 13, 2006].

[5] All statutory references are to the Education Code unless otherwise indicated.

funding shall be equal to the total funding that would be available to a similar school district serving a similar pupil population." "Operational funding" was defined to mean "all funding other than capital funding." (Former § 47613.5, subd. (c)(1), repealed eff. July 7, 1999; now § 47630 et seq., Stats. 1999, ch. 78.) In addition to equalizing operational funding, chapter 34 also,

> [E]xpanded the category of people who can sign a charter petition (§ 47605, subd. (a)); restricted a school district's discretion to deny the petition (*id.*, subd. (b)); and increased a statewide cap on the number of charter schools (§ 47602, subd. (a)). Moreover, AB 544 required charter schools to be free, nonsectarian, nondiscriminatory, and open to all students (§ 47605, subd. (d)); to meet statewide standards and conduct the pupil assessments applicable to students in noncharter public schools (§ 47605, subd. (c)); to hire credentialed teachers (*id.*, subd. (l)); and to submit to state and local supervision and inspection (*id.*, subd. (k), § 47604.5, § 47607). All these changes reflect an intent on the part of the Legislature to reduce, if not eliminate, the practical distinctions between charter schools and district-run schools.[6]

Statutes 1999, chapter 162, among other changes, subjected charter schools to laws concerning minimum minutes of instruction, documentation of attendance, and participation in state testing programs. Statutes 1999, chapter 736 amended the Charter School Revolving Loan Fund, and made other changes to charter school funding.

Statutes 1999, chapter 78, made charter schools "local educational agencies" for purposes of special education funding under the federal Individuals with Disabilities Education Act (IDEA). Chapter 78 also created a charter school funding model that funds charter schools either locally through the school district or directly from the state.

> The model consisted of three basic components: (1) revenue limit funding, (2) categorical block grant funding, and (3) separate categorical program funding—all of which were designed to yield charter school funding rates that were comparable to similar public schools. [¶]…[¶] [Before chapter 78 was enacted] …charter schools received funding on a program-by-program basis through negotiation with their charter authorizer.[7]

Because either a school district or county office of education may grant a charter petition, any reference herein to a "school district" also applies to a county office of education if that is the entity that granted the charter (§ 47605.6) or is overseeing the charter (§ 47605, subd. (k)).[8]

---

[6] *Ridgecrest Charter School v. Sierra Sands Unified School Dist.* (2005) 130 Cal.App.4th 986, 998.

[7] Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004). See http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm [as of January 13, 2006].

[8] In certain situations, petitioners can also apply for a charter directly to the State Board of Education (Ed. Code, § 47605.8).

On May 26, 1994, the Commission heard and decided a related test claim: *Charter Schools*, (CSM-4437).[9] The Commission found that Statutes 1992, chapter 781 (Ed. Code, §§ 47605 & 47607) imposes a reimbursable state-mandated program for school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

On November 21, 2002, the Commission adopted its Statement of Decision for the *Charter Schools II* test claim (99-TC-03) finding that Statutes 1998, chapters 34 and 673 (Ed. Code, §§ 47605, subds. (j)(1) & (k)(3), 47605.5, 47607, & 47614) require reimbursable state-mandated activities for school districts and/or county offices of education for activities related to reviewing renewal petitions and permitting charter schools to use school district facilities.

On December 2, 2003, the Commission adopted consolidated parameters and guidelines for the *Charter Schools* and *Charter Schools II* decisions (hereafter *Charter Schools* parameters and guidelines). School districts may charge a fee from one to three percent of the charter school's revenue for "supervisorial oversight" of the charter school,[10] which fee is a recognized offset in the *Charter Schools* parameters and guidelines.

Claimants' Position

Claimants contend that the test claim legislation constitutes a reimbursable state-mandated program pursuant to article XIII B, section 6 of the California Constitution and Government Code section 17514. Claimants request reimbursement for school district/county office of education and charter school costs for the following activities.

For school districts or county offices of education, claimants request reimbursement for:

- Calculating, processing and advancing payments of property taxes to charter schools.
- Responding to, preparing for, and participating in negotiations with the charter school regarding a share of the school district or county office's operational funding that a charter school does not receive under Chapter 6 (Ed Code, §§ 47630-47644).
- Responding to, preparing for, and participating in judicial appeals of decisions to approve a charter school petition, and if required, reconsider the charter petition.
- Responding to information for requests from the California Department of Education (CDE) or State Board of Education (SBE) for a charter that is appealed to SBE.[11]
- Preparation of and drafting written findings of fact for the denial of a charter petition.
- Preparing and adopting policies, procedures, and forms for reviewing and approving or denying charter petitions and other activities required by the test claim statutes and executive order and training staff regarding the requirement of the test claim legislation and the policies, procedures and forms.

---

[9] *Charter Schools* (CSM-4437) Statement of Decision adopted on July 21, 1994; parameters and guidelines adopted on October 18, 1994.

[10] Education Code section 47613 (former section 47613.7, added by Stats. 1998, ch. 34).

[11] Any references to CDE or SBE in this test claim include the Superintendent of Public Instruction (SPI).

- Responding to, preparing for, and participating in negotiations regarding the development and execution of a memorandum of understanding to clarify the relationship between the charter school and school districts and delineates the responsibilities of the charter school that are not covered by the Charter Schools Act and the delivery of services provided by the school district or county office (e.g., special education services and funding).
- Responding to, preparing for, and participating in administrative proceedings which involve the school district or county office of education as the charter granting agency (e.g. audits of the charter school by the Controller).
- Responding to, preparing for, and participating in dispute resolution proceedings with a school district or county office granted charter school.
- Providing reimbursement to the Charter School Revolving Loan Fund for monies loaned to a charter school that is formed as or operated by a nonprofit public benefit corporation.
- Requesting, reviewing, analyzing and processing financial information and data from charter schools and compiling required forms and reports to submit to the CDE.
- Reviewing, analyzing, and modifying the SELPA plan and allocation plan to meet the needs of charter schools as specified in the revisions to Charter Schools Act.
- Receipt, review and analysis of the charter school annual independent financial audit, including the costs of meeting with the charter school and discussing and resolving any audit deficiencies.

For charter schools, claimants request reimbursement for:

- Responding to information requests from the granting authority or from the Superintendent of Public Instruction (SPI) and, preparing for, and participating in meetings regarding this information.
- Contracting with a third party to perform an annual financial audit.
- Preparation for and meeting with parents and teachers on an annual basis regarding the charter schools educational program.
- Reviewing and analyzing attendance data and conducting a public random drawing if the number of pupils who wish to attend the charter school exceeds the school's capacity.
- Advertising, interviewing, verifying credentials, and hiring credentialed teachers. Any additional teacher costs incurred as a result of having to hire credentialed teachers is reimbursable.
- Responding to, preparing for, and participating in dispute resolution proceedings with a school district or county office that granted the charter school.
- Responding to, preparing for, and participating in discussions with the granting authority regarding notices to cure. This activity includes receipt and review of notices, meeting, discussing, and corresponding with the granting authority regarding the alleged violation and any proposed cure, and reviewing and analyzing any proposed cure of the violation.

- Calculating, processing and paying the supervisorial oversight fee required by Education Code section 47613.7. This activity includes the cost of the fee paid by the charter school to the granting agency.
- Creation and maintenance of written contemporaneous records that document pupil attendance. This activity shall include the cost of producing these records for audit and inspection.
- Reviewing and certifying that pupils have participated in required state testing programs.
- Increasing instructional minutes offerings to meet the minimums stated in Education Code section 46201.
- Reviewing, analyzing and modifying a charter school independent study program to comply with Article 5.5 of the Education Code (commencing with Section 51745) and implementing regulations adopted thereunder. This activity includes the costs of any additional staff or staff time necessary to meet the minimum staffing ratios.
- Calculating, compiling and responding to requests from the granting agency for financial data to be reported to the state. This activity includes the cost of software and consultants necessary to compile the information to be compatible with the granting agency's reporting format (e.g. SACS).
- Preparing and adopting policies, procedures, and forms for the activities required by the test claim statutes and executive orders and training staff regarding the requirements of the test claim legislation and the policies, procedures and forms.

The claim includes a declaration certifying that the costs stated are true and correct, and that estimated costs exceed $200, which was the standard under Government Code section 17564, subdivision (a), when the claim was filed.[12]

Claimants request that the *Charter Schools* parameters and guidelines be amended to include the new reimbursable activities in this Statement of Decision.

Claimants did not comment on the draft staff analysis.

State Agency Positions

The Department of Finance (DOF) submitted comments in October 2000, stating that charter schools are not eligible claimants because they are not "school districts" within the meaning of Government Code section 17551, and that their existence is voluntary. DOF also argues that many of the alleged activities are part of the school districts' normal overhead and operating cost, i.e., they are basic costs of doing business that are covered by general purpose appropriations. DOF further asserts that the state provided the school districts with authority to charge charter schools for administrative services provided to them, and that many of the pled activities are wholly optional and voluntary. These comments are discussed below.

No other state agencies commented on the test claim.

[12] Currently, the claim must exceed $1,000 in costs (Gov. Code, § 17564, subd. (a)).

DOF submitted comments on the draft staff analysis, agreeing that charter schools are not eligible claimants, and that school districts making written factual findings when denying a charter petition is not a reimbursable activity. As more fully explained in the analysis below, DOF disagrees with the draft analysis that the May 22, 2000 CDE letter contains a reimbursable mandate for reporting financial information, and disagrees that the transfer of funding in lieu of property taxes pursuant to Education Code section 47635 is a reimbursable mandate.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[13] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[14] "Its purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[15] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[16]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[17]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state

---

[13] Article XIII B, section 6, subdivision (a), (as amended by Proposition 1A in 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

[14] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[15] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[16] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174 (*Long Beach Unified School Dist.).*

[17] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

policy, but does not apply generally to all residents and entities in the state.[18] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[19] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[20]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[21] -

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[22] In making its decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[23]

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

A. Are charter schools eligible claimants?

The first issue, which is one of first impression for the Commission, is whether charter schools are eligible claimants, independent of the school district that granted the charter.

By way of background, charters schools are formed through a petition signed by either (1) at least one-half of the parents of the pupils that the charter school estimates will enroll in the school in its first year of operation, or (2) at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year.[24] Charters are submitted to a school district that must approve it unless the district makes specified written

---

[18] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[19] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[20] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[21] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[22] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

[23] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[24] Education Code section 47605, subdivision (a)(1). In the case of an existing public school conversion to a charter school, the petition must be signed by not less than 50 percent of the permanent status teachers currently employed at the school (Ed. Code, § 47605, subd. (a)(2)).

findings regarding defects in the petition, the proposed program, or the charter.[25] If the district denies the petition, petitioners can appeal to the county office of education or State Board of Education.[26] In certain situations, petitioners can apply for a charter directly to the county office of education[27] or State Board of Education.[28]

Claimants argue that a charter school qualifies as a "school district" or alternatively, as a "local agency." They cite section 47615, subdivision (a)(2): "charter schools are under the jurisdiction of the public school system." Claimants also cite former section 47630 that states legislative intent "that each charter school shall be provided with operational funding that is equal to the total funding that would be available to a similar school serving a similar student population." Claimants further submit that the State Controller's Office treats charter schools as eligible claimants, which claimants assert, "is the only way charter schools will receive the full and fair funding the Legislature envisioned." Claimants argue that this treatment,

> … is consistent with the treatment of charter schools as a [sic] "school districts" for numerous other requirements of law (e.g., for special education – see Education Code Section 47640 et seq. which allows charter schools to be treated as a separate local educational agency; Education Code Section 47611.5 which allows charter schools to be treated as the school district "employer" for purposes of collective bargaining under the EERA; and Education Code Section 47650 and 47651 indicating a charter school shall be deemed to be a "school district" for purposes of funding which it shall receive directly from the State).

In its comments on the test claim, DOF argues that a charter school is not a proper claimant because it "is not a 'school district' within the meaning of Government Code section 17551."[29] DOF further states:

> [U]nlike school districts, charter schools upon seeking to be chartered and upon having their charter reauthorized every five years, operate an optional program and thus choose to accept the State's requirements for such operation. … [T]he charter school is simply an alternative to traditional public schools and are voluntarily created and reauthorized.[30]

As discussed below, the Commission finds that charter schools are not eligible claimants under article XIII B, section 6 and applicable statutes.

---

[25] Education Code section 47605, subdivision (b).

[26] Education Code section 47605, subdivision (j).

[27] Education Code sections 47605.5 and 47605.6.

[28] Education Code section 47605.8.

[29] See Opposition and Recommendation of Department of Finance on 99-TC-14, submitted October 13, 2000, page 3. The definition of school district, for mandate purposes is actually in Government Code section 17519: "'School District' means any school district, community college district, or county superintendent of schools."

[30] Opposition and Recommendation of Department of Finance on 99-TC-14, submitted October 13, 2000, pages 3 and 14.

In the *Kern High School Dist.* case,[31] the California Supreme Court considered whether school districts have a right to reimbursement for costs in complying with statutory notice and agenda requirements for various education-related programs that are funded by the state and federal government. The court held that in eight of the nine programs at issue, the claimants were not entitled to reimbursement for notice and agenda costs because district participation in the underlying program was voluntary. As the court stated, "if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate."[32]

In this case, the charter school is *voluntarily* participating in the charter program at issue. Because charter schools are initiated by petition of either parents or teachers, they are created voluntarily. No state mandate requires them to exist. Consequently, based on the reasoning in the *Kern* case regarding voluntary participation, charters schools are not entitled to reimbursement under article XIII B, section 6.

A second reason charter schools are not eligible for mandate reimbursement is because they are not part of the definition in Government Code section 17519, which defines "school district" for purposes of mandate reimbursement, as "any school district, community college district, or county superintendent of schools."

As to this statutory argument, DOF asserts (1) charter schools are not "school districts" within the meaning of Government Code section 17551 and therefore, there is no statutory authority for the Commission to hear the school's claim; (2) standard statutory construction and the plain meaning of Government Code section 17551 show that charter schools are not school districts within the meaning of section 17551; (3) both the Courts and the Attorney General have concluded that charter schools are neither legally separate nor independent from the chartering school district; (4) charter schools do not resemble, behave as, or have the powers of school districts and therefore they are not school districts; (5) good public policy and common sense dictate that the Legislature must be able to make changes to the experimental system. DOF argues that finding that charter schools are school districts for the purposes of mandate funding would frustrate that policy.

Claimants note that charter schools are treated as school districts for some purposes, such as special education,[33] collective bargaining,[34] and apportionment of funds.[35] The Commission notes that charter schools are deemed school districts for purposes of "Sections 8 and 8.5 of Article XVI of the California Constitution [Proposition 98 school funding.]"[36]

---

[31] *Kern High School Dist., supra,* 30 Cal.4th 727.

[32] *Id.* at page 743. Emphasis in original.

[33] Education Code section 47604 et seq.

[34] Education Code section 47611.5.

[35] Education Code sections 47612, subdivision (c), 47650 and 47651.

[36] Education Code sections 47612, subdivision (c).

These examples, however, underscore that charter schools are not treated as school districts for purposes of mandate reimbursement under article XIII B, section 6. Charter schools are not mentioned in the mandates statutes (Gov. Code, § 17500 et seq.), nor are they considered "school districts" for purposes of mandate reimbursement in the charter school statutes (Ed. Code, § 47600 et seq.).

Charter schools were established in 1992 (Stats. 1992, ch. 781), long after the Commission's statutory scheme in 1984. Although both statutory schemes have been amended in recent years,[37] the Legislature has not amended either scheme to make charter schools eligible claimants. For example, the definition of "school district" in Government Code section 17519 does not include charter schools. Nor can charter schools be read into that definition. The Commission, like a court, may not add to or alter the statutory language to accomplish a purpose that does not appear on the face of the statute or from its legislative history, where the language is clear.[38]

Moreover, the California Supreme Court has stated, "Where a statute, with reference to one subject [whether school districts includes charter schools] contains a given provision, the omission of such provision from a similar statute concerning a related subject … is significant to show that a different intention existed."[39] Thus, that the Legislature deemed a "charter school" to be a school district for some purposes (such as special education for example) cannot be interpreted to mean that a "charter school" should be deemed a school district for other purposes, such as mandate reimbursement. The omission of "charter school" from the definition of school districts in Government Code section 17519 is significant to show a different intention: that charter schools are not eligible for mandate reimbursement.

Therefore, the Commission finds that charter schools are not eligible claimants for purposes of article XIII B, section 6 of the California Constitution. Thus, the charter school activities in the test claim are not reimbursable.

B. Does the Commission have jurisdiction over Statutes 1998, chapters 34 and 673, both of which were pled under the *Charter Schools II* test claim?

Claimants plead Statutes 1998, chapters 34 and 673 that amended Education Code section 47605 and former 47613.7 (now § 47613). Both of these 1998 chapters and code sections were pled and decided in the *Charter Schools II* test claim (99-TC-03). Thus, the question is whether the Commission has jurisdiction over those statutes in the current test claim.

An administrative agency does not have jurisdiction to rehear a decision that has become final.[40] Since *Charter Schools II* was decided in November 2002, it became final in November 2005

---

[37] For charter schools, in addition to the test claim statutes, see e.g., Statutes 2003, chapter 892. For the Commission, see e.g., Statutes 2004, chapter 890, Statutes 2002, chapter 1124, and Statutes 1999, chapter 643.

[38] *In Re. Jennings* (2004) 34 Cal. 4th 254, 265.

[39] *Id.* at page 273.

[40] *Heap v. City of Los Angeles* (1936) 6 Cal.2d 405, 407. *Save Oxnard Shores v. California Coastal Commission* (1986) 179 Cal.App.3d 140, 143.

when the three-year statute of limitations expired.[41] A closer look at the statutes pled in that claim is warranted, however, to see whether the Commission heard and decided Education Code sections 47605 and 47613, as amended by Statutes 1998, chapters 34 and 673.

The *Charter Schools II* Statement of Decision made findings on all of section 47613 (among others not relevant here), but only made findings on subdivisions (j) and (k) of section 47605. The Commission found that section 47605, subdivision (j)(1), imposed a mandate for reviewing charter petitions submitted to the county board of education when the school district denies a charter school petition. The Commission also found that section 47605, subdivision (j)(3) did not impose a reimbursable state mandate for judicial review for a county board of education that fails to act on a charter petition within 120 days of receipt. As to subdivision (k)(3), the Commission found that it is reimbursable for school district review of charter petitions for renewal under certain circumstances. Regarding section 47613, which authorizes school districts or other chartering agencies to charge fees for supervisorial oversight of charter schools, the Commission found it is not a reimbursable state mandate.

In the current test claim, claimants also plead sections 47605 and 47613.7 (among others). Therefore, since some amendments to section 47605 were not decided in the *Charter Schools II* claim (only subdivisions (j) and (k) were pled and decided) the Commission finds that it retains jurisdiction over subdivision (b) of section 47605.[42] However, the Commission finds that it does not have jurisdiction over claims of activities based in section 47605, subdivisions (j)[43] and (k), and 47613.7 (now § 47613),[44] as amended by Statutes 1998, chapters 34 and 673, because these provisions were decided in the *Charter Schools II* test claim.

In sum, the Commission finds that it has jurisdiction over subdivision (b) of section 47605 amended by Statutes 1998, chapter 34 and 673, which is further discussed below. This includes the activities claimants allege of "preparing and adopting policies, procedures and forms for reviewing and approving or denying charter petitions and other [related] activities … and training staff regarding the requirement of the test claim legislation and the policies, procedures and forms." Claimants also plead, as an activity under section 47605, subdivision (b) (as amended by Stats. 1998, ch. 34) the activities of (1) requiring "a school district or county office

---

[41] The statute of limitations for an administrative decision pursuant to Code of Civil Procedure section 1094.5 is three years. (Code Civ. Proc., § 338; *Long Beach Unified School Dist., supra*,, 225 Cal.App.3d at p. 169.)

[42] The Commission would also have jurisdiction over subdivisions (c), (d) and (l) of section 47605, but the claimants only plead charter school activities based on those subdivisions, and charter schools are not eligible claimants as discussed above.

[43] Section 47605, subdivision (j) (as amended by Stats. 1998, ch. 34) authorizes an appeal of a denied charter to SBE or county office of education. Claimant pled the activity of, "responding to information for requests from CDE or SBE for a charter that has been appealed to SBE."

[44] Section 47613 authorizes the school district to charge a fee to the charter school for "supervisorial oversight." In addition to a charter school activity (discussed above), claimants plead the activity of "Responding to, preparing for, and participating in administrative proceedings which involve the school district or county office of education as the charter granting agency (e.g., audits of the charter school by the Controller)."

of education to make written factual findings, specific to a particular charter school petition, setting forth specific facts for denial of a charter petition," and (2) "responding to, preparing for, and participating in judicial appeals of decisions to approve a charter school petition, and if required, reconsider the petition."

C. Are any of the claimed school district activities federal mandates?

Special education: Claimants plead sections 47640-47647 (as added by Stats. 1999, ch. 78) for: "Reviewing, analyzing, and modifying the SELPA plan[45] and allocation plan to meet the needs of charter schools as specified in the revisions to Charter Schools Act."

Sections 47640 through 47647 were added to the Education Code to deem a charter school a "local education agency" for purposes of special education funding and compliance with the Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.).

Former section 47642 (as added by Stats. 1999, ch. 78) stated:

> Notwithstanding Section 47651, [regarding apportionment of funds] all state and federal funding for special education apportioned on behalf on [sic] pupils enrolled in a charter school shall be included in the allocation plan adopted pursuant to subdivision (i) of Section 56195.7 [regarding the policymaking process for multidistrict SELPA distribution of state and federal funds among local education agencies] or Section 56836.05, [regarding multidistrict SELPA annual allocation plans] or both, **by the special education local plan area that includes the charter school.** [Emphasis added.]

Section 47643 (as added by Stats. 1999, ch. 78) states:

> If the approval of a petition for a charter school requires a change to the allocation plan developed pursuant to subdivision (i) of Section 56195.7 or Section 56836.05, the change shall be adopted pursuant to the policymaking process of the special education local plan area.

Thus, the plain language of these test claim statutes requires including charter schools in SELPA plans. The issue is whether doing so is a federal mandate.

The federal statute cited in the test claim legislation[46] is the Individuals with Disabilities Education Act (IDEA) (20 U.S.C. § 1400 et seq.), the purposes of which, among other things, is:

> (1)(A) to ensure that all children with disabilities have available to them a free and appropriate public education that emphasizes special education and related services … (B) to ensure that the rights of children with disabilities and parents … are protected; and (C) to assist States, localities, educational services agencies,

[45] SELPA stands for "Special Education Local Plan Area." It is a geographical region of school districts and the county office of education formed to provide the special education service needs of children living within the boundaries. Each SELPA develops a plan for special education services.

[46] See sections 47640, 47641, subdivision (a), and 47646, subdivision (a).

> and Federal agencies to provide for the education of all children with disabilities …[47]

Other purposes of the IDEA include, "early intervention services for infants and toddlers with disabilities … to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities…and to assess, and ensure the effectiveness of efforts to educate children with disabilities."[48] Assistance is available to states[49] and local educational agencies[50] that meet specified criteria.[51] IDEA also provides for Individualized Education Programs.[52] The predecessor to IDEA is the federal Education of the Handicapped Act, which since its 1975 amendments has,

> … required recipient states to demonstrate a policy that assures all handicapped children the right to a free appropriate education. (20 U.S.C. § 1412 (a).) The act is not merely a funding statute; rather, it establishes an enforceable substantive right to a free appropriate public education in recipient states [citations omitted]. … The Supreme Court has noted that Congress intended the act to establish "a basic floor of opportunity that would bring into compliance all school districts with the constitutional right to equal protection with respect to handicapped children." [Citations omitted.][53]

In *Hayes v. Commission on State Mandates*, the court held that the Education of the Handicapped Act (later renamed IDEA) is a federal mandate on California.[54] *Hayes* also held, "To the extent the state implemented the act [IDEA] by freely choosing to impose new programs or higher levels of service upon local school districts, the costs of such programs or higher levels of service are state mandated and subject to subvention."[55]

Since the *Hayes* court concluded that the state had "no true choice" in whether or not to implement the federal statute, the issue is whether California has a choice whether to make charter schools subject to IDEA. The Commission finds that it does not.

IDEA provides for subgrants to local educational agencies, "including public charter schools that operate as local educational agencies."[56]

---

[47] Title 20 United States Code section 1400 (d).

[48] *Ibid*.

[49] Title 20 United States Code sections 1411 and 1412.

[50] Title 20 United States Code section 1413.

[51] *Ibid.* Also, 34 Code of Federal Regulations part 300.110 (1999).

[52] Title 20 United States Code section 1414 (d).

[53] *Hayes v. Commission on State Mandates* (1992) 11 Cal. App. 4th 1564, 1587.

[54] *Id.* at page 1592.

[55] *Id.* at page 1594.

[56] 20 United States Code section 1411 (f).

IDEA also provides that,

> A local educational agency is eligible for assistance under this subchapter for a fiscal year if such **agency submits a plan** that provides assurances to the State educational agency that the local education agency meets each of the following conditions: …"[57] [¶]…[¶]
>
> (5) In carrying out this subchapter with respect to charter schools that are public schools of the local educational agency, the local educational agency –
>
> (A) serves children with disabilities attending those charter schools in the same manner as the local educational agency serves children with disabilities in its other schools, including providing supplementary and related services **on site at the charter school** to the same extent to which the local educational agency has a policy or practice of providing such services on the site to its other public schools; and
>
> (B) provides funds under this subchapter to those **charter schools** (i) on the same basis as the local educational agency provides funds to the local educational agency's other public schools, including proportional distribution based on relative enrollment of children with disabilities; and (ii) at the same time as the agency distributes other Federal funds to the agency's other public schools, **consistent with the State's charter school law**.[58] [Emphasis added.]

Since IDEA requires local educational agencies to submit a plan that treats charter schools the same as other schools for purposes of funding and pupils with disabilities, the Commission finds that the plan is federally mandated, as are any amendments to the plan. Thus, because they are federal mandates, the Commission finds that sections 47640-47647 (as added by Stats. 1999, ch. 78) are not state mandates subject to article XIII B, section 6.

D. Does the test claim legislation mandate an activity on school districts or county offices of education within the meaning of article XIII B, section 6?

As stated above, a test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[59] Thus, the issue here is whether the test claim statutes or executive order require an activity of school districts.

Judicial appeals: Claimants plead the activity of responding to, preparing for, and participating in judicial appeals of decisions to approve a charter school petition, and if required, reconsider the petition.[60] Claimants state that before the amendments to the Charter Schools Act by Statutes 1998, chapter 34, a school district had the discretion to deny a charter, but that a

---

[57] 20 United States Code section 1413 (a). Although this statute reads as though it were a condition on funding, the *Hayes* case makes it clear that IDEA is a federal mandate.

[58] 20 United States Code section 1413 (a)(5).

[59] *Long Beach Unified School Dist. v. State of California, supra,* 225 Cal.App.3d 155, 174.

[60] Claimants note that the *Charter Schools II* test claim alleged costs for responding to, preparing for, and participating in judicial appeals of decisions to deny a charter school petition, while this test claim alleges costs for granting the charter.

substantial part of that discretion is removed by chapter 34. Thus, according to claimants, the law may compel a school district to grant a charter that may be challenged.

DOF states that claimants fail to explain how this is a "new program" or provides a "higher level of service." DOF also states the following:

> [P]etitioners … have always had the ability to sue chartering school districts if they believed the law had been violated in the denial of their application. The amendment to section 47605 (b) does not change the legal rights of any party and actually aids the chartering school district because they now have standards with which they make their decision and by which a good defense can be raised. Moreover, with regards to the concern over litigation, there is no action required by this statute.

There is no mention of judicial review in Statutes 1998, chapter 34, (except in amended subdivision (j)(3), over which the Commission has no jurisdiction as discussed above).[61] Even if there were, preparation for or participation in judicial review proceedings is not mandated by law. Rather, they are voluntary responses to a lawsuit. Thus, the Commission finds that the activity of participating in judicial appeals is not mandated by the statute.

Review audit: Claimants plead the activity of "Receipt, review and analysis of the charter school annual independent financial audit. This activity shall include the costs of meeting with the charter school and discussing and resolving any audit deficiencies" (Ed. Code, § 47605, subd. (b)(5)(I) as amended by Stats. 1998, ch. 34).

This provision requires a school district to make written factual findings if a charter petition does not contain reasonably comprehensive descriptions as specified. One of the descriptions it must contain is (the strikeout and italics show how this statute was amended by Stats. 1998, ch. 34):

> (I) The manner in which ~~an annual audit of the financial and programmatic operations of the school is to be conducted~~ annual*, independent,* financial *audits shall* be conducted*, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.*

DOF argues that there is no requirement for the chartering school district to meet and confer with a charter school. The district is merely authorized to seek a meeting. DOF also states that the district administration fee would cover this activity, and that this activity should already be reimbursed as part of the *Charter Schools* parameters and guidelines, which provides reimbursement for monitoring charter school performance to determine if it has achieved its goals and objectives.

Because the statute merely describes a provision the charter must contain, the Commission finds that section 47605, subdivision (b)(5)(I), as amended by Statutes 1998, chapter 34, does not mandate an activity and therefore is not subject to article XIII B, section 6.

---

[61] The *Charter Schools II* Statement of Decision found that costs for judicial review are not reimbursable (based on § 47605, subd. (j)(3), as amended by Stats. 1998, ch. 673).

Negotiation for operational funds: Claimants plead the activity of **"**Responding to, preparing for, and participating in negotiations with the charter school regarding a share of the school district or county office's operational funding that a charter school does not receive under Chapter 6." (Ed Code, § 47636, as added by Stats. 1999, ch. 78.)

Statutes 1999, chapter 78, added chapter 6 (§§ 47630-47664, among others) to the Education Code. Section 47636 states, in part, "(b) This chapter *may not be construed to prevent* a charter school from negotiating with a local educational agency for a share of operational funding from sources not otherwise set forth in this chapter …" [Emphasis added.]

DOF states that this section does not require any activity on the part of the chartering school district. "If the …district chooses to 'meet and negotiate' with the charter school such activity is clearly permitted, but is certainly not required."

Because the language of the statute authorizes negotiation, but does not require it, the Commission finds that section 47636, as added by Statutes 1999, chapter 78, does not mandate an activity, and is therefore not subject to article XIII B, section 6.

Dispute resolution: Claimants plead the activity of "Responding to, preparing for, and participating in dispute resolution proceedings with a school district or county office that granted the charter school" (former Ed Code, § 47605 (b)(14) as amended by Stats. 1996, ch. 786, currently § 47605, subd. (b)(5)(N)).

Section 47605, subdivision (b)(5)(N) requires the charter to include a description of "The procedures to be followed by the charter school and the entity granting the charter to resolve disputes relating to provisions of the charter."

DOF states that "there is no requirement for formal proceedings in the statute. … it is simply a requirement placed on the petitioner to describe the procedure. …even if some action is mandated, this can certainly reimbursed [sic] from any the [sic] administrative fees that may be charged … to a charter school."

This statute merely requires the charter petitioner to put a description of dispute resolution procedures in the charter. Thus, the Commission finds that former section 47605, subdivision (b)(14), as amended by Statutes 1996, chapter 786, is not subject to article XIII B, section 6, because it does not mandate a school district to participate in dispute resolution.

Negotiations and memorandum of understanding: Claimants also plead the activities of responding to, preparing for, and participating in negotiations regarding the development and execution of a memorandum of understanding to clarify the relationship between the charter school and school districts that delineates the responsibilities of the charter school that are not covered by the Charter Schools Act and the delivery of services provided by the school district or county office (e.g., special education services and funding).

There is no statutory requirement to participate in negotiations and execute a memorandum of understanding to clarify the relationship between the charter school and the school district. Therefore, the Commission finds that this activity is not subject to article XIII B, section 6.

Reimburse loan fund: Claimants plead two activities based on section 41365 (as amended by Stats. 1999, ch. 736). First, claimants plead providing reimbursement to the Charter School Revolving Loan fund for monies loaned to a charter school that is formed as or operated by a

nonprofit public benefit corporation. Claimants also plead the activity of being liable for a loan that was made to a charter school that is incorporated. The statute at issue was amended by Statutes 1999, chapter 736 as follows (note strikeout deletions and italics for additions):

> (b) Loans may be made from moneys in the Charter School Revolving Loan Fund to ~~school districts~~ *a chartering authority* for charter schools that are not a conversion of an existing school*, or directly to a charter school that qualifies to receive funding pursuant to Chapter 6 (commencing with Section 47630) that is not a conversion of an existing school,* upon application of a ~~school district~~ *chartering authority or charter school* and approval by the Superintendent of Public Instruction. A loan is for use by the charter school during the period from the date the charter is granted pursuant to Section 47605 ~~and~~ *to* the end of the fiscal year in which the charter school first enrolls pupils. Money loaned to a ~~school district~~ *chartering authority* for a charter school, *or to a charter school,* pursuant to this section shall be used only to meet the purposes of the charter granted pursuant to Section 47605. The loan to a ~~school district~~ *chartering authority* for a charter school, *or to a charter school,* pursuant to this subdivision shall not exceed *two hundred* fifty thousand dollars ~~($50,000)~~ *($250,000)*. This subdivision does not apply to a *charter school that obtains* renewal of a charter pursuant to Section 47607.
>
> (c) ~~During each of the two successive fiscal years~~ Commencing with the first fiscal year following the fiscal year the charter school first enrolls pupils, the Controller shall deduct from apportionments made to the ~~school district~~ *chartering authority or charter school,* ~~, an amount equal to one-half of the amount loaned to the school district~~ for the charter school under this section and pay the same amount into the Charter School Revolving Loan Fund in the State Treasury. *Repayment of the full amount loaned to the chartering authority shall be deducted by the Controller in equal annual amounts over a number of years agreed upon between the loan recipient and the State Department of Education, not to exceed five years for any loan.*
>
> *(d) (1) Notwithstanding other provisions of law, a loan may be made directly to a charter school pursuant to this section only in the case of a charter school that is incorporated.*
>
> *(2) Notwithstanding other provisions of law, in the case of default of a loan made directly to a charter school pursuant to this section, the chartering authority shall, also, be liable for repayment of the loan.*

Claimants plead two activities. As to the first: 'reimbursing the loan fund for loan(s) to a charter school that is formed as or operated by a nonprofit public benefit corporation,' there is no language in the statute that requires this. Obtaining a loan is merely authorized. Subdivision (d)(1) states, "a loan *may* be made directly to a charter school …" [Emphasis added.] Therefore, the Commission finds that this activity is not mandated by the state, and therefore, not subject to article XIII B, section 6.

As to the second activity of being liable for a charter school loan in the event of default, subdivision (d)(2) of section 41365 (as amended by Stats. 1999, ch. 736) states, "in the case of

default of a loan made directly to a charter school pursuant to this section, the chartering authority shall,[62] also, be liable for repayment of the loan." However, being liable for a loan is not a reimbursable activity. Repayment is provided for in subdivision (c) of the statute by requiring the State Controller to deduct loan payments. As to the loan itself, reduction in state funding (in this case, for the Controller to deduct loan payments) does not transform the costs into a reimbursable mandate.[63]

Therefore, the Commission finds that school district liability for a charter school loan is not a reimbursable activity subject to article XIIIB, section 6.[64]

Findings on denial: Claimants plead the activity of requiring "a school district or county office of education to make written factual findings, specific to a particular charter school petition, setting forth specific facts for denial of a charter petition." (Ed. Code, § 47605, subd. (b), as amended by Stats. 1998, ch. 34).

The 1998 amendment added to the statute, in pertinent part, "The governing board of the school district shall not deny a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one, or more, of the following findings: …"

DOF comments as follows:

> Section 47605 (b), amended by Chap. 34/98, creates a state mandate because a *Chartering School District* is now required to make written factual findings regarding a particular charter school petition. … While this explicit requirement is new, DOF requests the Commission to develop the parameters and guidelines for this within the context of *Charter Schools I.*

Section 47605, subdivision (b), mandates an activity on school districts by requiring written factual findings when a charter petition is denied. Therefore, the Commission finds that this statute is subject to article XIII B, section 6,[65] so it is further discussed below under issues 2 and 3.

---

[62] According to Education Code section 75, "'Shall' is mandatory and 'may' is permissive."

[63] *Kern High School Dist., supra,* 30 Cal.4th 727, 748, citing *County of Sonoma, supra,* 84 Cal.App.4th 1264.

[64] As alternative grounds for denial, the activity is not new, as school districts were liable for loans under the prior statute (former Ed. Code, § 41365, subd. (b)). And the test claim statute was later amended (Stats. 2000, ch. 586) to make charter schools liable for their own loans.

[65] Claimants also plead the following activities: (1) preparing and adopting policies, procedures, and forms for reviewing and approving or denying charter petitions, and other activities required by the test claim statutes and executive order and (2) training staff regarding the requirement of the test claim legislation and the policies, procedures and forms. Claimants provide no citation or authority for these activities.

Subdivision (b) of section 47605 states that after charter petition review and a public hearing, "the school district shall either grant or deny the charter" within a specified timeframe unless

Transfer funds in lieu of property taxes: Claimants plead the activity of "Calculating, processing and advancing payments of property taxes to charter schools."

The test claim statute, Education Code section 47635, states in part:

> (a) A sponsoring local educational agency ***shall*** annually transfer to each of its charter schools funding in lieu of property taxes equal to the lesser of the following two amounts: … (b) The sponsoring local educational agency ***shall*** transfer funding in lieu of property taxes to the charter school in monthly installments, by no later than the 15th of each month.[66] [Emphasis added.]

DOF argues that these requirements do not constitute a new program or higher level of service because the district would have to incur financing costs and interest for the average daily attendance irrespective of the child's attendance in a charter school or other school in the district. DOF argues that "in virtually all cases where financing would have been necessary, the chartering school district would incur the cost of financing cash flow for property tax timing with or without the charter school in existence."

Section 47635 requires a school district or county office of education to transfer funding as prescribed because it uses the word "shall."[67] The Commission finds, therefore, that section 47635, as added by Statutes 1999, chapter 78, is subject to article XIII B, section 6 because it mandates an activity on a "sponsoring local educational agency" (i.e., school district or county office of education).

Financial information: Claimants plead the activity of "Requesting, reviewing, analyzing and processing financial information and data from charter schools and compiling required forms and reports to submit to the CDE. Claimants maintain that this activity is mandated by a letter from CDE, dated May 22, 2000, which requires charter granting agencies to include charter school financial information in the granting agency's annual statement of all receipts and expenditures.

The Commission finds that the CDE letter is an "executive order" as defined by Government Code section 17516.[68] The letter states, in pertinent part,

---

the district makes "written factual findings, specific to the particular petition" that it should not be approved. Criteria for denial are also specified under subdivision (b). However, the claimed activities of preparing policies and procedures and training staff do not appear on the face of the statute. Therefore, the Commission finds that adopting policies and procedures and forms are not activities that are mandated by the state under section 47605, subdivision (b). These activities may be considered during the parameters and guidelines phase to determine whether they are "the most reasonable methods of complying with [a] mandate." (Cal. Code Regs., tit 2, § 1183.12, subd. (b)(2)).

[66] Added by Statutes 1999, chapter 78.

[67] Education Code section 75: "'Shall' is mandatory and 'may' is permissive."

[68] According to Government Code section 17516, an 'executive order' for mandates purposes is "any order, plan, requirement, rule, or regulation issued by any of the following: (a) The Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government."

> Because the LEA [local educational agency, i.e., school district] is responsible for reporting all of its revenues and expenditures [Ed. Code, §§ 1628 & 42100] the LEA must include the revenues and expenditures generated by the charter school in the LEA's annual statement.

CDE required including this information in the annual statement only between May 22, 2000 and June 30, 2001, because the May 22, 2000 CDE letter was superseded by subsequent CDE correspondence. In a letter to county education officials dated April 5, 2004, CDE states,

> The submission of charter school financial data to CDE has been optional for the past two fiscal years. Now that the regulations and reporting formats required by *Education Code* sections 1628 and 42100 (as amended by AB 1994) are in place, **charter school financial reporting is required for fiscal year 2003-2004 and for subsequent fiscal years**.[69] [Emphasis in original.]

Given that the submission of charter school financial data to CDE has "been optional for the past two fiscal years," referring to fiscal years 2001-2002 and 2002-2003, the reports were voluntary during that period and therefore were not mandated by the state. The Commission finds, therefore, that the charter school financial information submitted by a school district or county office of education to CDE is only a mandated activity from May 22, 2000 (the date of the CDE letter) until June 30, 2001 (the last date of fiscal year 2000-2001).

DOF states, "This is not a mandate because financial reporting from schools within a district is not a new program. These activities were always a part of the duties of the District and would be necessary without designation of a school as a charter school." DOF's argument goes to the existence of a new program or higher level of service (discussed below), not a state-mandated program.

There is no requirement in the CDE letter, as claimant alleges, for "requesting, reviewing, analyzing and processing" financial information. Therefore, the Commission finds that these activities are not mandated by the letter, but they may be considered during the parameters and guidelines phase to determine whether they are the most reasonable methods of complying with the mandate.[70]

The CDE letter, however, uses the term 'must,' which is mandatory.[71] Thus, based on its plain language, the Commission finds that between May 22, 2000 and June 30, 2001, the CDE letter imposed a state mandate on school districts for including the revenues and expenditures generated by the charter school in the LEA's annual statement, in a format specified by CDE. Since this activity is subject to article XIII B, section 6, it is further discussed below.

---

[69] See <http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp> as of January 20, 2006. Because no test claim has been filed on it, the Commission makes no finding on this April 5, 2004 CDE letter or the statutes cited in it.

[70] California Code of Regulations, title 2, section 1183.12, subdivision (b)(2).

[71] *California Teachers Assn. v. Governing Board* (1977) 70 Cal.App.3d 833, 842.

E. Does the remaining test claim legislation constitute a "program" within the meaning of article XIII B, section 6?

Of the activities discussed above, only the following are subject to article XIII B, section 6. Thus, the "test claim legislation" now refers only to these activities and statutes or executive order:

- **Findings on denial:** making written factual findings, specific to a particular charter school petition, setting forth specific facts for denial of a charter petition, (§ 47605, subd. (b), as amended by Stats. 1998, ch. 34).
- **Transfer funds in lieu of property taxes:** transferring funds in lieu of property tax payments to charter schools, (§ 47635, added by Stats. 1999, ch. 78).
- **Financial information:** between May 22, 2000 and June 30, 2001, including the revenues and expenditures generated by the charter school in the LEA's annual statement (letter from CDE, dated May 22, 2000).

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state. [72] Only one of these findings is necessary to trigger article XIII B, section 6. [73]

The remaining activities at issue concern administration and oversight of charter schools or handling of charter school petitions, all of which are related to public education. The courts have held that education is a peculiarly governmental function administered by local agencies as a service to the public. [74] Thus, the Commission finds that the test claim legislation constitutes a program that carries out the governmental function of providing a service to the public.

Moreover, the activities are solely applicable to school districts or county offices of education. Therefore, the test claim legislation imposes unique requirements on these organizations that do not apply generally to all residents or entities of the state. Accordingly, the Commission finds that the test claim legislation constitutes a "program" and is therefore subject to article XIII B, section 6 of the California Constitution.

---

[72] *County of Los Angeles, supra,* 43 Cal.3d 46, 56.

[73] *Carmel Valley Fire Protection District v. State of California, et al.* (1987) 190 Cal.App.3d 521, 537.

[74] *Long Beach Unified School Dist., supra,* 225 Cal.App.3d at 172 states, "although numerous private schools exist, education in our society is considered to be a peculiarly governmental function ... administered by local agencies to provide service to the public."

Issue 2: Does the test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6?

To determine whether the "program" is new or imposes a higher level of service, the test claim legislation is compared to the legal requirements in effect immediately before enacting the test claim legislation.[75] Each activity is discussed separately.

Findings on denial: Section 47605, subdivision (b), as amended by Statutes 1998, chapter 34, prohibits districts from denying a charter petition unless it makes written findings of fact that (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not contain reasonably comprehensive descriptions of specified subject matter.

Prior law authorized the district to approve the charter if it determined that the petition contained the required number of signatures and descriptions of (1) the educational program of the school, (2) the measurable pupil outcomes, (3) method by which pupil progress toward meeting pupil outcomes is measured; (4) governance structure of the school, including process to ensure parental involvement; (5) qualifications of employees; etc (all of which are still required in the charter).

DOF comments "while this explicit requirement is new, DOF requests the Commission to develop the parameters and guidelines for this within the context of *Charter Schools I* [under which districts] are permitted to file mandate claims for the statutory requirement that they grant or deny the petition within 60 days of receiving the petition."[76]

Because the district is now required to make written findings in case of a charter petition denial that it was not required to make under prior law, the Commission finds that section 47605, subdivision (b), as amended by Statutes 1998, chapter 34, constitutes a new program or higher level of service for making written findings of fact that: (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not contain reasonably comprehensive descriptions, as specified in the statute.

Transfer funds in lieu of property tax: Section 47635, added by Statutes 1999, chapter 78 states, in part, "(a) A sponsoring local educational agency shall annually transfer to each of its charter schools funding in lieu of property taxes equal to the lesser of the following two amounts: … (b) The sponsoring local educational agency shall transfer funding in lieu of property taxes to the charter school in monthly installments, by no later than the 15th of each month."[77]

---

[75] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[76] Claimants state that they would request that the *Charter Schools* parameters and guidelines be amended to include new reimbursable activities under this claim.

[77] This provision was amended by Statutes 2001, chapter 586 to add subdivision (b)(5), excluding pupils in a charter school of a nonbasic aid school district under certain circumstances, subject to exceptions.

Under prior law, charter schools received funding through apportionments from the Superintendent of Public Instruction (SPI).[78]

In its comments on the draft staff analysis, DOF argues that this activity is not a new program or higher level of service:

> …providing funding to local schools, whether or not a charter school, is an ordinary and historical activity of school districts and county offices of education. Depending on the proportion of total funding that property taxes constitute, the chartering authority would have to incur the cost of financing cash flow for property tax timing with or without the charter school in existence. Any administrative costs of the funding transfer associated with the existence of a charter school would be minimal, and in the case of conversion charter schools, not a new cost.

DOF cites no legal requirement for this 'ordinary and historical' activity. And although the Education Code indicates that the SPI computes property taxes for allocation by each county superintendent of schools,[79] there is no requirement for county superintendents or districts to monthly transfer funds in lieu of property taxes to schools as the test claim statute does. Moreover, DOF ignores prior law (former Ed. Code, § 47612), which before it was repealed by Statutes 1999, chapter 78, required the SPI to apportion funds to charter schools, in contrast to the test claim statute that requires school districts to transfer funds to charter schools.[80] Finally, even assuming the transfer of funds were required of school districts under prior law, there is no indication the requirement would have applied to charter schools because Education Code section 47610 exempts charter schools from most laws governing school districts.[81]

Therefore, because the record indicates that local educational agencies (school districts or county offices of education that would perform this activity) were not required before the test claim statute to transfer funds in lieu of property taxes, the Commission finds that doing so in accordance with section 47635 constitutes a new program or higher level of service on school districts. This is limited to the administrative activity of transferring the funds to charter schools.

---

[78] Former Education Code section 47612, repealed by Statutes 1999, chapter 78.

[79] Education Code sections 2570 and 2571.

[80] Under this repealed section, the funds were apportioned "pursuant to Article 2 (commencing with Section 42238) of Chapter 7 of Part 24 [of the Education Code]." (former Ed. Code, § 47612). Section 42238, subdivision (h), requires the SPI to apportion to each school district funds minus property tax revenue "pursuant to … Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) …. of the Revenue and Taxation Code." These Revenue and Taxation Code sections require the county auditor to apportion revenues to school entities (§ 75.7, subd. (c) & § 96). There is no requirement on school districts.

[81] And if fund transfers from districts to schools were past practice but not legally required, the test claim statute could be a reimbursable mandate anyway under Government Code section 17565, which states: "If a local agency or a school district, at its option, has been incurring costs which are subsequently mandated by the state, the state shall reimburse the local agency or school district for those costs incurred after the operative date of the mandate."

Financial information: In a letter to school districts and county offices of education from CDE dated May 22, 2000, CDE stated:

> Because the LEA [local educational agency] is responsible for reporting all of its revenues and expenditures [Ed. Code, §§ 1628 & 42100] the LEA must include the revenues and expenditures generated by the charter school in the LEA's annual statement.

As noted above, including this information in the district's annual statement was required only between May 22, 2000 and June 30, 2001, because the CDE letter was superseded by April 5, 2004 CDE correspondence that stated "The submission of charter school financial date to CDE has been optional for the past two fiscal years [i.e., 2001-2002 and 2002-2003]."[82]

DOF states, "This is not a mandate because financial reporting from schools within a district is not a new program. These activities were always a part of the duties of the District and would be necessary without designation of a school as a charter school." DOF reiterates this argument in its comments on the draft staff analysis.

Under Education Code section 42100, the school district files "an annual statement of all receipts and expenditures of the district for the preceding fiscal year" with the Superintendent of Public Instruction. Section 1628 contains a parallel reporting provision for county offices of education. Charter schools were outside the scope of these reporting requirements, however, until these sections were amended by Statutes 2002, chapter 1058.[83]

Charter schools are generally exempt from the provisions of the Education Code,[84] and until the CDE letter, no exception was made for financial reporting. In other words, prior to the May 22, 2000 CDE letter, school districts were not required to provide charter school revenue and expenditure information to CDE. Therefore, the Commission finds that including the revenues and expenditures generated by the charter school in the school district's or county office of education's annual statement to CDE is a new program or higher level of service.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the test claim legislation's activities to impose a reimbursable state-mandated program under article XIII B, section 6 of the California Constitution, the activities must impose increased costs mandated by the state.[85] In addition, no statutory exceptions as listed in Government Code section 17556 can apply. Government Code section 17514 defines "costs mandated by the state" as:

---

[82] See <http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp> as of January 20, 2006. Because no test claim has been filed on it, the Commission makes no finding on this April 5, 2004 CDE letter or the statutes cited in it.

[83] This analysis makes no findings on Education Code sections 42100 and 1628, as amended by Statutes 2002, chapter 1058 because no test claim has been filed on the amended statutes.

[84] Education Code section 47610.

[85] *Kern High School Dist., supra,* 30 Cal. 4th 727, 736; *Lucia Mar Unified School Dist., supra,* 44 Cal.3d 830, 835; Government Code section 17514.

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

The final issue is whether the test claim legislation imposes costs mandated by the state within the meaning of Government Code sections 17556 and 17514.

As a result of Statutes 1998, chapter 34, (Ed. Code, § 47613, former § 47613.7)[86] school districts (or other chartering agencies, as defined in (e) below) may charge a fee from one to three percent of the charter school's revenue for "supervisorial oversight." This fee statute states:

> (a) Except as set forth in subdivision (b), a chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 1 percent of the revenue of the charter school.
>
> (b) A chartering agency may charge for the actual costs of supervisorial oversight of a charter school not to exceed 3 percent of the revenue of the charter school if the charter school is able to obtain substantially rent free facilities from the chartering agency.
>
> (c) A local agency that is given the responsibility for supervisorial oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the actual costs of supervisorial oversight, and administrative costs necessary to secure charter school funding.[87] A charter school that is charged for costs under this subdivision may not be charged pursuant to subdivision (a) or (b).
>
> (d) This section does not prevent the charter school from separately purchasing administrative or other services from the chartering agency or any other source.
>
> (e) For the purposes of this section, a chartering agency means a school district, county department of education, or the State Board of Education, that granted the charter to the charter school.
>
> (f) For the purposes of this section, "revenue of the charter school" means the general purpose entitlement and categorical block grant, as defined in subdivisions (a) and (b) of Section 47632.

Although the term "supervisorial oversight" is not defined in statute, the duties of a chartering authority for which the fee may be charged were enacted after the test claim statutes in Education

[86] In its Statement of Decision for *Charter Schools II,* the Commission determined that section 47613 does not contain a reimbursable state-mandated program. The section 47613 fee, however, is a recognized offset in the *Charter Schools II* consolidated parameters and guidelines.

[87] As originally enacted, the sentence ended with "not to exceed 3 percent of the revenue of the charter school."

Code sections 47604.32 (duties of chartering authority) and 47604.33 (annual financial reports).[88] In a report on charter schools, the Office of the Legislative Analyst stated:

> The oversight fee is intended to help a school district pay for such activities as reviewing charter petitions, evaluating charter school reports, responding to complaints from charter school parents, investigating charter school fiscal irregularities, and visiting charter school sites.[89]

Thus, the issue is whether Government Code section 17556, subdivision (d), would preclude reimbursement for the remaining activities. This provision states:

> The commission shall not find costs mandated by the state, as defined in Section 17514, in any claim submitted by a local agency or school district, if, after a hearing, the commission finds that: [¶]…[¶]
>
> (d) The local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the mandated program or increased level of service.

Each of the remaining activities in the test claim legislation is analyzed to determine whether the school district fee of section 47613 would preclude reimbursement within the meaning of Government Code section 17556, subdivision (d).

Findings on denial: Section 47605, subdivision (b), (as amended by Stats. 1998, ch. 34), prohibits districts from denying a charter petition unless it makes written findings of fact of one or more of the following: (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not contain reasonably comprehensive descriptions, as specified.

Because these findings would be made upon denial of a petition, there would be no charter school to which "supervisorial oversight" would apply. Therefore, this provision falls outside the charter school fee the district may charge. As a result, the Commission finds that section 47605, subdivision (b), as amended by Statutes 1998, chapter 34, imposes costs mandated by the state, and that Government Code section 17556, subdivision (d) does not apply.

Transfer funds in lieu of property taxes: Section 47635, (added by Stats. 1999, ch. 78) states, in part,

> (a) A sponsoring local educational agency shall annually transfer to each of its charter schools funding in lieu of property taxes equal to the lesser of the following two amounts: …

---

[88] Added by Statutes 2003, chapter 892. The Commission makes no findings on these code sections because no test claim has been filed on them.

[89] Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004); See <http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm> [as of January 13, 2006].

(b) The sponsoring local educational agency shall transfer funding in lieu of property taxes to the charter school in monthly installments, by no later than the 15th of each month."

There is no indication in the record that transferring property tax funds to charter schools constitutes "supervisorial oversight." Rather, this is an administrative function that districts or county offices of education perform in addition to their oversight responsibilities. Thus, the issue is whether a local educational agency that operates under the 'administrative' fee authority of section 47613, subdivision (c) would be eligible for reimbursement. This subdivision reads:

(c) A local agency that is given the responsibility for supervisorial oversight of a charter school, pursuant to paragraph (1) of subdivision (k) of Section 47605, may charge for the actual costs of supervisorial oversight, **and administrative costs necessary to secure charter school funding**. A charter school that is charged for costs under this subdivision may not be charged pursuant to subdivision (a) or (b). [Emphasis added.]

The 'local agency given the responsibility' is described in section 47605, subdivision (k)(1) as follows:

The State Board of Education [SBE] may, by mutual agreement, designate its supervisorial and oversight responsibilities for a charter school approved by the State Board of Education to any local education agency in the county in which the charter school is located or to the governing board of the school district that first denied the petition.

Reading section 47613, subdivision (c), together with section 47605, subdivision (k)(1), it is clear that in order to impose the administrative fee authority of section 47613, subdivision (c), the 'local agency' must (1) be given responsibility for supervisorial oversight by SBE; (2) obtain that responsibility by 'mutual agreement;' and (3) have a charter school approved by SBE (originally denied by a school district).

The fee authority given these 'local agencies' under section 47613, subdivision (c) is for "administrative costs necessary to secure charter school funding." Transferring funds in lieu of property taxes to a charter school is a cost within the scope of those necessary to secure charter school funding. Therefore, a local agency[90] that has fee authority under section 47613, subdivision (c), has fee authority under Government Code section 17556, subdivision (d) and is therefore not eligible for reimbursement for activities under section 47635 (added by Stats. 1999, ch. 78).

Other local educational agencies that impose fee authority under section 47613, subdivisions (a) or (b), do so for purposes of 'supervisorial oversight' and do not have fee authority for

[90] One of the definitions of "Sponsoring local educational agency" in the charter school fiscal statutes is: "In cases where a charter is granted by the State Board of Education after having been previously denied by a local educational agency, … the local educational agency designated by the State Board of Education pursuant to paragraph (1) of subdivision (k) of Section 47605 or if a local educational agency is not designated, the local educational agency that initially denied the charter petition." (Ed. Code, § 47632, subd. (i)(3)).

administrative costs necessary to secure charter school funding. And "A charter school that is charged for costs under this subdivision [(c)] may not be charged pursuant to subdivision (a) or (b)."[91] Therefore, except for local agencies under section 47613, subdivision (c), and section 47605, subdivision (k)(1), the Commission finds that section 47635, (added by Stats. 1999, ch. 78), imposes costs mandated by the state and that Government Code section 17556, subdivision (d) does not apply.

Financial information: In a letter to school districts and county offices of education from CDE dated May 22, 2000, CDE states:

> Because the LEA [local educational agency] is responsible for reporting all of its revenues and expenditures the LEA must include the revenues and expenditures generated by the charter school in the LEA's annual statement. [The letter goes on to specify the reporting format.]

As noted above, including this information in the district's annual statement was required only between May 22, 2000 and June 30, 2001, due to superseding CDE correspondence.[92]

The Commission finds that the original fee authority of section 47613 does not apply to including revenues and expenditures generated by the charter school in the school district's or county office of education's annual statement to CDE, in a format specified by CDE.

The fee authority does not extend to this report because, for the period CDE required it (from May 22, 2000 to June 30, 2001), including charter schools in the annual statement did not constitute 'supervisorial oversight' of the charter school. Rather, it is a report submitted to the state pursuant to the CDE letter.[93] Therefore, the Commission finds that the fee authority of Government Code section 17556, subdivision (d) does not extend to school districts or county offices of education that operate under fee authority of section 47613, subdivisions (a) or (b).

In comments on the draft staff analysis, DOF states:

> [T]he oversight fee authorized in Section 47613 offsets any costs associated with this activity on the part of a chartering authority, as nothing in current law suggests that reporting is not a normal part of oversight. In fact, current law (Section 42100, subdivision (b)) now requires charter schools to submit an annual statement of receipts and expenditures to a chartering authority for inclusion in its annual report to the state.

---

[91] Education Code section 47613, subdivision (c).

[92] See <http://www.cde.ca.gov/fg/ac/co/charterreport0203.asp> as of January 20, 2006. Because no test claim has been filed on it, the Commission makes no finding on this April 5, 2004 CDE letter or the statutes cited in it.

[93] As to county offices of education only, the activity of charter school financial reporting to the state was codified effective January 1, 2003 (Stats. 2002, ch. 1058) as an amendment to section 1628. School districts are not required to forward the charter school information to CDE (§ 42100, subd. (b)), only to the county office of education. The Commission makes no findings on these statutes because no test claim has been filed on them.

DOF goes on to discuss other subsequently enacted statutes (Ed Code, §§ 47604.32 & 47604.33) that require the charter school to submit financial reports to the school district, with costs to be covered by the fee authority of section 47613.

DOF correctly reads the current charter school financial reporting statutes. Sections 42100 and 1628 were amended by Statutes 2002, chapter 1058, to require charter school financial reporting to school districts, and to CDE through county offices of education. The following year, sections 47604.32 and 47604.33 were enacted (Stats. 2003, ch. 892) to make that reporting activity, among others, subject to the 'supervisorial fee' authority of section 47613.

DOF's citations to these statutes, however, are not relevant because they were enacted two to three years after the CDE letter.[94] Subsequent legislative declarations are not binding as to the intent of the Legislature that enacted an earlier statute,[95] and especially not binding as to the intent of CDE's letter (as the letter is an "executive order"[96] and not a statute). And nothing in the legislative history of Education Code sections 47604.32 and 47604.33 (Stats. 2003, ch. 892) indicates the Legislature was clarifying a preexisting law or CDE requirement (which was not a requirement after June 30, 2001 anyway, as explained above). Rather, the 2003 statutes were enacted based on a November 2002 report of the Bureau of State Audits that recommended oversight of charter schools by chartering entities.[97]

Similarly, nothing in the legislative history of the 2002 amendments (Ed. Code, §§ 42100 & 1628) indicates that the fee authority applied to charter school financial reporting, even though the fee authority had existed since 1998, and even though the legislature recognized the potential for state mandated costs.[98] It is a rule of statutory construction that the Legislature is deemed to be aware of statutes in existence when enacting or amending new statutes, and that they were enacted or amended in light thereof.[99] The fee authority in section 47613 had existed for four years when Statutes 2002, chapter 1058 was enacted, so had the Legislature intended the fee to apply, it would have so indicated in chapter 1058's amendment or legislative history. Thus, there is no evidence in the record that the fee authority of section 47613 "for supervisorial

---

[94] Section 42100 was enacted by Statutes 2002, chapter 1058; sections 47604.32 & 47604.33 were enacted by Statutes 2003, chapter 892.

[95] *People v. Cruz* (1996) 13 Cal. 4th 764, 781.

[96] Government Code section 17516 defines executive order as "any order, plan, requirement, rule, or regulation issued by any of the following: (a) the Governor. (b) Any officer or official serving at the pleasure of the Governor. (c) Any agency, department, board, or commission of state government."

[97] Assembly Floor Analysis, Analysis of Assembly Bill No. 1137 (2003-2004 Reg. Sess.) as amended September 4, 2003, page 3.

[98] Senate Rules Committee, Office of Senate Floor Analyses, Analysis of Assembly Bill No. 1994 (2001-2002 Reg. Sess.) as amended August 28, 2002, pages 4-5.

[99] *Schifando v. City of Los Angeles* (2003) 31 Cal.4th 1074, 1096.

oversight" applied to charter school reporting of revenues and expenditures prior to Statutes 2003, chapter 892 (Ed. Code, §§ 47604.32 & 47604.33).

Therefore, for the reasons discussed above, the Commission finds that the fee authority provision in Government Code section 17556, subdivision (d) does not preclude reimbursement for a school district or county office of education to include the revenues and expenditures generated by the charter school in the school district's or county office of education's annual statement, between May 22, 2000 and June 30, 2001, in a format specified by CDE.

Conclusion

The Commission finds as follows:

- Charter schools are not eligible claimants under article XIII B, section 6 and applicable statutes.
- The test claim statutes impose a reimbursable state-mandated program on school districts or county offices of education within the meaning of article XIII B, section 6 of the California Constitution and Government Code sections 17514 and 17556 for the following activities:
    - **Findings on denial:** Upon denial of a charter petition, a school district makes written findings of fact to support one or more of the following findings: (1) the charter school presents an unsound educational program for pupils; (2) petitioners are demonstrably unlikely to successfully implement the educational program; (3) the petition does not include the required number of signatures; (4) the petition does not contain reasonably comprehensive descriptions, as specified in statute (§ 47605, subd. (b), amended by Stats. 1998, ch. 34).[100]
    - **Transfer funds in lieu of property taxes:** except for local educational agencies that charge fees under Education Code section 47613, subdivision (c), a school district or county office of education that sponsors a charter school and transfers funds in lieu of property taxes to the charter school (§ 47635, added by Stats. 1999, ch. 78).
    - **Financial information:** for school districts or county offices of education that are chartering authorities, including the revenues and expenditures generated by the charter school in the in the school district's or county office of education's annual statement, in a CDE-specified format. This activity is only reimbursable from May 22, 2000 until June 30, 2001.

The Commission also finds that, except for statutes over which the Commission lacks jurisdiction because they were decided in a prior test claim, all other test claim statutes and executive orders pled by the claimants do not contain a reimbursable state-mandated program.

[100] This activity does not apply to a county office of education.

BEFORE THE
COMMISSION ON STATE MANDATES
STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 47605, subdivision (b)(5)(O) and 47611.5; Government Code section 3540, et seq., Statutes 1999, Chapter 828; Filed on November 29, 1999 By Western Placer Unified School District, Claimant.	No. 99-TC-05 *Charter School Collective Bargaining* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7 *(Adopted on July 28, 2006)*

STATEMENT OF DECISION

The attached Statement of Decision of the Commission on State Mandates is hereby adopted in the above-entitled matter.

_____ _____

PAULA HIGASHI, Executive Director Date

BEFORE THE

COMMISSION ON STATE MANDATES

STATE OF CALIFORNIA

IN RE TEST CLAIM ON: Education Code Sections 47605, subdivision (b)(5)(O) and 47611.5; Government Code section 3540, et seq., Statutes 1999, Chapter 828; Filed on November 29, 1999 By Western Placer Unified School District, Claimant.	Case No.: 99-TC-05 *Charter School Collective Bargaining* STATEMENT OF DECISION PURSUANT TO GOVERNMENT CODE SECTION 17500 ET SEQ.; TITLE 2, CALIFORNIA CODE OF REGULATIONS, DIVISION 2, CHAPTER 2.5, ARTICLE 7. (*Adopted on July 28, 2006*)

STATEMENT OF DECISION

The Commission on State Mandates ("Commission") heard and decided this test claim during two regularly scheduled hearings on May 25, 2006, and July 28, 2006. David Scribner, Scribner Consulting Group, Inc. appeared for and represented Western Placer Unified School District. Eric Premack appeared for Charter Voice at the May 25, 2006 hearing. Susan Geanacou appeared for the Department of Finance.

The law applicable to the Commission's determination of a reimbursable state-mandated program is article XIII B, section 6 of the California Constitution, Government Code section 17500 et seq., and related case law.

The Commission adopted the staff analysis to deny the test claim at the hearing by a vote of 7 to 0.

Summary of Findings

As to the test claim statutes, the Commission finds as follows:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as a declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5, subds. (b) & (f)) are not activities subject to article XIII B, section 6.
- The test claim statutes do not mandate an activity on county boards of education.

- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state (within the meaning of Government Code sections 17514 and 17556) to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Background

Charter schools are publicly funded K-12 schools that enroll pupils based on parental choice rather than residential assignment. In order to encourage innovation and provide expanded educational choices,[1] charter schools are exempt from most laws governing public education.[2] California was the second state in the nation to authorize charter schools in 1992, and they have steadily increased in number and enrollment since then.[3]

The test claim statutes subject charter schools to the Educational Employment Relations Act (EERA) or "Rodda Act."[4] Enacted in 1975, the EERA governs labor relations in California public schools with the stated purpose as follows:

> It is the purpose of this chapter to promote the improvement of personnel management and employer-employee relations within the public school systems … by providing a uniform basis for recognizing the right of public school employees to join organizations of their own choice, to be represented by the organizations in their professional and employment relationships with public school employers …and to afford certificated employees a voice in the formulation of educational policy.[5]

The EERA creates a process for groups of school district employees that share a 'community of interest' to organize and become represented by an employee organization (or union).[6] The EERA also defines the issues that may be negotiated between the school district and the

---

[1] Education Code section 47601 includes these reasons, among others, in the Legislature's intent behind establishing charter schools.

[2] Education Code section 47610. Exceptions to the exemption in section 47610 include teachers' retirement, the Charter School Revolving Loan Fund, and laws establishing minimum age for public school attendance. Other areas in which charter schools are subject to the Education Code include pupil assessments (§ 47605, subd. (c)(1)), and teacher credentials ((§ 47605, subd. (l)).

[3] Office of the Legislative Analyst, "Assessing California's Charter Schools" (January 2004); See <http://www.lao.ca.gov/2004/charter_schools/012004_charter_schools.htm> [as of January 13, 2006].

[4] The EERA is in Education Code section 3540 et seq. (Stats. 1975, ch. 961, eff. July 1, 1976).

[5] Education Code section 3540

[6] Education Code section 3543.

employee organization,[7] and defines the rules for negotiations,[8] mediation,[9] and dispute of grievances.[10] It also establishes the Public Employment Relations Board (PERB)[11] to administer the EERA and referee labor disputes.

The Test Claim Statutes

Education Code section 47605, subdivision (b)(5)(O)[12] requires each charter school charter to contain, "[a] declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of a charter school…."

Education Code section 47611.5 was also added by the test claim legislation. Subdivision (b) states, "If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of [the EERA]." Subdivision (f) of section 47611.5 requires, "By March 31, 2000, all existing charter schools …[to] declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter." Subdivision (c) defines the scope of representation to include discipline and dismissal of charter school employees "if the charter … does not specify that it shall comply with those statutes and regulations … that establish and regulate tenure or a merit or civil service system."

The EERA, in Government Code section 3540.1, subdivision (k), as amended by the test claim legislation, defines "public school employer" as "the governing board of a school district, a school district, a county board of education, or a county superintendent of schools, *or a charter school that has declared itself a public school employer pursuant to subdivision (b) of Section 47611.5 of the Education Code*." (Italicized text added by Stats. 1999, ch. 828.)

Related Commission Decisions on Charter Schools

On May 26, 1994, the Commission heard and decided a related test claim: *Charter Schools*, (CSM-4437).[13] The Commission found that Statutes 1992, chapter 781 (Ed. Code, §§ 47605 & 47607) is a reimbursable state-mandated program on school districts for new activities related to initial charter school petitions, and for monitoring and evaluating the performance of charter schools pertaining to the revision or renewal of approved charters.

On November 21, 2002, the Commission adopted its Statement of Decision for the *Charter Schools II* test claim (99-TC-03) finding that Statutes 1998, chapters 34 and 673 (Ed. Code,

---

[7] Education Code section 3543.2.

[8] Education Code section 3543.3.

[9] Education Code section 3548. Impasse procedures are also in this section.

[10] Education Code section 3543.

[11] Education Code section 3541.

[12] References herein are to the Education Code unless otherwise indicated.

[13] *Charter Schools* (CSM-4437) Statement of Decision adopted on July 21, 1994; parameters and guidelines adopted on October 18, 1994.

§§ 47605, subds. (j)(1) & (k)(3), 47605.5, 47607, & 47614) impose reimbursable state-mandated activities on school districts and/or county offices of education activities related to reviewing renewal petitions and permitting charter schools to use school district facilities.

On December 2, 2003, the Commission adopted consolidated parameters and guidelines for the *Charter Schools* and *Charter Schools II* decisions. School districts may charge a fee from one to three percent of the charter school's revenue for "supervisorial oversight" of the charter school.[14] This fee is a recognized offset in the *Charter Schools* parameters and guidelines.

The Commission was scheduled to hear the *Charter Schools III* test claim[15] at the April 26, 2006 Commission hearing, but it was continued to the May 25, 2006 hearing. The *Charter Schools III* claim alleges various activities related to charter school funding and accountability, and was filed on behalf of both school districts and charter schools.

Related Commission Decisions on Collective Bargaining/EERA

In the *Collective Bargaining* statement of decision, the Board of Control determined that Statutes 1975, chapter 961 (the EERA) is a reimbursable mandate. Parameters and guidelines were adopted on October 22, 1980, and amended seven times before the decision on the next related claim: *Collective Bargaining Agreement Disclosure* (97-TC-08).

On March 26, 1998, the Commission adopted the decision for the *Collective Bargaining Agreement Disclosure* (97-TC-08) test claim. The Commission found that Government Code section 3547.5 (Stats. 1991, ch. 1213) and CDE Management Advisory 92-01 is a reimbursable mandate for requiring K-14 school districts to publicly disclosing the major provisions of all collective bargaining agreements after negotiations, but before the agreement becomes binding.

The parameters and guidelines for *Collective Bargaining Agreement Disclosure* (97-TC-08) were adopted in August 19, 1998, and consolidated with the *Collective Bargaining* parameters and guidelines. The reimbursable activities in the consolidated parameters and guidelines can be summarized as follows:

1. Determination of appropriate bargaining units for representation and determination of the exclusive representatives:
    a. Unit determination;
    b. Determination of the exclusive representative.
2. Elections and decertification elections of unit representatives are reimbursable in the event the Public Employment Relations Board determines that a question of representation exists and orders an election held by secret ballot.

---

[14] Education Code section 47613 (former section 47613.7, added by Stats. 1998, ch. 34).

[15] Filed on Education Code Sections 41365, 47605, subdivisions (b),(c),(d), (j) and (l), 47604.3, 47607, subdivision (c), 47612.5, 47613 (former § 47613.7), and 47630-47664; Statutes 1996, Chapter 786, Statutes 1998, Chapter 34, Statutes 1998, Chapter 673, Statutes 1999, Chapter 162, Statutes 1999, Chapter 736, Statutes 1999, Chapter 78, California Department of Education Memo (May 22, 2000).

3. Negotiations: reimbursable functions include -- receipt of exclusive representative's initial contract proposal, holding of public hearings, providing a reasonable number of copies of the employer's proposed contract to the public, development and presentation of the initial district contract proposal, negotiation of the contract, reproduction and distribution of the final contract agreement.

4. Impasse proceedings:

   a. Mediation;

   b. Fact-finding publication of the findings of the fact-finding panel.

5. Collective bargaining agreement disclosure.

6.Contract administration and adjudication of contract disputes either by arbitration or litigation. Reimbursable functions include grievances and administration and enforcement of the contract.

7. Unfair labor practice adjudication process and public notice complaints.

In another related decision adopted in December 2005, the *Agency Fee Arrangements* Statement of Decision (CSM 00-TC-17, 01-TC-14), found that a portion of the EERA (Gov. Code, §§ 3543, 3546 & 3546.3, Cal. Code Regs, tit. 8 §§ 34030 & 34055) and its regulations constitute a reimbursable state-mandated program on K-14 school districts for deducting fair share fees and paying the amount to the employee organization, providing the exclusive representative of a public employee with the home address of each member of a bargaining unit, and for filing with PERB a list of names and job titles of persons employed in the unit described in the petition within a specified time.

Claimant Position

Claimant alleges that the test claim statutes impose a reimbursable mandate under section 6 of article XIII B of the California Constitution. After summarizing the test claim statutes, claimant states their consequence will be "school districts (including county superintendents of schools that sponsor charter schools), or the charter school will incur the cost of collective bargaining, depending upon the election of the charter school."[16] Claimant alleges the following activities:

- On county superintendents of schools, a higher level of service as the public school employer is required to assume the collective bargaining obligations of Government Code section 3540 through 3549 for charter schools granted under the authority of a county board of education when the charter school elects not to be the public school employer. The county board will incur additional costs of having to conduct a hearing for the material change in an existing charter school's charter in order to comply with the new mandate that all charter schools' charters include a declaration regarding its status as the public school employer. Although

[16] Test Claim, page 3.

this is a new reimbursable activity, this cost will be covered under the existing Charter School mandated reimbursement program.[17]

- On school districts, a higher level of service as the public school employer is required to assume the collective bargaining obligations of Government Code sections 3540 through 3549 for charter schools within their districts when the charter school elects not to be the "public school employer" under Section 47611.5. The school district that granted the charter will incur additional costs of having to conduct a hearing for the material change in an existing charter school's charter in order to comply with the new mandate that all charter schools' charters include a declaration regarding [their] status as the public school employer. Although this is a new reimbursable activity, this cost will be covered under the existing Charter School mandated reimbursement program.[18]

- In those cases where the charter school declares itself to be the "public school employer" … new reimbursable activities as the "public school employer" required to assume the collective bargaining obligations of Government Code sections 3540 through 3549. In addition to the costs of collective bargaining, an existing charter school is now mandated to amend its charter to include its declaration regarding its status as a "public school employer."[19]

As to the collective bargaining activities, claimant alleges activities "that mirror those already allowed under the Collective Bargaining reimbursement program."[20] Thus, claimant summarizes the activities listed in the *Collective Bargaining* parameter and guidelines listed above.

In comments submitted in July 2000 in response to the Department of Finance, claimant asserts:

> [W]here the charter school elects to be the 'public school employer' it is the charter school that assumes the new program or higher level of service in that the charter school will now be forced to comply with the collective bargaining obligations of the Educational Employment Relations Act.

Claimant agues that charter schools that make this election should be entitled to reimbursement under the current collective bargaining mandate reimbursement program. If, however, the charter school elects not to be the "public school employer' and the school district or the county office of education assume that role, claimant states that reimbursement should occur under the current collective bargaining program by amending the parameters and guidelines "to reflect the additional authority under which this obligation occurs."

Claimant refutes the assumption that charter school employees, for charter schools that elect not to become the "public school employer," would automatically become part of the existing bargaining units, so no additional costs would be incurred. Claimant states that this would occur

---

[17] Test Claim, page 3-4.

[18] Test Claim, page 4.

[19] Test Claim, page 4.

[20] Test Claim, page 4, footnote 10.

in some cases by agreement of the parties; "however, in most cases the charter schools' employees will not have community of interest with school district employees and will not become part of the school districts' bargaining units." Claimant includes with its comments a copy of Assembly Bill No. 842 (Migden), a bill that was introduced in 1999 but not enacted, that would have required charter school employees to be included in existing bargaining units. Claimant attaches Assembly Bill No. 842 (hereafter AB 842) to show that the legislative intent was not for charter employees to join existing bargaining units. Thus, claimant argues that "in most cases local educational agencies would incur costs as outlined in the collective bargaining mandated reimbursement program for all additional activities assumed with these new bargaining units (if formed)."

State Agency Position

In comments submitted in June 2000, the Department of Finance (Finance) states,

> If a charter school elects [not[21]] to be the public school employer of its employees for EERA purpose, and the charter school employees are subsequently placed in the same bargaining units with which the county office of education or school district currently negotiates, the Department of Finance believes no additional State-mandated costs would be incurred.

Finance goes on to comment, "[i]f, however, a charter school declares itself the exclusive public school employer of its employees and, as a consequence, new bargaining units are established with which the county office of education or school district must conduct negotiations, we do believe additional state-mandated costs may be incurred."

No other state agencies submitted comments on the claim.

COMMISSION FINDINGS

The courts have found that article XIII B, section 6 of the California Constitution[22] recognizes the state constitutional restrictions on the powers of local government to tax and spend.[23] "Its

---

[21] As noted by claimant, Department of Finance comments include a number of typos that lead to contradictory statements. This analysis is based on a reasonable interpretation of those comments as read by the claimant to insert the word "not" into the first sentence of the fourth full paragraph of the Department of Finance comments. The sentence should read, "If a charter school elects not to be the public school employer…"

[22] Article XIII B, section 6, subdivision (a), (as amended in November 2004) provides:

> (a) Whenever the Legislature or any state agency mandates a new program or higher level of service on any local government, the State shall provide a subvention of funds to reimburse that local government for the costs of the program or increased level of service, except that the Legislature may, but need not, provide a subvention of funds for the following mandates: (1) Legislative mandates requested by the local agency affected. (2) Legislation defining a new crime or changing an existing definition of a crime. (3) Legislative mandates enacted prior to January 1, 1975, or executive orders or regulations initially implementing legislation enacted prior to January 1, 1975.

purpose is to preclude the state from shifting financial responsibility for carrying out governmental functions to local agencies, which are 'ill equipped' to assume increased financial responsibilities because of the taxing and spending limitations that articles XIII A and XIII B impose."[24] A test claim statute or executive order may impose a reimbursable state-mandated program if it orders or commands a local agency or school district to engage in an activity or task.[25]

In addition, the required activity or task must be new, constituting a "new program," or it must create a "higher level of service" over the previously required level of service.[26]

The courts have defined a "program" subject to article XIII B, section 6, of the California Constitution, as one that carries out the governmental function of providing public services, or a law that imposes unique requirements on local agencies or school districts to implement a state policy, but does not apply generally to all residents and entities in the state.[27] To determine if the program is new or imposes a higher level of service, the test claim legislation must be compared with the legal requirements in effect immediately before the enactment of the test claim legislation.[28] A "higher level of service" occurs when the new "requirements were intended to provide an enhanced service to the public."[29]

Finally, the newly required activity or increased level of service must impose costs mandated by the state.[30]

The Commission is vested with exclusive authority to adjudicate disputes over the existence of state-mandated programs within the meaning of article XIII B, section 6.[31] In making its

---

[23] *Department of Finance v. Commission on State Mandates (Kern High School Dist.)* (2003) 30 Cal.4th 727, 735.

[24] *County of San Diego v. State of California (County of San Diego)*(1997) 15 Cal.4th 68, 81.

[25] *Long Beach Unified School Dist. v. State of California* (1990) 225 Cal.App.3d 155, 174.

[26] *San Diego Unified School Dist. v. Commission on State Mandates* (2004) 33 Cal.4th 859, 878 (*San Diego Unified School Dist.)*; *Lucia Mar Unified School District v. Honig* (1988) 44 Cal.3d 830, 835-836 (*Lucia Mar*).

[27] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 874, (reaffirming the test set out in *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, 56; *Lucia Mar, supra,* 44 Cal.3d 830, 835.)

[28] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[29] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

[30] *County of Fresno v. State of California* (1991) 53 Cal.3d 482, 487; *County of Sonoma v. Commission on State Mandates* (2000) 84 Cal.App.4th 1265, 1284 (*County of Sonoma*); Government Code sections 17514 and 17556.

[31] *Kinlaw v. State of California* (1991) 54 Cal.3d 326, 331-334; Government Code sections 17551, 17552.

decisions, the Commission must strictly construe article XIII B, section 6 and not apply it as an "equitable remedy to cure the perceived unfairness resulting from political decisions on funding priorities."[32]

Issue 1: Is the test claim legislation subject to article XIII B, section 6 of the California Constitution?

A. Are charter schools eligible claimants?

The test claim statutes include, in addition to the Education Code statutes pled by claimant, Government Code section 3540 et seq., the Educational Employment Relations Act (EERA). Because the Board of Control (the Commission's predecessor) already adjudicated the EERA in the *Collective Bargaining* test claim, as discussed above, this analysis of the EERA only applies to charter schools because the Commission does not have jurisdiction to reconsider the original EERA test claim.

Education Code section 47611.5, subdivision (a), states that the EERA applies to charter schools. Under subdivisions (b) and (f) of this section, as added by the test claim legislation, "all existing charter schools must declare whether or not they shall be deemed a public school employer ..." and must do so by March 31, 2000. Therefore, the first part of the analysis under issue 1 addresses whether these activities are subject to article XIII B, section 6 where the charter school has declared itself to be the public school employer. The second part of the analysis addresses whether these activities are subject to article XIII B, section 6 where the school district is the public school employer.

Charter School as "Public School Employer"

By way of background, charter schools are formed through a petition signed by either (1) at least one-half of the parents of the pupils that the charter school estimates will enroll in the school in its first year of operation; or (2) at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year.[33] Charters are submitted to a school district for approval or denial. The district must approve the charter unless it makes specified written findings regarding defects in the petition, the proposed program, or charter.[34] If the district denies the petition, petitioners can appeal to the county office of education or State Board of Education.[35] In certain situations, petitioners can apply for a charter directly to the county office of education[36] or State Board of Education.[37]

---

[32] *County of Sonoma, supra,* 84 Cal.App.4th 1265, 1280, citing *City of San Jose v. State of California* (1996) 45 Cal.App.4th 1802, 1817.

[33] Education Code section 47605, subdivision (a)(1). In the case of an existing public school conversion to a charter school, the petition must be signed by not less than 50 percent of the permanent status teachers currently employed at the school (Ed. Code, § 47605, subd. (a)(2)).

[34] Education Code section 47605, subdivision (b).

[35] Education Code section 47605, subdivision (j).

[36] Education Code sections 47605.5 and 47605.6.

[37] Education Code section 47605.8.

Finance comments, "[i]f, however, a charter school declares itself the exclusive public school employer of its employees and, as a consequence, new bargaining units are established with which the county office of education or school district must conduct negotiations, we do believe additional state-mandates costs may be incurred."

Claimant does not address the issue directly, but states in rebuttal to Finance's comments that if "the charter school elects to be the "public school employer" it is the charter school that assumes the new program or higher level of service in that the charter school will now be forced to comply with the collective bargaining obligations of the Educational Employment Relations Act." [Emphasis in original.]

The claimant in this case is a school district. The Commission finds that a school district does not have standing to claim reimbursement for activities alleged to be mandated on charter schools since school districts are not defined to include charter schools.[38] The Legislature has treated charter schools differently from school districts. In addition, as discussed below, the Commission finds that there is not a state mandate subject to article XIII B, section 6 when charter schools are deemed public school employers.

In the *Kern High School Dist.* case,[39] the California Supreme Court considered whether school districts have a right to reimbursement for costs in complying with statutory notice and agenda requirements for various education-related programs that are funded by the state and federal government. The court held that in eight of the nine programs at issue, the claimants were not entitled to reimbursement for notice and agenda costs because district participation in the underlying program was voluntary. As the court stated, "if a school district elects to participate in or continue participation in any underlying *voluntary* education-related funded program, the district's obligation to comply with the notice and agenda requirement related to that program does not constitute a reimbursable mandate."[40]

In this case, the charter school is *voluntarily* participating in the charter program at issue. Because charter schools are initiated by petition of either parents or teachers, they are created voluntarily. No state mandate requires them to exist. Rather, the charter is more in the nature of a contract than a state-imposed mandate. Consequently, based on the reasoning in the *Kern* case regarding voluntary participation, charters schools are not entitled to reimbursement under article XIII B, section 6.

Moreover, a charter school that elects to be the "public school employer" would be voluntarily subjecting itself to the provisions of the EERA. Section 47611.5 of the test claim statutes states:

> (b) A charter school charter shall contain a declaration regarding whether or not the charter school shall be deemed the exclusive public school employer of the employees at the charter school for the purposes of Section 3540.1 of the Government Code. [¶]…[¶]

---

[38] Government Code section 17519 defines 'school districts' for purposes of article XIII B, section 6. As to standing, Cf. *Kinlaw v. State of California* (1991) 54 Cal. 3d 326, 334-335.

[39] *Kern High School Dist., supra,* 30 Cal.4th 727.

[40] *Id.* at page 743. Emphasis in original.

> (f) By March 31, 2000, all existing charter schools must declare whether or not they shall be deemed a public school employer in accordance with subdivision (b), and such declaration shall not be materially inconsistent with the charter.

Based on the Supreme Court's reasoning discussed above regarding voluntary participation, charter schools are not entitled to reimbursement under article XIII B, section 6.

Government Code section 17519 defines "school district" for purposes of mandate reimbursement, as "any school district, community college district, or county superintendent of schools." Thus, in addition to the reasons discussed above, charter schools are not eligible for reimbursement because they are not included in this definition.

The Education Code treats charter schools as school districts for some purposes, such as special education,[41] collective bargaining,[42] and apportionment of funds.[43] And charter schools are deemed school districts for purposes of "Sections 8 and 8.5 of Article XVI of the California Constitution [Proposition 98 school funding.]"[44]

These examples, however, underscore that charter schools are not treated as school districts for purposes of mandate reimbursement under article XIII B, section 6. Charter schools are not mentioned in the mandates statutes (Gov. Code, § 17500 et seq.), nor are they considered "school districts" for purposes of mandate reimbursement in the charter school statutes (Ed. Code, § 47600 et seq.). And as mentioned above, except as otherwise specified, charter schools are "exempt from the laws governing school districts."[45] This exemption includes the mandate reimbursement statutes (Gov. Code, § 17500 et seq.).

Charter schools were established in 1992 (Stats. 1992, ch. 781), long after the Commission's statutory scheme was enacted in 1984. Yet in spite of recent amendments to article XIII B, section 6,[46] as well as both the mandates and charter school statutory schemes,[47] the Legislature has not amended either scheme to make charter schools eligible claimants. Because the definition of "school district" in Government Code section 17519 does not include charter schools, they cannot be read into that definition. The Commission, like a court, may not add to

---

[41] Education Code section 47604 et seq.

[42] Education Code section 47611.5.

[43] Education Code sections 47612, subdivision (c), 47650 and 47651.

[44] Education Code sections 47612, subdivision (c).

[45] Education Code section 47610.

[46] In November 2004, Proposition 1A was enacted to amend article XIII B, section 6, so that school district mandates are treated differently for purposes of mandate suspension, as well as mandates that "provide or recognize any procedural or substantive protection, right, benefit, or employment status of any local government employee … or … local government employee organization." (Cal. Const., art. XIII B, § 6, subds. (b)(4) & (b)(5).)

[47] For charter schools, in addition to the test claim statutes, see e.g., Statutes 2003, chapter 892. For the Commission, see e.g., Statutes 2004, chapter 890, Statutes 2002, chapter 1124, and Statutes 1999, chapter 643.

or alter the statutory language to accomplish a purpose that does not appear on the face of the statute or from its legislative history, where the language is clear.[48]

As the California Supreme Court has stated, "Where a statute, with reference to one subject [whether school districts includes charter schools] contains a given provision, the omission of such provision from a similar statute concerning a related subject … is significant to show that a different intention existed."[49] Thus, that the Legislature deemed a "charter school" to be a school district for some purposes (such as special education for example) cannot be interpreted to mean that a "charter school" should be deemed a school district for other purposes, such as mandate reimbursement. The omission of "charter school" from the definition of school districts in Government Code section 17519 is significant to show a different intention: that charter schools are not eligible for mandate reimbursement.

Therefore, the Commission finds that charter schools are not eligible claimants for purposes of article XIII B, section 6 of the California Constitution, nor are they eligible claimants for purposes of this test claim.

Based on this analysis, the Commission finds that the requirement for the charter school to be subject to the EERA, as well as the charter school's charter to declare whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5, subds. (b) & (f)) are not activities subject to article XIII B, section 6.

B. School district activities

School District or County Superintendent of Schools as "Public School Employer"

Education Code section 47611.5, subdivision (b), states, "If the charter school is not so deemed a public school employer, the school district where the charter is located shall be deemed the public school employer for the purposes of Chapter 10.7 … [the EERA]." Since the Legislature has made the school district the default public school employer if the charter school elects not to be the employer, the issue is whether doing so triggers mandated school district activities under article XIII B, section 6.

Claimant alleges the activities that mirror those listed in the *Collective Bargaining* parameters and guidelines are reimbursable for charter school employees: determination of appropriate bargaining units, elections and decertification of elections, negotiations, impasse proceedings, collective bargaining agreement disclosure, contract administration and adjudication of contract disputes, and unfair labor practice adjudication process and public notice complaints.

The Commission finds that the test claim statutes impose EERA (collective bargaining) activities on school districts (or county superintendents that act as school districts[50]) for charter schools.

---

[48] *In Re. Jennings* (2004) 34 Cal. 4th 254, 265.

[49] *Id.* at page 273.

[50] Education Code section 35160.2 states, "For the purposes of Section 35160, [regarding the authority of school districts] "school district" shall include county superintendents of schools and county boards of education."

Therefore, the Commission finds that the test claim legislation is subject to article XIII B, section 6 when the school district acts as the public school employer, (for purposes of the EERA) for charter school employees.[51]

Claimant alleges, as to county superintendents of schools, a higher level of service as the public school employer that is required to assume the collective bargaining obligations of Government Code sections 3540 through 3549 for charter schools granted under the authority of a county board of education when the charter school elects not to be the public school employer.

Although a county board of education may grant a charter petition,[52] and may be a 'public school employer,'[53] the test claim statute does not expressly apply to county boards of education. There is no provision under section 47611.5 for a county board to be assigned the public school employer role. According to section 47611.5, subdivision (b), either the charter school elects to be the public school employer, or the school district becomes so by default. Therefore, the Commission finds that claimant's alleged activity for county boards of education is not a mandate subject to article XIII B, section 6.[54]

Findings on denial

Claimant pleads section 47605, subdivision (b)(5) which requires written findings when denying a charter petition. In subparagraph (O), the findings must state, when applicable, that the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]."

---

[51] On page 4 of the test claim, in footnote 9, claimant states the "school district that granted a charter will incur additional costs … to conduct a hearing for the material change in an existing … charter … to comply with the new mandate that all … charters include a declaration regarding [their] status as the 'public school employer.' Although this is a new reimbursable activity this cost will be covered under the existing Charter School mandated reimbursement program." Staff notes that the public hearing requirement (in Ed. Code, § 47607) was decided by the Commission in the *Charter Schools* test claim (CSM 4437). Claimant's footnoted comment appears to be an observation. Because claimant alleges neither section 47607, nor activities based on it, staff makes no findings on the hearing activity.

[52] Education Code sections 47605, subdivision (j)(1), 47605.5 and 47605.6.

[53] Government Code section 3540.1, subdivision (k).

[54] On page 4 of the test claim, in footnote 8, claimant states that the "county board of education … will incur additional costs of having to conduct a hearing for the material change in an existing … charter in order to comply with the new mandate that all … charters include a declaration regarding [their] status as the 'public school employer.' Although this is a new reimbursable activity this cost will be covered under the existing Charter School mandated reimbursement program." Staff notes that the public hearing requirement for school districts (in Ed. Code, § 47607) was decided by the Commission in the *Charter Schools* test claim (4437). Claimant's footnoted comment appears to be an observation. Because claimant alleges neither section 47607, nor activities based on it, staff makes no findings on the hearing activity.

Although this statute merely describes a provision that the charter must contain, it also requires school districts to make a written finding when denying a charter for lack of this public school employer declaration. Although preexisting law required written findings on denial, the plain language of section 47605, subdivision (b)(5)(O) adds the lack of a public school employer designation as another potential reason for denying a charter petition. Therefore, as a requirement imposed on school districts when making applicable findings, the Commission finds that section 47605, subdivision (b)(5)(O) is subject to article XIII B, section 6.

Although in the *Charter Schools III* test claim (99-TC-14), the claimant pled that the activity of making written findings on denial of a charter is reimbursable, the statutes pled in that claim did not contain the public school employer declaration requirement of subdivision (b)(5)(O). Thus, the Commission finds that it has jurisdiction over this test claim statute, because subdivision (b)(5)(O) was not pled in the *Charter Schools III* test claim.

C. Does the test claim legislation constitute a "program" within the meaning of article XIII B, section 6?

In order for the test claim legislation to be subject to article XIII B, section 6 of the California Constitution, the legislation must constitute a "program," defined as a program that carries out the governmental function of providing a service to the public, *or* laws which, to implement a state policy, impose unique requirements on local governments and do not apply generally to all residents and entities in the state.[55] Only one of these findings is necessary to trigger article XIII B, section 6.[56]

Of the activities discussed above, only the following that are subject to article XIII B, section 6 are now under consideration:

- Subjecting school districts to the EERA (collective bargaining, Gov. Code, § 3540 et seq.) for charter school employees (Ed. Code, § 47611.5) when the district assumes the role of public school employer.
- Including in written findings when denying a charter petition that the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

The Commission finds that the test claim statutes constitute a program within the meaning of article XIII B, section 6. Although courts have generally held that mandates that affect employee benefits do not constitute a program within the meaning of article XIII B, section 6,[57] the EERA transcends ordinary employee rights or benefits.

---

[55] *County of Los Angeles, supra*, 43 Cal.3d 46, 56.

[56] *Carmel Valley Fire Protection District v. State of California, et al.* (1987) 190 Cal.App.3d 521, 537.

[57] In *County of Los Angeles v. State of California* (1987) 43 Cal.3d 46, the court held that legislation affording local agency employees the same increased level of workers' compensation benefits to employees in private organizations was not a program. Likewise, in *City of*

For example, Government Code section 3540 specifically declares the EERA's legislative intent: "It is the purpose of this chapter to … afford certificated employees *a voice in the formation of educational policy*." [Emphasis added.] Moreover, Government Code section 3543.2 of the EERA includes the following: "[T]he exclusive representative of certificated personnel has the right to consult on the definition of educational objectives, the determination of the content of courses and curriculum, and the selection of textbooks to the extent such matters are within the discretion of the public school employer under the law."[58]

The courts have held that although numerous private schools exist, education is a peculiarly governmental function and public education is administered by local agencies to provide a service to the public.[59] Thus, because the test claim statutes affect the educational policy of school districts that are public school employers as to their charter school(s), the Commission finds that the test claim statutes constitute a program within the meaning of article XIII B, section 6.

Issue 2: Does the test claim legislation impose a new program or higher level of service on school districts within the meaning of article XIII B, section 6?

To determine whether the "program" is new or imposes a higher level of service, the test claim legislation is compared to the legal requirements in effect immediately before enacting the test claim legislation.[60] And the test claim legislation must increase the level of governmental service provided to the public.[61] Each activity is discussed separately.

EERA

The issue is whether subjecting charter schools to the EERA for charter school employees creates any new school district activities, thereby imposing a new program or higher level of service on school districts. The Commission finds that it does not.

Richmond v. Commission on State Mandates (1998) 64 Cal.App.4th 1190, the court held that legislation requiring local governments to provide death benefits to local safety officers under both the Public Employees Retirement System and the workers' compensation system was not a program. Also, the court in *City of Anaheim v. State of California* (1987) 189 Cal.App.3d 1478, 1484, determined that a temporary increase in PERS benefits to retired employees, resulting in higher contribution rates for local government, did not constitute a program. And in *City of Sacramento v. State of California* (1990) 50 Cal.3d 51, the California Supreme Court determined that providing unemployment compensation protection to a city's employees was not a service to the public.

[58] In addition to certificated employees, the EERA also applies to classified employees. (Gov. Code, § 3540.1 subd. (e)).

[59] *Long Beach Unified School Dist.* (1990) 225 Cal.App.3d 155, 172.

[60] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878; *Lucia Mar, supra,* 44 Cal.3d 830, 835.

[61] *San Diego Unified School Dist., supra,* 33 Cal.4th 859, 878.

Finance, in its June 2000 comments on the test claim, states,

> If a charter school elects [not[62]] to be the public school employer of its employees for EERA purpose, and the charter school employees are subsequently placed in the same bargaining units with which the county office of education or school district currently negotiates, the Department of Finance believes no additional State-mandated costs would be incurred.

Claimant, in response to Finance's comments, states that Finance seems to argue that "if the charter school elects not to be the "public school employer" that the school district and/or county office of education will not assume any additional state mandated costs." Clamant assumes that Finance takes the position that these costs would be covered by the current collective bargaining reimbursement program. According to claimant:

> [I]n those instances where a charter school elects not to be the 'public school employer' and the school district or the county office of education assumes this responsibility that the costs for collective bargaining can be covered under the current collective bargaining mandated reimbursement program. However, the parameters and guidelines for the collective bargaining reimbursement program would have to be amended to reflect the additional authority under which this obligation occurs."

Claimant goes on to refute the assumption that employees of charter schools that elect not to become the "public school employer," would automatically become part of the existing bargaining units, so no additional costs would be incurred. Claimant states that this would occur in some cases by agreement of the parties; "however, in most cases the charter schools' employees will not have community of interest with school district employees and will not become part of the school districts' bargaining units. Claimant includes with its comments a copy of AB 842 (Migden), a bill introduced in 1999 but not enacted, that would have required charter school employees to be included in existing bargaining units. Claimant includes AB 842, apparently attempting to show that the legislative intent was not for charter employees to join existing bargaining units. Claimant argues that "in most cases local educational agencies would incur costs as outlined in the collective bargaining mandated reimbursement program for all additional activities assumed with these new bargaining units (if formed)."

The Commission disagrees. Other than claimant's assertions[63] and AB 842 (which was not enacted), claimant provides no evidence or legal authority that charter school employees, in a

---

[62] As noted by claimant, Department of Finance comments include a number of typos that lead to contradictory statements. This analysis is based on a reasonable interpretation of those comments as read by the claimant to insert the word "not" into the first sentence of the fourth full paragraph of the Department of Finance comments. The sentence should read, "If a charter school elects not to be the public school employer…"

[63] As to claimant's assertions, statements of fact are to be accompanied by a declaration under penalty of perjury (Cal. Code Regs, tit. 2, § 1183.03, subd. (d)). The record contains no such claimant declaration in its comments in response to Finance, or in any comments on the issue of

school district where the charter school is not the public school employer, would not join established collective bargaining units. Rather, the statutory scheme authorizes the new employees to join the established units[64] so that the school district is not required to engage in new activities with regards to the new charter school employees.

As to claimant's assertions regarding AB 842, where the Legislature simultaneously enacts a bill and rejects another, there is inference of legislative intent.[65] The legislative intent of AB 842, however, does not reveal whether charter school employees join existing bargaining units. It merely demonstrates that the Legislature did not enact AB 842 to force them to do so. Thus, legislative rejection of AB 842 sheds little light on the issue of whether charter school employees join existing bargaining units.

Therefore, the Commission finds that subjecting charter schools to the EERA for charter school employees does not create any new activities – and therefore is not a new program or higher level of service - for school districts.

Findings on Denial

The next issue is whether the following is a new program or higher level of service on school districts: including in written findings when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Preexisting law (Stats. 1998, ch. 34) requires the school district to make written findings of fact, as specified, to support denying a charter petition. Preexisting law did not, however, specify the lack of a public school employer declaration as one of the possible findings. Therefore, the Commission finds that it is a new program or higher level of service for a school district to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).) Because this is now the sole activity that constitutes a new program or higher level of service under this test claim, it alone is considered below.

Issue 3: Does the test claim legislation impose "costs mandated by the state" within the meaning of Government Code sections 17514 and 17556?

In order for the test claim statute to impose a reimbursable state-mandated program under the California Constitution, the test claim legislation must impose costs mandated by the state.[66] In

---

charter school employees joining existing bargaining units when the school district is the public school employer.

[64] Education Code section 47611.5.

[65] *Dyna-Med, Inc. v. Fair Employment & Housing Com.* (1987) 43 Cal.3rd 1379, 1396.

[66] *Lucia Mar, supra*, 44 Cal.3d 830, 835; Government Code section 17514.

addition, no statutory exceptions listed in Government Code section 17556 can apply. Government Code section 17514 defines "cost mandated by the state" as follows:

> [A]ny increased costs which a local agency or school district is required to incur after July 1, 1980, as a result of any statute enacted on or after January 1, 1975, or any executive order implementing any statute enacted on or after January 1, 1975, which mandates a new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.

With its test claim, claimant files a declaration from the Western Placer Unified School District that it "will/has incurred significantly more than $200[67] to implement these new duties mandated by the state for which Western Placer Unified School District has not be [sic] reimbursed…" The new duties for which it claims to have incurred costs, however, do not include making findings to deny a charter petition for lack of declaration as to the public school employer for purposes of the EERA (Ed. Code, § 47605, subd. (b)(5)(O)). Thus, there is no evidence in the record that the claimant has or will incur the cost of making this written finding.

The Commission must base its findings on substantial evidence in the record.[68]

> …[S]ubstantial evidence has been defined in two ways: first, as evidence of ponderable legal significance ... reasonable in nature, credible, and of solid value [citation]; and second, as relevant evidence that a reasonable mind might accept as adequate to support a conclusion.[69]

The Commission's finding must be supported by:

> …all relevant evidence in the entire record, considering both the evidence that supports the administrative decision and the evidence against it, in order to determine whether or not the agency decision is supported by "substantial evidence."[70]

The administrative record, including claimant's declaration, does not indicate that there are costs for making written findings on denial for lack of a declaration in the charter as to the public school employer. Therefore, because of this lack of evidence in the record, the Commission finds that test claim statute (Ed. Code, § 47605, subd. (b)(5)(O)) does not impose increased "costs mandated by the state" on school districts within the meaning of article XIII B, section 6, and Government Code sections 17514 and 17556.

---

[67] The current requirement is $1000 in costs (Gov. Code, § 17564, as amended by Stats. 2004, ch. 890).

[68] *Topanga Association for a Scenic Community v. County of Los Angeles* (1974) 11 Cal. 3d 506, 515. Government Code section 17559, subdivision (b).

[69] *Desmond v. County of Contra Costa* (1993) 21 Cal. App. 4th 330, 335.

[70] *Ibid.*

CONCLUSION

For the reasons indicated above the Commission finds that, as to the test claim statutes:

- A school district claimant does not have standing to claim reimbursement for the activities alleged to be mandated on a charter school.
- Charter schools are not eligible claimants subject to article XIII B, section 6 of the California Constitution. Thus, the requirement for the charter school to be subject to the EERA, as well as a declaration in the charter whether or not the charter school shall be deemed to be the exclusive public school employer, and requiring this declaration by March 31, 2000 (Ed. Code, § 47611.5, subds. (b) & (f)) are not activities subject to article XIII B, section 6.
- The test claim statutes do not mandate an activity on county boards of education.
- Subjecting charter schools to the EERA is not a new program or higher level of service for school districts that are deemed the public school employer.
- There is no evidence in the record that a school district incurs increased costs mandated by the state (within the meaning of Government Code sections 17514 and 17556) to make written findings of fact when denying a charter petition because the petition does not contain a reasonably comprehensive description of "A declaration whether or not the charter school shall be deemed the exclusive public school employer of the employees of the charter school for purposes of the [EERA]." (Ed Code, § 47605, subd. (b)(5)(O).)

Supreme Court of California
Joey WELLS, a Minor, etc., et al., Plaintiffs and Appellants,
v.
ONE2ONE LEARNING FOUNDATION et al., Defendants and Respondents;
State of California, Real Party in Interest and Respondent.

No. S123951.
Aug. 31, 2006.
As Modified on Denial of Rehearing Oct. 25, 2006.

Background: Charter school students and their parents and guardians sued charter schools, operators of schools, and chartering school districts, asserting qui tam causes of action, on behalf of the state, for violation of False Claims Act (FCA), violation of unfair competition law (UCL), intentional misrepresentation, negligent misrepresentation, and breach of contract. The Superior Court, Sierra County, No. S46-CV-5844,William Wooldridge Pangman, J., sustained defendants' demurrers without leave to amend and dismissed complaint. Plaintiffs appealed. The Court of Appeal reversed and remanded. The Supreme Court granted review, superseding the opinion of the Court of Appeal.

Holdings: The Supreme Court, Baxter, J., held that:
(1) school districts were not "persons" who were subject to suit under FCA, disapproving *LeVine v. Weis,* 90 Cal.App.4th 201, 108 Cal.Rptr.2d 562, and *LeVine v. Weis,* 68 Cal.App.4th 758, 80 Cal.Rptr.2d 439; but
(2) charter school defendants, and their operators, were "persons" who were subject to suit under FCA;
(3) charter school defendants and operators were also subject to suit under UCL;
(4) FCA cause of action was not barred insofar as it alleged violations of "independent study" rules proscribed by statute prior to 1999 amendment;
(5) FCA cause of action was not a barred claim for "educational malfeasance"; and
(6) Tort Claims Act filing requirements did not apply to False Claim Act cause of action.

Judgment of Court of Appeal affirmed in part, reversed in part, and remanded.

Kennard, J., filed concurring and dissenting opinion.

Opinion, 10 Cal.Rptr.3d 456, superseded.

West Headnotes

[1] States 360 188

360 States
360V Claims Against State
360k188 k. Making or presentation of false claims. Most Cited Cases

Public school districts were not "persons" who were subject to suit under False Claims Act (FCA); FCA provided enumerated list of covered "persons," including associations and organizations, but no words associated with public entities, such as a school district, were included in that list, and subjecting financially constrained school districts to treble-damages-plus-penalty provisions of FCA would result in prohibited infringement upon sovereign governmental powers; disapproving *LeVine v. Weis,* 90 Cal.App.4th 201, 108 Cal.Rptr.2d 562, and *LeVine v. Weis,* 68 Cal.App.4th 758, 80 Cal.Rptr.2d 439. West's Ann.Cal.Gov.Code §§ 12650(b)(5), 12651.

[2] Statutes 361 188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited Cases

Statutes 361 208

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction

361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k208 k. Context and related clauses. Most Cited Cases

Because statutory language generally provides the most reliable indicator of the Legislature's intent, courts turn to the words of the statute themselves when interpreting that statute, giving them their usual and ordinary meanings and construing them in context.

[3] Statutes 361 188

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k188 k. In general. Most Cited Cases

Statutes 361 212.7

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k212 Presumptions to Aid Construction
361k212.7 k. Other matters. Most Cited Cases

When interpreting a statute, if the language contains no ambiguity, courts presume the Legislature meant what it said, and the plain meaning of the statute governs.

[4] Statutes 361 190

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k187 Meaning of Language
361k190 k. Existence of ambiguity. Most Cited Cases

Statutes 361 217.4

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k217.4 k. Legislative history in general. Most Cited Cases

If statutory language is susceptible of more than one reasonable construction, courts can look to legislative history and to rules or maxims of construction in order to interpret the statute.

[5] Statutes 361 184

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k180 Intention of Legislature
361k184 k. Policy and purpose of act. Most Cited Cases

When interpreting a statute with language that is susceptible of more than one reasonable construction, courts may consider the impact of an interpretation on public policy.

[6] Statutes 361 233

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k233 k. Construction as including or binding government. Most Cited Cases

A traditional rule of statutory construction is that, absent express words to the contrary, governmental agencies are not included within the general words of a statute.

[7] Statutes 361 233

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k233 k. Construction as including or binding government. Most Cited Cases

While an unclear legislative intent may be resolved by the principle of statutory interpretation that excludes government agencies from the operation of general statutory provisions only if their inclusion would result in an infringement upon sovereign governmental powers, this principle cannot override positive indicia of a contrary legislative intent.

[8] States 360 188

360 States
360V Claims Against State
360k188 k. Making or presentation of false claims. Most Cited Cases

Agencies of state and local governments are not "persons" subject to suit under the False Claims Act (FCA). West's Ann.Cal.Gov.Code §§ 12650(b)(5), 12651.

[9] States 360 188

360 States
360V Claims Against State
360k188 k. Making or presentation of false claims. Most Cited Cases

Charter school defendants, and their operators, were "persons" subject to suit under the False Claims Act (FCA), and were not exempt from suit under FCA merely because such schools were deemed part of the public school system, for purposes of academics and state funding eligibility, under the Charter Schools Act (CSA); these charter schools were operated, pursuant to the CSA, by nongovernmental entities that were largely independent of management and oversight by the public education bureaucracy, and thus applications of FCA to these charter schools would not undermine state's sovereign educational function. West's Ann.Cal.Educ.Code § 47600 et seq.; West's Ann.Cal.Gov.Code §§ 12650(b)(5), 12651.
See Cal. Jur. 3d, State of California, § 119; Cal. Civil Practice (Thomson/West 2006) Torts, § 31:48.

[10] Antitrust and Trade Regulation 29T 143(1)

29T Antitrust and Trade Regulation
29TIII Statutory Unfair Trade Practices and Consumer Protection
29TIII(A) In General
29Tk139 Persons and Transactions Covered Under General Statutes
29Tk143 Businesses in General; Competitors and Competition
29Tk143(1) k. In general. Most Cited Cases

Charter school defendants, and their operators, were "persons" subject to suit under the unfair competition law (UCL), and were not exempt from suit under UCL merely because such schools were deemed part of the public school system, for purposes of academics and state funding eligibility, under the Charter Schools Act (CSA); these charter schools were operated, pursuant to the CSA, by nongovernmental entities that were largely independent of management and oversight by the public education bureaucracy, and thus imposition of UCL liability against these charter schools would not undermine state's sovereign educational function. West's Ann.Cal.Bus. & Prof.Code § 17200 et seq.; West's Ann.Cal.Educ.Code § 47600 et seq.

[11] States 360 188

360 States
360V Claims Against State
360k188 k. Making or presentation of false claims. Most Cited Cases

Charter school students' and their parents' qui tam False Claims Act (FCA) action against charter schools and their operators was not barred insofar as their FCA claim alleged violations of statutory "independent study" rules proscribed by statute prior to 1999 amendment, when those rules were explicitly made applicable to charter schools; even prior to amendment, statute's restrictions on provision of special funds or other things of value to independent study students applied to charter schools. West's Ann.Cal.Educ.Code § 51747.3; § 51747.3 (1998); West's Ann.Cal.Gov.Code §§ 12650(b)(5), 12651.

[12] Statutes 361 206

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k204 Statute as a Whole, and Intrinsic Aids to Construction
361k206 k. Giving effect to entire statute. Most Cited Cases

Interpretations which render any part of a statute superfluous are to be avoided.

[13] Statutes 361 223.1

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.1 k. In general. Most Cited Cases

Statutes 361 223.4

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k223 Construction with Reference to Other Statutes
361k223.4 k. General and special statutes. Most Cited Cases

In harmonizing the disparate, and sometimes discordant, statutory provisions, the Supreme Court is guided by the maxim that, where statutes are otherwise irreconcilable, later and more specific enactments prevail, pro tanto, over earlier and more general ones.

[14] Statutes 361 220

361 Statutes
361VI Construction and Operation
361VI(A) General Rules of Construction
361k213 Extrinsic Aids to Construction
361k220 k. Legislative construction. Most Cited Cases

A later expression of legislative purpose is not binding as to what prior legislation meant when it was adopted.

[15] States 360 188

360 States
360V Claims Against State
360k188 k. Making or presentation of false claims. Most Cited Cases

Charter school students' and their parents' qui tam False Claims Act (FCA) action against charter schools and their operators was not a barred claim for "educational malfeasance"; plaintiffs did not assert that charter schools provided a substandard education, but rather asserted under FCA that charter schools submitted false claims for school funds while failing to furnish any significant educational services, materials, and supplies. West's Ann.Cal.Gov.Code §§ 12650(b)(5), 12651.

[16] Schools 345 112.6

345 Schools
345II Public Schools
345II(I) Claims Against District
345k112.5 Notice, Demand, or Presentation of Claim
345k112.6 k. In general. Most Cited Cases
(Formerly 345k112)

Tort Claims Act (TCA) filing requirements did not apply to charter school students' and their parents' qui tam False Claims Act (FCA) cause of action against charter schools and their operators, alleging that charter schools submitted false claims for public school funds; qui tam plaintiffs stood in shoes of state or other local public entity, and thus came within TCA exemption for claims by state or public entity. West's Ann.Cal.Gov.Code §§ 945.4, 12650(b)(5), 12651.

*****110** Law Offices of Michael S. Sorgen, Michael S. Sorgen, Andrea Adam Brott, Joshua N. Sondheimer, Robert S. Rivkin, San Francisco, Claudia A. Baldwin, Oakland; Haley and Bilheimer, Allan Haley and John Bilheimer, Nevada City, for Plaintiffs and Appellants.

James Moorman, Amy Wilken, Joseph E.B. White; Law Offices of Paul D. Scott and Paul D. Scott, San Francisco, for Taxpayers Against Fraud as Amicus Curiae on behalf of Plaintiffs and Appellants.

Gordon & Rees, Dion N. Cominos, Fletcher C. Alford, Heather A. McKee and Mark C. Russell, San Francisco, for Defendant and Respondent One2One Learning Foundation.

Seyfarth Shaw, James M. Nelson, Oakland, Kurt A. Kappes, Jason T. Cooksey, Sacramento, and William S. Jue for Defendant and Respondent Charter School Resource Alliance.

California Education Legal Services, Thomas M. Griffin, Long Beach; Girard & Vinson, Christian M.

Keiner, Sacramento, and David E. Robinett, Pleasanton, for Defendant and Respondent Camptonville Union Elementary School District.

Parks, Dingwall & Associates, Linda Rhoads Parks, Brentwood; Law Offices of Jon Webster and Jon Webster, Concord, for Defendants and Respondents Camptonville Academy, Inc., and Janice Jablecki.

*****111** Needham, Davis, Kirwan & Young, Marc E. Davis, Marc J. Cardinal, Menlo Park, and Matt Demel for Defendant and Respondent Mattole Unified School District.

Duncan, Ball & Evans, Evans, Wieckowski & Ward, Matthew D. Evans and James B. Carr, Sacramento, for Defendants and Respondents Sierra Summit Academy, Inc., and Sierra Plumas Joint Unified School District.

Farmer, Murphy, Smith & Alliston, Craig E. Farmer, Sacramento, and Jojra E. Jackson for Statewide Association of Community Colleges, Southern California Regional Liability Excess Fund, Northern California Regional Liability Excess Fund and Schools Excess Liability Fund as Amici Curiae on behalf of Defendants and Respondents.

Sharon L. Browne, Sacramento, for Pacific Legal Foundation as Amicus Curiae on behalf of Defendants and Respondents.

Declues & Burkett, J. Michael Declues and Gregory A. Wille, Huntington Beach, for Coast Community College District as Amicus Curiae on behalf of Defendants and Respondents.

Gibson, Dunn & Crutcher, Joel S. Sanders, San Francisco, Mark A. Perry, Ethan D. Dettmer and Rebecca Justice Lazarus, San Francisco, for PricewaterhouseCoopers LLP as Amicus Curiae on behalf of Defendants and Respondents.

Ann Miller Ravel, County Counsel (Santa Clara) and Kathryn J. Zoglin, Deputy County Counsel, for California State Association of Counties as Amicus Curiae on behalf of Defendants and Respondents.

Thomas Law Firm, R. Todd Bergin and Allen L. Thomas, Long Beach, for Fullerton Joint Union High School District, Brea–Olinda Unified School District, Claremont Unified School District, Huntington Beach Union High School District, Long Beach Unified School District, Newport–Mesa Unified School District, Placentia–Yorba Linda Unified School District, Pomona Unified School District, Santa Monica–Malibu Unified School District, Tustin Unified School District and Whittier Union School High School District as Amici Curiae on behalf of Defendants and Respondents.

Bill Lockyer, Attorney General, Manuel M. Medeiros, State Solicitor General, James Humes, Chief Assistant Attorney General, Christopher Ames, Assistant Attorney General, Larry G. Raskin and Mark R. Soble, Deputy Attorneys General, for Real Party in Interest and Respondent.

BAXTER, J.

***1178 **228** The Charter Schools Act (CSA; Ed.Code, § 47600 et seq.), as adopted by the Legislature in 1992 and since amended, represents a revolutionary change in the concept of public education. Under this statute, interested persons may obtain charters to operate schools that function within public school districts, accept all eligible students, charge no tuition, and are financed by state and local tax dollars, but nonetheless retain considerable academic independence from the mainstream public education system. Such schools may elect to operate as, or be operated by, corporations organized under the Nonprofit Public Benefit Corporation Law. (*Id.*, § 47604, subd. (a).)

Here certain charter schools, their corporate operators, and the chartering school districts were sued on multiple grounds by some of the schools' students and their parents or guardians. The gravamen of all the claims is that the schools—designed to provide and facilitate home instruction through use of the Internet (so-called distance learning)—failed to deliver instructional services, equipment, *****112** and supplies as promised, and as required by law. In effect, the plaintiffs assert, the schools functioned only to collect "average daily attendance" (ADA) forms, on the basis of which the schools, and the districts, fraudulently claimed and received public education funds from the state. Plaintiffs also claim violations of specific statutory rules governing "independent study" programs offered by the public schools.

This case concerns whether, and in what circumstances, public school districts, charter schools, and/or the operators of such schools may be exposed to civil liability based on allegations of this kind. Among other things, we must determine whether such entities, or any of them, are "persons" who may be sued (1) under the unfair competition law (UCL; Bus. & Prof.Code, § 17200 et seq.) and (2) in a qui tam action, brought by ***1179** individuals on behalf of the state, under the California ****229** False Claims Act (CFCA; Gov.Code, § 12650 et seq.).[FN1]

> FN1. The CFCA provides a single definition of "person" for all purposes of that statute. "Persons" who knowingly submit false claims to state or local governments may be sued under the CFCA (Gov.Code, § 12651), and, under certain circumstances, "persons" may also *bring* "qui tam" actions, *on behalf of* defrauded governmental entities, *against* alleged false claimants (*id.*, § 12652, subd. (c)). Here, as noted above, we consider, among other things, whether public entities are "persons" who *may be sued* as false claimants under the CFCA. In a companion case, *State of California ex rel. Harris v. PricewaterhouseCoopers, LLP* (Aug. 31, 2006, S131807) 39 Cal.4th 1220, 48 Cal.Rptr.3d 144, 141 P.3d 256, 2006 WL 2506376 (*Harris*), we address the question whether a governmental entity is a person who, as a qui tam plaintiff under the CFCA, *may sue* for alleged false claims that were submitted only to *other* public agencies.

We reach the following conclusions: (1) Public school districts are not "persons" who may be sued under the CFCA. (2) On the other hand, the charter schools in this case, and their operators, are "persons" subject to suit under both the CFCA and the UCL, and are not exempt from either law merely because such schools are deemed part of the public school system. (3) The CFCA cause of action is not a barred claim for "educational malfeasance" (see *Peter W. v. San Francisco Unified Sch. Dist.* (1976) 60 Cal.App.3d 814, 131 Cal.Rptr. 854 (*Peter W.*)) insofar as it asserts, not simply that One2One's charter schools provided a *substandard* education, but that they submitted false claims for school funds while failing to furnish *any* significant educational services, materials, and supplies. (4) The CFCA cause of action is not barred insofar as it alleges that, before 2000, the charter schools violated "independent study" rules set forth in a 1993 statute, Education Code section 51747.3, because section 51747.3 applied to charter schools even before its amendment in 1999. (5) Finally, a qui tam action under the CFCA against a charter school or its operator is not subject to the Tort Claims Act (TCA; Gov.Code, § 815 et seq.) requirement of prior presentment of a claim for payment (see *id.*, §§ 905, 910 et seq.). These conclusions require that we affirm in part, and reverse in part, the judgment of the Court of Appeal.

FACTS AND PROCEDURAL BACKGROUND

On December 30, 1999, plaintiffs filed a complaint, which included a claim for qui tam relief on behalf of the state, under the CFCA. (Gov.Code, § 12652, subd. (c)(1).) As provided by the CFCA in such cases, the complaint was filed under seal. (*Id.*, subd. (c)(2).) In July 2000, after the seal was lifted, the Attorney General noticed his election to intervene in, and proceed *****113** with, the CFCA action on behalf of the state. (*Id.*, subd. (c)(6).)

***1180** On August 11, 2000, plaintiffs filed their first amended complaint (the complaint). As pertinent to the issues before us, the complaint alleged the following:

At various times during 1997, 1998, and 1999, defendant One2One Learning Foundation (One2One), a Texas corporation, operated three charter schools in California through its California corporate alter ego, defendant Charter School Resource Alliance (CSRA). These schools included (1) defendant Sierra Summit Academy, Inc. (Sierra Summit Academy), operating as a California nonprofit corporation, and chartered by the Sierra Plumas Joint Unified School District (Sierra District) in Sierra County, (2) defendant Mattole Valley Charter School (Mattole Valley School), chartered by the Mattole Unified School District (Mattole District) in Humboldt County, and (3) defendant Camptonville Academy, Inc. (Camptonville Academy), operating as a California nonprofit corporation, and chartered by defendant Camptonville Union Elementary School District (Camptonville District) in Yuba County.

Defendant Robert Carroll is One2One's president and chief executive officer. Defendant Jeff Bauer is Superintendent of the Sierra District. Defendant Carol

Kennedy is the Director of Sierra Summit Academy. Defendant Richard Graey is Superintendent of the Mattole District and the Director of Mattole Valley School. Defendant Allen Wright is Superintendent and Principal of the Camptonville District. Defendant Janis ****230** Jablecky is the Director of Camptonville Academy.[FN2]

> FN2. One2One, CSRA, Sierra Summit Academy, Mattole Valley School, and Camptonville Academy, as identified and described in the complaint, are hereafter collectively referred to as the charter school defendants. The Sierra District, the Mattole District, and the Camptonville District are hereafter collectively referred to as the district defendants. The charter school defendants, the district defendants, and the individual defendants are hereafter collectively referred to as all defendants.

Each plaintiff was a minor student enrolled in one of the defendant charter schools at some time during 1998 and/or 1999, or the parent and/or guardian of such a student. All the plaintiffs were direct victims of One2One's failure to provide promised instruction, testing, equipment, materials, and supplies.

Like traditional public schools, charter schools are funded by the state based on ADA records. While charter schools have considerable freedom in their academic approach, they must meet statewide educational standards and use appropriately credentialed teachers. The chartering entity, usually a school district, has oversight responsibilities, and must revoke a school's charter for fiscal mismanagement, material violation of the charter, failure to meet or pursue any of the educational outcomes set by the charter, failure to meet generally accepted accounting principles, or violation of law.

***1181** Sierra Summit Academy, Mattole Valley School, and Camptonville Academy were operated as distance learning schools, in which students study at home, complete lessons on their computers, and transmit them via the Internet to the school. Students are also tested through the Internet.

The charters and promotional literature for One2One-operated schools promised to provide "ways and means" for students to achieve an education through distance learning, including the furnishing of computers, necessary software, and textbooks, and reimbursement of up to $100 per month for out-of-pocket educational expenses incurred by students or their parents or guardians. Each student was also *****114** to be assigned an "educational facilitator," who was to devise a learning contract for the student, provide parents with a copy of the student's curriculum goals, order necessary educational materials, and come to the student's home a few hours per week for personal instruction, testing, and evaluation.

Despite its promises, One2One has failed to provide the enumerated equipment, supplies, and services, either to plaintiff students or to any of its enrollees. Its educational facilitators—who, on information and belief, are teaching outside their credentialed areas or are not credentialed at all—do not provide assessment, instruction, review, or curriculum, either online or in person. One2One also fails to reimburse students, parents, and guardians for educational expenses. In some cases, parents actually pay One2One for equipment and for educational materials and supplies, either because One2One has failed to provide these items for free as promised, or because parents have exhausted their $100 per month expense allowance. Moreover, One2One overbills for the educational materials and software it does provide. In particular, the educational software programs One2One uses are available online for free, or for much less than One2One charges.[FN3]

> FN3. Included in the complaint were detailed allegations concerning the charter schools' treatment of the named plaintiffs, including the schools' broken promises to supply computers and educational materials, and the failure of their "educational facilitators" to provide home visits, or any other significant contact, except for "religious" visits to collect signed ADA forms. The complaint also contained class action allegations.

One2One aggressively recruits poor, rural districts to approve their charter schools, then enrolls students throughout the state for distance learning. In return for chartering its schools and allowing their operation, One2One pays the districts administration fees in excess of those allowed by statute. Despite their oversight responsibilities, the districts enable One2One to misuse public funds by turning a blind

eye to the charter schools' activities, and, for the most part, failing to take steps to monitor them.

***1182** On the basis of allegations such as these, the complaint asserted causes of action ****231** against the charter school defendants for breach of contract (seventh cause of action) and intentional and negligent misrepresentation (fourth and fifth causes of action, respectively). Against the charter school and district defendants, it contained claims for mandamus and declaratory relief (third and 10th causes of action, respectively), and for violation of the free school, equal protection, and due process guarantees of the California Constitution (eighth and ninth causes of action, respectively). As to all defendants, it sought injunctive relief against misuse of taxpayer funds (second cause of action).

Finally, the complaint included, (1) against the charter school and district defendants, a CFCA cause of action for qui tam relief, on behalf of the state, for the alleged submission of false and fraudulent claims for payment of state educational funds (first cause of action) and, (2) against the charter school defendants, an individual and representative claim under the UCL, alleging unfair and deceptive business practices in the operation of the schools (sixth cause of action).

The CFCA cause of action asserted that the charter school defendants submitted false claims, within the meaning of this statute, by requesting funding from the districts and/or the state, "knowing that their ADA records did not accurately reflect the students enrolled in and receiving instruction, educational materials, or services*****115** from their schools." (At another point, the complaint alleged more generally that One2One "fails to provide the education it promises but falsely collects State educational funds as if the education were provided.")

The CFCA count also alleged that the charter school defendants falsely claimed ADA funds (1) for what was effectively independent study, though the schools were in violation of Education Code section 51747.3, subdivision (a), in that they provided money or other things of value to independent study pupils that were not provided to students attending regular classes, and (2) for independent study pupils who, in violation of subdivision (b) of the same section, resided outside the counties in which the respective schools were located, or adjacent counties.[FN4]

FN4. According to the complaint, for each of the 5,200 students enrolled statewide in its distance learning charter schools, One2One collects ADA funds of about $120 per day, or $4,350 per school term. The complaint thus asserted generally that, on the basis of One2One's failure to provide educational services and materials as promised in its charters and required by law, "One2One engages in a practice of defrauding parents, school districts, and the State by collecting more than $20 million annually in educational funds."

***1183** In the CFCA cause of action, the complaint alleged that the district defendants had submitted false claims on behalf of the charter schools, even though they "knew or deliberately or recklessly disregarded whether the public funds were being used for wrongful purposes." Further, the complaint asserted, the district defendants wrongfully claimed funds for supervisory services beyond the limits set forth in the CSA.

Aside from the injunctive and declaratory relief noted above, the complaint sought, among other things, (1) compensatory and punitive damages against the charter school defendants, and, (2) against the charter school and district defendants, restitution of funds falsely claimed and received, with treble damages and civil penalties as provided in the CFCA.

Several defendants demurred.[FN5] In November 2001, the trial court sustained, without leave to amend, the demurrers as to the first (CFCA), second (taxpayer injunctive relief), fourth (intentional misrepresentation), fifth (negligent misrepresentation), sixth (UCL), and seventh (breach of contract) causes of action.[FN6] The court reasoned as ****232** follows: (1) All these counts are noncognizable private claims for "educational malfeasance." (2) Because the charter school and district defendants are " public entities," the CFCA, intentional misrepresentation, and negligent misrepresentation causes of action are subject to the TCA requirement of prior presentment of a claim for payment. (3) As "public entities," the charter school defendants are not "persons" subject to suit under the *****116** UCL. (4) The taxpayer claim for injunctive relief is subject to the requirement of a prior claim for refund. (5) The CFCA claim for violation of the sta-

tutory restrictions on "independent study" programs fails, because those restrictions applied to charter schools only in and after 2000, and all the facts alleged in the complaint precede that date.[FN7]

FN5. Separate demurrers were filed by (1) CSRA and Carroll, (2) Sierra Summit Academy, Sierra District, Bauer, and Kennedy, and (3) One2One. One2One later filed a joinder in the demurrer of CSRA and Carroll.

FN6. Previously, in September 2001, the trial court had denied the State of California's motion to dismiss plaintiffs' CFCA claim for lack of jurisdiction. The motion was made under Government Code section 12652, subdivision (d)(3)(A), which deprives the court of jurisdiction over a private qui tam CFCA action that is based on the prior "public disclosure" of the facts supporting the claim, where the disclosure was made "in a criminal, civil, or administrative hearing, in an investigation, report, hearing, or audit conducted by or at the request of the Senate, Assembly, auditor, or governing body of a political subdivision, or by the news media," unless the qui tam plaintiff "is an original source of the information." The ruling on this motion is not involved in the appeal before us.

FN7. After an initial hearing on the demurrers, the trial court issued a final ruling as to the second (taxpayer injunctive relief), third (mandamus), fourth (intentional misrepresentation), fifth (negligent misrepresentation), seventh (breach of contract), eighth (free school guarantee), ninth (equal protection and due process), and 10th (declaratory relief) causes of action. However, as to the first (CFCA) and sixth (UCL) causes of action, the court obtained additional briefing on whether, in light of a then recent Court of Appeal decision, *LeVine v. Weis* (2001) 90 Cal.App.4th 201, 108 Cal.Rptr.2d 562 (*LeVine II*) (see also *LeVine v. Weis* (1998) 68 Cal.App.4th 758, 80 Cal.Rptr.2d 439 (*LeVine I*)), the charter school and district defendants, as "public entities within the public school system," could be sued under the CFCA and the UCL. In its final ruling, as noted, the court determined that the charter school defendants were not subject to suit under the UCL, but the court did not decide whether a similar rule applied to either the charter school or district defendants under the CFCA.

***1184** All parties stipulated that (1) the trial court's ruling on the demurrers was binding, as law of the case, on those defendants who had not demurred, (2) the remaining causes of action would be dismissed in order to facilitate appellate review, and (3) plaintiffs would dismiss the individual defendants. Judgment was entered accordingly.

Plaintiffs appealed, urging that the CFCA, UCL, contract, and misrepresentation claims should not have been dismissed.[FN8] The Court of Appeal reversed the judgment of dismissal. The Court of Appeal agreed with the trial court that the causes of action for breach of contract and misrepresentation are barred by the rule that private parties cannot sue public schools for "educational malfeasance." The Court of Appeal also concurred that the charter school defendants, as part of the public school system, are "public entities," and thus are not "persons" who may be sued under the UCL.

FN8. No defendant cross-appealed from the trial court's order *overruling* demurrers to the third (mandate), eighth (free school guarantee), ninth (equal protection/due process), and 10th (declaratory relief) causes of action. Nor did any of defendants' Court of Appeal briefs argue that those counts should have been dismissed. By the same token, after stipulating in the trial court to dismissal of individual defendants Carroll, Bauer, Kennedy, Graey, Wright, and Jablecki, plaintiffs did not contend in the Court of Appeal that the second cause of action (taxpayer relief)—the only one naming those defendants—should be reinstated. The State of California, as real party and respondent, filed a brief asserting only that the "prior claim" requirement of the TCA should not apply to qui tam actions under the CFCA.

On the other hand, the Court of Appeal held that the CFCA, unlike the UCL, does include public enti-

ties among the "persons" who may be sued. Hence, the Court of Appeal determined, charter schools and public school districts may be subject to private qui tam actions under the CFCA. Moreover, the Court of Appeal reasoned, plaintiffs' CFCA allegations—i.e., that the charter school and district defendants made or facilitated fraudulent claims to obtain state ADA funds for educational services that were not provided—are not a prohibited cause of action for "educational malfeasance."

Nor, the Court of Appeal concluded, must a qui tam action under the CFCA be preceded by presentment of a claim for payment pursuant to the TCA. In this regard, the Court of Appeal noted that (1) the state is expressly exempt from the *****117** TCA's "prior presentment" requirement (Gov.Code, § 905, subd. (*i*)), (2) a qui tam plaintiff under the CFCA stands in the shoes of the state, and (3) application of a "prior presentment" requirement in this context would undermine ****233** the CFCA's provision that qui tam actions must initially be ***1185** filed under seal, thus allowing the state to investigate, without prior warning to the alleged false claimant, before deciding whether to intervene in the action.

Finally, however, the Court of Appeal concurred with the trial court that plaintiffs' CFCA claim must fail insofar as it is based on allegations that the charter schools violated the "independent study" statute (Ed.Code, § 51747.3). Like the trial court, the Court of Appeal concluded that, while the complaint covered only acts done by the charter school defendants in the years 1998 and 1999, the "independent study" statute did not apply to charter schools until the year 2000.

The Court of Appeal remanded for further proceedings consistent with its opinion. We understand the effect of the Court of Appeal's judgment to be that plaintiffs may proceed against both the district and charter school defendants on the CFCA cause of action—minus the allegations concerning violation of the statutory rules governing "independent study" programs—but may not proceed on the UCL, contract, or misrepresentation causes of action.

Petitions for review were filed by defendants (1) One2One, (2) CSRA, (3) the Mattole District and Graey, (4) Camptonville Academy and Jablecki, and (5) the Sierra District and Sierra Summit Academy. All challenged the Court of Appeal's reinstatement of plaintiffs' CFCA cause of action. The petitions variously argued that (1) the charter school and district defendants are "public entities," and as such, are not "persons" subject to suit under the CFCA, (2) a qui tam action under the CFCA is subject to the "claim presentment" provisions of the TCA, and (3) the CFCA allegations are a disguised claim for "educational malfeasance."

Plaintiffs answered the petitions, urging, as additional issues, that (1) the restrictions on "independent study" programs imposed by Education Code section 51747.3 have applied to charter schools since that statute's adoption in 1993 and (2) private nonprofit corporations operating charter schools are "persons" covered by the UCL. We granted review. As will appear, we agree with certain of the Court of Appeal's holdings and disagree with others. We will therefore reverse in part the Court of Appeal's judgment.[FN9]

FN9. Amicus curiae briefs in support of defendants have been filed by (1) the Statewide Association of Community Colleges et al., (2) Fullerton Joint Union High School District et al., (3) the Pacific Legal Foundation, (4) the California State Association of Counties, (5) Coast Community College District, and (6) PricewaterhouseCoopers, LLP. An amicus curiae brief in support of plaintiffs has been filed by Taxpayers Against Fraud. We appreciate the assistance provided by these briefs.

***1186 DISCUSSION**

1. The CSA.

The CSA, as adopted in 1992 and since substantially amended, is intended to allow "teachers, parents, pupils, and community members to establish ... schools that operate independently from the existing school district structure." (Ed.Code, § 47601.) By this means, the CSA seeks to expand learning opportunities, encourage innovative teaching methods, provide expanded public educational choice, and promote educational competition and accountability within the public school system. (*Id.*, subds. (a)-(g).)

*****118** If statutory requirements are met, public school authorities must grant the petition of interested persons for a charter to operate such a school within a public school district. (Ed.Code, § 47605.) For certain purposes, the school is "deemed to be a 'school dis-

trict' " (*id.,* § 47612, subd. (c)), is "part of the Public School system" (*id.,* § 47615, subd. (a)), falls under the "jurisdiction" of that system, and is subject to the "exclusive control" of public school officers (*id.,* § 47615, subd. (a)(2); § 47612, subd. (a)). (See *Wilson v. State Bd. of Education* (1999) 75 Cal.App.4th 1125, 1136–1142, 89 Cal.Rptr.2d 745 (*Wilson*).)

A charter school must operate under the terms of its charter, and must comply with the CSA and other specified laws, but is otherwise exempt from the laws governing school districts. (Ed.Code, § 47610.) A charter school may elect to operate as, or be ****234** operated by, a nonprofit corporation organized under the Nonprofit Public Benefit Corporation Law. (*Id.,* § 47604, subd. (a), as added by Stats.1998, ch. 34, § 3.)

A charter school is eligible for its share of state and local public education funds, which share is calculated primarily, as with all public schools, on the basis of its ADA. (Ed.Code, § 47612; see also *id.,* § 47630 et seq.) [FN10] Provisions added to the CSA since its original adoption enumerate certain oversight responsibilities of the chartering authority (Ed.Code, §§ 47612, 47604.32), and authorize that agency to charge the school supervisorial fees, within specified limits, for such services (*id.,* § 47613).

> FN10. California school finance is enormously complex, but the basic system is that "funds raised by local property taxes are augmented by state equalizing payments. Each school district has a base revenue limit that depends on average daily attendance, ... and varies by size and type of district. [¶] The revenue limit for a district includes the amount of property tax revenues a district can raise, with other specific local revenues, coupled with an equalization payment by the state, thus bringing each district into a rough equivalency of revenues." (56 Cal.Jur.3d (2003) Schools, § 7, p. 198.)

1187** ***2. The CFCA.

The CFCA, which is patterned after a similar federal law, was adopted in 1987. (Stats.1987, ch. 1420, § 1, p. 5237.) It provides that "[a]ny person" who, among other things, "[k]nowingly presents or causes to be presented to ... the state or ... any political subdivision thereof, a false claim for payment or approval," or "[k]nowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the state or by any political subdivision," or "[c]onspires to defraud the state or any political subdivision by getting a false claim allowed or paid by the state or any political subdivision," or "[i]s a beneficiary of an inadvertent submission of a false claim to the state or a political subdivision, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the state or the political subdivision within a reasonable time after discovery [thereof]," "shall be liable to the state or to the political subdivision for three times the amount of damages" the state or political subdivision thereby sustained, as well as for the state's or political subdivision's costs of suit, and may also liable for a civil penalty of up to $10,000 for each false claim. (Gov.Code, § 12651, subd. (a)(1)-(3), (8).) [FN11]

> FN11. In certain circumstances, where the person submitting the false claim reported it promptly and cooperated in any investigation, the court may assess less than three times the damages (though no less than two times the damages), and no civil penalty. (Gov.Code, § 12651, subd. (b).)

*****119** The CFCA defines a "person" to "include any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust." (Gov.Code, § 12650, subd. (b)(5).)

Where a "person" has submitted a false claim upon state funds, or upon both state and political subdivision funds, in violation of the CFCA, the Attorney General may sue that person to recover the damages and penalties provided by the statute. (Gov.Code, § 12652, subd. (a)(1).) Where the false claim was upon "political subdivision funds," or upon both state and political subdivision funds, the "prosecuting authority" of the affected political subdivision may bring such an action. (*Id.,* subd. (b)(1).) [FN12]

> FN12. " 'Prosecuting authority' refers to the county counsel, city attorney, or other local government official charged with investigating, filing, and conducting civil legal proceedings on behalf of, or in the name of, a particular political subdivision." (Gov.Code, § 12650, subd. (b)(4).)

When either the Attorney General or the local

prosecuting authority unilaterally initiates an action involving both state and political subdivision funds, the other affected official or officials must be notified. If the Attorney General initiates such an action, the local prosecuting authority may, ***1188** upon receiving notice, intervene. If the local prosecuting attorney is the initiator, the Attorney General may, upon notice, elect to assume responsibility for the action, though the local prosecuting authority may continue as a party. (Gov.Code, § 12652, subds.(a)(2), (3), (b)(2), (3).)

A CFCA action may also be initiated by a "person," as a "qui tam" plaintiff, for and in ****235** the name of the state or the political subdivision whose funds are involved. (Gov.Code, § 12652, subd. (c)(1), (3).) The complaint in such an action shall be filed in camera, and may remain under seal for up to 60 days. While the complaint remains sealed, "[n]o service shall be made on the defendant." (*Id.*, subd. (c)(2).)

The qui tam plaintiff must immediately notify the Attorney General of the suit and disclose to him all material evidence and information the plaintiff possesses. If the qui tam complaint involves only state funds, the Attorney General may, within the 60–day period or extensions thereof, elect to intervene and proceed with the action. If political subdivision funds alone are involved, the Attorney General must forward the qui tam complaint to the local prosecuting authority, who may elect to intervene and proceed with the action. If both state and political subdivision funds are involved, the Attorney General and the local prosecuting authority are to coordinate their investigation and review. Either official, or both of them, may then elect to intervene and proceed with the action. If these officials decline to proceed, the qui tam plaintiff shall have the right to conduct the action. (Gov.Code, § 12652, subd. (c)(4)-(8).) If state or local officials intervene, they may assume control of the action, but the qui tam plaintiff may remain as a party. (*Id.*, subd. (e)(1).)

A substantial portion of the proceeds of any settlement or court award in a CFCA action—as much as 66 percent—does not revert to the general coffers of the state or the political subdivision against which the false claim was submitted. Instead, a significant "cut" of these proceeds goes to those who pursued the action on behalf of the defrauded entity.

Thus, if the Attorney General or a local prosecuting authority initiated a CFCA action, that officer is entitled to a fixed 33 percent of the proceeds of the action, or settlement thereof. Where a local prosecuting authority intervened in an action *****120** initiated by the Attorney General, the court may award the local prosecuting authority a portion of the Attorney General's 33 percent, as appropriate to the local authority's role in conducting the action. If, in an action brought by a qui tam plaintiff, the Attorney General or the local prosecuting authority proceeds with the action, that official receives a fixed 33 percent of the proceeds, and the qui tam plaintiff receives from 15 to 33 percent, depending on his or her litigation role. Where both the Attorney ***1189** General and a local prosecuting authority are involved in a qui tam action, the court may award the latter officer a portion of the Attorney General's 33 percent, depending on the role played by the local prosecutor.[FN13] If neither the Attorney General nor the local prosecuting authority elects to proceed with the action, the qui tam plaintiff may receive between 25 and 50 percent of the proceeds. (Gov.Code, § 12652, subd.(g).)

> FN13. Any proceeds recovered by the Attorney General as his "cut" of the award or settlement are deposited into a special False Claims Act Fund in the State Treasury. The Attorney General is to use the money in this fund, upon its appropriation by the Legislature, for the ongoing investigation and prosecution of false claims. (Gov.Code, § 12652, subd. (j).)

The CFCA's remedies are cumulative to any others provided by statute or common law. (Gov.Code, § 12655, subd. (a).) Further, its provisions "shall be liberally construed and applied to promote the public interest." (*Id.*, subd. (c).)

3. The UCL.

As pertinent here, the UCL provides for relief by civil lawsuit against "[a]ny person who engages, has engaged, or proposes to engage in unfair competition." (Bus. & Prof.Code, § 17203.) "Unfair competition" is defined to include "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising...." (*Id.*, § 17200.) An action for injunctive relief, which relief may include orders necessary "to restore to any person in interest any money or property .... acquired by

means of such unfair competition" (*id.,* § 17203), may be brought (1) by the Attorney General or a specified local prosecuting officer "upon their own complaint or upon the complaint of any board, officer, corporation, or association," or (2) "by any ****236** person who has suffered injury in fact and has lost money or property as a result of such unfair competition" (*id.,* § 17204). For purposes of the UCL, "the term person shall mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons." (*Id.,* § 17201.) Except as otherwise specifically provided, the UCL's remedies are "cumulative to each other and to the remedies or penalties available under all other laws of this state." (*id.,* § 17205.)

4. May a public school district be sued under the C FCA?

[1] The Court of Appeal held that both the district and charter school defendants are "persons" subject to suit under the CFCA. The district defendants insist that they are not "persons" for purposes of this statute. For reasons that will appear, we agree with the district defendants.

[2][3][4][5] ***1190** We apply well-settled principles of statutory construction. Our task is to discern the Legislature's intent. The statutory language itself is the most reliable indicator, so we start with the statute's words, assigning them their usual and ordinary meanings, and construing them in context. If the words themselves are not ambiguous, we presume the Legislature meant what it said, and the statute's plain meaning governs. On the other *****121** hand, if the language allows more than one reasonable construction, we may look to such aids as the legislative history of the measure and maxims of statutory construction. In cases of uncertain meaning, we may also consider the consequences of a particular interpretation, including its impact on public policy. (E.g., *MW Erectors, Inc. v. Niederhauser Ornamental & Metal Works Co., Inc.* (2005) 36 Cal.4th 412, 426, 30 Cal.Rptr.3d 755, 115 P.3d 41; *People v. Smith* (2004) 32 Cal.4th 792, 797–798, 11 Cal.Rptr.3d 290, 86 P.3d 348.)

As noted, the CFCA defines covered "persons" to "include[ ] any natural person, corporation, firm, association, organization, partnership, limited liability company, business, or trust." (Gov.Code, § 12650, subd. (b)(5).) We observe at the outset that while this list is not necessarily comprehensive, the only words and phrases it uses are those most commonly associated with private individuals and entities. While, in the broadest sense, a school district might be considered an "association" or an "organization," the statutory list of "persons" contains no words or phrases most commonly used to signify public school districts, or, for that matter, any other public entities or governmental agencies.

Yet the statute makes very specific reference to governmental entities in other contexts. Thus, it provides that any "person" who presents a false claim to the "state or [a] political subdivision" is liable to such entity for two or three times the damage thereby sustained. (Gov.Code, § 12651, subds.(a), (b).) A "political subdivision" is defined to include "any city, city and county, county, tax or assessment district, or other legally authorized local government entity with jurisdictional boundaries." (*Id.,* § 12650, subd. (b)(3).) The specific enumeration of state and local governmental entities in one context, but not in the other, weighs heavily against a conclusion that the Legislature intended to include public school districts as "persons" exposed to CFCA liability.

In other contexts, the Legislature has demonstrated that similar definitions of "persons" do not include public entities, and that legislators know how to include such entities directly when they intend to do so. For example, under the Fair Employment and Housing Act (FEHA; Gov.Code, § 12900 et seq.), a "person" is defined to "include[ ] one or more individuals, partnerships, associations, corporations, limited liability companies, legal ***1191** representatives, trustees, trustees in bankruptcy, and receivers or other fiduciaries." (*Id.,* § 12925, subd. (d).) FEHA provides that an " '[e]mployer' includes any *person* regularly employing five or more persons, or any person acting as an agent of an employer, directly or indirectly, *the state or any political or civil subdivision of the state, and cities,*" except as otherwise specified. (*Id.,* § 12926, subd. (d), italics added.) This conceptual separation of "persons" from governmental entities in FEHA is an additional indication that the CFCA's ****237** definition of "person" does not include public entities.[FN14]

FN14. Perusal of the codes discloses other similar examples. Labor Code section 18 defines "person," for all purposes of that

code, to mean "any person, association, organization, partnership, trust, limited liability company, or corporation." In division 4 of the Labor Code, concerning workers' compensation insurance, a covered "employer" is defined to include "[e]very *person* including any public service corporation, which has any natural person in service" (Lab.Code, § 3300, subd. (c), italics added) and, additionally and separately, "[t]he State and every State agency" (*id.,* subd. (a)) and "[e]ach county, city, district, and all public and quasi public corporations and public agencies therein" (*id.,* subd. (b)). Section 19 of the Water Code defines "[p]erson," for all purposes of that code, to mean "any person, firm, association, organization, partnership, business trust, corporation, limited liability company, or company." However, for purposes of division 7 of that code, concerning water quality, " '[p]erson' " *also* "includes any city, county, district, the state and the United States...." (Wat.Code, § 13050, subd. (c).)

On the other hand, amicus curiae Taxpayers Against Fraud invokes the maxim *expressio unius est exclusio alterius.* Amicus curiae notes that Government Code section 12652, subdivision (d)(1), explicitly prohibits, under certain circumstances, qui tam actions against "Member[s] of the State Senate or Assembly, ... member[s] of the state judiciary, ... elected official[s] in the executive branch of the state, or ... member[s] of the governing body of [a] political subdivision." By exempting these particular "public" defendants, amicus curiae argues, the CFCA must mean to include all others. We are not persuaded. The designated officials, as natural persons, clearly fall within the statute's definition of covered "persons," and thus must be expressly exempted in situations where the statute intends exemption.

*****122** The legislative history of the CFCA contains no explicit discussion of the scope of the word "person." Nonetheless, the limited evidence available suggests there was no intent to include school districts and other public and governmental agencies. As originally introduced on March 4, 1987, Assembly Bill No. 1441 (1987–1988 Reg. Sess.) (Assembly Bill No. 1441), which in final form became the CFCA, explicitly included, as covered "persons," "any person, firm, association, organization, partnership, business trust, corporation, company, *district, county, city and county, city, the state, and any of the agencies and political subdivisions of these entities.*" (Italics added.) A substantial subsequent amendment to the bill *excised the references to governmental entities,* and the definition of "person" was changed to the form finally adopted. (*Id.,* as amended in Assem. (Apr. 29, 1987) § 1; see Stats.1987, ch. 1420, § 1, p. 5238.) [FN15] Our past ***1192** decisions note deletions from bills prior to their passage as significant indicia of legislative intent. (E.g., *Sierra Club v. California Coastal Com.* (2005) 35 Cal.4th 839, 852, 28 Cal.Rptr.3d 316, 111 P.3d 294; *People v. Birkett* (1999) 21 Cal.4th 226, 240–242, 87 Cal.Rptr.2d 205, 980 P.2d 912; but cf. *American Financial Services Assn. v. City of Oakland* (2005) 34 Cal.4th 1239, 1261–1262, 23 Cal.Rptr.3d 453, 104 P.3d 813.)

FN15. The current reference to "limited liability company" in the statutory definition was added to the CFCA by a 1994 amendment. (Stats.1994, ch. 1010, § 141, p. 6088.)

[6] A traditional rule of statutory construction is that, absent express words to the contrary, governmental agencies are not included within the general words of a statute. (E.g., *Estate of Miller* (1936) 5 Cal.2d 588, 597, 55 P.2d 491; *Balthasar v. Pacific Elec. Ry. Co.* (1921) 187 Cal. 302, 305, 202 P. 37.) However, plaintiffs and their amici curiae invoke a more recent exception to this principle, i.e., that government agencies are excluded from the operation of general statutory provisions "only if their inclusion would result in an infringement upon sovereign governmental powers.... Pursuant to this principle, governmental agencies have been held subject to legislation which, by its terms, applies simply to any 'person.' [Citations.]" (*City of Los Angeles v. City of San Fernando* (1975) 14 Cal.3d 199, 276–277, 123 Cal.Rptr. 1, 537 P.2d 1250; see also, e.g., *Nestle v. City of Santa Monica* (1972) 6 Cal.3d 920, 933, 101 Cal.Rptr. 568, 496 P.2d 480 (*Nestle*); *Flournoy v. State of California* (1962) 57 Cal.2d 497, 498–499, 20 Cal.Rptr. 627, 370 P.2d 331; *Hoyt v. Board of Civil Service Commrs.* (1942) 21 Cal.2d 399, 402, 132 P.2d 804.) In at least one instance, this premise was applied

to a statutory definition of covered *****123** "persons" somewhat like that used in the CFCA. (*State of California v. Marin Mun. W. Dist.* (1941) 17 Cal.2d 699, 704, 111 ****238** P.2d 651 [county held subject to statute allowing Department of Public Works to order "any person" to move his pipeline as necessary for public safety or highway improvement; statute defined "person" to include "any person, firm, partnership, association, corporation, organization, or business trust," and did not expressly name governmental entities].)

In *LeVine I, supra,* 68 Cal.App.4th 758, 80 Cal.Rptr.2d 439, the Court of Appeal held that the defendant school district was a "person" within the scope of the CFCA, and was thus subject to CFCA provisions prohibiting retaliation against an employee for reporting a false claim or furthering a false claims action (Gov.Code, § 12653, subd. (b)). Invoking the "rule that governmental agencies are excluded from the general provisions of a statute only if their inclusion would result in an infringement upon sovereign powers," the Court of Appeal declined to find that the CFCA would cause such infringement. (*LeVine I, supra,* at p. 765, 80 Cal.Rptr.2d 439.) The Court of Appeal reasoned that "no governmental ***1193** agency has the power, sovereign or otherwise, knowingly to present a false claim." (*Ibid.*) [FN16] In the case before us, the instant Court of Appeal employed a similar analysis.

> FN16. In *LeVine II, supra,* 90 Cal.App.4th 201, 108 Cal.Rptr.2d 562, the Court of Appeal affirmed, as law of the case, its ruling in *LeVine I* that public school districts are "persons" subject to suit under the CFCA. The *LeVine II* court declined to reconsider its prior holding in light of several intervening federal decisions, including *Vermont Agency of Natural Resources v. United States ex rel. Stevens* (2000) 529 U.S. 765, 120 S.Ct. 1858, 146 L.Ed.2d 836 (*Stevens*). *Stevens* held that states are not "persons" subject to qui tam liability under the federal false claims statute. We discuss *Stevens* in greater detail below.

[7] We disagree with the ultimate conclusion of *LeVine I.* In the first place, the premise that public entities are statutory "persons" unless their sovereign powers would be infringed is simply a maxim of statutory construction. While the "sovereign powers" principle can help resolve an unclear legislative intent, it cannot override positive indicia of a contrary legislative intent. As we have explained, the language, structure, and history of the particular statute before us—the CFCA—strongly suggest that public entities, including public school districts, are not "persons" subject to suit under the law's provisions. On that basis alone, we are persuaded that governmental agencies, including the district defendants in this case, may not be sued under California's false claims statute.[FN17]

> FN17. We have indicated (*ante,* fn. 1) that the CFCA provides a single definition of "person," governing both who *may be sued* and *who may sue as a qui tam plaintiff.* In *Harris, supra,* 39 Cal.4th 1220, 48 Cal.Rptr.3d 144, 141 P.3d 256, we consider whether public entities are "persons" for the latter purpose. As we explain in *Harris,* there is ample evidence the Legislature did not contemplate public entities as qui tam plaintiffs under the CFCA. (See *Harris, supra,* 39 Cal.4th at pp. 1229–1232, 48 Cal.Rptr.3d at pp. 151–153, 141 P.3d at pp. 261–263.) Given the statute's uniform definition of "person," *Harris's* analysis further informs our conclusion here that public entities also are not "person[s]" subject to suit under the CFCA.

Moreover, we do not agree with *LeVine I's* analysis of the "sovereign power" question. Of course school districts have no "sovereign" power or right to submit false claims against the public treasury. Nonetheless, we cannot accept *LeVine I's* determination that application of the CFCA to public school districts would infringe *no* sovereign powers.

*****124** As we will explain, in light of the stringent revenue, appropriations, and budget restraints under which all California governmental entities operate, exposing them to the draconian liabilities of the CFCA would significantly impede their fiscal ability to carry out their core public missions. In the particular case of public school districts, such exposure would interfere with the state's plenary power and duty, exercised at the local level by the individual districts, to provide the free public education mandated by the Constitution.

***1194** The People, by initiative, have put all

agencies of government, including school districts, on a strict fiscal diet by adding provisions to the California Constitution that limit their power to tax and spend. Article XIII A, section 1, "places a general ceiling on the ad valorem property taxes which may be ****239** levied on behalf of local governments and school districts. [Citation]." (*Butt v. State of California* (1992) 4 Cal.4th 668, 691, 15 Cal.Rptr.2d 480, 842 P.2d 1240, fn. 17 (*Butt*).) Article XIII A also bans other new local taxes levied by, or for the specific benefit of, school and other special districts except as approved by a two-thirds majority of the voters. (Cal. Const., art. XIII A, § 4; see *Rider v. County of San Diego* (1991) 1 Cal.4th 1, 13–15, 2 Cal.Rptr.2d 490, 820 P.2d 1000; *Hoogasian Flowers, Inc. v. State Bd. of Equalization* (1994) 23 Cal.App.4th 1264, 1282–1284, 28 Cal.Rptr.2d 686.) At the state level, article XIII A forbids the enactment of any new ad valorem real property tax, and prohibits *all* increases in state taxes except by a two-thirds vote of each House of the Legislature. (Cal. Const., art. XIII A, § 3.)

Article XIII B generally limits the annual appropriations of state and local governments to the prior years' appropriations as adjusted for the cost of living. (Cal. Const., art. XIII B, § 1.) Under this constitutional provision, these limits may be changed only by vote of the affected electorate. (*Id.*, § 4.) [FN18]

> FN18. Article XIII B allows governmental entities to establish reserve, contingency, emergency, trust, sinking, and other like funds to pay unexpected or extraordinary expenses. Payments *from* such funds do not constitute appropriations subject to limitation, but contributions *to* such funds do count against an entity's appropriations limit. (Cal. Const., art. XIII B, § 5.)

Public school districts face an additional restriction on their ability to tax and spend for their educational mission. Because disparities in school funding levels based on the comparative wealth of local districts violate the equal protection clause of the California Constitution (see *Serrano v. Priest* (1976) 18 Cal.3d 728, 135 Cal.Rptr. 345, 557 P.2d 929; *Serrano v. Priest* (1971) 5 Cal.3d 584, 96 Cal.Rptr. 601, 487 P.2d 1241), the Legislature has adopted a strict system of equalized funding (Ed.Code, § 42238 et seq.), under which, as noted above, "the amount of property tax revenues a district can raise, with other specific local revenues, [is] coupled with an equalization payment by the state, thus bringing each district into a rough [per student] equivalency of revenues." (56 Cal.Jur.3d, *supra*, Schools, § 7, p. 198, fns. omitted.) "In obedience to *Serrano* principles, the current system of public school finance largely eliminates the ability of local districts, rich or poor, to increase local ad valorem property taxes to fund current operations at a level exceeding their [s]tate-equalized revenue per average daily attendance. [Citation.]" (*Butt, supra*, 4 Cal.4th 668, 691, fn. 17, 15 Cal.Rptr.2d 480, 842 P.2d 1240.)

***1195** School districts must use the limited funds at their disposal to carry out the state's constitutionally mandated duty to *****125** provide a system of public education. The Constitution requires, and makes the Legislature responsible for providing, "a system of common schools by which a free school shall be kept up and supported in each district...." (Cal. Const., art. IX, § 5.) The Legislature has chosen to implement this "fundamental" guarantee through local school districts with a considerable degree of local autonomy, but it is well settled that the state retains plenary power over public education. (*Butt, supra*, 4 Cal.4th 668, 680–681, 15 Cal.Rptr.2d 480, 842 P.2d 1240.)

Hence, there can be no doubt that public education is among the state's most basic sovereign powers. Laws that divert limited educational funds from this core function are an obvious interference with the effective exercise of that power. Were the CFCA applied to public school districts, it would constitute such a law. If found liable under the CFCA, school districts, like other CFCA defendants, could face judgments—payable from their limited funds—of at least *two*, and usually *three*, times the damage caused by each false submission, *plus* civil penalties of up to $10,000 for each false claim, plus costs of suit. Such exposure, disproportionate to the harm caused to the treasury, could jeopardize a district financially for years to come. It would injure the districts' blameless students far more than it would benefit the public fisc, or even the hard-pressed taxpayers who finance public education.[FN19]

> FN19. We note that the Legislature has provided other, detailed means by which the state may discover and recoup overpayments of state educational funds to local districts.

> Thus, as the district defendants and several amici curiae point out, local districts must undergo independent annual audits (Ed.Code, § 41020), and the State Controller may also audit local school districts (see *id.*, §§ 14506, 14507, 41344, subd. (e)). If an audit shows the district received an overapportionment equal to, or greater than, the sum due for even one unit of ADA, the state must reduce accordingly the total ADA apportionment otherwise due to the district for a succeeding year. (*Id.*, §§ 41341, 41344.) If a single-year recoupment would create hardship for the local district, a plan may be implemented for repayment over a period of up to eight years. (*Id.*, § 41344, subd. (a)(2).) While these provisions accord the state a strict remedy for funds improperly apportioned to a local district, they also display the Legislature's realistic solicitude for the several financial constraints under which modern California school districts, like all government agencies, must carry out their vital mission. They are additional evidence that the Legislature did not intend to apply the CFCA's draconian remedies in this context.

****240** The Legislature is aware of the stringent revenue, budget, and appropriations limitations affecting all agencies of government—and public school districts in particular. Given these conditions, we cannot lightly presume an intent to force such entities not only to make whole the fellow agencies they defrauded, but also to pay huge additional amounts, often into the pockets of ***1196** outside parties. Such a diversion of limited taxpayer funds would interfere significantly with government agencies' fiscal ability to carry out their public missions.[FN20]

> FN20. By statute, "[n]otwithstanding any other provision of law, a public entity is not liable for damages awarded under [s]ection 3294 of the Civil Code [governing punitive damages] or other damages imposed primarily for the sake of example and by way of punishing the defendant." (Gov.Code, § 818.) One might argue that the CFCA's treble-damage provisions are not strictly, or even primarily, "punitive," in that they are necessary to ensure both (1) full recovery by the state or political subdivision against which the false claim was made and (2) due compensation to the party who undertook the false claim action on behalf of the defrauded entity. (Cf., e.g., *People ex rel. Younger v. Superior Court* (1976) 16 Cal.3d 30, 127 Cal.Rptr. 122, 544 P.2d 1322 [Gov. Code, § 818 did not prohibit assessment, under statute expressly applicable to public entities, of civil penalties against port district for oil spill into estuary; penalties compensated people of state for real, but unquantifiable, damage from spill]; *State Dept. of Corrections v. Workmen's Comp.App. Bd.* (1971) 5 Cal.3d 885, 97 Cal.Rptr. 786, 489 P.2d 818 [Government Code section 818 did not prohibit assessment, under statute expressly applicable to public entities, of 50 percent increase in workers' compensation award otherwise payable by corrections department because of agency's serious and willful misconduct, since employee did not thereby receive more than full compensation for his injuries].) But the purpose behind the statutory ban on punitive damages against public entities—to protect their tax-funded revenues from legal judgments in amounts beyond those strictly necessary to recompense the injured party—applies equally here. In our view, this is an additional indication that the Legislature did not intend, without expressly saying so, to apply the CFCA to public entities such as school districts.

*****126** We note that " '[t]he ultimate purpose of the [CFCA] is to protect the public fisc.' " (*State v. Altus Finance* (2005) 36 Cal.4th 1284, 1297, 32 Cal.Rptr.3d 498, 116 P.3d 1175.) Given that school district finances are largely dependent on and intertwined with state financial aid (see *Belanger v. Madera Unified School District* (9th Cir.1992) 963 F.2d 248, 251–252 (*Belanger*)), the assessment of double and treble damages, as well as other penalties, to school districts would not advance that purpose.

Of course, where liability otherwise exists, public entities must pay legal judgments from their limited revenues and appropriations, even if they cannot exceed their tax or appropriations ceilings to do so and must therefore cut spending in other areas. (See Gov.Code, § 970 et seq.; *Ventura Group Ventures, Inc. v. Ventura Port Dist.* (2001) 24 Cal.4th 1089,

1098–1100, 104 Cal.Rptr.2d 53, 16 P.3d 717.) This obligation, in and of itself, does not infringe their "sovereign powers." But we may consider the effect on sovereign powers when we are determining whether the Legislature *intended*, by mere implication, to expose a public entity to a particular statutory liability.

For the reasons we have detailed, we conclude the Legislature did not intend to subject financially constrained school districts—or any agency of state or local government—to the treble-damages-plus-penalties provisions ***1197** of the CFCA. We conclude that such entities are not "persons" subject to suit under that statute. We disapprove *LeVine v. Weis, supra,* 68 Cal.App.4th 758, 80 Cal.Rptr.2d 439, and *LeVine v. Weis, supra,* 90 Cal.App.4th ****241** 201, 108 Cal.Rptr.2d 562, to the extent they hold otherwise.

Our analysis is not affected by two United States Supreme Court decisions construing the federal false claims statute (FFCA; 31 U.S.C. § 3729 et seq.)—the model for California's law. In *Stevens, supra,* 529 U.S. 765, 120 S.Ct. 1858, 146 L.Ed.2d 836, the high court majority held that the several *states* (including agencies of state governments) are not "persons" subject to qui tam actions under the FFCA. On the other hand, a different majority later concluded in *Cook County v. United States ex rel. Chandler* (2003) 538 U.S. 119, 123 S.Ct. 1239, 155 L.Ed.2d 247 (*Chandler*) that certain *local* governmental entities, including cities and counties, *are* "persons" subject to such suits.

The parties hotly dispute whether California school districts are "state" agencies as to which *Stevens* might be persuasive, or local governmental entities that should fall, by analogy, under the rule of *Chandler*. However, we find little in either case of direct relevance to the issue before us. Both decisions construe a federal statute which, in respects material here, is distinct from its California counterpart. Moreover, both cases apply federal principles of *****127** statutory construction that differ from those used in this state.

The FFCA was originally adopted in 1863 to confront massive contractor fraud during the Civil War. (*Stevens, supra,* 529 U.S. 765, 781, 120 S.Ct. 1858, 146 L.Ed.2d 836.) As enacted and since amended, the federal statute, like California's, makes "persons" liable for submitting false claims to the government (31 U.S.C. § 3729), but, unlike the California statute, the federal version includes no definition of covered "persons." In *Stevens,* the majority noted that the statute had never indicated it applied to states. Thus, the majority applied a "longstanding interpretive presumption," for purposes of federal law, "that 'person' does not include the sovereign. [Citations.]" (*Stevens, supra,* at p. 780, 120 S.Ct. 1858.)

Further, the *Stevens* majority pointed to a separate section of the FFCA—one also with no California parallel—allowing the Attorney General to serve civil investigative demands upon "persons." (31 U.S.C. § 3733(a)(1).) As the majority observed, "persons" were defined, *for purposes of that section,* to include the state (*id.,* § 3733(*l*)(4)), thus suggesting states were excluded for other purposes. (*Stevens, supra,* 529 U.S. 765, 783–784, 120 S.Ct. 1858, 146 L.Ed.2d 836.) The majority also cited a similar federal law, the Program Fraud Civil Remedies Act of 1986 (PFCRA), which was adopted just prior to the substantial 1986 amendments to the federal false claims act, and carried lesser penalties. As the majority noted, the PFCRA contains a definition of "persons" that does not include states. It would be anomalous, the majority concluded, for Congress to subject states—generally considered immune from "punitive" damages—to ***1198** the greater false-claims penalties but not the lesser ones provided by the PFCRA. (*Stevens, supra,* at pp. 786–787, 120 S.Ct. 1858.)

In *Chandler,* a qui tam plaintiff brought a federal false claims action against the county owner-operator of a hospital, alleging that the hospital submitted falsified compliance documents to obtain federal research funds. The county moved to dismiss, asserting it was not a "person" covered by the FFCA. On authority of *Stevens,* the district court agreed and dismissed the action. The court of appeals reversed, concluding that *Stevens* did not apply to the county. The United States Supreme Court affirmed the court of appeals.

In distinguishing *Stevens,* as had the court of appeals, the *Chandler* majority applied a different presumption of federal statutory construction—one also in effect since the Civil War inception of the FFCA. This presumption, the majority explained, is that, where not specifically defined, the word "person" encompasses "artificial persons" such as "corpora-

tions" (*Chandler, supra,* 538 U.S. 119, 125–126, 123 S.Ct. 1239, 155 L.Ed.2d 247), including both "full-fledged municipal corporations," such as towns and cities, that were incorporated at the request of their inhabitants, and "quasi-corporations," such as counties, that were created unilaterally by the state (*id.* at p. 127, fn. 7, 123 S.Ct. 1239).

The *Chandler* majority acknowledged that the 1986 amendments had added treble-damage ****242** and penalty provisions to the Civil War-era statute, and also conceded the presumption against subjecting government entities to " punitive" damages. However, the *Chandler* majority observed, there were remedial, nonpunitive aspects to the 1986 damages and penalty provisions. In any event, the majority concluded, given the strong presumption against repeal by implication, the modern addition of arguably "punitive" damages to the *****128** FFCA could not be considered a silent reversal of the historical assumption that this statute includes municipalities. (*Chandler, supra,* 538 U.S. 119, 129–134, 123 S.Ct. 1239, 155 L.Ed.2d 247.)

As noted above, when the issue is whether government entities are "persons" covered by a particular statutory scheme, California courts apply interpretive principles somewhat different from those detailed in *Stevens* and *Chandler*. Under California law, absent contrary indicia of legislative intent, statutory "persons" are deemed to include governmental entities, both state and local, unless such inclusion would infringe the entities' exercise of their sovereign powers and duties. California's false claims statute, unlike the federal version, defines covered "persons," and does so in a way that suggests an intent *not* to include government entities. Other indicia of legislative purpose also support this conclusion. And for reasons we have detailed, application of the CFCA's treble-damages-plus-penalties requirement to public school districts would place severe and disproportionate financial constraints on their ability to provide the free education mandated by the ***1199** Constitution—a result the Legislature cannot have intended. Nothing in *Stevens* or *Chandler* changes our conclusions in this regard.

Equally beside the point are federal and California decisions holding that California school districts are "arms of the state," and thus enjoy the state's sovereign immunity, under the Eleventh Amendment, from suits in federal court. (E.g., *Belanger, supra,* 963 F.2d 248, 250–251 [civil rights action under 42 U.S.C.A. § 1983]; *Kirchmann v. Lake Elsinore Unified School District* (2000) 83 Cal.App.4th 1098, 1100–1102, 1105–1115, 100 Cal.Rptr.2d 289 [entity with 11th Amend. immunity also enjoys immunity from state court suits under 42 U.S.C. § 1983]; also cf. *U.S. ex rel. Ali v. Daniel, Mann, Johnson* (9th Cir.2004) 355 F.3d 1140, 1147 [five-pronged "arm of the state" test is appropriate for determining whether government entity enjoys immunity from federal false claims liability under *Stevens*].) When we decide whether the California Legislature intended a California statute to include or exclude California government entities, we are not concerned with issues of federalism, constitutional or statutory.

[8] Nothing in decisions addressing such issues precludes us from holding, for the reasons we have explained, that there was no legislative intent to apply the CFCA to public school districts. We conclude that neither such districts, nor any other agencies of state and local government, are "persons" subject to suit under the CFCA.[FN21]

> FN21. The State of California argues that a public school district should be deemed a "person" under the CFCA, and thus liable under that statute for false claims against state education funds, *unless* any CFCA judgment against the district would essentially be paid *from* state funds, in which case the district should be considered an "arm of the state" and thus exempt. Whether a CFCA judgment against a district would be paid from state funds is a case-by-case determination, the state urges, and the instant record lacks information from which we may make such a determination in this case. Hence, the state asserts, a remand to the trial court is required. We are not persuaded. Under the revenue equalization system of California school finance, any judgment finding the district liable for a false claim against state funds will necessarily be paid, at least in part, from funds originally derived from the state. Indeed, the district defendants have urged that there is no purpose in holding them to CFCA liability in this regard, because the district's satisfaction of a CFCA judgment would, in effect, constitute "the state paying itself." We need not immerse ourselves in

> this thicket. For the reasons we have explained, we are satisfied that the Legislature did not intend to impair districts' financial ability to carry out their public educational mission on behalf of the state by exposing them to the harsh monetary sanctions of the CFCA.
>
> Finally, the analysis we have adopted makes it unnecessary to reach the district defendants' claims that they are immune from liability under various provisions of the TCA. (Gov.Code, § 815 et seq.)

*****129 **243** ***5. May charter schools and their operators be sued under the CFCA?***

[9] Though we have disagreed with the Court of Appeal about whether the district defendants are "persons" subject to CFCA actions, we have little ***1200** difficulty upholding the Court of Appeal's determination that the charter school defendants *are* "persons" who may be liable under the CFCA. [FN22]

> FN22. As indicated above, the charter school defendants, as so labeled for purposes of this opinion, include the schools themselves, in whatever legal form they are operated, as well as all other entities having legal form, other than the district defendants, which entities are named in the complaint as having direct or indirect responsibility for, or control of, the operation of such schools.

The CFCA expressly defines "persons" to include "corporations" and "limited liability companies," as well as, among other things, "organizations" and "associations." (Gov.Code, § 12650, subd. (b)(5).) The statute includes no exemption, either in the definitional section or elsewhere, for "corporations" organized under the Nonprofit Public Benefit Corporation Law (Corp.Code, § 5110), or for "corporations," "limited liability companies," "organizations," or "associations" that operate charter schools under the CSA.

The instant complaint alleges, and apparently there is no dispute, that defendants One2One, CSRA, Sierra Summit Academy, and Camptonville Academy are corporations. Moreover, Mattole Valley School, though apparently not itself a corporation, is alleged to be operated by corporations, and is certainly an "organization" within the meaning of the statutory definition.

Nonetheless, the charter school defendants insist that, by virtue of the CSA, they are entitled to any "public entity" immunity enjoyed by their chartering districts. The charter school defendants point to various declarations in the CSA that charter schools are "part of the Public School System as defined in [a]rticle IX of the California Constitution" (Ed.Code, § 47615, subd. (a)(1)),[FN23] are "under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools" (*id.*, subd. (a)(2)), and, for specified purposes of funding, are "deemed to be ... 'school district [s]' " (*id.*, § 47612, subd. (c); see also *id.*, § 47650). [FN24]

> FN23. Article IX, section 6 of the California Constitution defines the Public School System to "include all kindergarten schools, elementary schools, secondary schools, technical schools, and State colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them."
>
> FN24. Education Code section 47612, subdivision (c), states that charter schools are deemed to be school districts for purposes of (1) Education Code sections 14000 through 14058 (concerning appropriations, disbursements, and apportionment from the State School Fund to local districts based on ADA), 41301 (concerning apportionment formulas based on ADA), 41302.5 (defining "school districts" for purposes of article XVI, sections 8 and 8.5, of the California Constitution, which sections earmark levels of state funding for public schools), 41850 through 41857 (concerning apportionment from the State School Fund for home-to-school transportation), and 47638 (concerning charter schools' eligibility for State Lottery funds based on ADA), and (2) article XVI, sections 8 and 8.5 of the California Constitution.

We are not persuaded. Though charter schools are deemed part of the system of public schools for purposes of academics *****130** and state funding ***1201** eligibility, and are subject to some oversight by public

school officials (see *Wilson, supra,* 75 Cal.App.4th 1125, 1136–1142, 89 Cal.Rptr.2d 745), the charter schools here are *operated,* not by the public school system, but by distinct outside entities—which the parties characterize as non-profit corporations—that are given substantial freedom to achieve academic results free of interference by the public educational bureaucracy. The sole relationship between the charter school operators and the chartering districts in this case is through the charters governing the schools' operation. Except in specified respects, charter schools and their operators are "exempt from the laws governing school districts." (Ed.Code, § 47610.)

The autonomy, and independent responsibility, of charter school operators extend, in considerable degree, to financial matters. Thus, where a charter school is operated by a nonprofit public benefit corporation, the ****244** chartering authority is not liable for the school's debts and obligations. (*Id.,* § 47604, subd. (c).) A 2003 amendment to the CSA makes clear that the chartering authority's immunity from financial liability for a charter school extends to "claims arising from the performance of acts, errors, or omissions by the ... school, if the authority has complied with all oversight responsibilities required by law." (Ed.Code, § 47604, subd. (c).)

The CFCA was designed to help the government recover public funds of which it was defrauded by outside entities with which it deals. There can be little doubt the CFCA applies generally to nongovernmental entities that contract with state and local governments to provide services on their behalf. The statutory purpose is equally served by applying the CFCA to the independent corporations that receive public monies under the CSA to operate the schools at issue here on behalf of the public education system.

On the other hand, we conclude, the sovereign power over public education is not infringed by application of the CFCA, including its treble-damages-plus-penalties provisions, to the charter school operators in this case. As we have seen, public school *districts* are the entities fundamentally responsible for operating the system of free public education required by the Constitution. The *districts'* continuing financial ability to carry out this mission at basic levels of adequacy is thus critical to satisfying the state's free public school obligation. (See *Butt, supra,* 4 Cal.4th 668, 678–692, 15 Cal.Rptr.2d 480, 842 P.2d 1240.) Accordingly, we have concluded that the Legislature did not intend to undermine this sovereign obligation by exposing public school *districts* to the harsh monetary sanctions of the CFCA.

But the CSA assigns no similar sovereign significance to charter schools or their operators. Under that statute, the term of a charter cannot ***1202** exceed five years, subject to renewal. (Ed.Code, § 47607, subd. (a)(1).) The grant and renewal of charters are dependent upon satisfaction of statutory requirements, including attainment of specific educational goals. (*Id.,* subds. (b), (c); see also *id.,* § 47605.) A charter may be revoked for material violations of the law or charter, failure to meet pupil achievement goals, or fiscal mismanagement. (*Id.,* § 47607, subd.(d).) If a charter school ceases to exist, its pupils are reabsorbed into the district's mainstream public schools, and the ADA revenues previously allotted to the charter school for those pupils revert to the district.

The CSA was adopted to widen the range of educational choices available within the public school system. That is a salutary policy. Yet application of the CFCA's monetary remedies, however harsh, to the charter school defendants *****131** presents no fundamental threat to maintenance, within the affected districts, of basically adequate free public educational services. Thus, application of the CFCA to the charter school operators in this case cannot be said to infringe the exercise of the sovereign power over public education.

This being so, there is no reason to conclude that the charter school defendants are not "persons" within the definition expressly set forth in the CFCA. In our view, they are such "persons," and they may be held liable under the terms of that statute if they submit false claims for state or district educational funds.[FN25]

> FN25. Defendants Camptonville Academy and Jablecki insist that application of the CFCA to charter schools and their operators would violate constitutional and statutory mandates that state school funds be separately apportioned and maintained. (Citing Cal. Const., art. XVI, § 8, subd. (a) ["From all state revenues there shall first be set apart the moneys to be applied by the state for support of the public school system"]; see also *id.,* § 8.5 [referring to this separate fund

as the State School Fund]; Ed.Code, § 14040 [State Controller shall keep separate account of State School Fund].) This would require, these defendants assert, that money falsely received from the State School Fund must revert to that account alone when recovered from the false claimant. Yet, they observe, the CFCA provides, in subdivision (j) of Government Code section 12652, that "[p]roceeds from the action or settlement of [a CFCA] claim by the Attorney General" shall be deposited into a *different* fund, the False Claims Act Fund created by the same subdivision, and shall be used by the Attorney General, upon appropriation by the Legislature, for ongoing investigation and prosecution of false claims. We are not persuaded by this hypertechnical argument. Even assuming that the premise advanced by these defendants is correct (i.e., funds falsely received from the State School Fund must revert only to that fund), subdivision (j), reasonably read, does not provide otherwise. As noted, the CFCA specifies recovery of *double or triple* the amount falsely received. (Gov.Code, § 12651, subds. (a), (b).) From this total amount, the Attorney General, local prosecuting authority, and/or qui tam plaintiff, receive percentage "cuts" (*id.*, § 12652, subd. (g)(1)-(5)), with the remainder "revert [ing] to the state [or] the political subdivision" (*id.*, subd. (g)(6)). Elsewhere than in subdivision (j), section 12652 makes clear that the Attorney General, or a local prosecuting authority, is to use *that officer's "cut"* of the proceeds for ongoing investigation and prosecution of false claims. (*Id.*, subd. (g)(1)(A), (B), (2).) In this context, subdivision (j), when referring to "[p]roceeds from the action or settlement of the claim by the Attorney General," means *only* the Attorney General's "cut" of the total amount recovered in the action or settlement, leaving the remainder for reversion to the public fund, treasury, or account—general or specific—from which it was falsely obtained. In providing for double or treble recovery, the CFCA seeks to ensure that the "cuts" awarded to the public or private parties who prosecute false claims actions will not prevent the defrauded treasury itself from obtaining full recovery of the funds actually lost to the false claim. We see in this scheme no violation of the constitutional and statutory provisions cited by Camptonville Academy and Jablecki.

1203 **245** ***6. May charter schools and their operators be sued under the UCL?

[10] The Court of Appeal determined that the charter school defendants are *not* "persons" subject to suit under the UCL. But reasons similar to those applicable under the CFCA persuade us the Court of Appeal erred in this respect.

In language similar to the CFCA's, the UCL defines "persons" subject to that law to "mean and include natural persons, corporations, firms, partnerships, joint stock companies, associations and other organizations of persons." (Bus. & Prof.Code, § 17201.) The charter school defendants either are, or are operated by, corporations, and they also constitute "associations" or "organizations." They are within the plain meaning of the statute.

Noting that several cases have held government entities are not "persons" who may be sued under the UCL (e.g., *Community Memorial Hospital v. County of ***132 Ventura* (1996) 50 Cal.App.4th 199, 209, 56 Cal.Rptr.2d 732 (*Community Memorial*); see also *People for the Ethical Treatment of Animals, Inc. v. California Milk Producers Advisory Bd.* (2005) 125 Cal.App.4th 871, 877–883, 22 Cal.Rptr.3d 900; *California Medical Assn. v. Regents of University of California* (2000) 79 Cal.App.4th 542, 551, 94 Cal.Rptr.2d 194; *Trinkle v. California State Lottery* (1999) 71 Cal.App.4th 1198, 1203–1204, 84 Cal.Rptr.2d 496; *Janis v. California State Lottery Com.* (1998) 68 Cal.App.4th 824, 831, 80 Cal.Rptr.2d 549; *Santa Monica Rent Control Bd. v. Bluvshtein* (1991) 230 Cal.App.3d 308, 318, 281 Cal.Rptr. 298; but see *Notrica v. State Comp. Ins. Fund* (1999) 70 Cal.App.4th 911, 939–945, 83 Cal.Rptr.2d 89), the charter school defendants insist they are entitled, as part of the public school system, to this "public entity" exemption.[FN26] The Court of Appeal agreed. We do not.

FN26. Plaintiffs made no UCL claim against the school district defendants. Hence, whether governmental entities, as such, are "persons" covered by the UCL is not at issue in this appeal.

As we have indicated, the charter schools here are operated, pursuant to the CSA, by corporations that, for purposes of the CFCA, do not qualify as public entities. Though, by statutory mandate, these institutions are an alternative form of public schools financed by public education funds, they and their operators are largely free and independent of management and oversight by the public education bureaucracy. Indeed, the charter schools ***1204** compete with traditional public schools for students, and they receive funding based on the number of students they recruit and retain at the expense of the traditional system. Insofar as their operators use deceptive business practices to further these efforts, the purposes of the UCL are served by subjecting them to the provisions of that statute.

Nor is the state's sovereign educational function thereby undermined. Even if governmental entities, in the exercise of their sovereign functions, are exempt from the UCL's restrictions on their competitive practices (see *Community Memorial, supra,* 50 Cal.App.4th 199, 209–211, 56 Cal.Rptr.2d 732) [county was not "person" for purposes of UCL, such that county hospital's treatment of paying patients in competition with private hospitals would be subject to statute], no ****246** reason appears to apply that principle to the charter school defendants, which are covered by the plain terms of the statute and which compete with the traditional public schools for students and funding. We conclude that the charter school defendants are "persons" covered by the UCL.[FN27]

FN27. We do not, however, decide whether the particular allegations of plaintiffs' complaint state a cause of action under the UCL. That issue is beyond the scope of this appeal.

7. Did statutory restrictions on independent study programs apply to charter schools before Education Code section 51747.3 was amended in 1999?

[11] The Court of Appeal agreed with the trial court that plaintiffs may not pursue, as part of their CFCA cause of action, allegations that the charter school defendants claimed ADA funding in violation of the "independent study" requirements of Education Code section 51747.3. The appellate court reasoned that section 51747.3 applied to charter schools only after a 1999 amendment, effective in 2000, and that all the pertinent allegations of the complaint preceded this effective date. We conclude, contrary to the Court of Appeal, that section 51747.3, *as in effect before 2000,* did *****133** include charter schools. Our analysis proceeds against the following backdrop.

In 1989, article 5.5 (§ 51745 et seq.), dealing with independent study programs, was added to title 2, part 28, division 4, chapter 5 of the Education Code. (Stats.1989, ch. 1089, § 5, p. 3775.) [FN28] Section 51745, subdivision (a), provides that, beginning with the 1990–1991 school year, local school districts may offer independent study programs "to meet the educational needs of pupils in accordance with the requirements of this article."

FN28. A former article 5.5, also dealing with independent study, was simultaneously repealed. (Stats.1989, ch. 1089, § 4, p. 3775.)

Three years later, in 1992, the Legislature enacted the CSA. One section of that law, Education Code section 47610, provided that a charter school must ***1205** comply with its charter, but was "otherwise exempt from the laws governing school districts except as specified in [s]ection 47611 [dealing with participation in the State Teacher's Retirement System]." (Stats.1992, ch. 781, § 1, p. 3760.) Since its inception, the CSA has further stated that, with specified exceptions, "[a]dmission to a charter school shall not be determined according to the place of residence of the pupil, or of his or her parent or guardian, within this state." (Ed.Code, § 47605, subd. (d)(1).)

In 1993, Education Code section 51747.3 was added to the independent study provisions. (Stats.1993, ch. 66, § 32, p. 923.) As then enacted, section 51747.3 provided that "[n]o local education agency may claim state funding for the independent study of a pupil ... if the agency has provided *any funds or other thing of value* to the pupil or his or her parent or guardian that the agency does not provide to students who attend regular classes or to their parents or guardians." (Stats.1993, ch. 66, § 32, p. 923, adding Ed.Code, § 51747.3, subd. (a), italics added.) Further, the new statute specified that "*[n]otwithstanding any other provision of law,* ... independent study average daily attendance shall be claimed by school districts and county superintendents of schools only for pupils who are *residents of the county in which the apportionment claim is reported,* or ... of a county *imme-*

diately adjacent to [such] county....” (*Ibid.*, adding § 51747.3, subd. (b), italics added.) Finally, the statute stated that “[t]he provisions of this section are not subject to waiver by the State Board of Education, by the State Superintendent of Public Instruction, *or under any provision of Part 26.8* [*of the Education Code*] (*commencing with [s]ection 47600*) [i.e., the CSA].” (*Ibid.*, adding § 51747.3, subd. (d), italics added.)

A 1995 Attorney General's opinion concluded that Education Code section 51747.3's restrictions on the provision of special “funds or other thing[s] of value” to independent study pupils applied to charter schools. The opinion observed that although, in section 47610, the CSA purported to exempt charter schools from all but a few specified school district laws, subdivision (d) of section 51747.3 expressly provided that the provisions****247** of *that* statute could *not* be waived under the CSA.

As the opinion indicated, “[w]hatever may comprise the ‘laws governing school districts' from which charter schools are exempt, it is clear that for purposes of the state funding of independent study programs, a charter school must comply with the particular requirements of [Education Code] section 51747.3. The last sentence of subdivision (d) of section 51747.3 would otherwise be devoid of meaning, contrary to the rule of statutory construction *****134 *1206** that every word, phrase, sentence and part of a statute must be accorded significance if reasonably possible. [Citations.]” (78 Ops.Cal.Atty.Gen. 253, 257–258 (1995).) [FN29]

> FN29. The opinion concluded, however, that the “things of value” referred to in Education Code section 51747.3, subdivision (a), did not include special educational materials, such as laptop computers and other learning aids, for the purpose of facilitating independent study in particular. Noting that the resources necessary for independent study are inherently different from those appropriate to the classroom setting, the opinion concluded that “[s]ection 51747.3 may not be construed as limiting the educational resources of an independent study program expressly intended by the Legislature” to expand educational choices and opportunities. (78 Ops.Cal.Atty.Gen., *supra,* at pp. 259–260.) Such a result, the opinion asserted, would be “absurd.” (*Id.* at p. 260.) The statute's legislative history, the opinion observed, revealed “[n]othing [to] suggest that educational resources are to be withheld from students in an independent study program under the circumstances presented. Rather, the language of section 51747.3, subdivision (a), was adopted to prevent schools from offering ‘sign up bonuses' to the parents of home study children in order for the schools to obtain state funding for the attendance of the children in their independent study programs. The prohibition was intended to prevent schools from offering incentives unrelated to education, not to preclude schools from spending funds on special educational aids and materials for independent study students.” (*Ibid.*)

In 1996, the Legislature amended Education Code section 47610, part of the CSA, to add certain additional statutes to the list of laws from which charter schools, in derogation of the general rule, were *not* exempt. (Stats.1996, ch. 786, § 5.) Section 51747.3 was not included.

In this setting, the Legislature amended Education Code section 51747.3 in 1999. (Stats.1999, ch. 162, § 2.) As amended in 1999, subdivision (a) of section 51747.3 specifies that “[n]otwithstanding any other provision of law,” “charter schools” are among the “local educational agencies” barred from claiming state funding for pupils who have received “funds or other things of value” not provided to regular classroom students. (Stats.1999, ch. 162, § 2.) A new sentence in subdivision (a) further declares that “[a] charter school may not claim state funding for the independent study of a pupil ... if the charter school has provided any funds or other thing[s] of value to the pupil or his or her parent or guardian that a school district could not legally provide to a similarly situated pupil of the school district, or to his or her parent or guardian.” In subdivision (b), the amendment added “charter schools” to “school districts” and “county superintendents of schools” as entities ineligible to claim state apportionment funds for independent study pupils who reside outside the county from which the apportionment claim is reported, or an adjacent county. (Stats.1999, ch. 162, § 2.) [FN30]

FN30. As amended in 1999, Education Code section 51747.3 read, in pertinent part, as follows (added language in italics, omissions noted by brackets): "(a) [No] *Notwithstanding any other provision of law, a* local education agency, *including, but not limited to, a charter school,* may *not* claim state funding for the independent study of a pupil ... if the agency has provided any funds or other thing of value to the pupil or his or her parent or guardian that the agency does not provide to pupils who attend regular classes or to their parents or guardians. *A charter school may not claim state funding for the independent study of a pupil ... if the charter school has provided any funds or other thing of value to the pupil or his or her parent or guardian that a school district could not legally provide to a similarly situated pupil of the school district, or to his or her parent or guardian.* [¶] (b) Notwithstanding *paragraph (1) of subdivision (d) of Section 47605 or* any other provision of law, community school and independent study average daily attendance shall be claimed by school districts [and], county superintendents of schools, *and charter schools* only for pupils who are residents of the county in which the apportionment claim is reported, or who are residents of a county immediately adjacent to the county in which the apportionment claim is reported. [¶] ... [¶] (d) ... The provisions of this section are not subject to waiver by the State Board of Education, by the State Superintendent of Public Instruction, or under any provision of Part 26.8 (commencing with Section 47600)." (Stats.1999, ch. 162, § 2.) A 2003 amendment substituted "educational" for "education" between "local" and "agency." (Stats.2003, ch. 529, § 4.)

*****135 *1207 **248** The Legislative Counsel's Digest for Senate Bill No. 434 (1999–2000 Reg. Sess.) (Senate Bill No. 434), which incorporated the 1999 amendment to Education Code section 51747.3, stated that the amendment (1) "would make ... applicable to charter schools" the preexisting statutory restriction on ADA funding for independent study students who have received money or things of value not provided to traditional classroom students, (2) "would apply ... also to charter schools" the preexisting ban on ADA funding for independent study students who live outside the county in which funding is sought, or an adjacent county, and (3) would additionally prevent charter schools from receiving ADA funding for independent study pupils to whom they provided money or things of value which a school district could not legally provide to similarly situated students.

In concluding that the 1999 amendment extended Education Code section 51747.3 to charter schools for the first time, the Court of Appeal cited (1) the CSA's express exemption of charter schools from all but a few specified provisions governing school districts, (2) the express CSA provision that charter school enrollment cannot be limited by residence, (3) the 1999 amendment's express addition of charter schools to the entities subject to section 51747.3, and (4) the Legislative Counsel's Digest quoted above. The concurring and dissenting opinion applies a similar analysis. But that approach overlooks language section 51747.3 has contained since its adoption in 1993—i.e., that its provisions *are not subject to waiver under the CSA.*

[12] As the Attorney General observed in his 1995 opinion, the only possible meaning of this language is that, from and after the effective date of the 1993 enactment, charter schools were, and remain, subject to the statutory restrictions on independent study programs then set forth in that law. Any other conclusion would deprive this phrase of significance, contrary to the principle of statutory construction that interpretations which render any part of a statute superfluous are to be avoided. (E.g., *In re Young* (2004) 32 Cal.4th 900, 907, 12 Cal.Rptr.3d 48, 87 P.3d 797; *Hunt v. Superior Court* (1999) 21 Cal.4th ***1208** 984, 1002, 90 Cal.Rptr.2d 236, 987 P.2d 705; *People v. Aguilar* (1997) 16 Cal.4th 1023, 1030, 68 Cal.Rptr.2d 655, 945 P.2d 1204.)

[13] This construction of Education Code section 51747.3 does not overlook certain provisions of the CSA, noted by the Court of Appeal, and by the concurring and dissenting opinion, which were already in effect in 1993, including sections 47605 (eligibility for enrollment in particular charter school not to be determined by residence) and 47610 (charter school exempt from laws governing school districts except as expressly provided). In harmonizing the disparate, and sometimes discordant, statutory provisions, we are guided by the maxim that, where statutes are otherwise irreconcilable, later and more specific enact-

ments prevail, pro tanto, over earlier and more general ones. (See, e.g., *Pacific Lumber Co. v. State Water Resources Control Bd.* (2006) 37 Cal.4th 921, 942–943, 38 Cal.Rptr.3d 220, 126 P.3d 1040 (*Pacific Lumber*); *Stop Youth Addiction, Inc. v. Lucky Stores, Inc.* (1998) 17 Cal.4th 553, 568, 71 Cal.Rptr.2d 731, 950 P.2d 1086; *Department of Alcoholic Beverage Control v. Alcoholic Beverage Control Appeals****136** Bd.* (1999) 71 Cal.App.4th 1518, 1524, 84 Cal.Rptr.2d 621.)

Applying those principles, we conclude that the 1993 version of Education Code section 51747.3, including its provision for nonwaiver under the CSA, is a more recent and specific enactment on the subjects it addresses than the pertinent provisions of sections 47605 and 47610. The latter statutes, enacted in 1992, provided generally that charter schools were exempt from most school district laws and must accept nonresident students. But section 51747.3 later placed restrictions, including residence restrictions, on the circumstances under which charter schools, like other public schools, could obtain ADA funding for independent study programs and pupils in particular. To that extent, section 51747.3 superseded the earlier statutes. Indeed, section 51747.3 has ****249** always expressly provided that its residency restrictions apply notwithstanding any other provision of law. (*Id.*, subd. (b).) [FN31]

FN31. We have found nothing in the contemporaneous legislative history of Senate Bill No. 399 (1993–1994 Reg. Sess.), through which Education Code section 51747.3 was first adopted, that adds or detracts from the conclusion that the section was intended, from its inception, to apply to charter schools.

We are not persuaded otherwise by the 1996 amendment to Education Code section 47610, which added certain statutes to the list of laws from which charter schools are *not* exempt, but did not include section 51747.3. Section 51747.3, by its express terms, already applied to charter schools. There was no need to say so again in section 47610.

[14] ***1209** Nor are we dissuaded by the language, the Legislative Counsel's Digest, or the legislative history [FN32] of the 1999 amendment to Education Code section 51747.3, insofar as they might suggest the 1999 Legislature believed charter schools were being added to the statute for the first time. A later expression of legislative purpose is not binding as to what prior legislation meant when it was adopted. (E.g., *Pacific Lumber, supra,* 37 Cal.4th 921, 940, 38 Cal.Rptr.3d 220, 126 P.3d 1040; *Cummins, Inc. v. Superior Court* (2005) 36 Cal.4th 478, 492, 30 Cal.Rptr.3d 823, 115 P.3d 98.) We therefore conclude that the restrictions on independent study programs set forth in the 1993 version of Education Code section 51747.3 applied to charter schools even prior to the 1999 amendment. [FN33]

FN32. See, e.g., the Senate Education Committee's analysis of Senate Bill No. 434 as amended June 28, 1999, pages 1–2.

FN33. As originally adopted in 1993, Education Code section 51747.3 referred to "local education agenc[ies]," "school districts," and "county superintendents of schools," but not specifically to charter schools, as entities precluded from *claiming state funds* for independent-study pupils under the circumstances described in the statute. (Stats.1993, ch. 66, p. 923.) However, nothing in the 1993 version of the section indicated that these provisions, as in effect prior to 2000, did not apply equally to the independent-study *pupils* of charter schools operating under the jurisdiction of the "local education agencies," "school districts," and "county superintendents of schools" *responsible* for claiming state funds on behalf of such schools. In 1999, section 51747.3 was amended, among other things, expressly to include charter schools among the "local education agencies" covered by the section, and to place charter schools within the statute's limitations on claiming state funds for independent-study pupils. (Stats.1999, ch. 162, § 2.) But it appears this express statement of limitations on charter schools' ability to *claim state funding* was simply part of a contemporaneous overhaul of the way charter schools were funded in general. Another 1999 measure, Assembly Bill No. 1115 (1999–2000 Reg. Sess.) (Assembly Bill No. 1115)—a trailer to the 1999 Budget Bill—added section 47651, providing that a charter school may elect to receive its share

of state funding *directly,* rather than through the "local educational agency" under which it operates. (Stats.1999, ch. 78, § 32.8.) The legislative history of Senate Bill No. 434, by which section 51747.3 was amended, made specific reference to the change in funding methodology adopted in Assembly Bill No. 1115. (See Sen. Com. on Education, analysis of Sen. Bill No. 434, as amended June 28, 1999, p. 4.) Under these circumstances, it became logical for section 51747.3 to mention charter schools directly as *claimants of state funds.* In sum, we are not persuaded that either the pre–1999 version of section 51747.3, or the 1999 amendments to that section, evidence the Legislature's intent to *exclude* charter schools, prior to 2000, from this statute's funding restrictions on independent-study programs.

*****137** Plaintiffs' CFCA cause of action appears properly tailored to the pre–1999 version of the statute. The complaint alleges that the charter school defendants submitted false ADA claims for independent study pupils who (1) received "funds or other thing[s] of value" not provided to classroom students, and (2) resided outside the counties designated by the statute. The trial court and the Court of Appeal thus erred in holding that plaintiffs' "independent study" claims were barred because Education Code section 51747.3 did not apply to charter schools until it was amended in 1999. [FN34]

FN34. We realize the 1999 amendment to Education Code section 51747.3 did not simply insert "charter schools" as entities subject to the 1993 version of the statute. The amendment also added that "[a] charter school may not claim state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the charter school has provided any funds or other thing of value to the pupil or his or her parent or guardian *that a school district could not legally provide to a similarly situated pupil of the school district, or to his or her parent or guardian.*" (Stats.1999, ch. 162, § 2, italics added.) This new sentence may apply restrictions to charter school independent study programs beyond those imposed by the original version of the statute. We need not address that issue, however, because plaintiffs' complaint is not framed in the terms of this amended language. Moreover, we need not consider whether special educational materials may be provided to independent study pupils, though not to classroom students, without violating the "funds or other thing[s] of value" proscription in the *original* version of the statute, as suggested by the 1995 Attorney General's opinion. That question is beyond the scope of the issues presented by this appeal.

1210 **250** ***8. Is plaintiffs' CFCA claim barred as one for " educational malfeasance" ?

[15] The complaint alleges that the charter school defendants submitted false claims to obtain ADA funds for pupils who "were not [actually] students enrolled in and receiving instruction, educational materials, or services from [defendants'] schools." As noted above, the gravamen of this claim is that, in the operation of their distance learning schools, the defendants did little more than collect attendance forms from their ostensible pupils, while failing to provide the educational services, equipment, and supplies promised in the schools' charters and promotional materials, and required by law. Among other things, the complaint asserts that the defendants overcharged for educational software readily available from other sources, never furnished promised computers for online learning and testing at home, and failed to provide the services of "educational facilitators" who, for each student, were supposed to order necessary equipment and supplies, develop an individualized curriculum plan, and make weekly home visits for personal instruction, testing, and evaluation.

The trial court concluded that these were all impermissible claims for "educational malfeasance" (see *Peter W., supra,* 60 Cal.App.3d 814, 131 Cal.Rptr. 854), but the Court of Appeal disagreed. The Court of Appeal reasoned that the complaint's allegations required no judgments about the methodology or quality of defendants' *****138** educational services—a matter upon which reasonable persons could disagree. Rather, the appellate court observed, the complaint presented only the "straightforward and comprehensible" claim that the defendants defrauded the state by collecting public education funds for pupils to whom they provided *no* service beyond the timely collection of attendance forms.

We agree in principle with the Court of Appeal. Insofar as the complaint alleges, not that the defendants provided a *substandard* education, but instead that they (1) offered *no* significant educational services, (2) did, or failed to do, specific, quantifiable acts in violation of their charters or applicable law, or ***1211** (3) improperly caused students, parents, or guardians to incur monetary charges or overcharges for particular educational materials and equipment supplied by or through the defendants, it does not state a barred claim for educational malfeasance. We explain our reasoning in detail.

In *Peter W., supra,* 60 Cal.App.3d 814, 131 Cal.Rptr. 854, an 18–year–old former public school student sued his school district, asserting causes of action for negligence, breach of mandatory duty, and fraud. The complaint alleged as follows: The district "negligently and carelessly" failed to perceive the plaintiff's learning disabilities, assigned him to classes beyond his reading abilities with instructors unqualified to meet his special needs, passed him from grade to grade with knowledge that he had not achieved necessary skills, and permitted him, in violation of state law, to graduate even though he could not read above the eighth grade level. During this time, the district made representations to plaintiff's mother, which representations the district knew were false or had no basis to believe were true, that he was performing at or near his grade level. As a result, he graduated with fifth grade reading and writing skills, thus permanently limiting his employment opportunities and earning capacity.

Defendant's demurrer was sustained, the suit was dismissed, and the plaintiff appealed. The Court of Appeal affirmed. The court concluded that the complaint failed to allege the district's breach of a duty the law would recognize. As the court noted, "classroom methodology affords no readily acceptable standards of care, or cause, or injury." ****251** Pedagogical science, the court observed, is "fraught with different and conflicting theories" about how children should be taught; moreover, educational success or failure "is influenced by a host of factors," both personal and external, " which affect the pupil subjectively" and often are beyond the control of educators. (*Peter W., supra,* 60 Cal.App.3d 814, 824, 131 Cal.Rptr. 854.) "We find in this situation," said the court, "no conceivable 'workability of a rule of care' against which defendants' alleged conduct may be measured [citation], no reasonable 'degree of certainty that ... plaintiff suffered injury' within the meaning of the law of negligence [citation], and no such perceptible 'connection between the defendant's conduct and the injury suffered,' as alleged, which could establish a causal link between them within the same meaning [citation]." (*Id.* at p. 825, 131 Cal.Rptr. 854.)

Peter W. also identified other public policy considerations, "even more important in practical terms," that counsel against an "actionable 'duty of care' in persons and agencies who administer the academic phases of the public educational process." (*Peter W., supra,* 60 Cal.App.3d 814, 825, 131 Cal.Rptr. 854.) The opinion noted that the public schools are "already beset by social and financial problems," including widespread dissatisfaction with their academic ***1212** performance, and are subject *****139** to "the limitations imposed upon them by their publicly supported budgets." (*Ibid.*) Subjecting such institutions to an academic duty of care under these circumstances, the opinion concluded, "would expose them to the tort claims—real or imagined—of disaffected students and parents in countless numbers.... The ultimate consequences, in terms of public time and money, would burden them—and society—beyond calculation." (*Ibid.*)

As the instant Court of Appeal made clear, however, the considerations identified in *Peter W.* that preclude an action for personal educational injury based on inherently subjective standards of duty and causation do not apply to a claim that school operators fraudulently sought and obtained public education funds for doing nothing more than collecting attendance forms. Resolution of such a claim does not require judgments about pedagogical methods or the quality of the school's classes, instructors, curriculum, textbooks, or learning aids. Nor does it require evaluation of individual students' educational progress or achievement, or the reasons for their success or failure. It simply obliges the court to determine whether the operator offered *any* significant teaching, testing, curriculum oversight, and educational resources to ostensible students.

Similarly, nothing in the rationale of *Peter W.* precludes a claim that a school operator's claim on state funds was "false" insofar as the school committed objectively identifiable breaches of its charter,

applicable state law, or promises it made to induce enrollment. For example, *Peter W.* does not bar assertions that a school operator failed to provide promised equipment and supplies, used teachers who lacked necessary credentials, violated specific rules governing "independent study" programs, or caused students, parents, or guardians to incur improper fees or charges,[FN35] so long as such claims do not challenge the *educational quality or results* of the school's programs. [FN36]

FN35. Indeed, we have routinely addressed claims that public schools wrongly charged students, parents, or guardians for school-related activities or services, without any suggestion that such issues implicated the "educational malfeasance" doctrine. (E.g., *Salazar v. Eastin* (1995) 9 Cal.4th 836, 39 Cal.Rptr.2d 21, 890 P.2d 43 [taxpayer suit challenging charges for transportation of students to and from school]; *Hartzell v. Connell* (1984) 35 Cal.3d 899, 201 Cal.Rptr. 601, 679 P.2d 35 [parent/taxpayer suit challenging school fees for extracurricular activities].)

FN36. We emphasize that our discussion here is limited to whether such theories are barred under *Peter W.* as claims for "educational malfeasance." We express no view on whether such allegations can form the basis for a cause of action *under the CFCA.* In other words, we do not address whether a charter school's breaches of promises to students, parents, or guardians, or its violations of its charter or applicable law, may cause any related funding claims the school makes upon the state to be "false" within the meaning of that statute. Nor, of course, do we concern ourselves with the possibility that plaintiffs have pled factually inconsistent CFCA theories by alleging, on the one hand, that the charter school defendants failed to deliver educational equipment and supplies and, on the other, that they violated the "independent study" rules by providing things of value not offered to classroom students. Such issues were not addressed on demurrer and are beyond the scope of this appeal.

***1213 **252** For the most part, plaintiffs' CFCA allegations, detailed above, conform to these principles, and thus avoid preclusion under *Peter W.* As the Court of Appeal held, the trial court thus erred in concluding that the CFCA cause of action was wholly barred as a claim for "educational malfeasance." We note, however, a single passage of the complaint which alleges that One2One "fails to provide the education it promises but falsely collects State *****140** educational funds as if the education were provided." Insofar as this particular allegation seeks to raise issues of the *quality* of education offered by the charter school defendants, or of the academic *results* produced, we believe it falls within the rule that courts will not entertain claims of "educational malfeasance." To that extent, therefore, the allegation is not actionable.

9. Did the CFCA cause of action against the charter school defendants require prior presentment of a claim under the TCA?

[16] The TCA states that, with specified exceptions, all "claims for money or damages" against the state or "local public entities" must be "presented" in accordance with that law. (Gov.Code, §§ 905, 905.2.) Except as otherwise provided, no suit for money or damages may be brought against a public entity until such a claim has been presented to the entity and acted upon or deemed rejected. (*Id.*, § 945.4.) The claim must be presented within six months of accrual of the cause of action (*id.*, § 911.4), but the claimant may apply to the public entity for leave to present a late claim (*id.*, § 911.6). If such an application is denied, or deemed denied, the claimant may petition the court for relief from the claim presentment requirement. (*Id.*, § 946.6.)

Plaintiffs' complaint pleads that they "have presented claims for money or damages to the public entity defendants pursuant to the requirements of Government Code [section] 945.4, which have been denied, *and/or* have sought relief from the claims presentment requirements." (Italics added.) Plaintiffs concede that this pleading does not allege actual compliance with the TCA claim presentment requirements, and that they have not so complied. They urge no such compliance is necessary for purposes of the CFCA. The Court of Appeal concurred. We agree with the Court of Appeal.

At the outset, we need not decide whether the TCA's claim presentment requirements apply to

plaintiffs' CFCA claims against the *district defendants*, because we have concluded that those defendants are not "persons" subject to suit under the CFCA. (See discussion, *ante.*) On the other hand, the question arises whether the claim presentment provisions of the TCA could ever apply to the *charter school* defendants.

***1214** Under that law, claims must be presented to "the state" (Gov.Code, § 905.2) or "local public entities" (*id.,* § 905). For purposes of the TCA, " '[l]ocal public entity' includes a county, city, district, public authority, public agency, and any other political subdivision or public corporation in the [s]tate, but does not include the [s]tate." (Gov.Code, § 900.4.) Under the CSA, charter schools are part of the public school system and, for specified purposes, are deemed to be school districts. (See discussion, *ante.*) However, those purposes do not expressly include coverage by the TCA and, for reasons previously discussed in connection with the CFCA, the charter school defendants do not fit comfortably within any of the categories defined, for purposes of the TCA, as "local public entities."

In any event, as the Court of Appeal concluded, application of the TCA's claim presentment requirement to CFCA actions would frustrate the purposes of both statutes. The TCA itself expressly excludes from the claim presentment requirement "[c]laims by the [s]tate or by a state department or agency or by another local public entity." (Gov.Code, § 905, subd. (i).) Hence, CFCA actions brought, in their official capacities, by the Attorney General (*id.,* § 12652, subd. (a)) or local *****141** prosecuting authorities (*id.,* subd. (b)) clearly are exempt.

The same rule appears applicable to qui tam actions by "persons" under the CFCA. Such a suit is brought, not only for the quitam****253** plaintiff, but *"for* the State of California *in the name of the state,* if any state funds are involved, or *for* a political subdivision *in the name of the political subdivision,* if political subdivision funds are exclusively involved." (Gov.Code, § 12652, subd (c)(1), italics added.) If the Attorney General or local prosecuting authority elects not to intervene and proceed with the action, "the qui tam plaintiff shall have the same right to conduct the action as the Attorney General or prosecuting authority would have had if it had chosen to proceed...." (*Id.,* subd. (f)(1).) Hence, at the time a qui tam action is brought, the qui tam plaintiff stands in the shoes of the state or political subdivision, and within the TCA exemption for claims by the state or a local public entity.

Moreover, as the Court of Appeal explained, the qui tam provisions of the CFCA are at odds with the policy behind the TCA's claim presentment requirement. The general proviso that a public entity may not be sued for money or damages until it has received, and had the chance to act upon, a written claim is intended to allow the entity to investigate while the facts are fresh, to settle short of litigation where appropriate, and to engage in fiscal planning for potential liability. (E.g., *City of San Jose v. Superior Court* (1974) 12 Cal.3d 447, 455, 115 Cal.Rptr. 797, 525 P.2d 701; *Gatto v. County of Sonoma* (2002) 98 Cal.App.4th 744, 763, 120 Cal.Rptr.2d 550; *Barkley v. City of Blue Lake* (1996) 47 Cal.App.4th 309, 316, 54 Cal.Rptr.2d 679.)

***1215** On the other hand, a qui tam complaint under the CFCA *must* be filed *under seal,* and immediately must be served, along with a written disclosure of all material evidence and information the qui tam plaintiff possesses, on the Attorney General. (Gov.Code, § 12652, subd. (c)(2), (3).) If political subdivision funds are involved, the Attorney General must forward these materials to the local prosecuting authority within 15 days. (*Id.,* subd. (c)(7)(A).) The complaint must remain sealed for up to 60 days after filing, with additional extensions available upon timely application, while the Attorney General or local prosecuting authority investigates and decides whether to intervene. (*Id.,* subd. (c)(2), (4), (6), (7).) During this period, the complaint must not be served on the defendant. (*Ibid.*) Moreover, once a qui tam action is filed, it cannot be settled without the consent of the court, "taking into account the best interests of the parties involved and the public purposes behind [the CFCA]." (*Id.,* subd.(c)(1).)

No California decision has discussed the purpose of the CFCA's seal requirement. However, several federal cases, addressing the FFCA's similar provision, have indicated that the interests served include making sure the qui tam action does not alert wrongdoers, prior to intervention by the government, that they are under investigation. (E.g., *U.S. ex rel. Lujan v. Hughes Aircraft Co.* (9th Cir.1995) 67 F.3d 242, 245–246; *United States ex rel. Pilon v. Martin Ma-*

rietta Corp. (2d Cir.1995) 60 F.3d 995, 1000; *Erickson ex rel. United States v. American Institute of Bio. Sciences* (E.D.Va.1989) 716 F.Supp. 908, 912.)

The CFCA does not explicitly *preclude* a potential qui tam plaintiff, *prior* to filing a CFCA complaint, from disclosing to the potential defendant the basis of the claim, or even from attempting to settle it. But the CFCA's purposes would obviously be undermined if CFCA qui tam plaintiffs were *required,* under the TCA, to present "local public entity" defendants, as defined *****142** in that statute, with written claims before proceeding with suit.

The charter school defendants urge that this construction of the two statutes improperly "elevates" the CFCA over the TCA. Not so. As we have noted, the TCA includes an explicit exemption from the claim presentment requirement for claims by the state and local public entities. Qui tam actions under the CFCA are, in essence, claims of that kind. In any event, in view of the secrecy provisions of the CFCA, a later and more narrowly focused statute, it must prevail over contrary provisions of the earlier and more general TCA.[FN37]

> FN37. Defendant Sierra Summit Academy urges that the claim presentment requirement of the TCA is made applicable to the CFCA by Government Code section 12651, subdivision (e), which provides, in effect, that the CFCA is not violated by claims made pursuant to the TCA. We fail to follow the logic of this argument. That claims made pursuant to the TCA do not violate the CFCA does not mean a CFCA action against a public entity must be preceded by presentment of such a claim. Insofar as this defendant seeks to argue that section 12651, subdivision (e) exempts *it* from the CFCA, the claim lacks merit on this record. There is no indication that Sierra Summit Academy's claims for state education funding—the basis of plaintiffs' CFCA cause of action—were presented pursuant to the TCA.

***1216** We therefore conclude that even if the charter school defendants are "local public ****254** entities" for purposes of the TCA, plaintiffs were not required under that statute to present written claims before filing their qui tam complaint pursuant to the CFCA.[FN38]

> FN38. The charter school defendants suggest alternatively that, as "public entities" for purposes of the TCA, they enjoy, pursuant to that statute, *immunity* from CFCA liability. These defendants note the TCA's rule that a public entity is not liable for an "injury" where the public employee causing the injury is immune from liability. (Gov.Code, § 815.2, subd. (b).) They claim that submission of a false claim is a "discretionary act" and a "misrepresentation" for which a public employee, and thus the public entity, would be immune. (See *id.,* §§ 820.2, 822.2; see also § 818.8.) However, while the TCA was meant to supplant contrary common law, it was not intended to prevail over other statutes that impose liability in specific circumstances. (See *Nestle, supra,* 6 Cal.3d 920, 932, 101 Cal.Rptr. 568, 496 P.2d 480; Cal. Law Revision Com. com., 32 West's Ann. Gov.Code (1995 ed.) foll. § 815, pp. 167–168.) As we have seen, the CFCA makes "persons," including "natural person[s], corporation [s], [and] organization[s]" (Gov.Code, § 12650, subd.(b)(5)), liable for the submission of false claims (*id.,* §§ 12651, 12652). Insofar as "persons," as defined in the CFCA, include the corporations that operate the charter schools in this case, they are not entitled to immunity under the TCA. The charter school defendants note that immunities specified in the TCA prevail over liabilities set forth in that statute. (Cal. Law Revision Com., com., 32 West's Ann. Gov.Code, *supra,* foll. § 185, p. 168.) But this principle applies only *within the TCA itself* (*ibid.*); it does not preclude the Legislature from adopting other statutes that impose liability in specific circumstances, despite immunities stated in the TCA.

CONCLUSION

The judgment of the Court of Appeal is reversed insofar as it concludes that (1) the public school defendants are "persons" subject to suit under the CFCA, (2) the charter school defendants are not "persons" subject to suit under the UCL, and (3) the "independent study" restrictions set forth in Education Code section 51747.3, in the form adopted in 1993, did not

apply to charter schools until that section was amended in 1999. In all other respects, the judgment of the Court of Appeal is affirmed. *LeVine v. Weis, supra,* 68 Cal.App.4th 758, 80 Cal.Rptr.2d 439, and *LeVine v. Weis, supra,* 90 Cal.App.4th 201, 108 Cal.Rptr.2d 562, are disapproved to the extent they hold that public school districts are "persons" who may *****143** be sued under the CFCA. The cause is remanded to the Court of Appeal for further proceedings consistent with the views expressed in this opinion.

WE CONCUR: GEORGE, C.J., CHIN, J., MORENO, CORRIGAN, J., and IRION, J.[FN*]

FN* Associate Justice of the Court of Appeal, Fourth Appellate District, Division One, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

***1217** Concurring and Dissenting Opinion by KENNARD, J.

I concur in the majority's holdings that: (1) public school districts are not subject to lawsuits under the California False Claims Act; (2) the charter schools in this case and their operators are subject to lawsuits under the California False Claims Act and the unfair competition law; (3) plaintiffs' claims, except for the allegation that defendant One2One Learning Foundation failed to provide the education it promised, are not barred as claims for "educational malfeasance"; and (4) plaintiffs are not required to present written claims under the Tort Claims Act before filing a qui tam action under the California False Claims Act.

I dissent, however, from the majority's holding that Education Code section 51747.3 [FN1] applied to charter schools before its amendment in 1999, which became effective on January 1, 2000. That holding violates the rule that courts are to harmonize and maintain the integrity of statutes whenever possible, and it is contradicted by the legislative history of the 1999 amendment to section 51747.3.

FN1. All further statutory references are to the Education Code unless otherwise indicated.

Section 51747.3 was originally enacted in 1993. As here pertinent it (1) prohibited a ****255** local education agency from claiming state funding for students in independent study programs if the agency provided funds or other things of value beyond what it provided to students who attend regular classes; (2) prohibited school districts and county superintendents of schools, notwithstanding any other provision of law applicable to them, from claiming average daily attendance (for purposes of apportionment of funds) for students who were not residents of their county or a county immediately adjacent to their county; and (3) provided that its provisions *could not be waived* by the State Board of Education, by the State Superintendent of Public Instruction, or "*under any provision of Part 26.8 (commencing with Section 47600*)." (Stats.1993, ch. 66, § 32, p. 923, italics added.) Section 47600 is the first statute appearing in the Charter School Act. In 1999, the Legislature amended section 51747.3 to apply its provisions to charter schools. (Stats.1999, ch. 162, § 1.)

Seizing on the language in the 1993 enactment of section 51747.3 prohibiting waiver of that statute's provisions under the Charter School Act, the majority reasons that the waiver reference serves no purpose if section 51747.3 did not apply to charter schools. Perhaps so. But the majority's construction cannot be reconciled with the plain language of other statutory provisions, as I explain.

Section 51747.3, when enacted in 1993, provided that school districts and county superintendents of schools could not claim students from outside the ***1218** county or adjacent counties in average daily attendance. Charter schools, however, were prohibited by subdivision (d) of former section 47605 (as added by Stats.1992, ch. 781, § 1, p. 3758) from excluding students on the basis of their residence even if they lived beyond those boundaries. And at that time the Charter School Act then also provided, in former section 47610 (as added*****144** by Stats.1992, ch. 781, § 1, p. 3760), that a charter school was exempt from all laws governing school districts except as specified in section 47611. Because section 51747.3, a law that governs school districts, was not then specified in section 47611, it had no applicability to charter schools. Thus, the majority's construction of section 51747.3, as originally enacted in 1993, as applying to charter schools is flatly inconsistent with the language of former sections 47605, subdivision (d), 47610, and 47611. In my view, the relevant statutory provisions are best harmonized and given effect by construing

section 51747.3, as originally enacted in 1993, as being inapplicable to charter schools. Such applicability occurred only on January 1, 2000, the date on which the Legislature's 1999 amendment of section 51747.3 became effective.

The legislative history of section 51747.3 further underscores the error of the majority in construing the language of that statute's 1993 amendment as applying to charter schools. The Legislative Counsel's Digest of Senate Bill No. 434 (1999–2000 Reg. Sess.), which in 1999 proposed amending section 51747.3, specifically noted that the bill was *adding* charter schools to the statute: "(2) Existing law prohibits a local education agency from claiming state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the agency has provided any funds or other thing of value to the pupil or his or her parent or guardian that the agency does not provide to pupils who attend regular classes or to their parents or guardians. [¶] *This bill would make this prohibition applicable to charter schools* .... [¶] (3) Existing law requires community school and independent study average daily attendance to be claimed by school districts and county superintendents of schools only for pupils who are residents of the county in which the apportionment claim is reported or pupils who are residents of the county in which the apportionment claim is reported or pupils who are residents of the county immediately adjacent to the county in which the apportionment claim is reported. [¶] *This bill would apply this provision also to charter schools.*" (Leg. Counsel's Dig., Sen. Bill No. 434 (1999–2000 Reg. Sess.), italics added; accord, Sen. Com. on Education, Analysis of Senate Bill No. 434 (1999–2000 Reg. Sess.) June 28, 1999 ["Distance learning most closely resembles independent study in other public schools, but charter schools are not specifically required to abide by the independent study requirements that apply to other public****256** schools"].) Thus, as the Court of Appeal here concluded, the legislative history indicates that it was only in 1999 that the Legislature intended to add charter schools to section 51747.3.

***1219** Accordingly, I would affirm the judgment of the Court of Appeal, which in turn affirmed the trial court, insofar as it concluded that section 51747.3, as originally enacted in 1999, did not apply to charter schools, and that it was only when the statute's 1999 amendment became effective on January 1, 2000, that charter schools came within the statute's reach.

Cal.,2006.
Wells v. One2One Learning Foundation
39 Cal.4th 1164, 141 P.3d 225, 48 Cal.Rptr.3d 108, 212 Ed. Law Rep. 376, 06 Cal. Daily Op. Serv. 8194

END OF DOCUMENT

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

RICHARD D. WILSON et al., Plaintiffs and Appellants,
v.
STATE BOARD OF EDUCATION, Defendant and Respondent; CALIFORNIA NETWORK OF EDUCATIONAL CHARTERS, Intervener and Respondent.

No. A084485.

Court of Appeal, First District, Division 4, California.
Oct. 26, 1999.

SUMMARY

The trial court denied a petition for a writ of mandate filed by state residents and taxpayers who challenged the constitutionality of the Charter Schools Act (Ed. Code, § 47600 et seq.), as amended in 1998. (Superior Court of the City and County of San Francisco, No. 995602, Raymond D. Williamson, Jr., Judge.)

The Court of Appeal affirmed. The court held that the act does not violate Cal. Const., art. IX, § 5, which mandates that the Legislature provide for a state system of common schools, even though charter schools may control curriculum, textbooks, and operations under the act, since curriculum and courses of study are not constitutionally prescribed, but rather are details left to the Legislature's discretion. The court further held that the act brings charter schools within the constitutional system uniformity requirement by providing for uniformity in teacher requirements, program standards, and student assessments. The court also held that the act does not violate Cal. Const., art. IX, § 8, which prohibits the appropriation of public money for any school not under the exclusive control of officers of the public school system, since the Legislature has specifically declared that charter schools are under the exclusive control of the officers of the public schools (Ed. Code, § 47615, subd. (a)(2)) and charter school officials are officers of public schools. The court also held that the act does not violate constitutional prohibitions against public appropriations in aid of sectarian purposes or institutions (Cal. Const., art. XVI, § 5; Cal. Const., art. IX, § 8), since petitions for sectarian schools will be denied under the act and a later development or revelation of a sectarian affiliation would be immediate grounds for charter revocation. The court also held that the act's exemption of charter schools from adoption of state textbooks does not conflict with the textbook adoption requirement of Cal. Const., art. IX, § 7.5. The court also held that the act does not impermissibly delegate legislative powers to the board and chartering authorities and that procedures are in place in the act to safeguard the chartering authority's decisionmaking process. (Opinion by Reardon, J., with Hanlon, P. J., and Poché, J., concurring.)

HEADNOTES

Classified to California Digest of Official Reports

(1) Constitutional Law § 18--Constitutionality of Legislation--Judicial Power to Declare Legislation Void--Judicial Self-restraint.

The California Constitution imposes limits on the powers of the Legislature, and courts construe those limits strictly. Thus, when scrutinizing the constitutionality of a statute, a court starts with the premise of validity, resolving all doubts in favor of the Legislature's action. This presumption of constitutionality is particularly appropriate where the Legislature has enacted a statute with the pertinent constitutional prescriptions in mind.

(2a, 2b) Schools § 1--Legislative Control.

The Legislature's power over the public school system is plenary, subject only to constitutional restraints. The Constitution vests the Legislature with sweeping and comprehensive powers in relation to our public schools (Cal. Const., art. IX, §§ 1 and 5), including broad discretion to determine the types of programs and services which further the purposes of education. Further, when the Legislature delegates the local functioning of the school system to local boards, districts, or municipalities, it always does so with its constitutional power and responsibility for ultimate control for the common welfare in reserve.

(3a, 3b) Schools § 3--Classes of Schools--Charter Schools-- Constitutionality--Provision for State System of Common Schools.

The Charter Schools Act (Ed. Code, § 47600 et seq.), as amended in 1998, does not violate Cal.

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

Const., art. IX, § 5, which mandates that the Legislature provide for a state system of common schools, even though charter schools may control curriculum, textbooks, and operations under the act. Curriculum and courses of study are not constitutionally prescribed, but rather are details left to the Legislature's discretion. The act represents a valid exercise of legislative discretion aimed at furthering the purposes of education, and, under the act, the Legislature retains ultimate responsibility for all aspects of education in the charter schools. Charter schools are part of California's single, statewide public school system, and the establishment of charter schools does not create a dual system of public schools. The act brings charter schools within the system uniformity requirement because (1) their students will be taught by teachers meeting the same minimum requirements as all other public school teachers; (2) their education programs must be geared to meet the same state standards, including minimum duration of instruction, applicable to all public schools; and (3) student progress will be measured by the same assessments required of all public school students. Moreover, the act assures that charter schools will receive funding comparable to other public schools and guards against the flow of funds to schools outside the system.

[See 7 Witkin, Summary of Cal. Law (9th ed. 1988) Constitutional Law, § 367 et seq.]

(4) Schools § 3--Classes of Schools--Charter Schools--Constitutionality-- Control by Officers of Public Schools and Jurisdiction of Public School System.

The Charter Schools Act (Ed. Code, § 47600 et seq.), as amended in 1998, does not violate Cal. Const., art. IX, § 8, which prohibits the appropriation of public money for any sectarian school or any school not under the exclusive control of officers of the public school system. Charter schools are part of the public school system (Ed. Code, § 47615, subd. (a)(1)), and the Legislature has specifically declared that charter schools are under the exclusive control of the officers of the public schools (Ed. Code, § 47615, subd. (a)(2)). Further, under the act, the destiny of charter schools lies solely in the hands of public agencies and offices (school districts, county boards of education, and the state Superintendent and Board of Education), which control the application, approval, and revocation processes. Further, the act does not violate Cal. Const., art. IX, § 6 (all schools under authority of public school system), since charter school officials are officers of public schools.

(5) Schools § 3--Classes of Schools--Charter Schools--Constitutionality-- Prohibitions Against Public Appropriations in Aid of Sectarian Purposes or Institutions.

The Charter Schools Act (Ed. Code, § 47600 et seq.) as amended in 1998 does not violate constitutional prohibitions against public appropriations in aid of sectarian purposes or institutions (Cal. Const., art. XVI, § 5, and Cal. Const., art. IX, § 8). Charter petitioners must affirm that their school will be nonsectarian in its programs and operations (Ed. Code, § 47605, subds. (b)(4), (d)(1)) and a petition lacking that affirmation can be denied (Ed. Code, § 47605, subd. (b)(4)). In addition, if a school's religious affiliation evolved after charter status was attained, or, if initially masked, it became revealed at a later time, the situation would be immediate grounds for charter revocation (Ed. Code, §§ 47605, 47607). Under the act, charter schools must be nonsectarian. Furthermore, inclusion of an explicit nonaffiliation provision in the act would be redundant because nonaffiliation is already constitutionally proscribed.

(6) Schools § 3--Classes of Schools--Charter Schools--Constitutionality-- Textbook Adoption Requirement.

The Charter Schools Act (Ed. Code, § 47600 et seq.), as amended in 1998, does not conflict with the textbook adoption requirement of Cal. Const., art. IX, § 7.5. Even though Ed. Code, § 47610, exempts charter schools from adoption of textbooks adopted by the State Board of Education, the constitutional provision positing textbook adoption imposes a requirement on the board, not on school districts. The Legislature may define, limit, or condition a constitutional power or right so long as it does not unduly burden the exercise of that power or right. By exempting charter schools from the textbook adoption (and numerous other) laws, the Legislature has limited the scope of the board's authority with respect to the textbook selection process. However, the price for limited experimentation and operational freedom afforded to charter schools does not unduly burden the board's exercise of its textbook selection powers.

(7a, 7b) Schools § 3--Classes of Schools--Charter Schools-- Constitutionality--Delegation of Legislative Power.

The Charter Schools Act (Ed. Code, § 47600 et seq.) does not impermissibly delegate legislative powers to the State Board of Education and chartering

authorities. The Legislature has not left it up to chartering authorities to decide whether to grant a charter to a charter school controlled by a religious sect, since Cal. Const., art. XVI, § 5, prohibits public appropriations in aid of sectarian purposes or institutions under any circumstances. Further, having set the policy and having fixed standards and limits, the Legislature did its job. In the educational setting, legislatures rarely control public school operations directly, but delegate authority which permits state, regional, and local education agencies to establish school policies and practices. Reasonable grants of power to administrative agencies will not offend the nondelegation doctrine so long as adequate safeguards exist to protect against abuse of that power and procedures are in place in the act to safeguard the chartering authority's decisionmaking process.

(8) Legislature § 5--Powers--Delegation.

Essentials of the legislative function include the determination and formulation of legislative policy. Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others. The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the power to fill up the details by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect.

COUNSEL

Lynn S. Carman for Plaintiffs and Appellants.

Bill Lockyer, Attorney General, Stephanie Wald and Douglas M. Press, Deputy Attorneys General, for Defendant and Respondent.

Remcho, Johansen & Purcell, Joseph Remcho, James C. Harrison; Nielsen, Merksamer, Parrinello, Mueller & Naylor, John E. Mueller and James R. Parrinello for Intervener and Respondent.

John H. Findley and Sharon L. Browne for Pacific Legal Foundation and Pacific Research Institute as Amici Curiae on behalf of Defendant and Respondent and Intervener and Respondent.

REARDON, J.

"Charter schools are grounded in private-sector concepts such as competition-driven improvement ..., employee empowerment and customer focus. But they remain very much a public-sector creature, with in-bred requirements of accountability and broad-based equity. Simple in theory, complex in practice, charter schools promise academic results in return for freedom from bureaucracy." (Com. on Cal. State Gov. Organization and Economy, rep., The Charter Movement: Education Reform School by School (Mar. 1996) p. 1 (Little Hoover Report).)

Charter schools are a phenomenon of the 1990's. With the Charter Schools Act of 1992, [FN1] California became the second state to enact charter school legislation. (RPP Internat. & U. of Minn., A Study of Charter Schools, First-Year Rep., Of. of Ed. Research & Improvements, Dept. Ed. ***1130** (1997).) Last year, the Legislature fine-tuned the program. [FN2] Since the close of briefing, new provisions have been added. [FN3]

FN1 The Charter Schools Act of 1992 was added by Statutes 1992, chapter 781, section 1, page 3756, and is found at part 26.8 of the Education Code, section 47600 et seq. (hereafter the Charter Schools Act or the Act).

Unless otherwise indicated, all statutory references are to the Education Code.

FN2 Assembly Bill No. 544 (1997-1998) enacted as Statutes 1998, chapter 34, sections 1-19, amended and added new provisions to the Act.

FN3 Senate Bill No. 434 (1998-2000 Reg. Sess.) enacted as Statutes 1999, chapter 162, sections 1, 2, effective January 1, 2000.

Troubled by what they see as a multifaceted assault on the California Constitution, appellants [FN4] aim to halt the march of the charter school movement in California through a facial challenge to the Charter Schools Act and Assembly Bill No. 544. They have petitioned for a writ of mandate commanding the Board to refrain from (1) granting any charters under Assembly Bill No. 544 or the original legislation, and (2) expending any public funds in implementing those laws. Their petition has been denied. On appeal appellants roll out a slate of errors. None have merit.

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

FN4 Appellants are Richard D. Wilson and Fernando Ulloa, residents and taxpayers of San Francisco and Marin Counties, respectively. Respondent is the State Board of Education (Board); intervener is the California Network of Educational Charters.

I. Statutory Framework

A. *The Original Enactment*

Anyone closely allied with a public school-whether a parent or family member of a student, or a teacher, administrator or classified staff member-can attest to the perils resident in the complex tangle of rules sustaining our public school system. These include the potential to sap creativity and innovation, thwart accountability and undermine the effective education of our children.

The 1992 legislation sought to disrupt entrenchment of these traits within the educational bureaucracy by encouraging the establishment of charter schools. Specifically, it permitted the founding of 100 charter schools statewide and up to 10 in any district. These schools would be free from most state laws pertaining uniquely to school districts. Each would receive a five-year revocable charter upon successful petition to the school district governing board or county board of education, signed by a specified percent of teachers. (Former §§ 47602, subd. (a), 47605, 47607, as added by Stats. 1992, ch. 781, § 1, pp. 3756-3761; [FN5] § 47610.)

FN5 Hereafter, references to former section means those sections as added by Statutes 1992, chapter 781, section 1, pages 3756-3761.

The original enactment set out six goals: (1) improving pupil learning; (2) increasing learning opportunities, especially for low-achieving students; (3) encouraging use of different and innovative teaching methods; (4) creating ***1131** new professional opportunities for teachers, including being responsible for the school site learning program; (5) providing parents and students with more choices in the public school system; and (6) holding schools accountable for measurable pupil outcomes and providing a way to change from rule-based to performance-based accountability systems. [FN6] (Former § 47601.)

FN6 Assembly Bill No. 544 (1997-1998 Reg. Sess.) adds a seventh goal: "Provide vigorous competition within the public school system to stimulate continual improvements in all public schools." (§ 47601, subd. (g).)

Charter schools nonetheless were-and are-subject to important restraints: (1) they must be nonsectarian in their programs, admission policies, employment practices, and all other operations (former § 47605, subd. (d) [now § 47605, subd. (d)(1)]); (2) charter schools cannot charge tuition or discriminate against any student on the basis of ethnicity, national origin, gender or disability (*ibid.*); and (3) no private school can be converted to a charter school (former [and current] § 47602, subd. (b)).

The petition to establish a charter school was, and is, a comprehensive document which must, among other items, set forth (1) a description of the educational program; (2) student outcomes and how the school intends to measure progress in meeting those outcomes; (3) the school's governing structure; (4) qualifications of employees; (5) procedures to ensure the health and safety of students and staff; (6) means of achieving racial and ethnic balance among its students that reflects the general population within the territory of the school district; (7) admission requirements, if applicable; (8) annual audit procedures; (9) procedures for suspending and expelling students; and (10) attendance alternatives for students who choose not to attend charter schools. (Former § 47605, subd. (b) [now § 47605, subd. (b)(5)].)

Under the 1992 scheme, upon receiving a duly signed charter petition and convening a public hearing on its provisions, the school district had discretion to grant or deny the charter. (Former § 47605, subd. (b).) The granting of a charter exempted the school from laws governing school districts except, at the school's option, provisions concerning participation in the state teacher's retirement system. (Former §§ 47610, 47611.) Denial of a charter could trigger procedures for reconsideration, at petitioner's request. (Former § 47605, subd. (j)(1), (3).)

Charter schools were, and are, required to meet statewide performance standards and conduct certain pupil assessments. (Former § 47605, subd. (c) [now § 47605, subd. (c)(1)].) The chartering authority could, and can, revoke a charter for various deficiencies

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

including charter or legal violations and failure to meet student outcomes. (Former [and current] § 47607, subd. (b).) ***1132**

B. *Assembly Bill No. 544*

Assembly Bill No. 544 substantially revamped the 1992 enactment. Gone is the cap of 100 charter schools, replaced with a 1998-1999 school year cap of 250, with 100 more authorized each successive school year. (§ 47602, subd. (a).)

Gone too is the exclusive reliance on teacher signatures to start the petition process. Now, a petition is valid if signed by the number of parents/guardians equal to at least half of the estimated students, or the number of teachers equal to at least half the teachers expected to be employed. (§ 47605, subd. (a)(1).) The petition must display a statement that the signator is "meaningfully interested" in sending his or her child to, or teaching at, the charter school, as the case may be. (*Id.*, subd. (a)(3).) Petitions for the conversion of an existing public school to a charter school must be signed by at least half of the permanent status teachers currently employed at the school. (*Id.*, subd. (a)(2).)

Gone also is the broad discretion in granting or denying a charter. Now, following review of the petition and the requisite public hearing, the governing board of the district "shall not deny a petition" unless it makes written findings of fact that: (1) The charter school presents an unsound educational program; (2) petitioners are "demonstrably unlikely" to succeed in implementing the program; or (3) the petition lacks the required signatures, affirmations or descriptions of program particulars. (§ 47605, subd. (b).) If the school district nonetheless denies a petition, the petitioner can submit to the county board of education or the Board. (*Id.*, subd. (j)(1).) Additionally, petitioner can submit directly to the county board of education for a charter school that would serve pupils otherwise directly served by the county office of education. (§ 47605.5.)

As well, the amendments permit a charter school to operate as a nonprofit benefit corporation, with the school district granting the charter entitled to one representative on the board of directors. (§ 47604, subds. (a), (b).)

Now, the Board itself, upon recommendation of the Superintendent of Public Instruction (Superintendent), can take "appropriate action," including revoking the charter of any school, if it finds "[g]ross financial mismanagement" (§ 47604.5, subd. (a)); "[i]llegal or substantially improper" use of funds (*id.*, subd. (b)); or that "[s]ubstantial and sustained departure" from successful practices jeopardizes the educational development of the students (*id.*, subd. (c)).

Other new provisions include the following: (1) No funds will be given for any pupil who also attends a private school that charges his or her family ***1133** for tuition (§ 47602, subd. (b)); (2) all charter schoolteachers must hold a Commission on Teaching Credentialing certificate or equivalent (§ 47605, subd. (*l*)); (3) petitioners must provide the chartering authority with financial statements that include a proposed first-year operational budget and three-year cash-flow and financial projections (*id.*, subd. (g)); (4) charter schools must use generally accepted accounting principles in conducting the required annual financial audits, and any exceptions or deficiencies identified during the audit must be resolved to the satisfaction of the chartering authority (*id.*, subd. (b)(5)(I)).

Concerning accountability, charter schools must "promptly respond to all reasonable inquiries" from either the chartering authority or the Superintendent. (§ 47604.3.) Additionally, the chartering authority can "inspect or observe any part of the charter school at any time" (§ 47607, subd. (a)) and charge the school for supervisorial oversight (§ 47613.7, subd. (a)).

C. *Senate Bill No. 434*

Senate Bill No. 434 (1999-2000 Reg. Sess.) further refines the Charter Schools Act. Starting January 1, 2000, charter schools must (1) at a minimum, offer the same number of instructional minutes per grade level as required of all school districts (§ 47612.5, subd. (a)(1) [added by Stats. 1999, ch. 162, § 1]); and (2) maintain written contemporaneous records documenting pupil attendance and make the same available for audit and inspection (*id.*, subd. (a)(2)). As well, as a condition of apportionment of state funding, charter schools must certify that its pupils have participated in the state testing program in the same manner as all other pupils attending public schools. (*Id.*, subd. (a)(3).) Further, charter schools which provide independent study must comply with statutory requirements and implementing regulations that relate to independent study. (*Id.*, subd. (b).) And finally, in keeping with this sentiment, charter schools will be

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

held to the same prohibition as local education agencies when it comes to extending funds or value to pupils in independent study programs (or their parents or guardians): They cannot claim state funding if the funds or other value so extended could not legally be extended to similarly situated pupils of a school district (or their parents or guardians). (§ 51747.3, subd. (a), as amended by Senate Bill No. 434 [Stats. 1999, ch. 162, § 2].)

II. Standard of Review

Appellants have provoked a facial challenge to the Charter Schools Act and the Assembly Bill No. 544 amendments. This comes with a formidable burden commensurate with the outcome of a successful assault-namely, invalidation of a legislative act. ***1134**

(1) The California Constitution [FN7] is a limitation on the powers of the Legislature, and we construe such limits strictly. (*Pacific Legal Foundation v. Brown* (1981) 29 Cal.3d 168, 180 [172 Cal.Rptr. 487, 624 P.2d 1215].) Thus, when scrutinizing the constitutionality of a statute, we start with the premise of *validity*, resolving all doubts in favor of the Legislature's action. (*Arcadia Unified School Dist. v. State Dept. of Education* (1992) 2 Cal.4th 251, 260 [5 Cal.Rptr.2d 545, 825 P.2d 438].) This presumption of constitutionality is particularly appropriate where, as here, the Legislature has enacted a statute with the pertinent constitutional prescriptions in mind. [FN8] "In such a case, the statute represents a considered legislative judgment as to the appropriate reach of the constitutional provision." (*Pacific Legal Foundation v. Brown*, *supra*, 29 Cal.3d at p. 180.) Finally, to void a statute on its face, "petitioners cannot prevail by suggesting that in some future hypothetical situation constitutional problems may possibly arise as to the particular application of the statute .... Rather, petitioners must demonstrate that the act's provisions inevitably pose a present total and fatal conflict with applicable constitutional prohibitions." (*Id.* at pp. 180-181, italics omitted.)

FN7 All references to constitutions and articles are to the California Constitution.

FN8 Note, for example, that the Legislature has specifically found and declared that "Charter schools are part of the Public School System, as defined in Article IX" (§ 47615, subd. (a)(1)) and are "under the jurisdiction of the Public School System and the exclusive control of the officers of the public schools" (*id.*, subd. (a)(2)) "for purposes of Section 8 of Article IX ...." (§ 47612, subd. (b).)

III. Discussion

A. *The Legislature Has Plenary Power Over Public Schools*

(2a) As a preamble to addressing the amalgam of constitutional objections laid out in this appeal, we emphasize that the Legislature's power over our public school system is plenary, subject only to constitutional restraints. (*Hall v. City of Taft* (1956) 47 Cal.2d 177, 180-181 [302 P.2d 574]; *California Teachers Assn.* v. *Hayes* (1992) 5 Cal.App.4th 1513, 1524 [7 Cal.Rptr.2d 699].) Since 1879 our Constitution has declared the Legislature's preeminent role in encouraging education in this state, as well as its fundamental obligation to establish a system of public schools: "A general diffusion of knowledge and intelligence being essential to the preservation of the rights and liberties of the people, the Legislature shall encourage by all suitable means the promotion of intellectual, scientific, moral, and agricultural improvement." (Art. IX, § 1.) "The Legislature shall provide for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year, after the first year in which a school has been established." (*Id.*, § 5.)

There can thus be no doubt that our Constitution vests the Legislature with sweeping and comprehensive powers in relation to our public schools (*Hall* ***1135** v. *City of Taft*, *supra*, 47 Cal.2d at p. 179), including broad discretion to determine the types of programs and services which further the purposes of education (*California Teachers Assn.* v. *Hayes*, *supra*, 5 Cal.App.4th at p. 1528).

(3a) Appellants first maintain that the 1998 Assembly Bill No. 544 amendments violate article IX, section 5 because they amount to abdication of *any* state control over essential educational functions, e.g., control over curriculum, textbooks, educational focus, teaching methods and operations of charter schools. This is so, they argue, because the parents and teachers who write the charters and the grantees who operate the schools now run the show with respect to all these functions.

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

Appellants confuse the delegation of certain educational functions with the delegation of the public education system itself. As explained in *California Teachers Assn*. v. *Board of Trustees* (1978) 82 Cal.App.3d 249, 253-254 [146 Cal.Rptr. 850], the public school system is the system of schools, which the Constitution requires the Legislature to provide-namely kindergarten, elementary, secondary and technical schools, as well as state colleges-and the administrative agencies which maintain them. (See art. IX, § 6 [delineating features of public school system].) However, the curriculum and courses of study are not constitutionally prescribed. Rather, they are *details* left to the Legislature's discretion. Indeed, they do not constitute part of the system but are merely a function of it. (*California Teachers Assn*. v. *Board of Trustees, supra*, 82 Cal.App.3d at p. 255.) The same could be said for such functions as educational focus, teaching methods, school operations, furnishing of textbooks and the like.

Moreover, appellants take too myopic a view of what it means for the state to retain control of our public schools, including charter schools. The Charter Schools Act represents a valid exercise of legislative discretion aimed at furthering the purposes of education. Indeed, it bears underscoring that charter schools are *strictly* creatures of statute. From how charter schools come into being, to who attends and who can teach, to how they are governed and structured, to funding, accountability and evaluation-the Legislature has plotted all aspects of their existence. Having created the charter school approach, the Legislature can refine it and expand, reduce or abolish charter schools altogether. (See §§ 47602, subd. (a)(2), 47616.5.) In the meantime the Legislature retains ultimate responsibility for all aspects of education, including charter schools. (2b) " 'Where the Legislature delegates the local functioning of the school system to local boards, districts or municipalities, it does so, always, with its constitutional power and responsibility for ultimate control for the common welfare in reserve.' " (*Phelps* v. ***1136** *Prussia* (1943) 60 Cal.App.2d 732, 738 [141 P.2d 440], quoting trial court decision.)

B. *Charter Schools Are Part of California's Public School System*

(3b) Appellants further complain that Assembly Bill No. 544 has spun off a separate system of charter public schools that has administrative and operational independence from the existing school district structure, and whose courses of instruction and textbooks may vary from those of noncharter schools. Such splintering, appellants charge, violates the article IX, section 5 mandate to the Legislature to provide a "system of common schools."

Article IX, section 6 defines "Public School System" as including "all kindergarten schools, elementary schools, secondary schools, technical schools, and state colleges, established in accordance with law and, in addition, the school districts and the other agencies authorized to maintain them."

The key terms in these provisions are "common" and "system." The concept of a "common" school is linked directly to that of a "free school," which the Constitution mandates must be "kept up and supported" in each district for a prescribed annual duration. (Art. IX, § 5.) Historically, common schools were the "primary and grammar" schools, distinguished from other instrumentalities of the public school system by virtue of being the exclusive beneficiaries of the state school fund. (*Los Angeles County v. Kirk* (1905) 148 Cal. 385, 390-391 [83 P. 250]; *Stockton School District v. Wright* (1901) 134 Cal. 64, 67 [66 P. 34]; Jones, *Chapters on the School Law of California* (1914) 2 Cal.L.Rev. 459, 460-461.)

As to the concept of a system, we note that early on in California history "the contest was between a state system and a local system of common schools." (*Mitchell v. Winnek* (1897) 117 Cal. 520, 526 [49 P. 579].) The notion of a single state system, under state control, prevailed. (See *id*. at pp. 523-526.) *Piper v. Big Pine School Dist*. (1924) 193 Cal. 664, 666 [226 P. 926] presents a variation on this theme: At that time, the federal government had established "a school for the education and training of members of the Indian race" within the territorial boundaries of Big Pine School District. Alice Piper, "a female Indian child," sought admission to school in that district. (*Id*. at p. 665.) Our Supreme Court agreed that she was entitled to admission, holding that eligibility to attend the federal school did not satisfy the mandate of article IX, section 5 because the state had no control over that school. (*Piper v. Big Pine School Dist., supra*, 193 Cal. at pp. 672-673.) ***1137**

Thus the term "system" has come to import " 'unity of purpose as well as an entirety of operation,

and the direction to the legislature to provide "a " system of common schools means *one* system which shall be applicable to all the common schools within the state.' " (*Serrano v. Priest* (1971) 5 Cal.3d 584, 595 [96 Cal.Rptr. 601, 487 P.2d 1241, 41 A.L.R.3d 1187], original italics.) This means that the educational system must "be uniform in terms of the prescribed course of study and educational progression from grade to grade." (*Id.* at p. 596.)

From this perspective it is apparent that charter schools are part of California's single, statewide public school system. First, the Legislature has explicitly found that charter schools are (1) part of the article IX "Public School System"; (2) under its jurisdiction; and (3) entitled to full funding. (§ 47615, subd. (a).) These findings are entitled to deference. (*Amwest Surety Ins. Co*. v. *Wilson* (1995) 11 Cal.4th 1243, 1252 [48 Cal.Rptr.2d 12, 906 P.2d 1112].) As well, the Legislature has directed that the Charter Schools Act "shall be liberally construed to effectuate [these] findings ...." (§ 47615, subd. (b).)

Second, the establishment of charter schools does not create a dual system of public schools, as, for example, would be the case if there were a competing local system. Rather, while loosening the apron springs of bureaucracy, the Act places charter schools within the common system of public schools, as the following provisions illustrate: Charter schools by law are free, nonsectarian and open to all students. (§ 47605, subd. (d)(1).) They cannot discriminate against students on the basis of ethnicity, national origin, gender or disability. (*Ibid.*) Further, charter schools must meet statewide standards and conduct pupil assessments applicable to pupils in noncharter public schools (*id.*, subd. (c)(1)); [FN9] must hire credentialed teachers (*id.*, subd. (*l*)); and are subject to state and local supervision and inspection ***1138** (§§ 47605, subd. (k)(1), 47607, subd. (a)). Finally, beginning next year, charter schools must offer the minimum duration of instruction as required of all other public schools. (§ 47612.5, subd. (a)(1) [added by Stats. 1999, ch. 162, § 1].)

> FN9 Specifically, section 47605, subdivision (c)(1) states: "Charter schools shall meet all statewide standards and conduct the pupil assessments required pursuant to Section 60605 and any other statewide standards authorized in statute or pupil assessments applicable to pupils in noncharter public schools."
>
> Section 60605, subdivision (a)(1)(A) directs the Board, according to various time frames, to "adopt statewide academically rigorous content standards ... in the core curriculum areas of reading, writing, and mathmematics to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California education system." By November 1, 1998, the Board was to adopt content standards for history/social science and science. The adoption of statewide performance standards and pupil assessments in these areas follow on a later time frame. (*Id.*, subd. (a)(1)(B).)
>
> Section 60605, subdivision (c)(1) and (2) calls on the Board to adopt an assessment instrument and to require each district to administer the statewide assessment to all pupils in specified grades and in specified subject areas.
>
> It is highly significant to appellants' dual system argument that these very same academic content and performance standards adopted by the Board pursuant to section 60605 are model standards, which means that school districts may use them as a guideline in developing district standards. (See § 60618.) Thus, school districts have discretion when it comes to standards, just as charter schools do. All schools, however, must participate in the mandatory statewide assessments, which ensures a constitutional level of cohesion within the curriculum and course of study at each grade level in all schools. Section 47612.5, subdivision (a)(3) (added by Stats. 1999, ch. 162, § 1) conditions state funding on certification that charter school pupils participated in the state testing program in the same manner as all other public school students.

In sum it is clear that the Act brings charter schools within the system uniformity requirement because (1) their students will be taught by teachers meeting the same minimum requirements as all other

public school teachers; (2) their education programs must be geared to meet the same state standards, including minimum duration of instruction, applicable to all public schools; and (3) student progress will be measured by the same assessments required of all public school students.

Moreover, the Act assures that charter schools will receive funding comparable to other public schools. (§§ 47612-47613.5.) In addition, it guards against the flow of funds to schools outside the system. For example, the Act prohibits the conversion of private schools to charter schools. It also bars charter schools from receiving any public funds for any pupil also attending a private school that charges the family for tuition. (§ 47602, subd. (b).)

C. *Charter Schools Are Under the Exclusive Control of Officers of the Public Schools and Fall Under the Jurisdiction of the Public School System*

(4) Next, appellants contend that charter schools offend constitutional provisions calling for public schools to be under the exclusive control of officers of the public school system, as well as under the jurisdiction of that system. We find no problem.

1. *Article IX, Section 8*

Article IX, section 8 provides in part: "No public money shall ever be appropriated for the support of any sectarian or denominational school, or any school not under the exclusive control of the officers of the public schools ...."

This section endeavors to (1) prohibit the use of public funds to support private schools, whether sectarian or not; and (2) preserve strict separation ***1139** between religion and public education. Appellants attempt to build the argument that charter schools are private, not public schools. They are convinced that under Assembly Bill No. 544, officers of public schools have no real control over the educational product delivered by charter schools because these officers cannot deny a charter petition except upon finding that the educational program is unsound, the petitioners are "demonstrably unlikely" to succeed in implementing the program, or that the petition lacks certain mandatory items. (§ 47605, subd. (b).) According to appellants, this means the charter grantees are in control, and again according to appellants, they are not officers of the public schools.

First, the terms of Assembly Bill No. 544 belie these contentions. To begin with, charter schools *are* public schools because, as explained above, charter schools are part of the public school system. [FN10] (§ 47615, subd. (a)(1).) Further, the Legislature has specifically declared that charter schools are under "the exclusive control of the officers of the public schools" (*id.*, subd. (a)(2)) and directs us to construe the law liberally to effectuate that finding (*id.*, subd. (b)).

> FN10 Because charter schools are public schools and serve to further public education goals, contrary to appellants' additional assertion, their funding does not offend the public purpose doctrine. (See *City of Los Angeles* v. *Lewis* (1917) 175 Cal. 777, 779-780 [167 P. 390].)

Second, one court construing the "exclusive control" language harkened back to early constitutional history, observing that "[t]he language of article IX, section 8, has remained unchanged since its proposal in the constitutional convention of 1878-1879 and its adoption by the People on May 7, 1879. It was approved at the convention without significant debate .... (See 3 Debates and Proceedings of the Constitutional Convention of the State of Cal. (1881).) ... The delegates were seriously concerned with assuring that public funds should only be used for support of the public school system they were creating in article IX .... Thus, in another context a delegate expressed concern about any 'opposition system of schools against the common schools of the State ....' " (*Board of Trustees v. Cory* (1978) 79 Cal.App.3d 661, 665 [145 Cal.Rptr. 136].) Obviously charter schools are not in opposition to the public school system. On the contrary, they are a part of that system. Although they have operational independence, an overarching purpose of the charter school approach is to infuse the public school system with competition in order to stimulate continuous improvement in *all* its schools. (§ 47601, subd. (g).)

Third, we wonder what level of control could be more complete than where, as here, the very destiny of charter schools lies solely in the hands of public agencies and offices, from the local to the state level: school districts, ***1140** county boards of education, the Superintendent and the Board. The chartering authority controls the application approval process, with sole power to issue charters. (See §§ 47605, 47605.5.)

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

Approval is not automatic, but can be denied on several grounds, including presentation of an unsound educational program. (§ 47605, subd. (b)(1).) Chartering authorities have continuing oversight and monitoring powers, with (1) the ability to demand response to inquiries concerning financial and other matters (§ 47604.3); [FN11] (2) unlimited access to "inspect or observe any part of the charter school at any time" (§ 47607, subd. (a)(1)); and (3) the right to charge for actual costs of supervisorial oversight (§ 47613.7, subd. (a)). As well, chartering authorities can revoke a charter for, among other reasons, a material violation of the charter or violation of any law. (§ 47607, subd. (b)(1).) Short of revocation, they can demand that steps be taken to cure problems as they occur. (*Id.*, subd. (c).) The Board, upon recommendation from the Superintendent, can also revoke any charter or take other action in the face of certain grave breaches of financial, fiduciary or educational responsibilities. (§ 47604.5.) Additionally, the Board exercises continuous control over charter schools through its authority to promulgate implementing regulations. (§§ 47605, subd. (j)(4), 47613.5, subd. (b).) Finally, public funding of charter schools rests in the hands of the Superintendent. (See §§ 47612, 47613.)

> FN11 The Superintendent can likewise prompt inquiry. (§ 47604.3.)

Fourth, the sum of these features, which we conclude add up to the requisite constitutional control over charter schools, are in place whether a school elects to "operate as, or be operated by, a nonprofit public benefit corporation" (§ 47604, subd. (a)), or whether it remains strictly under the legal umbrella of the chartering authority. In other words, even a school operated by a nonprofit could never stray from under the wings of the chartering authority, the Board, and the Superintendent. We note too that situating the locus of control with the public school system rather than the nonprofit is not incompatible with the laws governing nonprofit public benefit corporations. Specifically, one of their enumerated powers is to "[p]articipate with others in any partnership, joint venture or other association, transaction or arrangement of any kind *whether or not such participation involves sharing or delegation of control with or to others*." (Corp. Code, § 5140, subd. (j), italics added.)

Fifth, speaking directly to appellants' repeated concern that charter grantees will be making decisions about curriculum and similar educational functions and thus the necessary control element has been abandoned, we reiterate that these functions are details left to legislative discretion. (*California Teachers Assn.* v. *Board of Trustees, supra*, 82 Cal.App.3d at p. 255.) With the Charter Schools Act, the Legislature has exercised its discretion to ***1141** sanction a certain degree of flexibility and operational independence, thereby giving the nod to healthy, innovative practices and experimentation. Central to its intent is the goal of stimulating continuous improvement in *all* public schools by fostering competition within the public school system itself. (See § 47601, subd. (g).) And in any event, through their powers to deny petitions and revoke charters, chartering authorities *do* exercise control over these educational functions.

Sixth, as to appellants' point that charter grantees are not officers of public schools, the law again belies this proposition. The Constitution gives the Legislature the "power, by general law, to provide for the incorporation and organization of school districts ... of every kind and class, and [to] classify such districts." (Art. IX, § 14.) Seizing this power, the Legislature has declared that "[a] charter school shall be deemed to be a 'school district' for purposes of Section 41302.5 and Sections 8 and 8.5 of Article XVI ...." [FN12] (§ 47612, subd. (c).) Appellants argue that a charter school is not a school district "because its incorporation and organization [have] not been provided by an enactment of the Legislature ...." What is the Charter Schools Act if not an enactment of the Legislature providing for the organization of charter schools as districts for purposes of the enumerated provisions? Nothing in article IX, section 6 says that a district *classified* by the Legislature must also be *incorporated* pursuant to explicit legislative direction.

> FN12 Article XVI, section 8 gives priority funding status to support of the public school system and public institutions of higher education and also sets minimum amounts of funding. Section 8.5 of article XVI provides for allocation of property tax revenues to public schools. Section 41302.5 states that for purposes of these two constitutional sections, the term " 'school districts' shall include county boards of education, county superintendents of schools, and direct elementary and secondary level instructional services provided by the state ...."

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

Thus, under this scheme, charter school officials are officers of public schools to the same extent as members of other boards of education of public school districts. So long as they administer charter schools according to the law and their charters, as they are presumed to do, they stand on the same constitutional footing as noncharter school board members. If they violate the law, the charter will be revoked.

2. *Article IX, Section 6*

Appellants advance similar arguments concerning the jurisdictional requirement of article IX, section 6. This section reads in part: "No school or college or any other part of the Public School System shall be, directly or indirectly, transferred from the Public School System *or placed under the* ****1142*** *jurisdiction of any authority other than one included within the Public School System*." (Italics added.) Article IX, section 6 also provides that the public school system consists of the various levels and types of public schools and colleges as well as "the school districts and the other agencies authorized to maintain them."

School districts, county boards of education and respondent Board share several things in common: The formation of each entity is provided for in article IX (§ 7 [Board and county boards of education], §§ 14 & 16 [local school districts and their governing boards]). As such each entity is "authorized to maintain" the various schools in our public school system. (*Id.*, § 6.) Finally, each entity is a defined chartering and revoking authority under the Act (§§ 47605, subds. (b), (j), 47605.5, 47607), with supervisorial oversight over their charter schools (§§ 47604.3, 47607, 47613.7). The most direct answer to appellants' jurisdictional challenge is this: Charter schools are under the jurisdiction of chartering authorities; chartering authorities are authorities "within the Public School System," and hence no violation of article IX, section 6 can be stated.

To the extent appellants define the term "jurisdiction" more narrowly as "management and control" (citing *California Teachers Assn.* v. *Board of Trustees*, *supra*, 82 Cal.App.3d at p. 256), our analysis of article IX, section 8 fully applies. (See pt. C.1., *ante*.)

D. *The Charter Schools Act As Amended Does Not Run Afoul of Constitutional Prohibitions Against Public Appropriations in Aid of Sectarian Purposes or Institutions*

(5) Appellants' greatest misgiving is their assessment that the current scheme "requires the issuance of a school charter to every church or sect who otherwise qualifies to be a charter grantee ...." (Underscore omitted.) They reason as follows: A chartering authority cannot deny a charter, whether the proposed grantee is sectarian or not, unless it can render one of the negative findings set forth in section 47605, subdivision (b). This is so because the statute does not explicitly authorize chartering authorities to deny a petition on grounds that petitioner is a religious organization or an affiliate of a religious organization.

Moreover, appellants are dismayed that the Act does not specifically sanction charter revocation in the event a school is or becomes controlled by ***1143** a religious sect. [FN13] Accordingly, they are adamant that churches and other sectarian groups will and must be permitted to operate and control charter schools, all in defiance of article XVI, section 5 [FN14] and article IX, section 8 (quoted in pertinent part in pt. C.1., *ante*).

FN13 To demonstrate their concern, appellants refer us to the discussion in the Little Hoover Report about an independent study, home-based charter school where, "[a]t the request of parents, the school was purchasing textbooks published by organizations with religious affiliations." (Little Hoover Rep., *supra*, at p. 57.) Appellants are appalled that the school's charter was not revoked. This is not the whole story. According to the report, the school changed its policy after the county education office informally told school officials "that such purchases could be viewed as violating the anti-sectarian provisions of the charter law." (*Ibid.*)

On a related note, appellants also cite the existence of 40 home-based charter schools, assuming, without factual basis, that "[b]y definition, the home-based teacher is a good Christian, Jew, Muslim, Buddhist, or what have you, who inculcates the parents' religion to the pupil, in the course of the home-based teaching." This is a speculative attack on home-based independent study programs in general, which exist *apart* from the charter school movement. While the Little Hoover Report gives some credence to concerns

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

> about funnelling public funds to parents to subsidize religious training, it also notes: "Unfortunately, [this concern is] just as possible in independent study programs that are not run by charter schools, Department of Education officials acknowledge. [¶] The department points out that there is no special program with earmarked funding; independent study is a teaching 'modality' rather than a specific program. A district that chooses to have such a program receives per-pupil funding equal to that it receives for a student who it houses in a classroom under full-time teacher supervision." (Little Hoover Rep., *supra*, at p. 58.) And in any event, starting next year charter schools will be explicitly barred from receiving state funds if they pay for religious materials or anything else in connection with a home or independent study program that could not legally be purchased for the education of noncharter public school students. (See § 51747.3, subd. (a).)
>
> FN14 Article XVI, section 5 reads in relevant part: "Neither the Legislature, nor any county, city and county, township, school district, or other municipal corporation, shall ever make an appropriation, or pay from any public fund whatever, or grant anything to or in aid of any religious sect, church, creed, or sectarian purpose, or help to support or sustain any school, college, university, hospital, or other institution controlled by any religious creed, church, or sectarian denomination whatever ...."

The antidote to these concerns is found in the Act itself. Charter petitioners must affirm that their school will be nonsectarian in its programs and operations. (§ 47605, subds. (b)(4), (d)(1).) A petition lacking such affirmation can be denied. (*Id.*, subd. (b)(4).) But what if the petition contained the requisite affirmation but petitioners nonetheless were controlled by a religious organization? In that event, the chartering authority could deny the petition because petitioners were "demonstrably unlikely to successfully implement the program set forth in the petition," most notably its nonsectarian premise. (*Id.*, subd. (b)(2).) Moreover, a petition for a charter school controlled by a sectarian organization would be denied under this same clause because the school would be *illegal* under article XVI, section 5. A school illegal from its inception has little chance of success. ***1144**

In addition, if a school's religious affiliation evolved *after* charter status was attained, or, if initially masked, became revealed at such later time, either situation would be immediate grounds for charter revocation. In the first instance, the school would come within the "[v]iolated any provision of law" provision of section 47607, subdivision (b)(4). In the latter instance, petitioners would have presented a facially acceptable but misleading petition, i.e., one affirming that the school would be nonsectarian in its programs and operations. (§ 47605, subds. (b)(4), (d)(1).) When that proved not to be the case, the charter would be subject to revocation because the school materially violated its charter. (§ 47607, subd. (b)(1).)

Appellants' various legal arguments are not persuasive. First, they dissect the holding of *California Teachers Assn.* v. *Riles* (1981) 29 Cal.3d 794 [176 Cal.Rptr. 300, 632 P.2d 953], a case that has no applicability to the one at hand. *Riles* involved a constitutional challenge to the statutory textbook loan program, which authorized the lending of public school textbooks to students attending private schools. There was no question that sectarian schools would benefit from the program. The only question was the *character* of the benefit provided, the state defendants arguing an indirect benefit under the "child benefit" doctrine. The high court rejected their arguments, holding that the benefit to sectarian schools themselves was neither indirect nor remote. By providing textbooks at public expense the loan program appropriated money to advance the educational function of sectarian schools, in violation of section 8 of article IX and section 5 of article XVI. (*California Teachers Assn.* v. *Riles*, *supra*, 29 Cal.3d at pp. 809-813.)

In contrast, charter schools must be nonsectarian. Not content with the nonsectarian provisions of the Charter Schools Act, appellants claim the law is flawed because it does not include an express nonaffiliation provision, as do the Minnesota and federal charter school laws. [FN15] Their theory is untenable: that section 47605, subdivision (d), as worded, authorizes "public charter schools to be owned by, controlled by, affiliated with, [FN16] or operated by, a church or religious group, provided, that it be nonsectarian in its programs, admission policies, employment prac-

tices, and all other operations." ***1145**

FN15 Section 124D.10, subdivision 8(c) of the Minnesota State Laws provides in part that the sponsor of a charter school "*may not authorize a charter school or program that is affiliated with a nonpublic sectarian school or a religious institution*." (Italics added.) The federal act similarly provides in part that a charter school is a public school which, among other traits, "*is not affiliated with a sectarian school or religious institution ....*" (20 U.S.C. § 8066(1)(E), italics added.)

FN16 Appellants do not explain the concept of "affiliation" nor does that term or concept appear in the relevant constitutional provisions. The verb "affiliate" means "to bring or receive into close connection as a member or branch[;] to associate as a member." (Webster's New Collegiate Dict. (9th ed. 1984) p. 61, col. 2.) Common sense tells us that for purposes of article XVI, section 5, a school that associated itself as a member or branch of a religious sect would, in fact, be controlled by the operative "religious creed, church, or sectarian denomination."

This construction disregards settled principles of statutory construction, such as: We presume that the Legislature operates within the borders of the Constitution when enacting legislation. (*In re Kay* (1970) 1 Cal.3d 930, 942 [83 Cal.Rptr. 686, 464 P.2d 142].) [FN17] Unless a conflict with a provision of the Constitution is clear and unquestionable, we will uphold the statute, wherever possible interpreting it as consistent with applicable constitutional provisions, seeking to harmonize statute and Constitution. (*Arcadia Unified School Dist. v. State Dept. of Education*, *supra*, 2 Cal.4th at p. 260.) Finally, there is no requirement that the Legislature bar by statute what is already barred by Constitution. (See *Bowen v. Kendrick* (1988) 487 U.S. 589, 614 [108 S.Ct. 2562, 2577, 101 L.Ed.2d 520].) In this sense, a nonaffiliation provision would be redundant because nonaffiliation is already constitutionally proscribed.

FN17 One strong indicator of validity is this: With Assembly Bill No. 544 the Legislature has permitted charter schools to elect to operate as, or be operated by, a nonprofit public benefit corporation. (§ 47604, subd. (a).) It is significant that the statute does not, for example, refer more broadly to corporations organized under the Nonprofit Corporation Law. (See Corp. Code, § 5000 et seq.) In addition to nonprofit public benefit corporations, such corporations would include nonprofit *religious* corporations. (See *id*., § 5046.) Thus, the *only* private entity that can operate a charter school is a nonprofit public benefit corporation. A church or other religious corporation could never operate a charter school outright.

E. *The Charter Schools Act Does Not Conflict With the Textbook Adoption Requirement of Article IX, Section 7.5*

(6) The broad exemption from most education laws governing school districts, which the Act extends to charter schools, embraces section 60200 concerning adoption of textbooks by the Board. Article IX, section 7.5 calls for such adoption: "The [Board] shall adopt textbooks for use in grades one through eight throughout the State, to be furnished without cost as provided by statute."

From this appellants posit infringement of article IX, section 7.5. But how? By its terms the provision imposes a requirement *on the Board*. It does not constitute a limitation on school districts, prohibit them from choosing other books, [FN18] or hinder the Legislature from enacting laws delineating the scope of the Board's authority (see *Engelmann v. State Bd. of Education*, *supra*, 2 Cal.App.4th at p. 54). "[T]he Legislature may define, limit, or condition a constitutional power or right so long as it does not unduly burden ***1146** the exercise of that power or right." (*Ibid.*) This is just what section 47610 does: By exempting charter schools from the textbook adoption (and numerous other) laws, the Legislature has limited the scope of the Board's authority with respect to the textbook selection process. However, the price for limited experimentation and operational freedom afforded to charter schools does not unduly burden the Board's exercise of its textbook selection powers. Therefore, the Act does not run afoul of article IX, section 7.5.

FN18 Under the code itself a school district can select nonadopted textbooks, but only if it establishes to the Board's satisfaction "that

> the state-adopted instructional materials do not promote the maximum efficiency of pupil learning in the district ....” (§ 60200, subd. (g); *Engelmann v. State Bd. of Education* (1991) 2 Cal.App.4th 47, 52 [3 Cal.Rptr.2d 264].)

F. *The Act Does Not Impermissibly Delegate Legislative Powers*

(7a) Appellants' final protest concerns the effect of the unamended Charter Schools Act, should we strike Assembly Bill No. 544. They insist that the underlying enactment amounts to an unconstitutional delegation of legislative powers to the Board and other chartering authorities. Specifically, they assert that the power to issue charters has been handed over without standards or guidance as to a whole quilt of concerns: decisions about curriculum, texts, educational focus, and teaching methods; minimum qualifications of charter grantees; whether, through apt terms in the charter, to retain control over public educational functions of the charter schools; and whether to grant charters to grantees controlled by a church or religious sect. Appellants cast each of these issues as implicating “a fundamental policy decision which the Legislature [is] required to make ....”

To begin with, the Legislature has not left it up to charter authorities to decide whether to grant a charter to a grantee controlled by a religious sect. To reiterate: Article XVI, section 5 *is* the standard, and the standard is “don't do it under any circumstances.”

Next, appellants misunderstand the legislative function. (8) “Essentials of the legislative function include the determination and formulation of legislative policy. 'Generally speaking, attainment of the ends, including how and by what means they are to be achieved, may constitutionally be left in the hands of others. The Legislature may, after declaring a policy and fixing a primary standard, confer upon executive or administrative officers the ”power to fill up the details“ by prescribing administrative rules and regulations to promote the purposes of the legislation and to carry it into effect ....' ” (*State Bd. of Education v. Honig* (1993) 13 Cal.App.4th 720, 750 [16 Cal.Rptr.2d 727], quoting *First Industrial Loan Co. v. Daugherty* (1945) 26 Cal.2d 545, 549 [159 P.2d 921].)

(7b) Here, the Legislature made the fundamental policy decision to give parents, teachers and community members the opportunity to set up public schools with operational independence in order to improve student learning, ***1147** promote educational innovation and accomplish related public education goals. (§ 47601.) From there, the Legislature set limits on the number of charter schools that can exist at any particular time and their term (§§ 47602, subd. (a), 47606, subd. (a)); controlled against charter status by way of private school conversion (§ 47602, subd. (b)); and fixed standards for charter schools, as detailed in the numerous petition and operational requirements set forth in section 47605. Having set the policy and fixed standards and limits, the Legislature did its job: “In the educational setting, legislatures rarely control public school operations directly, but delegate authority which permits state, regional, and local education agencies to establish school policies and practices.” (*State Bd. of Education v. Honig*, *supra*, 13 Cal.App.4th at p. 750.)

Reasonable grants of power to administrative agencies will not offend the nondelegation doctrine so long as adequate safeguards exist to protect against abuse of that power. (*State Bd. of Education v. Honig*, *supra*, 13 Cal.App.4th at p. 751.) Here, procedures are in place to safeguard the chartering authority decisionmaking process. These include procedures for review of denied petitions (§ 47605, subd. (j)) and, with the Assembly Bill No. 544 amendments, open meeting requirements (§ 47608).

Finally, while it is obvious that appellants wish for more-and more detailed-standards and guidelines, more could not be better in this situation where a primary purpose of the Act is to encourage educational innovation, experimentation and choice in order to improve learning and expand learning opportunities for all students. How can you write the score to a symphony yet to be created?

IV. Disposition

The Charter Schools Act rests on solid constitutional ground. We affirm the judgment.

Hanlon, P. J., and Poché, J., concurred.

A petition for a rehearing was denied November 24, 1999, and appellants' petition for review by the Supreme Court was denied January 25, 2000. ***1148**

Cal.App.1.Dist.
Wilson v. State Bd. of Educ.

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965
(Cite as: 75 Cal.App.4th 1125)

75 Cal.App.4th 1125, 89 Cal.Rptr.2d 745, 138 Ed. Law Rep. 453, 99 Cal. Daily Op. Serv. 8594, 1999 Daily Journal D.A.R. 10,965

END OF DOCUMENT

CALIFORNIA
DEPARTMENT OF
EDUCATION

1430 N STREET
SACRAMENTO, CA
95814-5901

JACK O'CONNELL
State Superintendent of
Public Instruction
PHONE: 916-319-0800

April 5, 2004

Dear County and District Superintendents, County and District Chief Business Officials, and Charter School Administrators:

CHARTER SCHOOL FINANCIAL REPORTING FOR 2003-2004 AND SUBSEQUENT FISCAL YEARS

In a March 5, 2003, letter titled, "Financial Reporting for Charter Schools," the California Department of Education (CDE) informed districts, counties, and charter schools it was continuing to implement the requirements of Assembly Bill (AB) 1994, Chapter 1058, Statutes of 2002, regarding charter school financial reporting. Since that time, CDE developed regulations authorizing the standardized account code structure (SACS) as a financial reporting format available to school districts, county offices of education, joint powers agencies, and charter schools. Additionally, CDE developed regulations for an alternative format (hereinafter referred to as the Alternative Form) that may be used by those charter schools that choose not to report in the SACS format.

After a 45-day public comment period and a public hearing, the regulations and the Alternative Form for charter school reporting were approved at the September 2003 meeting of the State Board of Education (SBE). Subsequently, the Office of Administrative Law approved the regulations in November 2003, and they are now published in sections 15060, 15070, and 15071 of Title 5 (Education) of the *California Code of Regulations* (CCR). The CCR can be accessed from the Office of Administrative Law Web site at www.oal.ca.gov (Outside Source) or ccr.oal.ca.gov (Outside Source). Also, the regulations and the Alternative Form are available for viewing on CDE's Web site at www.cde.ca.gov/regulations/, under School Finance. (Please note: CDE will be launching a new Web site in late April. Once the new Web site is active, the regulations and the Alternate Form will be at www.cde.ca.gov/re/lr/rr/.)

Required Charter School Financial Reporting

The submission of charter school financial data to CDE has been optional for the past two fiscal years. Now that the regulations and reporting formats required by *Education Code* sections 1628 and 42100 (as amended by AB 1994) are in place, **charter school financial reporting is required for fiscal year 2003-2004 and for subsequent fiscal years** . These year-end reports are due to each charter school's authorizing agency on or before September 15 each year. As previously mentioned, charter schools may choose to submit their financial data either in the SACS format or in the Alternative Form prescribed in the regulations. In either case, the data must be submitted to the charter school's authorizing agency, forwarded to and reviewed by the county office of education, and electronically submitted to CDE.

The specific reporting options for 2003-2004 are as follows:

- Charter school financial data can be reported in SACS, in the authorizing agency's General Fund (SACS Fund 01), Charter Schools Special Revenue Fund (SACS Fund 09), or a new Charter Schools Enterprise Fund (SACS Fund 62), which allows full accrual accounting for not-for-profit charter schools.

- Charter school financial data can be reported in SACS by the charter school, separate from the authorizing agency, by using the charter school's county-district-school (CDS) code to access the applicable forms, including the Charter Schools Enterprise Fund form.
- Charter school financial data can be reported by the charter school using the Alternative Form.

We encourage charter schools to thoroughly review the charter school financial reporting options (SACS and the Alternative Form) before choosing the format to use in submitting the 2003-2004 financial reports. We also suggest that charter schools discuss the options with their authorizing agencies and independent auditors before making a decision. To assist charter schools with this decision, here are some thoughts to consider about using SACS or the Alternative Form for financial reporting.

Using SACS

Many charter schools are already using SACS, either on their own or with the help of their authorizing agency. We encourage these charter schools to continue using SACS for a variety of reasons, including: SACS allows charter schools to take advantage of various automated software features, such as the ability to create program reports and automatically calculate an indirect cost rate; SACS allows charter schools to easily respond to requests for information needed to comply with federal special education maintenance of effort compliance requirements; and SACS provides CDE, the Legislature, other state and federal agencies, and the public with the most complete and comparable financial data.

For 2003-2004 reporting, we plan to modify the SACS software to accept a charter school's data separate from the charter school's authorizing agency. We will accomplish this by modifying the "LEAID" field in the Preferences menu in the SACS software. The specific details of this modification have been included in a separate SACS software letter, but briefly this means that for those school districts and county offices whose charter schools wish to report their data separately, the extract file will have to be amended to add an additional seven digits for a school code. For local education agencies whose charter schools do not report separately, no change is required to the extract program, because CDE will automatically backfill the seven-digit school code field with zeroes. The SACS software letter referred to above is on CDE's Web site at www.cde.ca.gov/fiscal/financial/corresp.htm. On CDE's new Web site, the letter will be at www.cde.ca.gov/fg/ac/co/.

Although the entire SACS package may look daunting to charter schools, keep in mind that charter schools need only complete the data elements that apply to them. For instance, it is not likely that a charter school will have more than one fund, so there is no need to report data in multiple funds. Also, compared to traditional school districts, charter schools will have fewer funding sources (due to block grant funding) and fewer instructional settings, which should simplify the use of SACS for charter schools.

In addition to the SACS software changes planned for 2003-2004, we hope to build into SACS, to the extent possible, the Senate Bill 740 (Chapter 892, Statutes of 2001) nonclassroom-based funding determination form. The SACS software will automatically pull most, if not all, of the data needed to complete the form. Because of the volume of changes being made this year, however, we may not be able to add this new feature until next year.

Using the Alternative Form

The Alternative Form is an option available for charter schools to prepare their unaudited actual financial reports without using the SACS format. Because the Alternative Form is less complex than the SACS reporting format, it may be easier for charter schools to use. However, charter schools using the Alternative Form may need to separately provide additional information, such as the information needed to determine a charter school's compliance with federal special education "maintenance of effort" requirements.

An indirect cost rate cannot be generated from data reported using the Alternative Form. CDE has asked the United States Department of Education (USDE) to grant the department authority to approve indirect cost rates for individual charter schools. Depending on the outcome of these negotiations with USDE, charter schools using the Alternative Form that request an indirect cost rate will need to provide CDE with additional information before a rate can be calculated. If a charter school does not request an indirect cost rate, this additional data will not be required.

The Alternative Form is currently available only for viewing and printing; however, it will soon be available in a downloadable Excel spreadsheet format that will be posted on CDE's Web site with other financial software. We expect the form will be posted on CDE's new Web site at www.cde.ca.gov/fg/sf/ by the end of April.

If charter schools use the Alternative Form for financial reporting to CDE, the Excel spreadsheet version must be used, and the data must be submitted to CDE electronically, via either disk or Internet (see *Education Code* sections 1628 and 42100 and CCR Title 5 Section 15071); hard copies of the Alternative Form will not be accepted. Details about transmitting the Alternative Form to CDE will be provided with the release of the electronic version of the form.

Budgets and Interim Reporting

Beginning January 1, 2004, charter schools are required by *Education Code* Section 47604.33 (Assembly Bill 1137, Chapter 892, Statutes of 2003) to submit budgets and interim reports to their chartering agency for review. Because no particular format is required, CDE will not be developing the associated budget and interim forms. However, charter schools reporting as separate agencies in SACS will have access to existing budget and interim forms.

Charter School Accounting and Financial Reporting Guidance

In 2004-2005, CDE will be revising the *California School Accounting Manual* (CSAM) to include accounting and financial reporting guidance that is specific to charter schools. In the meantime, the latest edition of CSAM provides a wealth of information about school district accounting and financial reporting, much of which is applicable to charter schools. Both the CSAM and information about SACS are available on CDE's Web site at www.cde.ca.gov/fiscal/sacs/. On CDE's new Web site, CSAM and SACS information will be located at www.cde.ca.gov/fg/ac/.

Additional Information

For more information about financial accounting and reporting, and CDE's financial reporting software, charter school personnel should first contact their authorizing district or county office of education. If additional help is needed, contact our Financial Accountability and Information Services Office by calling 916-322-1770 or by email to sacsinfo@cde.ca.gov.

Sincerely,

Scott Hannan, Director
School Fiscal Services Division

Marta Reyes, Director
Charter School Division

Last Reviewed: Thursday, January 27, 2011

Charter Schools

Public schools that may provide instruction in any of grades K-12 that are created or organized by a group of teachers, parents, community leaders or a community-based organization

---

Administration & Support
Information about charter school funding model options, funding opportunities, and funding determinations for non-classroom-based instruction.

Announcements & Current Issues
Current and upcoming events, time-sensitive issues, and hot topics.

Laws, Regulations, & Policies
State and federal legislation, laws and regulations, policy guidance and legal opinions for charter schools.

Resources
Information about obtaining a charter school number; questions and answers about charters; and other state, federal, and private resources.

California Department of Education
1430 N Street
Sacramento, CA 95814

2011 Financial Reporting Calendar-Summary

Summary calendar includes 2011-12 budget, interim, and 2010-11 unaudited actuals and audit calendar.

DATE DUE*	ITEM	DESCRIPTION	EDUCATION CODE
July 1	Budget	COE budget due to State Superintendent of Public Instruction (SSPI) District budget due to County Office of Education (COE) Charter school budget due to chartering authority and COE	1622(a) 42127(a)(2) 47604.33(a)(1)
September 8	Budget (dual)	COE revised budget due to SSPI District revised budget due to COE	1622(c) 42127(e)
September 15	Unaudited Actual Data, including Gann, due to COE	District unaudited actual data, including Gann***, due to COE Charter school unaudited actual data due to chartering authority and COE	42100(a), Government Code (GC) 7906(f) 47604.33(a)(4)****, 42100(b)
September 15	Gann Resolution	District adopts Gann resolution	42132
September 22	Tentative Disapproved District Budgets	COE must notify SSPI of district budgets which may be disapproved	42127(f), 42127(i)(2)
October 8	Disapproved District Budgets	COE notifies SSPI of district budgets that have been disapproved or budget review committees waived	42127(h)
October 15	Gann Resolution	COE adopts Gann resolution	1629
October 15	Unaudited Actual Data, including Gann, due to SSPI	COE unaudited actual data, including Gann***, due to SSPI After reviewing for accuracy, COE transmits district and charter school unaudited actual data, including Gann***, to SSPI	1628 42100(a) GC 7906(f)
October 31	Budget Adoption Cycle	District must notify COE and county must notify SSPI of 2012–13 single/dual budget adoption cycles (via the unaudited actual software data submission due to SSPI October 15, 2011)	1622(e), 42127(i)
December 10	Unadopted Budgets Report	The SSPI must report to the Legislature and the Department of Finance regarding districts that, by November 30, do not have adopted budgets	42127(g), 42127(i)(3), 42127.1(a)
December 15**	1st Interim (October 31)	COE 1st interim due to SSPI District 1st interim due to COE (also to SSPI and State Controller if qualified or negative)	1240(l)(1)(A) and (B) 42131(a)(1) and (2)
December 15	Charter School 1st Interim (October 31)	Charter school 1st interim due to chartering authority and COE	47604.33(a)(2)
December 15	Audit	COE prior year audit due to SSPI and State Controller District prior year audit due to COE, SSPI, and State Controller Charter school prior year audit due to chartering authority, COE, SSPI, and State Controller	41020(h) 41020(h) 47605(m), 41020(h)
January 14**	1st Interim Status Report District Qualified/ Negative Interims	COE must notify SSPI and State Controller of district 1st interim certifications COE must report to SSPI and State Controller on district qualified or negative 1st interims	42131(c) 42131(a)(2)
March 15	Charter School 2nd Interim (January 31)	Charter school 2nd interim due to chartering authority and COE	47604.33(a)(3)
March 17**	2nd Interim (January 31)	COE 2nd interim due to SSPI District 2nd interim due to COE (also to SSPI and State Controller if qualified or negative)	1240(l)(1)(A) and (B) 42131(a)(1) and (2)
April 16**	2nd Interim Status Report District Qualified/	COE must notify SSPI and State Controller of district 2nd interim certifications COE must report to SSPI and State Controller on district qualified or negative 2nd interims	42131(c) 42131(a)(2)

	Negative Interims		
May 15	Audit Status Report	COE must certify to SSPI and State Controller that Local Educational Agency (LEA) prior year audits were reviewed and must identify attendance-related exceptions or exceptions involving state funds	41020(k)
June 1	6/30 Projection	June 30 projection as of April 30 due to COE, SSPI, and State Controller if district or county had qualified or negative 2nd interim	1240.2, 42131(e)

* Due dates are established in law unless otherwise noted. In accordance with GC 6700, GC 6707, and GC 6803, if the due date falls on a Saturday, Sunday, or holiday, the reporting date shall be the following workday. Unless stated otherwise, “days” means calendar days.
** Date calculated as prescribed in law
*** Gann filing date administratively determined by California Department of Education (CDE)
**** EC 42100 reporting will satisfy the EC 47604.33 requirement

SSPI: State Superintendent of Public Instruction
COE: County Office of Education
LEA: Local Educational Agency
GC: Government Code

Questions: Financial Accountability & Information Services | sacsinfo@cde.ca.gov | 916-322-1770

California Department of Education
1430 N Street
Sacramento, CA 95814

Last Reviewed: Wednesday, July 13, 2011

BILL ANALYSIS

Date of Hearing: April 2, 2003

ASSEMBLY COMMITTEE ON EDUCATION
Jackie Goldberg, Chair
AB 1137 (Reyes) - As Amended: March 27, 2003

SUBJECT : Charter schools.

SUMMARY : Authorizes a school district to elect not to be a chartering authority thus requiring the State Board of Education (SBE) and the Superintendent of Public Instruction (SPI) to enter into an agreement with an entity to act as the chartering authority. The bill also specifies several oversight duties of each chartering authority and establishes criteria for charter renewal. Specifically, this bill :

1)Makes legislative findings and declarations regarding charter school accountability.

2)Authorizes a charter school to provide for the transportation of pupils at least 3 years and 9 months of age and who are enrolled in special education programs and provides state reimbursement for this purpose.

3)Repeals provisions of the Instructional Time and Staff Development Reform Program as they relate to charter schools.

4)Repeals provisions of the Mathematics and Reading Professional Development Program as they relate to charter schools.

5)Specifies that an authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, if the authority has complied with its oversight responsibilities.

6)Authorizes the governing board of a school district to elect not to be a chartering authority.

a) If the district elects not to be a chartering authority, the SBE and the SPI are required to enter into an agreement with an entity to act as the chartering authority in that school district.

7)Requires a chartering authority to do all of the following

with respect to each charter school under its authority:

a) Identify a least one staff member as a contact person from each charter school;

b) Visit each charter school at least annually;

c) If the chartering authority is responsible for two or more charter schools, form a committee consisting of at least one representative from each of those charter schools and one representative from each school district department that interacts on a regular basis with the charter schools;

d) Distribute to the parent or guardian of each pupil in the school district an annual information brochure, including, but not limited to, a general description of the purposes of charter schools, descriptions of charter schools within the school district, and contact information regarding admission and enrollment procedures for each charter school;

e) Ensure that each charter school under its authority complies with all reporting requirements specified in law, including, but not limited to, average daily attendance records, school accountability report cards, and the California Basic Educational Data System (CBEDS); and

i) Specifies that failure to provide this information is cause for revoking a charter.

f) Develop performance target standards for each charter school under its authority commensurate with standards, if any, applied to other noncharter public schools in the district.

8)Requires, upon approval of a charter petition, the chartering authority and the charter school to cooperatively develop a

list of activities that are reflective of the instructional program described in the charter, to be regularly reviewed and reported by the charter school in the form of an annual performance report.

9)Requires the chartering authority to ensure that each charter school under its authority is held accountable for the ongoing implementation of its charter.

10)Requires the chartering authority to contract with an external auditor to conduct an annual audit of the charter schools average daily attendance (ADA).

11)Requires each charter school to annually prepare and submit the following reports to its chartering authority and the county board of education, unless the county board of education is the chartering authority:

a) On or before July 1, a preliminary budget, except for a charter in its first year of operation since this information is already required;

b) On or before December 15, an interim report, reflecting changes through October 31;

c) On or before March 15, a second interim report, reflecting changes through January 31; and

d) On or before September 15, a final report for the full prior year.

12)Requires the chartering authority to review the fiscal reports within 30 days of receipt and notify the charter school if the following concerns exist:

a) The income and expenditure assumptions are unreasonable; or

b) Inadequate reserves have been set aside or the budget reflects a negative balance.

13)Requires a charter school that is approved on or after July 2005 to have its ADA recording procedure reviewed by a certified public accountant qualified to conduct audits of local education agencies (LEA).

a) Requires, within 30 days of commencing to record ADA, the charter school to obtain an audit from the certified public accountant within 30 days of its receipt.

b) Specifies that if the audit determines that the ADA recording system complies with the charter school ADA requirements, the charter school is not responsible for any

ADA audit exceptions, as long as it adheres to the system as approved by the certified public accountant.

14)Requires, on January 1, 2005, or after a charter school has been in operation for four years, whichever is later, a charter school to meet at least one of the following criteria prior to receiving a charter renewal:

a) Attained its Academic Performance Index (API) growth target in the prior year or in two of the last three years, or in the aggregate for the prior three years;

b) Ranked in deciles 4 to 10, inclusive, on the API in the prior year or in two of the last three years;

c) Ranked in deciles 4 to 10, inclusive on the API for a demographically comparable school in the prior year or in two of the last three years;

d) Qualifies for an alternative accountability system; or

e) The SBE determines that pupils of the charter school are learning more of the statewide adopted performance standards than the pupils would have learned had they attended a local noncharter public school.

i) Requires the SBE, in making this determination, to consider recommendations from the charter school advisory committee.

ii) Requires the determination to be based on, but not limited to, the following factors:

(1) Pupil achievement data from assessments, including, but not limited to the Standardized Testing and Reporting (STAR) Program;

(2) The academic performance of the public schools the pupils would otherwise be required to attend as well as the academic performance of the schools in the district in which the charter school is located, including specific recognition of the composition of the student population being served.

(3) Any ongoing improvement demonstrating the

charter school will meet or exceed the requirements, as specified in number 14 of this analysis, once renewed.

(4) Consideration my be given to whether or not the charter school has been accredited through a recognized accreditation process, including, but not limited to accreditation through the California Network of Educational Charters (CANEC) and the Western Association of Schools and Colleges (WASC), and the status of that accreditation;

15) Exempts a nonclassroom charter from the funding determination process for nonclassroom based instruction if the charter meets all of the following:

a) Achieved a rank of 6 or higher for the last two years on the API, and does not fall below a rank of 6 during any two consecutive years; and

b) Is accredited through the joint California Network of Educational Charters and Western Association of Schools and Colleges (WASC) accreditation process.

16) Requires the SBE to review the finances of a nonclassroom charter school in either the current or previous fiscal year in which that charter school applies for a renewal.

17) Defines "revenue of the charter school" as the general purpose entitlement and categorical block grant.

18) Repeals provisions of the Instructional Material Fund (IMF) they relate to charter schools.

19) Repeals provisions of the Instructional Materials Funding Realignment Program as they relate to charter schools.

EXISTING LAW establishes the Charter Schools Act of 1992 which authorizes a school district, a county office of education or the SBE to approve or deny a petition for a charter school to operate independently from the existing school district structure as a method of accomplishing, among other things, improved pupil learning.

Existing law establishes a process for the submission of a

petition for the establishment of a charter. A petition, identifying a single charter school to operate within the geographical boundaries of the school district, may be submitted to the school district. If the governing board of a school district denies a petition for the establishment of a charter school, the petitioner may elect to submit the petition to the county board of education. If the county board of education denies the charter then the petitioner may submit the petition to the SBE. The act also authorizes a school that serves a countywide service, to submit the charter petition directly to the County Office of Education. If the school serves a statewide purpose, the charter may go directly to the SBE.

Existing law authorizes a charter to be granted for not more than five years. A charter granted by a school district, county board of education or SBE may be granted one or more renewals by that entity, not to exceed five years. The renewals and material revisions of the charter are based on the same standards for the original charter petition.

FISCAL EFFECT : Unknown.

COMMENTS : Bureau of State Audits (BSA) report. In November, 2002, the BSA released the report, "California's Charter Schools: Oversight at All Levels Could Be Stronger to Ensure Charter Schools' Accountability." The audit focused on four chartering entities: Fresno Unified School District, Los Angeles Unified School District, Oakland Unified School District and San Diego City Unified School District. The audit found that these chartering entities did not consistently monitor the achievement of student outcomes nor did they monitor compliance with legal requirements such as state testing, instructional minutes, and teacher credentialing. These entities also lacked procedures for proper fiscal monitoring.

The audit made the following recommendations to the Legislature:

1)Amend current law to make the chartering entities' oversight role and responsibilities explicit.

2)Clarify the law to define the types of charter school revenue that are subject to the chartering entities' oversight fees; and

3) Establish a method for disposing of a charter school's assets

and liabilities and require the SDE to adopt regulations regarding this process, in the event that a charter must close.

The report also recommended that chartering entities consider developing and implementing policies and procedures for academic and fiscal monitoring, and establish a process to analyze actual costs of oversight for purposes of charging the charter school and receiving funds from the mandate-reimbursement process.

Legislative Analyst's Office (LAO) report scheduled to be completed July 1, 2003 . While the BSA makes recommendations regarding academic and fiscal accountability, the audit does not fully address the effectiveness of the charter school approach in general. A report from the LAO, due July 1, 2003, will analyze the effectiveness of charter schools. Specifically the report will address: Pre- and post charter school test scores of pupils attending charter schools, fiscal structures and practices to school districts, whether or not there is an increased focus on low-achieving and gifted pupils, and pupil dropout rates in the charter schools compared to non-charter schools. Staff recommends the author consider the LAO recommendations as decisions are made with regards to restructuring the renewal process for charter schools.

Should a school district be allowed to elect not to be a chartering authority and instead have "an entity" act as the chartering authority ? Currently, each petition for a charter must include several components including parent and/or teacher signatures; proposed budgets and financial projections; and a reasonably comprehensive description of 15 required elements, including the method for measuring student progress and teacher qualifications. A school district is required to grant a charter if the district is satisfied that the granting charter is "consistent with sound educational practice." The district cannot deny a petition unless written factual findings show the petition does not include the components. If the district cannot find reason to deny the charter, the district must accept the charter. AB 1137 would allow a district to simply elect not to be a chartering authority instead of trying to find a reason to deny the charter.

The bill also states that if the district elects not to be the chartering authority, the SBE and the SPI are required to agree upon "an entity" to act as the chartering authority. How is "an

entity" defined? Can any organization be a chartering authority?

Staff recommends the author clarify who may be the chartering entity.

Prior legislation .

AB 544 (Lempert), Chapter 34, Statutes of 1998 made several comprehensive changes to the charter school law, specifically related to: the granting and revocation of charters; funding and facilities; allowing charter schools to operate as nonprofit public benefit corporations; and lifting the cap on the number of charters schools allowed to operate in the state from 100 to 250 in 1998-99 and allows for an additional 100 charters each year thereafter.

SB 750 (O'Connell), Chapter 892, Statutes of 2001 required that charter schools offer a certain number of instructional minutes and document student attendance as conditions of receiving apportionment funding. The bill also required charter schools to submit copies of their audited financial statements to their chartering entities and SDE.

AB 1994 (Reyes), Chapter 1058, Statutes of 2002 made several reforms to charter schools regarding course credit transfer notices, closeout audits, expense disclosure, and geographical limitations for the establishment of charters.

Arguments in support . According to the author, "In November 2002, the California State Auditor released an audit on California's charter school system. The audit found that the Legislature should consider amending the Education code to make the charter entities' oversight role and responsibilities explicit so that the chartering entities will be able to hold their charter schools accountable through adequate oversight. In addition, the audit recommended that chartering entities should develop and implement policies and procedures for academic and fiscal monitoring, and ensure that charter schools' reported ADA is verified through an independent audit. In regards to student achievement, the audit found chartering entities were not monitoring charter school's academic performance. Several charter schools were not measuring the academic performance against measurable outcomes, so chartering entities would have no way of determining whether their schools

are making progress in improving student learning. AB 1137 provides clear oversight standards as well as a method to review academic performance and ensure that charter schools are fulfilling their purpose of increasing innovation and learning opportunities while being accountable for achieving measurable student outcomes."

Arguments in opposition . According to the CTA, "CTA strongly opposes the provisions of the bill related to giving "entities" granting and supervisoral authority over charter schools if a district doesn't want to fulfill its responsibilities under the Charter Schools Act. CTA is also concerned that there are unintended consequences related to the revocation provisions of the bill. We ask that careful consideration be given to any concept related to API revocation. We do not want public schools to have the reputation of being a dumping ground for failed charter schools and their students - especially when it comes to evaluating whether or not charter schools are better than regular public schools."

REGISTERED SUPPORT / OPPOSITION :

Support

EdVoice (Sponsor)

Opposition

California Teacher Association

Analysis Prepared by : Misty Padilla / ED. / (916) 319-2087

BILL ANALYSIS

SENATE COMMITTEE ON EDUCATION
John Vasconcellos, Chair
2001-2002 Regular Session

BILL NO: AB 1994
AUTHOR: Reyes
AMENDED: June 19, 2002
FISCAL COMM: Yes HEARING DATE: June 26, 2002
URGENCY: No CONSULTANT:James Wilson

SUBJECT : Charter Schools

SUMMARY

This bill: (a) restricts a charter school's location to the county of the chartering district, (b) requires that each charter assigned a number by the State Board of Education (SBE) must correspond to only one school which is operating at one site, as defined, (c) restricts the number of sites that a charter school may have to three if specific conditions exist, and (d) gives existing charter schools until at least June 30, 2005 to come into compliance with these location restrictions. This bill also requires that charter schools approve and file financial statements, as currently required of school districts and county offices of education, and makes other changes, as specified.

NEED FOR THE BILL

According to the author, "When the Charter School Act was passed in 1992, the Legislature intended to provide opportunities for teachers, parents, pupils, and the community members to establish and maintain schools that operate independently from the state's existing school districts. Except where specifically noted, charter schools are generally exempt from most laws governing school districts. However, because charter schools lack the oversight and accountability required of other public schools, reforms are needed."

"One case that particularly concerns me is the Gateway Academy Charter School (Gateway) in my district. The Fresno Unified School District approved the charter with Gateway in 1998 and the school started operating in September 1999, according to the Department of Education.

However, the charter was revoked by the Fresno Unified School District Board last month after it learned that the 600-student statewide school had accumulated a $1.3 million debt in one year, hired teachers without credentials, and employed individuals who did not pass criminal background checks. The large debt triggered many questions including how Gateway used state and federal funding and questions about its enrollment. Inquiries suggested that one of Gateway's satellites, the Silicon Valley Academy, was providing sectarian studies and charging tuition. Numerous other accounts of violations involving Gateway have been alleged over the last several months. AB 1994 provides several key common sense reforms so charter schools are more accountable to taxpayers."

BACKGROUND

Current law authorizes charter schools established by petition to the governing board of any school district, county office of education or the State Board of Education. Under current law a local school board must grant a charter unless the local board documents specified inadequacies in the proposed charter. If a petition to establish a charter is not approved, the petitioner may appeal to the county board of education or the SBE. A petitioner whose petition is denied by a county board may appeal to the SBE. The Legislative Counsel notes the lack of any explicit authorization for a school district governing board to approve the charter of a school that would operate outside the district, but this is a common practice among charter schools.

Current law authorized a maximum of 250 charter schools in the 1998-99 school year, allowing an additional 100 charter schools to be authorized each year since. The law requires the SBE to assign a number to each charter petition that is granted based on the chronological order in which the notice is received. The SBE has in practice allowed single

charters to be used to authorize the operation of multiple school sites, which are called "satellites" of the charter. Satellites have often operated at considerable distance from the "home" charter. Early this year the Gateway Charter School, chartered by the Fresno Unified School District, was the subject of several newspaper articles and an ongoing law enforcement investigation, concerning allegations that satellites of the Gateway School were operating in violation of several laws. Gateway's charter

was revoked by the district governing board who cited the difficulties of keeping track of remote (satellite) operations as a reason why various anomalies were not discovered sooner.

Proposition 39, approved in November 2000, reduced the vote percentage required for approval of local bonds to 55% and made provision for sharing local bond funding with charter schools. Under the Proposition 39 rules, any charter school located in the geographic boundaries of a district is entitled to share in the bond funding of that district in proportion to the number of pupils in the charter school that are actually residents in the district. This is true whether the charter school was chartered by that district, or another district that has jurisdiction over another territory. Also under Proposition 39 rules, any district that contributes 80 or more of its residents to a charter has an obligation to help provide facilities.

AB 16 (Chapter 33 of 2002) authorizes the placement of two school bond measures including: a $13.05 billion on the November 2002 ballot and a $12.3 billion bond measure in 2004. AB 16 aside funds for facilities for charter schools, subject to subsequent legislation, in the amounts of $100 million in the 2002 bond and $300 million in the 2004 bond.

Current law authorizes charter schools that elect not to receive charter school block grant funding to receive funding through traditional formulas only through the fiscal year 2001-02.

ANALYSIS

This bill:

1) Requires charter schools to approve and file an annual statement of all receipts and expenditures of the charter school for the preceding fiscal year. Statements are to be filed with the entity that approved the charter school. Further requires districts and county offices of education to include the charter school filed statements when they forward their own (already required) statements to the Superintendent of Public Instruction.

2) Requires that each number assigned by the SBE to a charter petition on or after January 1, 2003, correspond to a single charter school that will operate at a single schoolsite or facility.

3) Requires that each petition to establish a charter school that is submitted on or after January 1, 2003, identify a single charter school that will operate at a single schoolsite or facility.

4) Requires that a charter school that is granted a charter and commences providing educational services to pupils on or after July 1, 2002, may locate only at a single schoolsite or facility and only may locate

only at a single schoolsite or facility and only within the geographical boundaries of the county in which the authorizing entity is located.

5) Declares that a "schoolsite" or "facility", as used in the bill, does not include any resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met:

   a) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school.

   b) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the school is authorized.

AB 1994
Page 5

6) Provides that a charter school may operate at up to three sites or facilities in the county in which the authorizing entity is located, only if an additional site or facility is necessary for any of the following reasons:

   a) The school has attempted to locate a single site or facility to house the entire program but such a facility or site is unavailable in the area in which the school chooses to locate.

   b) To ease overcrowding at the primary school site.

   c) To accommodate the planned growth of the charter school as described in the school's charter.

   d) As temporary use during a construction or expansion project.

   e) To meet the terms of receiving a facility under the provisions established pursuant Proposition 39.

7) Requires that additional sites be reasonably close to the primary schoolsite to ensure that governance, management, staffing and all other operations of the charter school are easily directed from the primary schoolsite.

8) Provides that by June 30, 2005, or upon the expiration of a charter that is in existence on January 1, 2003, whichever is later, all charter schools shall be required to comply with the location rules described above for schoolsites at which education services are provided to pupils prior to or after July 1, 2002. To meet this requirement a charter school must receive approval of a (new or renewed) charter petition.

9) Exempts a charter high school that provides instruction exclusively in cooperation with the California Conservation Corps or local Conservation Corps certified by the California Conservation Corps from the "jurisdictional limitations" set forth in the bill.

AB 1994
Page 6

10) Modifies the procedure for appeal of the denial of a petition to establish a charter school by requiring the petitioner to appeal to a county office of education before appealing to the SBE.

11) Requires the petition for the establishment of a charter high school to describe how that school will inform parents about the transferability and eligibility of courses to other public high schools and to meet college entrance requirements.

12) Requires the petition for the establishment of a charter school to describe the procedures to be used if the charter school closes.

.

13) Authorizes school districts that have converted all of their schools to charter schools to receive funding

through traditional procedures and elect not to receive their funding through the charter school block grants.

14) Allows a charter school in its first year of operation to commence instruction within the first 3 months of the fiscal year beginning July 1 of that year, but would make a charter school ineligible for an apportionment for a fiscal year in which instruction commenced after September 30 of that fiscal year.

STAFF COMMENTS

1) "Grandfathering" current charters. One aspect of this bill that has drawn some of the heaviest criticism of the charter school community is its lack of any provision that would allow current multiple site charters from continuing to operate after their next charter renewal, or July 2005, whichever is later. The bill does exempt charters associated with the California Conservation Corps, but not sites associated with the Job Corps or other well known charters such as the Los Angeles County Community School Charter operated by Brother Modesto. The Los Angeles County Charter, for example, operates at 18 sites throughout Los Angeles County. Those charters that want to continue operations outside of their home county could always seek a charter from the SBE, but they would still be limited to a maximum of three sites, assuming that the three sites could be justified under the bill's criteria.

2) State mandated costs . The Legislative Counsel has flagged this bill for potential mandated costs related to the bill's requirement that each charter school submit a financial statement to the entity that approved the charter.

3) Related legislation.

a) AB 2503 (Diaz), also to be heard today, requires charter schools to locate their school sites only within the boundaries of their authorizing entity. Unlike this bill, AB 2503 exempts all existing charters from its new location restrictions.

b) AB 2628 (Leach), would grant general authority to the county superintendent of schools to monitor the operations of a charter school located within that county and to conduct an investigation into the operations of that charter school, based on parental complaints or other information that justifies the investigation.

SUPPORT

California Teachers Association

State Superintendent of Public Instruction

OPPOSITION

California Charter Academy
California Network of Educational Charters
Gold Rush Home Study Charter School
Sierra Charter School

California State Auditor

BUREAU OF STATE AUDITS

California's Charter Schools:

Oversight at All Levels Could Be Stronger to Ensure Charter Schools' Accountability

November 2002
2002-104

The first five copies of each California State Auditor report are free. Additional copies are $3 each, payable by check or money order. You can obtain reports by contacting the Bureau of State Audits at the following address:

California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, California 95814
(916) 445-0255 or TDD (916) 445-0255 x 216

OR

This report may also be available on the World Wide Web
http://www.bsa.ca.gov/bsa/

The California State Auditor is pleased to announce the availability of an online subscription service. For information on how to subscribe, please contact David Madrigal at (916) 445-0255, ext. 201, or visit our Web site at www.bsa.ca.gov/bsa

Alternate format reports available upon request.

CALIFORNIA STATE AUDITOR

ELAINE M. HOWLE
STATE AUDITOR

STEVEN M. HENDRICKSON
CHIEF DEPUTY STATE AUDITOR

November 7, 2002 2002-104

The Governor of California
President pro Tempore of the Senate
Speaker of the Assembly
State Capitol
Sacramento, California 95814

Dear Governor and Legislative Leaders:

As requested by the Joint Legislative Audit Committee, the Bureau of State Audits presents its audit report concerning California's charter schools.

This report concludes that oversight at all levels could be stronger to ensure charter schools' accountability. The chartering entities are not effectively monitoring their charter schools and ensuring that these schools meet the agreed-upon student outcomes listed in their charters. The chartering entities' fiscal monitoring of their charter schools is also weak. Without academic or fiscal oversight by the chartering entities, charter schools are not held accountable for improving student learning, meeting their agreed-upon academic goals, or the taxpayer funds that support their operations. Moreover, the chartering entities could not justify the oversight fees they charge their charter schools because they do not track their actual costs of oversight and risk double-charging the State for their oversight costs through mandated cost reimbursement claims.

The Department of Education (department) plays a role in holding the charter schools accountable. However, it does not systematically review the charter schools information that it receives to raise questions with the chartering entities regarding certain charter schools' fiscal or academic practices. Furthermore, to apportion funds to charter schools, the department relies primarily on the certifying signatures of school districts and county offices of education, both of which lack the necessary procedures to ensure that charter schools comply with apportionment requirements. Thus, the department cannot be certain that the schools receive only the public funds to which they are legally entitled. Finally, although two recently enacted laws, Senate Bill 1709 and Assembly Bill 1994 (Chapters 209 and 1058, Statutes of 2002), attempt to add accountability to the existing charter schools environment, without an increased monitoring commitment on the part of chartering entities and the department, these new laws may not be as effective as they could be.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

CONTENTS

Appendix C

Responses to the Audit

SUMMARY

Audit Highlights . . .

Oversight of charter schools at all levels could be stronger to ensure schools' accountability. Specifically:

- ☑ *The four chartering entities we reviewed do not ensure that their charter schools operate in a manner consistent with their charters.*
- ☑ *These chartering entities' fiscal monitoring of their charter schools is also weak.*
- ☑ *Some charter schools assess their educational programs against their charters' measurable student outcomes, but others do not.*
- ☑ *The Department of Education (department) could, but does not target its resources toward identifying and addressing charter schools' potential academic and fiscal deficiencies.*
- ☑ *Finally, although two new statutes attempt to add accountability, without the chartering entities and department increasing their commitment to monitoring, these new laws may not be as effective as they could be.*

RESULTS IN BRIEF

The California Legislature passed the Charter Schools Act of 1992 (Act) to provide opportunities for teachers, parents, students, and community members to establish and operate schools independently of the existing school district structure, including many of the laws that school districts are subject to. The Legislature intended charter schools to increase innovation and learning opportunities while being accountable for achieving measurable student outcomes. Before a charter school can open, a chartering entity must approve a petition from those seeking to establish the school. Under the Act, three types of entities—a school district, a county board of education, and the State Board of Education (state board)—have the authority to approve petitions for charter schools. As of March 2002, there were 360 charter schools serving approximately 131,000 students throughout California. More than 70 percent of the agencies chartering those schools have only 1 charter school.

Chartering entities play a role in overseeing the schools they charter to determine if the schools operate in a manner consistent with their charters and follow all applicable laws. These responsibilities are not explicitly stated; rather, they are implied through the Act and its amendments, which authorize the chartering entities to approve charters, inspect or observe a school at any time, collect fees for oversight costs, and revoke charters under certain conditions. As such, we expected to find that the chartering entities had established policies and procedures for assessing the academic achievements of students in their charter schools, in accordance with the measurable student outcomes required in each charter. We had similar expectations for the chartering entities' assessment of their charter schools' financial operations. Without academic and fiscal monitoring, the charter schools are not held accountable for achieving their measurable student outcomes or for prudent use of the taxpayer funds they receive.

Despite our expectations for academic monitoring, the four entities we reviewed—Fresno Unified School District, Los Angeles Unified School District, Oakland Unified School District, and San Diego City Unified School District—do not monitor to determine if their charter schools are achieving

their student outcomes. Although each charter agreement contains standards for gauging the academic performance of the school, chartering entities typically do not have guidelines in place to effectively monitor their charter schools, nor do the chartering entities adequately monitor their charter schools against the agreed-upon student outcomes. Without periodically monitoring their schools for compliance with the charter terms, the chartering entities cannot ensure that their schools are making progress in improving student learning in accordance with their charters, nor are they in a position to identify necessary corrective action or revocation.

Because the chartering entities were not effectively monitoring their charter schools for compliance with the measurable academic outcomes listed in their charters, we visited a sample of schools. Although some schools assess their educational programs against their charter's measurable student outcomes, others do not. By not assessing student performance against the charter terms, the schools are not demonstrating their accountability for meeting their agreed-upon academic goals.

Further, although charter schools are exempt from much of the Education Code that governs public schools, they are still subject to at least three legal requirements as conditions for receiving state funds, including hiring teachers who hold a Commission on Teacher Credentialing permit, offering a minimum number of instructional minutes, and certifying that their students have participated in state testing programs. However, we found that chartering entities are not always ensuring compliance with these legal requirements at each of their charter schools.

Like the chartering entities' academic monitoring, their fiscal monitoring also had weaknesses. Some schools rely on their chartering entity for operational support. Other schools manage their own operations; these schools we consider to be fiscally independent. Because the chartering entities do not control the financial activities of their fiscally independent charter schools, the risk that these schools will develop financial problems is greater. Thus, we targeted the chartering entities' oversight of fiscally independent charter schools. We found that the chartering entities lacked necessary policies and procedures for effective fiscal monitoring and have not adequately monitored their charter schools. Although all four entities

outlined the types of financial data they wanted their charter schools to submit and how often this data should be submitted, and all asserted that they have data review procedures to identify and resolve problems, none could provide evidence of these procedures. Further, even though all four chartering entities recently adopted new policies and procedures for charter schools, only two address fiscal monitoring and appear to provide for improved monitoring of their charter schools' fiscal health. Without adequate monitoring, schools that develop fiscal problems and other reported deficiencies might fail to meet the terms of their charter or deteriorate financially to the point of having to close, disrupting their students' education.

Moreover, some charter schools are fiscally unhealthy. Based on fiscal year 2001–02 financial data, 6 of the 11 charter schools showed year-to-date expenditures in excess of revenues, and 4 of the 6 schools did not have prior year-end fund balances sufficient to cover their deficits. If these schools' problems go uncorrected, the schools may have to close and displace their students. In addition, the schools' closures may result in a loss of taxpayer money.

The chartering entities are authorized to charge up to 1 percent of a charter school's revenues for the actual costs of providing supervisorial oversight, or up to 3 percent if they provide the charter school with substantially rent-free facilities. For fiscal years 1999–2000 and 2000–01—the latest years for which data was available during our review—the four chartering entities charged their charter schools more than $2 million in oversight fees. Nevertheless, none of the four chartering entities could document that the fees they charged corresponded to their actual costs, in accordance with statute, because the entities failed to track their actual oversight costs. Rather, the entities automatically charged a percentage of charter schools' revenues, assuming that their oversight costs exceeded the revenues they charged. As a result, the entities may be charging their charter schools more than permitted by law.

Moreover, these chartering entities participated in the State's mandated-costs reimbursement process, which reimburses organizations for the costs of implementing state legislation. The chartering entities claimed more than $1.2 million in costs related to charter schools for the two fiscal years. However, because the chartering entities did not track the actual costs associated with overseeing their charter schools, they risk

double-charging the State. Finally, although the statute is clear that the entities' oversight fee is capped at a certain percentage, the statute is unclear regarding which types of revenues are subject to the oversight fee. Consequently, the chartering entities are interpreting the law differently and may be applying their oversight fee to too much or too little of their charter schools' revenue.

The Department of Education (department) plays a role in holding charter schools accountable for their fiscal and academic practices. The department has the authority to recommend that the state board take action, including, but not limited to, charter revocation. Although the chartering entity is the primary monitor of a charter school's financial and academic health, the department has the authority to make reasonable inquiries and requests for information. It currently uses this authority to contact chartering entities if it has received complaints about charter schools. If the department reviewed the information that it receives related to charter schools and raised questions with the chartering entities regarding fiscal or academic practices when appropriate, the department could target its resources toward identifying and addressing charter schools' potential academic and fiscal deficiencies. In this way, the department would provide a safety net for certain types of risks related to charter schools. The concept of the State as a safety net is consistent with the California Constitution, which the courts have construed to place on the State the ultimate responsibility to maintain the public school system and to ensure that students are provided equal educational opportunities.

Although we found that the accountability system at the chartering entity level is weak, our work does not demonstrate the need for the department to play a greatly expanded and possibly duplicative role in overseeing charter schools, or any function beyond that of a safety net. Moreover, when we asked the department to provide any data it had to demonstrate pervasive academic concerns or fiscal malfeasance that may support the need to expand its oversight role beyond that of a safety net, it did not provide any.

To apportion funds to charter schools, the department relies primarily on the certifying signatures of school districts and county offices of education—both of which lack the necessary procedures to ensure that charter schools comply with apportionment requirements. As a result, the department

cannot be sure that charter schools have met the apportionment conditions the Legislature has established and that they receive only the public funds to which they are legally entitled. In addition, there appears to be a policy gap regarding a chartering entity's authority following a charter revocation—an authority that statutes do not clearly address, as Fresno Unified School District's recent revocation of Gateway Charter Academy's charter demonstrates. Finally, although two recently enacted laws, Senate Bill 1709 and Assembly Bill 1994 (Chapters 209 and 1058, Statutes of 2002), attempt to add accountability to the existing charter schools environment, without an increased monitoring commitment on the part of chartering entities and the department, these new laws may not be as effective as they could be.

RECOMMENDATIONS

The Legislature should consider amending the statute to make the chartering entities' oversight role and responsibilities explicit so that the chartering entities hold their charter schools accountable through oversight.

To ensure that charter schools are held accountable for the taxpayer funds they receive and demonstrate accountability for the measurable outcomes set forth in their charters, the chartering entities should consider developing and implementing policies and procedures for academic and fiscal monitoring.

To ensure that chartering entities can justify the oversight fee they charge their charter schools and to minimize the risk of double-charging the State for the costs of charter school oversight, they should:

- Establish a process to analyze their actual costs of charter school oversight.
- Compare the actual costs of oversight to the fees charged and, if necessary, return any excess fees charged.
- Use the mandated-costs reimbursement process as appropriate to recover their unreimbursed costs of overseeing charter schools.

The Legislature should consider clarifying the law to define the types of charter school revenue that are subject to the chartering entities' oversight fees.

To fulfill its role as a safety net, the department should review available financial and academic information and identify charter schools that are struggling, then raise questions with the schools' chartering entities as a way of ensuring that the schools' problems do not go uncorrected.

So that it does not improperly fund charter schools, the department should work with the appropriate organizations to ensure that charter schools' reported ADA is verified through an independent audit or other appropriate means and that charter schools have met other statutory conditions of apportionment.

The Legislature may wish to consider establishing a method for disposing of a charter school's assets and liabilities and requiring the department to adopt regulations regarding this process, in this way, ensuring that a charter school's assets and liabilities are disposed of properly when it closes or has its charter revoked.

AGENCY COMMENTS

The four chartering entities: Fresno, Los Angeles, Oakland, and San Diego, strongly disagreed with our conclusions related to chartering entity oversight and stated that we misinterpreted the law and held them to a standard of charter schools oversight that the Act does not contain. They object to being evaluated based on sound oversight criteria unless that criteria is explicitly in statute. Each chartering entity noted repeatedly that the legislation regarding charter school oversight is unclear and several stated that chartering entities have little or no grounds to deny a charter or enforce a charter.

The department also disagreed with our audit as it relates to its oversight role. The department stated that it had strong concerns about our interpretation of the Act and our interpretation that the department has the authority and responsibility to monitor the fiscal and academic performance of charter schools. The department also stated that our recommendations do not account for its limited staffing resources.

Although not rendering a legal opinion on the issue of oversight, our view that the Act places some monitoring responsibilities on chartering entities is informed by our reading of the statutes as well as the constitutional obligations of the State regarding the public school system. We believe that the

statutes, although not explicit, do envision a monitoring role for chartering entities and that a monitoring process is absolutely essential to identifying key issues, providing charter schools the opportunity to take corrective action, and determining whether a chartering entity should exercise its authority to revoke a charter. Finally, we carefully analyzed each of the chartering entity's responses and we stand by our interpretation of the law and our audit conclusions. ■

Blank page inserted for reproduction purposes only.

INTRODUCTION

BACKGROUND

The California Legislature passed the Charter Schools Act of 1992 (Act) to provide opportunities for teachers, parents, students, and community members to establish and operate schools independently of the existing school district structure. Charter schools were given wide latitude to explore the following new educational opportunities:

- Increase learning opportunities for all students, but especially low achievers.
- Encourage the use of different and innovative teaching methods.
- Create new professional opportunities for teachers.
- Provide parents and students with expanded educational choices.
- Create vigorous competition within the public school system in order to improve all public schools.

In addition to this increased flexibility, the Legislature intended for charter schools to improve student learning and to be accountable for achieving measurable student outcomes. Statute defines measurable student outcomes as the extent to which all students demonstrate they have attained the skills, knowledge, and attitudes specified in the school's educational program.

Charter schools are public schools serving any grade from kindergarten through grade 12. They are publicly funded, serve diverse populations, and employ a variety of educational philosophies. For example, the Oakland Charter Academy serves a predominantly Latino population and is focused on addressing the academic and social needs of language minority students, whereas High Tech High Charter School in San Diego is focused on providing students with academic and workplace skills for our increasingly technological society. Even though the Act exempts these schools from many state laws governing school districts, it requires charter schools to comply with select statutes, such as those establishing a minimum age for public school attendance, and to meet certain conditions for funding, such as participation in statewide testing of pupils.

The Act as amended in 1998 allowed for the creation of 250 charter schools throughout the State and authorized an additional 100 schools each successive school year. As of March 2002, there were 360 charter schools serving approximately 131,000 students throughout California. As Table 1 shows, more than 70 percent of the entities chartering schools have only one charter school. A chartering entity is an organization, such as a school district, that approves a charter petition, thus creating a school. We discuss chartering entities in more detail in the next section. However, the five chartering entities with more than 8 schools chartered 85 of California's 360 charter schools. These entities are Fresno Unified School District (Fresno), Oakland Unified School District (Oakland), Twin Ridges Elementary School District, San Diego City Unified School District (San Diego), and Los Angeles Unified School District (Los Angeles). (See Appendix A for a list of active charter schools as of March 2002, their chartering entities, and selected information about the schools.)

TABLE 1

Number of Charter Schools at Chartering Entities

Number of Charter Schools	Chartering Entities With That Number of Schools	Percentage of Total Chartering Entities
1	128	70.3%
2 to 3	36	19.8
4 to 5	10	5.5
6 to 7	3	1.7
8 or more	5	2.7
Total	**182**	**100.0%**

Chartering a School

Typically, a group of parents, teachers, and/or community members develops a charter petition, which they then submit to a chartering entity for approval. Under the Act, a chartering entity can be one of three types of entities: a school district, a county board of education, or the State Board of Education (state board). Once a chartering entity has approved the charter petition, the charter goes into effect for up to five years.

By law, each petition must contain certain components, including parent and/or teacher signatures; proposed budgets and financial projections; and a reasonably comprehensive description of 15 required elements, such as the method for measuring student

progress and the qualifications that teachers and other staff must have. In addition, the petitioners must affirm that the school will remain nonsectarian in all respects, will not charge tuition, and will not discriminate against any student based on ethnicity, national origin, gender, or disability.

The 15 Elements Required in Each Charter Petition

- Description of the school's educational program.
- Measurable student outcomes the school plans to use.
- Method for measuring student progress in achieving those outcomes.
- School governance structure, including how parents will be involved.
- Qualifications that individuals the school employs must meet.
- Procedures to ensure the health and safety of students and staff.
- How the school will achieve a student racial and ethnic balance reflective of the general population residing in the district.
- Admission requirements, if applicable.
- How annual financial audits will be conducted, and how problems uncovered by the audits will be resolved.
- Procedures for suspending or expelling students.
- Provisions to cover employees under the State Teachers' Retirement System, the Public Employees' Retirement System, or federal social security.
- Public school alternatives for students residing within the district who choose not to attend charter schools.
- Description of the rights of any employee of the school district who leaves the employ of the school district to work in a charter school, and of any rights of return to the school district after employment at a charter school.
- Dispute resolution process.
- Declaration of whether the charter school will be the exclusive public school employer of the charter school employees.

Source: Education Code, Section 47605(b)(5)

The Act requires the chartering entity to review the charter petition and hold a public hearing to consider the level of community support for the charter school. A chartering entity cannot deny a petition unless it makes written factual findings, specific to the particular petition, that one or more of the following deficiencies exist:

- The charter school presents an unsound educational program.
- The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.
- The petition does not contain the required number of signatures.
- The petition does not contain a declaration that the school will remain nonsectarian, not charge tuition, and not discriminate.
- The petition does not contain reasonably comprehensive descriptions for all 15 statutorily required elements.

Once approved, the petition becomes the founding agreement or charter for a school. A chartering entity and a charter school may also enter into a Memorandum of Understanding (MOU) to further define their responsibilities and legal relationship. For example, an MOU may outline a charter school's insurance requirements or fee-for-service arrangements.

Chartering Entity's Role in Charter Schools

The chartering entity is responsible for overseeing the school to ensure that it operates in a manner consistent with the charter and all applicable laws. To compensate the chartering entity

for its oversight functions, the Education Code, Section 47613, authorizes the chartering entity to charge for the actual costs of supervisorial oversight, not to exceed 1 percent of a charter school's revenue or 3 percent of its revenue if the chartering entity provides substantially rent-free facilities. These oversight fees do not include the costs of administrative or other services that the charter school may purchase from the chartering entity. Some chartering entities have categorized their charter schools as independent or dependent, based on whether the school contracts with them for fiscal services. Dependent charter schools may rely on the chartering entity for operational support, including reviewing and approving expenditures, recording revenues, and reporting student attendance. In contrast, fiscally independent charter schools do not receive such operational support from their chartering entity.

A chartering entity also has the authority to revoke a charter it has granted if the school materially violates its charter, fails to achieve or pursue any of its student outcomes, engages in fiscal mismanagement, or violates any provision of law. Before revoking a charter, the entity must notify the charter school of the violation and give it a reasonable opportunity to remedy the violation, unless the violation constitutes a severe and imminent threat to the students' health and safety. A chartering entity also has authority to make reasonable inquiries and to inspect any part of the charter school at any time.

State Board's Role in Charter Schools

The state board has the authority to approve a charter petition; however, a school district or county board of education must first have denied the petitioner's charter proposal. If the state board approves a charter petition, it becomes the chartering entity and is responsible for oversight of the school or delegating this responsibility to a local education agency in the county in which the charter school is located or to the school district that first denied the charter petition. When the time comes for the charter school to renew its charter, it submits the renewal petition to the school district that initially denied the charter. If the renewal petition is denied, the charter school may then petition the state board for renewal. As of March 2002, three schools chartered by the state board were operating in the State. Finally, the state board is responsible for adopting regulations to implement certain sections of the Act, including criteria to review and approve petitions addressed to the state board and requirements that charter schools must follow when they provide nonclassroom-based instruction.

Department of Education's Role in Charter Schools

Although the Department of Education (department) does not have the authority to approve a charter petition and act as a chartering entity, it plays a role in the charter school community. The department has established a charter schools unit that, among other things, is responsible for helping groups prepare charter proposals and for assisting charter schools and chartering entities with fiscal, legal, and administrative issues. The department also has the authority to recommend to the state board that a charter be revoked for certain statutorily defined reasons. To carry out its responsibilities, the department may make reasonable inquiries of the charter schools for information. Finally, as it does with other public schools, the department apportions funds to the charter schools based on their average daily attendance (ADA) reports. This type of funding is known as apportionment funding. Table 2 describes each entity and its role in the operation and monitoring of charter schools.

TABLE 2

Division of Responsibilities for Charter Schools

Charter School	School District	County Office of Education	State Board of Education	Department of Education
Prepare petition	Review petition and hold public hearing	Review petition and hold public hearings for new charter petitions and those the local district denied	Review petition and hold public hearings for charter petitions denied at school district or county level	Allocate school funding
Implement charter's academic program	Deny charter petition or approve petition and become a chartering entity	Deny charter petition or approve petition and become a chartering entity	Deny charter petition or approve petition and become a chartering entity	Collect annual audit reports
Comply with Education Code and other applicable statutes	Oversee charter schools	Oversee charter schools	Oversee charter schools	Operate charter schools unit
Request approval for amendments when charter is materially revised	Certify charter school ADA	Certify charter school ADA	Assign a unique tracking number to all approved charters	Recommend to the State Board of Education charter revocation when appropriate
Assess itself against its charter	Receive annual audit reports of charter schools	Receive annual audit reports of charter schools	Receive annual audit reports of charter schools	
Prepare renewal petition	Approve or deny renewal petition	Approve or deny renewal petition	Approve or deny renewal petition for charter petitions denied at school district or county level	
	Revoke charters of schools when necessary	Revoke charters of schools when necessary	Revoke charters of any schools when necessary	

Recent Changes to the Charter School Act

The Act has been revised throughout its first decade of existence. One of the more recent modifications is Senate Bill 740 (Chapter 892, Statutes of 2001). Effective January 2002, Senate Bill 740 requires, among other things, that charter schools offer a certain number of instructional minutes and document student attendance as conditions of receiving apportionment funding from the department. We discuss these requirements further in Chapter 1. In addition, under Senate Bill 740, charter schools must submit copies of their audited financial statements to their chartering entities and the department. We discuss this issue further in Chapters 2 and 3 of this report.

In addition to Senate Bill 740, the Legislature recently passed and the governor signed two bills addressing charter schools: Assembly Bill 1994 (Chapter 1058, Statutes of 2002) and Senate Bill 1709 (Chapter 209, Statutes of 2002). In Chapter 3, we describe these bills and their effect on certain issues we raise in this report.

SCOPE AND METHODOLOGY

The Joint Legislative Audit Committee (audit committee) requested that the Bureau of State Audits conduct a comprehensive audit of California's charter schools. Specifically, the audit committee asked us to review and assess the chartering entities' processes for reviewing and approving charters to determine if the processes are consistent with the law. In addition, we were to evaluate the chartering entities' policies and procedures for enforcing charters, including revocations. Further, we were to examine the policies and practices for monitoring the charter schools' compliance with the conditions, standards, and procedures specified in their charters. Lastly, the audit committee asked us to review and evaluate the academic and fiscal accountability structure and practices of charter schools, including, but not limited to, student assessment, student enrollment and attendance, instructor credentials, and curriculum content.

To conduct our audit, we selected a sample of four chartering entities—Fresno, Los Angeles, Oakland, and San Diego—based on the number of active charter schools these entities have chartered. We chose this sample because we believed that chartering entities with a number of charter schools were more likely to have implemented policies and procedures for monitoring their charter schools than those chartering entities with just one or two charter schools. Within each of the four chartering entities, we then selected three charter schools, at which we conducted site visits. We selected 11 of these 12 charter schools because they are fiscally independent, meaning that they do not receive fiscal or operational support from their chartering entities, as we discussed previously.

As part of our audit, we reviewed documents prepared by the department, selected chartering entities, and selected charter schools, as well as these entities' applicable policies and procedures. Additionally, we reviewed relevant laws and regulations and interviewed department, chartering entity, and charter school staff. We reviewed how the chartering entities have monitored to ensure that the 12 selected charter schools have implemented 4 of the 15 required elements for a charter school petition, including the measurable student outcomes the charter school plans to use, the method for measuring student progress in achieving those outcomes, the qualifications to be met by individuals the school employs, and how annual financial audits will be conducted and problems identified by the audits resolved. We selected these elements because we believe they represent the most relevant indicators of the academic and fiscal health of the State's charter schools and because, if not met, they provide justifications to revoke a charter, thus providing accountability.

To assess the chartering entities' processes for reviewing and approving charters to determine if the processes are consistent with the law, we reviewed the approved charter school agreements for the 12 selected charter schools.

To examine the policies and practices for monitoring the charter schools' compliance with the conditions, standards, and procedures specified by their charters, we reviewed the chartering entities' efforts to monitor their charter schools. Further, we reviewed the interim and annual financial reports submitted by the charter schools to determine reviews and actions taken by the chartering entities.

To review and evaluate the academic and fiscal accountability structure and practices of charter schools, we conducted site visits at 12 selected charter schools and reviewed information those charter schools provided regarding their actual student outcomes and financial condition. Specifically, because each charter agreement must contain measurable student outcomes, we reviewed the schools' documentation intended to prove that they were achieving those outcomes. Further, we reviewed financial information at the 12 charter schools for fiscal year 2001–02 to determine whether the chartering entities took appropriate action when potential financial problems were noted.

In January 2002, Fresno revoked the charter of Gateway Charter Academy (Gateway). We did not review Fresno's oversight of Gateway. Our report should not be construed as an evaluation of Fresno's oversight specifically of Gateway or Fresno's revocation process. Our comments in Chapter 3, under the heading 'Statutory Guidance for Disposing of a Revoked Charter School's Assets and Liabilities Is Unclear,' reflect a policy gap needing the Legislature's and the department's attention. Our comments do not reflect an evaluation of Fresno's revocation process or oversight specific to Gateway.

Per the Education Code, Section 47616.5, the Legislative Analyst is required to contract for an evaluation of the effectiveness of the charter school approach. The evaluation is to include:

- Pre- and post-charter school test scores of pupils attending charter schools.
- Fiscal structures and practices of charter schools and the relationship of these structures and practices to school districts.
- Whether or not there is an increased focus on low-achieving and gifted pupils.
- Pupil dropout rates in the charter schools compared to non-charter schools.

We designed our audit to avoid duplicating, whenever possible, the Legislative Analyst's areas of inquiry. The Legislative Analyst's evaluation has a statutory deadline of July 1, 2003. ■

CHAPTER 1

Chartering Entities Do Not Adequately Monitor the Academic Health of Their Charter Schools

CHAPTER SUMMARY

Charter schools operate in a unique environment, in which they are given freedom from many provisions of the Education Code. However, the Legislature created a system whereby the schools are required to be accountable to their chartering entity for the academic performance of the students enrolled. Although the chartering entity's role is not clearly defined in the statutes, the statutes imply certain oversight responsibilities. To facilitate their oversight, we expected to find chartering entities with established policies and procedures guiding their charter oversight activities. However, our review of California's charter schools revealed that chartering entities do not adequately oversee their schools to determine whether the program described in the charter agreement is implemented successfully.

Specifically, chartering entities do not ensure that their charter schools are achieving the student outcomes that each school sets forth in its charter agreement. Although the charter agreement for each school specifies measurable student outcomes for gauging the academic performance of the school, chartering entities typically do not have guidelines in place to effectively monitor their charter schools, nor do the chartering entities adequately monitor their charter schools against the agreed-upon student outcomes. To see what the charter schools themselves are doing to fulfill this aspect of their charter agreement, we visited a sample of schools and found that although some charter schools assess their educational programs against their charter's measurable student outcomes, others do not.

Furthermore, charter schools must comply with various state laws, including teacher credentials, instructional minutes, and participation in statewide tests. Each of these legal provisions is what is known as a condition of apportionment. In other words, if a school does not comply with the provisions, it risks losing a portion of its state funding. However, we found that chartering entities do not always ensure that charter schools comply with legal requirements.

CHARTERING ENTITIES HAVE CERTAIN RESPONSIBILITIES FOR OVERSEEING CHARTER SCHOOLS' ACADEMIC OUTCOMES

In authorizing charter schools, the Legislature intended to provide opportunities for teachers, parents, students, and community members to establish and operate schools independently of the existing school district structure. The Legislature freed the schools from the programmatic and fiscal constraints that exist in the public school system. However, the statutes do not overlook accountability. Specifically, the Education Code, Section 47601(f), speaks to the Legislature's intent that charter schools be held accountable for meeting certain outcomes and for moving from rule-based to performance-based accountability systems. Thus, each school must create a founding document, or charter, which by law must contain certain elements. For example, the charter must contain measurable student outcomes and the methods the schools will use to measure their outcomes. As such, the schools' creators are outlining the instructional goals they agree to be held accountable for.

An approved charter represents an agreement between the school and its chartering entity and therefore makes the school accountable to its chartering entity. Although the chartering entity's role is not clearly defined in the statutes, the statutes imply certain oversight responsibilities, as they allow the entities to:

Although a chartering entity's role is not clearly defined in the statutes, the statutes imply that it has certain oversight responsibilities.

- Inspect or observe any part of the charter school at any time.
- Charge the charter schools fees for oversight.
- Make reasonable inquiries, including for financial data.
- Revoke a charter for material violations of any charter condition, standard, or procedure; failure to meet or pursue the charter's student outcomes; engaging in fiscal mismanagement; and any violation of law.

We expected that, to facilitate their oversight, chartering entities would have established policies and procedures guiding these activities. Typically, sound oversight systems define the types and frequency of data to be submitted, the manner in which the entity will review the data, and the steps it will take to resolve any concerns resulting from its oversight activities. Therefore, we assessed the charter oversight activities of the selected chartering entities against what a sound oversight system would include.

CHARTERING ENTITIES DO NOT ENSURE THAT CHARTER SCHOOLS MEET TARGETED STUDENT OUTCOMES

The chartering entities were not consistently assessing the schools' performance against their charter terms.

The Charter Schools Act of 1992 (Act) gave charter schools a much greater level of freedom to operate their educational programs than noncharter schools have. School districts and county boards of education act as chartering entities, with oversight responsibilities implied through their power to revoke charters and to charge the schools a supervisorial oversight fee. In order to hold the charter schools accountable, the Legislature required that each charter petition contain certain elements, including measurable student outcomes proposed by the school to accomplish its educational program. Typical outcomes a school might list in the charter petition include increased performance on standardized tests or higher student attendance rates. These outcomes give the chartering entity criteria against which it can measure the school's academic performance and hold it accountable. However, the chartering entities we reviewed did not always assess their charter schools against the agreed-upon measurable outcomes.

Since the chartering entities were not adequately holding their charter schools accountable, we visited a sample of schools to determine what actions the schools were taking to demonstrate that they had achieved the outcomes defined in their charters. We found that the schools were not always assessing their academic programs against the terms of their charters.

Chartering Entities Lack Oversight Guidelines and Do Not Periodically Monitor Their Charter Schools' Performance Against the Agreed-Upon Measurable Outcomes

A school's charter represents an agreement between it and the chartering entity. The charter agreement is critical for accountability, as it outlines the standards the school is agreeing to be held to; therefore, we expected to find that chartering entities had established monitoring guidelines and activities to ensure that their charter schools were complying with their agreements. Although three of the four chartering entities we visited have chartered schools since 1993, and each has chartered at least eight schools, none had developed and implemented an adequate process to monitor their schools' academic performance. Without periodically monitoring their schools for compliance with the charter terms, the chartering entities cannot determine whether their schools are making progress in improving student learning as identified in their charters, nor are the chartering entities in a position to identify necessary corrective action or revocation.

Without periodically monitoring their schools for compliance with charter terms, the chartering entities will not know if their charter schools are making progress in improving student learning.

Under the Act, the Legislature required that each charter petition include 15 statutorily defined elements, one of which is a description of the measurable student outcomes its educational program will accomplish. The petitioners develop the outcomes that are relevant to their educational vision, and thus these outcomes vary from school to school, depending on the educational program and target population. To ensure compliance, the Legislature granted the chartering entity the authority to revoke a school's charter if, among other things, the school committed a material violation of any of the charter's conditions, standards, or procedures or the school failed to achieve or pursue the identified student outcomes. Included in a chartering entity's authority is the right to inspect or observe any part of its charter schools at any time and the responsibility to permit charter schools an opportunity to cure the identified problems prior to revocation.

Furthermore, the Legislature allowed the chartering entities to charge up to 1 percent of a charter school's revenue for supervisorial oversight, which implies that the chartering entity has an obligation to oversee its charter schools.[1] It appears that the chartering entities are aware of their oversight obligation inherent in their role as chartering entities. For example, in its fiscal year 2000–01 Memorandum of Understanding (MOU) with the Explorer Elementary Charter School, San Diego City Unified School District (San Diego) included a clause outlining fees the school would pay for the chartering entity's cost of overseeing the school. Similarly, in its standard charter school MOU for fiscal year 2001–02, Oakland Unified School District (Oakland) included two sections referring to oversight. The first contained a statement that the school agrees to an annual evaluation in accordance with the instructional and academic goals established in its charter school petition. The second section mirrors the law and states that Oakland has the right to inspect or observe any part of the school at any time. Despite the fact that the chartering entities have the authority to revoke schools' charters, are being paid fees for oversight, and have acknowledged in writing their intent to perform oversight activities, they typically have not established monitoring guidelines or engaged in these activities.

Table 3 gives an overview of the practices of the four chartering entities in monitoring their charter schools' academic health.

[1] A chartering entity may charge up to 3 percent of a charter school's revenue if the chartering entity provides substantially rent-free facilities to the charter school. Otherwise, the chartering entity is limited to an oversight fee of up to 1 percent of revenues.

TABLE 3

Academic Monitoring of Charter Schools by Chartering Entities in Fiscal Year 2001–02

Chartering Entity	Year First Chartered Schools	Total Number of Charter Schools Authorized	Written Guidelines?	Engaged in Periodic Academic Monitoring?	Future Plans for Academic Monitoring?
Fresno Unified School District	1998	9*	No	Some	Pending
Los Angeles Unified School District	1993	39	No	Some	Some
Oakland Unified School District	1993	9	No	No	Pending
San Diego City Unified School District	1993	17	No	No	Yes

* Although the Fresno County Office of Education chartered one of the schools described here, the Fresno Unified School District is partially responsible for overseeing the school.

Each chartering entity we reviewed has interpreted its oversight responsibilities differently, typically developing some practices for overseeing charter schools. However, none of the chartering entities has adequately ensured that their charter schools are achieving the measurable student outcomes set forth in their charter agreements. As Table 3 shows, three of the four chartering entities we reviewed have chartered schools since 1993. Nevertheless, Oakland lacks academic monitoring guidelines and has not engaged in oversight but is developing plans to implement policies. Likewise, Fresno Unified School District (Fresno) does not have guidelines to monitor its charter schools and does not always periodically monitor the schools' academic performance relative to their charter agreements. Los Angeles Unified School District (Los Angeles), as the chartering entity with the greatest number of charter schools, lacks in its recently developed guidelines a process to continually monitor academic performance, but it engages in a formal independent review of each school during its fourth year of operation. Finally, San Diego lacked monitoring guidelines for student performance and did not periodically review its charter schools at the time of our review. However, San Diego has developed a new charter schools policy that it plans to implement in fiscal year 2002–03.

Responding to complaints is an appropriate activity for chartering entities, but this activity alone does not constitute adequate charter school oversight.

As of March 2002, Oakland had nine charter schools subject to its oversight. However, it did not have a process in place to monitor to determine if these schools complied with their charter agreements and did not assess whether its charter schools were achieving the measurable outcomes agreed to in their charters. Although Oakland staff visited several of Oakland's charter schools during fiscal year 2001–02, they made these visits to establish relationships and in response to parental and community complaints, rather than to verify that the schools were measuring student progress towards educational goals consistent with their charters. Even though responding to complaints is a reasonable activity, this activity alone does not constitute adequate monitoring. By merely responding to complaints, Oakland loses the opportunity to identify where a charter school's program is deficient and to help ensure that the school is maximizing its students' educational opportunities by achieving the measurable outcomes in its charter and making sound use of taxpayer funds in accordance with its charter.

Fresno chartered its first school in 1998, and as of March 2002 it had oversight of nine charter schools. Despite being a chartering entity for four years, Fresno still lacks a written monitoring plan and an adequate process to monitor to determine if its charter schools achieve the academic outcomes they set forth in their charter agreements. Although Fresno had six of its nine charter schools participate in a Review of Compliance with Charter Provisions (compliance review) beginning in November 2001, these actions do not reflect adequate academic oversight. For example, as part of its compliance review, Fresno required the six schools to describe how they had measured student outcomes. However, Fresno did not associate the schools' responses with the measurement criteria described in their charters, nor did Fresno verify the accuracy of the schools' responses.

For four of the six schools completing the review, we found that the schools' responses describing how they were measuring student outcomes differed from the measurement criteria listed in the charter agreements. For example, in its compliance review for Renaissance Charter School (Renaissance), Fresno listed that the school administers proficiency tests, comprehensive tests of basic skills, and the Stanford 9. However, in the charter agreement, we found references to three other methods of measurement, including grade point averages, graduation rates, and portfolios, none of which Fresno included in its compliance review of Renaissance. Even though these agreed-upon measures were not included in the compliance review, Fresno deemed the school "compliant."

Additionally, Fresno required six of its schools to complete an annual report. Each charter school developed its annual report and presented it to the Fresno Board of Education in March 2002. One of the purposes of this report was to ensure that each charter school has clear, concrete, and measurable performance objectives. Upon reviewing a sample of these annual reports, we found that one report did not address the measurable student outcomes described in its charter. For example, in its annual report, Fresno Prep Academy (Fresno Prep) described the school's overall goals but did not address the measurable student outcomes listed in its charter. Although Fresno's compliance review and annual reports may have provided some valuable information, they were insufficient to completely and accurately assess its charter schools' academic health. Fresno also did not require all of its charter schools to participate, and thus its insight was limited to the participating schools. Moreover, Fresno merely collected and summarized the schools' responses without verifying that the schools were responding based on the charters' student outcomes and demonstrating how they are meeting those outcomes.

Los Angeles has implemented a slightly different monitoring approach than either Oakland or Fresno; however, its approach is not adequate to determine if its 39 charter schools are making progress against their measurable student outcomes. Instead of performing an ongoing assessment of its charter schools' academic health, Los Angeles relies on an external evaluation during the latter part of each school's fourth year of operation under its charter agreement. Los Angeles does not use this evaluation as a monitoring tool. Rather, its purpose is to assess each school's program so that Los Angeles can decide whether to renew the charter. This fourth-year evaluation meets Los Angeles' objective as a tool to obtain additional data to make an informed renewal decision. However, Los Angeles' evaluation does not serve as an adequate ongoing assessment of its charter schools, because the evaluation takes place far too infrequently, allowing the schools four years of operation without having to demonstrate to Los Angeles that they are meeting their goals and objectives. By not monitoring its charter schools effectively, Los Angeles, as a chartering entity, may not ensure that its schools are providing students with suitable curriculum and educational opportunities in accordance with their charters and cannot identify when corrective action is necessary.

Finally, although San Diego has not in the past adequately assessed its charter schools for compliance with their agreed-upon measurable student outcomes, San Diego has developed guidelines that, if implemented, may constitute an adequate process to

monitor its charter schools. These guidelines, in part, require San Diego to conduct annual charter school site visits as well as programmatic audits in the first and third years of each school's operations. The programmatic audit will document the school's progress in student achievement, as well as whether the school has implemented the instructional program called for in the charter. To accomplish this increased level of oversight, San Diego plans to create a charter schools office during fiscal year 2002–03 to coordinate oversight activities and act as the charter schools' district contact point. These guidelines will help San Diego monitor to determine if its charter schools are providing the agreed-upon student educational opportunities and will help give it the information it needs to take necessary corrective action when schools are not following their charters.

Some Charter Schools Assess Their Students' Performance Against the Measurable Outcomes in Their Charters, but Other Schools Do Not

Since the chartering entities we reviewed did not effectively monitor their charter schools for compliance with the provisions regarding measurable student outcomes listed in their charter agreements, we visited a sample of schools from those chartering entities. We expected to find charter schools assessing student performance against the measurable outcomes defined in their charter. Although the schools' charters typically contained student outcomes and outlined the methods the schools were to use to measure the outcomes, 10 of the 12 charter schools we reviewed were not assessing themselves against all of the outcomes contained in their charters.

Ten of the 12 charter schools we reviewed were not assessing themselves against all of the student outcomes their charters contained.

Moreover, the student outcomes the schools wrote into their charters were not always objective indicators of the schools' academic success. For example, the Oakland Charter Academy, in its charter, stated as a component of its student outcomes that students would develop four traits: a sense of personal competence, self-worth, and personal and social responsibility. Although laudable goals, these outcomes are difficult, if not impossible, to measure by any objective standard. By not assessing their students' performance using measurable, objective standards defined in their charters that are relevant to academic performance, the charter schools will not be able to demonstrate to their chartering entities the success of their academic programs. Furthermore, by not assessing student performance against the charter terms, the schools are not demonstrating their accountability for meeting their agreed-upon academic goals.

In the Act, the Legislature established certain requirements for charter petitions, one of which was a description of the measurable student outcomes that the school would be expected to attain. If a school fails to achieve or pursue the charter's student outcomes, the chartering entity has the authority to revoke the charter. For the schools in our sample, each charter contained an element describing measurable student outcomes. These outcomes varied depending on the school's educational program. Nevertheless, we found that not every charter school was assessing its program in accordance with its charter terms. Table 4 shows which of the 12 schools we reviewed are assessing their students using the measurable outcomes defined in their charters.

TABLE 4

Charter School Compliance With Agreed-Upon Measurable Outcomes Fiscal Year 2001–02

School Name	Chartering Entity Charged With Oversight	Assessment Methods in Practice as Described in the Charter Agreement?	Number of Measurable Outcomes of Academic Performance Included in Charter Agreement	Number of Objectively Measurable Outcomes
Center for Advanced Research and Technology (CART)	Fresno Unified School District	Some	5	3
Edison-Bethune Charter Academy	Fresno Unified School District/Fresno County Office of Education	Some	2	2
Fresno Prep Academy	Fresno Unified School District	Few	6	3
Accelerated School	Los Angeles Unified School District	Some	6	5
Valley Community Charter School	Los Angeles Unified School District	Some	8	5
View Park Preparatory Accelerated Charter School	Los Angeles Unified School District	Some	5	5
Ernestine C. Reems Academy of Technology and Art	Oakland Unified School District	None	7	5
North Oakland Community Charter School	Oakland Unified School District	All	3	3
Oakland Charter Academy	Oakland Unified School District	Few	9	4
Explorer Elementary Charter School	San Diego City Unified School District	All	18	11
High Tech High Charter School	San Diego City Unified School District	Some	5	4
King/Chavez Academy of Excellence Charter School	San Diego City Unified School District	Some	5	2

For those measurable student outcomes that schools assess, not all schools fully complete the assessment. For example, Fresno Prep assessed its students' progress for only one of its three measurable outcomes. One reason for this is that Fresno Prep has narrowed the population it serves from all high school grades to primarily students who were required to repeat the eighth grade. However, instead of measuring whether all of its students were making one year's growth for each year in the program, Fresno Prep assessed only its day students for progress toward this goal. Independent study students account for 65 percent of Fresno Prep's students, with day students accounting for the remaining 35 percent. As a result, Fresno Prep is not able to fully demonstrate to its chartering entity that all of its students are making appropriate academic growth. Similarly, the Accelerated School, chartered by Los Angeles, had in its charter three measurable outcomes that related to individual student performance on standardized tests. Although the school has analyzed the test results on a school-wide and grade-level basis, it has not assessed the test results to determine whether the individual students' results have achieved the outcomes agreed to in the charter.

Two-thirds of the student outcomes in the charters of schools we reviewed can be measured objectively and are indicators of student academic performance. Although laudable, the remaining one-third are difficult, if not impossible, to measure by any objective standard.

Some of the schools did prepare full assessments of specific measurable outcomes in accordance with their charters. For instance, North Oakland Community Charter School (North Oakland) has as one of its measurable student outcomes that all students will demonstrate academic mastery in the academic core areas. The primary way North Oakland assesses its students against this outcome is by using a progress report twice a year. This progress report reflects the various attributes the school believes the student should demonstrate in developing mastery in reading, writing, speaking and listening, conceptual math, and applied math. By completing this assessment, the school is able to document each student's progress toward a mastery of these subjects.

Even though a school may not be performing the required assessments, its students may be growing academically. The measurable student outcomes described in the charter agreement are critical for accountability to the chartering entity, but the use of these measurement criteria is not, in and of itself, an indicator of academic growth. For example, one school that does not assess its students against all of the outcomes described in the charter agreement, View Park Preparatory Accelerated Charter School, chartered by Los Angeles, increased student performance on standardized test scores in grades 2 through 5 by 2.02 percent and 1.88 percent for reading and math, respectively,

between academic years 1999–2000 and 2001–02. It appears that these students are growing academically, even though the school is not performing all its agreed-upon assessments. Standardized test data for this and other charter schools is summarized in Appendix C.

As Table 4 on page 25 shows, all 12 of the sample schools had at least two outcomes in their charter agreement that could be measured objectively and were adequate indicators of student academic performance. Objective measures of student performance are important because they provide clear indicators against which a school can measure itself and demonstrate to others its accountability. However, 34 percent of the outcomes listed in the schools' charters were not related to academic performance. For example, several charters listed student attendance rates as a measurable student outcome. Student attendance rates can be a measure of a charter school's overall success, particularly if the school improves attendance rates for students who had not regularly attended their previous public schools. However, the effects of improved attendance rates on academic performance are of a longer-term nature and cannot be measured objectively. Thus, we did not include them in our determination of how well the charter schools were assessing the academic success of their programs.

CHARTERING ENTITIES DO NOT ENSURE THE SCHOOLS' COMPLIANCE WITH VARIOUS LEGAL REQUIREMENTS THAT ARE CONDITIONS OF APPORTIONMENT

Charter schools are subject to conditions of apportionment, but most chartering entities do not ensure all of their schools have fulfilled these conditions.

Charter schools operate in a unique environment in which they are exempt from much of the Education Code that governs public schools. Although exempt from many statutes, charter schools are still subject to at least three legal requirements as conditions for receiving state funds. These requirements include (1) hiring teachers who hold a Commission on Teacher Credentialing permit, except for teachers of non-core, non-college-prep courses; (2) offering, at minimum, the same number of instructional minutes as noncharter schools; and (3) certifying that students have participated in state testing programs in the same manner as other students attending public schools. Requirements 1 and 2 became conditions of receiving state funds beginning January 2002, whereas requirement 3 became a condition of receiving state funds effective January 2000.

Since these requirements are conditions of apportionment, we expected to find that the chartering entities had established guidelines and activities to ensure compliance with these legal provisions. Most of the chartering entities we reviewed lack policies and sufficient procedures to validate that all of their charter schools have met these conditions of apportionment. For example, Los Angeles does not review the teacher credentials at its independent schools, and San Diego does not ensure that all of its charter schools offer the requisite number of instructional minutes. Moreover, as we discuss further in Chapter 2, although the charter school statute requires an annual audit, these audits do not address all of the conditions set forth in the statute. By not verifying that all of their charter schools comply with these legal requirements, the chartering entities cannot be assured that their charter schools have satisfied the conditions of apportionment.

Table 5 shows the extent to which the chartering entities we reviewed verify their charter schools' compliance with the three legal requirements just described.

TABLE 5

Chartering Entities' Verification of Charter Schools' Compliance With Legal Requirements Fiscal Year 2001–02

Chartering Entity	Verify Teacher Qualifications?	Verify Instructional Minutes?	Verify Standardized Testing?
Fresno Unified School District	Unclear	All	Some
Los Angeles Unified School District	Some	Unclear	Most
Oakland Unified School District	No	No	No
San Diego City Unified School District	Unclear	Some	Most

Chartering entities typically have not verified that all of their charter schools employ credentialed teachers. According to the Education Code, teachers in charter schools are required to hold a Commission on Teacher Credentialing certificate, permit, or other document equivalent to that which a teacher in other public schools would be required to hold. For example, although Los Angeles reviews the teacher credentials for its dependent

schools, it does not review the credentials of the teachers at its 14 independent charter schools, which do not purchase payroll services from the district. In Oakland, the district reviews the charter schools' California Basic Education Data System (CBEDS) data as its way of verifying teacher credentials. However, because the CBEDS data is merely a summary of instructors by credential type, it is not an adequate substitute for reviewing the credentials directly.

Furthermore, according to the Education Code, a charter school shall offer, at a minimum, the same number of minutes of instruction as a noncharter school for the appropriate grade levels. However, it is unclear whether all of the chartering entities verify the instructional minutes at each of the charter schools under their authority. San Diego typically verifies its charter schools' instructional minutes by collecting the schools' class schedules, calculating the number of minutes offered, and requiring the charter school to verify this number for accuracy. In at least one instance, San Diego did not confirm the number of minutes offered by collecting a signature from the school. Because meeting the required number of instructional minutes is an ongoing process, at each apportionment reporting period, it would seem necessary for the chartering entity to certify that the schools have met this condition of apportionment. However, for another school San Diego did not complete the instructional minutes certification for fiscal year 2001–02 until May 23, 2002, several weeks after the May 1, 2002, deadline on which San Diego certified to the Department of Education (department) that all of its charter schools had met the conditions of apportionment for the period July 1, 2001, through April 15, 2002. Thus, San Diego verifies only some of its charter schools' instructional minutes before submitting its certification for the apportionment reporting period.

Finally, the chartering entities do not always verify that each charter school participates in the requisite standardized testing. According to the Education Code, a charter school must certify that its students have participated in state testing programs in the same manner as other students attending public schools. For example, Oakland treats each of its charter schools as independent, and thus each school conducts the state standardized testing on its own. The test scores are not available to Oakland until they are publicly released in late summer following the testing year. Oakland uses these results to verify that each charter school has conducted the requisite

testing. In 2002, this practice meant that Oakland certified to the department by July 15, 2002, that its charter schools had conducted the testing, yet it was not able to verify this until the test results were publicly released on August 29, 2002.

Without monitoring all of its schools for compliance with these various legal requirements, the chartering entity cannot ensure that the reports it sends to the department, wherein it certifies that all of its charter schools meet the conditions of apportionment, are accurate. The department thus has no assurances that the charter schools are legally entitled to the state funding apportioned to them. Moreover, the schools' failure to comply with law is grounds for charter revocation.

RECOMMENDATIONS

To ensure that the chartering entities hold their charter schools accountable through oversight, the Legislature should consider amending the statute to make the chartering entities' oversight role and responsibilities explicit.

To ensure that charter schools are held accountable for the taxpayer funds they receive and demonstrate accountability for the measurable outcomes set forth in their charters, the chartering entities should consider developing and implementing policies and procedures for academic monitoring. At a minimum, the policies and procedures should outline the following:

- Types and frequency of the academic data charter schools should submit.
- Manner in which the chartering entity will review the academic data.
- Steps the chartering entity will take to initiate problem resolution.

To ensure that their charter schools are meeting statutory conditions for receiving state funding, the chartering entities should verify these conditions through the schools' independent financial audits or some other means. ■

CHAPTER 2

Chartering Entities Do Not Exercise Sufficient Oversight of Charter Schools' Fiscal Health

CHAPTER SUMMARY

When chartering entities authorize the creation of a charter school, they accept the responsibility for monitoring its fiscal health. However, chartering entities are not adequately monitoring all of their charter schools even though some appear to have fiscal problems. Specifically, chartering entities do not ensure that they receive the financial information they request from their charter schools and do not thoroughly review the information they do receive. Because chartering entities do not have as much knowledge about the financial activities of the fiscally independent charter schools as they do about those of the fiscally dependent charter schools, it is important that the charter schools' auditors verify the schools' compliance with statutory requirements, and that the chartering entities have policies and procedures to ensure thorough follow-up when fiscal concerns or audit findings are noted at these schools. However, the chartering entities lacked such policies and procedures and, despite fiscal problems at some schools and various audit findings, were unable to provide evidence of actions they took to improve the schools' fiscal condition. Without adequate monitoring, schools that develop fiscal problems and other reported deficiencies might fail to meet the terms of their charters or might deteriorate financially to the point of having to close, disrupting their students' education.

Further, chartering entities are authorized to charge a percentage of a charter school's revenues for the actual costs of providing oversight. However, they cannot support that their actual costs were at least equal to the oversight fees charged because they did not track their actual oversight costs, as required by statute. As a result, the chartering entities may be charging their charter schools more than legally permitted. They also risk double-charging the State through their mandated-costs claims. Finally, although the statute is clear regarding the percentage of revenues that may be charged, the chartering entities are not all

applying the percentage to the same types of revenues and thus may be charging more than they should or not charging enough to cover their oversight costs.

CHARTERING ENTITIES HAVE CERTAIN RESPONSIBILITIES FOR MONITORING CHARTER SCHOOLS' FISCAL HEALTH

In authorizing charter schools, the Legislature intended to provide opportunities for teachers, parents, students, and community members to establish and operate schools independently of the existing school district structure. The Legislature freed the schools from the programmatic and fiscal constraints that exist in the public school system. However, the statutes do not overlook accountability. Specifically, the Education Code, Section 47601(f), speaks to the Legislature's intent that charter schools be held accountable for meeting certain outcomes and for moving from rule-based to performance-based accountability systems. Thus, each school must create a founding document, or charter, which by law must contain certain elements. For example, all charter schools, as public schools, are eligible for state funds, and each school's charter must specify how an annual audit will be conducted and how audit exceptions will be satisfactorily resolved. As such, they are accountable for the taxpayer funds the State provides for the schools' operations.

An approved charter represents an agreement between the school and its chartering entity and therefore makes the charter school accountable to its entity. Although the chartering entity's role is not clearly defined in the statutes, they imply certain oversight responsibilities, as they allow the entities to:

- Inspect or observe any part of the charter school at any time.
- Charge the charter schools fees for oversight.
- Make reasonable inquiries, including for financial data.
- Revoke a charter for material violations of any charter condition, standard, or procedure; failure to meet or pursue the charter's pupil outcomes; engaging in fiscal mismanagement; and any violation of law.

We expected that, to facilitate their oversight, chartering entities would have established formal policies and procedures guiding these oversight activities. Typically, sound oversight

systems define the types and frequency of data to be submitted, the manner in which the entity will review the data, and the steps it will take to resolve any concerns resulting from its oversight activities. Therefore, we assessed the charter oversight activities of the selected chartering entities against what a sound oversight system would include.

The charter schools reviewed in this chapter are all fiscally independent of their chartering entities. Although the statutes authorizing charter schools imply that chartering entities are responsible for providing oversight, the degree of oversight may vary depending upon whether the charter school is fiscally dependent or fiscally independent. As we discussed in the Introduction, fiscally dependent schools rely on their chartering entities for operational support. In contrast, fiscally independent schools do not rely on their chartering entity for fiscal or operational support. Although chartering entities have sufficient information to monitor the fiscal health of their dependent charter schools, they do not maintain financial information for the fiscally independent charter schools. Consequently, oversight of these types of charter schools is essential.

CHARTERING ENTITIES LACK POLICIES AND PROCEDURES FOR SUFFICIENT FISCAL MONITORING AND HAVE NOT ADEQUATELY MONITORED THEIR CHARTER SCHOOLS

Despite the crucial need for consistent fiscal monitoring, the chartering entities have not adequately monitored their charter schools' fiscal health, even though some charter schools appear to have fiscal problems.

When chartering entities authorize the creation of a charter school, they accept the responsibility for monitoring its fiscal health. Without fiscal monitoring, charter schools are not held accountable for the taxpayer funds they receive nor will chartering entities always know when they should revoke a charter. Moreover, students are affected should a school close because of financial problems. Despite the crucial need for consistent fiscal monitoring, we found that the chartering entities lacked policies and procedures for such monitoring and have not adequately monitored their charter schools' fiscal health, even though some charter schools appear to have fiscal problems. The four chartering entities we reviewed could not demonstrate that they always receive the financial information they request, such as year-end audited financial statements. Moreover, although all four chartering entities asserted that they have procedures for reviewing fiscal data and identifying and resolving problems, none could provide evidence of such. Further, even though all four chartering entities recently developed or adopted new policies and

procedures regarding charter schools, only two of those policies address fiscal monitoring and appear to provide for improved monitoring of the chartering entities' charter schools' fiscal health.

Even though all four chartering entities recently developed or adopted new charter schools policies and procedures, only two policies address fiscal monitoring.

Oakland Unified School District (Oakland) signs a Memorandum of Understanding (MOU) with each of its charter schools—all of which are fiscally independent—that outlines the fiscal data it needs to receive and the timing for submittal. However, not all of the charter schools were submitting the reports on time or submitting all of the required reports.[2] For example, between July 1, 2001, and April 30, 2002, three of Oakland's nine charter schools submitted their monthly reports only quarterly, and eight failed to submit all of the required reports. Additionally, two charter schools were between one and six months late in submitting any of their monthly reports. Although Oakland asserted that it had contacted the charter schools regarding the missing reports, it could not provide evidence of the steps it took, nor could it provide us with all of the reports.

Although Oakland receives some of the charter schools' financial reports on time, it could not provide evidence that it had reviewed the reports that it received. At various times between December 2001 and April 2002, six of Oakland's nine charter schools reported expenditures in excess of revenues. The schools' level of excess spending ranged from $23,000 to $217,000, with some schools reporting expenditures in excess of revenues for as many as six months in a row. For example, as of February 28, 2002, West Oakland Community School (West Oakland) reported year-to-date spending of $217,000 more than its revenues. The school had reported expenditures in excess of revenues for at least two months between July and February during fiscal year 2001–02. However, Oakland could not provide evidence that it had reviewed West Oakland's financial reports or that it had worked with the school to correct its financial condition. For some schools, reported deficits are simply a timing issue, as the schools spend in anticipation of funding. However, without reviewing the schools' fiscal data and resolving questions, the chartering entities may not be aware of this, potentially leaving a serious financial problem to grow unchecked.

Oakland's recently developed fiscal policies and procedures cover three stages of fiscal monitoring: receiving financial data, reviewing the data, and taking necessary corrective action.

[2] The monthly financial information that Oakland requests includes both budget and year-to-date actual revenue and expenditures, as well as bank statements, bank reconciliations, and average daily attendance reports.

Specifically, the policies and procedures do the following:

- Reiterate the types of monthly and annual financial information the schools are to provide.
- State that Oakland will withhold funds from schools that fail to submit complete monthly and annual financial information.
- Outline Oakland's process for reviewing the charter schools' budget and actual information to determine their fiscal health.
- Require Oakland to document conclusions and corrective actions.

Without reviewing fiscal data and resolving their questions, chartering entities potentially leave serious financial problems to grow unchecked.

If implemented, these policies and procedures appear to provide for more complete monitoring of its charter schools, giving Oakland a better understanding of the schools' fiscal conditions and increasing its opportunity to help schools avert fiscal problems.

In fiscal year 2001–02, Fresno Unified School District (Fresno) twice required its charter schools to submit budget and actual information for its review at December 2001 and March 2002. Fresno provided some information indicating that it had reviewed the March financial reports, but it had not established formal policies and procedures for conducting the review and resolving any fiscal problems the reports may reveal. As a result, Fresno's review was not as effective as it could be.

For example, based on reports that Fresno Prep Academy (Fresno Prep) submitted, it appeared to be fiscally insolvent; the school had reported year-to-date expenditures of $46,000 in excess of revenues. When combined with its fiscal year 2000–01 net deficit of $87,000, the school's cumulative net deficit was $133,000, approximately 28 percent of its total revenues for fiscal year 2000–01. Although Fresno noticed that Fresno Prep had financial problems and contacted the school for additional information, it did not follow through with the school to obtain data Fresno claimed the school did not provide. As this school's chartering entity, Fresno is not adequately holding Fresno Prep accountable for the taxpayer funds the school receives. In addition, Fresno's failure to follow up with the charter school may result in continued financial problems, which could lead to the school's closure.

Fresno's recently developed fiscal policies and procedures, if implemented, appear to provide for improved fiscal monitoring of its charter schools' fiscal health. The new

policies and procedures restate the types and frequency of financial information the schools are to provide and outline Fresno's process for reviewing the information. However, the new policies and procedures do not address Fresno's basis for determining a school's fiscal health or the steps it will take when corrective action is necessary; these additional steps are necessary to create a sound fiscal monitoring system.

The Los Angeles Unified School District (Los Angeles) bases its fiscal review of charter schools on interim budget and year-to-date actual revenue and expenditure reports, as well as audited annual financial statements.[3] However, during fiscal year 2001–02, Los Angeles' charter schools did not always submit all of the required reports, and following its review Los Angeles lacks formal policies to appropriately follow up when a school experiences fiscal problems. For example, of the 10 schools that submitted fiscal year 2000–01 audited financial statements, only 2 included all of the required components. Los Angeles did not follow up with the other charter schools to obtain the missing components.

Los Angeles provided a spreadsheet that it prepared to facilitate a review of its charter schools' financial information. Staff asserted that if its review reveals a school with a net deficit, staff contacts the school to determine the reason and asks how the charter school will correct the problem by the end of the fiscal year. Los Angeles could not provide any documentation to support that it had contacted the schools, and thus it is difficult to assess whether the steps described actually occurred.

We reviewed the financial information for five of Los Angeles' fiscally independent charter schools as of October 31, 2001, and January 31, 2002, and found that three of the charter schools reported expenditures in excess of revenues at both time periods. However, Los Angeles could not provide evidence that it had worked with these schools to determine the reason for the potential fiscal problem or to correct the imbalance. Specifically, we found that the Accelerated School reported year-to-date spending of $32,000 in excess of revenues as of October 31, 2001, and year-to-date spending of $147,000 in excess of revenues as of January 31, 2002. Although the school reported a $689,000 ending fund balance in fiscal year 2000–01, at a minimum, we would expect that the January 2002 figures

[3] For Los Angeles' charter schools, the annual audited financial statements are to include the auditor's opinion regarding the balance sheet; statement of revenues, expenditures, and changes in fund balances; statement of cash flows; and statement of compliance with state and federal guidelines.

would have warranted a phone call to determine the reason for the large excess of expenditures over revenues and to find out the school's plans to correct the financial problem. However, Los Angeles could not provide evidence of its efforts to follow up with the school. As of June 30, 2002, the charter school reported revenues of $43,000 in excess of expenditures.

Although Los Angeles recently developed policies and procedures for its charter schools, they do not address its fiscal monitoring. As a result, Los Angeles' fiscal review was incomplete, as it lacked complete data from all the schools and has no process to ensure that the schools resolve identified problems. Without complete financial information and the necessary processes to hold its charter schools accountable for the taxpayer funds they operate with, these schools may be at greater risk for closure due to fiscal failure.

Even if San Diego City Unified School District (San Diego) had policies and procedures to guide its fiscal review and follow-up, it does not request and receive sufficient data to adequately monitor its charter schools. San Diego receives annual financial information from its schools in the form of audited financial statements; it typically does not request or receive other financial information. However, only 5 of San Diego's 15 charter schools submitted the requested annual reports for fiscal year 2000–01. Although San Diego asserted that it followed up on the missing reports, the charter schools did not all comply, and San Diego made no further attempts to obtain the reports.

In addition, San Diego compiles financial data for its charter schools periodically during the fiscal year, but this data is not adequate to assess the schools' fiscal health. San Diego's reports include budgeted revenues and expenditures and year-to-date actual revenues, but they reflect year-to-date actual expenditures only if San Diego provides the schools with financial services. Because San Diego does not provide financial services for all of its charter schools, it does not have actual expenditure information for those schools for which it does not provide financial services. Further, San Diego's recently adopted policies for its charter schools do not address its review of the data, indicators of fiscal problems, or steps to be taken to resolve fiscal problems. Without requiring and receiving necessary financial information from its charter schools, San Diego cannot provide sufficient oversight of its charter schools' fiscal health, potentially allowing fiscal problems to grow unchecked.

San Diego agrees that audited financial statements are not sufficient to monitor its charter schools. Nevertheless, the senior financial accountant told us that San Diego lacks the authority to require regular financial reporting from schools that do not purchase its financial services. We disagree with San Diego's assessment. Each of the three chartering entities discussed earlier—Fresno, Oakland, and Los Angeles—requests and receives some sort of financial information from its charter schools in addition to audited financial statements. Moreover, the Education Code, Section 47604.3, requires charter schools to promptly respond to their chartering entity regarding all reasonable inquiries, including those related to its financial records. Despite weaknesses in their data review and problem resolution activities, it seems that chartering entities are successfully requesting and receiving interim financial data and that the Education Code gives San Diego explicit authority to do so. Without fiscal monitoring, charter schools are not held fully accountable for the taxpayer funds they receive.

Some Charter Schools Are Fiscally Unhealthy

Despite some charter schools reporting negative fund balances, the chartering entities were unable to provide evidence of actions they had taken to help the charter schools improve their fiscal condition.

Because the four chartering entities were not sufficiently monitoring their charter schools, we used high-level indicators to review the fiscal health of 11 independent charter schools. We found that, during fiscal year 2001–02, some of the charter schools appeared to have fiscal problems. For reporting periods ending between March 31, 2002, and June 30, 2002, 6 of the 11 charter schools reported year-to-date expenditures in excess of revenues. Moreover, as Appendix B shows, 5 of the 25 charter schools that submitted audited financial statements for fiscal year 2000–01 reported negative fund balances as of June 30, 2001, and others failed to meet the reserve requirement the Department of Education (department) has established for school districts.[4] Although we recognize that charter schools are not legally obligated to meet this reserve requirement, we used it as a benchmark for assessing schools' fiscal health.

Despite reported negative fund balances, which represent the accumulation of net expenditures in excess of net revenues, and net deficits, the chartering entities were unable to provide evidence of actions they had taken to work with these charter schools to improve their fiscal condition. It is important for

[4] The department established a fund balance reserve requirement for school districts to cover cash requirements in succeeding fiscal years. The ratio is between 1 percent and 5 percent of the fund balance to expenditures, depending on a district's average daily attendance level.

chartering entities to monitor charter schools that consistently report expenditures in excess of revenues during a fiscal year or that report negative fund balances to ensure the schools take appropriate corrective actions and progress toward regaining fiscal health. Otherwise, the schools may deteriorate to the point of having to close and displace their students.

Table 6 on the following page summarizes the fiscal status of the 11 charter schools we reviewed for reporting periods ending between March 31, 2002, and June 30, 2002. For fiscal year 2001–02, 6 of the 11 charter schools showed year-to-date expenditures in excess of revenues; further, at least 4 of these 6 schools did not have prior year-end fund balances sufficient to cover their deficits. Even though the chartering entities asserted they took action, none could provide sufficient evidence to support their claims, and thus the chartering entities could not assure that their charter schools were accountable for the taxpayer funds they received. For example, as of June 30, 2002, Valley Community Charter School (Valley), chartered by Los Angeles, reported a cumulative negative fund balance. Valley has operated for only two years; in this short time, the school's expenditures have exceeded its revenues by almost $189,000. Of additional concern is that Valley reported a $200,000 loan outstanding from the department as of June 30, 2002. The loan terms call for the department to withhold $50,000 each year from the school's apportionment until the loan principal is repaid. Because the school has spent in excess of its revenues, notwithstanding its loan obligation, this illustrates a school that may need technical assistance from its chartering entity. However, Los Angeles did not assess the school in this manner and could not demonstrate that it was working with Valley to shore up the school's finances. If Valley's fiscal health deteriorates further, the school may close and the department may not be reimbursed for the outstanding loan, resulting in a loss of taxpayer money.

CHARTER SCHOOL AUDITS DO NOT PROVIDE ALL NECESSARY INFORMATION, AND CHARTERING ENTITIES DO NOT SUFFICIENTLY REVIEW REPORTS OR ENSURE THAT AUDIT FINDINGS ARE RESOLVED

Having an audit and correcting noted deficiencies are ways charter schools demonstrate accountability for the taxpayer funds they are entrusted with. Although each charter must specify the manner in which annual independent financial audits shall be conducted, not all audit reports contain all

TABLE 6

Fiscal Health of the Independent Charter Schools We Reviewed
Fiscal Year 2001–02

Chartering Entity/Charter School	Period Ending (Unaudited Financial Statements)	Revenues in Excess of Expenditures?	Prior-Year Fund Balance Sufficient to Cover Expenditures in Excess of Revenues?
Fresno Unified School District			
Edison-Bethune Charter Academy	4/30/2002	No	Unknown*
Fresno Prep Academy	6/30/2002	No	No
Los Angeles Unified School District			
Accelerated School	6/30/2002	Yes	N/A
Valley Community Charter School	6/30/2002	No	No
View Park Preparatory Accelerated Charter School	6/30/2002	Yes	N/A
Oakland Unified School District			
Ernestine C. Reems Academy of Technology and Art	3/31/2002	No	No
North Oakland Community Charter School	4/30/2002	No	No
Oakland Charter Academy	4/30/2002	Yes	N/A
San Diego City Unified School District			
Explorer Elementary Charter School	6/30/2002	Yes	N/A
High Tech High Charter School	6/30/2002	No	Unknown*
King/Chavez Academy of Excellence Charter School	6/30/2002	Yes	N/A

* Edison-Bethune's financial information was included as part of its parent company and no separate audited financial information was available for fiscal year 2000–01. High Tech High did not have audited financial information for fiscal year 2000–01.

N/A - Not applicable because the school reported revenues in excess of expenditures for the period reviewed.

the information relevant to school operations. For example, not all the audit reports we reviewed reflected tests of average daily attendance (ADA), the primary basis for school funding. Nor did the auditors always assess the schools' compliance with standardized testing. As of January 2002, conditions of apportionment included standardized testing and other statutory requirements—a charter school must meet these statutory conditions to be eligible for State funding.

When they approve charters, chartering entities become responsible for monitoring to determine if their schools meet their charter terms. As such, we expected the chartering entities to have policies and procedures in place for reviewing the audit reports of their charter schools to determine the significance of any audit findings and for ensuring that the schools resolved reported problems. However, none of the chartering entities we reviewed had these necessary policies and procedures. Moreover, some entities did not adequately review the reports and ensure that reported problems were resolved.

Charter Schools' Audit Reports Do Not Always Provide Assurance on All Aspects of School Operations

The Education Code, Section 47605, states that each charter must reasonably describe the manner in which:

- Annual, independent, financial audits shall be conducted.
- Audit exceptions and deficiencies shall be resolved to the chartering entity's satisfaction.

Although the charter school statute requires an annual audit, some of these audits do not address all of the conditions set forth in the statute. As Table 7 on the following page shows, for the 25 independent charter schools that submitted audited financial statements for fiscal year 2000–01, less than one-half indicated that the auditors had verified the schools' reported ADA. Because ADA is the primary basis for state funding, it is important for the auditors to assess the schools' attendance systems for accuracy. Similarly, in January 2000, as a condition of apportionment, the Legislature began requiring charter schools to participate in state testing programs. However, as the table shows, only 1 of the 25 audit reports we reviewed indicated whether the school had met this condition. Effective January 2002, the Legislature imposed on charter schools three additional conditions of apportionment: meeting minimum instructional minute requirements, maintaining written contemporaneous pupil attendance records, and using credentialed teachers in certain instances.

TABLE 7

Number of Charter Schools' Auditors That Performed Various Compliance Testing Procedures Fiscal Year 2000–01 Audit Reports

Chartering Entity	Number of Charter Schools That Submitted Audited Financial Statements	Number of charter schools' auditors that: Verified* Instructional Minutes	Verified* Reported ADA	Verified* Teacher Credentials	Verified Standardized Testing
Fresno Unified School District	5	2	3	1	1
Los Angeles Unified School District	10	0	1	0	0
Oakland Unified School District	6	0	4	0	0
San Diego City Unified School District	4	2	3	1	0
Totals	**25**	**4**	**11**	**2**	**1**

* Charter school law requires the schools to meet certain specified standards. As of January 2002, all of these three requirements became conditions of apportionment.

The State Controller's Office standards and procedures for California K-12 local educational agency audits offers general insight into the nature, scope, and administration of such audits and identifies the minimum audit and reporting requirements necessary to comply with statutory requirements. Although we recognize that charter school audits are not required to conform to these guidelines, if they were used, the resulting audits would provide a more complete picture of charter schools' financial positions. In addition, this level of review would provide the chartering entities with a greater indication of the charter schools' accountability.

Chartering Entities Do Not Sufficiently Review Audit Reports or Ensure That Audit Findings Are Resolved

At the time of our review, Fresno lacked policies and procedures for reviewing and following up on reported findings. The administrator of Fresno's fiscal services division described Fresno's process for reviewing the fiscal year 2000–01 audit reports as assessing the fiscal impact of any negative audit findings and determining whether the corrective action plan was adequate. In addition, the administrator asserted that Fresno staff compared the audited figures to unaudited information and looked for any ongoing concerns, fund balance issues, and differences in debt issuances.

As described, Fresno's audit review practices sound thorough; however, Fresno could not provide evidence that it actually employs these practices. For example, Fresno's administrator asserted that the problems found during an audit of Fresno Prep were immaterial and that the school's stated corrective actions were sufficient to address the problems. However, we believe that, taken as a whole, the 10 problems identified in the audit report are in fact material to the charter school's fiscal health and that Fresno's response was insufficient. Fresno Prep's audit report contained numerous findings, including weak internal controls and over reported student attendance figures, and the audit report revealed the school had an $87,000 net deficit. In the report, the auditor also expressed substantial doubts as to the school's ability to continue as a going concern.

When asked to justify her reasons for accepting Fresno Prep's corrective action plan, Fresno's administrator stated that she believed the school's responses to the external auditor's recommendations appeared appropriate. In addition, that:

- Fresno received the school's audit report in mid-March 2002, more than three months after the deadline, and thus was unable to review Fresno Prep's audit findings at the same time as it reviewed its other charter schools' audit reports.

- In January 2002, Fresno visited Fresno Prep to review the school's attendance procedures. Although it noted exceptions with the school's attendance accounting, Fresno concluded that the process was functioning as intended.

The fact that Fresno Prep submitted the report late, after Fresno was done reviewing the other audits it had received, is not an appropriate reason for accepting the school's corrective action plan without further inquiry. Moreover, Fresno's January 2002 attendance review should have caused it to take a closer look at Fresno Prep, as the attendance review revealed at least two of the same deficiencies reported in the school's audit—namely, certificated staff not signing the school's attendance sheets and the attendance sheets lacking a legend explaining the various attendance marks. By not sufficiently following up on Fresno Prep's numerous audit findings, Fresno is not suitably holding the charter school accountable for its financial management. Although Fresno's new policies and procedures state that it will review the charter schools' audit reports and determine if any audit findings require follow-up, the policies do

not address the basis Fresno will use to determine the significance of the audit findings or how Fresno will ensure that reported audit problems are resolved.

During the course of our work, Oakland's controller, who provided us with initial information regarding Oakland's policies and procedures, left the district. As a result, Oakland's current financial services officer asserted that she could not verify whether Oakland had formal policies and procedures for reviewing audit reports and following up on audit findings or that it had applied these policies and procedures to its charter schools' audit reports for fiscal year 2000–01. It seems likely that Oakland did not review its charter schools' fiscal year 2000–01 audit reports or follow up with the schools to ensure that reported problems were corrected, as it could not provide any evidence of such actions. During the audit, Oakland's financial services officer provided a document she stated was a work product resulting from meetings among staff currently responsible for charter schools. The document represents new formal monitoring procedures to be used by Oakland's staff. The new policies require the accounting supervisor and the charter schools coordinator to meet with the charter schools to review the audit reports. This step in the new policies, if implemented, appears reasonable; however, the policies do not specify how Oakland will ensure that negative audit findings are resolved. For fiscal year 2000–01, the charter schools' audit findings did not appear to be significant. Nevertheless, on an ongoing basis, audit review and resolution of findings are important elements in the chartering entities' overall monitoring responsibilities, allowing them to determine whether charter schools are appropriately using the taxpayer funds they are entrusted with.

Audit review and resolution of findings are important elements in the chartering entities' overall monitoring responsibilities, allowing them to determine whether charter schools are appropriately using the taxpayer funds they are entrusted with.

In Los Angeles, according to the director of the charter schools office, only fiscally independent charter schools must submit an audit, and to date, there have been no negative audit findings. However, the director asserted that if there were audit findings, the staff responsible would immediately inform her. In addition, all pertinent charter school and chartering entity stakeholders would meet to resolve the audit issues to Los Angeles' satisfaction. We reviewed 10 audit reports for Los Angeles' independent charter schools and confirmed that for fiscal year 2000–01, none of these schools' reports contained negative findings. This lack of findings does not negate Los Angeles' need for audit review policies and procedures, however. Although the process the director described seems reasonable, it is not documented so

that staff can acknowledge responsibility for these activities. Nor do staff have a point of reference to ensure that they are taking appropriate measures in holding the charter schools accountable for their fiscal management. Thus, it is difficult for Los Angeles to guarantee that the steps outlined would occur.

Like the three other chartering entities, San Diego lacks policies and procedures for reviewing audit reports or for ensuring that problems were resolved. However, for this chartering entity, audit review and follow up are significant activities, as they represent San Diego's primary method of charter school oversight. As we mentioned earlier in this chapter, the charter schools' audited financial statements are typically the only information San Diego requests and receives from its charter schools. However, San Diego was unable to provide evidence documenting its review or the conclusions reached. Further, because San Diego did not receive audit reports for 10 of its charter schools in operation during fiscal year 2000–01, it cannot ensure that any deficiencies that those audits may have revealed have been corrected.

CHARTERING ENTITIES CANNOT JUSTIFY THE OVERSIGHT FEES THEY CHARGE AND RISK DOUBLE-CHARGING THE STATE THROUGH MANDATED-COSTS CLAIMS

Over two fiscal years, the four chartering entities charged more than $2 million in oversight fees, but none could document that these fees corresponded to their actual costs in accordance with statute.

The Education Code, Section 47613, authorizes chartering entities to charge up to 1 percent of a charter school's revenues for the actual costs of providing supervisorial oversight, or up to 3 percent if providing the charter school with substantially rent-free facilities. For fiscal years 1999–2000 and 2000–01—the most recent data available at the time of our review—the four chartering entities charged their charter schools more than $2 million in oversight fees. Nevertheless, none of the four chartering entities could document that the fees they charged corresponded to their actual costs in accordance with statute, because they failed to track their actual oversight costs. Rather, the chartering entities automatically charged a percentage of charter schools' revenues, assuming that their oversight costs exceeded the fees they charged. As a result, the chartering entities may be charging their charter schools more than permitted by law.

Moreover, these chartering entities also participated in the State's mandated-costs reimbursement process, which reimburses entities for the costs of implementing state legislation. The chartering

entities claimed costs in excess of $1.2 million related to charter schools for the two fiscal years we reviewed. However, because the chartering entities did not track the actual costs associated with overseeing their charter schools, they risk double-charging the State.

Finally, although the statute is clear that the entities' oversight fee is capped at a certain percentage of a school's revenue based on actual costs, it is unclear regarding which revenues are subject to the oversight fee. Consequently, the chartering entities are interpreting the law differently and may be applying the percentage to more revenues than permitted or to fewer revenues than they could be to cover their oversight costs.

Chartering Entities Have Failed to Tie Oversight Fees to Actual Oversight Costs

During fiscal years 1999–2000 and 2000–01—the most recent data available at the time of our review—we found that the four chartering entities we reviewed did not track the actual costs of providing charter schools oversight. Although the law limits the oversight fee that the chartering entity charges to actual costs, with a ceiling of 1 percent of a charter school's revenues, or 3 percent if the chartering entity provides substantially rent-free facilities, three of the four chartering entities we reviewed charged oversight fees of precisely 1 percent or 3 percent. However, none of these three chartering entities tracked their actual oversight costs.

For fiscal year 2000–01, Fresno charged five of its charter schools roughly $27,000 for oversight. We asked Fresno to share its cost analysis supporting the fees it charged, but it could not. Fresno's administrator asserted that for fiscal year 2000–01, Fresno's oversight costs exceeded the $27,000 in collected fees, yet had no data to support this claim. Similarly, Oakland charged its charter schools 1 percent for oversight during fiscal years 1999–2000 and 2000–01; these fees totaled approximately $43,600 and $51,200, respectively. Oakland's financial services officer was unable to provide evidence to support the fees.

Like the other three entities, Los Angeles failed to track its oversight costs to demonstrate that the fees it charged its charter schools were justified. Unlike the other chartering entities, however, Los Angeles charged two of its charter schools a 1.5 percent oversight fee. Los Angeles asserted that the 1.5 percent oversight

fee was based on negotiations between it and the charter schools and that it was providing the schools with rent-free facilities. Although we found that Los Angeles did provide these schools with rent-free facilities, it was unable to account for its oversight costs to justify the 1.5 percent fee. By failing to track actual costs related to oversight, chartering entities may be charging a charter school more for oversight than permitted by law.

Chartering Entities Risk Double-Charging the State for Charter School Oversight Costs

In July 1994 the Commission on State Mandates determined that the Charter Schools Act of 1992 (Act) resulted in reimbursable state-mandated costs because the Act established specific responsibilities for chartering entities. The State Controller's Office, in its School Mandated Cost Manual (manual), lists reimbursable charter school activities as:

- Providing information on the Act and the chartering entities' charter policies and procedures.
- Reviewing and evaluating new charter petitions.
- Preparing for public hearings for charter adoption, reconsideration, renewal, revision, revocation, or appeal.
- Reviewing, analyzing, and reporting on a charter school's performance for the purpose of charter reconsideration, renewal, revision, evaluation, or revocation.
- Carrying out the petition appeals process.

In addition, the manual states that only net local costs may be claimed; the claimant must offset its costs with any savings or reimbursements received.

Chartering entities risk double-charging the State for some costs by charging the charter schools an oversight fee and claiming mandated-costs reimbursements.

Chartering entities risk double-charging the State for some costs related to charter schools by charging the charter schools the oversight fee and then claiming mandated-costs reimbursements. As Table 8 on the following page shows, for fiscal years 1999–2000 and 2000–01, the four entities charged their charter schools $2 million in oversight fees and claimed mandated-costs reimbursements of $1.2 million from the State.

TABLE 8

Chartering Entities' Oversight Fees Charged and Mandated-Costs Reimbursements Claimed for Fiscal Years 1999–2000 and 2000–01

Chartering Entity	Oversight Fee Charged		Mandated-Costs Reimbursements Claimed	
	1999–2000	2000–01	1999–2000	2000–01
Fresno Unified School District	$ 0	$ 27,117	$ 45,599	$ 64,592
Los Angeles Unified School District	242,555	301,821	411,484	484,520
Oakland Unified School District	43,571	51,199	18,829	18,194
San Diego City Unified School District	547,850	786,998	45,886	113,104
Fiscal Year Totals	**$833,976**	**$1,167,135**	**$521,798**	**$ 680,410**
Combined amount for fiscal years 1999–2000 and 2000–01		**$2,001,111**		**$1,202,208**

As we stated earlier, none of the four chartering entities was able to demonstrate that their oversight costs justified the fees they charged their charter schools. Nevertheless, each chartering entity submitted a mandated-costs reimbursement claim to the State, which implies that it incurred costs that were not otherwise paid for. Because the chartering entities we reviewed failed to adequately track their actual costs of providing oversight, they are unable to demonstrate that charter schools have not already paid for some or all of these oversight activities through the oversight fee. Thus, as Table 9 shows, for fiscal years 1999–2000 and 2000–01 combined, the four chartering entities we reviewed risk double-charging the State for costs related to monitoring activities that they had already charged their charter schools for.

TABLE 9

The Risk of Double-Charge for Fiscal Years 1999–2000 and 2000–01

Chartering Entity	Charter Petition Process and Miscellaneous Costs*		Potential Double-Charge for Monitoring Activities	
	1999–2000	2000–01	1999–2000	2000–01
Fresno Unified School District	$ 45,599	$ 38,472	$ 0	$ 26,120
Los Angeles Unified School District	305,570	316,774	105,914	167,746
Oakland Unified School District	5,618	823	13,211	17,371
San Diego City Unified School District	14,236	27,867	31,650	85,237
Fiscal Year Totals	**$371,023**	**$383,936**	**$150,775**	**$296,474**
Combined amount of potential double-charge for monitoring activities for fiscal years 1999–2000 and 2000–01				**$447,249**

* This includes charter petition review and evaluation, preparing for and conducting public hearings on charter petitions, providing information regarding the Act and charter petitions, and indirect costs. For San Diego, these costs also include clerical support, developing policies/training, and charter school committee meetings. For Los Angeles, these costs also include prorated equipment, materials, and supplies.

The chartering entities' mandated-costs claims indicate that the reimbursable activities relate only to the charter petition process. It seems reasonable for the chartering entities to claim these costs, as the schools do not yet exist or receive public funds during the petition process, and thus the chartering entity cannot recover the costs through oversight fees. Although Oakland, San Diego, and Los Angeles provided staff time logs to support their mandated-costs claim forms, none of the chartering entities were able to show that the activities claimed through the mandated-costs claims process had not already been covered by the oversight fees charged to the charter schools. Moreover, not all of the chartering entities could demonstrate that they had instructed their staff to record time for only certain specified charter school functions. For example, Oakland circulated a memo and time log form on August 31, 2001, to various district staff. The memo instructed the staff to complete the log sheet for fiscal years 1999–2000 and 2000–01, but it did not specify that the time recorded needed to be limited to the charter petition process.

Chartering Entities' Interpretations of the Revenue Subject to the Oversight Charge Vary

Charter schools receive funding from a variety of sources, including federal and state grants, lottery funds, start-up loans, and private donations. For fiscal years 1999–2000 and 2000–01, the four chartering entities varied in the categories of revenue against which they charged the oversight fee because their interpretation of applicable revenue differed. For example, Fresno and Los Angeles consider most state funds to be applicable revenue, whereas San Diego charges its oversight fees against all charter school funds deposited in the county treasury. In contrast, Oakland narrowed its definition of revenues beginning in fiscal year 2000–01 to include only state general-purpose entitlements and lottery funds, instead of all state funds, as it had done in fiscal year 1999–2000. Because the law does not define the term "revenue," the chartering entities apply the oversight fee differently and may be applying their oversight fee to too much or too little of their charter schools' revenues.

RECOMMENDATIONS

To ensure that charter schools are held accountable for the taxpayer funds they receive and that they operate in a fiscally sound manner, the chartering entities should consider developing and implementing policies and procedures for fiscal monitoring. At a minimum, the policies and procedures should outline the following:

- Types and frequency of fiscal data charter schools should submit, including audited financial statements, along with consequences if the schools fail to comply.
- Manner in which the chartering entity will review the financial data, including the schools' audited financial statements.
- Financial indicators of a school with fiscal problems.
- Steps the chartering entity will take to initiate problem resolution or to ensure that reported audit findings are adequately resolved.

To ensure that chartering entities can justify the oversight fee they charge their charter schools and to minimize the risk of double-charging the State for the costs of charter school oversight, they should:

- Establish a process to analyze their actual costs of charter school oversight.

- Compare the actual costs of oversight to the fees charged and, if necessary, return any excess fees charged.

- Use the mandated-costs reimbursement process as appropriate to recover the costs of overseeing charter schools.

To ensure that the chartering entities charge their oversight fees appropriately, the Legislature should consider clarifying the law to define the types of charter school revenues that are subject to the chartering entities' oversight fees. ■

Blank page inserted for reproduction purposes only.

CHAPTER 3

The Department of Education Could Do More to Ensure That Charter School Students Receive Equal Educational Opportunities and Taxpayer Funds Are Spent Appropriately

CHAPTER SUMMARY

The Department of Education (department) plays a role in the accountability of charter schools. The department has the authority to recommend that the State Board of Education (state board) take action, including but not limited to charter revocation, if the department finds, for example, evidence of the charter school committing gross financial mismanagement, or substantial and sustained departure from measurably successful academic practices. Although the chartering entity is the primary monitor of a charter school's financial and academic health, the department has the authority to make reasonable inquiries and requests for information. It currently uses this authority to contact a chartering entity if it has received complaints about a charter school.

If the department reviewed the information that it receives regarding charter schools and raised questions with the chartering entities regarding charter schools' fiscal or academic practices, the department could target its resources toward identifying and addressing potential academic and fiscal deficiencies. In this way, it would provide a safety net for certain types of risks related to charter schools. The concept of the State as a safety net is consistent with the California Constitution, which the courts have found places on the State the ultimate responsibility to maintain the public school system and to ensure that students are provided equal educational opportunities. However, the department does not target its resources toward identifying and addressing charter schools' potential academic and fiscal deficiencies. In addition, beginning December 2002, the department will receive charter schools' annual independent financial audits; however, the department plans to collect the information, but not review it because it asserts it does not have staff to do so. Therefore,

the department will be missing an opportunity to help hold charter schools accountable and to avert financial instability or academic failure.

Furthermore, the department apportions funds to the charter schools in the same manner as other public schools, using reported average daily attendance (ADA). However, it relies primarily on the certifying signatures of school districts and county offices of education—both of which lack the necessary procedures to ensure that charter schools comply with apportionment requirements. As a result, the department cannot be assured that charter schools have met the apportionment conditions the Legislature has established and receive only the public funds to which they are legally entitled.

As Fresno Unified School District's recent revocation of Gateway Charter Academy's charter demonstrates, there is a policy gap regarding a chartering entity's authority following a charter revocation—authority that the statutes do not address.[5] Finally, the recent enactment of two charter schools laws, Senate Bill 1709 and Assembly Bill 1994 (Chapters 209 and 1058, Statutes of 2002) may not improve charter school accountability. Although this legislation attempts to add accountability to the existing charter schools environment, without an increased monitoring commitment on the part of chartering entities and the department, these new laws may not be as effective as they could be. Senate Bill 1709 expands the number of entities to which charter schools must submit a copy of their annual independent audit reports. Assembly Bill 1994, among other things, requires charter schools to report on their annual receipts and expenditures and limits the geographic boundaries for most charter schools to the county boundaries within which their chartering entity is located.

THE DEPARTMENT PLAYS A ROLE IN CHARTER SCHOOLS' FISCAL AND ACADEMIC ACCOUNTABILITY

In authorizing charter schools, the Legislature intended to provide opportunities for teachers, parents, students, and community members to establish and operate schools independently of the existing school district structure. The Legislature freed the schools from the programmatic and fiscal constraints that exist in the public school system. However,

[5] We did not review Fresno's oversight of Gateway. Our report should not be construed as an evaluation of Fresno's oversight specifically of Gateway or Fresno's revocation process.

the statues do not overlook accountability. Specifically, the Education Code, Section 47601(f), speaks to the Legislature's intent that charter schools be held accountable for meeting certain outcomes and for moving from rule-based to performance-based accountability systems. Thus, each school must create a founding document, or charter, which by law must contain certain elements. For example, all charter schools, as public schools, are eligible for state funds. To ensure that charter schools are accountable for the taxpayer funds that the State provides for their operations, each school's charter must specify how an annual audit will be conducted and how audit exceptions will be satisfactorily resolved. In addition, each charter must contain measurable student outcomes and the methods that each school will use to measure these outcomes. In this way, the schools' creators are outlining the instructional goals for which they agree to be held accountable.

The department could be a safety net for ensuring charter schools are held accountable; the chartering entities play the primary role.

We believe that the department plays a role in the charter schools' accountability. The department has the authority to recommend that the state board take action, including but not limited to charter revocation, if the department finds evidence of the charter school committing one or any combination of the following: gross financial mismanagement, illegal or substantially improper use of charter school funds, or substantial and sustained departure from measurably successful practices. Moreover, the department has the authority to make reasonable inquiries and requests for information from charter schools, and the courts have found that the California Constitution gives the State ultimate responsibility for maintaining the public schools system and ensuring that students have equal educational opportunities.

Because an approved charter represents an agreement between the school and its chartering entity, making the schools primarily accountable to their chartering entities, we equate the department's role to that of a safety net. As such, we expected to find the department assessing the charter school data it receives and drawing the responsible chartering entities' attention to any concerns so that they could resolve issues regarding the charter schools' fiscal or academic performance. Therefore, we assessed the department's activities against the level of oversight we would expect it to have.

In fact, the department already has positioned itself in somewhat of a safety net role. It appears that the department is exercising its authority to make requests for information in its telephone contact and correspondence with chartering entities and charter

Through its everyday activities the department has already positioned itself in somewhat of a safety net role.

schools. For example, the manager of district organization and charter schools asserts that she and her staff receive 250 to 350 calls related to charter schools per week, of which she estimated 10 percent are complaints. The manager asserted that staff ask callers reporting more serious allegations of wrongdoing at or by the charter schools to put their complaints into writing and stated that the department follows up on credible written complaints. Through its everyday activities, it appears that the department has the necessary authority to act as a safety net. As we established in Chapters 1 and 2 of this report, although the accountability system at the chartering entity level is weak, our work does not demonstrate the need for the department to play a greatly expanded and possibly duplicative role in charter schools oversight, or any function beyond that of a safety net. Moreover, when we asked the department to provide any data it had demonstrating pervasive academic concerns or fiscal malfeasance that may support the need to expand its oversight role beyond that of a safety net, it did not provide any.

THE DEPARTMENT RECEIVES CERTAIN CHARTER SCHOOL DATA BUT DOES NOT SYSTEMATICALLY REVIEW IT TO IDENTIFY POTENTIAL FISCAL AND ACADEMIC PROBLEMS

Although the chartering entity is the primary monitor of a charter school's financial and academic health, we expected to find the department acting as a safety net, reviewing the charter school information it receives and raising questions with the responsible chartering entities regarding charter schools' fiscal or academic practices. Despite receiving two additional positions and funding for fiscal year 2001–02 for its charter schools unit—in part to carry out fiscal and academic monitoring activities—the department does not target its resources toward identifying and addressing potential academic and fiscal deficiencies in charter schools. In addition, as of January 2002, the department is authorized to receive charter schools' annual independent financial audits; the department plans to collect the information but not review it because it has not received staff to do so. By not reviewing the data available to it regarding the State's charter schools, the department is missing an opportunity to help hold charter schools accountable and avert financial instability or academic failure.

The Department Could Use Existing Data to Identify Fiscally or Academically Struggling Charter Schools and Then Question the Responsible Chartering Entities

Although it has sufficient information, the department does not analyze charter schools' funding or academic data or draw the responsible entity's attention to possible problems.

We expected to find the department systematically reviewing charter school funding and academic data to identify fiscal and academic concerns and drawing the responsible chartering entity's attention to these issues. The department's charter schools unit seems like the appropriate vehicle to exercise the department's safety net role. For example, in an August 17, 2000, budget request, the department portrayed its responsibilities as including monitoring the effectiveness of charter schools' academic and assessment programs as well as monitoring their fiscal reporting to ensure fiscal accountability. Subsequently, the department received two of the seven positions it requested, as well as funding for these and other activities. In October 2001, the charter schools unit reorganized its operations, assigning each of its five consultants to a region of between 5 and 20 counties, with the intention of better supporting charter schools and allowing the charter schools unit's staff to develop relationships that could help uncover fiscal or academic issues.

Given the description of its monitoring responsibilities, the resulting increase in staffing, and the reorganization, we expected to find that the charter schools unit was conducting basic analyses of charter schools' funding and academic data as a way of identifying schools that may require assistance. Although the charter schools unit appears to have access to types and amounts of data sufficient for it to function in this capacity, it does not review this data to identify potentially struggling charter schools and raise questions with chartering entities. It appears that communication between the charter schools unit and the chartering entities about charter school operations typically results from individual complaints rather than a systematic data review. For example, the manager of district organization and charter schools, who oversees the charter schools unit, provided copies of correspondence that the department sent to parents of charter school students, chartering entities, and others during fiscal year 2001–02. These letters address issues, such as testing, school curriculum, and facilities concerns, that complainants raised about the operation of 13 separate charter schools. The department typically either referred the complaints back to the chartering entity or requested that the chartering entity provide some additional information. In one letter, the department wrote that it is "more effective in ensuring that charter-authorizing entities provide oversight of particular charter schools when we are able to communicate specific issues

to the district." It is apparent that when notified in the form of a complaint, the department communicates with the chartering entities and questions the charter schools' performance.

Test data by itself is not a sufficient basis for the department to recommend revocation, but simple assessments may reveal charter schools needing their chartering entities' assistance.

We acknowledge that the data available to the charter schools unit, such as periodic ADA reports and the Academic Performance Index (API) derived from the annual Stanford 9 achievement test scores, is not sufficient for the department to make a revocation recommendation. Nevertheless, the charter schools unit could systematically assess the data or devise simple comparisons revealing those charter schools that may need assistance from their chartering entity. This type of assessment is simply a form of internal information to identify a potential concern, similar to an external complaint, leading the department to communicate with a chartering entity about a school's operations, either fiscal or academic. We see little difference in the authority needed to respond to external concerns and addressing internal ones.

In order to gauge a charter school's fiscal stability, for example, the charter schools unit could review ADA forms, which existing charter schools submit three times a year for funding purposes. As the primary component of school funding, ADA drives the amount of money the State apportions to each charter school for its overall operations. Fluctuations in ADA, such as continual drops, might indicate a school needing assistance or intervention to ensure that it considers ways to address its decreasing revenue, such as fund-raising, cost-cutting, or outreach to attract more students. For example, the department could review ADA data two times each year by comparing the reported ADA to the schools' prior year reports. Further, by targeting its review to identify those schools with ADA changes that exceed a certain percentage, the department could focus its review on those schools that exhibit the greatest potential for developing fiscal problems. Having identified the schools most likely to be struggling, the charter schools unit could question the responsible chartering entities about the schools' viability.

According to the director of the school fiscal services division, the department is not responsible for reviewing financial and academic data; rather, such activities are the responsibility of the charter school's chartering entity. Further, the department believes that the State's legal authority to revoke a charter exists only in the most egregious and extreme cases of inappropriate or illegal charter school behavior. Specific to fiscal monitoring, the director said that the department could assess the fiscal health of charter schools, but that the courts have ruled the department

The department believes that monitoring the charter schools is workload that was not envisioned for it.

does not have the authority to collect charter schools' financial information. In addition, she asserts that ADA is not an indication of fiscal health; it is simply a reporting of how many students are attending school. Further, without knowing what other funds the charter schools receive from non-state sources or how those funds are spent, the department has no basis for identifying potential fiscal concerns. Moreover, the director stated that monitoring the charter schools represents a major workload that was not envisioned for the department.

Because of its authority to recommend charter revocation, we do not believe the department can entirely absolve itself from a responsibility to review, identify, and question chartering entities regarding potential fiscal deficiencies at charter schools. Moreover, in two budget requests that the director provided us, the department acknowledges an oversight role: to provide measures of fiscal and programmatic accountability to the State and to examine and resolve charter schools' audit findings. In addition, we are suggesting that the department use data at hand to conduct its monitoring, not collect additional information. As we noted previously, the charter schools report ADA three times each year. Because this information is the basis for apportionment funding, it directly relates to the schools' revenue. The department's lack of complete knowledge regarding all of a charter school's revenue sources is not reason alone to assume that fluctuations in apportionment funding do not significantly affect a school's financial position.

Finally, we do not believe that acting as a safety net entails the workload that the department suggests. As we noted previously, the chartering entity is the first line of defense against a charter school's financial instability. As a safety net, we would expect the department to draw the chartering entities' attention to those schools that raise fiscal concerns, not to intervene with the schools immediately or directly. The charter schools unit received two positions and necessary funding for monitoring and other activities. In addition, according to the department, the unit is organized on a regional basis to allow staff to become more familiar with the charter schools and chartering entities in the regions and any particular regional issues, and to provide a single, consistent point of contact for schools and chartering entities in the region. Thus, it does not appear that by communicating with the chartering entities about fiscal concerns, the charter schools unit would be engaged in activities it was not organized for or communicating with entities it was not already intending to be in contact with.

To ascertain a charter school's academic health, the charter schools unit could develop a tool, such as Table 10, to compare charter schools' annual API results or other test data that may be required for low-enrollment charter schools. As the table shows, of those charter schools statewide that earned an API score for each of the three academic years 1998–99, 1999–2000, and 2000–01, 90 percent either remained the same between 1998–99 and 2000–01 or showed an improvement. However, the data also reveals that API scores decreased 10 percent for charter schools statewide with API scores for the three years. This simple analysis could help the charter schools unit identify schools that may need their chartering entities' assistance in delivering a sound educational program.

TABLE 10

Comparison of API Scores at Charter Schools and Noncharter Schools Between Academic Years 1998–99 and 2000–01

Growth in API Score Between 1998–99 and 2000–01	Sample Chartering Entities' Charter Schools		Charter Schools Statewide		All Noncharter Schools*	
	Number of Schools	Percentage of Total	Number of Schools	Percentage of Total	Number of Schools	Percentage of Total
Greater than 20.0%	10	28.6%	16	16.0%	650	10.0%
10.0 to 20.0%	7	20.0	20	20.0	1,668	25.6
5.0 to 9.9%	4	11.4	27	27.0	1,764	27.1
0.0 to 4.9%	9	25.7	27	27.0	1,916	29.4
(5.0) to (0.1)%	4	11.4	9	9.0	462	7.1
Less than (5.0)%	1	2.9	1	1.0	56	0.8
Totals	**35**	**100.0%**	**100**	**100.0%**	**6,516**	**100.0%**

* This column excludes all charter schools statewide.

The department's policy and evaluation division reviews schools' API scores, including the scores of charter schools, to identify schools eligible to participate in the Immediate Intervention/Underperforming Schools Program (II/USP)—a grant program intended to help schools improve student achievement. However, this program's impact on charter schools is limited because of the low number of charter schools participating. Among the four districts we reviewed, only 1 charter school participated in the II/USP in fiscal year 1999–2000, 4 joined in 2000–01, and 8 joined in 2001–02. The 13 charter schools

participating in the II/USP are not necessarily the same as the 10 charter schools with decreasing API scores as shown in Table 10 because the table reflects the relative growth or decline in a school's score, not its absolute score. Thus, a charter school with an API of 300 for academic year 1998–99 and 360 for 2000–01 would show 20 percent growth as indicated in Table 10. Nevertheless, because the school's API score is low overall, this school may be eligible for the II/USP.

Similar to its position on financial monitoring, the department does not believe it is responsible for reviewing academic data related to charter schools, maintaining that such activities are the responsibility of the local entity that authorized the charter school. The department acknowledged that the Stanford 9 scores and API data contain sufficient information to trigger a conversation with a chartering entity about a charter school's academic health. However, it claims that, because some charter schools are too small to produce a reliable API score and because many parents with students in charter schools choose to excuse their children from the statewide Stanford 9 test from which the API score is derived, many charter schools lack an API score.

The need for the department to act as a safety net is heightened because not all chartering entities have adequate oversight processes in place.

As we discussed in Chapter 1, not all chartering entities have adequate processes in place to receive and review charter schools' academic data, thus heightening the importance of the department's role as a safety net. In addition, as we noted earlier, in an August 2000 budget request, the department acknowledged that it plays a role in charter schools' academic accountability. In a January 2001 presentation to the state board, the department acknowledged that 70 percent of charter schools had API data, which, we believe, represents a sizable population of schools that could be systematically reviewed. This API analysis, combined with systematic tracking and review of charter schools' ADA data—which the department already receives—would go a long way toward fulfilling the department's role as safety net.

We considered the department's concerns regarding the workload that the analyses and follow-up we are recommending would add and found no merit in their concerns at this time. For example, the ADA data for charter schools already exists in electronic form at the department. Running a computer program to identify the 20 or 30 charter schools with the largest increases or decreases in ADA and making inquiries to their chartering entities does not appear excessive considering the volume of inquiries the department already asserts that it makes. Similarly,

Table 10 on page 60 shows that about 10 percent of charter schools may have declining API scores, thus, the total number of charter schools with declining scores would be about 36. Contacting the chartering entities for those charter schools with the greatest declining API scores should thus not be a substantial additional workload.

The Department Does Not Plan to Review Audits Submitted Under Senate Bill 740 to Identify Fiscally Deficient Charter Schools

Senate Bill 740 (Chapter 892, Statutes of 2001) requires each charter school to submit to its chartering entity and the department, by December 15 of each year, an independent financial audit following generally accepted accounting principles. An independent audit report typically contains financial statements and an opinion as to the accuracy with which the statements present a school's financial position—information illustrating the charter schools' accountability for the taxpayer funds they receive. Although not specifically required by the law, we expected the department to plan to review the audits required by Senate Bill 740 in order to raise questions with chartering entities about how they were working with charter schools to resolve the schools' fiscal deficiencies. In fact, our expectations appear in line with the activities the department described itself doing in its October 24, 2001, budget request. However, the department does not plan to systematically review the charter schools' audits for this purpose.

As part of its budget request related to charter schools dated October 24, 2001, the department described a need for new staff so that it could comply with Senate Bill 740. Specifically, the department wrote that Senate Bill 740, among other things, requires it to review and resolve audit exceptions contained in each charter school's audit report. In response to its request, the department received two limited-term positions for fiscal year 2002–03. According to the department's director of the school fiscal services division, this represents less than half of the requested positions and only 28 percent of the funding. Moreover, the director told us that the positions will not be used to review charter schools' audit data, but rather for staffing the Charter Schools Advisory Commission and administering the Charter Schools Facility Grant Program. Thus, according to the former administrator of the department's fiscal policy office, the department plans only to ensure that all charter schools

submit the required audit reports, without further review. As a result, the department will collect but not review the charter schools' audit reports, data which helps reflect the schools' accountability for taxpayer funds.

Although the department may not engage in the level of review it intended when it proposed positions in its budget request, a more limited review of these reports may prove beneficial. The charter schools' audit reports contain valuable information that could assist the department in carrying out its role as a safety net. For example, the department could review these reports for three to four key points, such as:

- Comments related to the school as a going concern.
- Whether the school is reporting a deficit fund balance.
- Findings related to conditions of apportionment.
- Whether the school's structured debt exceeds the life of the charter agreement.

Assessing the audit reports in this manner would give the department high-level financial data that it could use to initiate discussions with the responsible chartering entities to help ensure that charter schools are held accountable.

THE DEPARTMENT CANNOT ASSURE THAT APPORTIONMENTS TO CHARTER SCHOOLS ARE ACCURATE

School districts and county offices of education that sign charter schools' ADA forms lack the necessary procedures to ensure the schools meet all their conditions of apportionment.

Although the department apportions charter school funds on the basis of ADA, its apportionment process is faulty because it relies primarily on the certifying signatures of school districts and county offices of education—both of which lack the necessary procedures to ensure that charter schools comply with apportionment requirements. As a result, the department cannot be assured that charter schools have met the apportionment conditions the Legislature has established and receive only the public funds to which they are legally entitled.

To calculate apportionments, the department requires each school to submit ADA forms on January 15, May 1, and July 15 of each year. These forms provide attendance counts and are certified by officials of the charter school and the appropriate school district and/or county office of education. At each

interval, the department reviews the forms for the necessary certifying signatures and then uses this data to apportion a certain percentage of schools' funding to them.

One reason that the department's apportionment process is faulty relates to the charter schools' ADA data. As we noted in Chapter 2, the schools' chartering entities have not been verifying ADA, and not all charter schools' financial audits included tests of the accuracy of the ADA being reported. We spoke with staff from four county offices of education—Fresno, Los Angeles, Alameda, and San Diego—and were told that, despite being required to sign the ADA forms of charter schools whose chartering entities were located in their county, these offices did not verify the charter schools' ADA in any way. Without assurance that ADA is being reported properly and that charter schools meet other conditions of apportionment, the department risks inaccurately apportioning funds, and the charter schools may be receiving funds they are not legally entitled to.

Without assurance that ADA is being reported properly, the department risks inaccurately apportioning funds or providing funds the charter schools are not legally entitled to.

As we stated earlier, the charter schools must, beginning December 15, 2002, submit to the department a copy of their audited financial statements. Although in a request for additional staff the department stated that it would use the audited financial statements as a means of independently verifying and resolving problems related to charter schools' ADA and instructional minutes, the department currently lacks plans to review the statements for findings related to these apportionment conditions. Thus, the department is not maximizing the data it has to validate conditions of apportionment.

Statute requires a charter school to certify that its pupils participated in statewide testing as a condition of receiving public funds for its operations. By relying on ADA signatures alone, the department is assuming that the school district and/or county offices of education have verified charter schools' compliance with this requirement. Even though the chartering entities are signing the ADA forms, they do not always monitor their charter schools for compliance with testing requirements. Beginning in January 2002, the Legislature expanded charter schools' apportionment conditions to include maintaining written contemporaneous pupil attendance records, offering the same number of instructional minutes as noncharter schools, and employing teachers with valid certificates for classroom-based activities. Although charter schools were previously responsible for meeting these requirements, the Legislature for the first time has linked them to the schools' funding. However,

the chartering entities are not verifying the charter schools' compliance with these legal requirements; thus, it seems unwise for the department to continue a process that does not ensure these funding conditions are met.

STATUTORY GUIDANCE FOR DISPOSING OF A REVOKED CHARTER SCHOOL'S ASSETS AND LIABILITIES IS UNCLEAR

In January 2002, acting on evidence that the school had materially violated its charter, provisions of the law, and was endangering the health and safety of its students, Fresno Unified School District (Fresno) revoked the charter for Gateway Charter Academy (Gateway). After its revocation action, Fresno sought the department's guidance regarding the disposition of Gateway's assets and liabilities. Fresno's concerns, covering a variety of financial issues, highlight a policy gap regarding a chartering entity's authority following a charter revocation—authority that statutes do not clearly address. For example, Fresno asked for clarification of its role in accounting for and recovering Gateway's assets, particularly since Gateway was no longer a public entity. In addition, Fresno lacked an understanding of how to respond to Gateway's creditors, who were seeking repayment of liabilities. Fresno's concerns, covering a spectrum of financial issues, highlight the chartering entities' ambiguous authority following a charter revocation. Without established procedures for recovering public assets and addressing potential liabilities, including a clearly defined division of responsibilities assigned to the department and the chartering entity, the State may be unable to reclaim taxpayer-funded assets. Although the recent enactment of Assembly Bill 1994 requires a school's charter to specify closeout procedures, a policy gap remains regarding revoked or closed charter schools.

Statutes do not clearly address a chartering entity's authority following a charter revocation.

On January 16, 2002, after repeated requests for corrective action, Fresno revoked Gateway's charter. Fresno had evidence that Gateway had committed material violations of the conditions, standards, and procedures set forth in its charter; had failed to meet generally accepted accounting principles and engaged in fiscal mismanagement; and had violated provisions of the law. Furthermore, Fresno determined that several of Gateway's violations constituted a severe and imminent threat to the health and safety of the pupils, specifically Gateway's failure to provide to Fresno, upon request, evidence of fire marshal approval for its facilities that housed schoolchildren

and criminal background clearances for 88 of its employees. Upon revoking the charter, Fresno directed Gateway to cooperate with it in winding up Gateway's affairs, including refraining from making any expenditures; refraining from making any sales, purchases, or transfers of real or personal property; accounting for all assets and liabilities; surrendering all assets and written records; and notifying pupils, their parents, and adjacent school districts of its revocation to ensure the pupils' continuing education. In addition, because the Fresno County Office of Education was unclear as to who may be entitled to Gateway's funds now that it was no longer a public entity, it instructed Fresno not to release property taxes or other funds to Gateway. Subsequently, Gateway's attorney questioned Fresno's authority in making demands regarding the disposition of its assets, urging Fresno to withdraw its demands and take no further action until Fresno's revocation of Gateway's charter could be resolved in a court of law. To date the courts have not ruled on this matter; Gateway filed a complaint, but it was dismissed on June 10, 2002.

Throughout this process, Fresno kept the department abreast of its activities and intentions. In accordance with the department's post-revocation guidance, Fresno sought to account for Gateway's assets and liabilities and to assume possession of assets. Facing uncertainties, which departmental guidelines do not clarify, Fresno turned to the department for advice with primarily financial questions that still remain unanswered. For example, Fresno sought guidance on issues, including the following:

- Handling creditors' claims to a revoked charter school's expected ADA revenue.
- Recovering state assets from a former public entity.
- Repaying creditors, as Fresno believes it is not financially responsible for a revoked charter school's liabilities.
- Planning to protect state assets while the department determines the disposition of a revoked charter school's assets and liabilities.
- Clarifying Fresno's role in pursuing any court action to reclaim assets.

Although the department strongly suggests that an agreement between a chartering entity and a school contain closeout procedures, its guidance is not enforceable as it lacks the necessary authority to develop regulations for charter schools or chartering entities with regard to closeout procedures and responsibilities. The department recommends that closeout procedures include the following: documenting a closure action, notifying the department and the county office of education, informing parents and students of the closure, arranging for transfer and retention of school records, letting the receiving school districts know of the potential for transferring students, and arranging for an independent audit within six months after closure to determine the charter school's net assets or net liabilities. The department also recommends that a chartering entity and a charter school develop a plan to repay any liabilities or disburse the charter school's assets. If the charter school is a nonprofit corporation without any other functions, the department suggests that the corporation be dissolved and its assets distributed according to its bylaws. Fresno attempted to enforce these guidelines, but Gateway's refusal to comply, compounded by a state Department of Justice investigation that resulted in the confiscation of some of Gateway's financial records, prompted Fresno's request for additional assistance.

Assembly Bill 1994 requires charter petitions to include closeout procedures, but a policy gap remains regarding the disposition of assets and liabilities of revoked charter schools.

Because statute does not define a chartering entity's authority and the department's guidance assumes foresight and the full cooperation of a charter school, chartering entities facing different contingencies, as is the case in the Gateway revocation, are left with ambiguous authority. Although the recent enactment of Assembly Bill 1994 requires charter schools to include closeout procedures in their charter petitions, a policy gap remains with regard to the disposition of assets and liabilities of a revoked or closed charter school. Without a statute clearly defining or requiring the department to develop regulations that define the division of responsibilities between the department and the chartering entity to recover public assets and address potential liabilities, the State may be unable to reclaim taxpayer-funded assets in the event of a charter school closure or revocation.

RECENT CHANGES TO CHARTER SCHOOL LAW MAY NOT COMPLETELY ANSWER EXISTING QUESTIONS ABOUT ACCOUNTABILITY

During its 2001–02 session, the Legislature approved two charter school bills that address some of the issues we raise in this report. Senate Bill 1709, signed into law on August 12, 2002, expands the number of entities to which charter schools—beginning in 2003—must submit by December 15 of each year, copies of their annual independent financial audit reports for the preceding fiscal year. To the list of current recipients—chartering entities and the department—Senate Bill 1709 adds the State Controller and the county superintendent of schools (county superintendent) for the county in which the school is located. A charter school whose audit is encompassed in its chartering entity's annual audit are not required to submit separate audits. As we discussed earlier, the department's recent inclusion as a recipient of charter schools' audit reports may not necessarily lead to greater accountability or awareness of charter schools' fiscal health, unless the department reviews the audit reports.

The level of accountability Assembly Bill 1994 provides for will not be achieved without an increased commitment by chartering entities and the department to monitor charter schools.

Assembly Bill 1994, signed on September 29, 2002, provides both technical and substantive changes to the charter schools law. This legislation includes many provisions, some of which address issues we raise in our report. First, this bill requires charter schools, through the county superintendent, to submit an annual statement of all receipts and expenditures (annual statement) from the preceding fiscal year. The annual statements must follow a format prescribed by the department. Furthermore, the bill requires that each county superintendent verify the mathematical accuracy of the charter schools' annual statements before submitting them to the department.

These annual statements provide both chartering entities and the department with additional financial data to assess the fiscal health of charter schools. However, as we showed in Chapter 2, the chartering entities are not adequately reviewing the financial records and audit reports they already receive. In addition, as we demonstrate in this chapter, the department does not use currently available funding data to identify potentially struggling charter schools in order to raise questions with their chartering entities. As a result, without an increased commitment by chartering entities and the department to monitor charter schools, the level of accountability will not reach its full potential as provided for in the statute.

Second, to increase the chartering entities' monitoring abilities, Assembly Bill 1994 limits the geographic boundaries for most charter schools to the county boundaries within which their chartering entity is located. For the chartering entities we reviewed, this new requirement will not alleviate the weaknesses in their monitoring, as all of their schools were located within their boundaries.

The third change in Assembly Bill 1994 that affects issues in this report is that it grants the county superintendent general authority to monitor the operations of charter schools within that county if prompted by a written complaint. The charter schools must:

- Promptly respond to all reasonable inquiries by the county superintendent with jurisdiction over the school's chartering entity, including, but not limited to, the school's financial records.

- Provide the county superintendent with the location of each school site before commencing operations.

These monitoring functions create an additional level of oversight that, although not directing the county superintendent to periodically monitor charter schools within their county boundaries, gives the county superintendent authority to investigate complaints, which may result in greater school accountability.

Finally, as we noted previously, under Assembly Bill 1994 each charter school's petition must describe procedures for closing the charter school, including a final school audit to determine the disposition of the school's assets and liabilities and a plan for the maintenance and transfer of pupil records. This provision turns some of the department's suggested procedures for charter school closures that we discuss in this chapter into statute. However, it does not delineate the division of authority between the department and the chartering entity with regard to the implementation of closure procedures.

RECOMMENDATIONS

To fulfill its role as a safety net, the department should review available financial and academic information and identify charter schools that are struggling. The department should then raise questions with the schools' chartering entities as a way of ensuring that the schools' problems do not go uncorrected.

The department should take the necessary steps to fully implement Senate Bill 740, including reviewing audit exceptions contained in each charter school's audit report and taking the necessary and appropriate steps to resolve them.

So that it does not improperly fund charter schools, the department should work with the appropriate organizations to ensure that charter schools' reported ADA is verified through an independent audit or other appropriate means and that charter schools have met other statutory conditions of apportionment.

To ensure that a charter school's assets and liabilities are disposed of properly when it closes or its charter is revoked, the Legislature may wish to consider establishing a method for disposing of the school's assets and liabilities and requiring the department to adopt regulations regarding this process.

We conducted this review under the authority vested in the California State Auditor by Section 8543 et seq. of the California Government Code and according to generally accepted government auditing standards. We limited our review to those areas specified in the audit scope section of this report.

Respectfully submitted,

Elaine M. Howle

ELAINE M. HOWLE
State Auditor

Date: November 7, 2002

Staff: Nancy C. Woodward, CPA, Audit Principal
Sharon L. Smagala, CPA
Jeana Kenyon, CPA, CMA, CFM
Matt Taylor
Almis Udrys

APPENDIX A

Characteristics of California's Charter Schools

The table in this appendix provides an inventory of the State's charter schools as of March 2002.[6] The Legislature passed the Charter Schools Act of 1992, and by 1993 the State Board of Education (state board) was recognizing charter schools, some of which still operate today. The first two columns list the county in which each school is located as well as the chartering entity that approved the charter petition. The table shows the date that the state board numbered each charter school. Once a school is numbered, it is eligible to receive public funding. Charter schools are free to specify in their petitions the grade configuration their school will serve. As a result, schools may serve just a few grades, such as Oakland Charter Academy, which reported it serves grades 6 through 8, or they may serve all grades, kindergarten through grade 12, such as Crenshaw/ Dorsey: Mid-City Charter Magnet School reported. As shown in the table, charter schools also enroll a varied number of students, from 5 to 3,637 students. In addition, they can be developed either through a conversion or as a start-up school. A conversion charter school is one that existed previously as a noncharter public school, but the requisite number of teachers and student families has agreed to develop and implement a charter school at that campus. A start-up charter school is one that came into existence because of the approval of a charter petition, with no prior history as a school. As of March 2002, there were 105 reported conversion charter schools and 253 reported start-up charter schools in the State; 2 schools declined to report this information. Finally, charter schools may offer different locations for instruction. Site-based instruction uses classroom-centered instructional methods, and independent study employs nonclassroom-based methods. In total, almost 66 percent of the State's charter schools reported offering a site-based program.

[6] The primary source of data for this inventory is the Department of Education; the secondary source is the California Network of Educational Charters. However, charter schools voluntarily report this information, thus it is sometimes incomplete and may contain errors.

TABLE A.1

Characteristics of California's Charter Schools

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
Alameda	Alameda City Unified	Arthur Anderson Community Learning Center	2/8/2001	7-12	†	Start-up	†
	Alameda City Unified	Bay Area School of Enterprise	7/11/2001	9-12*	40	Start-up	Site Based
	Fremont Unified	Circle of Independent Learning	7/21/1998	K-12	156	Conversion	Independent Study
	Oakland Unified	American Indian Public Charter School	2/9/1996	6-9	34	Start-up	Site Based
	Oakland Unified	Aspire Public Schools - Oakland Campus	7/14/1999	K-8	365	Start-up	Site Based
	Oakland Unified	Dolores Huerta Learning Academy	7/14/1999	K-6	187	Start-up	Site Based
	Oakland Unified	East Bay Conservation Corps Charter School	12/8/1995	K-12	100*	Start-up	Both Site Based and Independent Study
	Oakland Unified	Ernestine C. Reems Academy of Technology and Art	7/14/1999	K-6	15	Start-up	Site Based
	Oakland Unified	North Oakland Community Charter School	6/7/2000	K-1	17	Start-up	Site Based
	Oakland Unified	Oakland Charter Academy	6/11/1993	6-8	165	Start-up	Site Based
	Oakland Unified	University Preparatory Charter Academy	6/7/2001*	9-12	120	Start-up	†
	Oakland Unified	West Oakland Community School	6/12/1998	6-8	45	Start-up	Site Based
	State Board of Education	Oakland Military Institute, College Preparatory Academy	12/6/2000	7-12*	190	Start-up	Site Based
	Sunol Glen Unified	Bay Area School for Independent Study (B.A.S.I.S.)	6/6/2001	K	†	†	Independent Study
Butte	Butte County Office of Education	Blue Oak Charter School	9/5/2001	K-8*	20*	Start-up	Site Based
	Butte County Office of Education	Learning Community Charter School	2/9/1996	K-12	518	Conversion	Both Site Based and Independent Study
	Chico Unified	Chico Country Day School	6/14/1996	K-6	244	Start-up	Site Based*
	Oroville Union High	Challenge Charter High School	7/10/1997	9-12	191	Start-up	Both Site Based and Independent Study
	Paradise Unified	Children's Community Charter School	11/8/1995	K-3	128	Start-up	Site Based
	Paradise Unified	HomeTech Charter School	9/9/1994	3-8	58	Start-up	Independent Study
	Paradise Unified	Paradise Charter Middle School	3/10/1995	6-8	97	Start-up	Site Based
	Paradise Unified	Paradise Charter Network	9/11/1998	K-12	80	Conversion	Independent Study
Contra Costa	Antioch Unified	Learner-Centered School	6/12/1998	K-8	116	Start-up	Site Based
	Knightsen Elementary	Home SmartKids of Knightsen	9/6/2000	K-8	205	Start-up	Independent Study
	Mt. Diablo Unified	Eagle Peak Montessori School	6/7/2000	1-5*	60*	Start-up	Site Based
	West Contra Costa Unified	Alternative Education Learning Center Charter School	3/7/2001	9-12*	100	Start-up	Site Based

Note: The primary source of data for this inventory is the Department of Education; the secondary source is the California Network of Educational Charters. However, charter schools voluntarily report this information, thus it is sometimes incomplete and may contain errors.

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	West Contra Costa Unified	Manzanita Charter Middle School	9/7/2000	6-8	73*	Start-up	Site Based
Del Norte	Del Norte County Office of Education	Castle Rock School	3/7/2001	K-12	360*	Start-up	Independent Study*
El Dorado	El Dorado County Office of Education	Charter Community School	2/11/1993	K-12	426	Conversion	Both Site Based and Independent Study
	El Dorado County Office of Education	Rite of Passage School	6/30/1994	K-12	94	Conversion	Site Based
	Pioneer Union Elementary	Learning With A Purpose	5/11/2000	7-12	47	Start-up	Site Based
Fresno	Alvina Elementary	Alvina Elementary School	9/7/2000*	K-8	207*	Conversion	Independent Study
	Fresno County Office of Education	Edison-Bethune Charter Academy	6/11/1999	K-6	675	Conversion	Site Based
	Fresno Unified	Carter G. Woodson Public Charter School	5/10/2001	7-12	200	Start-up	Site Based
	Fresno Unified	Center for Advanced Research and Technology (CART)	1/13/2000	11-12	1,500*	Start-up	Site Based
	Fresno Unified	Cornerstone Academy	7/13/2000	6-8	41	Start-up	Both Site Based and Independent Study
	Fresno Unified	Fresno Prep Academy	6/11/1999	9-12	55	Start-up	Both Site Based and Independent Study
	Fresno Unified	New Millennium Institute of Education Charter School	9/11/1998	7-12	148	Start-up	Both Site Based and Independent Study
	Fresno Unified	Renaissance Charter School	7/13/2000	7-12	60	Start-up	Site Based
	Fresno Unified	School of Unlimited Learning	7/21/1998	7-12	132	Start-up	Both Site Based and Independent Study
	Fresno Unified	Sunset Charter School	6/11/1999	K-6	312	Conversion	Site Based
	Kingsburg Joint Union Elementary	Kingsburg Joint Union Elementary§	†	K-8	147	Conversion	Site Based
	Kingsburg Joint Union Elementary	Kingsburg Joint Union Elementary§	†	K-6	†	Conversion	Site Based
	Kingsburg Joint Union Elementary	Kingsburg Joint Union Elementary§	†	K-1	385	Conversion	Site Based
	Kingsburg Joint Union Elementary	Kingsburg Joint Union Elementary§	†	7-8	409	Conversion	Site Based
	Kingsburg Joint Union Elementary	Kingsburg Joint Union Elementary§	†	5-6	458	Conversion	Site Based
	Kingsburg Joint Union Elementary	Kingsburg Joint Union Elementary§	†	2-4	632	Conversion	Site Based
	Sanger Unified	Quail Lake Environmental Charter	9/9/1999	K-8	207	Start-up	Site Based
	Sanger Unified	Sanger Academy Charter School	2/9/2000	3-8	291	Start-up	Site Based
	Sanger Unified	Sanger Hallmark Charter School	9/9/1999	K-12	287	Start-up	Both Site Based and Independent Study

continued on next page

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	Sierra Unified	University High School, CSU Fresno	6/11/1999	9	105	Start-up	Site Based
	West Fresno Elementary	One Step Up Charter Academy	5/10/2001	K-12	268	Start-up	Both Site Based and Independent Study
	West Fresno Elementary	W.E.B. DuBois Charter School	11/9/1999	K-12	326	Start-up	Both Site Based and Independent Study
	West Fresno Elementary	West Fresno Performing Arts Academy	5/10/2001	K-12	200	Start-up	Site Based
	West Park Elementary	West Park Charter Academy	12/10/1993	K-12	433	Conversion	Both Site Based and Independent Study
Humboldt	Big Lagoon Union Elementary	Big Lagoon Charter School	9/6/2000	K-12	35	Start-up	Site Based*
	Freshwater Elementary	Freshwater Charter Middle School	2/10/1999	7-8	34	Start-up	Site Based
	Loleta Union Elementary	Pacific View Charter School	12/8/1999	K-12	156	Start-up	Independent Study
	Mattole Unified	Mattole Valley Charter School	9/11/1998	K-12	520	Start-up	Independent Study*
Kern	El Tejon Unified	Mountain Community Charter School	10/11/2000	4-11	50*	Start-up	Both Site Based and Independent Study
	Kern County Office of Education	Community Learning Center	1/13/1995	K-12	399	Start-up	Both Site Based and Independent Study
	Kern County Office of Education	Valley Oak Charter School	9/7/2000	K-12	64	Start-up	Independent Study
	Kern Union High	Kern Workforce 2000 Academy Charter	11/9/1994	9-12	466	Start-up	Site Based
	State Board of Education	Ridgecrest Charter School	12/6/2000	K-12*	300	Start-up	Site Based
Kings	Delta View Joint Union Elementary	Delta View District-wide Charter	6/10/1999	K-8	96	Conversion	Site Based
	Island Union Elementary	Island Union Elementary	10/12/2000	K-8	225	Conversion	Site Based
	Kings River-Hardwick Union Elementary	Kings River-Hardwick School District	5/10/2001	†	†	Conversion	Site Based
	Kit Carson Union Elementary	Mid Valley Alternative Charter School	7/14/1995	K-8	31	Start-up	Both Site Based and Independent Study
	Pioneer Union Elementary	Pioneer Elementary§	11/10/1993*	K-5	734	Conversion	Site Based
	Pioneer Union Elementary	Pioneer Middle§	11/10/1993*	6-8	356	Conversion	Site Based
Lassen	Fort Sage Unified	Long Valley Charter School	7/13/2000	K-8	178	Conversion	Both Site Based and Independent Study
	Westwood Unified	Westwood Charter School	7/11/2001	7-12*	400	Start-up	Site Based
Los Angeles	Antelope Valley Union High	Desert Sands Charter High School	9/5/2001	8-12*	197	Start-up	Independent Study
	Antelope Valley Union High	Henry Hearns Charter School	7/13/2000	K-12	163	Start-up	Site Based
	Baldwin Park Unified	Opportunities for Learning-Baldwin Park	7/11/2001	K-12	132*	Start-up	Both Site Based and Independent Study
	Burbank Unified	Options for Youth - Burbank	9/11/1997	K-12	873	Start-up	Independent Study

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	Gorman Elementary	Gorman Charter Middle School	7/21/1998	6-8	57	Conversion	Both Site Based and Independent Study
	Gorman Elementary	Gorman Learning Center	2/9/2000	K-12	1,203	Start-up	Independent Study
	Hacienda La Puente Unified	Opportunities for Learning - Hacienda La Puente	5/12/1999	K-12	1,131	Start-up	Both Site Based and Independent Study
	Lawndale Elementary	Environmental Charter High School	2/8/2001	9-12	110	Start-up	Site Based
	Lennox Elementary	Animo Leadership High School	3/13/2000	9-12	140	Start-up	Site Based
	Long Beach Unified	Constellation Community Charter Middle School	7/8/1994	6-8	189	Start-up	Site Based
	Long Beach Unified	Emerson Parkside Academy Charter School	6/7/2001	K-5	714	Conversion	Site Based
	Long Beach Unified	New City School	4/12/2000	K-8	80	Start-up	Site Based
	Long Beach Unified	Pacific Learning Center	7/13/2000	9-12	54	Start-up	Both Site Based and Independent Study
	Long Beach Unified	Premier Education Charter High School	7/13/2000	9-12	325	Start-up	Both Site Based and Independent Study
	Long Beach Unified	Promise Academy Charter School	7/11/2001	†	120	Start-up	Both Site Based and Independent Study
	Los Angeles County Office of Education	Odyssey Charter School	7/14/1999	K-8	227	Start-up	Site Based
	Los Angeles County Office of Education	Soledad Enrichment Action Charter School	5/13/1997	9-12	743	Start-up	Site Based*
	Los Angeles Unified	Accelerated School	1/14/1994	K-8	263	Start-up	Site Based*
	Los Angeles Unified	California Academy for Liberal Studies	9/7/2000	6-8	64	Start-up	Site Based
	Los Angeles Unified	Camino Nuevo Charter Academy	4/12/2000	K-5	346	Start-up	Site Based
	Los Angeles Unified	Camino Nuevo Charter Middle School	7/11/2001	†	675	Start-up	Site Based
	Los Angeles Unified	CHIME Charter School	10/10/2001	K-4*	82*	Start-up	Site Based
	Los Angeles Unified	Community Charter Middle School	6/11/1999	6	128	Start-up	Site Based
	Los Angeles Unified	Crenshaw Learn Charter High School	7/14/1999	9-12	2,724	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Audubon Charter Middle School & Magnet Center	7/14/1999	6-8	2,109	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Baldwin Hills Charter Elementary	7/14/1999	K-5	706	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Coliseum Street Elementary School	7/14/1999	K-5	401	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Fifty-fourth Street Charter Elementary	7/14/1999	K-5	519	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Fifty-ninth Street Elementary	7/14/1999	K-5	487	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Forty-second Street Charter School	7/14/1999	K-5	717	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Hyde Park Charter School	7/14/1999	K-6	1,049	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Marlton Charter School	7/14/1999	K-12	352	Conversion	Site Based

continued on next page

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	Los Angeles Unified	Crenshaw/Dorsey: Mid-City Charter Magnet School	7/14/1999	K-12	344	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Seventy-fourth Street LEARN Charter School	7/14/1999	K-5	928	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Sixth Avenue Elementary	7/14/1999	K-5	1,085	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Tom Bradley Environmental Science	7/14/1999	K-5	726	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: View Park Continuation High School	7/14/1999	10-12	77	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Virginia Road Charter Elementary School	7/14/1999	K-5	591	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Western Avenue Charter School	7/14/1999	K-5	955	Conversion	Site Based
	Los Angeles Unified	Crenshaw/Dorsey: Whitney Young Continuation High School	7/14/1999	9-12	51	Conversion	Site Based
	Los Angeles Unified	Fenton Avenue Charter School	9/10/1993	K-6	1,259	Conversion	Site Based
	Los Angeles Unified	Montague Charter Academy	9/13/1996	K-6	1,115	Conversion	Site Based
	Los Angeles Unified	Multicultural Learning Center	6/7/2001	K-5	200	Start-up	Site Based
	Los Angeles Unified	Open Charter Magnet School	5/14/1993	K-5	364	Conversion	Site Based
	Los Angeles Unified	Palisades Charter High School	7/14/1999	9-12	2,517	Conversion	Site Based
	Los Angeles Unified	Palisades: Canyon Charter Elementary	7/14/1999	K-5	334	Conversion	Site Based
	Los Angeles Unified	Palisades: Kenter Canyon Charter School	7/14/1999	K-5	399	Conversion	Site Based
	Los Angeles Unified	Palisades: Marquez Charter School	7/14/1999	K-5	711	Conversion	Site Based
	Los Angeles Unified	Palisades: Palisades Charter Elementary	7/14/1999	K-5	418	Conversion	Site Based
	Los Angeles Unified	Palisades: Temescal Canyon Continuation High School	7/14/1999	9-12	79	Conversion	Site Based
	Los Angeles Unified	Palisades: Topanga Elementary	7/14/1999	K-5	294	Conversion	Site Based
	Los Angeles Unified	Paul Revere Charter/LEARN Middle School	7/14/1999	6-8	1,834	Conversion	Site Based
	Los Angeles Unified	Valley Community Charter School	7/13/2000	K-6	175	Start-up	Site Based
	Los Angeles Unified	Vaughn Next Century Learning Center	6/11/1993	K-6	1,072	Conversion	Site Based
	Los Angeles Unified	View Park Preparatory Accelerated Charter School	5/12/1999	K-5	287	Start-up	Site Based
	Los Angeles Unified	Watts Learning Center Charter School	9/11/1997	K-1	199	Start-up	Site Based
	Los Angeles Unified	Westwood Charter School	9/10/1993	K-5	734	Conversion	Site Based
	San Gabriel Unified	Options for Youth San Gabriel Inc.	12/12/1996	K-12	444	Start-up	Independent Study
	Santa Monica-Malibu Unified	Edison Language Academy	9/11/1998	K-5	436	Conversion	Site Based
	West Covina Unified	San Jose-Edison Academy	4/9/1998	K-12	964	Start-up	Site Based

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	William S. Hart Union High	Opportunities for Learning - Santa Clarita	7/14/1999	7-12	535	Start-up	Both Site Based and Independent Study
Madera	Bass Lake Joint Elementary	Mountain Home School Charter	9/9/1994	K-8	138	Conversion	Independent Study
Marin	Marin County Office of Education	Phoenix Academy	6/9/1995	9-12	22	Conversion	Site Based
	Novato Unified	Novato Charter School	7/14/1995	K-8	221	Start-up	Site Based
	Sausalito Elementary	Willow Creek Academy	1/10/2001	K-4*	40*	Start-up	Site Based
Mendocino	Anderson Valley Unified	Anderson Valley Charter Network	7/14/1999	9-12*	5*	Start-up	Independent Study
	Arena Union Elementary	Pacific Community Charter School	5/12/1999	K-8	73	Start-up	Both Site Based and Independent Study
	Round Valley Unified	Eel River Charter School	9/10/1993	K-8	47	Start-up	Site Based
	Ukiah Unified	Black Oak Charter School	6/11/1999	K-12	40	Start-up	Site Based
	Ukiah Unified	La Vida Independent Study Charter School	4/12/2001	1-12	46	Start-up	Independent Study
	Ukiah Unified	Redwood Academy of Ukiah	11/9/1999	7-12	127	Start-up	Both Site Based and Independent Study
	Ukiah Unified	Tree of Life Charter School	12/8/1999	1-8	40	Start-up	Site Based
	Willits Unified	Willits Charter School	10/9/1998	6-12	73	Start-up	Both Site Based and Independent Study
Merced	Merced City Elementary	John C. Fremont Charter School	9/8/1995	K-5	615	Conversion	Site Based
Modoc	Modoc Joint Unified	Modoc Charter School	1/13/2000	K-12	264	Start-up	Independent Study
Mono	Eastern Sierra Unified	Sierra Charter School	3/12/1998	K-12	255	Start-up	Both Site Based and Independent Study
	Mono County Office of Education	Summit Charter School	6/7/2000	K-12	5	Start-up	Independent Study
Monterey	Monterey County Office of Education	Monterey County Home Charter School	9/6/2000	K-12	279	Conversion	Independent Study
	Monterey Peninsula Unified	Cypress Grove Charter for Arts & Sciences	5/10/2001	9-12	66	Start-up	Both Site Based and Independent Study
	North Monterey County Unified	Liberty Family Academy	9/11/1998	K-12	504	Start-up	Both Site Based and Independent Study
Napa	Napa Valley Unified	Napa Valley Language Academy	10/9/1998	K-6	660	Conversion	Site Based
	Napa Valley Unified	Phillips-Edison Partnership School	3/12/1998	K-6	567	Conversion	Site Based
	Napa Valley Unified	River School Charter	9/8/1995	6-8	160	Start-up	Site Based
	Napa Valley Unified	Shearer Charter School	6/11/1999	K-6	741	Conversion	Site Based
Nevada	Grass Valley Elementary	Grass Valley Charter School	7/9/1993	K-8	173	Start-up	Both Site Based and Independent Study
	Nevada City Elementary	Nevada City Charter School	10/14/1994	K-8	48	Conversion	Both Site Based and Independent Study
	Nevada County Office of Education	John Muir Charter School	7/14/1999	9-12	632	Start-up	Site Based
	Nevada County Office of Education	Nevada County Academy of Learning High School	12/8/1995	K-12	†	Start-up	Site Based

continued on next page

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	Ready Springs Union Elementary	Vantage Point Charter	7/9/1993	K-12	92	Start-up	Both Site Based and Independent Study
	Twin Ridges Elementary	Bitney Springs Charter High School	3/11/1999	9-10	86	Start-up	Site Based
	Twin Ridges Elementary	Forest Charter School	2/8/2001	K-5*	8*	Start-up	Site Based
	Twin Ridges Elementary	Golden Valley Charter	4/7/1999	K-5	90	Start-up	Site Based
	Twin Ridges Elementary	Maria Montessori Charter Academy	4/12/2000	K-4	96	Start-up	Site Based
	Twin Ridges Elementary	Napa Valley Charter School	7/14/1999	K-2	115	Start-up	Site Based*
	Twin Ridges Elementary	Nevada City School of the Arts	7/12/1996	K-8	217	Start-up	Site Based
	Twin Ridges Elementary	Oak Tree Community School	5/11/2000	K-8	69	Conversion	Site Based
	Twin Ridges Elementary	River Oak Public Charter School	5/12/1999	K-4	160	Start-up	Site Based
	Twin Ridges Elementary	Twin Ridges Home Study Charter School	9/10/1993	K-8	55	Start-up	Independent Study
	Twin Ridges Elementary	Village School (The)	7/14/1999	K-3	39	Start-up	Site Based
	Twin Ridges Elementary	Woodlands Charter School (The)	7/14/1999	K-6	80	Start-up	Site Based
	Twin Ridges Elementary	Yuba River Charter School	6/9/1995	K-8	239	Start-up	Site Based
	Union Hill Elementary	Union Hill School District Charter School	4/14/1995	K-8	164	Start-up	Both Site Based and Independent Study
Orange	Capistrano Unified	Journey School	4/12/2000	K-3	90	Start-up	Site Based
	Orange County Office of Education	Orange County Charter School	6/11/1998	K-12	1,567	Conversion	†
	Orange Unified	California Charter Academy of Orange County	4/12/2000	K-12	31	Start-up	Both Site Based and Independent Study
	Orange Unified	Santiago Middle School	9/9/1994	7-8	1,070	Conversion	Site Based
	Saddleback Valley Unified	Gates Charter Language School	9/11/1998	K-6	792	Conversion	Site Based
	Santa Ana Unified	El Sol Santa Ana Science and Arts Academy	3/7/2001	K-8	120	Start-up	Site Based
	Santa Ana Unified	Orange County High School of the Arts	4/12/2000	7-12	806	Start-up	Site Based
Placer	Rocklin Unified	Rocklin Academy	6/7/2000	K-8	103	Start-up	Site Based
	Tahoe-Truckee Joint Unified	Prosser Creek Charter School	6/12/1998	K-12	356	Start-up	Both Site Based and Independent Study
	Western Placer Unified	Carlin C. Coppin Elementary	3/11/1993	K-5	450	Conversion	Site Based
	Western Placer Unified	Creekside Oaks Charter Elementary School	2/11/1993	K-5	498	Conversion	Site Based
	Western Placer Unified	Horizon Instructional Systems	6/11/1993	K-12	2,947	Start-up	Site Based
	Western Placer Unified	Lincoln High School	2/11/1993	9-12	855	Conversion	Site Based
	Western Placer Unified	Sheridan Charter School	5/14/1993	K-8	186	Conversion	Both Site Based and Independent Study
Plumas	Plumas Unified	Plumas Charter School	6/12/1998	K-12	138	Start-up	Independent Study
Riverside	Desert Sands Unified	Washington Charter School	6/13/1994	K-5	705	Conversion	Site Based

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	Moreno Valley Unified	Moreno Valley Community Learning Center	7/8/1994	7-12	58	Start-up	Site Based
	Nuview Union Elementary	Nuview Bridge Academy	3/7/2001	9-12	50*	Start-up	Site Based
	Perris Union High	Choice 2000 On-Line School	7/8/1994	7-12	189	Start-up	Site Based
	Riverside County Office of Education	Indio Charter School	9/9/1999	K-12	263	Start-up	Site Based
	San Jacinto Unified	San Jacinto Valley Academy	7/10/1997	K-8	168	Start-up	Site Based
	Temecula Valley Unified	Language Acquisition Magnet Program (LAMP)	9/11/1998	K-1	135*	Start-up	Site Based
	Temecula Valley Unified	Temecula Learning Center	9/9/1994	K-8	138	Start-up	Site Based
	Temecula Valley Unified	Temecula Preparatory School	2/9/2000	K-12	189	Start-up	Site Based
Sacramento	Center Joint Unified	Antelope View Home Charter School	10/11/2000	K-12	44	Start-up	Both Site Based and Independent Study
	Del Paso Heights Elementary	Sharwin Charter School Academy	1/10/2002	†	†	†	†
	Elk Grove Unified	Elk Grove Charter School	9/10/1993	K-2	137	Start-up	Both Site Based and Independent Study
	Natomas Unified	Natomas Charter School	7/9/1993	K-10	944	Start-up	Both Site Based and Independent Study
	Rio Linda Union Elementary	Westside Charter School	12/9/1994	7-8	204	Start-up	Site Based
	Sacramento City Unified	Bowling Green Charter	6/11/1993	K-6	973	Conversion	Site Based
	San Juan Unified	Choices Charter School	12/8/1999	K-12	57	Start-up	Both Site Based and Independent Study
	San Juan Unified	Deterding Charter Elementary School	2/10/1994	K-6	549	Conversion	Site Based
	San Juan Unified	Options for Youth - San Juan	7/14/1999	K-12	40	Start-up	Independent Study
	San Juan Unified	Visions in Education Charter School	7/14/1999	K-12	2,860	Start-up	Site Based
San Bernardino	Apple Valley Unified	Academy for Academic Excellence	7/10/1997	K-12	533	Start-up	Both Site Based and Independent Study
	Oro Grande Elementary	California Charter Academy of Oro Grande	6/7/2001	K-12	634	Start-up	Independent Study
	Redlands Unified	Grove High School	3/11/1999	9-12	65	Start-up	Site Based*
	San Bernardino City Unified	Provisional Accelerated Learning (PAL) Academy	9/7/2000	9-12	325	Start-up	Site Based
	Snowline Joint Unified	California Charter Academy	5/10/2001	K-12	3,227	Start-up	Both Site Based and Independent Study
	Snowline Joint Unified	California Charter Academy	9/9/1999	K-12	1,261	Start-up	Site Based
	Snowline Joint Unified	Eagle Summit Academy	7/8/1994	7-12	192	Start-up	Site Based
	Upland Unified	Options for Youth - Upland	2/9/1996	K-12	460	Start-up	Independent Study
	Victor Elementary	Charter 101 Elementary School	12/8/1995	K-6	173	Start-up	Both Site Based and Independent Study
	Victor Elementary	Mountain View Montessori Charter School	4/12/2000	K-6	42	Start-up	Site Based
	Victor Elementary	Sixth Street Prep School	6/7/2000	K-6	164	Conversion	Site Based
	Victor Valley Union High	Excelsior Education Center	1/13/1995	7-12	1,090	Start-up	Independent Study

continued on next page

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	Victor Valley Union High	Options for Youth - Victorville Charter School	6/11/1993	7-12	683	Start-up	Independent Study
San Diego	Bonsall Union Elementary	Vivian Banks Charter School	1/12/1996	K-5	143	Start-up	Site Based
	Chula Vista Elementary	Chula Vista Learning Community Charter	2/10/1998	K-6	349	Start-up	Site Based
	Chula Vista Elementary	Clear View Charter School	10/14/1994	K-6	587	Conversion	Site Based
	Chula Vista Elementary	Discovery Charter School	6/13/1994	K-6	909	Conversion	Site Based
	Chula Vista Elementary	Feaster-Edison Charter School	3/18/1997	K-6	1,120	Conversion	Site Based
	Chula Vista Elementary	Mueller Elementary Charter School	9/9/1994	K-6	863	Conversion	Site Based
	Dehesa Elementary	Dehesa Charter School	10/10/2001	†	†	Start-up	†
	Escondido Union Elementary	Classical Academy	6/11/1999	K-8	350	Start-up	Independent Study
	Escondido Union High	Escondido Charter High School	2/9/1996	9-12	867	Start-up	Both Site Based and Independent Study
	Grossmont Union High	Helix High School	7/21/1998	9-12	2,406	Conversion	Site Based
	Jamul-Dulzura Union Elementary	Greater San Diego Academy	9/9/1999	K-8	267	Start-up	Independent Study
	Julian Union Elementary	Julian Charter School	11/9/1999	K-12	732	Start-up	Independent Study
	Julian Union High	Eagles Peak Charter School	2/9/2000	K-12	260	Start-up	Both Site Based and Independent Study
	Lakeside Union Elementary	River Valley High Charter School	3/18/1997	7-12	143	Start-up	Both Site Based and Independent Study
	Oceanside Unified	Pacific View Charter School	7/14/1999	K-12	176	Start-up	Both Site Based and Independent Study
	San Diego City Unified	Audeo Charter School	7/11/2001	6-12	†	Start-up	Independent Study
	San Diego City Unified	Charter School of San Diego	9/10/1993	7-12	1,305	Start-up	Independent Study
	San Diego City Unified	Cortez Hill Academy Charter School	10/11/2000	7-12	94	Start-up	Site Based
	San Diego City Unified	Darnall E-Charter School	9/10/1993	K-5	528	Conversion	Site Based
	San Diego City Unified	Explorer Elementary Charter School	12/8/1999	K-6	128	Start-up	Site Based
	San Diego City Unified	Harriet Tubman Village Charter School	1/14/1994	K-6	297	Conversion	Site Based
	San Diego City Unified	High Tech High Charter School	11/9/1999	9-12	198	Start-up	Site Based
	San Diego City Unified	Holly Drive Leadership Academy	10/8/1999	K-6	254	Start-up	Site Based*
	San Diego City Unified	King/Chavez Academy of Excellence Charter School	11/7/2001	†	†	Start-up	†
	San Diego City Unified	Kwachiiyao/Ixcalli	1/7/1998	K-7	221	Start-up	Site Based
	San Diego City Unified	McGill School of Success	11/8/1995	K	75	Start-up	Site Based
	San Diego City Unified	Memorial Academy Charter School	11/8/1995	7-9	1,618	Conversion	Site Based
	San Diego City Unified	Museum School	4/14/1995	3-4	61	Start-up	Site Based
	San Diego City Unified	Nubia Leadership Academy	9/11/1997	K-6*	356	Start-up	Site Based

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	San Diego City Unified	O'Farrell Community School: Center for Advanced Academic Studies	1/10/1994	6-8	1,513	Conversion	Site Based
	San Diego City Unified	Preuss School UCSD	11/13/1998	6-9	423	Start-up	Site Based
	San Diego City Unified	Sojourner Truth Learning Academy	5/12/1999	K-8	255	Start-up	Site Based*
	San Diego County Office of Education	Literacy First Charter School	7/11/2001	K-3	120	Start-up	Site Based
	South Bay Union Elementary	South Bay Charter School	12/11/1998	K-6	3,637*	Conversion	Both Site Based and Independent Study
	Sweetwater Union High	MAAC Community Charter School	6/7/2000	K-12	50*	Start-up	Both Site Based and Independent Study
	Valley Center-Pauma Unified	All Tribes American Indian Charter School	6/7/2001	6-8	60	Start-up	Site Based
	Vista Unified	Guajome Park Academy	5/13/1994	6-12	1,839	Start-up	Both Site Based and Independent Study
	Vista Unified	Vista Literacy Academy Charter School	6/7/2001	K-6	520	Start-up	Site Based
San Francisco	San Francisco Unified	Creative Arts Charter School	11/10/1993	K-8	157	Start-up	Site Based
	San Francisco Unified	Gateway High School	4/9/1998	9-12	285	Start-up	Site Based
	San Francisco Unified	Leadership High School	4/11/1997	9-12	344	Start-up	Site Based
	San Francisco Unified	Life Learning Academy	4/9/1998	9-12	54	Start-up	Site Based
	State Board of Education	Edison Charter Academy	9/11/1998*	K-5	521	Conversion	Site Based
San Joaquin	Lammersville Elementary	Lammersville Charter School	6/11/1999	K-8	17	Start-up	Both Site Based and Independent Study
	Lodi Unified	Aspire Public Schools - Lodi Campus	3/7/2001	K-8	356	Start-up	Site Based
	Lodi Unified	Joe Serna Jr. Charter School	3/8/2000	K-5	180	Start-up	Site Based
	Lodi Unified	University Public Schools - San Joaquin Campus	3/11/1999	K-6	406	Start-up	Site Based
	Manteca Unified	Heritage Family Academy	7/14/1999	K-12	1,282	Start-up	Independent Study*
	New Hope Elementary	New Hope Charter School	2/9/2000	K-12	778	Start-up	Both Site Based and Independent Study*
	New Jerusalem Elementary	Delta Charter School	7/11/2001	†	†	Start-up	Independent Study
	New Jerusalem Elementary	New Jerusalem Charter School	1/6/1999	K-8	156	Start-up	Independent Study
	Tracy Joint Unified	Discovery Charter School	2/8/2001	5-8	125*	Start-up	Site Based
San Luis Obispo	Paso Robles Joint Unified	Grizzly Challenge Charter School	7/21/1998	10-12	119	Start-up	Site Based
	San Luis Coastal Unified	Bellevue-Santa Fe Charter School	10/13/1995	K-6	146	Start-up	Site Based
San Mateo	Ravenswood City Elementary	Aspire Charter High School	4/12/2001	9-12	80	Start-up	Site Based
	Ravenswood City Elementary	East Palo Alto Charter School	6/13/1997	K-6	358	Conversion	Site Based
	Ravenswood City Elementary	Edison-McNair Academy	6/12/1998	5-8	533	Conversion	Site Based

continued on next page

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	Ravenswood City Elementary	School of Wisdom and Knowledge College Preparatory	5/12/1999	K-8	74	Start-up	Site Based
	Redwood City Elementary	Aurora High	6/11/1999	9-11	75	Start-up	Site Based
	Redwood City Elementary	Garfield Charter School	5/13/1994	K-8	727	Conversion	Site Based
	San Carlos Elementary	Arundel School	12/6/2000	K-4	316	Conversion	Site Based
	San Carlos Elementary	Brittan Acres School	9/9/1999	K-4	367	Conversion	Site Based
	San Carlos Elementary	Heather School	9/9/1999	K-4	287	Conversion	Site Based
	San Carlos Elementary	San Carlos Charter Learning Center	2/11/1993	K-8*	206*	Start-up	Site Based
	San Carlos Elementary	Tierra Linda Middle School	9/6/2000	5-8	242	Conversion	Site Based
	San Carlos Elementary	White Oaks Elementary	9/7/2000	K-4	349	Conversion	Site Based
Santa Barbara	College Elementary	Santa Ynez Valley Charter School	10/11/2000	K-8	127*	Start-up	Site Based
	Santa Barbara Elementary	Cesar Estrada Chavez Dual Language Immersion Charter School	9/6/2000	K-2	39	Start-up	Site Based
	Santa Barbara Elementary	Peabody Charter School	7/9/1993	K-6	659	Conversion	Site Based
	Santa Barbara Elementary	Santa Barbara Elementary Charter School	7/9/1993	K-5	205	Start-up	Site Based
	Santa Barbara High	Santa Barbara Middle Charter School	3/11/1999	6-8	52	Start-up	Site Based
Santa Clara	Campbell Union Elementary	Sherman Oaks Community Charter School	6/7/2000	K-5	454	Conversion	Site Based
	East Side Union High	Latino College Preparatory Academy	9/5/2001	9*	†	Start-up	Site Based
	East Side Union High	MACSA Academia Calmecac	9/7/2000	9-12	50	Start-up	Site Based
	Gilroy Unified	MACSA El Portal Leadership Academy	5/11/2000	9-12	60	Start-up	Site Based
	Morgan Hill Unified	South Valley Charter School	3/7/2001	K-6	235	Start-up	Site Based
	Mountain View-Los Altos Union High	Silicon Valley Essential Charter High School	10/11/2000	9-12	65	Start-up	Site Based
	San Jose Unified	Downtown College Preparatory	3/8/2000	9-12	109	Start-up	Site Based
Santa Cruz	Pajaro Valley Joint Unified	Academic/Vocational Charter Institute	10/8/1999	11-12	45	Start-up	Site Based
	Pajaro Valley Joint Unified	Alianza School	9/11/1998	K-6	724	Conversion	Site Based
	Pajaro Valley Joint Unified	Linscott Charter School	11/10/1993	K-8	189	Conversion	Site Based
	Pajaro Valley Joint Unified	Pacific Coast Charter School	1/6/1999	K-12	165	Start-up	Independent Study
	Pajaro Valley Joint Unified	Watsonville Charter School of the Arts	4/12/2001	K-8	110*	Start-up	Site Based
	San Lorenzo Valley Unified	SLVUSD Charter	9/10/1993	K-12	589	Conversion	Both Site Based and Independent Study
	Santa Cruz City High	Delta Charter School	7/8/1994	9-12	44	Start-up	Site Based
	Santa Cruz City High	Sojourn Middle School	7/10/1997	6-8	36	Start-up	Both Site Based and Independent Study
	Santa Cruz County Office of Education	Pacific Collegiate Charter Public School	6/11/1999	7-12	180	Start-up	Site Based

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
Shasta	Enterprise Elementary	Chrysalis - Monarch Learning Center Charter School	5/10/1996	K-10	76	Start-up	Site Based
	Gateway Unified	Lubeles Academy Charter	12/8/1999	K-12	56	Start-up	Site Based
	Gateway Unified	North Woods Discovery School	4/12/2000	K-8	148*	Start-up	Site Based
	Redding Elementary	Monarch Learning Center	6/7/2000	K-8	86	Start-up	Site Based
	Redding Elementary	Pathway.com Charter School	3/7/2001	9-12	60*	Start-up	Site Based
	Redding Elementary	Stellar Charter School of Technology & Home Study	7/14/1999	K-8	79	Conversion	Both Site Based and Independent Study
	Redding Elementary	Wonder to Wisdom Academy	11/7/2001	4-12*	12	Start-up	Independent Study
	Shasta Union High	Redding School of the Arts	6/11/1999	K-8	218	Start-up	Both Site Based and Independent Study
	Shasta Union High	Shasta Secondary Home School	9/9/1999	9-12	138	Start-up	Independent Study
Siskiyou	Mt. Shasta Union Elementary	Challenge Home School	3/12/1998	K-8	19	Start-up	Independent Study
	Mt. Shasta Union Elementary	Options for Youth - Mount Shasta	3/12/1998	K-8	156	Start-up	Independent Study
Solano	Vacaville Unified	Elise P. Buckingham Charter School	7/8/1994	K-12	801	Start-up	Site Based
	Vallejo City Unified	Mare Island Technology (MIT) Academy High School	3/7/2001	9-12*	78*	Start-up	Site Based
	Vallejo City Unified	Mare Island Technology (MIT) Academy Middle School	4/7/1999	6-7	243	Start-up	Site Based
Sonoma	Fort Ross Elementary	Fort Ross Charter School	12/8/1999	K-6	343	Start-up	Independent Study
	Petaluma City Elementary	Live Oak Charter School	5/10/2001	K-3	63	Start-up	†
	Piner-Olivet Union Elementary	Piner-Olivet Charter School	12/8/1995	6-8	128	Start-up	Site Based
	Santa Rosa Elementary	Kid Street Learning Center Charter School	7/14/1999	K-6	23	Start-up	Site Based
	Santa Rosa Elementary	Nexus Learning Community Charter School	11/8/2000	9-12	66	Start-up	Site Based
	Santa Rosa Elementary	Santa Rosa Education Cooperative Charter School	1/13/1995	K-6	15	Start-up	Site Based
	Santa Rosa High	Roseland Accelerated Middle School	6/7/2001	7-8	55	Start-up	Site Based
	Sebastopol Union Elementary	Sebastopol Independent Charter School	3/10/1995	K-8	182	Start-up	Site Based
	Sonoma Valley Unified	Sonoma Valley Charter School	2/11/1993	K-8	230	Start-up	Site Based
	Twin Hills Union Elementary	Orchard View Charter School	7/13/2000	K-12	136	Start-up	Independent Study
	West Sonoma County Union High	West Sonoma Charter School	12/8/1999	7-12	289	Start-up	Independent Study
	Windsor Unified	Cali Calmecac	9/11/1998	K-6	846	Conversion	Site Based
Stanislaus	Denair Unified	Denair Charter Academy	3/7/2001	K-12	50*	Start-up	Both Site Based and Independent Study
	Hart-Ransom Union Elementary	Hart-Ransom Academic Charter School	4/14/1995	K-8	234	Start-up	Independent Study

continued on next page

County	Chartering Entity	Charter School Name	Date Numbered by the State Board of Education and Eligible for State Funding	Approved Grade(s)	Estimated Enrollment	School Origin	Instructional Type
	Hickman Elementary	Hickman Charter School§	3/8/2000	K-8	706	Start-up	Site Based
	Hickman Elementary	Hickman Elementary School§	3/8/2000	K-8	213	Conversion	Both Site Based and Independent Study
	Hickman Elementary	Hickman Middle School§	3/8/2000	6-8	141	Start-up	Site Based
	Keyes Union Elementary	Gold Rush Home Study Charter School	7/11/2001	K-12*	300	Start-up	Independent Study
	Keyes Union Elementary	Keyes to Learning Charter School	5/12/1995	K-8	288	Start-up	Independent Study*
	Keyes Union Elementary	University Public Schools - Stanislaus	9/6/2000	K-6	200	Start-up	Site Based
	Oakdale Joint Unified	Oakdale Charter School	1/12/1996	9-12	107	Start-up	Independent Study
	Patterson Joint Unified	Grayson Charter School	7/14/1999	K-6	255	Conversion	Site Based
	Stanislaus County Office of Education	Valley Business High School	2/10/1999	11-12	39	Start-up	Site Based
Sutter	Yuba City Unified	Yuba City Charter School	4/12/2000	K-12	270	Start-up	Site Based
Tehama	Mineral Elementary	Wonder to Wisdom Charter Academy	7/11/2001	4-12*	40	Start-up	Both Site Based and Independent Study
	Red Bluff Union Elementary	Sacramento River Discovery Center Charter School	7/11/2001	6-12*	35*	Start-up	Both Site Based and Independent Study
Tulare	Tulare County Office of Education	Eleanor Roosevelt Community Learning Center	7/11/2001	K-8*	33*	Start-up	Independent Study
	Tulare County Office of Education	La Sierra High School	10/11/2000	9-12	157	Start-up	Site Based
	Visalia Unified	Charter Alternatives Academy	7/14/1999	7-12	114	Conversion	Both Site Based and Independent Study
	Visalia Unified	Charter Home School Academy	7/14/1999	K-8	38	Conversion	Independent Study
	Visalia Unified	Charter Oak School	6/13/1994	5-8	62	Start-up	Both Site Based and Independent Study
Ventura	Mesa Union Elementary	Golden Valley Charter School	2/8/2001	K-12	112*	Start-up	Independent Study
Yuba	Camptonville Elementary	Camptonville Academy	10/9/1998	K-12	514	Start-up	†
	Marysville Joint Unified	Marysville Charter Academy for the Arts	6/7/2000	7-12	84	Start-up	Site Based
	Wheatland Elementary	California Montessori Project	3/7/2001	K-12	460*	Start-up	Site Based
	Wheatland Elementary	Wheatland Charter Academy	3/7/2001	K-12	70*	Start-up	Both Site Based and Independent Study
	Wheatland Union High	Academy for Career Education Charter School	5/12/1999	9-12	51	Conversion	Both Site Based and Independent Study
	Yuba County Office of Education	Yuba County Career Preparatory Charter	9/8/1995	K-12	509	Start-up	Both Site Based and Independent Study
				Total	**130,921**		

Source: California Department of Education—Charter Schools Database.

* California Charter Schools Networking Directory and Resource Guide Year—2002.

† Neither of the two data sources contain this information.

§ These schools may be part of an all-charter school district.

APPENDIX B

Analysis of Charter Schools' Financial Information, Fiscal Year 2000–01

The table in this appendix lists each of the fiscally independent charter schools within the four chartering entities that we reviewed. As shown in the table, five of these charter schools did not complete a financial audit for fiscal year 2000–01 and four of those that did submit audited statements did not submit information specific to the school's operations.

The Department of Education (department) established regulations that a school district should maintain a reserve balance of between 1 percent and 5 percent, depending on the district's overall average daily attendance (ADA), to cover cash requirements in succeeding fiscal years. The required reserve balance is based on a ratio of fund balance to annual expenditures. By maintaining a reserve balance, charter schools would have a stronger financial position; therefore, using the department's regulations, the charter schools would need to maintain a fund balance of between 3 percent and 5 percent of annual expenditures. Although we recognize that charter schools are not legally obligated to meet this reserve requirement, we used it as a benchmark for assessing the schools' fiscal health.

For the 25 charter schools that submitted school-specific audited financial statements for fiscal year 2000–01, we reviewed the statements to determine their fund balance and the ratio of fund balance to annual expenditures. However, 9 of the charter schools reported net assets rather than fund balances, and 1 school included its fixed assets as a component of its fund balance. Because the department's ratio is based on fund balance, and because fund balance represents the cumulative difference between net revenues and net expenditures from the beginning of operations for the charter schools' operating funds, we adjusted the net assets for these charter schools to approximate the fund balance.

Of the 25 fiscally independent charter schools that submitted school-specific audited financial statements for fiscal year 2000–01, 5 reported a negative fund balance, an indication that these 5 charter schools are not fiscally healthy. As shown in the table, we found that 11 charter schools did not meet the fund balance

reserve based on their ADA, including those with negative fund balances as discussed above. Various circumstances may explain why a charter school would not meet the fund balance reserve. For example, a new charter school may have large expenditures for capital outlays or improvements and equipment purchases, which are necessary to begin operations. Further, repayment of the Charter School Revolving Loan from the department to aid a charter school in beginning operations, reduces the charter school's revenues in future years, and payments to a business management company to run a charter school increases the school's expenditures, both resulting in a decrease in a charter school's fund balance.

TABLE B.1

Fiscally Independent Charter Schools Within the Four Selected Chartering Entities Fiscal Year 2000–01

Chartering Entity/Charter School	Was Audit Report Received?	Did the School Meet the Fund Balance Reserve Ratio?	Target Reserve Based on ADA (%)	Fund Balance to Expenditures Ratio (%)
Fresno Unified School District				
Center for Advanced Research and Technology*	Yes	No	4%	2.6%
Cornerstone Academy	Yes	No	5	**-8.8**
Edison-Bethune Charter Academy*†	Yes	Unknown	4	Unknown
Fresno Prep Academy	Yes	No	5	**-29.2**
Gateway Charter Academy‡	No	Unknown	5	Unknown
New Millennium Institute of Education Charter School	Yes	Yes	5	52.5
Renaissance Charter School	Yes	Yes	5	46.4
School of Unlimited Learning†	Yes	Unknown	5	Unknown
Los Angeles Unified School District				
Accelerated School	Yes	Yes	5	20.6
California Academy for Liberal Studies	Yes	Yes	5	7.8
Camino Nuevo Charter Academy	Yes	No	4	1.1
Community Charter Middle School	Yes	No	5	**-8.0**
Fenton Avenue Charter School	Yes	Yes	3	50.1
Montague Charter Academy	Yes	Yes	3	26.5
Valley Community Charter School	Yes	No	5	**-12.3**
Vaughn Next Century Learning Center	Yes	Yes	3	159.6
View Park Preparatory Accelerated Charter School	Yes	Yes	5	6.5
Watts Learning Center Charter School	Yes	Yes	5	50.8

Chartering Entity/Charter School	Was Audit Report Received?	Did the School Meet the Fund Balance Reserve Ratio?	Target Reserve Based on ADA (%)	Fund Balance to Expenditures Ratio (%)
Oakland Unified School District				
American Indian Public Charter School	Yes	No	5%	**-1.6**%
Aspire Public Schools—Oakland Campus†	Yes	Unknown	4	Unknown
Dolores Huerta Learning Academy	Yes	No	5	1.6
East Bay Conservation Corps Charter School†	Yes	Unknown	5	Unknown
Ernestine C. Reems Academy of Technology and Art	Yes	No	5	0.4
North Oakland Community Charter School	Yes	Yes	5	17.1
Oakland Charter Academy	Yes	Yes	5	23.7
West Oakland Community School	Yes	Yes	5	59.2
San Diego City Unified School District§				
Charter School of San Diego	Yes	Yes	4	69.6
Cortez Hill Academy Charter School	Yes	Yes	5	20.5
Explorer Elementary Charter School	Yes	No	5	3.9
High Tech High Charter School	No	Unknown	5	Unknown
Holly Drive Leadership Academy	No	Unknown	5	Unknown
Nubia Leadership Academy	No	Unknown	4	Unknown
Preuss School UCSD	Yes	No	4	0.6
Sojourner Truth Learning Academy	No	Unknown	5	Unknown

* Fresno Unified School District is not entirely responsible for the monitoring of either of these charter schools. Center for Advanced Research and Technology is a joint charter of Fresno Unified School District and Clovis Unified School District. Responsibility for the school's fiscal monitoring lies with Clovis Unified School District. Edison-Bethune Charter is chartered by the Fresno County Office of Education, but a joint committee of staff from Fresno County Office of Education and the Fresno Unified School District is responsible for the school's fiscal monitoring.

† These charter schools were audited as part of their parent company and no separate audited financial information was available for fiscal year 2000–01.

‡ Charter revoked in January 2002.

§ San Diego City Unified School District had eight fiscally independent charter schools in operation during fiscal year 2000–01. In fiscal year 2001–02, two additional fiscally independent schools began operations, however, these schools are not reflected in this table.

Blank page inserted for reproduction purposes only.

APPENDIX C

Academic Performance Index Scores and Stanford 9 Test Results for Selected Charter Schools, Academic Years 1998–99 Through 2000–01 and 1999–2000 Through 2001–02, Respectively

Table C.1 lists the Academic Performance Index (API) scores for academic years 1998–99 through 2000–01 for each of the charter schools within the four chartering entities we reviewed. The Department of Education describes the API as the cornerstone of the Public Schools Accountability Act, signed into law in April 1999. This law authorized the establishment of the first statewide accountability system for California public schools. The basis of a school's API score is the performance of individual pupils on the Stanford 9, as measured through the national percentile rankings.[7] The purpose of the API is to measure the academic performance and progress of all public schools, including charter schools. It is based on a numeric index that ranges from a low of 200 to a high of 1,000. The State has set 800 as the API score that schools should strive to meet. Over the next few years, the API will incorporate other standards tests, as well as the California High School Exit Examination, eventually including graduation and attendance rates as well.

As Table C.1 on the following page shows, only 5 of the 86 charter schools met the State's goal in all three academic years, by scoring at least 800. Further, as the table shows, even though the majority of the charter schools listed did not meet the State's goal, the charter schools' API scores generally improved over the two-year time period.

Tables C.2 through C.4 list each charter school in the four chartering entities we reviewed and the 1999–2000 through 2001–02 Stanford 9 scores for reading and math.[8] Schools, including charter schools, are required to test all students in grades 2 through 11 using the Stanford 9 exam. The purpose of this exam is to determine how well students are achieving academically compared to similar students tested nationwide. It has been used in California since 1997. Because the Stanford 9 is a national achievement test with the test questions

[7] Beginning in academic year 2001–02, the API also incorporates the results of the California Standards Test in English Language Arts as measured through performance levels.

[8] Schools with no reported Stanford 9 scores for the three years are not included in the table.

and scoring remaining the same from year to year, results from the test's 2001–02 administration are comparable to the results from any earlier examination completed within the previous four years.

Table C.2 on page 93 summarizes the Stanford 9 scores for those charter schools serving grades 2 through 5 within our sample chartering entities. As the table shows, the scores for some charter schools were higher than the average scores for their chartering entities' other, noncharter schools for the same grades in the same year. For example, in the San Diego City Unified School District (San Diego), for academic year 2001–02, two charter schools posted higher reading scores than San Diego's average, yet the remaining seven had lower scores. Overall, the scores for charter schools within our sample were roughly the same as their chartering entities' average scores.

Tables C.3 and C.4 on pages 95 and 97, respectively, show reading and math scores for charter schools and the average scores for their chartering entities for grades 6 through 8 and 9 through 11, respectively. Again, in either grade group, the charter schools' scores and their chartering entities' average scores are comparable.

TABLE C.1

API Scores for Four Selected Chartering Entities' Charter Schools Academic Years 1998–99 Through 2000–01

Chartering Entity/Charter School	Date Numbered by the State Board of Education and Eligible for State Funding	API 1998–99	API 1999–2000	API 2000–01
Fresno Unified School District				
Carter G. Woodson Public Charter School	5/10/2001	NS	NS	NS
Center for Advanced Research and Technology (CART)	1/13/2000	NS	NS	NS
Cornerstone Academy	7/13/2000	NS	NS	NS
Edison-Bethune Charter Academy	6/11/1999	363	399	446
Fresno Prep Academy	6/11/1999	NS	375	NS
Gateway Charter Academy*	5/12/1999	NS	NS	284
New Millennium Institute of Education Charter School	9/11/1998	NS	NS	NS
Renaissance Charter School	7/13/2000	NS	NS	NS
School of Unlimited Learning	7/21/1998	355	346	304
Sunset Charter School	6/11/1999	343	424	414
Los Angeles Unified School District				
Accelerated School	1/14/1994	574	654	706
California Academy for Liberal Studies	9/7/2000	NS	NS	700

Chartering Entity/Charter School	Date Numbered by the State Board of Education and Eligible for State Funding	API 1998–99	API 1999–2000	API 2000–01
Los Angeles Unified School District–continued				
Camino Nuevo Charter Academy	4/12/2000	NS	NS	485
Camino Nuevo Charter Middle School	7/11/2001	NS	NS	NS
CHIME Charter School	10/10/2001	NS	NS	NS
Community Charter Middle School	6/11/1999	NS	528	590
Crenshaw/Dorsey: Audubon Charter Middle School & Magnet Center	7/14/1999	473	477	485
Crenshaw/Dorsey: Baldwin Hills Charter Elementary	7/14/1999	625	657	695
Crenshaw/Dorsey: Coliseum Street Elementary School	7/14/1999	440	515	532
Crenshaw/Dorsey: Fifty-fourth Street Charter Elementary	7/14/1999	597	653	622
Crenshaw/Dorsey: Fifty-ninth Street Elementary	7/14/1999	503	519	575
Crenshaw/Dorsey: Forty-second Street Charter School	7/14/1999	479	545	553
Crenshaw/Dorsey: Hyde Park Charter School	7/14/1999	349	376	414
Crenshaw/Dorsey: Marlton Charter School	7/14/1999	NS	NS	NS
Crenshaw/Dorsey: Mid-City Charter Magnet School	7/14/1999	456	508	558
Crenshaw/Dorsey: Seventy-fourth Street LEARN Charter School	7/14/1999	482	506	542
Crenshaw/Dorsey: Sixth Avenue Elementary	7/14/1999	344	417	470
Crenshaw/Dorsey: Tom Bradley Environmental Science	7/14/1999	508	536	560
Crenshaw/Dorsey: View Park Continuation High School	7/14/1999	NS	NS	NS
Crenshaw/Dorsey: Virginia Road Charter Elementary School	7/14/1999	446	519	600
Crenshaw/Dorsey: Western Avenue Charter School	7/14/1999	435	458	471
Crenshaw/Dorsey: Whitney Young Continuation High School	7/14/1999	NS	NS	NS
Crenshaw Learn Charter High School	7/14/1999	459	452	455
Fenton Avenue Charter School	9/10/1993	473	509	562
Montague Charter Academy	9/13/1996	444	505	585
Multicultural Learning Center	6/7/2001	NS	NS	NS
Open Charter Magnet School	5/14/1993	816	840	817
Palisades: Canyon Charter Elementary	7/14/1999	832	850	873
Palisades: Charter High School	7/14/1999	720	707	714
Palisades: Kenter Canyon Charter School	7/14/1999	827	851	882
Palisades: Marquez Charter School	7/14/1999	902	917	893
Palisades: Palisades Charter Elementary	7/14/1999	785	815	839
Palisades: Temescal Canyon Continuation High School	7/14/1999	NS	NS	NS
Palisades: Topanga Elementary	7/14/1999	794	861	832
Paul Revere Charter/LEARN Middle School	7/14/1999	747	751	747
Valley Community Charter School	7/13/2000	NS	NS	650
Vaughn Next Century Learning Center	6/11/1993	443	494	591

continued on next page

Chartering Entity/Charter School	Date Numbered by the State Board of Education and Eligible for State Funding	API 1998–99	API 1999–2000	API 2000–01
Los Angeles Unified School District–continued				
View Park Preparatory Accelerated Charter School	5/12/1999	NS	761	800
Watts Learning Center Charter School	9/11/1997	NS	577	681
Westwood Charter School	9/10/1993	842	872	858
Oakland Unified School District				
American Indian Public Charter School	2/9/1996	NS	NS	436
Aspire Public School - Oakland Campus	7/14/1999	NS	NS	466
Dolores Huerta Learning Academy	7/14/1999	NS	NS	504
East Bay Conservation Corps Charter School	12/8/1995	NS	348	NS
Ernestine C. Reems Academy of Technology and Art	7/14/1999	NS	NS	440
North Oakland Community Charter School	6/7/2000	NS	NS	NS
Oakland Charter Academy	6/11/1993	413	425	423
University Preparatory Charter Academy	6/7/2001	NS	NS	NS
West Oakland Community School	6/12/1998	NS	NS	597
San Diego City Unified School District				
Audeo Charter School	7/11/2001	NS	NS	NS
Charter School of San Diego	9/10/1993	510	NS	NS
Cortez Hill Academy Charter School	10/11/2000	NS	NS	NS
Darnall E-Charter School	9/10/1993	559	558	588
Explorer Elementary Charter School	12/8/1999	NS	NS	830
Harriet Tubman Village Charter School	1/14/1994	621	620	616
High Tech High Charter School	11/9/1999	NS	NS	820
Holly Drive Leadership Academy	10/8/1999	NS	546	504
King/Chavez Academy of Excellence Charter School	11/7/2001	NS	NS	NS
Kwachiiyao/Ixcalli	1/7/1998	NS	462	500
McGill School of Success	11/8/1995	NS	NS	NS
Memorial Academy Charter School	11/8/1995	497	NS	448
Museum School	4/14/1995	NS	745	788
Nubia Leadership Academy	9/11/1997	552	682	677
O'Farrell Community School: Center for Advanced Academic Studies	1/10/1994	608	620	620
Preuss School UCSD	11/13/1998	NS	820	800
Sojourner Truth Learning Academy	5/12/1999	NS	618	561

NS - No score available. API scores may not be reported for an individual school for a variety of reasons. For a school to earn an API score, it must have valid Stanford 9 test scores for a minimum of 100 students, and those students must have been in the school district the previous year. In addition, API scores are not created for county-run schools, community day schools, alternative schools, continuation schools, and independent study schools. Finally, the school may not have been open during the testing year; or the district superintendent (or principal, if an independent charter school) may have certified that the scores obtained on the administration of the Stanford 9 do not reflect the performance of the students at the school.

* Charter revoked in January 2002.

TABLE C.2

Average Stanford 9 Scores for Grades 2 Through 5 for Charter Schools in Four Selected Chartering Entities Academic Years 1999–2000 Through 2001–02

Chartering Entity/Charter School	Date Numbered by the State Board of Education and Eligible for State Funding	Reading			Percentage Change Between 1999–2000 and 2001–02	Math			Percentage Change Between 1999–2000 and 2001–02
		1999–2000	2000–01	2001–02		1999–2000	2000–01	2001–02	
Fresno Unified School District		**598.0**	**599.8**	**602.6**	**0.77%**	**596.6**	**598.1**	**602.5**	**0.99%**
Edison-Bethune Charter Academy	6/11/1999	581.6	587.4	588.3	1.15	575.9	580.5	584.3	1.46
Gateway Charter Academy*	5/12/1999	N/R	577.4	—	—	N/R	567.9	—	—
Sunset Charter School	6/11/1999	580.0	577.2	583.2	0.55	589.0	580.4	581.8	(1.22)
Los Angeles Unified School District		**608.9**	**605.4**	**610.0**	**0.18**	**608.3**	**604.2**	**611.0**	**0.44**
Accelerated School	1/14/1994	614.0	621.3	621.2	1.17	621.4	619.7	615.8	(0.90)
Camino Nuevo Charter Academy	4/12/2000	N/R	585.3	586.4	—	N/R	583.7	586.2	—
Crenshaw/Dorsey: Baldwin Hills Charter Elementary	7/14/1999	620.8	625.6	623.5	0.43	606.5	615.8	618.4	1.96
Crenshaw/Dorsey: Coliseum Street Elementary School	7/14/1999	600.3	600.1	600.6	0.05	587.2	592.8	592.8	0.95
Crenshaw/Dorsey: Fifty-fourth Street Charter Elementary	7/14/1999	618.7	615.6	607.6	(1.79)	611.9	608.8	596.4	(2.53)
Crenshaw/Dorsey: Fifty-ninth Street Elementary	7/14/1999	595.6	603.2	605.9	1.73	591.4	597.4	604.9	2.28
Crenshaw/Dorsey: Forty-second Street Charter School	7/14/1999	601.9	600.5	605.5	0.60	595.2	597.6	599.4	0.71
Crenshaw/Dorsey: Hyde Park Charter School	7/14/1999	582.8	582.7	587.6	0.82	573.0	577.4	581.6	1.50
Crenshaw/Dorsey: Marlton Charter School	7/14/1999	608.4	605.8	616.1	1.27	606.3	609.4	618.4	2.00
Crenshaw/Dorsey: Mid-City Charter Magnet School	7/14/1999	601.4	607.2	613.7	2.05	601.6	606.0	619.4	2.96
Crenshaw/Dorsey: Seventy-fourth Street LEARN Charter School	7/14/1999	600.9	606.1	612.8	1.98	589.8	594.0	601.6	2.00
Crenshaw/Dorsey: Sixth Avenue Elementary	7/14/1999	587.4	590.7	599.6	2.08	579.8	584.2	592.3	2.16
Crenshaw/Dorsey: Tom Bradley Environmental Science	7/14/1999	603.6	606.9	613.1	1.57	594.8	596.9	604.7	1.66
Crenshaw/Dorsey: Virginia Road Charter Elementary School	7/14/1999	599.7	606.1	608.3	1.43	592.1	606.5	605.9	2.33
Crenshaw/Dorsey: Western Avenue Charter School	7/14/1999	592.6	590.3	599.7	1.20	585.1	587.0	597.2	2.07
Fenton Avenue Charter School	9/10/1993	592.9	597.8	605.0	2.04	597.7	602.4	613.8	2.69
Montague Charter Academy	9/13/1996	593.0	599.4	605.5	2.11	599.6	609.7	616.9	2.89
Multicultural Learning Center	6/7/2001	N/R	N/R	583.5	—	N/R	N/R	579.3	—
Open Charter Magnet School	5/14/1993	651.9	649.5	652.8	0.14	641.9	640.2	646.2	0.67
Palisades: Canyon Charter Elementary	7/14/1999	659.5	668.8	667.9	1.27	642.8	649.9	655.1	1.91

continued on next page

Chartering Entity/Charter School	Date Numbered by the State Board of Education and Eligible for State Funding	Reading			Percentage Change Between 1999–2000 and 2001–02	Math			Percentage Change Between 1999–2000 and 2001–02
		1999–2000	2000–01	2001–02		1999–2000	2000–01	2001–02	
Los Angeles Unified School District–continued									
Palisades: Kenter Canyon Charter School	7/14/1999	656.5	661.3	663.3	1.04%	646.9	655.7	660.1	2.04%
Palisades: Marquez Charter School	7/14/1999	672.0	667.8	670.2	(0.27)	655.9	658.3	663.9	1.22
Palisades: Palisades Charter Elementary	7/14/1999	657.1	658.8	656.1	(0.15)	640.2	644.9	654.4	2.22
Palisades: Topanga Elementary	7/14/1999	662.6	661.4	661.6	(0.15)	643.6	642.8	653.2	1.49
Valley Community Charter School	7/13/2000	N/R	624.3	621.9	—	N/R	602.5	606.3	—
Vaughn Next Century Learning Center	6/11/1993	591.6	599.7	603.8	2.06	598.2	613.1	611.0	2.14
View Park Preparatory Accelerated Charter School	5/12/1999	629.4	637.2	642.1	2.02	627.4	633.1	639.2	1.88
Watts Learning Center Charter School	9/11/1997	570.7	599.3	616.2	7.97	559.5	585.4	600.4	7.31
Westwood Charter School	9/10/1993	658.7	655.7	659.3	0.09	646.3	646.2	651.2	0.76
Oakland Unified School District		**600.2**	**602.9**	**607.8**	**1.27**	**597.6**	**599.6**	**604.1**	**1.09**
Aspire Public Schools - Oakland Campus	7/14/1999	N/R	585.0	592.5	—	N/R	591.4	607.7	—
Dolores Huerta Learning Academy	7/14/1999	582.9	588.6	580.0	(0.50)	593.1	600.0	587.7	(0.91)
East Bay Conservation Corps Charter School	12/8/1995	N/R	N/R	602.6	—	N/R	N/R	585.6	—
Ernestine C. Reems Academy of Technology and Art	7/14/1999	594.7	586.6	586.5	(1.38)	585.3	576.7	591.0	0.97
San Diego City Unified School District		**620.0**	**622.8**	**626.6**	**1.06**	**615.9**	**618.4**	**621.1**	**0.84**
Darnall E-Charter School	9/10/1993	598.0	603.7	600.1	0.35	596.3	609.6	601.1	0.80
Explorer Elementary Charter School	12/8/1999	N/R	661.1	677.0	—	N/R	642.5	651.0	—
Harriet Tubman Village Charter School	1/14/1994	607.9	614.6	615.1	1.18	603.7	603.3	601.2	(0.41)
Holly Drive Leadership Academy	10/8/1999	606.6	593.7	610.3	0.61	596.9	587.5	592.1	(0.80)
King/Chavez Academy of Excellence Charter School	11/7/2001	N/R	N/R	592.7	—	N/R	N/R	593.4	—
Kwachiiyao/Ixcalli	1/7/1998	591.2	596.5	607.9	2.82	573.3	591.5	592.9	3.42
Museum School	4/14/1995	645.6	661.7	663.7	2.80	638.7	652.9	645.3	1.03
Nubia Leadership Academy	9/11/1997	620.6	619.3	618.8	(0.29)	610.9	616.0	611.2	0.05
Sojourner Truth Learning Academy	5/12/1999	616.2	609.3	609.3	(1.12)	604.2	600.0	604.7	0.08
State of California		**617.5**	**620.2**	**622.2**	**0.76**	**614.8**	**618.8**	**622.2**	**1.20**

N/R - No score report available for this year.

* Charter revoked in January 2002.

TABLE C.3

Average Stanford 9 Scores for Grades 6 Through 8 for Charter Schools in Four Selected Chartering Entities Academic Years 1999–2000 Through 2001–02

Chartering Entity/Charter School	Date Numbered by the State Board of Education and Eligible for State Funding	Reading			Percentage Change Between 1999–2000 and 2001–02	Math			Percentage Change Between 1999–2000 and 2001–02
		1999–2000	2000–01	2001–02		1999–2000	2000–01	2001–02	
Fresno Unified School District		**660.3**	**659.7**	**660.7**	**0.06%**	**661.4**	**661.3**	**662.4**	**0.15%**
Edison-Bethune Charter Academy	6/11/1999	635.1	637.2	635.5	0.06	636.1	633.2	637.1	0.16
Cornerstone Academy	7/13/2000	N/R	630.6	624.4	—	N/R	637.2	641.4	—
Gateway Charter Academy*	5/12/1999	N/R	634.4	—	—	N/R	634.8	—	—
New Millenium Institute of Education Charter School	9/11/1998	N/R	N/R	641.6	—	N/R	N/R	647.8	—
Sunset Charter School	6/11/1999	629.8	633.5	638.4	1.37	637.7	643.6	646.8	1.43
Los Angeles Unified School District		**665.7**	**658.4**	**659.2**	**(0.98)**	**665.6**	**656.7**	**658.6**	**(1.05)**
Accelerated School	1/14/1994	674.3	681.1	683.5	1.36	669.4	676.6	684.5	2.26
California Academy for Liberal Studies	9/7/2000	N/R	653.5	664.6	—	N/R	671.0	663.5	—
Camino Nuevo Charter Academy	4/12/2000	N/R	N/R	630.5	—	N/R	N/R	649.0	—
Camino Nuevo Charter Middle School	7/11/2001	N/R	N/R	654.3	—	N/R	N/R	653.1	—
Community Charter Middle School	6/11/1999	644.9	657.1	667.1	3.44	642.8	651.9	660.0	2.68
Crenshaw/Dorsey: Audubon Charter Middle School & Magnet Center	7/14/1999	651.5	654.7	656.9	0.83	647.2	646.9	647.0	(0.03)
Crenshaw/Dorsey: Mid-City Charter Magnet School	7/14/1999	653.1	658.4	662.6	1.45	643.7	644.4	648.3	0.71
Paul Revere Charter/LEARN Middle School	7/14/1999	689.5	688.3	690.8	0.19	687.5	690.1	691.1	0.52
Valley Community Charter School	7/13/2000	N/R	654.6	670.4	—	N/R	651.4	664.6	—
View Park Preparatory Accelerated Charter School	5/12/1999	N/R	675.0	685.6	—	N/R	686.9	694.1	—
Oakland Unified School District		**652.6**	**654.2**	**655.9**	**0.51**	**653.4**	**655.5**	**658.2**	**0.73**
American Indian Public Charter School	2/9/1996	634.4	647.0	658.1	3.74	620.9	643.1	661.6	6.56
Aspire Public Schools - Oakland Campus	7/14/1999	N/R	643.9	646.9	—	N/R	644.1	661.2	—
Dolores Huerta Learning Academy	7/14/1999	625.8	633.5	644.1	2.92	626.2	655.1	668.9	6.82

continued on next page

Chartering Entity/Charter School	Date Numbered by the State Board of Education and Eligible for State Funding	Reading			Percentage Change Between 1999–2000 and 2001–02	Math			Percentage Change Between 1999–2000 and 2001–02
		1999–2000	2000–01	2001–02		1999–2000	2000–01	2001–02	
Oakland Unified School District–continued									
East Bay Conservation Corps Charter School	12/8/1995	658.6	N/R	N/R	—	637.9	N/R	N/R	—
Ernestine C. Reems Academy of Technology and Art	7/14/1999	636.2	639.3	647.2	1.73%	629.2	634.0	645.2	2.54%
Oakland Charter Academy	6/11/1993	650.1	643.7	648.9	(0.18)	640.6	639.1	649.4	1.37
West Oakland Community School	6/12/1998	643.2	663.9	682.1	6.05	639.7	657.6	662.8	3.61
San Diego City Unified School District		**675.3**	**676.0**	**677.1**	**0.27**	**670.9**	**671.4**	**674.4**	**0.52**
Charter School of San Diego	9/10/1993	682.1	683.8	687.7	0.82	657.3	660.0	659.6	0.35
Cortez Hill Academy Charter School	10/11/2000	N/R	693.1	N/R	—	N/R	659.5	N/R	—
Explorer Elementary Charter School	12/8/1999	N/R	N/R	703.8	—	N/R	N/R	707.8	—
Harriet Tubman Village Charter School	1/14/1994	680.9	681.9	679.3	(0.23)	669.2	667.0	667.5	(0.25)
Holly Drive Leadership Academy	10/8/1999	N/R	635.7	649.4	—	634.9	649.3	647.6	2.00
King/Chavez Academy of Excellence Charter School	11/7/2001	N/R	N/R	640.7	—	N/R	N/R	650.0	—
Kwachiiyao/Ixcalli	1/7/1998	662.5	662.9	659.0	(0.53)	634.9	648.6	649.5	2.30
Memorial Academy Charter School	11/8/1995	657.4	650.2	654.6	(0.43)	653.2	650.0	655.4	0.34
Museum School	4/14/1995	N/R	670.3	681.1	—	N/R	671.3	686.7	—
Nubia Leadership Academy	9/11/1997	663.9	650.4	654.1	(1.48)	668.9	656.9	655.4	(2.02)
O'Farrell Community School: Center for Advanced Academic Studies	1/10/1994	669.3	665.6	666.5	(0.42)	663.8	664.9	667.4	0.54
Preuss School UCSD	11/13/1998	694.7	698.2	696.2	0.22	691.4	689.5	691.2	(0.03)
Sojourner Truth Learning Academy	5/12/1999	660.9	655.4	674.0	1.98	661.7	654.5	661.1	(0.09)
State of California		**674.0**	**675.1**	**675.4**	**0.21**	**673.4**	**675.7**	**677.4**	**0.59**

N/R - No score report available for this year.

* Charter revoked in January 2002.

TABLE C.4

Average Stanford 9 Scores for Grades 9 Through 11 for Charter Schools in Four Selected Chartering Entities Academic Years 1999–2000 Through 2001–02

Chartering Entity/Charter School	Date Numbered by the State Board of Education and Eligible for State Funding	Reading			Percentage Change Between 1999–2000 and 2001–02	Math			Percentage Change Between 1999–2000 and 2001–02
		1999–2000	2000–01	2001–02		1999–2000	2000–01	2001–02	
Fresno Unified School District		**682.0**	**681.2**	**681.3**	**(0.10)%**	**691.4**	**690.7**	**691.0**	**(0.06)%**
Fresno Prep Academy	6/11/1999	647.3	676.4	650.6	0.51	665.1	658.9	663.9	(0.18)
Gateway Charter Academy*	5/12/1999	N/R	661.8	—	—	N/R	666.9	—	—
New Millennium Institute of Education Charter School	9/11/1998	N/R	659.0	660.6	—	N/R	666.6	668.7	—
Renaissance Charter School	7/13/2000	N/R	647.7	648.7	—	N/R	665.2	660.7	—
School of Unlimited Learning	7/21/1998	659.9	645.7	661.7	0.27	665.1	669.4	667.6	0.38
Los Angeles Unified School District		**686.1**	**681.1**	**681.9**	**(0.61)**	**694.0**	**687.5**	**688.4**	**(0.81)**
Crenshaw Learn Charter High School	7/14/1999	671.9	671.8	673.3	0.21	675.9	676.7	676.6	0.10
Crenshaw/Dorsey: Marlton Charter School	7/14/1999	N/R	N/R	635.1	—	N/R	N/R	660.3	—
Crenshaw/Dorsey: Mid-City Charter Magnet School	7/14/1999	673.9	N/R	N/R	—	679.9	N/R	N/R	—
Crenshaw/Dorsey: View Park Continuation High School	7/14/1999	654.2	658.1	664.2	1.53	663.7	663.3	662.8	(0.14)
Crenshaw/Dorsey: Whitney Young Continuation High School	7/14/1999	662.9	647.5	680.2	2.61	667.9	N/R	670.8	0.43
Palisades: Charter High School	7/14/1999	705.7	709.8	709.8	0.58	712.4	713.3	711.7	(0.10)
Palisades: Temescal Canyon Continuation High School	7/14/1999	691.6	672.6	659.5	(4.64)	685.6	683.4	662.3	(3.40)
Oakland Unified School District		**675.3**	**674.3**	**673.9**	**(0.21)**	**685.6**	**685.9**	**685.9**	**0.04**
American Indian Public Charter School	2/9/1996	664.6	N/R	N/R	—	658.9	N/R	N/R	—
East Bay Conservation Corps Charter School	12/8/1995	N/R	644.8	N/R	—	N/R	636.7	N/R	—
University Preparatory Charter Academy	6/7/2001	N/R	N/R	694.5	—	N/R	N/R	701.2	—
San Diego City Unified School District		**696.5**	**694.2**	**693.7**	**(0.40)**	**701.3**	**699.7**	**700.6**	**(0.10)**
Charter School of San Diego	9/10/1993	688.2	688.9	689.0	0.12	679.9	679.5	680.7	0.11
Cortez Hill Academy Charter School	10/11/2000	N/R	692.1	689.1	—	N/R	681.8	682.2	—
High Tech High Charter School	11/9/1999	N/R	723.4	720.5	—	N/R	723.9	728.5	—
Memorial Academy Charter School	11/8/1995	668.8	663.8	662.0	(1.02)	676.0	673.1	674.8	(0.18)
Preuss School UCSD	11/13/1998	N/R	705.6	713.2	—	N/R	712.7	718.4	—
State of California		**691.7**	**691.5**	**691.6**	**(0.01)**	**698.2**	**698.6**	**699.3**	**0.16**

N/R - No score report available for this year.

* Charter revoked in January 2002.

Blank page inserted for reproduction purposes only.

Agency's comments provided as text only.

Fresno Preparatory Academy, Inc.
3381 North Bond, Suite 102
Fresno, CA 93726

October 16, 2002

California State Auditor*
Attn: Elaine M. Howle, Auditor
555 Capital Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle:

I wish to thank you and all your staff for their tireless and unfortunately unappreciated efforts to comply with the request from the Joint Legislative Audit Committee. While we can't speak for all charter schools, we can see that the end result of this process will be a better informed charter school with a more streamlined assessment vehicle.

Fresno Prep Academy is one of many fourth-year charter schools that have seen the charter movement go from its infancy to its awkward adolescence with all the pitfalls and challenges. We have seen the transformation of the open-ended charter school law of 1992 to a law that has associated with it the bureaucratic red tape of non-charter public schools. This growth process is not without problems. It is our hope that a collaborative effort between charter schools and their sponsoring agencies will produce highly efficient and productive charter schools. To this end we have taken this audit review as a first step in this healing process.

We have attached our responses to those areas pertaining to our charter school and we ask that our responses, along with the responses of other charter schools, be taken in the manner in which they were intended. We hope that we can shed some light on many of the problem areas of the charter school movement.

If there is any further information or materials you might need to complete this document, please contact me at your earliest convenience.

Sincerely,

(Signed by: Earl C. Vickers)

Earl C. Vickers, Consultant

* California State Auditor's comment appears on page 103.

RESPONSES

Chapter 1

"Sponsoring agencies lack oversight guidelines and do not periodically monitor their charter schools' performance against the agreed-upon measurable outcomes."

Fresno Preparatory Academy completed an annual report as well as a compliance review report of their charter for their sponsoring agency in the 2001-2002 school year. These two reports were the first reports of that nature that were required by Fresno Unified School District in our three years of operation. While, in the opinion of some outside sources, these reports may not have sufficiently assessed the academic health of our charter schools, they formed a reasonable benchmark beginning for in-depth reports in subsequent years. The whole charter school experience has been a learning process for the charters as well as their sponsoring agencies. We are reasonably sure that the experience gained with this report will translate to better assessments by all parties.

"Some charter schools assess their students performance against the charters' measurable outcomes in their charters, but other schools do not."

The measurable student outcomes as detailed in our charter petition are as follows: 1) Academic Progress, 2) Job Readiness, 3) Work Experience, & 4) Personal Objectives.

In the fall of 2000-2001, our second school year, Fresno Prep Academy narrowed its student focus from a 9-12 high school with an education/business concentration to a transition school for retained 8th graders and first year 9th graders. This decision was reached by collaboration with our sponsoring agency. We found that many of our students in the previous year had so many deep-seated emotional and academic problems that they became socially ineligible for job shadowing and work experience. We worked with our sponsoring agency to attract a student population that had fewer problems and could possibly be saved from dropping out of school. This was the first year of State mandated retention policies for all districts. Part of the retention process was the development of strategies and programs to help the retained student. Fresno Prep became that important program in the retention process. We still addressed the needs of continuing students with an independent study program that offered core classes along with classes to make them more marketable from an employment point of view. We could only measure academic progress and personal progress. Academic progress can only be measured by a comparison of previous academic levels with academic levels at the current date. The paper trail of Cumulative Permanent Records is drastically slowed due to the increased numbers of requests for transcripts that are received by local secondary public schools in the first months of every school year. This backlog of requests may take months to be completed. In many instances we have had to wait a full semester to receive student records. The records that we receive may not be current in regards to test scores and special education IEP's or assessments. As is the custom, the test scores for the Sanford9 Tests for the previous school year are not made public until the end of October and would not be included in many student records. Many of our at-risk students have incomplete testing records due to their high transience and attendance levels. Therefore, we can only measure student growth during the time in which

we have the student in our program. We have each student do an autobiography and goal projection at the beginning of the semester to formulate a starting point from which to begin our assessments. We keep a portfolio on each student in order to see and record academic growth. Each student is enrolled in the core curriculum along with grade specific electives. The electives we offer the ninth grade students is Peer Communication which is a semester class on conflict resolution and a semester class of literacy work in a laboratory setting using technology as a tool. We offered our independent study program at the request of our sponsoring agency due to the numbers of students that leave and enter the district in mid semester. In many cases all of the alternative sites in the district are full and the district needed another site that could and would accept continuing students temporarily to complete the semester. We enroll these students in independent study and continue in the course work that they need so as to allow them to stay on track with their classmates and become eligible to re-enter the high school in their attendance area if possible. Many of these students have not taken any standardized tests and are with us for a very short time. It would be highly improbable to measure one year's growth academically. In most cases they make whatever credits they can while they are here and then move on to other schools. We enroll these students in the core classes that they need in order to help them make progress towards graduation.

Chapter 2

"Sponsoring agencies lack policies and procedures for thorough fiscal monitoring and have not adequately monitored their charter schools."

Sponsoring agencies as well as charter schools were not prepared for the complexity of the charter school movement. Fresno Unified School District approved our charter proposal in the spring of 1999 and we went about getting set to open our doors for the 1999-2000 school year. We signed a lease on a 40-year-old building that was centrally located in the inner city of Fresno between two major freeways and with a municipal bus stop in front of the school. We unrealistically estimated our enrollment to be 140 students and received an advance apportionment to get us started. We realized very soon that our apportionment money would not cover our costs, especially when the City of Fresno building inspectors informed us in the middle of the school year that our building had a business B-2 occupancy and we must apply for and complete a change of occupancy to an E-2 occupancy. We applied for a loan from the Charter School Revolving Loan Fund and we received $ 250,000 to help in the many start-up costs. We also applied for and received a Federal Implementation Grant for $ 150,000 to help install our technology equipment to make us eligible to apply for a Digital Grant. The start-up loan payment is taken from our monthly apportionment monies in four consecutive months in the spring of each year and amounts to $50,000 per year for 5 years. We, like our sponsoring agency, found out that we didn't have the resources or manpower to handle all the complexities of running or overseeing a charter school. The end result of all our facility and manpower shortages caused us to have a fiscal shortfall. We spent over $ 130,000 on just building improvements to complete our change of occupancy. We turned in our first independent audit late to our sponsoring agency due to our not anticipating the scope of the audit as well as the length of time to complete.

We feel that our charter school governing board as well as the alternative education division of our sponsoring agency are now feeling the result of being under prepared to handle all the complexities of this process. I feel that our school will become fiscally sound now that building costs will be reduced to a minimum and we now are experiencing increased support and advice from our sponsoring agency.

"Sponsoring agencies do not sufficiently review audit reports or insure that audit findings are resolved."

Fresno Prep experienced the finding of ten (10) problems that were listed in our audit. We responded to all the items in detail and sent our district as well as the California Department of Education copies of our audit along with responses. We assumed that if our sponsoring agency or the Department of Education had any issues concerning the nature of the problems listed in the audit or our responses then they would communicate them to us in some form. Our audit stated that we were compliant in all areas; however improvements were needed in several areas. We have complied with all the improvements and we realize that the audit process is in its self a learning process and growth must occur. I doubt that many new charter schools had a perfect audit with no improvements recommended.

We feel that with our unstable fiscal forecast for our state and the backlash from the negative publicity concerning charter schools have cast a cloud of uncertainty on school finance in general. We hope to work with our sponsoring agency to insure a collegial atmosphere and mutual understanding.

Appendix B

"Analysis of charter schools' financial information – fiscal year 2000-2001."

The concept of a reserve balance for all public schools is all well and good as it relates to overall fiscal solvency. I am sure that every charter school would love to have a 5 % reserve balance. The real world paints a drastically different picture. Most charter schools have enrollments change from month to month and year to year. Most large public schools and districts have a reasonable secure student base to begin each school year to allow for adequate staffing and facilities. Cash flow is not usually an issue in these large schools/districts. Charter schools are faced with last minute hires and lay-offs to accommodate student population levels. I hope that all the parties involved in this issue can understand that charter schools have a difficult time acquiring experienced staff especially when most districts can offer lifetime benefits for those employees that demonstrate long tenures with the district.

Most people in education are painfully aware of the pending budget cuts for education and uncertainty of our fiscal future. Most people are not aware that most large districts will take out short-term loans to ride through the tough times. Most charter schools with 3 or 4 years of experience are not a very good candidate for loans and therefore must make due with what they have.

There is relief on the horizon with the incorporation Prop 39 monies for charter schools to request facilities from a district that has children in the charter school. Fresno Prep has made a request for facilities from their sponsoring agency for the 2003-2004 school year. The number one cause for fiscal problems for most charter schools is facilities and this proposition could make a significant impact on school fiscal climate.

COMMENT

California State Auditor's Comment on the Response From the Fresno Preparatory Academy

To provide clarity and perspective, we are commenting on the Fresno Preparatory Academy's (Fresno Prep) response to our audit report. The number below corresponds to the number we placed in the margin of Fresno Prep's response.

1 Although the term "sponsoring agency" is in the statutes, we have changed the term to "chartering entity" to more closely conform to the language of the Charter Schools Act of 1992. The change in term does not affect any of the findings or recommendations in our report.

Blank page inserted for reproduction purposes only.

Agency's comments provided as text only.

Fresno Unified School District
2309 Tulare Street
Fresno, CA 93721-2287

October 24, 2002

California State Auditor*
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, Ca 95814

Attention: Elaine M. Howle

Dear Ms. Howle:

Enclosed is the Fresno Unified School District's Executive Summary and Response to the audit report from your office.

Please contact Dr. Marilyn Shepherd, Administrator, Student Support Services, 559 457-3913, if you have any questions.

Thank you.

Sincerely,

(Signed by: Santiago V. Wood)

Santiago V. Wood, Ed.D.
Superintendent

Enclosures

* California State Auditor's comments begin on page 127.

FRESNO UNIFIED SCHOOL DISTRICT'S RESPONSE TO CALIFORNIA STATE AUDITOR'S OCTOBER 15, 2002 DRAFT AUDIT ENTITLED "CALIFORNIA'S CHARTER SCHOOLS: MONITORING AND OVERSIGHT AS ALL LEVELS COULD BE STRONGER TO ENSURE CHARTER SCHOOLS ACCOUNTABILITY"

EXECUTIVE SUMMARY

The Fresno Unified School District believes the State Auditor's report is fundamentally flawed. The audit's flaws appear to arise from a fundamental misunderstanding of charter school law, which manifested itself in the audit's creation of its own particular (and statutory unfounded) criteria for evaluating school district oversight of charter schools. While audits of most State government subdivisions and programs would be routine and would likely involve similar standards, charter schools are truly a unique creation of the State Legislature. Charter schools are not, and never were intended to be, to be overseen, supervised and managed as if they were an ordinary subordinate department, bureau or office of the school district, and thus cannot be fairly evaluated in this way.

One would reasonably expect that such an audit would evaluate how a specific statutory scheme is being carried out in the field, and then make recommendations as to how the laws could be improved. Instead, the audit appeared to start by first generating its own ideas of what the law should require with respect to charter school oversight, and then measured school districts against this artificial standard. Predictably, the audit concludes school districts have failed to meet the audit's newly created standards. What is most confounding is that the audit actually could make constructive suggestions about how oversight of charter schools might be improved.

The following points relating to basic deficiencies in the audit are addressed in detail by Fresno Unified:

- The audit relies on the reference to "accountability" in Education Code section 47601, without acknowledging all of the intent behind the creation of charter schools and even misunderstanding "accountability " in the context of charter schools.

- The audit demonstrates basic misunderstanding of charter school law through its repeated misuse of charter school terminology.

- The audit contradicts charter school law by criticizing school districts for tolerating "non-objective" pupil outcomes, and defines "academic performance" as the only acceptable measurable pupil outcome to be identified and pursued by charter schools.

- Rather than acknowledging the real limitations and absence of legal authority existing in current charter school law, the audit "implies" duties and assumes the existence of powers which do not legally exist.

- The audit fails to acknowledge the existing statutory limitations to demanding financial reports from charter schools.

- The audit ignores the statutory requirement that a charter school's annual independent financial audits meet "generally accepted accounting principles", and creates its own standard for audits, and then chastises school districts for not unlawfully imposing them on charter schools.

- While the Charter Schools Act expressly freed charter schools from Education Code requirements, the audit has reimposed the Education Code's budgetary reserve requirements.

- The audit repeatedly asserts that chartering agencies can and should "withhold fees" despite the fact that no legal authority exists for such withholding.

- The audit creates strict accounting standards for school district expenses relating to charter schools and then condemns districts for not meeting the new standards.

In addition to all of the general deficiencies of the audit as set forth above, the audit also makes specific statements directed to Fresno Unified which are inaccurate, misleading or otherwise objectionable. The District's response identifies and challenges 15 specific statements in the audit related specifically to Fresno Unified.

It is our expectation that the State Auditor will give due consideration to our response, and ultimately concur with our recommendation and request that the starting point of the audit, its understanding of charter school law and definition of standards, be re-worked from scratch. Specifically, it would be helpful for the audit team if charter school law experts were brought into the process at the beginning. Such charter school law experts could include representatives from charter school advocacy groups and school districts with knowledge of the law and real world experience in applying it. Additionally, the process should be transparent and open to input from the districts who are the subject of the audit.

Alternatively, we note that Education Code section 47616.5 requires the Legislative Analyst to contract for a comprehensive neutral evaluation of the entire charter school system, with the report to be submitted by July 1, 2003. This statutorily mandated report process easily exceeds the current audit in both scope and resources. Accordingly, rather than re-work the current audit from scratch, it may make sense to take no action and simply defer analysis, conclusions and recommendations to the Section 47616.5 report.

FRESNO UNIFIED SCHOOL DISTRICT'S RESPONSE TO CALIFORNIA STATE AUDITOR'S OCTOBER 15, 2002 DRAFT AUDIT ENTITLED "CALIFORNIA'S CHARTER SCHOOLS: MONITORING AND OVERSIGHT AS ALL LEVELS COULD BE STRONGER TO ENSURE CHARTER SCHOOLS ACCOUNTABILITY"

OCTOBER 24, 2002

A. Introduction

The Fresno Unified School District believes the State Auditor's report is fundamentally flawed. The audit's flaws appear to arise from a fundamental misunderstanding of charter school law, which manifested itself in the audit's creation of its own particular (and statutory unfounded) criteria for evaluating school district oversight of charter schools. While audits of most State government subdivisions and programs would be routine and would likely involve similar standards, charter schools are truly a unique creation of the State Legislature. Charter schools are not, and never were intended to be, to be overseen, supervised and managed as if they were an ordinary subordinate department, bureau or office of the school district, and thus cannot be fairly evaluated in this way.

One would reasonably expect that such an audit would evaluate how a specific statutory scheme is being carried out in the field, and then make recommendations as to how the laws could be improved. Instead, the audit appeared to start by first generating its own ideas of what the law should require with respect to charter school oversight, and then measured school districts against this artificial standard. Predictably, the audit concludes school districts have failed to meet the audit's newly created standards. What is most confounding is that the audit actually could make constructive suggestions about how oversight of charter schools might be improved.

It is our recommendation and request that the starting point of the audit, its understanding of charter school law and definition of standards, be re-worked from scratch. Specifically, it would be helpful for the audit team if charter school law experts were brought into the process at the beginning. Such charter school law experts could include representatives from charter school advocacy groups and school districts with knowledge of the law and real world experience in applying it. Additionally, the process should be transparent to the districts who are the subject of the audit. For example, there are many ambiguities in charter school law, and these ambiguities have been interpreted in many different ways. The legal interpretations and positions adopted by the audit team should therefore be explained and supported by reasoned legal analysis, available for review and comment by the school districts. Where ambiguities in the law are not clearly resolvable, the audit should allow for the different interpretations by different school districts or suggest legislative clarifications, not criticisms of school districts for their inability to enforce ambiguous laws.

Alternatively, we note that Education Code section 47616.5 requires the Legislative Analyst to contract for a comprehensive neutral evaluation of the entire charter school system, with the report to be submitted by July 1, 2003. This statutorily mandated report process easily exceeds the current audit in both scope and resources. Accordingly, rather than re-work the current audit from scratch, it may make sense to take no action and simply defer analysis, conclusions and recommendations to the Section 47616.5 report.

B. General Flaws and Deficiencies throughout the Audit

1. The audit relies on the reference to "accountability" in Education Code section 47601, without acknowledging all of the intent behind the creation of charter schools and even misunderstanding "accountability " in the context of charter schools.

The audit is based upon an initial misunderstanding of charter school law, resulting in the creation of unsupported expectations based more upon what the auditors wanted charter school law to be, rather than what it actually is. The audit appears to begin and end its interpretation of charter school law with subdivision (f) of Education 47601, which sets forth the Legislature's intent regarding the accountability of charter schools. But charter schools do not exist for the purpose of being held accountable to public school districts. To the contrary, the essence of charter schools is found in the other subdivisions of Section 47601, which state that charter schools are intended to encourage "different and innovative teaching methods", "increase learning opportunities", "create new professional opportunities", and "provide parents and pupils with expanded choices in the types of education opportunities".

Furthermore, Education Code section 47601 also intends that charter schools "provide vigorous competition" to existing public schools. Given this intent behind charter school law, even the audit's understanding of its sole standard, accountability, is called into question. While the audit views charter schools as being solely accountable to school districts, Section 47601 does not identify to whom charter schools are to be held accountable, but simply states the intention that they be accountable. Given the "vigorous competition" intended to occur with existing schools of school districts, the Legislature apparently understood that a charter school could not fairly compete with a school district while at the same time being subject to aggressive monitoring, excessive accountability standards, and intrusive corrective action. More than anything else, charter schools have been defined so as to be strictly accountable to parents and pupils–unlike the schools of public school districts, no pupil in the State is required to attend a charter school, and every student in the State is free to attend a charter school. Ultimately, the choices of parents and pupils to attend any given charter school will determine the ultimate success or failure of that charter school.

Ultimately, the audit fails to understand that charter schools are not, and never were intended to

be, subdivisions of school districts, to be supervised as if they were a subordinate department, bureau or office of the school district, and thus cannot be fairly evaluated in this way.

2. The audit demonstrates basic misunderstanding of charter school law through its repeated misuse of charter school terminology.

The terminology used throughout the audit suggests a fundamental misunderstanding of the statutorily created relationship between a chartering agency and a charter school. The following are examples of the misleading terminology which permeates the audit:

(a) **"Sponsoring Agencies" and "Sponsors"**. The audit elects to refer to chartering agencies repeatedly and exclusively as the "sponsors" of charter schools. In the Charter Schools Act agencies that grant charters to charter schools are referred to as the "Chartering agency" for good reason. To "sponsor" something implies supporting, endorsing, or vouching for it. When a charter petition is submitted to a chartering agency, it is legally irrelevant whether the chartering agency supports, endorses or can otherwise vouch for a charter school. Education Code section 47605 requires a chartering agency to grant a charter unless the specified grounds are established for denying the charter. These grounds do not include whether the chartering agency endorses or supports the charter school. In fact, many charter schools existing today were granted charters not only without express endorsement or approval of a school district, but despite opposition from the school districts. The term "sponsoring agency" came into use in 1999 as a term of art with respect to the funding scheme for charter schools, as a way to delineate which public entity is required to front a portion of property taxes to charter schools pursuant to Education Code section 47635. Its use throughout this audit demonstrates both a basic misunderstanding of the law, as well as a potential predisposition against chartering agencies.

(b) **"Charter agreements", "Agreed-upon provisions" and "Charter represents an agreement between it and the sponsoring agency"**. A charter is not an agreement. The charter school and chartering agency do not "agree" to a charter. A school district that receives a charter petition has no legal authority to negotiate any terms of the charter and has no ability to deny a charter absent establishing the grounds specified by Education Code section 47605. An agreement can be generally understood as terms and conditions voluntarily negotiated and assented to between two or more parties and which define the rights and responsibilities of the parties. A charter, on the other hand, can be generally understood as a document which defines the goals, characteristics, and practices of the charter school, and binds only that one entity. By referring to charters as "agreements", the audit implies a voluntary consent to everything in the charter by the chartering agency. But such consent does not exist nor is it intended to be a requirement for the granting of a charter. By implying such consent, the audit seems to be bolstering its own idea of what the relationship should be between a chartering agency and charter school, an idea without a basis in existing law and which should more appropriately be presented as a legislative recommendation than used against school districts as if it were existing law.

(c) **"Approve charters"**. Again, the audit misleads by choosing to use its own word, "approve", to refer to the granting of a charter by a chartering agency, rather than the statutory terminology. The Charter Schools Act does not require nor even expect that an agency which receives a charter petition will "approve" of the charter school. Charter schools are intended to compete directly with existing public schools, and as such, their existence cannot be subject to the actual approval of the school district. Chartering agencies are required by Education Code section 47605 to grant a charter petition in all circumstances, unless it can establish the specified grounds for denying a charter petition.

(d) **"Fiscal health" and "Academic health"**. Again, nowhere in charter school law does there exist a standard of "fiscal health" or "academic health" which a charter school must meet and which a chartering agency must "ensure" or take "corrective action". While new laws and regulations creating and defining such standards might or might not be warranted, rather than simply making this recommendation the audit once again assumes that this standard already exists and then criticizes school districts for not ensuring it is met. Further, as stated elsewhere in this response, the Legislature gave chartering agencies only one power to take corrective action, the power to revoke a charter. Education Code section 47607, setting forth the grounds for revocation, does not refer to concerns over "fiscal health" or "academic health" that may lead to problems in the future. Under Section 47607, unless a charter school fails "to meet generally accepted accounting principles, or engaged in fiscal mismanagement", a charter may not be revoked. While poor "fiscal health" (never specifically defined by the audit) would not be a good thing, such a charge would likely fall short of the statutory grounds of engaging in fiscal mismanagement or failing to meet generally accepted accounting principles.

(e) **"Academic Monitoring"**. This is a phrase invented by the audit but which has no actual basis in charter school law. While the audit may believe "academic monitoring" powers should be added to the law, they do not now exist. Further, the Legislature which enacted the charter school laws may very well object to "academic monitoring" by school districts, coupled with actual power to "take corrective actions". Such pervasive monitoring and oversight of charter school curriculum would be antithetical to one of the basic premises underlying charter schools. Charter schools are expected to experiment, be innovative, and provide an education different from the existing public school structure. Having a public school district monitor and correct the academic programs of charter schools would defeat one of their very purposes.

3. The audit contradicts charter school law by criticizing school districts for tolerating "non-objective" pupil outcomes, and defines "academic performance" as the only acceptable measurable pupil outcome to be identified and pursued by charter schools.

While academic performance would certainly be a significant measure of a charter school's success, the audit proceeds as if this is the exclusive measure of whether a charter school is pursuing or meeting its pupil outcomes. Further, the audit suggests that charter schools should have only objectively measurable student outcomes. The audit states:

> As Table 4 shows, all 12 of the sample schools had at least two outcomes in their charter agreement that could be measured objectively and were adequate indicators of student academic performance. However, 34 percent of the outcomes listed in the schools' charters were not related to academic performance. Objective measures of student performance are important because they provide clear indicators against which a school can measure itself and demonstrate to others its accountability.
>
> (The audit's basic misunderstanding of the chartering agency-charter school relationship is addressed elsewhere in this report--here it is evidenced by reference to the "charter agreement" (a charter is not an agreement) and the "sponsoring agency" (a chartering agency does not "sponsor" a charter school)).

The audit than goes on to criticize the goal of increased attendance as not sufficiently measurable with respect to academic performance, and states that it has therefore ignored any successful charter school efforts toward assessing and meeting this goal.

Once again, the audit creates its own definition of what is an appropriate measurable pupil outcome for charter schools ("objectively measurable academic performance"), then proceeds to condemn school districts for not forcing this definition on "its" charter schools. The requirement that charter schools identify and pursue measurable pupil outcomes is found in Education Code section 47605(b)(5)(B), which requires the charter school to provide a reasonable description in its charter of the following:

> The measurable pupil outcomes identified for use by the charter school. "Pupil outcomes" for purposes of this part, means the extent to which all pupils of the school demonstrate that they have attained the ***skills, knowledge, and attitudes*** specified as goals in the school's educational program. (Emphasis added.)

First, the audit's requirement that "objectively measurable" standards of "academic performance" be used to judge whether pupil outcomes are being adequately monitored by school districts and charter schools is contrary to the statutory law, which expressly allows for outcomes related to skills and attitudes, in addition to objectively measurable knowledge. Using the example of increased attendance, which was dismissed by the audit as unacceptable, it is easy to understand how this measure would be relevant to achieving goals related to skills and attitude. Showing up consistently for class, regardless of one's test scores, demonstrates the basic (yet frequently

overlooked) job skill of showing up for work every day, as well as a positive attitude toward learning. With respect to attitude, low test scores combined with increased attendance could even suggest the development of the desirable attitude of persistence in the face of adversity. While such goals would be expressly permitted by statute, and even encouraged by the intent of the Charter Schools Act, they apparently do not fit into the audit's preconception of what the law should be, and thus the law itself is ignored.

4. Rather than acknowledging the real limitations and absence of legal authority existing in current charter school law, the audit "implies" duties and assumes the existence of powers which do not legally exist.

The legal starting point for the audit's creation of standards it then applies to school districts is, admittedly, an implication. The audit concedes that there is no express statutory (or regulatory) requirements, directions or guidance regarding how and to what extent a chartering agency should carry out its oversight of a charter school. Undaunted, the audit simply asserts, without legal support, that all of its newly created standards for oversight are "implied" by the law. The audit then goes so far as to express "surprise" when they discover school districts have not necessarily recognized the same implied standards assumed to exist by the audit.

One example can be found in the following sentence, which criticizes a specific chartering agency for failing to do that which it has no legal authority to do:

> By not monitoring its charter schools effectively, [the school district], as a sponsoring agency, may not ensure that its schools are providing students with a suitable curriculum and education opportunities and cannot identify when corrective action is necessary.

Putting aside the misuse of terminology which implies a relationship and control which does not exist, here the audit implies powers that do not legally exist, and then criticizes a school district for not exercising the fictional powers. Nowhere in the Charter School Act are chartering agencies given the responsibility or power to ensure that a charter school is providing its students with a suitable curriculum and educational opportunities. The Charter School Act was carefully crafted to ***prevent*** chartering agencies from imposing their view of what is a "suitable" curriculum or what "educational opportunities" should be offered to the students of a particular charter school. Charter schools have been intentionally protected from any such interference by districts in order to allow for innovation and experimentation.

Even if, in the above example, a chartering agency were legally permitted to determine the suitability of a charter school's curriculum, the audit misidentifies the possible remedies of a chartering agency. Throughout the audit school districts are chastised for not taking "corrective action", which is never quite defined, but is identified as a separate action than revoking a charter. Legal authority to take "corrective action" short of revocation simply does not exist. As stated above, the Charter Schools Act was structured so as to prevent chartering agencies

meddling, micro-managing or otherwise interfering with the operation of charter schools. Chartering agencies were entrusted with only one power to control the operations of an existing charter school--the ultimate power to revoke a charter and permanently close its doors pursuant to Education Code section 47607. The audit's failure to understand this fundamental limitation on chartering agencies is evident throughout the report, and leads to baseless criticisms of school districts. In addition to giving chartering authorities just that one big stick of revocation, section 47607 limits the grounds for revocation. A charter may not be revoked for concerns about the "suitability" of its curriculum or differences of opinion regarding "educational opportunities" for charter students. A charter may be revoked only when the chartering agency finds that the charter school:

1. Committed a material violation of any of the conditions, standards, or procedures set forth in the charter.

2. Failed to meet or pursue any of the pupil outcomes identified in the charter.

3. Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.

4. Violated any provision of law.

Given the structure and intent of the Charter Schools Act, in practice only a few chartering agencies have taken the drastic step of revoking a charter, and only in response to the most serious grounds.

5. The audit fails to acknowledge the existing statutory limitations to demanding financial reports from charter schools.

When school districts are able to stretch the law and require more accountability of charter schools, they should be commended by the audit. Instead, such efforts are used to criticize any other instances where a school district did not take such aggressive action.

A clear example of this is the way some school districts have effectively used the Memorandum of Understanding (MOU) to get charter schools to provide financial information above and beyond what is required by statute. In a typical MOU, the school district agrees to provide certain services to the charter school, typically for a fee. As part of the agreement, some school districts, such as Fresno, require charter schools to submit preliminary financial reports in addition to the Annual Financial Audit. Rather than commend such school districts for successfully negotiating such terms with its charter schools, the audit considers this to be a minimum standard that all school districts must meet, and then condemns those that do not. Again, however, the newly created standard has no basis in the current charter school law.

First, the Charter Schools Act limits the what financial documents may be required of a charter school. This is consistent, as stated elsewhere herein, with a statutory scheme premised on freeing and protecting charter schools from existing school district burdens. A school district is only permitted to impose those burdens on a charter school that it is expressly allowed to impose by statute. With respect to financial documents, there are two provisions that reference a requirement. The first is Education Code section 47605(b)(5)(I), requiring the charter petition (as stated above, a non-negotiated document created by the charter school promoters) to state the:

> manner in which annual, independent, financial audits shall be conducted, which shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority.

The second is Education Code section 47604.3, which states:

> "A charter school shall promptly respond to all reasonable inquiries, including, but not limited to, inquiries regarding its financial records, from its chartering authority or from the Superintendent of Public Instruction and shall consult with the chartering authority or the Superintendent of Public Instruction regarding inquiries."

The first requirement above, that an annual audit be conducted, does not in any way require preliminary, supplemental, interim or additional financial reports to be generated by a charter school. The second requirement only allows *financial records* to be available for inspection–it does not require a charter school to generate any additional financial reports at the request of the chartering agency. Conceivably, a district could review all of the invoices, receipts, and other records of a charter school and then generate its own desired interim report–effectively conducting its own full-scale continuous audit of the school–but that is clearly not the intention of the statutes. Thus, there is simply no legal authority for a school district to require a charter school to generate and present any financial report to the district other than the annual, independent, financial audit.

Notwithstanding this statutory limitation, some school districts have nevertheless been able to get some additional financial reports from some charter schools through use of an MOU. There is nothing, however, in the Charter School Act that even requires a charter school to negotiate or enter into an MOU with a school district on any terms. The only statutory reference to such an agreement is in Education Code section 47613, which permits the oversight charge, and then goes on to state that this section "shall not prevent the charter school from separately purchasing administrative or other services from the chartering agency or any other source." If a charter school does not want to enter into an MOU with a school district, there is nothing a district can do. The limited grounds for denying a charter petition under Section 47605 do not include a charter school's failure to enter into an MOU with a district. The only other leverage a district might have, the revocation powers of Education Code section 47607, similarly do not allow a charter to be revoked for failing to enter into an MOU with a district. Many charter schools are

well aware of these statutory limitations and choose not to enter into any kind of MOU with a district, or choose to use this freedom to negotiate non-restrictive terms in the MOU. Charter schools are generally not motivated to voluntarily agree to increased financial reporting requirements.

Given the limitations on what financial reporting a school district can require of charter schools, one would expect the audit to commend those districts which are able to get additional financial reports from charter schools. The audit, however, makes incorrect assumptions about the current state of charter school law, and then condemns districts for not meeting the audit's assumptions.

6. The audit ignores the statutory requirement that a charter school's annual independent financial audits meet "Generally Accepted Accounting Principles", and creates its own standard for audits, and then chastises school districts for not unlawfully imposing them on charter schools.

The only statutory auditing standard by which charter schools are required to perform their annual independent financial audits is that they meet "generally accepted accounting principles" (GAAP). The audit, however, has created a new standard for charter school audits, one which requires the charter school audit to address all of the specific statutory requirements of charter schools, such as tests of average daily attendance, a charter school's compliance with standardized testing, meeting minimum instructional minute requirements, employing properly credentialed teachers, and all other statutory requirements.

While the audit's recommendations on adding specific requirements to a charter school's annual independent financial audit might have merit, once again the audit assumes that its preferences already exist as current law, and then chastises districts for not meeting the fictional standards. The audit completely refrains from referring to GAAP anywhere, and goes so far as to delete any mention of the statutory requirement from its restatement of existing law. The audit cites Education Section 47605's audit requirement as follows: "Annual, independent, financial audits shall be conducted", followed by: "Audit exceptions and deficiencies shall be resolved to the sponsoring agency's satisfaction." Section 47605(b)(5)(I), however, requires charter schools to describe the following:

> "The manner in which annual, independent, financial audits shall be conducted, ***which shall employ generally accepted accounting principles,*** and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the chartering authority." (Emphasis added to statutory language deleted from audit's version.)

Furthermore, the only leverage a school district has to enforce this requirement is the threat of revocation pursuant to section 47607(b)(3), the specific ground being limited to when the charter school:

> ***"failed to meet generally accepted accounting principles,*** or engaged in fiscal mismanagement." (Emphasis added.)

Chartering agencies simply do not have the legal authority to require any more of a charter school than an annual, independent, financial audit, meeting generally accepted accounting principles.

Possibly the clearest statement in the audit which reveals both the audit's fundamental misunderstanding of charter school law, as well as the desire to portray the audit's preferences as existing law is as follows:

> "Although we recognize that charter school audits are not required to conform to these guidelines, if the sponsoring agencies required their application as part of the charter agreement, the resulting audits would provide a more complete picture of the charter schools' financial position."

First, the audit actually concedes that charter schools have no legal obligation to meet the standards by which the audit is judging them and the school districts. The audit then goes on to recommend that school districts simply require the insertion of these heightened standards in charter petitions. This would be illegal. Under Education Code section 47605, chartering agencies may deny charters only on specified grounds–the chartering agency has no power to require the insertion of any additional requirements, let alone additional non-statutory audit requirements. The audit also refers to the charter petition as an "agreement"–which it is definitely not. Chartering agencies have no legal right to negotiate any aspect of a submitted charter petition. Again, the agency can only grant or deny the charter on limited grounds. Further, while it may be helpful to obtain "a more complete picture of the charter school's financial position", the chartering agency can only take action to revoke a charter if the school fails to meet generally accepted accounting principles or engages in fiscal mismanagement. This is a high standard for action which does not necessarily allow for revocation based on generalized concerns over a charter school's fiscal health.

7. While the Charter Schools Act expressly freed charter schools from Education Code requirements, the audit has reimposed the Education Code's budgetary reserve requirements.

The Charter Schools Act deliberately exempts charter schools from almost all laws governing school districts. Education Code section 47610 states:

A charter school shall comply with this part and all of the provisions set forth in its charter, but is otherwise exempt from the laws governing school districts except all of the following:

(a) As specified in Section 47611.

(b) As specified in Section 41365

(c) All laws establishing minimum age for public school attendance.

Notwithstanding this basic premise of charter school law, the audit has concluded that charter schools should meet State Department of Education regulations requiring and defining the size of an appropriate reserve balance in public school district budgets. Again, rather than simply recommend to the Legislature that the laws be changed to impose this new requirement on charter schools, the audit simply assumes it already exists as a legal requirement and then proceeds to condemn school districts for not forcing the fictional requirement on charter schools. The audit states:

> "Further, the Department of Education (department) established regulations that a district should maintain a reserve balance of between 1 percent and 5 percent, depending on the district's overall average daily attendance (ADA), to cover requirements in succeeding fiscal years. The required reserve balance is based on a ratio of fund balance to annual expenditures. By maintaining a reserve balance, charter schools would have a stronger financial position; therefore, according to the department's regulations, the charter schools would need to maintain a fund balance of between 3 percent and 5 percent of annual expenditures."

It might be a good idea to impose a mandatory budget reserve requirement on charter schools, although the real world experience of charter schools is that their financial circumstances differ greatly from established public school districts. In any event though, such a requirement does not legally exist today, and to criticize districts for not enforcing it is patently unfair.

8. The audit repeatedly asserts that chartering agencies can and should "withhold fees" despite the fact that no legal authority exists for such withholding.

At several points in the audit, the school districts' authority to "withhold funding" from a charter school is mentioned as if this were legal or even possible. In fact, school districts have not been given the leverage of being able to "withhold funds" from charter schools. Education Code section 47613 states, in relevant part:

". . . a chartering agency may charge for the actual costs of supervisorial oversight of a charter school . . ."

As there is no express authorization to withhold charter school funding, many school districts follow the letter of the law and will "charge" a charter school by sending it a bill for the 1% amount. Even if a school district were to decide to withhold funding without any express legal authority, most charter school funding does not actually pass through school districts. Since 1999 most new charter schools are directly funded by the state, with dollars being transferred directly from the State Treasury to the county treasury, and then directly to the charter schools. This funding never passes through school districts, and thus cannot be withheld. The only potential funding to withhold would be the in lieu property tax transfers from districts to charter schools required by Education Code section 47635. This property tax transfer requirement is not considered additional funding given that it is offset dollar-for-dollar from the ADA direct funding to charter schools. Rather, this property tax transfer assists charter schools with managing the very real cash flow challenges that arise in the creation of a new charter school. Withholding this crucial cash flow from charter schools, rather than "charging" for oversight, without express legal authorization could very well result in a successful legal challenge by a charter school. While giving this power to school districts may or may not be a good idea, this is a decision for the Legislature, and the audit should not treat the issue as having already been decided.

9. The audit creates strict accounting standards for school district expenses relating to charter schools and then condemns districts for not meeting the new standards.

Given the overall critical tone of the audit, it is not surprising that audit would hope to expose any school districts which may be double-charging the State for the costs of charter school oversight. But in this instance, the audit has not any exposed any actual wrongdoing. Rather, the audit has determined that school districts should have tracked and documented all of their charter school oversight costs in order to make sure that their 1% charge to charter schools is consistent with actual costs of oversight. By not following this standard, the audit concludes that it would be possible for school districts to potentially double-charge the State when submitting a mandated cost claim. The appropriate conclusion from this analysis that can be fairly stated is that the current lack of expense tracking by school districts allows for potential abuse through double-charging. The appropriate recommendation to make from this conclusion is that school districts should track and document charter school expenses. In practice, the recommendation would likely become moot, as many districts are already attempting to better document charter school expenses in order to obtain reimbursement, whether from charter schools or the State.

The audit, however, chooses to make a confrontational accusation more befitting of a tabloid headline than an unbiased audit, proclaiming: "School Districts may be double-charging the State". It is easy to see how unfair this accusation is by hypothetically applying it every situation where an audit determines that more rigorous accounting procedures might be warranted (which

probably encompasses most audits). For example, if the audit concluded that better expense report verification systems are required for State employees, the comparable headline would be "Employees may be stealing from State!". It is analogous to the difference between pointing out someone's incorrect statements and proclaiming that the person may be a compulsive liar.

Under current charter school law, of course, there is no clear guidance as to what tracking and documenting may be required for charter school expense. Nowhere in the Charter Schools Act are school districts even expressly required to track their expenses associated with oversight of a charter school. The statute at issue, Education Code section 47613, states, in relevant part, only the following:

> ". . . a chartering agency may charge for the actual costs of supervisorial oversight of a charter school . . ."

The audit extrapolates from this language a standard regarding how and to what degree charter school expenses incurred by a school district must be specifically tracked and documented. While such a requirement regarding how and to what extent school districts track and document charter school expenses is certainly not an unreasonable proposition, such a requirement is not currently defined in charter school law. With respect to this matter, simple clarifying guidelines issued by an appropriate State agency may very well achieve the desired results as a practical matter.

C. Specific Flaws and Deficiencies in the Audit with Respect to Fresno Unified School District

In addition to all of the general deficiencies of the audit as set forth above, the audit also makes specific statements directed to Fresno Unified which are inaccurate, misleading or otherwise objectionable.

The District objects to following specific statements, identified by the page number corresponding to the October 15, 2002 Draft Report:

1. "..(Fresno) does not have guidelines to monitor charter schools and does not always periodically monitor its charter schools' academic performance relative to the charter agreement." (Page 24)

Table 3 (pg. 24) gives an overview of academic monitoring of charter schools by sponsoring agencies. One column of the table evaluates the districts based on their written guidelines. The District would like to emphasize that "written guidelines" are not mentioned or required by charter school law. In addition, the report states "...Fresno Unified school District (Fresno) does not have guidelines to monitor charter schools..." (pg. 24), which is inaccurate. Fresno has

guidelines that were set out in the annual report and the process for the District's compliance review of charter schools. The report further states "...(Fresno) does not always periodically monitor its charter schools' academic performance relative to the charter agreement" (Pg. 24). While periodic monitoring of academic performance is the unstated expectation of the audit team, current charter law under which Fresno was operating does not require this type of monitoring. However, the District did engage in an annual review of the charter school's performance in performing its oversight duties.

2. **"...Fresno still lacks a written monitoring plan and an adequate process to ensure that its charter schools achieve academic outcomes they set forth in their charter agreements." (pg 25)**

Fresno disputes this statement, as the charter school compliance review process that the District utilizes provides a comprehensive process to evaluate all of the fifteen elements of the charter petition.

3. **"Although Fresno had six of its nine charter schools participate in a Review of Compliance with Charter Provisions (compliance review) beginning in November 2001,..." (pg. 25)**

This statement is inaccurate as Fresno had seven of its ten charters participate in the compliance review.

4. **"...Fresno required the six schools to describe how they had measured student outcomes." (pg. 25)**

Again, Fresno required the seven schools to participate to describe this particular element.

5. **"However, Fresno did not associate the schools' responses with the measurement criteria described in the charter, nor did Fresno verify the accuracy of the schools' responses." (Pg. 25)**

The charters provided the objective measurement data in their responses to the compliance review, such as STAR 9, proficiency test, and other testing information. These measurements are considered the primary indicators of student progress, as with all of the District's schools. Consideration of other subjective data would not provide an appropriate measure of the charter schools' "academic health."

6. **"For example, in its compliance review for Renaissance Charter School (Renaissance), Fresno listed that the school administers proficiency tests, comprehensive tests of basic skills, and the Stanford 9. However, the charter agreement, we found references to three other methods of measurement, including grade point averages, graduation rates, and portfolios, none of which the district included in its compliance review of Renaissance." (Pg. 26)**

The assessments referenced in the Renaissance report were better indicators of students' progress versus grade point averages, graduation rates, and portfolios. The assessments that the District utilized to assess Renaissance's progress were more objective than the ones mentioned in their petition, which are highly subjective. To rely on the indicators of grade point average, graduation rate and portfolios would have based student progress on factors that varied from teacher to teacher. The audit team's limited knowledge of California's current standards for assessing school progress is evident in this particular finding.

7. **"Even though these agreed-upon measures were not included in the compliance review, Fresno deemed the school 'compliant'." (Pg. 26)**

Fresno deemed the school compliant since the school completed appropriate student assessments and analyzed the results to determine areas for improvement and growth for the charter. In the annual reports, the charters discussed the results of student assessment and their approach for student improvement.

8. **"Additionally, Fresno required six of its schools to complete an annual report. Each charter school developed its annual report and presented it to the Fresno Board of Education in March 2002." (Pg. 26)**

Again the report is inaccurate. In 2000-01, Fresno required and received seven of the nine schools to complete an annual report. Two of the charter schools were District conversion charter schools and their reports were included in the District's elementary and secondary division reports. The March 2002 Board of Education presentation was not the charter schools annual reports, but rather the findings from the compliance review conducted November 2001.

9. **"Although Fresno's compliance review and annual reports may have provided some valuable information, they were insufficient to completely and accurately assess its charter schools' academic health." (Pg. 26)**

The audit team states their opinion that the degree of "academic health" should be measured. This requirement is not imposed by law. Why have we never seen the audit committee's opinion

in law or memorandum from any State agency until now? A reality the auditors do not face is the evolution of a charter school's operation as it gains knowledge about how to better serve its students as reflected in the response by Fresno Prep. To think that every element of a charter petition would remain as written is naive. Real schools are constantly adapting to students, finances, students' needs, and crisis.

10. "Fresno did not require all its' charter schools to participate, thus Fresno's insight was limited to the participating schools". (Pg. 26)

The District explained and provided documentation to the audit committee on several occasions that the three charter schools that did not participate in the compliance review were District conversion charter schools. These charter schools are provided oversight by the District division assistant superintendents, and are monitored as all other schools within the Fresno Unified School District.

11. "...Fresno merely collected and summarized the schools' responses without verifying that the schools were responding based on previously agreed-upon student outcomes and demonstrating how they are meeting those outcomes."(Pg. 26)

This statement is a gross misrepresentation of the District's actions. Upon completion of the compliance review, District staff met with all of the charter school administrators and presented the District's findings of the review. Where there were questions or noncompliant areas, the District informed the charter school administrators that a staff member would be visiting the site and reviewing the specific areas of concern. Throughout the entire process the District collaborated with the charter schools to review their findings and determine areas that needed to be addressed. In the spirit of the charter law, the District acknowledged the charter schools' independence to analyze the data and develop improvement plans regarding curriculum, instruction and, ultimately, student outcomes.

The District disagrees with the statement of "demonstrating how they are meeting those outcomes". The issue is to what degree did we verify the charter schools' responses to student outcomes. The District did not verify to the degree that the audit committee considered adequate; however we haven't seen anything from the committee that indicates what adequate verification would be.

12. "Although exempt from many statutes, charter schools are still subject to at least three legal requirements as conditions for receiving state funds including: (1) hiring teachers that hold a Commission on Teacher Credentialing permit, except for non-core, non-college prep course; (2) offering, at minimum, the same number of instructional minutes as traditional public schools; and (3) certifying that its students have participated in

state testing programs in the same manner as other students attending public schools. Requirements 1 and 2 became conditions of receiving state funds beginning January 2002, whereas requirement number 3 became a condition of receiving state funds effective January 2000. Since these requirements are conditions of apportionment, we expected to find sponsoring agencies with guidelines and activities to ensure compliance with these legal provisions." (Pg. 32)

The audit committee's assertion that Fresno Unified did not have guidelines and activities to ensure compliance with the cited legal provisions is insulting. The District demonstrated that the compliance review process addressed all 15 fifteen elements of the charter petition, including teacher credentialing and student participation in State assessments. In addition, the District produced the documentation that the instructional minutes of each charter school were reviewed. While the guidelines and activities may not have been in a format that the audit committee would have preferred, the District took very seriously its responsibility to ensure compliance with all required legal provisions. Again, the District's monitoring performance was evaluated on unstated and inappropriate expectations.

13. Table 5 - Sponsoring Agencies' Verification of Charter Schools' Compliance with Legal Requirements Fiscal Year 2001-02. (Pg. 33)

Fresno disagrees with the assertion that the District's process for verifying teacher qualifications was "unclear". The table heading is unclear in itself, as the statute states that teachers in charter schools are to hold a credential. Clarity of qualification versus credential is essential to provide an accurate picture. During the compliance review conducted in 2001-02, Fresno required every charter school to produce evidence that the teachers employed had a valid teaching credentials. While the process may not have met the audit committee's unwritten standards, the District did inspect the documents and, as appropriate, obtained copies. The audit committee's finding of "unclear" is unwarranted and inappropriate based on the tenets of the law.

The subsequent columns on the chart for Fresno of "verify instructional minutes" and "verify standardized testing" also contain misleading information. The District did in fact verify both of these areas for all of the charter schools in 2001-02. Again, the audit committee's unstated expectations for the process that districts were to utilize to conduct such reviews allows for such a misrepresentation of Fresno's activities.

D. Conclusion

The Fresno Unified School District understands the need for a fair audit to determine how well the District is meeting its oversight obligations toward charter schools. The draft report provided for District comment and review five days ago is not such an audit. The District proposes that

the State Auditor convene an audit team which includes experts in charter school law and practice, in order to reach an initial understanding of what the charter school law actually requires and how best to measure district monitoring efforts. We propose that the process be transparent to the effected school districts, and that differences in legal understanding and interpretation be shared, analyzed and resolved where possible. Where understanding can not be achieved, at a minimum, the ambiguity of current law, should be acknowledged and district efforts to comply should be respected.

Alternatively, we note that Education Code section 47616.5 requires the Legislative Analyst to contract for a comprehensive neutral evaluation of the entire charter school system, with the report to be submitted by July 1, 2003. This statutorily mandated report process easily exceeds the current audit in both scope and resources. Accordingly, rather than re-work the current audit from scratch, it may make sense to take no action and simply defer analysis, conclusions and recommendations to the Section 47616.5 report.

If the State Auditor publishes the audit in its current form, or any edited form that does not address the District's fundamental concerns, we request that this response and executive summary be published with the audit, in its entirety and without any editing or alteration.

Blank page inserted for reproduction purposes only.

COMMENTS

California State Auditor's Comments on the Response From the Fresno Unified School District

To provide clarity and perspective, we are commenting on the Fresno Unified School District's (Fresno) response to our audit report. The numbers below correspond to the numbers we placed in the margins of Fresno's response.

1. The report title changed and we made Fresno aware of the change while Fresno was reviewing the draft report.

2. Contrary to Fresno's suggestion, this report is not intended to be read as a legal opinion on the application of charter schools law to chartering entities. Instead, we looked to the law for guiding principles in responding to specific questions from the Joint Legislative Audit Committee (audit committee) regarding policies and practices for monitoring charter schools. Moreover, on pages 18 and 32, we recognize the lack of specificity in state law regarding monitoring charter schools and recommend to the Legislature that it might consider making the oversight role and responsibilities of chartering entities more explicit. Finally, as we state on these same pages, we believe that some monitoring role for chartering entities is implicit in the Charter Schools Act of 1992 (Act), particularly in a chartering entity's charter revocation authority, the primary vehicle for enforcement of charters.

   Although not rendering a legal opinion on the issue of oversight, our view that the charter schools law places some monitoring responsibilities on chartering entities is informed by our reading of the statutes as well as the constitutional obligations of the State regarding the public school system. In fact, in *Wilson v. State Board of Education*, (1999) 75 Cal.App 4th 1125, the First Appellate District Court of Appeal considered the issue of whether the Act permitted funding for schools that fell outside of the public school system, thus violating the California Constitution. In finding that the Act did not run afoul of the constitution, the court pointed to the statutes that we have relied on as evidence that charter schools are operated in a framework that keeps them within the public school system. For example, the court found that:

- Chartering entities have "continuing oversight and monitoring powers" with:
  - The ability to demand response to inquiries.
  - Unlimited access to inspect or observe any part of the charter school at any time.
  - The right to charge for actual costs of supervisorial oversight.
  - The right to revoke a charter for, among other reasons, a material violation of the charter or violation of any law, failure to meet student outcomes, or fiscal mismanagement.
- As part of their revocation authority, chartering entities are required to permit a charter school the opportunity to cure the alleged problem. More specifically, the court stated, "short of revocation, [charter entities] can demand that steps be taken to cure problems as they occur."
- Chartering entities "approve" charters. The chartering entity "controls the application-approval process, with sole power to issue charters"—"[a]pproval is not automatic, but can be denied on several grounds, including presentation of an unsound education program."
- With regard to accountability, charter schools must promptly respond to all reasonable inquiries from a chartering entity.
- The charter schools law does not create a dual system of public schools. Although the law loosens the "apron strings of bureaucracy," the court found that charter schools are within the common system of public schools because, among other reasons, they "are subject to state and local supervision and inspection."
- Even though charter schools have operational independence "the very destiny of charter schools lies solely in the hands of public agencies and offices, from the local to the state level: school districts, county boards of education, the Superintendent [of Public Instruction] and the [State] Board of [Education]."

We believe that the statutes, although not explicit, do envision a monitoring role for chartering entities and that a monitoring process is absolutely essential to identifying key issues, providing charter schools the opportunity to take corrective action, and determining whether a chartering entity should exercise its authority to revoke the charter.

- As noted on page 18 of the report, our expectation that Fresno would have a monitoring process in place is also based on the statutes providing chartering entities with the authority to revoke charters when a school fails to maintain satisfactory academic and fiscal operations.

- Although the term "sponsoring agency" is in the statutes, we have changed the term to "chartering entity" to more closely conform to the language of the Act. The change in term does not affect any of our findings or recommendations in the report.

- Fresno's comment here misrepresents the discussion of academic outcomes in the report. On page 27 of the report, we indicate that about one-third of the outcomes listed in the charters are not clear indicators of academic performance. We recognize that certain of these outcomes are beneficial, but do not have a clear causal relationship with academic performance. We limited our analysis to determining the extent to which the schools and chartering entities were measuring academic progress against the objective measures in the charters, because we believed that they would be the measures that the schools and chartering entities would find to be the easiest to assess and most likely to be documented.

- As we discuss more fully in note 2 on page 127, we stand behind our analysis of the authority chartering entities have with regard to monitoring charter schools' adherence to the provisions of their charters.

- Since Fresno has successfully obtained financial reports from its charter schools, we are uncertain why Fresno raises the issue of statutory limitations on requests for information. These requests are allowed by the Education Code, Section 47604.3, which requires charter schools to promptly respond to all reasonable inquiries, including those regarding its financial records.

- Fresno misrepresents our discussion of the annual audit reports. We are not creating our own standard for audits. We are merely recommending that the independent financial audit could be expanded to include these state compliance items. Furthermore, the Department of Education (department) believes that the passage of Assembly Bill 2834 (Chapter 1128, Statutes of 2002), will make this a requirement for charter schools.

- Fresno again misrepresents the wording of our report. As we note on page 38 of the report and in Appendix B, we used the fund balance reserve requirement established by the department for school districts as one indicator in our assessment of a charter school's fiscal health. We also acknowledge in the report that charter schools are not legally required to meet this reserve requirement, although it would be a prudent practice.

- We have changed the wording of the report to reflect "charge" rather than "withhold" to conform more precisely to the charter schools law. The change in term does not change the findings or recommendation related to this issue. We would note, however, that the documents we obtained from the chartering entities show that at least three of the four *withhold* the oversight fee from amounts they distribute to the charter schools.

- Contrary to Fresno's assertion, we did not create accounting standards for school district expenditures related to charter schools. As we describe more fully in note 28 on page 134, the problem we identified at Fresno was that it did not have support for the expenses it asserted that it incurred providing oversight of the charter schools. The statute allows Fresno to charge a charter school for *actual* costs up to 1 percent or 3 percent of a charter school's revenue as a fee for oversight.

- We stand by the findings and recommendations in our report. The audit committee charged us with the independent review of the chartering entities' policies and procedures for enforcing charters and the policies and practices for monitoring the charter schools' compliance with the conditions, standards, and procedures entered into under the charter. As our work shows, chartering entities are not enforcing the charters and the responses reflect that the chartering entities do not believe it is their responsibility to do so.

- Fresno misrepresents the text of our report. As we state on page 19 of the report, unless a chartering entity engages in some sort of periodic monitoring, it will not be in a position to identify grounds for charter revocation and the corrective action that a charter school must undertake to avoid revocation. We discuss more fully in note 2 on page 127 our analysis of the authority chartering entities have with regard to monitoring of charter schools' adherence to the provisions of their charters.

- Our use of the term "agreements" stems primarily from the fact that in its charter petition, the individual charter school has set forth its planned academic program and the measurable student outcomes for which it agrees to be held accountable. We also concluded that the charter document was an agreement, because the chartering entity does have the ability to have the charter petitioner modify the document before approval if it is lacking in certain statutorily specified elements. Thus, although Fresno disagrees with us, we believe our use of the term "agreement" is appropriate.

- Although Fresno asserts that chartering entities do not approve charters, its objection to our terminology is not supported by a decision by the First Appellate District Court of Appeal, as we describe more fully in note 2 on page 127.

- Again, Fresno is overreacting to terminology we use to describe the focus of the monitoring we believe that chartering entities should perform to fulfill their responsibilities under the Act. As we state on page 19 of the report, unless a chartering entity engages in some sort of periodic monitoring, it will not be in a position to identify grounds for charter revocation and the corrective action that a charter school must undertake to avoid revocation. Although we agree with Fresno on the grounds for revocation and that revocation is not to be taken lightly, the chartering entities are required by the Education Code, Section 47607(c), to notify the charter school of any violation of either an academic or fiscal nature and give the school a reasonable opportunity to cure the violation. Thus, the chartering entity has the ability to work with a school to effect corrective action short of revocation.

- Fresno may have overlooked the text of the report beginning with page 19 where we are using "academic monitoring" to mean what the chartering entity is doing to ensure that its charter schools are meeting the student outcomes listed in their charters. As Fresno has pointed out in its response, one of the grounds for which a chartering entity can revoke a charter is if a school has failed to meet or pursue any of the student outcomes identified in the charter. Since a chartering entity is required to give the charter school an opportunity to cure the violation, it seems reasonable that a chartering entity would periodically monitor its charter schools to ensure that progress is being made.

- Fresno misrepresents the discussion of measurable outcomes on pages 24 though 27 of the report. We in fact recognize that certain of the measurable student outcomes have value, but do not have a direct causal link to improved student academic achievement. Far from terming these outcomes as unacceptable, on page 27 we note that they can be a measure of a charter school's overall success, but their effects on academic performance are of a longer-term nature and are difficult to measure. Thus, we limited our analysis to determining the extent to which the schools and chartering entities were measuring academic progress against the objective measures in the charters, because we believed they would be the measures that the schools and chartering entities would find to be the easiest to assess and most likely to be documented.

- Fresno indicates in its response on page 122 that in its compliance review of its charters, it used assessments to measure progress that were more objective than the analyses of grade point averages, graduation rates, and portfolios. Fresno asserts it used these more objective assessments because the others are highly subjective and would have based student progress on factors that varied from teacher to teacher. Thus, Fresno has criticized us for limiting our review to the objective measures of student progress even though it did the same thing.

- Fresno is responding to an example where another chartering entity is not making a determination of whether the charter schools are in fact meeting or pursuing any of the pupil outcomes identified in the charter. Since this is a basis for revocation, the chartering entities have the authority to request information from the charter schools, and the chartering entities have charged the charter schools for oversight costs, it is reasonable that the chartering entity can monitor the schools for compliance with the academic program as delineated in the charter.

- Fresno's claim that we fail to understand that the only power that chartering entities have to control the operation of an existing charter school is the power to revoke, misreads our report and misrepresents the Act. Nowhere in the report do we suggest that a chartering entity should or could revoke a charter on the basis of the suitability of its curriculum. In fact, on page 19, we state that without periodically monitoring their schools for compliance with the charter terms, the chartering entities cannot determine whether their charter schools are making progress in improving student learning, nor are the chartering entities in a position to identify necessary corrective

action or revocation. Moreover, as we discuss in note 16 on page 131, short of revocation, a chartering entity may demand material compliance with any of the conditions, standards, or procedures set forth in a charter it has approved and, in fact, the law requires that the charter school be provided a reasonable opportunity to cure the violation prior to revocation. Fresno's response simply ignores this important opportunity for chartering entities to demand that charter schools be held accountable to their charters short of the revocation process.

- We do not believe that implementing our findings and recommendations would lead Fresno to begin meddling, micromanaging, or otherwise interfering with the operation of their charter schools. Our basic premise was that the chartering entities would be working with their charter schools to provide a quality academic program to all students and, possibly, learn new and innovative techniques from the charters that could be replicated in Fresno's noncharter schools.

- Contrary to Fresno's contention, we did not criticize its ability to receive financial information from its charter schools. We did, however, discuss on page 35 of the report how Fresno's review of this information was not as effective as it could be.

- Fresno is again misrepresenting the Act and misreading our report. The Act allows chartering entities to make reasonable requests for information from their charter schools, including requests for financial information and we did not recommend a specific financial reporting scheme for all chartering entities to implement.

- Fresno misrepresents our discussion of the annual audit reports. We are not creating our own standard for these audits. As we note on page 41 of the report, less than one-half of the audit reports we reviewed indicated that the auditor had verified the school's reported average daily attendance (ADA). Because ADA is the primary basis for state funding and, thus material to a school's revenue, the validity of the school's attendance system would be an essential test for an auditor to perform under generally accepted auditing standards to render a conclusion on the school's financial statements. The fact that nearly half of the schools we reviewed had their auditors use the State Controller's Office standards and procedures for California K-12 local educational agency audits indicates that our conclusion on its use is worthwhile.

- Fresno misrepresents our discussion related to the budgetary reserve. As we note on page 38 of the report and in Appendix B, charter schools are not required to meet the reserve ratio established by the department. However, we used the reserve ratio as one indicator in our analysis to gauge the fiscal health of charter schools. Of the 11 schools that did not meet the ratio, 5 reported negative fund balances, which is itself a warning sign. Our intent in using the reserve ratio was to attempt to identify additional tools that chartering entities could use to analyze financial information from the charter schools to determine whether the schools need additional technical assistance.

- We have changed the wording of the report to reflect "charge" rather than "withhold" to conform more precisely to the charter schools law. However, Fresno has again misrepresented the wording of our report. As we state on page 46 of the report, each of the chartering entities charged their charter schools precisely the percentage allowed. When we asked for the support for the actual costs incurred to justify this percentage, none of the chartering entities could show the costs that were covered. Each chartering entity could document the costs that it included in its mandated-costs claims, but could not show that these costs were in addition to the costs for which the charter schools reimbursed their chartering entities. Although Fresno states that the documentation of a chartering entity's costs is not required or defined in the statutes, we see this as strictly an accounting issue. In fact, by signing the mandated-costs claim, the chartering entity is certifying that it has not been otherwise reimbursed for these costs. As we found, the chartering entities cannot support this assertion. We have modified the report text to state there "is a risk of double charging" rather than "may be double charging."

- The compliance review that Fresno performed in fiscal year 2001–02 was the first effort Fresno had made to formally monitor the academic performance of its charter schools. According to Fresno's administrator of student support services, Fresno will not repeat the compliance review as it had done it in fiscal year 2001–02, but is currently redefining the monitoring approach that it will use in the future.

- Although Fresno states that its compliance review process is a comprehensive review of all elements of the charter, as shown on page 22 of our report, our work did not support this assertion. Fresno did not assess the charter schools' progress against the measurable outcomes in each charter. In addition,

Fresno's assertion here is inconsistent with other statements in its response on page 122 where it provides its rationale for why it did not assess each school's progress against its specific charter outcomes.

- Fresno began a compliance review with a seventh school, but it suspended the review of this school when Fresno revoked the school's charter in January 2002. In addition, Fresno included only the results of its compliance review of six charter schools in its presentation to its board in March 2002.

- Fresno's assertion here that it was justified in not assessing its schools' use of more subjective indicators of academic progress such as grade point averages, graduation rates, and portfolios is inconsistent with its earlier statements in its response on page 112 that the objective measures should not be the exclusive measure of whether a charter school is pursuing or meeting its pupil outcomes. Our point was that Fresno should be asking its charter schools to show how they are meeting the pupil outcomes they include in their charters, whether they are objectively or subjectively measured.

- The documentation that Fresno provided to us related to the conversion charter schools did not reflect that Fresno used the charters as the basis for any part of its monitoring.

- We recognize, as does the Act, that a school's academic program may change over time. That is why the Education Code, Section 47607(a), allows for charters to be amended for material revisions, with the agreement of the chartering entity. The important point to remember is that the charter provides the criteria against which the chartering entity should be monitoring the school for accountability. To imply that charters are no longer relevant indicates that the chartering entity and the school are not following the statutory provisions to keep the charter relevant.

- We reexamined our evidence and concluded that for the verification of instructional minutes that Fresno had sufficiently validated their charter schools' compliance with this requirement and have made the appropriate text changes. However, we have not changed our conclusions related to Fresno's verification of standardized testing or teacher credentials. The compliance review performed in November 2001 was before the standardized testing dates for fiscal year 2001–02. As far as we are aware, Fresno's only other verification of standardized

testing occurs for the majority of its charter schools when the test results are posted to the department's Web site in late summer, after Fresno has certified the last apportionment for the year. Thus, we continue to be concerned that Fresno is not verifying this condition of apportionment timely. Finally, we termed Fresno's actions related to the verification of teacher credentials as "unclear" because the documentation that Fresno provided to us was faxed to it from the schools the day after we requested the information from Fresno. Moreover, the compliance review documents did not show that Fresno had verified the teacher certifications. Thus, it was unclear to us whether Fresno had in fact verified this information during fiscal year 2001–02.

Agency's comments provided as text only.

Los Angeles Unified School District
333 South Beaudry, 25th Floor, Room 143
Los Angeles, California 90017

October 24, 2002

Elaine Howle, State Auditor*
555 Capitol Mall, Suite 300
Sacramento, California 95814

Dear Ms. Howle:

In response to the draft of the State Auditor's report entitled "California's Charter Schools: Monitoring and Oversight at all Levels Could Be Stronger to Ensure Charter Schools Accountability," I wish to express the following concerns on behalf of the Los Angeles Unified School District:

The auditors' assumptions and interpretation of the laws regarding the extend of the authority of school districts are questionable. Charter schools are governed by statutes that specifically support the independent nature of such schools. They are not subdivisions of the local school districts, nor are they subject to type of supervision that, in part, was the premise upon which the audit was conducted. This audit and its recommendations and findings clearly contradict the law and are contrary to the legislative intent concerning the operation and oversight of charter schools.

Education Code section 47605 requires a chartering agency to grant a charter unless there are specific grounds upon which a charter may be denied by a chartering agency. The legislative intent was to create a process whereby Charter schools could operate independently and school districts were not designated to be nor are they sponsoring agencies.

In conducting this audit, the intent of the law was expressly ignored. Instead the auditors admittedly relied upon "implied law" and assumptions to formulate their conclusions. Nowhere in the Charter School Act are school districts held responsible for ensuring that charter schools provide students with a "standard" instructional program. In addition, the auditors' basic lack of knowledge concerning the Charter School Act and related laws further led them to flawed conclusions concerning the degree of fiscal accountability of school districts for charter schools.

While the auditors go to great lengths to impose a duty upon school districts to require charter schools to provide more detailed financial reporting, the law does not support the extent to which they hold school districts accountable for ensuring that a certain degree of accountability is met. Education Code section 47065 is clear that charter schools are to follow generally accepted accounting principles and are to conduct annual, independent fiscal audits; not district dictated audits. Simply stated, current law does not support the standard created by the auditors.

* California State Auditor's comments begin on page 143.

We also question the assumption that district oversight is implied in the law in the way it is applied by the auditors. The auditors' recommendation to withdraw funds from charter schools for relatively minor non-compliance, for example, not only far exceeds the district's authority, but it is also restrictive and punitive. This type of approach would result in an inability on the part of the charter school to follow its stated vision and mission as approved by the local and State Board of Education.

Type of evidence sought was limited and in most cases did not warrant the conclusions reached by the auditors. The type of evidence the Auditors' sought was limited in scope. The auditors drew conclusions based on a specific type of record keeping they expected to see, leaving out important information that was available from other sources. For example, the auditors' report stated that the number of minutes for instruction was not verified, yet, everything was done on the part of the district to verify it, i.e., the bell schedule was collected, a person was appointed to verify that the number of minutes on the schedule corresponded to the required number of minutes. When challenged, the auditors said that they were looking for a signature. The auditors cite the case of Accelerated schools' three students, whose test results were allegedly not matched to the outcomes in the charter document, as evidence of lack of accountability. The number alone makes the claim questionable. In addition there are valid developmental and educational reasons for charter outcomes not matching precisely to individual students' outcomes. Having visited the school numerous times and collected overwhelming evidence of academic success for all the students, we question the auditors' methodology, applicability and relevance of the claims.

Another example of conclusions based on limited evidence is in reference to standardized testing, which the auditors claim was not verified. However, all the charter schools had test results published on the LA Times like the non-charter schools, they were reported on the CDE web page, and were included in our annual analysis of test scores. In other words, even though a checklist of phone calls or other records may not have been available as verification, the schools' performance indicated compliance. This is precisely what performance-based rather than a rule-based accountability requires. We submit that this is ample evidence of verification and underscores the auditors' basis lack of knowledge concerning charter schools and charter school law.

There are many ways to hold schools accountable that in most instances better reflect the soundness of the academic program and likelihood of a charter school to succeed. For instance, information revealed through conversations and networks is often more accurate and reliable than simple checklists as monitoring instruments. A shared vision and strong network relationships are widely supported by educational research, research on high performing teams and systems thinking research as ways to inspire people to do better quality work and to promote increased accountability. Focusing only on information found in record keeping is a serious limitation that invalidates the conclusions that are drawn. It was obvious that the goals of the audit were intended to support preconceived notions rather than to objectively discover how well districts oversaw charter schools.

Conclusions reached appear to stretch the extent of logic. The draft report often appears to lack logic or sound reasoning. In the case of Valley Community Charter, for example, the auditors jumped to the conclusion that "if Valley's fiscal health continues to deteriorate, the school may close." The characterization of the school's fiscal health as "deteriorating," is in fact an overstatement. It is very unlikely that this school would close. Valley has a sound educational program and it

has demonstrated excellent academic growth from year to year, as evidenced by longitudinal data analyses. Not only is Valley's academic achievement higher than that of the nearby public schools, it has an extended track record of being fiscally sound.

Conclusions reached were limited to those supporting the auditors' thesis and ignored and neglected many other possible explanations. Rather than state an observation that there is a potential for double-charging due to a lack of expense tracking, the auditors made bold assertions that the state was being double charged. For example, in reference to oversight fees and mandated costs, although we would not disagree with the desirability of clearly determining how the 1% fee is used by the district, the fact that more than 1% was claimed for reimbursement from mandated costs does not automatically mean that there was a double charge. Another explanation could simply be that in fact more was spent than was charged to the schools. This is in fact supported by an internal study conducted by the district in 1998, which indicated that district expenses in relation to charters were indeed much higher than the 1%.

Accountability systems already in place were ignored. In the past year the LAUSD has placed an increased focus and emphasis on accountability. Although the LAUSD Policy for Charter Schools was approved by the Board of Education following the years covered by the audit, neglecting to mention the systems that are currently in place presents the District in an inaccurate light. The LAUSD has a very clearly articulated accountability system, which is widely disseminated monthly to potential charter school developers, to existing charter schools at Focus Group meetings, and is posted on the district's web page for the general public.

The LAUSD's accountability system is proactive and is focused on the following practices:

1) Promoting and recruiting high quality charter schools that are accountable
2) Using rubrics as a tool to strictly apply the five point criteria for charter approval, which is required by State law, and approving those charter schools that demonstrate a sound educational program and the likelihood to succeed
3) Annually examining and analyzing both student achievement data and financial data reports.
4) Carrying out an external charter evaluation on the fourth year, preceding the fifth year charter renewal

An entire section of the LAUSD Policy for Charter Schools is dedicated to a discussion on the district's expectations on accountability. Ignoring this fact was simply irresponsible.
The charter proposal itself represents the school's internal accountability. Therefore, the district expects that accountability measures be clearly outlined in the charter proposal, be consistent with the stated vision and mission of the school, and address legal and statutory requirements. The following are expected to be part of the charter proposal:

- Clear goals and expectations. The school has clear and measurable learning goals and a curriculum and instructional program that are designed to help students reach the goals.

- Multiple student assessments. The school uses, not only State-required standardized tests, but also ways to continuously monitor student performance individually and in groups. For example, the school may create ways to examine student work in collaboration with colleagues as part of teacher reflective practice; it may use vertical K-5 teams; use mid-point evaluations, and regular review of practices and achievements.

- Assessment as part of the total system. The school uses student assessment as part of the total system to improve instruction, design professional development, and refine school operations and make decisions.
- Management practices. The school defines the roles and responsibilities for the governance of the school and the process of decision making to support and enhance student learning and achievement.
- Financial practices. The school's financial practices promote the financial sustainability of the school over the years.

External measures of accountability, most of which are required by the District, include the following:

- Results of standardized achievement tests. Charter Schools are included in the Public Schools Accountability Act of 1999 and SB1X. Therefore, in addition to internal student progress monitoring and assessments that are consistent with the charter vision and mission, students in the Charter School are required to participate in the State Testing and Reporting System (STAR) and API, and demonstrate growth. A minimum of an annual 5 percent point increase is required. For schools with an API of 1, a higher growth of at least 10 percent points is expected. The District expects that all students in charter schools, including subgroup populations, meet their targeted growth and demonstrate increased learning, in keeping with District's mission of reducing the achievement gap for low-income students. Failure to meet growth targets for three of the four years prior to renewal may result in non-renewal of the charter.
- External evaluation prior to 5-year renewal. The charter school is required to participate in a District-sponsored external evaluation during the spring of the fourth year of operation. This evaluation is comprehensive and encompasses information from multiple sources, such as, statistical analyses of student test scores and disaggregated data, staff interviews, surveys, school observations, evidence of gains in academic achievements overall and for each subgroup population. The results of this evaluation carry considerable weight on the Los Angeles Unified School District Board of Education decision on whether or not to renew a charter.
- Annual independent fiscal audit. The charter school is required to participate in an annual independent fiscal audit, which employs generally accepted accounting principles, to demonstrate on-going financial stability.
- Systematic data collection. The Charter Office and the Program Evaluation and Research Branch in the Los Angeles Unified School District have developed a collaboration to collect, maintain and analyze data from charter schools in a systematic way from year to year, in order to learn from the charter school experience. Three components, 1) charter renewal evaluation, 2) identification of best practices, and 3) continual data monitoring, will respond to short-term and long-term information needs of the District. Longitudinal, matched-data measuring student progress over time will be used to identify effective and promising practices from which others may learn. An in-depth study of 10 charter schools that represent charter schools throughout the district is planned. Three dimensions: 1) student performance; 2) school organization and governance; 3) instructional leadership, classroom practice, and professional development, will be used as a framework to identify best practices from which all District schools can learn.

- Student Enrollment and Application Pool. Student enrollment and application pool, and number of students on waiting lists, are strong indicators of the general public's interest in the charter school. They are a powerful measure of the ultimate accountability of charters in a market economy.
- Charter-Generated Voluntary Annual Report. Charter schools may voluntarily generate a locally - designed annual report, such as a type of "Accountability Report Card" to report information to the general public, such as school wide successes, student growth, challenges and goals.

In addition to the internal and external accountability measures described above, there are informal processes that can be equally as powerful in promoting a high level of accountability among the various stakeholders and in holding a school accountable for results. Although more difficult to measure by usual instruments, it is important to acknowledge their impact. Operating from the assumption that professional educators, and human beings in general, tend to feel strongly accountable to their peers for their performance to a greater degree than they do only to external measures, the Los Angeles Unified School District promotes the development of "Community of Practice" networks. These networks are intended as vehicles to:

- Provide a peer-support mechanism to existing and newly established charters
- Exchange research-based, proven or innovative ideas that improve practice
- Disseminate best practices to the wider educational community
- Promote the sustainability of the charter school over the years

It is assumed that in the process of sharing innovative practices with one another and revealing weaknesses and needs within a safe context, charter schools can demonstrate their accomplishments and successes as well as offer support and growth opportunity to one another. Through communication and interaction with one another they can help clarify issues, learn about resources for improvement, and become further inspired by their colleagues to do their best work. Dissemination thus becomes another tool for accountability.

Charter law has evolved throughout the ten years it has been in effect. Its central core, however, has not changed. The balance between flexibility and accountability remains the most important and fundamental concept that, if challenged, can defeat the entire purpose and value of charter schools in educational reform. If we overemphasize accountability and enforce traditional methods to measure it, we risk posing serious limitations to the potential that charter schools offer to discover valuable solutions to educational challenges that are typical of urban districts. On the other hand, flexibility cannot be such that it would pose a risk to students.

The solution to ensuring a true balance and to preserving the spirit of the Charter School Act is in the types of accountability measures that we select. By the very nature of the issues and because of the many types and ranges of charter schools, multi-dimensional and creative accountability measures are required. Therefore, any accountability review team should include not only certified public accountants, who would clearly best understand the financial aspects of a school, but also educators that have depth and breadth of experience with school organizations, curricula, assessments and learning. The methodology used in the review process itself should include the many facets that make organizations work, such as types of relationships, teamwork, leadership, and the culture of the school. The latter are clearly more difficult to measure, but they may indeed be equally as, if not the most, important in determining whether or not a school will be effective and succeed.

The LAUSD is committed to ensuring both the accountability of charter schools to the extent required by law, to ensure maximum learning for its students, and the necessary flexibility, to ensure that creativity and experimentation will indeed result in collective learning for the entire educational community beyond the school. Only in this way can reform take place for the betterment of education now and in the future.

The LAUSD proposes that, at the very least, a fair and impartial audit be conducted with the assistance of experts in charter school law who could assist in resolving ambiguities in law and facilitating an understanding of various positions. If in fact the State Auditor publishes the draft audit in its current form without addressing the concerns of the District, we request that this response accompany the audit report in its entirety and that any further response by LAUSD also be published in its entirety.

Sincerely,

Grace Arnold, Ph.D.
Director

COMMENTS

California State Auditor's Comments on the Response From the Los Angeles Unified School District

To provide clarity and perspective, we are commenting on the Los Angeles Unified School District's (Los Angeles) response to our audit report. The numbers below correspond to the numbers we placed in the margins of Los Angeles' response.

1. The report title changed and we made Los Angeles aware of the change while Los Angeles was reviewing the draft report.

2. Contrary to Los Angeles' suggestion, this report is not intended to be read as a legal opinion on the application of the Charter Schools Act of 1992 (Act) to chartering entities. Instead, we looked to the law for guiding principles in responding to specific questions from the Joint Legislative Audit Committee (audit committee) regarding policies and practices for monitoring charter schools. Moreover, on pages 18 and 32, we recognize the lack of specificity in state law regarding monitoring charter schools and recommend to the Legislature that it might consider making the oversight role and responsibilities of chartering entities more explicit. Finally, as we state on these same pages, we believe that some monitoring role for chartering entities is implicit in the Act, particularly in a chartering entity's charter revocation authority, the primary vehicle for enforcement of charters.

   Although not rendering a legal opinion on the issue of oversight, our view that the charter schools law places some monitoring responsibilities on chartering entities is informed by our reading of the statutes as well as the constitutional obligations of the State regarding the public school system. In fact, in *Wilson v. State Board of Education*, (1999) 75 Cal.App 4th 1125, the First Appellate District Court of Appeal considered the issue of whether the Act permitted funding for schools that fell outside of the public school system, thus violating the California Constitution. In finding that the Act did not run afoul of the constitution, the court pointed to the statutes that we have relied on as evidence that charter schools are operated in a framework that keeps them within the public school system. For example, the court found that:

- Chartering entities have "continuing oversight and monitoring powers" with:
  - The ability to demand response to inquiries.
  - Unlimited access to inspect or observe any part of the charter school at any time.
  - The right to charge for actual costs of supervisorial oversight.
  - The right to revoke a charter for, among other reasons, a material violation of the charter or violation of any law, failure to meet student outcomes, or fiscal mismanagement.
- As part of their revocation authority, chartering entities are required to permit a charter school the opportunity to cure the alleged problem. More specifically, the court stated, "short of revocation, [charter entities] can demand that steps be taken to cure problems as they occur."
- Chartering entities "approve" charters. The chartering entity "controls the application-approval process, with sole power to issue charters"—"[a]pproval is not automatic, but can be denied on several grounds, including presentation of an unsound education program."
- With regard to accountability, charter schools must promptly respond to all reasonable inquiries from a chartering entity.
- The charter schools law does not create a dual system of public schools. Although the law loosens the "apron strings of bureaucracy," the court found that charter schools are within the common system of public schools because, among other reasons, they "are subject to state and local supervision and inspection."
- Even though charter schools have operational independence "the very destiny of charter schools lies solely in the hands of public agencies and offices, from the local to the state level: school districts, county boards of education, the Superintendent [of Public Instruction] and the [State] Board of [Education]."

We believe that the statutes, although not explicit, do envision a monitoring role for chartering entities and that a monitoring process is absolutely essential to identifying key issues, providing charter schools the opportunity to take corrective action, and determining whether a chartering entity should exercise its authority to revoke the charter.

- Los Angeles mischaracterizes our assumptions regarding the authority of chartering entities. On pages 18 and 32, we recognize the unique and independent nature of charter schools. At the same time, as discussed in note 2 on page 143, we recognize that charter schools are not set completely free from the public school systems and that the statutory framework provides for some measure of oversight of charter schools by their chartering entities. We have also endeavored to identify areas where that oversight can be improved and perhaps even clarified by the Legislature.

- Los Angeles misstates our report; we do not state or even imply that charter schools are required to provide students with a "standard" education program. In fact, on page 20, we recognize the unique flexibility of charter schools to craft their own educational programs, as reflected in their approved charters.

- Los Angeles is misrepresenting our report; nowhere in our report do we state that the chartering entities are to 'dictate' charter schools' audits. On page 32 we state that one element each charter must contain is a description of how an annual audit will be conducted and any exceptions satisfactorily resolved. The audit requirement is contained in the Education Code, Section 47605(b)(5)(I).

- Los Angeles has mischaracterized our recommendation regarding a chartering entity developing and implementing policies and procedures for monitoring. On page 50 of our report, we recommend that the chartering entities' fiscal monitoring policies and procedures outline the types and frequency of fiscal data the charter schools should submit, including consequences if the schools fail to comply. Los Angeles has chosen to interpret this recommendation as including a monetary penalty, we did not state that in our report.

- Los Angeles continues to mischaracterize our report. On page 28, Table 5 summarizes Los Angeles' verification of charter schools' compliance with three legal requirements. We do not use Los Angeles' verification of instructional minutes as an example in our report. However, we concluded that Los Angeles' process was 'unclear' because the data it provided us contained fax date stamps that showed that Los Angeles received the charter schools' bell schedules after we requested the information. Thus, it was unclear to us when Los Angeles verified the charter schools' instructional minutes or whether the district has an ongoing process to determine charter schools' compliance with legal requirements for receiving state apportionment funds.

- Los Angeles has misread our report. Contrary to Los Angeles' statement that we are basing our conclusion on the performance of three students on standardized tests, on page 26 we state that the Accelerated School had in its charter three student outcomes that related to individual student performance on standardized tests. In addition, although the school has analyzed the test results on a school-wide and grade-level basis, it has not assessed the test results to determine whether the individual students' results have achieved the outcomes agreed to in the charter.

- Los Angeles has missed the point of our report related to standardized testing. As we state on page 27, standardized testing is one of at least three legal requirements charter schools must fulfill to receive state funds. Table 5 on page 28 of our report reflects that Los Angeles verified most of its charter schools participated in standardized testing. We do not use Los Angeles' verification of standardized testing as an example in our report. However, we concluded that Los Angeles verified 'most' of its schools because many of Los Angeles' charter schools contract with it for testing services. However, not all of the charter schools do. Therefore, as a condition of apportionment, Los Angeles should be certain that the testing has taken place before certifying the schools are compliant for funding purposes as discussed in the case of Oakland Unified School District on page 29 of our report.

- As with any audit we perform, our first step is to review and evaluate the laws, rules, and regulations relevant to the issues. As we state on pages 18 and 32 of our report, we determined that the chartering entities have certain authority for overseeing charter schools' academic outcomes and fiscal health. As we describe further on these pages, to facilitate their oversight, we expected the chartering entities would have established policies and procedures guiding these activities and also describe what makes up a sound monitoring system. Los Angeles states in its response that it has accountability systems in place. If Los Angeles' procedures were as effective as it now asserts, the results of our audit would have been substantially different.

- We disagree with Los Angeles that we jumped to a conclusion related to Valley Community Charter School. As we state on page 39 of our report, the school's expenditures have exceeded its revenues by almost $189,000; the school has also taken a loan for $200,000. It seems reasonable to us that Los Angeles would want to understand the school's fiscal situation and assist in any way possible. Moreover, it seems short-sighted

on Los Angeles' part to assume that a school with sound instructional practices also has sound fiscal practices. Finally, despite Los Angeles' claims, as we note on page 39 of our report, the school has been open for two years, this does not represent an extended track record of being fiscally sound.

- We changed the text in this section to more precisely communicate the issue we describe. As we state on page 46 of our report, Los Angeles failed to track its oversight costs to demonstrate that the fee it charged its charter schools was justified. In addition, as Table 9 on page 49 shows, Los Angeles submitted a mandated-costs claim for its charter schools' oversight costs and as we state on this same page, because the chartering entities failed to adequately track their actual costs of providing oversight, they could not demonstrate that the charter schools have not already paid for some or all of these oversight activities through the oversight fee. Thus, although Los Angeles' explanation that the district spent more for oversight than it charged to the schools is plausible, our conclusion that Los Angeles, and other chartering entities, risk double-charging the State for charter school oversight costs is also plausible.

- Contrary to Los Angeles' claim that we ignored the accountability system that it already had in place, on page 36 we discuss Los Angeles' fiscal review of charter schools including interim budget and year-to-date actual revenue and expenditure reports and audited financial statements. We agree with Los Angeles that it annually examines and analyzes this data, but we conclude that not all of its schools submitted data for review and Los Angeles lacks formal policies to appropriately follow up when a school experiences fiscal problems. Moreover, Los Angeles is overstating its academic monitoring and the value it provides. Los Angeles provided us with a report its Program Evaluation and Research Branch (PERB) prepared comparing charter and noncharter schools' Academic Performance Index and Stanford 9 scores. However, we understood that this report represents a one-time effort by Los Angeles in compiling this data. This is supported by the fact that in March 2002, PERB proposed to develop a data monitoring system for charter schools; the development was estimated to take six to seven months. Finally, on page 21, in Table 3 we summarize the chartering entities' academic monitoring. Specific to Los Angeles, we conclude that it engaged in some academic monitoring, but on page 23 we conclude that its efforts are not adequate as it relies

on an external evaluation during a school's fourth year of its charter. Moreover, Los Angeles uses the evaluation for renewal purposes, not as a monitoring tool.

- Again, Los Angeles claims that we ignored its accountability system, this is not true. On page 21 we mention Los Angeles' recently developed guidelines; however, as we also mention, the guidelines lack a process to continually monitor the charter schools' academic performance. On page 37 we again mention Los Angeles' guidelines, but note that the guidelines do not address its charter schools' fiscal monitoring. Los Angeles states that the charter proposal represents the schools' internal accountability. However, we do not believe that the charter itself is a substitute for a sound monitoring system. As we state in note 2 on page 143, our view that the Act places some monitoring responsibilities on chartering entities is informed by our reading of the statutes as well as the constitutional obligations of the State regarding the public school system.

- Los Angeles accurately notes that the charter schools' annual independent fiscal audit is an external measure of accountability; on page 39 of our report we also state this. However, on page 44 we state that Los Angeles needs audit review policies and procedures to ensure that staff take appropriate measures in holding the charter schools accountable for their fiscal management.

- It should be noted that Los Angeles' systematic data collection was proposed by its PERB on March 25, 2002. We understand that PERB has undertaken the first element of evaluating charter schools for renewal; we are not certain Los Angeles has implemented the two remaining proposed elements: identification of best practices and continual data monitoring.

- We agree with Los Angeles, we do not promote enforcing traditional methods to measure charter schools and flexibility cannot be such that it would pose a risk to students.

- We stand by the findings and recommendations in our report. As we state in note 2 on page 143, we reviewed the law for guiding principles in responding to specific questions from the audit committee that charged us with the independent review of chartering entities' policies and procedures for monitoring charter schools' compliance with their charters. We also recognize the lack of specificity in state law regarding monitoring and recommend that the Legislature make the chartering entities' role and responsibilities more explicit.

Agency's comments provided as text only.

Oakland Unified School District
1025 Second Avenue
Oakland, California 94606

October 24, 2002

Elaine M. Howle, State Auditor*
555 Capitol Mall, Suite 300
Sacramento, CA 95814

RE: California Charter Schools Audit
Agency Response from Oakland Unified School District

Auditor Expectations Not Based in California's Charter Law

Dear Ms. Howle:

Oakland Unified School District (OUSD) has received and reviewed your agency's draft audit report, California's Charter Schools, dated October 2002, that cites our district's performance as a charter-granting agency. We appreciate the difficulty the audit team faced as it attempted to master California's complex Charter Law and to fashion orderly expectations where few are stated in the law, while members of your auditing team came and went in turnover that mirrors what we face in local districts.

The District concurs with the auditors' general finding that the State Legislature's charter school program could benefit from stronger efforts at the state, district and charter school levels to assure fiscal, legal and academic accountability. However, this audit report is fundamentally flawed because it is based upon an initial misunderstanding of California's Charter School Law, resulting in the creation of statutorily unsupported expectations that are not based on what California's Charter School Law actually is. Independent charter schools are not subdivisions of school districts, to be supervised as if they were subordinate departments, bureaus or offices of the school district, and thus cannot be fairly evaluated in this way.

Even though the auditors acknowledge a district's oversight "responsibilities are not explicitly stated" in Charter Law, they not only presume that responsibilities "are implied through the Act and its amendments," **[Report Summary]** they also define specific procedural expectations for how a district should fulfill these presumed responsibilities. We do not believe that the auditors had a basis in Charter Law for many of their critiques. In addition, there are factual errors in the report that we wish to correct and statements that may mislead readers that we wish to clarify.

* California State Auditor's comments begin on page 157.

The District has been strengthening and improving its role as a charter authorizing agency. Progress has been made on many fronts, and more is underway. The District agrees that it would benefit from clearer, written policies and practices that could be implemented more consistently, and staff has many of these improvements underway. In August 2001, the Oakland Board of Education recognized the value of creating a position whose sole responsibility would be to coordinate the District's attention to charter issues. During the past fiscal year, we could only support that function as a half-time position. This proved sufficient for processing the many new applicants for charters, but did not provide time for monitoring at the level our District believes is important. In July 2002, the Board expanded the position to full-time specifically to provide more opportunity for creating and implementing a broader monitoring system. Our fiscal and human resources will be severely strained, however, if there is no limit to the quantity of charters we must accept and no relief to the drain on fiscal and facility resources caused by charter schools.

The audit report recognizes some of the improvements underway, especially improvements to our fiscal monitoring system, but under-reports other improvements. More disturbingly, the auditors have interpreted the words in Charter Law to create their own standards of practice that they *expected to see* in place at districts. Our failure to have a practice in place that matches these individuals' expectations should not be confused with a failure to meet our statutory obligations.

For contextual clarity, we recommend that the audit report change one of its terms. The report consistently refers to charter-granting agencies as "sponsoring agencies." The term, although defined in the statute, is misleading to readers because it implies a relationship between the local educational agency and the charter school that is neither required by law, nor typical in practice. The term "sponsor" connotes a backer, a patron, a benefactor or a champion. By contrast, Charter Law *requires* a district to grant a charter unless the charter fails to meet one of five conditions outlined in the Charter School Act **[Ed Code 476069(b)]** regardless of the fiscal, facility, or monitoring burdens that the school's existence will place on a district. A "sponsoring" agency may even have *denied* a charter that is subsequently granted by the County Office of Education or State Board of Education. **[47632(i)]**

The report **[Page 25]** incorrectly says that District staff only visited charter schools to investigate parent complaints. This is untrue. District staff visited eight of its nine charter schools last year and the ninth school was the first one visited this year. Several schools received more than one visit. Most of the District's site visits were to observe, to counsel and to establish relationships between our new staff and charter leaders. Parent complaints sometimes stimulated a site visit and other times were addressed through telephone conversations, exchanges of correspondence, or referrals to the schools' directors and boards.

The report suggests **[Page 25]** that the District should conduct site visits "to help ensure that the school is maximizing its students' educational opportunities and making sound use of taxpayer funds." These are noble endeavors, but not the responsibility of a charter authorizer. The District may well believe that students' educational opportunities would be maximized in a District school or by applying a different educational approach, but Charter Law allows charter schools to make independent choices, as long as they employ some sound educational program. **[Ed. Code 47605(b)(1)]** The statute would permit us to suggest, but would prohibit us from prescribing our preferred educational approach. Further, the "sound use of taxpayer resources" is a subjective evaluation linked to one's support of, or opposition to, the educational techniques being employed. As the report notes **[Page 20]** the intent of Charter Law was to move charter schools to performance-based accountability systems. While the District needs to do more to monitor performance, it is inconsistent with the intent of the statute to ask districts to evaluate the means to those ends, beyond strict legal parameters. At most, District staff might evaluate whether taxpayer resources are being used for *legal* purposes.

Auditors note that they expected to find "established policies and procedures for assessing the academic achievements of students in their charter schools, in accordance with the measurable student outcomes required in each charter" **[Report Summary]** and they describe their version of what a sound accounting system might include. **[Report - Page 21]** Their report reads as if the District has failed to meet its legislated responsibilities when, in several instances, our system simply failed to match what the auditors expected to see. Even so, the District is also eager to improve its charter schools accountability system. The District's effort to expand and clarify its charter schools accountability activities this year is especially apparent in the more detailed language the Oakland Board of Education has approved for this year's Memoranda of Understanding (MOU) with our charter schools. We will consider adding those portions of the auditors' recommendations that are not already represented in our expanded MOUs.

The report makes a general assertion that authorizing agencies "do not periodically monitor their charter school's performance against agreed-upon measurable outcomes." **[Page 22]** This statement is both inappropriately broad and incorrect. The auditors have completely negated the value of the review process that occurs in our district when charters are considered for renewal. Given that the statute does not specify how frequently a *periodic* monitoring must occur, and given that the academic benefits of a program typically take a year to implement for benchmarking, then at least two years to bear fruit, it is not unreasonable for an authorizing district to wait until a school's fourth year to evaluate the academic benefits of its program. This timeline is consistent with review for charter renewal after five years.

The report notes that we have not established comprehensive *written* monitoring guidelines. **[Page 23]** However, the District presented plentiful evidence that it has implemented many monitoring activities and acted upon its findings. For example, the District monitors charter schools' monthly fiscal and attendance data, monitors other program components occasionally, initiated revocation procedures on several occasions, and revoked two charters. Our District is compiling year-by-year testing information and consulting with the charter schools to develop a written, multiple-criteria annual assessment report that will also incorporate each school's unique measurable goals.

Although it is not the District's statutory responsibility to ensure that charter school students demonstrate academic performance, the District is aware of which charter schools are experiencing academic difficulty and offering some assistance-which independent charter schools and their governing boards, which are separately incorporated nonprofit organizations, are not obligated to accept. For example, in 2001-02, the District invited five under-performing charter schools to enroll in the High Priority Schools Grant of the Immediate Intervention Under-performing Schools Program (HPSG-IIUSP). Four accepted the invitation and the District assisted them with the application process.

The auditors were displeased to find that one-third of charter school outcomes were not related to academic performance. **[Page 31]** While we recognize the importance of academic achievement, we find the auditors' low esteem for non-academic measurable outcomes disturbing. Many of the parents in our charter schools place high value on non-academic factors (such as safety and attendance) that are essential prerequisites to learning, and attitudes (such as self-esteem and respect for others) that they recognize as important components of citizenship. Charter Law does not require that the benefit of all outcomes be objectively measurable in the short-term, nor that all measures be of academic performance. Ignoring improved attendance as a success factor is severely myopic.

In Table 5 **[Page 33]**, the report alleged that OUSD did not verify teacher credentials. The text of that page then *described part of the process* OUSD used to verify teacher credentials in 2001-02. The auditors may believe our process was insufficient, but the "no" on this table should be changed to "some" or another term that indicates a process existed. The audit report notes that schools must certify a listing of their teachers and their credentials as part of CBEDS data. In addition, but unnoted in the audit report, each school's charter and the annual MOUs that are signed by each charter include a passage stating that teachers in the school will hold a Commission on Teacher Credentialing Certificate, permit or other document equivalent to that which a teacher in other public schools would be required to hold except where the lack of such certificate, permit, or other document is permitted by law.

Charter Law **[Ed Code 47605(l)]** and each school's MOU identify that charter schools are responsible for maintaining teacher credentialing information at the school and that these records are subject to *periodic* review by the authorizing district. The auditors have interpreted this provision to mean that districts should conduct and document *annual* credential reviews. While we concur that this would be a laudable practice, and we plan to increase our scrutiny this year, an annual review is not required by Charter Law.

In Table 5 **[Page 33]**, the report alleges that OUSD did not verify that State-mandated tests were administered at charter schools. We believe the auditors confused a lack of a document with a lack of verification. The "no" on this category should be changed to either "yes" or "some" verification. Our

process included informing schools that they must test, gaining their agreement to test (in both their charters and in their annual MOUs), arranging for them to order and purchase testing material from our vendor, providing extensive training in testing and reporting procedures, and receiving their testing results. Schools that did not attend training sessions received information by mail and all schools received on-going counsel via electronic mail and telephone. We note that the auditors did not find that any of our charter schools failed to participate in State-mandated tests. If performance (i.e., participation) was the goal, then our method was successful. In the future we will ask each school to provide a document certifying that its students participated in the State Testing Programs specified in Education Code 60600-60652 in the same manner as other students attending public schools, but signing a certificate after the fact will not change the outcome (participation or not).

In Table 5 on page 33, the report notes that the District did not verify instructional *minutes* in 2001-02. Each school commits in its charter and annual MOU that "The School shall offer, at a minimum, the same number of instructional minutes set forth in Education Code 46201 for the appropriate grade levels." The District did verified instructional days. The MOUs for the current year and our accounting system have been amended to include monitoring instructional *minutes*.

During 2001-02, the District emphasized improving the foundation of our charter school relationships by tightening provisions in the charter documents themselves. The report ignores the District's expanded charter petition review process that has led to improved charter quality, more specific measurable standards, and greater clarity about charter schools' statutory obligations. This has had an immediate effect on the quality and specificity of new charters and will eventually cover all charter schools after their renewals. Our more careful scrutiny by the Charter Schools Coordinator, an internal review team, and a committee of the Board of Education takes more time but will lead to long-term improvement in the authorizer/school relationship

The report ignores District monitoring that has revealed problems and where our intervention either led to a correction of a problem (e.g., a leadership change at one school, governance changes at two schools to eliminate conflicts of interest; school schedule changes to provide an adequate number of instructional days at one school) or a revocation of charters (Oak Tree Charter School and Meroe International Academy). Clearly, the District's monitoring efforts reveal, address and resolve many problems.

In two instances, the auditors apply a standard that they admit is not required of charter schools **(Page 47, 51.)** The auditors expect charter authorizers to work with charter schools to improve their financial condition. **(Page 47)** While this is a nice service to offer, and the District sometimes offers advice, we are not required to do this.

The auditors complain that two charter schools had periods when E.C. Reems' and North Oakland's revenues on hand were less than their current expenses. **(Page 48)** It is not unusual for many charter schools and entire school districts to experience cash flow disruptions. There are many techniques for navigating these periods and these schools navigated adequately.

This year's more detailed MOU will specify that the annual external audit must reflect tests of ADA and instructional minutes. (**Page 49)**

The auditors acknowledge improvements to our audit review process, but complain that we do not specify how negative audit findings are resolved. **(Page 53)** This will always depend on the nature of the finding is. It is noteworthy that the auditors say, "For fiscal year 2000-01, the charter schools' audit findings did not appear to be significant." **(Page 53)** They seem to be stretching hard to find something to complain about in our new process.

The report says our district "failed to track actual oversight costs" (Pages 55, 56) even though documentation was provided to the audit team.

The auditors' allegation that districts "may be double-dipping" allegation (Page 55) should either be specific and substantiated or omitted. Our District could not possibly have double-dipped in 2001-02 because we have not yet submitted our Mandated Costs Reimbursement (MCR) request for charter activities yet. (Page 61) We are compiling our records and will turn them in by the October 31 deadline. Our minimal MCR claimed in 99-00 and 00-01 is can be more than justified with staff time reviewing new charters in those years.

There is a lack of logical connection (Page 59) between the auditors' acknowledgement that MCR is the way to collect for new charter reviews because there is no charter school revenue stream to assess, and their subsequent suspicion that districts also charged the (non-existent) charter school's revenue stream for staff time processing new applications.

The District wholeheartedly supports the auditors' calls (Pages 56, 60, 61) for language clarification in the statute about what revenue we can assess our 1% against. This has been a source of confusion and multiple interpretations by State and District staff and by charter school leaders.

Our district, like others, endeavors to interpret and implement its responsibilities, as it identifies needs and as resources are available for this purpose. A major impetus of the charter schools movement was to move away from procedural accountability toward outcome accountability. In this spirit, we are seeking an appropriate balance of intervention and autonomy, prescription and innovation, control and independence. Change the District is implementing will increase our role in monitoring charter schools to ensure greater accountability.

If the Legislature wishes to dictate the requirements of a comprehensive procedural audit, we would expect to receive clear definitions about what documents would be required to have available for review at the State Department of Education Charter Schools Office, at the County Department of Education, at the authorizing district's office, and at each charter school site, at what frequency those documents must be updated, and what supporting materials are required to substantiate

the information. We would also expect the District's cost for participating in these documentation and audit processes to be fully eligible for payment as a charter monitoring cost, and expenses in excess of those fees to be fully reimbursable as mandated costs.

Sincerely,

(Signed by: Dennis K. Chaconas)

Dennis K. Chaconas
Superintendent

Blank page inserted for reproduction purposes only.

COMMENTS

California State Auditor's Comments on the Response From the Oakland Unified School District

To provide clarity and perspective, we are commenting on the Oakland Unified School District's (Oakland) response to our audit report. The numbers below correspond to the numbers we placed in the margins of Oakland's response.

1. Contrary to Oakland's suggestion, this report is not intended to be read as a legal opinion on the application of the Charter Schools Act of 1992 (Act) to chartering entities. Instead, we looked to the law for guiding principles in responding to specific questions from the Joint Legislative Audit Committee regarding policies and practices for monitoring charter schools. Moreover, on pages 18 and 32, we recognize the lack of specificity in state law regarding monitoring charter schools and recommend to the Legislature that it might consider making the oversight role and responsibilities of chartering entities more explicit. Finally, as we state on these same pages, we believe that some monitoring role for chartering entities is implicit in the Act, particularly in a chartering entity's charter revocation authority, the primary vehicle for enforcement of charters.

Although not rendering a legal opinion on the issue of oversight, our view that the charter schools law places some monitoring responsibilities on chartering entities is informed by our reading of the statutes as well as the constitutional obligations of the State regarding the public school system. In fact, in *Wilson v. State Board of Education*, (1999) 75 Cal.App 4th 1125, the First Appellate District Court of Appeal considered the issue of whether the Act permitted funding for schools that fell outside of the public school system, thus violating the California Constitution. In finding that the Act did not run afoul of the constitution, the court pointed to the statutes that we have relied on as evidence that charter schools are operated in a framework that keeps them within the public school system. For example, the court found that:

- Chartering entities have "continuing oversight and monitoring powers" with:
  - The ability to demand response to inquiries.
  - Unlimited access to inspect or observe any part of the charter school at any time.
  - The right to charge for actual costs of supervisorial oversight.
  - The right to revoke a charter for, among other reasons, a material violation of the charter or violation of any law, failure to meet student outcomes, or fiscal mismanagement.
- As part of their revocation authority, chartering entities are required to permit a charter school the opportunity to cure the alleged problem. More specifically, the court stated, "short of revocation, [charter entities] can demand that steps be taken to cure problems as they occur."
- Chartering entities "approve" charters. The chartering entity "controls the application-approval process, with sole power to issue charters"—"[a]pproval is not automatic, but can be denied on several grounds, including presentation of an unsound education program."
- With regard to accountability, charter schools must promptly respond to all reasonable inquiries from a chartering entity.
- The charter schools law does not create a dual system of public schools. Although the law loosens the "apron strings of bureaucracy," the court found that charter schools are within the common system of public schools because, among other reasons, they "are subject to state and local supervision and inspection."
- Even though charter schools have operational independence "the very destiny of charter schools lies solely in the hands of public agencies and offices, from the local to the state level: school districts, county boards of education, the Superintendent [of Public Instruction] and the [State] Board of [Education]."

We believe that the statutes, although not explicit, do envision a monitoring role for chartering entities and that a monitoring process is absolutely essential to identifying key issues, providing charter schools the opportunity to take corrective action, and determining whether a chartering entity should exercise its authority to revoke the charter.

- Oakland is misrepresenting the content of our report. We did not define specific procedural expectations, but rather identified where chartering entities did not provide adequate oversight using any one of a number of methods that we would have considered satisfactory. As we state on page 18, we expected that, to facilitate their oversight, chartering entities would have established policies and procedures guiding these activities. Typically, sound systems define types and frequency of data to be submitted, the manner in which the entity will review the data to be submitted, the manner in which the entity will review the data, and the steps it will take to resolve any concerns resulting from its oversight activities. Therefore, we assessed the charter oversight activities of the selected chartering entities against what a sound oversight system would include.

- Although Oakland states that we made factual errors or misleading statements, the following point-by-point analysis of its response disproves this assertion.

- Although Oakland disagrees with the underlying facts, Oakland agrees that it would benefit from clearer, written policies and practices that could be implemented more consistently, and states that staff has many of these improvements underway.

- Oakland apparently believes that our expectations that its oversight system should ensure that charter schools are meeting the terms of their charter, such as measuring student progress in achieving stated outcomes and ensuring qualifications of staff, are unreasonable expectations. As fully described in note 1 on page 157, we recognize the lack of specificity in state law regarding monitoring charter schools. In addition, in our report we recommend to the Legislature that it might make the oversight role and responsibilities of chartering entities more explicit.

- Although the term "sponsoring agency" is in statute, we have changed the term "sponsoring agency" to "chartering entity" to more closely conform to the language of the Act. The change in term does not affect any of our findings or conclusions in the report.

- We have modified the text on page 22 to incorporate Oakland's assertion that it made school visits to establish relationships. However, the point remains that Oakland did not visit its charter schools to monitor their performance in accordance with the schools' charter agreements.

- Oakland is understating its responsibility. Although the California Constitution gives the State the ultimate responsibility to maintain the public school system and to ensure that students are provided equal educational opportunities, Oakland presumably has some responsibility. However, we have clarified the text on page 22 to state that Oakland did not assess whether its charter schools were achieving the measurable outcomes agreed to in their charters. Presumably these agreed-upon measurable outcomes were designed as alternative methods to provide equal educational opportunities to students. Oakland could have denied a charter petition if it believed the educational program was not sound. Also, Oakland is understating its responsibility to ensure that taxpayer funds are being spent soundly. It has a responsibility to ensure charter schools' compliance with various legal requirements that are conditions of apportionment, a responsibility to ensure that federal funds are spent in accordance with federal rules, and can revoke a charter for fiscal mismanagement.

- We are pleased Oakland is improving in this area after our audit. However, the fact remains that for fiscal year 2001–02 Oakland did not have any type of effective policies and procedures to ensure that charter schools were assessing the academic achievement of students in its charter schools in accordance with the measurable student outcomes required in each charter.

- Oakland is asserting that the evaluation that occurs relating to a charter renewal process, which occurs every five years, is an adequate substitute for the periodic monitoring that a chartering entity is supposed to be performing in order to justify the fee of "up to" 1 percent or 3 percent of a charter school's revenue. This interpretation ignores the chartering entity's authority to not only renew a charter but to also revoke a charter due to the material violation of any charter condition. In addition, as described in note 1 on page 157, chartering entities have the ability to demand response to inquiries and unlimited access to inspect or observe any part of the charter school at any time. Without periodic monitoring of their schools for compliance with the charter terms, the chartering entities cannot ensure that their charter schools are making progress in improving student learning, nor are the chartering entities in a position to identify necessary corrective action or the need for revocation.

- The fact remains that Oakland provided us no evidence that it had either written procedures or any consistently applied monitoring effort in place for the period we reviewed during fiscal year 2001–02.

Oakland's response recognizes that in fiscal year 2001–02 the resources it provided "proved sufficient for processing the many new applicants for charters but did not provide time for monitoring at the level our district believes is important."

As discussed in detail in note 1 on page 157, Oakland is understating its statutory authority to ensure that charter school students demonstrate academic performance in accordance with its charter. It has the authority to revoke a charter due to failing to achieve or pursue any of its student outcomes if the charter school does not correct the problem.

Oakland is mischaracterizing our report. We expressed no displeasure that one-third of charter schools' outcomes were not related to academic performance. For example, on page 24, we call some of these goals laudable. However, we also correctly discuss that these goals by their nature are difficult, if not impossible to measure by any objective standard. Without objective standards defined in their charters that are relevant to academic performance, the charter schools will not be able to demonstrate to their chartering entities the success of their academic programs.

Although Oakland may state teacher qualifications in its charters, Oakland had no process in place at the time of our review where it verified the credentials of teachers in charter schools. Oakland did not perform the verification on an annual or any other periodic basis.

Oakland is either missing or evading our point related to verifying that testing at charter schools has occurred prior to its certifying the last apportionment. Even though Oakland states that it does numerous things to ensure that testing will occur, it does nothing to ensure that testing did occur prior to its certifying the last apportionment for the year. Oakland's statement about "receiving their (charter schools) testing results" is disingenuous because, as far as we are aware, they are referring to the fact that they have access to the Department of Education's Web site that posts the results after Oakland has certified the last apportionment for the year. Thus, this late receipt of test results is irrelevant to the point that we raised.

Oakland is understating its statutory authority related to charter school fiscal affairs. It has authority to revoke a charter due to fiscal mismanagement. Although expenses greater than revenues is not in isolation a problem, it is sufficient for Oakland to use its statutory authority to make reasonable inquiries, including inquiries for financial data.

- Oakland is mischaracterizing our report. We do not state that it could not support the expenses reported on its mandated-costs claim. Rather we state that it did not provide us with any support for the expenses that it asserted it incurred providing oversight over the charter schools. The statute allows Oakland to charge a district "up to" 1 percent or 3 percent of a charter school's revenue as a fee for oversight. Without any supporting detail for these expenses, Oakland cannot support that it has expenses other than the expenses related to charter schools for which it sought reimbursement on its mandated-costs claim. We have modified the report text to state there "is a risk of double-charging" rather than "may be double-charging."

- The Legislature has already provided a funding mechanism for the oversight of charter schools—the 1 percent or 3 percent. Also, if Oakland already had in place the procedures it is asserting it is now developing or implementing, the results of our audit would have been substantially different. In addition, as discussed in note 2 on page 159, we are not suggesting that the Legislature define specific procedural expectations, but rather that Oakland accomplish sound oversight systems for the "up to" 1 percent or 3 percent of charter school revenue fee that they can charge charter schools.

Agency's comments provided as text only.

San Diego City Schools
Eugene Brucker Education Center
4100 Normal Street
San Diego, CA 92103-2682

October 24, 2002

Elaine Howle*
State Auditor
California State Auditor
Bureau of State Audits
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Dear Ms. Howle,

Enclosed you will find San Diego Unified School District's written response to the report titled "California's Charter Schools: Monitoring and Oversight at All Levels Could Be Stronger to Ensure Charter Schools Accountability." A diskette with files for the response and this cover letter is also enclosed.

We request that you inform the San Diego Unified School District of the details for releasing this audit including the date, time, method(s) of release and intended audiences. We also request that notification be given at least two weeks in advance of to allow us the opportunity to make travel arrangements, should they be necessary, to participate and/or observe the release.

Respectfully,

(Signed by: Terrance L. Smith)

Terrance L. Smith
Chief of Staff

* California State Auditor's comments begin on page 185.

SAN DIEGO UNIFIED SCHOOL DISTRICT'S RESPONSE TO CALIFORNIA STATE AUDITOR'S OCTOBER 15, 2002 DRAFT AUDIT ENTITLED "CALIFORNIA'S CHARTER SCHOOLS: MONITORING AND OVERSIGHT AS ALL LEVELS COULD BE STRONGER TO ENSURE CHARTER SCHOOLS ACCOUNTABILITY"

A. INTRODUCTION

San Diego Unified School District welcomed the opportunity to participate in the California State Auditor's evaluation of how effectively the oversight of charter schools was conducted within the State of California during 2000/2001. The audit team members explained that they were working with various departments of the State of California, four school districts, and a selected number of charter schools within those districts to complete an audit report with respect to the accountability of public charter schools in the 2000/2001 school year. It was our understanding that the audit report would confirm practices as they existed in 2000/2001 at the state, district and charter school levels; identify actions, policies or procedures enacted by the State Board of Education, California Department of Education, districts or charter schools since that time to improve the accountability of charter schools; and newly enacted legislation with the end result of the audit being a number of recommendations for improving the accountability of charter schools at all levels. We looked forward to participating in a process that was designed to result in a better understanding of how the current charter laws and regulations were being implemented, their effectiveness, and how they might be improved.

The San Diego Unified School District believes there are fundamental flaws in the draft audit and the process that was utilized to create the draft. It was our belief at the outset of the audit that the auditors had already obtained a thorough "understanding of the program to be audited to help assess, among other matters, the significance of possible audit objectives and the feasibility of achieving them. The auditors' understanding could have come from knowledge they already had about the program and knowledge they would have gained from inquiries and observations they made in planning the audit" (GAO Yellow Book Section 6.9). The extent and breadth of these inquiries and observations would certainly have varied given the change in identity of members of the audit team, as would the need to understand individual aspects of public charter schools, such as the following:

1. Laws and Regulations
2. Purpose and Goals
3. Efforts
4. Program Operations
5. Outcomes

During the last four months of interaction with the audit team, it has become clear to us that this was not the case. In addition the four-person audit team has consisted of at least six different people of which we are aware. It is appears that there has been a lack of consistent communication among the six audit team members, with respect to information that was already provided by and discussed with district staff, during the transition that has occurred. This lack of clear communication among the audit team members has not been resolved and has resulted in incorrect information being contained within the draft report.

The San Diego Unified School District expected that the audit would evaluate how the charter law and regulations were being implemented at the state, district and charter level. We anticipated that findings would highlight areas of effective implementation, identify areas for improvement, and make recommendations for clarifying and improving the existing law and regulations. However, the audit seems to be based upon an initial misunderstanding of charter school law which resulted in the creation of non-existent performance expectations based upon how the auditors interpreted the law, rather than the reality of existing charter law. Those unsupported standards were then used as if they were the established legal standards to evaluate the effectiveness of authorizing agencies. Interestingly enough, the standards created by the audit could be excellent recommendations for improving the oversight of charter schools if they were presented as recommendations for the Legislature to enact into law or the State Board of Education and/or California Department of Education to include in regulations.

In the interest of creating an audit that would be very useful for charter school policy makers and practitioners within the State of California, we recommend that the audit team enlist the assistance of charter school law experts from advocacy groups and school districts. Such experts would be able to assist in the creation of a balanced legal analysis of the existing charter school law, and where the law is ambiguous not fault districts for having different interpretations.

B. Specific Audit Inaccuracies in Reference to San Diego Unified School District that are Contained in Chapter 1: "Sponsoring Agencies do not Adequately Monitor the Academic Health of their Charter Schools"

1. As stated at page 19, "… our review of California's charter schools revealed that sponsoring agencies do not adequately oversee their schools to ensure that the program described in the charter agreement is implemented successfully".

   - A review of Education Code 47600 et seq. indicates multiple references to "the authority that granted the charter" and not to "sponsoring agencies" – the District observes that the use of the word "authority" conveys a vastly different legal reality than that of "sponsor". This is consistent with the legislative intent language of EC 47601: "… to establish and maintain schools that **operate independently** from the existing school district structure…"

- In the context of "*their* charter schools", public charter schools are not the *property* (as "their" is commonly defined) of their authorizing districts. They are intended to be operationally independent from districts and other authorizers, and independently subject to legal and other compliance to the State Board of Education who acts as the ultimate authority for a charter's permission to open.
- The audit year selected was the first full year of implementation of (then) recently passed AB 544. The legislation itself never defined the term "oversight." Earlier charter laws used the term "monitoring," which also lacked any definition in the statue or in regulations.
- The definition of "adequate oversight" as employed by the audit team has no clear statutory basis in legislation or litigation – rather, it was defined solely by the audit team and applied as they saw fit to the District and local school sites.
- In the absence of written procedural definition to the contrary (from the Legislature, the California Department of Education, the State Board of Education, or the GAO Yellow Book), the District was free to set its own standards for reasonable monitoring of individual school performance.
- The appropriate standard for review, absent definitional clarity in the law, would have been to compare the District's activities against its usual and customary practice of monitoring schools' academic performance in the audit year selected.
- The audit year selected included an obligation on the part of the charter school to execute an annual audit – yet the legislation was silent as to the scope and authority of the audit. There were no implementing or definitional regulations passed in that year by CDE or SBE to clarify this issue, and no direction to charter schools NOT to rely on existing District audit practice (i.e., inclusion within the annual district audit and related audit practices for academic review).
- In the SDUSD, only three schools were visited – and they were visited with little notice, after the conclusion of the school year, and with little or no explanation of the audit scope and rights of response.
- The audit team at no time identified the criteria for selecting these three schools as compared to others within the District. They further failed to identify the written rubrics for selection of these sites - a silent selection process made all the more suspect by the team's admission that THEY, not statute or regulation, were defining "adequate oversight".

2. As stated at page 20, and as a justification for the audit team's self-generated definition of "adequate oversight", the ability to "withhold fees from the charter schools for oversight" is referenced. As used here and frequently through the report, the verb "withhold" is incorrectly applied to District practice – all District charter schools were "billed" for the fee and the fee was "paid" by the schools to the District.

3. As stated at page 22, "We found that they were not always assessing their academic programs against the terms of the charter".

   - "Not always" is a term of linguistic art and has no statistical basis for audit review. Further, as frequently seen in the report, there is no definitional basis for the following terms: "most", "some", "adequately", "academic health", etc.
   - There is no definition of these terms in the GAO Yellow Book, the late-announced audit protocol, nor in statute or regulation as it applies to charter schools.
   - Absent such standards, how can an audit conclusion be reached that "Sponsoring agencies do not adequately monitor the academic health of their charter schools"?

4. While the audit report leaves the reader with the impression that the District did not specify the responsibilities of the charter schools, District charter schools were, in fact, the subject of written expectations - as stated at page 23, "… in its fiscal year 2000-01 **memorandum of understanding (MOU)** with Explorer Elementary School …"

5. As stated at page 23, "… sponsoring agencies … have typically not established monitoring guidelines or engaged in these activities".

   - For the audit year selected, there was no statutory or regulatory obligation on the part of the District to establish such guidelines – the audit team thus contradicts itself by acknowledging the presence of MOU's as stated above while concluding that no written expectations were present.
   - What is the statistical definition of "typically not established" as used here?

6. It is agreed to by the audit team that the District has the right to revoke a charter – what the team clearly does not understand is the PERMISSIVE language in the charter law that indicates that a District **"may"** revoke a charter for the five reasons listed in the law – it is not mandatory that they **"shall"** do so (EC 47607 (b)).

   - This District has in fact revoked two charters since the first law was enacted, but does so only as a last resort. There is no hesitancy to act when the health, safety, and welfare of students is at stake, or the practices in place prevent the charter from reaching its stated goals. There is no evidence in the audit team's report that these more serious issues were present at any District school and ignored by District staff and Board.
   - Revocation was the only tool in place in 2000-01 to remedy even the most trivial issues involving charter school practice within the District. Given the legislative intent to have charters be operationally independent from districts as stated in the law, the audit team failed to justify that any of the issues of concern that they cited would in fact have been legally defensible to justify charter revocation.

- The audit team further ignores the fact that the reasons for revocation identified in EC 47607 were never defined in the law. CDE, SBE, or any court has never subsequently defined them. The team substitutes its own personal definition when one cannot be found in the law, and fails to mention that such definitions are nowhere defined in their own audit protocol.

7. As noted at page 24, the District is faulted for "having no written guidelines".

- In fact, each school had a MOU as the team admitted earlier in the chapter.
- The audit team sites no statutory obligation on the part of the District in the audit year selected to have had such written guidelines across the District.

8. As noted at page 24, the District receives a "NO" in answer to the claim of "Engaged in Periodic Monitoring".

- "Periodic monitoring" is a term of art that was never defined in the law or regulations.
- The audit team never defines "periodic" and cites no definition from the audit protocol for this term.
- The District was thus free to define the term for itself as it best fit the needs of the District – especially in the first full year of the new law (2000-01) that the audit team selected for its review, and in the absence of statutory or regulatory direction to the contrary.
- As further proof that our conclusion is correct, we note that the audit team at no time cites the District for abusing its definitional discretion.

9. As concluded on page 24, "… none of the sponsoring agencies has adequately ensured that their charter schools are achieving the measurable student outcomes set forth in their charter agreements."

- As the audit team only reviewed three schools in the district, they would have had no way of knowing if this was universally correct – even if we assume that this was not done at the three schools selected – a position that we do not admit.
- The team cites no definitional basis, statute, regulation, or portion of the audit protocol that defines "adequately ensured", "achieving", or "measurable student outcomes".

10. At page 24, the team concludes that "San Diego lacked monitoring guidelines for student performance and did not periodically review its charter schools at the time of our review."

- There was no statutory or regulatory standard against which "monitoring guidelines" could have been measured or defined in the audit year selected.
- There is no definition at law or in the audit scope for "periodic".
- The Public Schools Accountability Act (PSAA) represents the standard against which student performance is based. It specifically includes charter schools. As the team itself seems to recognize (in that Appendix C includes STAR data), the accountability system in place was regulated by the PSAA. As this was the most important standard for academic accountability (recognizing that the PSAA includes identified sanctions for nonperformance), the District adhered to state law in this instance.
- There is no statutory obligation on the part of the District to exceed adherence to state law – by definition; the PSAA was "usual and customary practice" in the state. As such, the yearly release and review of STAR data constitutes annual review of charter academic performance. We note that "periodic" certainly encompasses "annual". We further observe that the sequence of release of the data (API raw scores followed by API growth targets followed by API rankings) represent at least three different benchmarks of "periodic" review.
- Charter school independence, as identified in the so-called "mega waiver" provisions of charter law exempting charter schools from compliance with all but specifically identified Education Codes and clearly intended by the legislature (EC 47601), would likely have prevented additional District regulations – a point clearly echoed in the 2002 court decision preventing CDE from imposing further fiscal regulations on charter schools.
- We observe as well that the first and most specific intent of the charter law was to "improve pupil learning" (EC 47601 (a)). The District submits that the state legislature, in passing both the charter law and the PSAA, clearly intended for the PSAA to be the procedural implementation and regulatory check on the charter school's first and most important priority – student achievement. The audit team cites no evidence to indicate that the District did not follow the requirements of PSAA in its use of that legislation to ensure "the academic health" of charter schools **authorized** (as opposed to "sponsored") by the District.

11. It is precisely for these historical reasons that the District convened a two-day meeting in June 2001 with the District's charter school community and the senior District staff. The intent was to formalize a policy based on the District's self-initiated and funded review of charter schools in the District by McKenna and Cuneo (external legal counsel to the District). The focus for the intense discussions was the historical growth of practice during the preceding twelve months under STAR, the PSAA, and (at that time) proposed legislation regarding charter practice that would eventually lead to the passage of SB 740 and AB 1994. Copies of this report were made available to the audit team but never mentioned in their report. The District proactively sought to clarify local practice in the face of statewide inconsistency with respect to the laws affecting charter

schools. The audit team initially dismisses the significance of this two-day meeting, the subsequent meetings and negotiations that lasted over one hundred hours, and the unanimous approval of the District's new charter oversight policy on November 2001 with the following single sentence:

"However, San Diego has developed a new charter schools policy that it plans to implement in fiscal year 2002-03."

An attempt at further acknowledgement appears at page 27. Unfortunately characteristic of the entire tone of the report, even this language is unnecessarily cautionary and dismissive: "Finally, although San Diego has not in the past adequately assessed its charter schools for compliance with agreed upon measurable student outcomes, it has developed guidelines that, if implemented, may constitute an adequate process to monitor its charter schools."

- The District objects to and disagrees with the conclusionary language suggesting that we have not adequately assessed charter school compliance.
- The District Board approved the guidelines in November 2001, and the Charter Office positions were funded (even in the face of statewide budget delay and the prospect of District deficits) in September 2002. We believe that "if implemented" does not reflect this District's commitment to be a leader in developing a charter oversight model that is prudent, flexible, and consistent.
- We do agree that "these guidelines will help San Diego ensure that its charter schools are providing the agreed upon student educational opportunities and will help give it the information it needs to take necessary corrective action when schools are not following their charters." It would have been most appropriate for the audit team to have concluded its review at this point.

12. At page 28, the report notes that "we expected to find charter schools assessing student performance against the measurable outcomes defined in their charter."

- As the overwhelming majority of charters in 2000-01 came in to existence under the old charter law, one would expect to find such a mandate for the schools (as opposed to the District) under the language in the old law. We find no such language.
- Further, there was and is no language in the law that prohibits charter schools from adding other than "objective indicators" in their assessment statements. In fact, it would have been extremely helpful for the audit team to define, from statutory authority or their own protocol, "objective indicators" to begin with.
- The time for review of charter indicators would be during the renewal or revision process. The report is silent as to the obligation of the audit team to have reviewed such documentation in the case of renewals or revisions that the District has dealt with. Had they done so, they would have discovered that such reviews of charter indicators did take place and are a part of the District and Board records.

- Most recently, charter revisions were granted to the Sojourner Truth Learning Academy and the Holly Drive Leadership Academy, and a five-year charter renewal was granted to the Nubia Leadership Academy. In each instance, a full review, accompanied by clear and challenging conditions relating to academic performance (attached to the Board approval action) were present. It is unfortunate that the audit team ignored these facts as well in their written report.
- In the absence of statutory or regulatory definitions for "objective indicators", the audit team at Table 4 attempts to summarize their review of three charter schools in the District. Their review indicates that "some" assessment measures were included in the charters. While again not defining for statistical accuracy what "some" means, the Table leads one to conclude that the absence of "all" is a problem. Since there was not statutory prohibition in either the old or new charter law with respect to using some "objective "indicators' and **some** "non-objective" indicators, what precisely is the problem that the Table purports to represent?
- The report's conclusion at page 31 that "… 34 percent of the outcomes listed in the school's charters were not related to academic performance" is due to the reasons **other than pupil achievement** that are reflected in EC 47601 (b) through (g) as justification by the legislature to approve public charter schools. They include a special emphasis on students who are academically low-achieving, encouraging the use of different and innovative teaching methods, creating new professional growth opportunities for teachers, providing parents and students with expanded school choices, holding schools accountable, and providing vigorous competition within the public school system to stimulate continual improvements in all public schools. Rather than criticize these other objectives, the audit team should have applauded them as being consistent with legislative intent.
- The ultimate indicator with respect to achievement accountability, as stated previously, would be the PSAA – and the report is silent as to this reality and is equally silent on the District's use of PSAA to determine charter progress.
- The audit team's apparent confusion on this issue is demonstrated at page 31 when they note (for an unnamed school) that one school that did not assess its outcomes according to the new rules imposed by the audit team nevertheless showed increased student achievement. We conclude that such a statement in fact supports the current practice of mixing both "objective" and "non-objective" measures in the charter document.
- As stated at page 32, the audit team questions the use of student attendance data as a measurable outcome of charter success. They state "the effects of improved attendance rates on academic performance are of a longer-term nature and cannot be measured objectively". The audit team, especially as relates to racial and economic subgroup performance on standardized and content-based testing, has apparently ignored consistent academic research. It is fair to conclude that if a student is consistently absent from school, his/her test score performance and academic achievement will decline. If not, what would be the reason for mandatory attendance in the State of California?

13. At page 32, the report states that "San Diego does not ensure that all of its charter schools offer the requisite number of instructional minutes". This sweeping condemnation is "proven" (according to the audit team) at page 34: "In at least one instance, the district did not confirm the number of minutes offered by collecting a signature from the school". The report further states that "for another school San Diego did not complete the instructional minutes verification" until 22 days after the May 2002 certification was due. While we could be pleased that this represents (by default), an 88% success rate, we offer the following with respect to the two unnamed schools cited:

    - The signature from High Tech High School, whom we believe to be the first school cited, was secured after the District provided to the school site an opportunity to validate their change in schedule and secured the requested signature after the review process was completed.
    - With respect to the second school, we note for the record that all public schools may adjust their May reports in June after P-2 with a Final Report. The verification noted above was permitted under state law.
    - We therefore conclude that **the District had a 100% verification rate**, not (as concluded in the report) that "the district only verifies some of its charter schools' instructional minutes…"

14. **Although absolutely no data or explanation is presented** at Table 5 on page 33, the District's ability to verify teacher qualifications is stated as "unclear". In addition to the specific explanations to the team in the conference call and their last visit, we offer again the following:

    - In accord with EC 44258.9 (b) and (e), it is the obligation of each county superintendent to submit a report of credential verification to the state in the format requested. This county has done so, and this District has provided the required (and verified) data for submission. The report is silent as to this legal obligation and as to this District's compliance with that requirement.
    - **In addition to regularly satisfying that requirement,** the District conducts an **annual** review for **all charter schools**. Using the "Administrator's Assignment Manual", the District identifies the process to place personnel and monitor assignments.
    - Within four months for **all** charter schools in the district, credential verification occurs.
    - The master schedules for **all** charter schools are used as a **second verification.**
    - For 'arm of the district" schools using District payroll services, a third review occurs **monthly**.

- For arm of the district" schools using District payroll services, the Unit reviews all credentials set to expire and does so three months before their expiration date as a **fourth verification**.
- Although not required under the law, the District established a "Credential Unit" with three auditors within the Human Resource Services Division. The Director of the Credential Unit is responsible for credential verification for **all** charter schools.
- We note for the record, again, that the audit team makes no reference to specific statutory violations.

15. We are pleased that the audit team agreed with the District that standardized testing compliance was not an issue in this District, since no examples of purported noncompliance are noted at pages 34-35 and all charter schools are listed in the appendix. We are therefore puzzled as to why the team would have stated at page 34 that "… the sponsoring agencies do not always verify that each charter school participates in standardized testing." Given that the district provided the audit team with certification of testing for every charter school, we do not understand why the notation in Table 5 on page 33, under Verify Standardized Testing? Indicates "Most" versus "All."

16. With respect to the recommendations at page 35-36, we cite the audit team's statement at page 28 that the San Diego Unified School District's oversight policy will resolve any outstanding issues: "The programmatic audit will document the school's progress in student achievement, as well as whether the school has implemented the instructional program called for in the charter … These guidelines will help San Diego ensure that its charter schools are providing the agreed upon student educational opportunities and will help give it the information it needs to take necessary corrective action when schools are not following their charters."

C. Specific Audit Inaccuracies in Reference to San Diego Unified School District that are Contained in Chapter 2: "Sponsoring Agencies do not Exercise Sufficient Oversight of Charter Schools' Fiscal Health"

1. As stated at page 37, "When sponsoring agencies (sponsors) authorize the creation of a charter school, they accept the responsibility for monitoring its fiscal health …"

- As stated before, the appropriate terminology would include "authorizing agencies" and not "sponsoring agencies". In fact, the clear intent of the legislation almost compels a "yes" vote for charters from a local district board: "The governing board of the school district **shall not deny** a petition for the establishment of a charter school unless it makes written factual findings, specific to the particular petition, setting forth specific facts to support one or more of the following findings…" (EC 47605 (b)). In this context, and as opposed to the previous charter law, a district is compelled to grant a charter absent a very narrow permission to deny. This is clearly not "sponsorship"

– it reflects an objective predisposition to grant charters designed to "operate independently from the existing school district structure" (EC 47601).

- Absent the audit team's inability to define by statute or regulation what is meant by "monitoring" the "fiscal health" of a charter school, a review of the written historical record reveals the following:

  a. California Department of Education – Policy Letter – June 12, 1997 Joseph Symkowick – General Counsel

     "In our view, the Charter School Act balances flexibility in the relationship between a charter school and the chartering entity under the terms of the charter with the basic duty of the chartering entity **to revoke** the charter if public funds are not responsibly used for purposes of public education. While this duty to revoke exists, school districts and county offices of education **are not the financial guarantors** of any charter school transaction or liable for claims that arise against the charter school except in limited circumstances … The overall intent of the Charter School Act was to encourage experimentation and innovation in providing choices to public school students. Exposing chartering school districts to liability for charter school obligations would have a chilling effect on the ability of local groups to obtain or maintain charters that the legislature, in our view, did not intend." (page 2)

     In finding no more recent reference to the historical intent of charter school legislation in California since that time, the District identifies that its appropriate role is to grant charters (absent listed and narrow reasons for denial) and further identifies what it believes to be a clear "arm's length distance" from charter school operations.

  b. Mr. Symkowick observes later (page 3) in that same policy paper that the authorizing district's obligations are to "… **at a minimum** review the annual audit report on the charter school's financial operations to determine whether the charter school has acted in accordance with reasonable and prudent business standards. If the chartering entity decides that a charter school has failed to act in a fiscally responsible manner, the charter may be revoked."

     We conclude from the above reference that the power to revoke is permissive in that "may", not "shall" is used and that revocation is the **single remedy** that a district may employ. We note further that it is the "chartering entity", and not any other part of the educational system, that has the exclusive right to revoke. We observe that the criterion for revocation is clear – failing to "act in accordance with reasonable and prudent business standards".

c. When the new charter law took effect in January 1999, no substantive language was added to alter these conclusions. The San Diego Unified School District should then have been judged in the audit report against the standards and limitations described above – upon a finding that a specific charter had failed to "act in accordance with reasonable and prudent business standards". The District had the exclusive power to revoke a charter – but could decide not to revoke based on the use of the word "may" in **both the old and new law**. Mr. Symkowick states at page 3 of his report that "The duty to revoke … appears to require an exercise of discretion, which may not be compelled under (Code of Civil Procedure) Section 1085 unless the failure to act rises to the level of an abuse of discretion." The audit team made no such finding in its report.

d. The audit report is equally silent on whether the issues alleged (for the few charter schools cited in the report) in fact rose to the level of insufficient business practices that would have prompted a revocation hearing. Mr. Symkowick observes at page 5 of his report that "It is our view that a chartering entity should become liable, if at all, only after it has notice of a **pattern of fiscally irresponsible actions**, and fails to prevent further injuries by expeditious revocation of the charter". The audit report cites no such "pattern of fiscally irresponsible actions" on behalf of any charter school authorized by the San Diego Unified School District and thus errs it its conclusions.

e. The audit report is not clear as to the significance of the problem identified in the District. Of the thirteen charter schools in existence in the year cited, ten were "arm of the district" charter schools utilizing District fiscal services that automatically gave the District review authority of the monthly fiscal realities. None of these schools is cited as a problem. For the remaining three schools, they were operating as non-profit public benefit corporations – independent legal and fiscal entities. Each of these schools, in addition to the ten noted above, were treated as public schools within the District for audit review purposes under the District's audit as verified in the District's annual reporting using the J-200 form. We note for the record that the three independent entity charter schools had additional audit obligations under California law with respect to non-profit public benefit corporations.

f. The audit report correctly concludes that at the time of their visit not all of the schools had submitted their audits to the District. We note for the record that parallel information was already available to the District for the "arm of the district" schools, that **all** charter schools were a part of the District audit, and that the **single concern** expressed in the report focused on the June 30th ending balance for High Tech High, (HTH) a separate legal entity (page 48). HTH maintains a private bank

account to which they regularly transfer all funds received from the County Treasury. In order to reflect that this cash is no longer available for expenditure from the County Treasury, the District "expenses" the total of the wire transfer amount. Therefore, the charter school's fund balance may indicate that there are expenses in excess of revenues, when in fact there were cash balances in the commercial bank account that the charter school maintained. As reported in the June 30th **audited financial report**, Qualcomm Corporation (a regular sponsor and partner to HTH since it opened) had pledged $500,000 to HTH. If the audit team's review would have indicated that HTH had **no financial reserves** on the date cited (which they never did), then the District should have been promptly notified of the **alleged actual deficit** so that appropriate action could have been take. In fact, HTH was solvent at the time and remains so today.

g. The District has responded in a timely fashion in its review of the fiscal status of charter schools that it authorizes. We cite as evidence the fact that three of the District's charter schools (Nubia Leadership Academy, Sojourner Truth Learning Academy, and the Holly Drive Leadership Academy) were notified that they would be **audited by the District** in February 2002 in preparation for the renewal of Nubia's charter and material revisions to the charters of Sojourner Truth and Holly Drive. The decision to audit was made before the District was aware that the Legislative Committee audit was in existence. The audit report is silent as to this activity.

2. Absent any statutory or regulatory definition of "sufficient oversight", the audit team consistently impugns criminal activity to the District and never defends its conclusions by proof through an audit finding. We note a few of these generalized allegations:

- page 38: "may be withholding"
- page 38: "may be double-charging"
- page 57: "may be double-charging"
- page 58: "may have charged"
- page 58: "potential oversight double-charges"

Nowhere in the report is there an audit finding that specifically proves the truth of these insinuations – in the absence of such findings, this language should never (under any accepted audit protocol) have been used.

3. As used at page 39, the District does not "withhold fees" from charter schools – the charter schools are "charged" a fee and they authorize its payment.

4. At page 45, the conclusion is erroneously made that the District does not include in its Board-approved charter oversight policy (November 2001) any procedures for fiscal review. In fact, the new policy includes the following:

   Page 12:

   "The manner in which annual, independent financial audits shall be conducted:

   These audits shall employ generally accepted accounting principles, and the manner in which audit exceptions and deficiencies shall be resolved to the satisfaction of the Board."

   A 'reasonably comprehensive description' would:
   1. Assure annual, independent financial audits employing generally accepted account ing principals will be conducted.
   2. Describe the manner in which audit exceptions and deficiencies will be resolved.
   3. Describe the plans and systems to be used to provide information for an independent audit.
   4. State the school will adhere to financial reporting requirements described in Guideline
   5, Additional Requirement 4 of this policy."

   Page 16:

   "The petitioners shall provide assurance that "the charter school will promptly respond to all reasonable inquiries, including inquiries regarding its financial records."

   Additional Requirement 4, Reporting Requirements

   The petitioners shall assure the charter school will adhere to the district's reporting requirements. Note: Petitioners may reference the written assurance previously provided in Element 9.

The applicants shall:

Provide the following reports as required by law:

a. CBEDS (California Basic Educational Data System).
b. ADA (Average Daily Attendance) reports J18/19.
c. Budget J210 (preliminaries and final).
d. SARC (School Accountability Report Card – charter schools may use their own formats).
e. Copies of annual, independent financial audits employing generally accepted accounting principles.

Provide the following reports as required by the district:

a. Monthly statements of accounts (for arm-of-the-district charter schools only).
b. Annual reconciliations of the J210 with financial audits (SDUSD will provide a template).
c. Copies of test results reports for all state mandated assessments, which are:
    i. STAR (Standardized Testing and Reporting).
    ii. CELDT (California English Language Development Test).
    iii. SABE/2 (Spanish Assessment of Basic Education).
    iv. California High School Exit Examination.

Changes in reporting requirements may be incorporated by reference into the school's charter when the school and district update their MOU."

The audit team did not reference this language in their report although much time was spent with the team and staff discussing the new procedures.

District notes that CDE has been prevented in a recent court case from requiring charter schools to report their finances. While AB 1994 (effective January 1, 2003) may resolve this issue (if the as yet not written and approved regulations do come into existence at the state level), there is a statewide lack of guidance, in either regulation or statute for "sufficient data", "other financial information", "oversight", "monitoring", or "periodic".

5. As noted at page 45, the audit team must accept the legitimacy of fiscal review for the 10 charter schools receiving District payroll in the audit year reviewed, since their single focus is on the non-profit public benefit corporation schools (three). Please see introductory statements above regarding District review of fiscal issues for the non-profits.

6. At page 46, the audit team erroneously and harmfully misquotes the "senior financial accountant" as she is alleged to have stated that "San Diego lacks the authority to require regular financial reporting from schools that do not purchase the district's financial services". In fact, the senior financial accountant's statement was absolutely taken out of context. At page 3 of the senior financial accountant's memo (9/6/02) to the audit team, she states: "A charter school shall promptly respond to all reasonable financial inquiries, including, but not limited to, inquiries relating to its financial records…" She goes on to observe in that same response that "In a memo dated June 24, 2002, issued by Janet Sterling, CDE School Fiscal Services Division, regarding financial reporting for charter schools, it states that as a result of a lawsuit (*referred to previously in this District response*), since CDE does not have the statutory authority to require charter schools to submit annual financial data, 'charter schools are not required to submit

year-end financial reports to CDE'." San Diego does in fact receive financial data from all of its schools. The only issue is whether the data collected met with the test of sufficiency set up by the audit team. Since the audit team could cite no statutory or regulatory definition as to the extent of data collected, it is erroneous to conclude that the District was incorrect in its procedures. The District recommends **with** the audit team that these definitions be made clear in the regulations to be written to implement AB 1994. We recommend as well that "reasonable inquiries" and "financial records" as used in EC 47604.3 be clearly defined. We finally request that the erroneous statement attributed to the senior financial ccountant included in the report be removed.

7. As stated at Page 50 and Table 7, reference is made to "Number of Charter School Auditors that Performed Various Compliance Testing Procedures". This is the clearest example in the entire report of the audit team's penchant for creating an unsubstantiated test for district performance and then concluding that a district is at fault for not living up to their test. We note that, prior to the Table placement on page 50, the audit team reports that "Effective January 2002 the Legislature has imposed on the charter schools three additional conditions of apportionment: meeting minimum instructional minute requirements, maintaining written contemporaneous pupil attendance records, and using credentialed teachers in certain instances." The District notes that the legislation cited, SB 740, dealt with independent study charter schools, not in-seat learning programs that comprised 12 of the 13 charters in existence in the audit year selected. The one charter school with independent study, the Charter School of San Diego, has complied, through the Charter School Advisory Commission and the SBE with all verification components. We further observe that these requirements **were not in effect in 2000-01 and hence cannot be used a standard against which to judge District practice.**

8. We note as well that the audit team incorrectly identifies the level of educational authority responsible for ADA verification. Reading EC 11966, it is clear that the Superintendent of Public Instruction has the obligation to verify ADA – not the local district. The San Diego Unified School District has historically reviewed the ADA information although not required to do so. As the audit team knew, the Cortez Hill Academy Charter School audit for the year ending June 30, 2001 indicated a discrepancy of 2.04 units in their ADA. The District worked with Cortez Hill to correct this mistake and amend the records to reflect actual ADA at the lower figure. The audit report is silent as to this practice.

9. At page 50, the audit team references the "State Controller's Office standards and procedures for California K-12 local education agency audits." While this is interesting, the audit team knows full well that this specific audit protocol has never been an expectation for charter schools. It was not a part of the new charter law and has never been applied, by regulation or statute, to charter schools and was certainly not a mandatory

reporting form in the audit year selected. We agree with the audit team that future regulations or legislation must specifically identify what audit protocol a charter school is to use – but it was not an obligation in 2000-01.

10. As stated at page 54, the District is faulted for its audit compliance practices. In fact, ten of the thirteen charters were being regularly reviewed through fiscal information received by the District as "arm of the district" schools, and the other three independent legal entities were included in the annual District audit scope. The audit team cites **no data** to indicate that **any** of the schools had uncorrected deficiencies, except for the later reference to High Tech High that was responded to earlier.

11. At page 58-60, the audit team attempts to insinuate that the District "double-charged" for reimbursement under the 1%-3% fee and mandated cost recovery. The Table at page 58 is either incorrect or misleading. In accord with the J-210 Fund Consolidation Report approved by CDE, the total cost to the District under the Indirect Cost Recovery formula was $979,707. The one- percent oversight fee paid by charter schools for 1999-2000 was $249,332. If the state approved methodology for indirect costs calculation is representative of the oversight functions actually provided by districts, then, $730,375 **more** in "oversight" was provided for than billed. For the 2000-01 fiscal year, in accord with the same CDE-approved report for that year, the charter schools paid $384,277 for the one- percent oversight fee, while $1,262,200 in services was provided. For that year, the District services exceeded charter school billing by $877,923. As the audit team knows full well, the District used the Indirect Cost Recovery method and formula to determine its oversight costs. The team presented no evidence that this formula was incorrectly used, or that statute or regulation prohibited its use. Absent such a finding, the District's use of the formula was legal and compliant.

12. The issue rises to one of criminal insinuation with the statement at page 58 and elsewhere that the District engaged in "potential oversight double-charge". This insinuation is correct only if the team makes a finding that the $45,886 and $113,104 claims were filed with the knowledge that they had already been covered by the 1% fee charges for the two respective years. In fact, the audit team was challenged by the Mandated Costs Unit at the District, both in the conference call and at their last meeting at the District, to prove that the claims in question were not a part of the nearly $1.6 million dollars in uncharged oversight provided by the District to the charter schools for the two years in question. If anything, the District is at fault for not filing a mandated costs claim for the full amount owed. The audit team was reminded as well that three years or more are needed to finally approve a mandated costs claim. While this may be 2002, the claims process in question pre-dates the current charter law and calls into question (as mentioned earlier) the change in language from the old law to the new law. While the old law used "monitoring", the new law uses "oversight". In addition to neither term being defined in either law, the lack of statewide consistent practice on this issue is proven in the report when the team surmises that "the sponsors inconsistently apply the withholding fee" at page 60. In fact, the districts apply the same language

differently, not "inconsistently". San Diego has consistently applied its Indirect Cost Formula to the 1% charge. The fact that we use a different formula than other districts is irrelevant unless San Diego was mandated to have used some other formula. The audit team knew, and knows now, that no single formula for computation for mandated cost claims for charter school oversight ever existed in law or regulation.

13. This same analysis applies to the remarks made at page 60 regarding the definition of charter school income used as a basis for charging the fee – there was and is no definition in law or regulation as to what constituted charter income. The audit report is also silent as to the District's solution to the problem found in the new oversight policy adopted by District Board action in November 2001:

"Oversight Fees

Consistent with Education Code § 47613, the district will cover the cost of oversight activities by charging charter schools using district facilities 3% of their total revenue and schools not using district facilities 1% of their total revenue. Schools receiving private grant funding or other private sources of revenue may have additional funds excluded from the revenue figure used to calculate oversight charges if the schools can provide proper documentation identifying the source and amount of private revenue. Further, direct funded schools operated as or by a nonprofit public benefit corporation may, with proper documentation, exclude funds from one-time government grants that require no signature of the district to acquire (e.g., federal charter school implementation and dissemination grants)."

14. On page 5 the audit team defines the term fiscally independent as: "Some charter schools rely on their sponsors for operational support. Other schools manage their own operations; these schools we consider to be fiscally independent." Also on page 5, the audit team states that "some charter schools are fiscally unhealthy" and speculates that the "schools may have to close and displace their students."

In Appendix B eight of the San Diego Unified School District charter schools are included in a discussion of financial viability. Of these eight charter schools, only three are non-profit benefit corporations: Cortez Hill, Explorer, and High Tech High and, therefore, comply with the audit team's definition of "fiscally independent" charter schools. The other five charter schools are arm-of-the-district schools and the district provided payroll and accounting services for these schools. Therefore, any reference to these five charter schools should be deleted from Appendix B.

Further, the fund balance reserve requirement that the Department of Education has established for school districts as discussed by the audit team on pages 47 and 65 is, to the District's knowledge, **not** specifically required for charter schools in any statute, regulation or CDE policy. Since the audit team does not cite any legal reference

for this requirement for charter schools, the audit cannot hold charter schools or the authorizing districts accountable to this standard.

In our review of available independent financial audits of the three cited fiscally independent charter schools, we found that they did have in excess of the 5% fund balance reserve as defined by the audit team, i.e. fund balance of between 3% to 5% of annual expenditures. If the audit team can provide any financial data to show otherwise, then the district requests that information.

Cortez Hill:
5% of fiscal year 2000/2001 expenditures of $471,926 = $23, 596
Unrestricted Fund Balance at 6/30/01 = $105,978

Explorer:
5% of fiscal year 2000/2001 (first six months) expenditures of $355,013 = $17,750
Unrestricted Fund Balance at 12/31/00 = $64,888

High Tech High
5% of fiscal year 1999/2000 expenditures of $1,414,102 = $70,705
Unrestricted Fund Balance at 6/30/2000 = $2,686,519

D. Conclusion

As previously stated, the San Diego Unified School District welcomes the opportunity to participate in a fair audit to determine how effectively the oversight of charter schools was conducted within the State of California during 2000/2001. The draft audit that was provided to the District for review and response does not accomplish that goal.

It may be far more appropriate for the audit team to await the conclusion of the legislative review of charter schools mandated in Section 47616.5 of the Education Code and now being conducted by the Rand Corporation. The 1999 legislation mandates that by July 2003 the following fiscal-related recommendation must be made: (j) "The governance, fiscal liability and accountability practices and related issues between charter schools and the governing boards of school districts approving charters". The legislation also calls for their report to include: (d) "The fiscal structures and practices of charter schools as well as the relationship of these structures and practices to school districts, including the amount of revenues received from various public and private sources."

At a minimum, we recommend that the audit team enlist the assistance of charter school law experts from advocacy groups and school districts across the State of California. Such experts assist the audit team in reaching an initial understanding of what the charter school law permits and how to measure performance.

In reviewing the draft audit report and in making preparations for the final audit report, we hope that the final report will "(1) communicate the results of audits to officials at all levels of government, (2) make the results less susceptible to misunderstanding, (3) make the results available for public inspection, and (4) facilitate follow-up to determine whether appropriate corrective actions have been taken" (GAO Yellow Book Section 7.3).

Should the State Auditor publish the audit in its current form or any revised form that does not incorporate the District's revisions nor address its concerns, we request that this response be published with the audit, without any editing and in its entirety.

We also request that the State Auditor inform the San Diego Unified School District of the details for releasing this audit including the date, time, method(s) of release and intended audiences. We request that notification be given at least two weeks in advance to allow us the opportunity to make travel arrangements, should they be necessary, to participate and/or observe the release.

Blank page inserted for reproduction purposes only.

COMMENTS

California State Auditor's Comments on the Response From the San Diego City Unified School District

To provide clarity and perspective, we are commenting on the San Diego City Unified School District's (San Diego) response to our audit report. The numbers below correspond to the numbers we placed in the margins of San Diego's response.

1. The title of the report changed and we made San Diego aware of the change while San Diego was reviewing the draft report.

2. During any of the several meetings we had with San Diego to discuss our audit findings, San Diego officials never expressed a concern about "a lack of consistent communication among members of our audit team." And for San Diego to make such complaints now, without even alerting us of their concern, is disingenuous.

3. Contrary to San Diego's suggestion, our audit report is not intended to be read as a legal opinion on the application of the Charter Schools Act of 1992 (Act) to chartering entities. Instead, we looked to the law for guiding principles in responding to specific questions from the Joint Legislative Audit Committee (audit committee) regarding policies and practices for monitoring charter schools. Moreover, on pages 18 and 32, we recognize the lack of specificity in state law regarding monitoring charter schools and recommend to the Legislature that it might consider making the oversight role of chartering entities more explicit. Finally, as we state on these same pages, we believe that some monitoring role and responsibilities for chartering entities is implicit in the Act, particularly in a chartering entity's charter revocation authority, the primary vehicle for enforcement of charters.

   Although not rendering a legal opinion on the issue of oversight, our view that the charter schools law places some monitoring responsibilities on chartering entities is informed by our reading of the statutes as well as the constitutional obligations of the State regarding the public school system. In fact, in

Wilson v. State Board of Education, (1999) 75 Cal.App 4th 1125, the First Appellate District Court of Appeal considered the issue of whether the Act permitted funding for schools that fell outside of the public school system, thus violating the California Constitution. In finding that the Act did not run afoul of the constitution, the court pointed to the statutes that we have relied on as evidence that charter schools are operated in a framework that keeps them within the public school system. For example, the court found that:

- Chartering entities have "continuing oversight and monitoring powers" with:
  - The ability to demand response to inquiries.
  - Unlimited access to inspect or observe any part of the charter school at any time.
  - The right to charge for actual costs of supervisorial oversight.
  - The right to revoke a charter for, among other reasons, a material violation of the charter or violation of any law, failure to meet student outcomes, or fiscal mismanagement.
- As part of their revocation authority, chartering entities are required to permit a charter school the opportunity to cure the alleged problem. More specifically, the court stated, "short of revocation, [charter entities] can demand that steps be taken to cure problems as they occur."
- Chartering entities "approve" charters. The chartering entity "controls the application-approval process, with sole power to issue charters"—"[a]pproval is not automatic, but can be denied on several grounds, including presentation of an unsound education program."
- With regard to accountability, charter schools must promptly respond to all reasonable inquiries from a chartering entity.
- The charter schools law does not create a dual system of public schools. Although the law loosens the "apron strings of bureaucracy," the court found that charter schools are within the common system of public schools because, among other reasons, they "are subject to state and local supervision and inspection."

- Even though charter schools have operational independence "the very destiny of charter schools lies solely in the hands of public agencies and offices, from the local to the state level: school districts, county boards of education, the Superintendent [of Public Instruction] and the [State] Board of [Education]."

We believe that the statutes, although not explicit, do envision a monitoring role for chartering entities and that a monitoring process is absolutely essential to identifying key issues, providing charter schools the opportunity to take corrective action, and determining whether a chartering entity should exercise its authority to revoke the charter.

We stand by the findings and recommendations in our report. The audit committee charged us with the independent review of the chartering entities' policies and procedures for enforcing charters and the policies and practices for monitoring the charter schools' compliance with the conditions, standards, and procedures entered into under the charter. As our work shows, chartering entities are not enforcing the charters and the responses reflect that the chartering entities do not believe it is their responsibility to do so.

Although the term "sponsoring agency" is in the statutes, we have changed the term to "chartering entity" to more closely conform to the language of the Act. The change in term does not affect any of our findings or recommendations in the report.

San Diego suggests that it was free to set its own standards for reasonable monitoring of charter school performance. Although San Diego may have that freedom, at the time of our audit San Diego had not adopted policies and procedures for monitoring charter school performance. However, it is important to point out that to be in conformance with the Act, San Diego's oversight policies should ensure that the performance of its charter schools are measured in accordance with the academic outcomes set forth in the schools' charters.

This is simply untrue. In letters dated July 3 and July 8, 2002, that we sent to San Diego as a courtesy, we notified San Diego as to which charter schools we would be visiting. We arranged our visits with the schools at times convenient for them, at the same time allowing us to progress in our work. At no time did the schools express the concerns San Diego has. Moreover, our school visits were necessitated by the fact that San Diego did not adequately monitor its schools. As San Diego did not

participate in these conferences, it is disingenuous to make such complaints now. Finally, each school was provided with the relevant text and tables in our draft report for their review and comment.

We have changed the wording of the report to reflect "charge" rather than "withhold" to conform more precisely to the charter schools law. The change in term does not affect any of our findings or conclusions in the report. We would note, however, that the documents we obtained from the chartering entities show that at least three of the four districts *withhold* the oversight fee from amounts they distribute to charter schools.

We stand by our audit conclusion. At the four chartering entities included in our audit, we found that two of them do not monitor the academic performance of their charter schools. At these two chartering entities the academic programs of the schools are not measured against three conditions set forth in the charter. Based on this observation we concluded that "chartering entities were not always assessing their academic programs against the terms of their charters."

San Diego suggests that the audit report leaves the reader with the impression that it did not specify the responsibilities of the charter schools. We do not believe this to be true. Rather, the audit report plainly concludes that San Diego has not set forth its own responsibilities for monitoring the academic health of its charter schools.

In the Memorandum of Understanding between San Diego and its charter schools, San Diego agrees that it is their intent to oversee the activities of the charter schools. However, San Diego has not established a plan or guidelines specifying how it intends to do so, nor has it monitored the charter schools' performance against the outcomes set forth in their charter agreements.

It is erroneous for San Diego to suggest that we do not understand the revocation provisions of the Act. The audit report accurately reflects the Act, pointing out that the Act provides that the chartering entity "may" revoke a school's charter.

Again, San Diego is overreacting to terminology we use to describe the focus of the monitoring we believe that chartering entities should perform to fulfill their responsibilities under the charter

schools law. Further, we believe that the law adequately defines grounds for revocation. As we state on page 19 of the report, unless a chartering entity engages in some sort of periodic monitoring, it will not be in a position to identify grounds for charter revocation and the corrective action that a charter school must undertake to avoid revocation. Although we agree with San Diego on the grounds for revocation and that revocation is not to be taken lightly, the chartering entities are required by the Education Code, Section 47607(c), to notify the charter school of any violation of either an academic or fiscal nature and give the school a reasonable opportunity to cure the violation. Thus, the chartering entity has the ability to work with a school to effect corrective action short of revocation. The Act authorizes a chartering entity to revoke a charter upon a finding that a charter school did any of the following: (a) committed a material violation of any of the conditions, standards, or procedures set forth in the charter; (b) failed to meet or pursue any of the pupil outcomes identified in the charter; (c) failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement; or (d) violated any provision of law. For example, if a chartering entity suspected a charter school violated a provision of law, the chartering entity could review the alleged facts and then apply the particular statute that it suspects was violated to determine whether the law was violated. Moreover, our legal counsel advises us that under the rules of statutory construction, statutory terms should be construed in accordance with the usual or ordinary meaning of the words used.

- As we explain in the text following Table 3, San Diego has not developed guidelines for monitoring the academic outcomes of charter schools nor has it engaged in such oversight. Based on these observations, San Diego receives a "No" in answer to the question of "Has the chartering entity engaged in periodic academic monitoring"?

- San Diego suggests that the Public Schools Accountability Act represents the standard against which student performance is based. This is an accurate statement, however, our audit focused on how the performance of charter schools are being measured. Furthermore, the Act requires that charter schools be assessed against the agreed-upon student outcomes contained in their charters.

- We disagree with San Diego's assessment of the Sacramento Superior Court's order granting summary judgment in *CANEC v. State Department of Education*. The order does not state that the Department of Education (department) is prohibited from

imposing further fiscal regulation on charter schools. Instead the court specifically ruled that the department did not have statutory authority to impose financial reporting requirements on charter schools and chartering entities in a format dictated by the department. The court also ruled that charter schools are authorized to prepare their financial reports in a manner of their choosing for transmission to the department. Given the nature and specificity of the *CANEC* order, we do not think it should be relied on when analyzing a chartering entity's authority to oversee its charter schools (see California Rules of Court, Rule 977, which prohibits an opinion of a superior court that is not certified for publication or ordered published from being cited or relied on by a court or a party in any legal proceeding).

As we state on page 21 of the report, San Diego is in the process of developing a plan, which it has not yet implemented, to monitor the academic performance and fiscal health of charter schools. San Diego intends to implement this plan during the current school year.

San Diego's comment here misrepresents the discussion of academic outcomes in the report. On page 27 of the report, we indicate that about one-third of the outcomes listed in the charters are not clear indicators of academic performance. We recognize that certain of these outcomes are beneficial, but do not have a clear causal relationship with academic performance. We limited our analysis to determining the extent to which the schools and chartering entities were measuring academic progress against the objective measures in the charters, because we believed that they would be the measures that the schools and chartering entities would find to be the easiest to assess and most likely to be documented.

San Diego is asserting that the evaluation relating to a charter renewal process, which occurs every five years, is an adequate substitute for the periodic monitoring that a chartering entity could be performing to justify the fee of "up to" 1 percent or 3 percent of a charter school's revenue. This interpretation ignores the chartering entity's authority to not only renew a charter but to also revoke a charter due to material violation of any charter condition. In addition, as described in note 3 on page 185, chartering entities have the ability to demand response to inquiries and unlimited access to inspect or observe any part of the charter school at any time. Without periodically monitoring their schools for compliance with the charter terms, the chartering entities cannot ensure that

their charter schools are making progress in improving student learning, nor are the chartering entities in a position to identify necessary corrective action or the need for revocation.

- San Diego complains that our report makes a "sweeping condemnation" of one of its practices when we state that it does not ensure that all of its charter schools offer the requisite number of instructional minutes. We do not agree that this is a "sweeping condemnation." Furthermore, we reached this conclusion only after discovering that for two of the charter schools we sampled, San Diego had not verified that the requisite number of instructional minutes had been provided. For this reason, we stand by the words contained in the report to convey this audit conclusion.

- In Table 5 of the report, we rated as "Unclear" that San Diego had properly verified teacher qualifications. We reached this conclusion only after requesting documents from San Diego evidencing their review of teacher qualifications. Initially, San Diego was unable to provide us such documents. However, it subsequently collected the sought-after documents from the charter schools and ultimately forwarded the documents to us. In other words, San Diego did not have the documents on hand, making it "Unclear" whether they regularly verified the qualifications of the teachers in their charter schools.

- For one of the charter schools in our sample, San Diego had not certified that the school had participated in standardized testing. For this reason, we gave San Diego the rating of "Most" in the Verify Standardized Testing column of Table 5.

- We disagree with San Diego's characterization of its revocation authority as an "exclusive remedy." The statute granting revocation authority to chartering entities also grants chartering entities authority to "inspect or observe any part of the charter school at any time." Further, charter schools are required to respond to any reasonable inquiries made by its chartering entity. Finally, chartering entities are required to provide charter schools with an opportunity to cure violations prior to revocation. Thus, we believe the statutes provide avenues for chartering entities to work with their charter schools in resolving problems prior to revocation proceedings. We also disagree with San Diego's assertion that chartering entities have the "exclusive right" to revoke charters. The Education Code, Section 47604.5, clearly grants the State Board of Education

revocation authority upon the recommendation of the Superintendent of Public Instruction and upon certain findings. Finally, although San Diego asserted on page 168 that the reasons for revocation are not defined, it appears that San Diego has now read the statute to define one reason for revocation—fiscal mismanagement by charter schools—and has construed that reason to require a finding that a charter school is "failing to act in accordance with reasonable and prudent business standards."

- Our data show that San Diego was the chartering entity for 17 schools in fiscal year 2001–02. San Diego believes that schools utilizing its fiscal services give it "automatic review authority of the fiscal realities." In our report we note that San Diego does not have expenditure data for all of its schools, and thus, does not have a complete financial picture for all of its charter schools. The data we cite in Table 6 accurately reflects the information High Tech High Charter School (High Tech High) provided to us; San Diego did not supply this information. Moreover, San Diego overstates the reliance that should be placed on its audit. It may have included all charter schools' revenue, but for some charter schools, San Diego's expenditure information is limited to the lump-sum transfer of revenue from the county treasury to a commercial bank account. San Diego does not have the detailed expenditure information for all schools required for a financial audit.

- We strenuously object to San Diego's suggestion that we have engaged in "criminal insinuation" with regard to our findings of risk of potential double-charges for oversight costs. Nothing in our text either suggests or implies that San Diego engaged in anything remotely akin to criminal behavior. Moreover, the statutes pertaining to the State mandated-costs claim process do not make any provisions for criminal penalties, thus to suggest that we have engaged in "criminal insinuation" is completely baseless in law and fact.

- We have changed the wording of the report to reflect "charge" rather than "withhold" to conform more precisely to the charter schools law. However, San Diego has again misrepresented the wording of our report. As we state on page 46 of the report, each of the chartering entities charged their charter schools precisely the percentage allowed. When we asked for the support for the actual costs incurred to justify this percentage, none of the chartering entities could show the costs that were covered. Each chartering entity could document the costs that it included in

its mandated-costs claims, but could not show that these costs were in addition to the costs for which the charter schools reimbursed their chartering entities. Although San Diego states that the documentation of a chartering entity's costs is not required or defined in the statutes, we see this as strictly an accounting issue. In fact, by signing the mandated-costs claim, the chartering entity is certifying that it has not been otherwise reimbursed for these costs. As we found, the chartering entities cannot support this assertion. We have modified the report text to state there "is a risk of double-charging" rather than "may be double-charging."

San Diego objects to our conclusion that the charter school oversight policy it adopted in November 2001 is insufficient. San Diego claims that its policy includes procedures for fiscal review. San Diego's policy does cite a number of documents and reports that it plans to require its charter schools to submit. However, as we state in our report, San Diego's policy does not address how it will review the data, what it has defined as indicators of fiscal problems, or the necessary steps it will take to help resolve the charter schools' fiscal problems. We view requesting and receiving information as separate from reviewing and responding to the information; it is the last two steps that San Diego's policy does not address.

We disagree. In a September 6, 2002, memorandum in which she responded to a number of our questions, San Diego's senior accountant made two different references to her belief that San Diego lacks the authority to require regular financial reporting by a charter school. The senior accountant went on to say that absent such reporting, San Diego is left only with the audited financial statements to monitor the charter schools that do not utilize San Diego's financial systems.

San Diego is correct in pointing out that the additional conditions imposed by Senate Bill 740 did not go into effect until January 2002. Therefore, to reflect this, we have modified Table 7.

We agree that the State Controller's Office standards for California K-12 local education agency audits do not apply to charter schools. Accordingly, in our report we do not state that these standards apply to charter schools.

- San Diego's comment on this point reflects exactly the point we intend to bring to the reader's attention. That is, as we state on page 50 of our report, there is no definition in law or regulation as to what constitutes charter school revenue.

- San Diego suggests that our title for the table in Appendix B is incorrect because it contains schools that rely on San Diego to receive some or all of their fiscal services, which San Diego calls "arm of the district" charter schools. This concern reflects a minor disagreement between us and San Diego over the definition of independent charter schools. For this reason we chose not to modify the table.

- San Diego misrepresents the wording of our report. As we note on page 38 of the report and in Appendix B, we used the fund balance reserve requirement established by the department for school districts as one indicator in our assessment of a charter school's fiscal health. We also acknowledge in the report that charter schools are not legally required to meet this reserve requirement, although it would be a prudent practice.

- San Diego is partly mistaken in its claim that the three schools have in excess of the 5 percent fund balance reserve. As we show in Table B.1, Cortez Hill Academy Charter School met the fund reserve requirement. However, Explorer Elementary Charter School (Explorer) did not. Explorer's fiscal year 2000–01 audited financial statements reflect net assets of $108,187 and total expenses of $834,642; we adjusted these figures to approximate the fund balance as described in Appendix B. The resulting reserve ratio is what we show in Table B.1, 3.9 percent. In the case of High Tech High, San Diego cites fiscal year 1999–2000 financial information. As we note in our appendix, we are reporting fiscal year 2000–01 audited data and High Tech High did not have an audit report for this period.

Agency's comments provided as text only.

California Department of Education
721 Capitol Mall
Sacramento, CA 95814

October 23, 2002

Elaine M. Howle*
State Auditor
555 Capitol Mall, Suite 300
Sacramento, CA 95814

Audit No. 2002-104

Dear Ms. Howle:

This letter and accompanying documents constitute the California Department of Education's (CDE) response to your draft audit report entitled "California's Charter Schools: Oversight at All Levels Could Be Stronger to Ensure Charter Schools Accountability." We appreciate the opportunity to comment on your draft audit report.

The successful operation of California's charter schools and the teaching of children who attend those schools are goals that CDE shares with the Bureau of State Audits (BSA). However, this report recommends that CDE adopt a significant oversight role that is not statutorily authorized, and it designates CDE as a "safety net" for identifying and addressing certain types of problems and risks associated with charter schools. For the record, CDE is emphatically not charged with, nor given the statutory authority to serve as a comprehensive safety net for California's charter schools. However, CDE does have concerns about academic and/or fiscal malfeasance occurring at any school, including charters. I initiated legislation this past session to shore up limited fiscal oversight authority for charter schools.

Therefore, I have strong concerns regarding the BSA's interpretation of CDE's responsibilities in the charter school law and the premise that CDE has inferred or implied authority and responsibility to monitor the fiscal and academic performance of charter schools. CDE's authority to act must be specifically authorized or be reasonably implied by the plain language of the statutes, not through inference and interpretation of legislative intent by your staff. The recent lawsuit *CANEC vs. the State Department of Education, et al*, specifically rules out the approach advanced by your audit team.

Your draft audit report appears to be based upon assumptions and inferences of the law gleaned by your staff. Nowhere in your report does the BSA provide any factual circumstances to document if and where CDE violated any laws with respect to charters.

* California State Auditor's comments begin on page 213.

Likewise, your report does not provide any factual basis for any adverse consequences or tangible effects to justify your recommendations that CDE take on a larger monitoring role with regard to charter schools. As enacted, the charter schools statutes regarding oversight and monitoring placed this responsibility at the most appropriate level--with the local sponsoring organization that approves the charter and that has the primary responsibility to renew or revoke the charter. Since inception, CDE has best been able to define its "safety net" responsibilities as focusing its very limited resources toward intervention in only the most serious cases on an exception basis rather than duplicating routine monitoring activities of sponsoring organizations. CDE simply lacks the resources to monitor the over 400 charter schools now operating in the state.

The report minimizes the impact of its recommendations on the limited staffing resources of CDE. It ignores the fact that limited resources were appropriated by the Legislature to CDE to handle a myriad of federal and state responsibilities clearly delineated in law. The Charter Schools Office only has 12 staff positions. Seven positions are federally funded in order to fulfill our obligations under the federal law. Three are funded to perform specific, statutorily required state functions – SB 740, and the Revolving Loan Fund; and the remaining two are to carry out all remaining state activities. CDE submitted a budget change proposal (BCP) for the 2002-03 fiscal year for 5.5 additional new staff to address the statutory and other related workload resulting from the enactment of SB 740. However, CDE was authorized only two one-year limited term positions. These two positions are to "carry out activities relating to Chapter 892 of the Statutes of 2001; for administration of the Charter Schools Facilities Grant; for activities relating to the State Board of Education's Charter School Advisory Group; for developing regulations; and to assist the State Board of Education in the analysis of non-classroom based charter school requests for determination of funding" as specifically stated in the 2002-03 Governor's Budget narrative (enclosed), issued in January 2002. Although it might be beneficial to implement some analysis or review not presently required by law, CDE is required to focus our very limited resources on only those areas mandated by law and not on speculative analyses or reviews.

When your staff visited our Department, they were unaware of the recent lawsuit brought against the CDE by the California Network of Educational Charters, CANEC. We advised the BSA of the Motion for Summary Judgment filed by CANEC, which it appears your staff has largely ignored. Much of what you contend the CDE should be doing about financial oversight was ruled out by the judge. While some additional oversight will be allowed because of legislation that we sponsored, many of your suggestions about what the Department should have been doing were expressly forbidden by the Court. For example, I cite directly from the Judgment: "Nowhere in the statutory scheme does the Legislature authorize Defendants to require charter schools, directly or

indirectly through the Local Education Agencies, to provide annual reports in a format directed by the Department of Education."

I am enclosing the Judgment Granting the Motion for Summary Judgment in the *CANEC* case, lest anyone reading this audit miss the fundamental disconnect between your findings and the court's opinion. I request that the entire Order granting the Summary Judgment be printed as part of CDE's response to this audit.

Also enclosed is our response that addresses each of your audit recommendations, as well as our rebuttal to the report that provides the specifics for the points made above. If you have any questions about the corrective actions taken by CDE or the information in our response, please contact CDE's Audit Response Coordinator, Susan Faresh at (916) 323-4124 or Kim Sakata at (916) 323-2560.

Sincerely,

(Signed by: Delaine Eastin)

DELAINE EASTIN
State Superintendent of Public Instruction

Enclosures

6110 DEPARTMENT OF EDUCATION—Continued

- Other Reductions
  - $183.5 million for the School Library Materials ($158.5 million) and K–4 Classroom Library Materials ($25 million) programs in an effort to realign funding for instructional materials and provide greater flexibility for school districts. (See related Governor's Instructional Materials Realignment Initiative).
  - $21.6 million Proposition 98 for the School Development Plans and Resource Consortia.
  - $5.0 million in Proposition 98 General Fund for the College Preparation Partnership Program.
  - $1.4 million General Fund state operations for lower rent and maintenance costs associated with the department's relocation to the East End Complex.
  - $275,000 in General Fund state operations and 1.9 PYs due to expiration of the Teenage Pregnancy Prevention Grant Program).
  - $250,000 General Fund state operations resulting from the suspension of the instructional materials follow-up adoption process, which is not statutorily required.
  - $210,000 General Fund reduction due to elimination of STAR and HSEE test integrity assurance team. Consistent with current practice, these activities will continue to be performed by school districts.
  - $173,000 General Fund state operations for eliminating unnecessary reports and administrative procedures.
  - $142,000 General Fund state operations for the Commission on Technology in Learning, reflecting half-year costs due to the sunset of the Commission.
  - $125,000 General Fund state operations for Healthy Start Field Office contract.
  - $100,000 General Fund state operations in support for the Curriculum Commission.
  - $100,000 General Fund state operations for the CalSAFE evaluation contract.
  - $94,000 General Fund reduction due to elimination of support activities associated with Williams v. State of California.
  - $85,000 General Fund state operations for College Preparation Partnership Program administration.
  - $78,000 General Fund state operations for the California Academic Preparation Initiative, which tracks the progress of students whose teachers have received professional development training via demonstration programs.
- Other Major Budget Adjustments
- Governor's Initiatives
  - $250.0 million Proposition 98 for the Governor's Instructional Materials Realignment Initiative, in the first year of a multi-year effort to align funding with the instructional materials adoption process and provide districts the flexibility to purchase standards aligned materials or library materials. Funding level provided is an increase over current funding for instructional materials programs for grades K–8 ($137 million) and grades 9–12 ($35.8 million).
  - $200.0 million in one-time funds (Proposition 98 Reversion Account) for textbook procurement. These funds also complement the Governor's Instructional Materials Realignment Initiative.
  - $100.0 million in one-time funds (Proposition 98 Reversion Account) for school library enhancements. These funds also complement the Governor's Instructional Materials Realignment Initiative.
  - $73.0 million in one-time funds (Proposition 98 Reversion Account) for science lab materials and equipment.
  - $8.0 million in one-time funds (Proposition 98 Reversion Account) for the High-Tech High School program.
- General Fund
  - $197.0 million Proposition 98 to support low-performing schools through the High Priority Schools Grant Program.
  - $30.0 million augmentation for the Mathematics and Reading Professional Development Program, bringing the total funding level to $110 million in 2002–03 ($22.9 million Proposition 98 and $87.1 million in one-time funds from the Proposition 98 Reversion Account).
- $29.6 million Proposition 98 augmentation for the Intermediate Intervention/Underperforming schools program:
  - $49.0 million Proposition 98 augmentation to fund implementation grants for the Third Cohort of the Intermediate Intervention/ Underperforming Schools Program.
  - $10.8 million Proposition 98 reduction in the II/USP due to a projection that approximately 20 percent of schools in the First Cohort will not be eligible to receive a third year of implementation funding.
  - $8.6 million Proposition 98 reduction in the Intermediate Intervention/Underperforming Schools Program (II/USP). These funds were provided on a one-time basis in 2001–02 to equalize funding levels at $200 per pupil between the First Cohort and the other II/USP Cohorts.
  - $15.5 million in one-time funds from the Proposition 98 Reversion Account for implementation of the California School Information Services Project.
  - $11.0 million Proposition 98 for implementation of the California School Information Services Project.
  - $8.3 million Proposition 98 for a growth adjustment for the Charter School Categorical Block Grant.
  - $7.5 million in one-time funds from the Proposition 98 Reversion Account for the Principal Training Program.
  - $3.9 million Proposition 98 to fund growth ($1.0 million) and COLA ($4.9 million) for the Instructional Time and Staff Development Reform Program.
  - $3.7 million Proposition 98 to fund growth ($1.9 million) and COLA ($1.8 million) for the Beginning Teacher Support and Assessment Program.
  - $3.5 million Proposition 98 augmentation to fully fund the High School Exit Examination.
  - $3.1 million Proposition 98 to fund growth ($0.9 million) and COLA ($2.2 million) for pupil testing programs.
  - $2.7 million Proposition 98 to fund growth ($0.9 million) and COLA ($1.8 million) for the Peer Assistance and Review Program.
  - $2.4 million Proposition 98 to provide workbooks for the High School Exit Examination.
  - $2.3 million Proposition 98 augmentation to fund district apportionments for the English Language Development Test.
  - $1.6 million to continue funding for 18 positions provided for activities associated with the High Priority Schools Grant Program. Of the total, $858,000 General Fund is appropriated by Chapter 749, Statutes of 2001, and $752,000 is provided from federal funds.
  - $196,000 to fund two consultant positions, limited-term through the 2002–03 fiscal year, to carry out activities relating to Chapter 892 of the Statutes of 2001; for administration of the Charter School Facilities Grant; for activities relating to the State Board of Education's Charter School Advisory Group, for developing regulations; and to assist the State Board of Education in the analysis of non-classroom based charter school requests for determination of funding.
  - $135,000 General Fund and $2.6 million in bond funds in state operations for network infrastructure expenses associated with the department's relocation to the East End Complex.
  - $100,000 General Fund state operations appropriated by Chapter 737, Statutes of 2001, to support the Department of Education's administration of the Mathematics and Reading Professional Development Program.
  - $74,000 in General Fund and 1.0 PY for growing Interscholastic Athletic discrimination-related workload (Chap. 889, Stats. 2001).

SB 740

---

* Dollars in thousands, except in Salary Range.

SHARON L. BROWNE, No. 119246
STEPHEN R. McCUTCHEON, JR., No. 191749
Pacific Legal Foundation
10360 Old Placerville Road, Suite 100
Sacramento, California 95827
Telephone: (916) 362-2833
Facsimile: (916) 362-2932
E-mail address: slb@pacificlegal.org

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA NETWORK OF EDUCATIONAL CHARTERS, a nonprofit corporation; and CONSTELLATION COMMUNITY MIDDLE SCHOOL, a nonprofit corporation,

Plaintiffs,

v.

STATE DEPARTMENT OF EDUCATION; and DELAINE EASTIN, in her official capacity as the Superintendent of Public Instruction,

Defendants.

No. 01AS02690

JUDGMENT

Hearing Date: April 11, 2002
Dept.: 54
Judge Joe S. Gray
Verified Complaint
Filed: May 3, 2001
Trial Date: June 3, 2002

PACIFIC LEGAL FOUNDATION
10360 Old Placerville Road, Suite 100
Sacramento, CA 95827
(916) 362-2833 FAX (916) 362-2932

On April 11, 2002, the Court granted the motion for summary judgment of Plaintiffs California Network of Educational Charters and Constellation Community Middle School made under Code of Civil Procedure section 437c on the grounds that Defendants exceeded their statutory authority and violated the Administrative Procedures Act, for an Order that judgment be entered for Plaintiffs in accordance with that Order.

IT IS ORDERED ADJUDGED AND DECREED that:

1. For the reasons stated in the Order Granting Summary Judgment, attached hereto and incorporated in this final judgment, the May 22, 2000, memorandum from Janet Sterling, the Director of School Fiscal Services Division, entitled "Financial Reporting for Charter Schools"

and the September 11, 2000, memorandum from Janet Sterling, entitled "Follow Up: Financial Reporting for Charter Schools" are unauthorized by law and are invalid exercises of the Defendants' statutory authority with respect to charter schools.

2. For the reasons stated in the Order Granting Summary Judgment, attached hereto and incorporated in this final judgment, the May 22, 2000, memorandum from Janet Sterling, the Director of School Fiscal Services Division, entitled "Financial Reporting for Charter Schools" and the September 11, 2000, memorandum from Janet Sterling, entitled "Follow Up: Financial Reporting for Charter Schools" are invalid, not authorized by law and are not enforceable as they constitute underground regulations that have not been duly promulgated under the Administrative Procedures Act, Gov't Code § 11340, *et seq.*

3. Plaintiffs are entitled to costs of suit as designated in a memorandum of costs to be filed in this Court, and

4. Jurisdiction is reserved for consideration of a motion for attorneys' fees.

DATED: APR 29 2002

JOE S GRAY

HONORABLE JOE S. GRAY
Judge of the Superior Court

Approved as to Form

Attorney for Defendants

PACIFIC LEGAL FOUNDATION
10360 Old Placerville Road, Suite 100
Sacramento, CA 95827
(916) 362-2833 FAX (916) 362-2932

Exhibit B

SHARON L. BROWNE, No. 119246
STEPHEN R. McCUTCHEON, JR., No. 191749
Pacific Legal Foundation
10360 Old Placerville Road, Suite 100
Sacramento, California 95827
Telephone: (916) 362-2833
Facsimile: (916) 362-2932
E-mail address: slb@pacificlegal.org

Attorneys for Plaintiffs

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SACRAMENTO

CALIFORNIA NETWORK OF EDUCATIONAL CHARTERS, a nonprofit corporation; and CONSTELLATION COMMUNITY MIDDLE SCHOOL, a nonprofit corporation,

Plaintiffs,

v.

STATE DEPARTMENT OF EDUCATION; and DELAINE EASTIN, in her official capacity as the Superintendent of Public Instruction,

Defendants.

No. 01AS02690

ORDER GRANTING SUMMARY JUDGMENT

Hearing Date: April 11, 2002
Dept.: 54
Judge Joe S. Gray
Verified Complaint Filed: May 3, 2001
Trial Date: June 3, 2002

The motion of California Network of Educational Charters and Constellation Community Middle School for summary judgment came on regularly for hearing on April 11, 2002, before this Court in Department No. 54, Honorable Joe S. Gray, Judge Presiding. After full consideration of the evidence, the separate statements of material facts of each party, and the authorities submitted by counsel, the Court finds that there is no triable issue of material fact in this action and that the moving party is entitled to summary judgment as a matter of law for the reasons stated below. The Court has disregarded the inadmissible evidence and relied only on all of the admissible evidence in making its decision.

1. On May 22, 2000, Defendant State Department of Education, by Janet Sterling, the Director of School Fiscal Services Division, distributed a memorandum entitled "Financial

Reporting for Charter Schools" to County and District Superintendents, County and District Chief Business Officials, and Charter Schools Administrators regarding financial reporting for charter schools. The May 22, 2000, memorandum was distributed under the control of Defendant Delaine Eastin, the Superintendent of Public Instruction, acting as the Director of Education. The memorandum did not contain notice that its guidance was not binding on chartering entities (Local Education Agencies) or other agencies, nor was it issued pursuant to the Administrative Procedures Act (APA), Gov't Code § 11340, *et seq.*

2. On September 11, 2000, Defendant State Department of Education, by Janet Sterling, the Director of School Fiscal Services Division, distributed a memorandum entitled "Follow Up: Financial Reporting for Charter Schools" to County and District Chief Business Officials and Charter Schools Administrators regarding financial reporting for charter schools. This memorandum was distributed under the control of the Defendant Superintendent of Public Instruction. The memorandum did not contain notice that its guidance was not binding on Local Education Agencies or other agencies, nor was it issued pursuant to the APA.

3. Plaintiffs seek summary judgment of the complaint for declaratory relief in which they allege that the Defendants did not have statutory authority to issue the May 22, 2000, and September 11, 2000, memoranda and, even if Defendants did have such authority, the memoranda are underground regulations in that Defendants failed to exercise that authority in compliance with the APA. Defendants oppose Plaintiffs' motion for summary judgment, arguing that factual issues exist with respect to the actual burdensomeness of the reporting requirements.

4. The Court grants Plaintiffs' motion for summary judgment on the grounds that the motion raises issues of statutory interpretation, which are matters of law for the Court to decide. The essential material facts are undisputed. Defendants' contention that factual issues exist regarding the actual burdensomeness of the reporting requirements misses the point. The factual issues raised by Defendants are immaterial to the issue of whether the memoranda are valid exercises of the Defendants' statutory authority with respect to charter schools. Thus, this Court finds that there are no triable issues of material fact.

PACIFIC LEGAL FOUNDATION
10360 Old Placerville Road, Suite 100
Sacramento, CA 95827
(916) 362-2833 FAX (916) 362-2932

5. The Charter Schools Act of 1992 (Educ. Code § 47600, *et seq.*) authorizes charter schools to operate free from most state laws and regulations that govern school districts. Despite the limitations imposed by the Charter Schools Act on their power to directly regulate charter schools, Defendants attempted to accomplish the same result indirectly by requiring the chartering entities (Local Education Agencies) to collect and report specified data from charter schools by issuing the May 22, 2000, and September 11, 2000, memoranda. The Court finds that the May 22, 2000, and September 11, 2000, memoranda impose financial reporting requirements on charter schools and chartering entities that exceed the authority granted by the Charter Schools Act.

6. Contrary to Defendants' position, express authority to issue the memoranda cannot be found in Education Code sections 47601, 47605(b), 47610, 47604.3, and 47607, either individually or collectively. Section 47601 expresses the Legislature's intent that charter schools "operate independently from the existing school district structure." Section 47605(b) sets forth the required elements of a petition to establish a charter school. Subdivision (J) of section 47605(b)(5) confers on charter schools, not Local Education Agencies or the Department of Education, the power to determine the manner in which "annual, independent, financial audits shall be conducted." Section 47610 expressly exempts charter schools from compliance with the laws governing school districts, with certain exceptions not relevant here. Section 47604.3 requires charter schools to respond to reasonable inquiries regarding its financial records. Section 47607 authorizes revocation of a charter for, inter alia, a failure to meet generally accepted accounting principles or fiscal mismanagement.

7. Nowhere in the statutory scheme does the Legislature authorize Defendants to require charter schools, directly or indirectly through the Local Education Agencies, to provide annual reports in a format dictated by the Department of Education. Indeed, section 47605(m), which requires charter schools to submit a copy of its annual, independent financial audit report to the Department of Education, indicates exactly the opposite: that charter schools are authorized to prepare their financial reports in a manner of their choosing (consistent with generally accepted accounting principles) for transmission to the Department of Education. In

PACIFIC LEGAL FOUNDATION
10360 Old Placerville Road, Suite 100
Sacramento, CA 95827
(916) 362-2833 FAX (916) 362-2932

PACIFIC LEGAL FOUNDATION
10360 Old Placerville Road, Suite 100
Sacramento, CA 95827
(916) 362-2833 FAX (916) 362-2932

view of these overt expressions of Legislative intent, the Court cannot draw an inference that the Department of Education may burden charter schools, directly or indirectly, with additional financial reporting requirements.

8. The Court finds that the May 22, 2000, and September 11, 2000, memoranda are not valid exercises of the Department of Education's statutory authority with respect to charter schools.

9. Further, to the extent the Department of Education has any authority to establish general standards of financial reporting applicable to charter schools or their chartering entities (Local Education Agencies), which standards embellish upon or depart from express statutory language, it must exercise that authority in compliance with the APA. *Englemont v. State Board of Education*, 2 Cal. App. 4th 47, 62 (1991). The May 22, 2000, and September 11, 2000, memoranda are invalid as they constitute underground regulations that have not been duly promulgated under the APA.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that Plaintiffs' motion for summary judgment is GRANTED and that judgment shall be entered forthwith in favor of Plaintiffs and against Defendants on all causes of action.

JOE S GRAY

DATED: APR 29 2002

HONORABLE JOE S. GRAY
Judge of the Superior Court

Approved as to Form.

Attorney for Defendants

CALIFORNIA DEPARTMENT OF EDUCATION'S RESPONSE THAT ADDRESSES THE RECOMMENDATIONS ON THE BUREAU OF STATE AUDITS REPORT NUMBER 2002-104

California's Charter Schools: Oversight at All Levels Could be Stronger to Ensure Charter Schools Accountability

Recommendation 1 – To fulfill its role as a safety net, the department should review available financial and academic information and identify charter schools that are struggling. The department should then raise questions with the schools' sponsoring agencies as a way of ensuring that the schools' problems do not go uncorrected.

California Department of Education's (CDE) Response:

BSA makes the assumption that CDE should be responsible for identifying charter schools with problems, and is the safety net for charter schools, then further addresses how CDE should identify these charter schools by using Academic Performance Index (API) and average daily attendance (ADA) data. BSA's suggestion of the use of these data is arbitrary, indicates a lack of BSA's understanding of the use and limitation of the data, and is unsupportable by any clear statutory authority. There is no basis for these assumptions, nor is there an explanation of their rationale. CDE regularly identifies charter schools with problems and questions the sponsoring agency through its already established and successful complaint and inquiry process.

CDE focuses its very limited resources toward an intervention by exception in the most serious cases, and it notifies authorizing school districts in several cases when information received suggests a charter school may be in trouble. In these cases, CDE asks the district to look into the allegation and report back to us. For example, the concerns in two cases were so serious that CDE initiated its authority under *Education Code* Section 47604.5 to recommend revocation of the two charters to the State Board of Education (SBE). In both cases, the local district governing boards revoked the charters subsequent to CDE intervention and prior to SBE action. This illustrates that CDE's limited role as a "safety net" is effective, as it provoked the local board to take action. To further implement a systematic review process at the state level would consume very limited resources to unnecessarily review materials of charter schools for which no concern is apparent. Given the CDE's limited resources and the lack of explicit statutory authority, CDE chooses to implement a more strategic and efficient approach by intervening on a case-by-case basis when the local systems fail.

The failure of local districts to routinely review charter performance and fiscal data and oversee charter schools is not a sufficient reason to presume CDE itself should be performing the responsibility that the law specifies be fulfilled at the local level. A more appropriate recommendation would be to improve local review and oversight, not to delegate the responsibility to a state agency.

Recommendation 2 – The department should take necessary steps to implement Senate Bill 740, including reviewing each charter school's audit report for pertinent information and taking appropriate steps to follow up.

CDE's Response:
CDE is implementing all statutorily required Senate Bill 740 (SB 740) activities, including processing funding determinations (118 last year), adjusting the apportionments of charter schools with funding determinations, administering the Charter Schools Facilities Grant Program, providing staffing assistance to the Advisory Commission on Charter Schools (ACCS), and ensuring that the Kindergarten through grade 12 audit guide includes procedures for auditing charter schools for the elements specified in SB 740. SB 740 does not require CDE to review charter schools' audit reports for any purpose; however, CDE agrees it could be valuable to review those reports. With the recent passage of Assembly Bill 2834 (AB 2834) (Chapter 1128, Statutes of 2002), the school district audit reform bill, CDE received one new position for the purpose of reviewing charter school audits and ensuring that any audit findings are resolved, which we will do. CDE also plans to review the audit reports to determine whether the audit findings have any bearing on the charter school funding determination requests submitted.

Recommendation 3 – So that it does not improperly fund charter schools, the department should work with sponsoring agencies and county offices of education to ensure that their charter schools' reported ADA is verified through an independent audit or other appropriate means and that charter schools have met other statutory conditions of apportionment.

CDE's Response:
We do not concur with BSA's finding relating to this recommendation. We have been and continue to work with authorizing agencies and county offices of education to ensure that their charter schools' reported ADA is verified through "other appropriate means" as described below.

We do not concur with BSA's concerns regarding our apportionment process as it relates to charter schools' ADA data. While the law is clear with respect to our responsibilities to compute and apportion funding to charter schools based on their ADA, there exists no clear statutory or regulatory procedures that address how ADA should be verified and what entity is responsible to perform the verification. With this lack of clarity and authority in statute, our responsibilities require us only to apportion funds based on the ADA reported. As an added level of assurance to the apportionment process, we require the charter school, the authorizing local educational agency (LEA), and the authorizing LEA's county office of education to certify that the charter school's attendance data was compiled and reported in accordance with state and federal laws and regulations. We promptly follow up on all instances where an LEA indicates concerns in certifying the ADA of its charter school. As a result, we work to determine the legitimacy of the concerns and whether the LEA has provided a legal basis to conclude that the ADA is noncompliant. In some cases where an LEA has exercised its due diligence and provided us with specific reasons for not certifying ADA, and quantified the ADA in question, we have withheld apportionment of funds to its charter school. In many instances, this certification requirement has prompted the authorizing LEA and/or county office of education to conduct or contract for an audit or review of the charter school's attendance.

Current statutes do not provide CDE with explicit guidance and authority related to verifying ADA, nor is it clear whether the audit process of charter schools will insure that all statutory conditions of apportionment of state funds are met. As such, we believe that the verification of the charter school's ADA and that their assurance that other statutory conditions of apportionment have been met are most appropriately determined at the local level, not with CDE.

Recommendation 4 – To ensure that charter school assets and liabilities are disposed of properly when a charter school closes or has its charter revoked, the Legislature may wish to consider setting out a method for disposing of the assets and liabilities and requiring the department to adopt regulations to implement these provisions.

CDE's Response:
We agree with this recommendation; however, we believe that the Legislature would need to specify in statute, which entity is responsible and liable for the assets and liabilities of a charter school when a charter school closes or its charter is revoked. Without clear statutory guidance in this regard, the CDE would have no statutory basis for developing regulations implementing the specific methods for disposing of assets and liabilities. It should be noted that CDE has established a suggested process for charter school closures to provide some guidance to school districts and charter schools in this regard. This suggested process includes documenting the closure action; notifying CDE, the county office of education, parents and students of the charter school, and school districts receiving those students; dissolving assets; and closing out the finances of the school.

CALIFORNIA DEPARTMENT OF EDUCATION

REBUTTAL TO THE BUREAU OF STATE AUDITS
REPORT NUMBER 2002-104

California's Charter Schools: Oversight at All Levels Could be Stronger to Ensure Charter Schools Accountability

Page 10: Department of Education's Role in Charter Schools – The narrative and accompanying table that describes the role of the California Department of Education (CDE) with regard to charter schools fails to acknowledge the primary function of CDE's charter school unit, which is to administer the federal Public Charter School Grant Program (PCSGP). Seven of the 12 existing Charter School Office staff positions are fully federally funded, as is one-third of the administrator position, in order to fulfill our obligations under the federal law. Three positions perform specific, statutorily required state functions – SB 740, and the Revolving Loan Fund, and two positions carry out all remaining state activities. CDE allocates an average of approximately $24 million per year and approximately 300 active grants under the PCSGP.

Page 19, First Paragraph: "Therefore, we assessed the department's activities against the level of oversight we would expect it to have." While BSA may expect other actions and not agree with our approach to charter oversight, the report provides no clear standard or statutory authority in support of its interpretation. In fact, the standard BSA has applied that oversight should be conducted by CDE using Academic Performance Index (API) and average daily attendance (ADA) data, is arbitrary, suggests a lack of understanding of the uses and limitations of this data, and is unsupportable by any clear statutory authority.

Page 20, Subtitle: "The Department Neither Identifies Nor Questions Sponsoring Agencies About Fiscally or Academically Struggling Charter Schools" - The title of this section is misleading, erroneous, and inflammatory; it is not supported by the text. In fact, the report documents CDE's approach to responding to complaints and inquiries about charter schools by contacting the chartering agency. If BSA's concern is that CDE only provides intervention on an exception basis, and does not perform regular and systematic data review and analysis of all charter schools, then the title should reflect that concern. Further, and more importantly, nowhere in the law does it suggest or specify that CDE has the responsibility suggested by this title.

Page 21, First Paragraph, the Additional Staffing – The two positions provided to the Charter Schools Office beginning in fiscal year 2001-2002, were the first state funded positions provided to handle general state activities related to charter schools. Prior to that, the federally funded staff handled all Charter School Office state activities, with the exception of those related to the Charter School Revolving Loan Fund and the apportionments. These two state funded positions absorb the existing workload of the Charter Schools Office, including the high-level oversight activities for those charters directly approved by the State Board.

Page 22, First Paragraph: "We see little difference between responding to external concerns or internal ones." – BSA makes assumptions first, that CDE should be identifying charter schools with problems, and second how CDE should be doing that (using API and ADA). There is no basis for their assumptions, nor do they explain their rationale. The law does not require CDE to internally identify struggling charter schools.

Page 24, First Paragraph: "In addition, the office is organized on a regional basis to facilitate constant interaction with the sponsoring agencies." – The regional configuration of the Charter Schools Office was never intended to facilitate constant interaction with either sponsoring agencies or charter schools. The configuration is intended to allow state staff to become more familiar with the charter schools and sponsoring agencies in the regions and any particular regional issues, and to provide a single, consistent point of contact for schools and districts in the region.

Page 26, Second Paragraph – The failure of local districts to systematically review charter performance and fiscal data and oversee charter schools is not a sufficient reason to presume CDE should be performing a responsibility that the law specifies be handled at the local level. A more appropriate response to lack of local review and oversight would be to improve local review and oversight, not to delegate the responsibility to a state agency.

Page 28, First Paragraph – As described in the BSA report, CDE submitted a budget change proposal (BCP) for the 2002-03 fiscal year for new staff to address the statutory and other related workload resulting from the enactment of SB 740. Although we requested 5.5 additional, ongoing positions, CDE was provided only 2 one-year limited term positions. Furthermore, narrative in the 2002-03 Governor's Budget, issued in January 2002, specified that those two positions were to "carry out activities relating to Chapter 892 of the Statutes of 2001; for administration of the Charter Schools Facilities Grant; for activities relating to the State Board of Education's Charter School Advisory Group; for developing regulations; and to assist the State Board of Education in the analysis of non-classroom based charter school requests for determination of funding" (see attached copy). Notwithstanding the fact that CDE has not yet been able to fill these positions due to the state hiring freeze, the workload associated with the funding determination analysis, staffing the ACCS, and the facilities program is greater than two positions. It is all we can do to fulfill our statutory obligations under SB 740, without taking on the voluntary workload of reviewing charter schools' audits for potential fiscal solvency issues.

Page 28, Second Paragraph: Four Key Points for Which CDE Should Review Charter School Audits – There are potentially significant shortcomings in the current charter school annual audits. These audits are only required to be financial in nature and, therefore, are not useful in assessing charter school compliance with applicable provisions of law. However, AB 2834 will bring charter school in the Kindergarten through grade 12 audit guide process for the first time beginning in 2002-03, which should help address this shortcoming in the future. In addition, charter schools are permitted to be included in the annual audit of their charter-granting agency, so CDE will not receive audit reports specific to these charter schools. Because the annual school district audits only look at a sampling of schools within the district, if the charter school is not selected in the sample, the audit will contain no information specific to the charter school(s) within the district. Finally, with respect to BSA's example of looking at the charter school's structured debt to determine if

it exceeds the life of the charter agreement, this criteria may not be particularly useful. We would expect that many, if not most, charter schools are in this situation. Given the relatively short term of the charter (five years), that the expectation by most charter schools is that they will be renewed, and the types of reasons that charter schools carry debt (e.g. facilities), it is not unexpected that many fiscally healthy schools will have debt exceeding the life of the charter agreement.

Page 29, Subtitle: "The Department's Process For Making Charter School Apportionments Is Unsound" – The title of this finding is misleading. BSA's basis for this finding is that CDE primarily relies on the certifying signatures of school districts and county offices of education—both of which, according to BSA, lack the necessary procedures to ensure that charter schools comply with apportionment requirements. While BSA's report does not explain what necessary procedures are lacking at the local level, we believe that the authorizing LEA and county office of education are in a better position than CDE to provide the assurance needed to verify whether the charter school is in compliance with apportionment requirements. Existing law provides the authorizing LEA with the monitoring and supervising authority over the charter schools and the authority to make reasonable inquiries related to financial and other records. As such, the authorizing LEA should have access to charter school records to effectively review them on a regular basis. Therefore, BSA should review those procedures first before making these assumptions that CDE's processes are unsound.

The finding further allocates blame to CDE because BSA determined that some authorizing LEAs have not been verifying ADA. The failure of LEAs to take the necessary procedures to validate the ADA and then to certify to CDE that the ADA was compiled and reported in accordance with state and federal laws and regulations is not a sufficient reason to presume CDE's apportionment process is unsound. We expect the chartering agency to take responsibility of its charter school in the same manner that is applied to its traditional schools, which is to ensure that the ADA is accurate and compliant. In this regard, the certification process is a constant reminder to LEAs of their responsibility. In addition, the certification process mirrors the procedures applied to the ADA of traditional schools. What is lacking for charter schools, however, is that the traditional school process requires responsible school district officials to be held fully accountable for the sum and substance of attendance accounting and reporting; fiscal accountability and liability of a charter school is not addressed in current law.

Further, traditional schools are subject to annual financial and compliance audits, which include attendance procedures and requirements that address the conditions of eligibility for the receipt of state funds. The charter school statutes that make specific compliance requirements as conditions of apportionment do not contain explicit procedures or methodologies to ascertain whether a charter school has met or violated a condition of apportionment. We generally agree with the BSA recommendation that an independent audit would be a means of verification; however, the charter school statutes do not require that an audit of a charter school include state program compliance procedures. Charter schools are required only to have an annual, independent, financial audit performed. As stated in the BSA's report, "An independent audit report typically contains financial statements and an opinion as to the accuracy with which the statements present a school's financial position—information illustrating the charter schools' accountability for the taxpayer funds they receive." A financial audit, which is different from a compliance audit, does not

illustrate or determine compliance to state program requirements. We note that SB 740 recently added a requirement to ensure that the Kindergarten through grade 12 Audit Guide includes procedures for auditing charter schools related to nonclassroom-based instruction. It is to be determined, however, whether this requirement extends to other state program compliance areas that are deemed to be conditions of apportionment.

COMMENTS

California State Auditor's Comments on the Response From the California Department of Education

To provide clarity and perspective, we are commenting on the response by the Department of Education (department) to our audit report. The numbers below correspond to the numbers we placed in the margins of the department's response.

The concept of the State as a safety net is consistent with the California Constitution, which the courts have construed to place on the State the ultimate responsibility to maintain the public school system and to ensure that students are provided equal educational opportunities. Although the chartering entity is the primary monitor of a charter school's financial and academic health, the department has the authority to make reasonable inquiries and requests for information. It currently uses this authority to contact chartering entities if it has received complaints about a charter school. We are not suggesting that the department assume a greatly expanded and possibly duplicative role in monitoring charter schools. However, we do recommend, in addition to responding to complaints, that the department analyze information that it already receives to identify those charter schools that may need additional assistance and bring that information to the attention of the responsible chartering entity.

1. The department misrepresents the magnitude of the oversight role we recommend. As we note on page 55, the charter schools are primarily accountable to their chartering entity, but that the department has certain information it could analyze and use to draw chartering entities' attention to concerns about specific charter schools.

2. Although the department asserts it does not have the statutory authority to serve as a comprehensive safety net for charter schools, its statement contradicts later statements in its response and the actions it currently takes when it receives complaints from the public about academic or fiscal issues at charter schools. As we discuss on page 56, through its requests that

chartering entities investigate these complaints, it appears that the department has the necessary authority to act as a safety net as we have used the term in our report.

- The department again mischaracterizes our report and exaggerates how the order granting summary judgment in *CANEC v. State Department of Education* would apply to our report. We merely suggest that the department could review financial data regarding charter schools that it *already* receives under its *existing* statutory authority. For example, on page 58, we simply suggest that the department's charter schools unit could review average daily attendance (ADA) forms that it already receives from charter schools to determine if significantly declining ADA with resulting declining apportionments is cause for concern. In contrast, the *CANEC* lawsuit challenged a memoranda circulated by the department on the basis that it sought to impose additional financial reporting requirements on charter schools and chartering entities. The court agreed and ruled that the department did not have statutory authority to impose financial reporting requirements on charter schools and chartering entities in a format required by the department. But the court also found that charter schools may prepare their financial reports in a manner of their choosing for *transmission to the department*. Our report merely suggests that the department review information transmitted to it under the existing statutory scheme.

- The department is misrepresenting what we say in our report. Our findings and recommendations are that the department can more effectively use information it currently has to enhance its role as a safety net related to the academic and fiscal operations of charter schools, not that it has violated any laws with respect to charter schools.

- Although the term "sponsoring agency" is in the statutes, we have changed the term to "chartering entity" to more closely conform to the language of the Charter Schools Act of 1992 (Act). The change in term does not affect any of our findings or recommendations in the report.

- The department is misrepresenting the magnitude of the oversight role we recommend. The department's comment overlooks statements we make in the report related to this issue. As we note on pages 61 and 62, much of the information the department could use to identify schools that may need assistance is in electronic form. The department would only need to contact the chartering entities for the 20 to 30 schools that meet some criteria indicating the school's fiscal health is at risk.

- On pages 62 and 63, we discuss the department's request for additional staff and the number of positions approved. We also discuss other strategies the department could use to leverage its resources to identify charter schools that are potentially in need of assistance.

- Although the department believes the analyses we recommend are speculative, we believe they are simply another method to identify potential academic and fiscal concerns. In this way, the results of the analyses would be comparable to action the department asserts it takes when it receives complaints or information that suggests a charter school may be in trouble.

- Contrary to the department's statement, on pages 58 and 59 we describe why we believe an analysis of the Academic Performance Index and ADA could be useful in identifying charter schools that are potentially in need of assistance. For example, fluctuations in ADA, such as continual drops, may indicate a school needing assistance or intervention to ensure that it considers ways to address its decreasing revenue. We acknowledge that these analyses are not definitive evidence of a troubled charter school, but they would supply sufficient indicators of concerns that would justify communicating with the chartering entity about a charter school's operations.

- In contrast to its earlier statements, the department persuasively argues a case here for our recommendation that it serve as a safety net and communicate concerns about specific charter schools to the appropriate chartering entity.

- The department states that its current safety net role, for which it earlier asserts it has no authority to perform, is effective. Our recommendation that it analyze information it currently receives about and from charter schools would allow the department to identify other charter schools that may be struggling.

- The department overstates our recommendation related to its role. We do not presume nor state in the audit report that the department itself should be responsible for oversight of charter schools. In fact, in Chapters 1 and 2, we recommend ways that chartering entities can improve their oversight of charter schools. Furthermore, on page 56 we state that although the accountability systems at the chartering entities need improvement, our work does not demonstrate the need for the department to play a greatly expanded and possibly duplicative role in charter school oversight, or any function beyond that of a safety net.

- The statement the department makes here is inconsistent with other statements in its response. The department asserts that it has and continues to work with the various entities to ensure that charter schools' reported ADA is verified. However, it then states that there is no clear statutory authority or regulations addressing how ADA should be verified and what entity is responsible to perform the verification. The department further states that due to the lack of clarity and authority in the statute it is only responsible for apportioning funds based on reported ADA.

- Contrary to the department's claim that certifying signatures add a level of assurance to the charter schools' ADA reporting, these signatures do not have the same weight as those related to noncharter schools. Noncharter schools' ADA is verified through annual audits, which include tests of ADA; however, charter schools are not held to this same standard in their audits. As we conclude on page 63, the department's apportionment process with regard to charter schools is faulty because it relies primarily on the certifying signatures of school districts and county offices of education, which lack the necessary procedures to ensure that ADA is correct. Finally, the department asserts Assembly Bill 2834 will subject charter schools to the State Controller's K-12 audit guide. If the department is correct in its assertion, these guidelines will go a long way in addressing the current shortcomings in charter schools' annual financial audits.

- The department overstates our recommendation related to its role. On page 70 of our report, we recommend that the department work with the appropriate organizations to ensure that ADA is properly verified and reported. We do not recommend that the department make this determination itself.

- The department claims here that the charter schools unit's primary function is to administer a federal grant program. Our intent in providing summary information in the Introduction was to provide context for the reader. The fact that certain of its workload is related to federal funding does not negate the department's role and responsibilities with regard to oversight of California' public schools, including charter schools.

- We disagree with the department that the heading on page 57 was misleading, erroneous, and inflammatory; however, during our edit process, we changed the heading to more precisely communicate the issue described in this section. Furthermore, the department is misrepresenting our report as nowhere in it do we state the law specifies that the department has the

responsibility to directly monitor charter schools. However, as stated on page 55, we believe that the Act envisions some monitoring role for the department and that the State has ultimate responsibility for maintaining the public school system. Moreover, we believe that a recent decision, *Wilson v. State Board of Education*, (1999) 75 Cal.App. 4th 1125, which involved an unsuccessful challenge to the constitutionality of the Act on the basis that it provided funds to schools operated outside of the public school system supports our view. In ruling that charter schools are operated within the public school system, the court found that the "very destiny of charter schools lies solely in the hands of public agencies and offices, from the local to the state level: school districts, county boards of education, the Superintendent [of Public Instruction] and the [State] Board [of Education.]" Specifically with regard to state involvement, the court looked to the superintendent's authority to recommend charter revocation, the superintendent's authority to "prompt inquiry," and the fact that "public funding of charter schools rests in the hand of the Superintendent." We believe that monitoring is absolutely essential for the department to identify those egregious situations that would prompt a revocation recommendation to the State Board of Education. As we describe beginning on page 54, we view the departments' role as that of a safety net because the charter schools are primarily accountable to their chartering entities. In addition, the department's comments appear contradictory as it notes in its response the safety net activities that it does engage in.

- We have changed the text of our report by inserting the department's description of the charter schools unit's configuration.

- The department again misrepresents our report; we do not recommend that the department act as the primary monitor of charter schools. On page 55, we state that the charter schools are primarily responsible to their chartering entities and that the department's role is that of a safety net. On page 61 we state that not all chartering entities are fulfilling this primary responsibility, which increases the importance for the department to fulfill its safety net role.

- We disagree with the department that review of a charter school's structured debt may not be useful. This element was just one of four suggested key points that the department could use to assess the charter schools' financial stability. When viewed in conjunction with the assessment of funding information we suggest the department perform on page 58, a charter school

with declining ADA will receive less revenue and may be in less of a position to repay long-term debt than a charter school experiencing steady or increasing ADA.

- We have modified the report text to state the department cannot assure that apportionments to charter schools are accurate.

- When constructing its response, the department did not have Chapters 1 and 2 of our report to review for reasons of confidentiality. These chapters fully address the chartering entities' lack of oversight and that these weaknesses contribute to the unsoundness of the department's apportionment process.

- The department has mischaracterized our report and its comments are inconsistent with other statements the department made in its response. On page 63, we discuss the weaknesses inherent in the department's allocation process. The department has chosen to interpret our remarks as 'allocating blame.' In addition, the department states that "there is no clear statutory or regulatory procedures that address how ADA should be verified and what entity is responsible to perform the verification." Nevertheless, the department expects that the chartering entity would take responsibility for its charter schools in the same manner as its noncharter schools to ensure that the ADA is accurate and compliant. Throughout its response, the department takes exception to our establishing expectations from vague statutory language, however, it has applied the same standard to chartering entities that it argues against for itself.

cc: Members of the Legislature
Office of the Lieutenant Governor
Milton Marks Commission on California State Government Organization and Economy
Department of Finance
Attorney General
State Controller
State Treasurer
Legislative Analyst
Senate Office of Research
California Research Bureau
Capitol Press

January 2004

LAO
60 YEARS OF SERVICE

Assessing California's Charter Schools

ELIZABETH G. HILL • LEGISLATIVE ANALYST

The 2003 statewide evaluation of charter schools, conducted by RAND, concluded that charter schools were cost-effective—achieving academic results similar to those of traditional public schools even though they obtain less state and federal categorical funding. This report summarizes the findings of this evaluation and offers recommendations for improving charter schools in California. Most importantly, we recommend the Legislature restructure the charter school categorical block grant and strengthen charter school oversight and accountability. ■

Acknowledgments

This report was prepared by Jennifer Kuhn, and reviewed by Rob Manwaring. The Legislative Analyst's Office (LAO) is a nonpartisan office which provides fiscal and policy information and advice to the Legislature.

LAO Publications

To request publications call (916) 445-4656.

This report and others, as well as an E-mail subscription service, are available on the LAO's Internet site at www.lao.ca.gov. The LAO is located at 925 L Street, Suite 1000, Sacramento, CA 95814.

EXECUTIVE SUMMARY

Since they first opened their doors in fall 1993, charter schools in California have grown in number and steadily increased enrollment. Over the last decade, the state has funded two comprehensive charter school evaluations—the findings of which were released in 1997 and 2003. Both evaluations concluded that charter schools are a viable reform strategy—expanding families' choices, encouraging parental involvement, increasing teacher satisfaction, enhancing principals' control over school-site decision making, and broadening the curriculum without sacrificing time spent on core subjects. The most recent evaluation deemed charter schools cost-effective—finding that charter schools achieve academic results similar to those of traditional public schools even though they obtain significantly less state and federal categorical funding. The evaluation also found, however, that the state continues to face challenges in the areas of charter school finance and accountability.

After summarizing the findings of the 2003 evaluation, this report offers recommendations for improving charter school finance and accountability. Most importantly, we recommend the Legislature:

- ***Restructure the Charter School Categorical Block Grant.*** We recommend shifting 14 currently excluded programs into the general block grant, shifting 10 other currently excluded programs into the disadvantaged-student component of the block grant, and rebenching the underlying per pupil funding rates in a cost-neutral manner.

- ***Strengthen Charter School Oversight.*** We recommend that school districts be permitted to opt out of charter authorizing, charter schools be allowed to choose among multiple authorizers, and specific safeguards be created to promote stronger accountability.

- ***Modify Charter School Facility and Oversight Fees.*** We recommend delineating more clearly between facility fees and oversight fees, capping these fees (at 2 percent and 1 percent, respectively, of total charter school revenues), and eliminating the mandate-claims process for oversight costs.

Taken together, these reforms would address many of the weaknesses the 2003 charter school evaluation identified and be a significant step forward in improving charter school funding and oversight in California.

INTRODUCTION

In 1992, California became the second state in the country to enact legislation allowing for the creation of charter schools. The first charter schools in California opened their doors for the 1993-94 school year and, during the past ten years, charter schools have grown in number and steadily increased enrollment. To assess how these schools are using their resources in educating students, the state recently funded a two-year evaluation—the results of which were released on June 30, 2003. The evaluation deemed charter schools cost-effective—achieving academic results similar to those of traditional public schools despite receiving less state funding.

Chapter 34, Statutes of 1998 (AB 544, Lempert), required the Legislative Analyst's Office (LAO) to contract for the statewide evaluation. The LAO contracted with RAND, and the state provided a total of $666,000 for the evaluation. (In addition to this evaluation, the state has funded three other independent charter school studies. For a summary of these other reports, please see the shaded box on page 5.)

Chapter 34 also required the LAO to report to the Legislature on the general effectiveness of charter schools and, specifically, to recommend whether to expand or reduce the state cap on the number of allowable charter schools.

This report responds to this legislative directive. In this report, we:

- Discuss some general similarities and differences among charter schools and track the growth of charter schools nationwide and in California over the last decade.
- Summarize the findings of RAND's charter school evaluation.
- Offer recommendations for: (1) adjusting the state cap on the number of allowable charter schools, (2) improving the charter school funding model, (3) strengthening charter school oversight, and (4) modifying policies relating to oversight fees.

OVERVIEW OF CHARTER SCHOOLS

Charter schools are publicly funded K-12 schools. These schools are subject to state testing and accountability requirements, but they are exempt from many laws relating to specific education programs. Because of these exemptions, charter schools have greater fiscal and programmatic flexibility than traditional public schools. This expanded flexibility was intended to promote innovation in local education practices. Charter schools also were intended to expand students' educational options, thereby generating competition and enhancing incentives for traditional public schools to make educational improvements.

In this section, we:

- Provide some background information on charter schools in California—including information on chartering authorities, types of charter schools, differences

among charter schools' general modes of instruction, and charter school finance.

- Summarize eight especially significant charter school laws.
- Track the growth of charter schools nationwide and in California.

OTHER STATE-INITIATED EVALUATION EFFORTS

In addition to the 2003 RAND evaluation, the state has undertaken several other evaluation activities relating to charter schools, as detailed below.

First Statewide Evaluation Affirmed Charter Schools as Viable Reform Option (1997). The first statewide evaluation was authorized by Chapter 767, Statutes of 1996 (AB 2135, Mazzoni), which appropriated $146,000 for the study. The LAO contracted with SRI International, Inc. (SRI) to conduct the evaluation, and the findings were released in December 1997. SRI found that charter schools were located in all parts of the state, operated in all types of communities, and served all grade levels. It found that, statewide, charter schools enrolled students who were similar to students in traditional public schools. It also found that charter schools, on average, had smaller student enrollments, higher parental involvement, and teachers who were more satisfied (because they had more control over decisions affecting their classrooms and felt a greater sense of ownership of their school's educational program). SRI did raise concerns, however, with the legal ambiguities surrounding the liability of charter authorizers and the lack of oversight of charter schools' academic outcomes.

State Audit Concludes That Existing Oversight of Charter Schools Is Weak (2002). In November 2002, the Bureau of State Audits (BSA) released the findings of its audit of four large charter authorizers—the Fresno, Los Angeles, Oakland, and San Diego City Unified school districts. The BSA found widespread evidence that: (1) oversight of charter schools' academic outcomes and fiscal management was weak, (2) charter authorizers could not justify the oversight fees they charged charter schools because they did not track their actual costs, and (3) charter authorizers risked double-charging the state because they filed mandate claims for reimbursement of charter-school oversight activities even though they could not demonstrate that the oversight fees they already had collected from charter schools were insufficient to cover these costs.

RAND Begins New Study of Charter Schools' Nonclassroom-Based Activities (Expected 2004). Chapter 892, Statutes of 2001 (SB 740, O'Connell), authorized a follow-up statewide evaluation on charter schools' nonclassroom-based activities. The *2002-03 Budget Act* provided $333,000 for this follow-up study. Specifically, this evaluation is to assess the state's funding system for nonclassroom-based activities as well as the State Board of Education's (SBE) regulations for making specific funding determinations for nonclassroom-based charter schools. The findings of this evaluation are scheduled to be released on October 1, 2004.

THE "BASICS" OF CHARTER SCHOOLS IN CALIFORNIA

In this section, we provide some basic background information about charter schools in California.

School District Board Most Common Charter Authorizer. Since the inception of charter schools, 258 government agencies have authorized (or officially granted) charters in California. These charter-granting authorizers consist of the SBE, 23 county school boards, and 234 school district boards. School district boards have authorized the vast majority of charter schools (87 percent). Most charter authorizers (69 percent) have approved only one charter. Less than 10 percent have authorized more than three charters.

Approximately One of Every Ten Charter Petitions Denied. To operate in California, a charter school must submit a petition to a charter authorizer. A petition must include specific information that is delineated in statute, such as a description of the education program of the charter school and the student outcomes the school will use to measure its performance. Charter authorizers report denying approximately 10 percent of all submitted petitions. (Given RAND's survey was distributed only to charter authorizers that were currently overseeing charter schools, this percentage is likely to understate the actual denial rate because it does not include data from charter authorizers that have denied *all* submitted petitions. Additionally, it does not account for informal actions on behalf of charter authorizers that might have discouraged groups even from submitting a petition.) Although the original 1992 charter school law did not require charter authorizers to provide reasons for denying a charter petition, later amendments require that charter authorizers now prepare written documentation justifying their denials. The most common reasons charter authorizers report for denying charter petitions are "an unsound educational program" and a concern that the proposed school is "demonstrably unlikely to succeed."

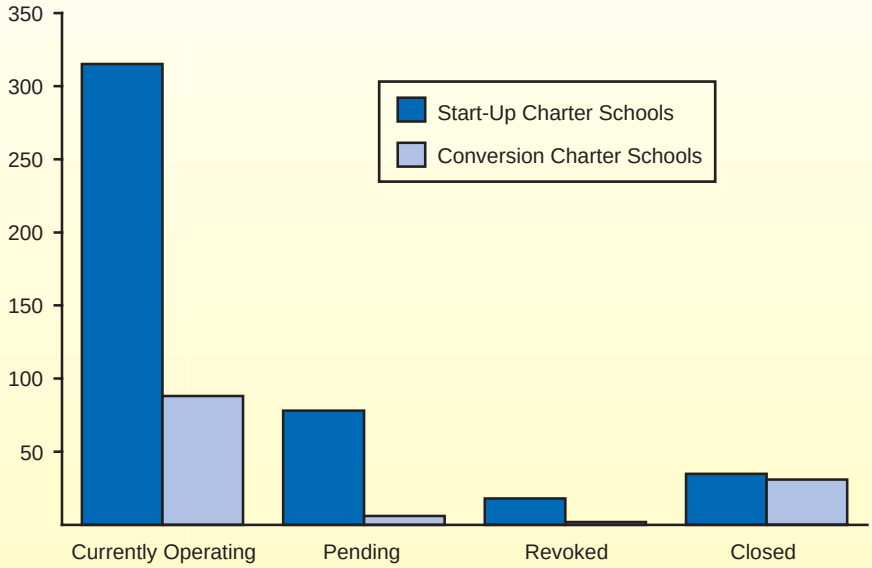
Since 1993, the State Department of Education (SDE) Has Tracked Almost 575 Charter Schools. When a petition is approved or pending, SDE assigns the charter school a unique tracking number. Since the inception of charter schools, SDE has assigned tracking numbers to 573 schools. Of these 573 charter schools, 403 schools (70 percent) are currently operating, 84 schools (15 percent) have petitions pending with a charter authorizer, 20 charters (3 percent) have been revoked, and 66 charter schools (12 percent) have been closed. (In addition to these schools, SDE has issued 31 "inoperative" numbers associated with schools that had approved charters but either never opened or later withdrew their charter.)

"Start-Up" Charter Schools More Common Than Conversion Charter Schools. In California, charter schools may be newly created as a start-up charter school or else a traditional public school may close and reopen as a "conversion" charter school. Figure 1 shows the number of start-up and conversion charter schools that are (1) currently operating, (2) pending, (3) have closed, or (4) have had their charter revoked. As the figure shows, about four out of every five currently operating charter schools are start-up schools whereas one out of every five is a conversion school.

Figure 1

Start-Up Charter Schools More Common Than Conversion Charter Schools

(1993-2003)



Souce: California Department of Education.

Conversion Charter Schools Serve More Students Than Start-Up Charter Schools. Although start-up charter schools are more common than conversion charter schools, conversion charter schools actually enroll a greater number of students. Of all charter school students in the elementary grades, 72 percent are enrolled in a conversion charter school whereas 28 percent are enrolled in a start-up school. Of all charter school students in the secondary grades, 46 percent are enrolled in a conversion charter school whereas 54 percent are enrolled in a start-up school. (In 2002-03, charter school enrollment was split about evenly between the elementary and secondary grades.)

Charter Schools Offer Two General Modes of Instruction—Classroom-Based and Nonclassroom-Based. Charter schools provide instruction either primarily in a traditional classroom setting or in a nonclassroom setting. The SDE classifies a charter school as a classroom-based school if at least 80 percent of its instructional time is offered on the school site, with the school site being a facility used principally for classroom instruction. A nonclassroom-based school, in contrast, is one in which more than 20 percent of instructional time is offered in a location different from the primary school site. Nonclassroom-based charter schools tend to rely on individualized, self-paced student learning plans. Nonclassroom-based instruction includes independent study, home study, distance study, computer-based study, and work-study. Some of these types of instruction (for example, independent study) are common in traditional public schools as well as charter schools whereas others (for example, home study) are unique to charter schools.

Approximately One-Third of All Charter Schools Are Nonclassroom-Based. In 2001-02, SBE classified 118 charter schools, or approximately one-third of all charter schools, as nonclassroom-based. Start-up charter schools are much more likely to be nonclassroom-based than conversion charter schools (57 percent and 11 percent, respectively). State law prohibits nonclassroom-based schools from hiring teach-

ers without state credentials. Additionally, state law requires SBE to establish general rules for determining the appropriate funding level for nonclassroom-based charter schools. The board's regulations specify that funding determinations are to be based on: (1) the percentage of total expenditures associated with teacher salaries and benefits, (2) the percentage of total expenditures associated with instruction, and (3) the student-teacher ratio. Nonclassroom-based charter schools that devote a greater share of their budget to teacher salaries and instruction and have lower student-teacher ratios are eligible for higher levels of funding.

Charter School Funding Model Intended to Result in Funding Comparable to Traditional Public Schools. In 1999, the Legislature adopted the current charter school funding model. Prior to this time, charter schools received funding on a program-by-program basis through negotiation with their charter authorizer. Under the current model, charter schools receive funds through the following three funding streams.

- ***Revenue Limit Funding.*** Charter schools receive revenue limit funding equal to the average revenue limit of all traditional public schools in the state. A different revenue limit rate is calculated for each of four grade spans—K-3, 4-6, 7-8, and 9-12. As with other public schools, revenue limit funding is continuously appropriated general purpose funding that charter schools may expend at their discretion.

- ***Categorical Block Grant.*** In lieu of applying separately for certain categorical programs, charter schools receive categorical block grant funding, which is specified as a line item in the annual budget act. The block grant allocation to each charter school includes: (1) general block grant funding and (2) disadvantaged student funding. Similar to the revenue limit calculation, the general block grant rate provides per pupil funding equal to the average amount of funding traditional public schools receive in total for certain categorical programs. This rate also is calculated separately for each of the four grade spans. The disadvantaged student component is a single rate equivalent to the statewide average per pupil funding rate provided to traditional public schools for Economic Impact Aid. Unlike other public schools (which may not participate in the categorical block grant), charter schools may expend categorical block grant funding at their discretion and are not bound by the specific programmatic requirements of each categorical program included within the block grant.

- ***Other Categorical Programs.*** Charter schools also may apply separately for categorical programs not included in the categorical block grant. Charter schools that apply for these categorical programs, such as the Governor's Mathematics and Reading Professional Development program or the Principal Training program, are required to abide by all associated programmatic requirements.

MAJOR CHARTER SCHOOL LEGISLATION

This section highlights eight pieces of state legislation that have had an especially strong impact on charter school operations and facilities.

Charter School Operations

Chapter 781, Statutes of 1992 (SB 1448, Hart)—Authorized the Creation of Charter Schools in California. The Charter Schools Act of 1992 was the original law authorizing the creation of publicly funded schools that could operate independently from school districts and be exempt from existing education laws. The law established a statewide cap of 100 charter schools and a districtwide cap of ten charter schools. The law established petition requirements, designed a two-stage appeals process, and specified certain conditions under which charters could be revoked. It required the qualifications of personnel to be specified in a school's charter, but it did not require staff to hold state credentials. The law also stated that the Superintendent of Public Instruction (SPI) was to make annual apportionments to each charter school, but in practice, charter schools initially negotiated funding with the school district rather than receiving it directly from the state. The original law did not address charter school facility issues.

Chapter 34—Instituted Significant Charter School Reforms. This law increased the statewide cap to 250 charter schools for the 1998-99 school year, with an additional 100 charter schools allowed to open annually thereafter, and eliminated the districtwide cap. It slightly eased (1) petition requirements, (2) the petition submittal process, (3) the appeals process, and (4) the revocation process. Unlike the 1992 law, it also required all core-subject teachers to hold a state credential. Additionally, it clarified that charter schools could receive funding directly from the state. It also required school districts to offer charter schools any unused district facilities at no charge, and it capped the oversight charges school districts could assess charter schools.

Chapter 162, Statutes of 1999 (SB 434, Johnston)—Applied Independent Study Laws to Charter Schools. This law required charter schools that offered independent study to comply with all laws and regulations governing independent study generally. This law also required charter schools to offer a minimum number of instructional minutes equal to that of other public schools, maintain written records of pupil attendance, and release these records for audit and inspection. Additionally, it required charter schools to certify that their students participated annually in the state's testing programs.

Chapter 78, Statutes of 1999 (AB 1115, Strom-Martin)—Created Charter School Funding Model. This law clarified the language regarding funding by expressing legislative intent to provide charter schools with operational funding equal to the total operational funding available to similar public schools serving similar student populations. It also established a funding model that allowed charter schools to receive funds either locally through the school district or directly from the state. The model consisted of three basic components: (1) revenue limit funding, (2) categorical block grant funding, and (3) separate categorical program funding—all of which were designed to yield charter school funding rates that were comparable to those of similar public schools.

Chapter 892—Reduced Funding for Nonclassroom-Based Charter Schools. This law required SBE to: (1) adopt regulations governing nonclassroom-based instruction, (2) develop criteria for determining the amount of funding to be provided for it, and (3) make specific funding determinations for individual charter schools. This law included certain guidelines regarding funding levels. Specifically, funding for nonclassroom-based charter schools was to be reduced by no more than 10 percent in 2001-02, no less than 20 percent in 2002-03, and no less than 30 percent in 2003-04. The board, however, retained the discretion, on a case-by-case basis, to adjust funding by different percentages. The board was to make funding determinations on a five-year cycle if a charter school did not make material changes to its charter and was deemed to be in good standing.

Chapter 1058, Statutes of 2002 (AB 1994, Reyes)—Established Geographic Restrictions and Enhanced County Oversight. This law required, with few specified exceptions, that a charter school consist of a single school site located within the geographic jurisdiction of its chartering school district. If adequate justification was provided, the law, however, allowed for two exceptions. Specifically, a group could receive a countywide charter (to operate at multiple sites throughout that county) or a statewide charter (to operate at multiple sites throughout the state). In either case, a charter school group had to justify the educational benefit of operating programs at multiple sites spanning multiple local jurisdictions. Additionally, the law granted County Offices of Education (COEs) general authority to conduct both fiscal and programmatic oversight of charter schools. The law, for example, allowed COEs to conduct an investigation of a charter school based on parental complaints or fiscal irregularities.

Charter School Facilities

Proposition 39 (November 2000)—Required School Districts to Provide "Reasonably Equivalent" Charter School Facilities. This law, approved by the voters at a statewide election, allowed school districts to pass local school facility bonds with a 55 percent vote instead of a two-thirds vote. In addition, the law required school districts to provide charter schools with reasonably equivalent facilities that were sufficient to accommodate all their classroom-based students. This requirement must be met even if unused facilities are not available and the district would incur costs to provide the facilities. The school district, however, is not required to spend its general discretionary revenues to provide charter school facilities. Instead, the district could use other revenue sources, including state and local bonds. The law also: (1) required that charter facilities be reasonably equivalent to other district facilities, (2) allowed school districts that funded charter school facilities with discretionary revenues to charge the associated charter schools a facility fee, and (3) exempted a school district from providing facilities to charter schools that served fewer than 80 students.

Chapter 935, Statutes of 2002, (AB 14, Goldberg) and Proposition 47 (November 2002)—Created Charter Schools Facilities Program and Approved Sizeable Bond Funding. Chapter 935 established a pilot program—the Charter Schools Facilities Program—to determine the optimum method for funding charter school facilities. The law specified that the State Allocation Board (SAB) was to approve a set of projects that was "fairly representative"

of: (1) the various geographic regions of the state; (2) urban, suburban, and rural regions; (3) large, medium, and small schools; (4) and the various grade levels. While ensuring this fair representation was achieved, SAB also was required to give preference to charter schools in overcrowded school districts and low-income areas as well as to charter schools operated by not-for-profit organizations. This facilities program was linked with voter approval of Proposition 47, which provided up to $100 million (of a total of $3.5 billion) for the construction of new charter schools. On July 2, 2003, SAB provided preliminary facility apportionments to six charter schools—committing a total of $97 million in Proposition 47 bond monies.

CHARTER SCHOOLS HAVE EXPERIENCED NOTABLE GROWTH OVER LAST DECADE

In this section, we track the recent growth of charter schools nationwide and in California.

Charter Schools Spread Across Country in 1990s. During the 1990s, legislation allowing for the creation of charter schools was adopted by most state governments. Figure 2 tracks this growth. Today, 40 states as well as the District of Columbia (DC) have charter school laws.

Almost 2,700 Charter Schools Serving More Than 684,000 Students Nationwide. Currently charter schools are operating in 36 states and DC. In 2002-03, almost 2,700 charter schools served more than 684,000 students nationwide. Of these schools, almost 400 were new charter schools that opened in fall 2002. Figure 3 (see next page) shows the number of charter schools for each state and indicates the percentage of all public K-12 students in each state who attend charter schools. The data are provided for

Figure 2

Charter School Legislation Spreading Across Country[a]

Year Legislation Enacted	State
1991	Minnesota
1992	California
1993	Colorado Georgia Massachusetts Michigan New Mexico Wisconsin
1994	Arizona Hawaii Kansas
1995	Alaska Arkansas Delaware Louisiana New Hampshire[b] Rhode Island Texas Wyoming[b]
1996[c]	Connecticut Florida Illinois New Jersey North Carolina South Carolina
1997	Mississippi Nevada Ohio Pennsylvania
1998	Idaho Missouri New York Utah Virginia
1999	Oklahoma Oregon
2001	Indiana
2002	Iowa Tennessee
2003	Maryland

a The following ten states currently do not have charter school laws: Alabama, Kentucky, Maine, Montana, Nebraska, North Dakota, South Dakota, Vermont, Washington, and West Virginia.

b Indicates states that have charter school laws but no charter schools currently operating.

c The District of Columbia also adopted charter school legislation in 1996.

Source: Center for Education Reform.

Figure 3

California Ranks High Nationally on Two Charter School Measures

2001-02

State	Number of Charter Schools	Charter School Enrollment As Percentage of Total Public School Enrollment
Arizona	370	6.7
California	**350**	**2.2**
Texas	243	1.1
Michigan	204	3.8
Florida	192	1.6
Wisconsin	109	1.7
North Carolina	93	1.4
Colorado	86	3.3
Ohio	85	1.2
Pennsylvania	77	1.6
Minnesota	77	1.2
New Jersey	51	0.9
New York	44	—[a]
Massachusetts	43	1.5
Georgia	40	1.7
District of Columbia	33	9.2
Illinois	23	0.4
Hawaii	22	1.7
Oregon	22	0.2
Missouri	21	0.8
New Mexico	20	0.8
Louisiana	20	0.5
Alaska	15	1.7
Connecticut	15	0.5
Kansas	11	0.3
Delaware	10	3.7
Idaho	10	0.6
Nevada	10	0.5
Oklahoma	10	0.3
South Carolina	10	0.1
Utah	9	0.1
Virginia	8	0.1
Rhode Island	6	0.5
Arkansas	6	0.2
Mississippi	1	0.1
Indiana	1	—[a]
Totals	**2,347**	—[a]

[a] Data not available.

Source: U.S. Department of Education, National Center for Education Statistics.

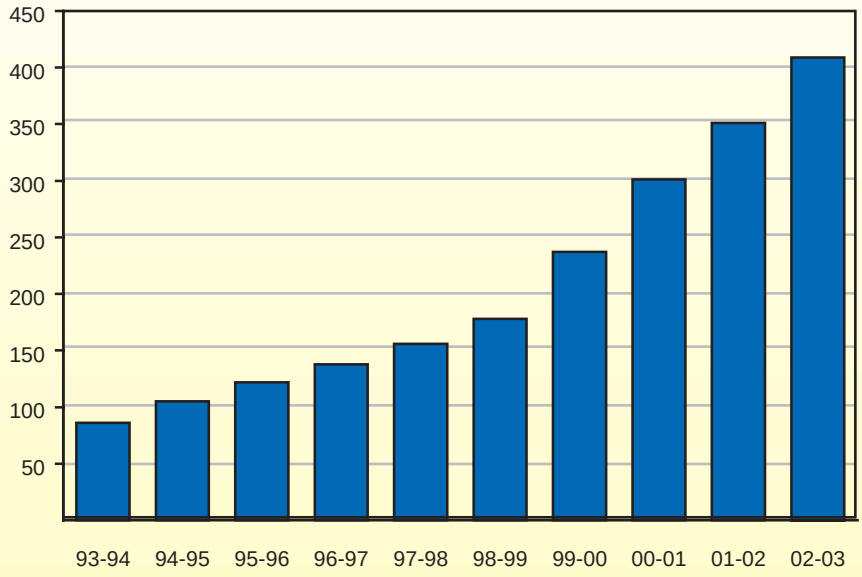
2001-02—the most recent nationwide data compiled by the National Center for Education Statistics. As the figure shows, Arizona is the state with the greatest number of charter schools, followed closely by California. The DC serves the greatest proportion of all public K-12 students in charter schools (almost 10 percent). California serves approximately 2.5 percent of all public K-12 students in charter schools. Numerically, California serves more charter school students than any other state.

Steady Charter School Growth in California Over Past Ten Years. In California, the number of charter schools and the number of students attending charter schools has increased steadily over the past ten years. Figures 4 and 5 show the total number of charter schools and the total number of charter school students, respec-

tively, in California each school year from 1993-94 through 2002-03. In 1993-94, 86 charter schools located in 23 of California's 58 counties served approximately 48,000 students. Of these students, 73 percent were in grades K-6, 12 percent were in grades 7-8, and 14 percent were in grades 9-12. By comparison, in 2002-03, 409 charter schools located in 45 counties served almost 157,000 students. Thus, over this ten-year period, California experienced average annual growth in charter school enrollment of 14 percent. As Figure 5 shows, during this period, the grade-level composition of charter school students also has changed—with charter schools now serving proportionally fewer K-6 students, slightly more seventh and eighth grade students, and considerably more high school students.

Figure 4

Number of Charter Schools in California Has Increased Steadily Since 1993-94

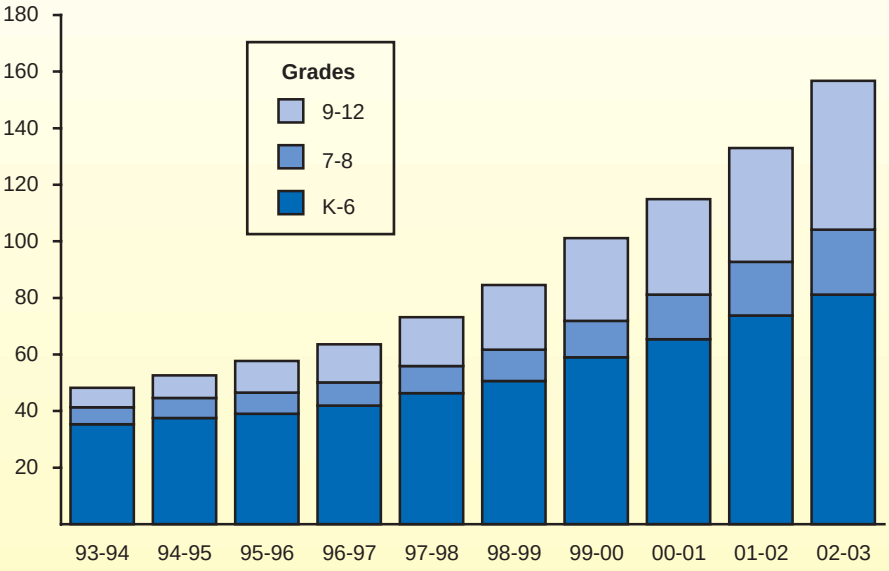


Source: California Department of Education.

Figure 5

Number of Charter School Students in California Has Increased Steadily Since 1993-94

(In Thousands)



Source: California Department of Education.

RAND'S EVALUATION DEEMS CHARTER SCHOOLS COST-EFFECTIVE

As mentioned earlier, RAND recently released the results of a two-year evaluation of charter schools in California. The evaluation assessed charter schools' effectiveness in using their resources to educate students. To conduct the evaluation, RAND used both primary and secondary data sources. To collect original data, RAND conducted a survey in spring 2002 of all California charter school principals, the principals of similar traditional public schools, and all California charter authorizers. In selecting traditional public schools to survey, RAND matched charter schools with a set of traditional public schools that served students with similar ethnic and socioeconomic characteristics. Thus, RAND attempted to compare charter schools to like schools serving like students. During fall 2002, RAND also visited nine charter schools and all but one of their charter authorizers and interviewed administrators and teachers at each site. Additionally, RAND collected student achievement data from six school districts with a large number of charter schools. These data were longitudinally linked, which permitted RAND to track students' test scores over time, thereby better isolating the independent effect of attending a charter school. To supplement these primary data sources, RAND also tapped traditional secondary data sources—including SDE's data on student demographics and test scores, teacher qualifications, and schools' academic performance.

This section highlights the most important differences and similarities that RAND found between charter schools and traditional public schools serving similar students and between start-up charter schools and conversion charter schools. Specifically, this section reviews RAND's findings regarding:

- The academic achievement of charter schools compared with other public schools.
- The academic achievement of classroom-based charter schools compared with nonclassroom-based charter schools.
- The general policies and practices of charter schools.

Charter Schools Show Year-to-Year Achievement Gains Comparable to That of Other Public Schools. As one method for assessing academic performance, RAND compared the average growth rate in charter schools' Academic Performance Index (API) score with that of other public schools. RAND found that, statewide, both charter schools and other public schools improved academic performance between 1999-00 and 2001-02. RAND also found that the average growth in charter schools' API score was not significantly different from that of other public schools. Changing the comparison group and restricting the analysis only to school districts that have at least one charter school, RAND similarly found that the average growth rate in charter schools' API score was not significantly different from neighboring public schools.

Classroom-Based Charter Schools Attain Higher Test Scores Than Nonclassroom-Based Charter Schools. RAND also compared the

academic performance of classroom-based charter schools with both nonclassroom-based charter schools and other public schools. It found that classroom-based charter schools tend to attain higher test scores than either nonclassroom-based charter schools or other public schools. Specifically, it found that students in start-up, classroom-based charter schools scored slightly higher in almost every grade and subject than similar students in other public schools. It also found that students in conversion, classroom-based charter schools scored slightly higher in reading than comparable students in other public schools, but they scored slightly lower in mathematics. In contrast, RAND found that students in nonclassroom-based charter schools—whether start-up schools or conversion schools—scored lower in every grade and subject compared to students in other public schools.

Overall, RAND Deems Charter Schools Cost-Effective. Figure 6 highlights many of RAND's other findings relating to the general policies and practices of charter schools. The figure is divided into the following six subsections: (1) student body, (2) academic environment, (3) special education, (4) staffing, (5) finances and facilities, and (6) governance and oversight. Overall, RAND concluded that charter schools are cost-effective—attaining achievement scores comparable to those of other public schools even though they face considerable fiscal and facility challenges. Particularly noticeable, RAND found that charter schools participate in state-funded and federally-funded categorical programs at significantly lower rates than other public schools. RAND also found that charter school teachers and administrators are less experienced, but they feel more involved in decision making and have a greater sense of ownership of their classrooms and school site. Taken together, RAND's findings suggest that charter schools generally are viable, cost-effective reform strategies for improving academic achievement and serving certain students whose families desire additional school options.

Figure 6

RAND Charter School Study—Summary of Findings

Evaluation Component	RAND's Findings
Student Body	
School Choice	• Black students are more likely, white students are just as likely, and Asian and Latino students are less likely to choose a charter school than they are a traditional public school within their district.
Ethnic Integration	• Overall, charter schools are not exacerbating ethnic segregation.
Target Groups	• Charter school principals are more likely to report focusing their services on specific student populations—such as low-income students—than matched public school principals (33 percent and 21 percent, respectively).
Student Admissions	• Charter schools' admission policies do not differ substantially from matched public schools' policies. • Charter schools are more likely to interview prospective families, but most schools use these interviews only for informational or diagnostic purposes.

Continued

Evaluation Component	RAND's Findings
Academic Environment	
Instructional Time	• Charter school principals report providing, on average, a longer instructional day than matched public schools. • Charter school principals report providing approximately the same amount of instructional time in core subjects as matched public schools, except they report providing significantly more instructional time in mathematics in the middle grades. • Charter school principals report providing more instructional time in noncore subjects (such as fine arts and foreign language) in the elementary grades than principals in matched public schools. • Compared to matched public school principals, charter school principals report that state tests have significantly less influence on instructional planning and teaching.
Specialized Programs	• Bilingual programs are approximately half as likely to be offered by charter schools than by matched public schools. • Charter schools offer significantly fewer Advanced Placement courses (1.3 courses) than matched public schools (7.6 courses). • Approximately the same percentage of charter school principals report offering before-and-after school enrichment programs as matched public school principals.
Computer-to-Student Ratio	• No significant difference exists in the computer-to-student ratio of charter schools and matched public schools. Both types of schools report about one computer for every four students.
Parent Involvement	• Charter schools are more likely to use school-parent contracts to clarify a school's expectations of parental involvement. • Charter school principals report higher rates of parent participation in school activities. • Parents are equally likely to volunteer in charter schools as in matched public schools.
Behavioral Issues	• No significant differences exist between the out-of-school suspension rates and expulsion rates of charter schools and matched public schools, but charter schools report significantly fewer in-school suspensions. • Few significant differences were reported in student behavior at charter schools and matched public schools.
Special Education	
Students With an Individualized Education Plan (IEP)	• The proportion of special education students with IEPs differs only slightly between charter schools (7.6 percent) and matched public schools (8.9 percent). • Start-up charter schools, however, report serving a significantly smaller proportion of special education students (5.5 percent) than conversion charter schools (10 percent).
Students Identified as Severely Disabled	• The proportion of special education students identified as severely disabled differs only slightly between charter schools (1.3 percent) and matched public schools (1.1 percent). • Start-up charter schools, however, report serving a significantly smaller proportion of severely disabled students (0.4 percent) than conversion charter schools (2.3 percent).
Target Group	• Fewer charter school principals report focusing their services on special education students (7.6 percent) compared with matched public school principals (17 percent).

Continued

Evaluation Component	RAND's Findings
Mode of Instruction	• Charter schools are more likely to mainstream special education students (39 percent) than matched public schools (19 percent). • Start-up charter schools are most likely to mainstream special education students (64 percent). • Charter schools are less likely to serve special education students in pull-out programs (37 percent) than matched public schools (61 percent).
Special Education Staff	• The proportion of special education aides to total staff did not differ significantly between charter schools and matched public schools (approximately 10 percent). • Significant differences, however, exist in the proportion of special education staff between start-up charter schools (2 percent) and conversion charter schools (16 percent).
Control and Liability for Special Education Services	• Charter schools report having less control over and less liability for special education than other areas of school operations.
Staffing	
Teachers With State Credentials	• Teachers in start-up charter schools are significantly less likely to have a full credential (67 percent) than teachers in conversion charter schools (88 percent) and matched public schools (88 percent). • Teachers in start-up charter schools are significantly more likely to serve on an emergency permit (27 percent) than teachers in conversion charter schools (16 percent) and matched public school teachers (10 percent).
Teachers' Subject Authorizations	• Almost all elementary school teachers in charter schools and matched public schools have relevant subject matter authorizations. • Secondary school teachers in charter schools, however, are significantly less likely to have relevant subject matter authorizations than teachers in matched public schools.
Teachers' Level of Experience	• Charter school teachers are, on average, less experienced than teachers in matched public schools (10 years and 14 years of experience, respectively). • Teachers in start-up charter schools are, on average, less experienced than teachers in conversion charter schools (8.7 years and 11 years of experience, respectively).
Teachers' Salaries and Collective Bargaining	• Charter school principals are significantly less likely to report using a salary schedule to determine teacher salaries (78 percent compared to all matched public school principals). • Charter school principals are significantly less likely to report engaging in collective bargaining agreements with a teachers' union (32 percent) than matched public school principals (83 percent).
Teachers' Professional Development Activities	• Charter school teachers participate in informal professional development activities, such as coaching programs and peer collaboration, at higher rates than teachers in matched public schools. • Principals and teachers at all nine case-study charter schools report strong emphasis on professional development, especially activities such as mentoring and collaboration.
Teachers' Control Over Decision-Making	• Teachers at all charter case-study schools stated that they played an important role in school decision making. • Some teachers in schools that had been converted from traditional public schools felt they were treated with more respect after conversion.

Continued

Evaluation Component	RAND's Findings
Principals With State Credentials	• Charter school principals are significantly less likely to have a teaching credential (86 percent) than matched public school principals (99 percent) and significantly less likely to have an administrative credential (61 percent and 97 percent, respectively).
Principals' Previous Work Experience	• Charter school principals are significantly less likely to have served as principals or vice principals before accepting their current assignment (40 percent) than matched public school principals (73 percent). • Charter school principals are significantly more likely to have served in teaching positions before accepting their current administrative assignment (22 percent) than matched public school principals (13 percent). • Charter school principals are significantly more likely to have come from a non-teaching or nonadministrative occupation outside the field of education (10 percent compared to less than 1 percent of matched public school principals).
Principals' Years of Experience	• Charter school principals report shorter tenures at their current schools (3.1 years) than principals of matched public schools compared (4.4 years). • Charter school principals report less total experience in school administration (9.1 years) than matched public school principals (12 years).
Principals' Control Over Decision-Making	• Charter school principals report having greater overall control of decision making than matched public school principals. • A majority of charter school principals report they have full control over major decisions—including those related to student disciplinary policies, curriculum, budgetary expenses, hiring and dismissal, and staff salaries and benefits.
Working Days	• Charter school teachers and principals report working, on average, five more days per year than teachers and principals in matched public schools.
Finances and Facilities	
Participation in Categorical Programs	• Compared to matched public school principals, charter school principals report significantly lower participation in eight relatively large federal and state categorical programs—including Title I, K-3 Class Size Reduction, and Supplemental Instruction. • Start-up charter schools are significantly less likely to participate in categorical programs than either conversion charter schools or matched public schools. • Almost half of start-up charter school principals agree or strongly agree with the statement: "Our school has given up pursuing certain categorical funds because they are too complex."
Categorical Block Grant Funding Rates	• Block grant funding rates for charter schools have declined over time due to (1) the removal of programs from the block grant, (2) the defunding of programs initially included in the block grant, and (3) funding reductions experienced by many programs remaining in the block grant.
Private Funding	• Charter schools receive substantially more private funding per student ($433) than matched public schools ($83). • The extent to which these private funds are one time or used only for facilities is unclear.
Expenditures	• Start-up charter schools and conversion schools report spending about the same amount per student ($6,168 and $6,366, respectively). • Classroom-based charter schools report spending almost $2,000 more per student than nonclassroom-based charter schools ($6,926 and $4,973, respectively).

Continued

Evaluation Component	RAND's Findings
Facility Acquisition and Financing	• More than 90 percent of principals at conversion charter schools report that their facilities are provided by a district at no cost or only nominal cost. Less than 25 percent of principals at start-up charter schools report obtaining facilities in this manner. • The majority of start-up charter schools lease facilities from a commercial site or privately rent/own their facilities. Less than 10 percent of conversion charter schools report funding facilities in these ways. • Almost two-thirds of charter school principals and more than one-third of charter authorizers agree or strongly agree that they are struggling with financing capital expenditures.
Governance and Oversight	
Legal Liability	• Approximately 67 percent of charter schools report having memoranda of understanding (MOU) with their charter authorizers. (An MOU is a separate document from the charter that clarifies the responsibilities and liabilities of the charter school and the charter authorizer.)
Control Over School Practices	• Both charter authorizers and charter school principals report that charter schools are more autonomous than matched public schools.
Information Charter Authorizers Require of Charter Schools	• The most common types of information charter authorizers collect from charter schools are financial reports, student attendance data, student achievement scores, and school schedules. • The least common types of information charter authorizers collect from charter schools are student disciplinary actions, student transfer data, student grades, and parent satisfaction data.
Reasons for Intervening in Charter School Activities	• Charter authorizers' most common reasons for intervening in charter schools' activities are (1) complaints from parents and (2) financial irregularities.
Oversight Activities	• The most common form of intervention is some form of investigation of the charter school (including site visits and requests for additional records).

Source: RAND Education, *Charter School Operations and Performance* (2003).

LAO RECOMMENDATIONS

As detailed above, RAND's evaluation provides considerable insight into the current strengths and weaknesses of charter schools in California. Although charter schools in general are making similar academic gains and attaining similar academic scores, RAND's findings suggest that some weaknesses exist relating to charter school funding and oversight. In this section, we focus on the following four charter school issues: (1) the annual growth cap on charter schools, (2) the charter school funding model, (3) the general system of charter school oversight, and (4) oversight fees. For each of these issues, we describe existing policies and make recommendations for improving them.

Reexamining the Need for an Annual Growth Cap

As mentioned in the first part of this report, the Charter Schools Act of 1992 capped the total number of charter schools that could operate in California at 100, with a districtwide

cap of ten charter schools. In 1992, charter schools were new creations that had yet to be tested and evaluated, and the statewide cap was intended as a safety precaution against the uncontrolled growth of these experimental entities. The districtwide cap was intended to prevent a small set of very large school districts from establishing so many charter schools that the statewide cap was reached before smaller school districts had the opportunity to create their own charter schools. The districtwide cap therefore helped to promote the creation of charter schools across an array of both small and large school districts. The districtwide cap also ensured that no single school district would need to oversee and monitor a large number of charter schools.

In 1998, reform legislation modified these original caps. Specifically, the new law increased the statewide cap to 250 charter schools for the 1998-99 school year, allowing 100 additional charter schools to open each year thereafter. It also entirely eliminated the districtwide cap. (The shaded box on page 21 shows the number of allowable charter schools in each of the 39 states that has charter school laws.)

Remove Growth Cap

We recommend the Legislature remove the cap on the annual growth of charter schools because the original rationale for the cap is no longer applicable.

Existing law requires the LAO to review the annual growth cap for charter schools and recommend whether to expand or reduce it. Although capping the total number of charter schools that could operate in the state was appropriate when the performance of charter schools was unknown, the environment today is considerably different, and we recommend repealing the cap.

Cap No Longer Needed. Charter schools remain neither new (they have operated in California for ten years) nor untested (the state has conducted two comprehensive charter school evaluations). Both statewide evaluations concluded that charter schools were viable educational reforms. Neither evaluation uncovered any alarming finding to warrant slower growth or continuation of the growth cap. Indeed, as discussed in detail earlier in this report, RAND's recent evaluation concluded that charter schools were attaining achievement results comparable to those of other public schools despite facing considerable fiscal and facility challenges. As a result, we are not aware of any analytical basis for continuing to cap the annual growth in charter schools. Therefore, we recommend the Legislature remove the cap on the annual growth of charter schools.

Reforming the Charter School Categorical Block Grant

The Charter Schools Act of 1992 specified that a charter school was to receive state funding comparable to other public schools located within the same district and serving a similar student population. Specifically, a charter school was to receive comparable revenue limit funding, categorical funding, and special education funding. To a large extent, the charter school funding model developed in 1999 simply formalized the intent of the original 1992 law by establishing specific funding mechanisms intended to yield comparable funding rates.

Trend Toward Decreasing Flexibility and Increasing Regulation. Despite legislative intent to provide charter schools with comparable

THE NUMBER OF CHARTER SCHOOLS THAT STATES ALLOW VARIES WIDELY

The number of charter schools that individual states allow to operate within their borders ranges from zero to unlimited, as shown in Figure 7. Currently, ten states do not permit any charter schools. Of the 40 states that do allow charter schools:

- Eighteen states allow an unlimited number of charter schools to operate.
- Thirteen states have a statewide charter school cap—with specific caps ranging from 6 schools in Mississippi to 750 schools in California.
- Seven states have separate caps for start-up charter schools and conversion charter schools—with the typical pattern being to cap only the number of start-up schools and allow for an unlimited number of conversion schools.
- Two states have unique charter school caps.

Figure 7

The Number of Charter Schools States Allow Varies Widely

States That Allow for an Unlimited Number of Charter Schools (18)	
Arizona	New Hampshire
Colorado	New Jersey
Delaware	Oklahoma
Georgia	Oregon
Indiana	Pennsylvania
Maryland	South Carolina
Michigan	Utah
Minnesota	Wisconsin
Missouri	Wyoming

States With a Single Statewide Cap (13)	
California (750)	Kansas (30)
Texas (215)	Connecticut (24)
North Carolina (100)	Nevada (21)
Idaho (60)	Rhode Island (20)
Alaska (60)	Iowa (10)
Illinois (45)	Mississippi (6)
Louisiana (42)	

States With Separate Caps for Start-Up Schools and Conversion Schools (7, Listed by Size of Cap for Start-Up Schools)
Ohio (225 start-ups, unlimited conversions)
New York (100 start-ups, unlimited conversions)
New Mexico (75 start-ups, 25 conversions)
Massachusetts (72 start-ups, 48 conversions)
Hawaii (25 start-ups, 23 conversions)
Florida (start-up cap ranges from 12 to 28 per district depending on district size, unlimited conversions)
Arkansas (12 start-ups, unlimited conversions)

States With Other Types of Caps (2)
Tennessee (number of charter schools may not exceed one-third of all failing schools)
Virginia (2 charter schools per district or 10 percent of schools in district)

Source: Center for Education Reform, Charter School Laws Across the States (2003).

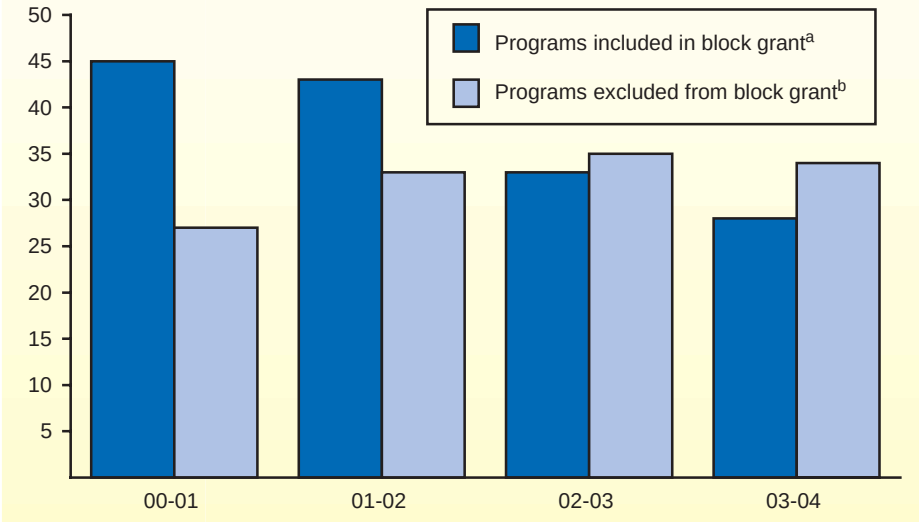
state funding using a simple funding stream with few strings attached, charter school finance has become increasingly complex and opaque since the enactment of the 1999 funding model. The trend most incompatible with the original intent of charter schools is the increasing number of categorical programs for which charter schools must apply separately. As discussed in "Part I" of this report, charter schools receive categorical funding in one of two ways. Some categorical programs are included in the charter school categorical block grant and associated funding is allocated directly to charter schools. In contrast, some categorical programs are excluded from the block grant and, to receive funding for them, charter schools must apply separately for each program. The trend toward having charter schools apply separately for more and more categorical programs is resulting in increasing regulation and less programmatic and fiscal flexibility. This trend also appears contrary to the underlying rationale for establishing charter schools—that is, to exempt certain schools from most state regulation in exchange for local accountability.

Number of Programs in Block Grant for 2003-04 at All-Time Low. Figure 8 shows the number of K-12 education programs included and excluded from the charter school categorical block grant each year from 2000-01 through 2003-04. When enacted in 1998, the block grant included 33 programs. As Figure 8 shows, this number grew to 45 programs in 2000-01 but since has been declining noticeably. In 2003-04, the number of programs included in the block grant will be at an all-time low of 28 programs.

Number of Programs Excluded From Categorical Block Grant Has Grown Noticeably. In contrast, the number of programs *excluded* from the block grant has increased noticeably over recent years. Originally, the block grant excluded 18 categorical programs. Charter schools were precluded on a de facto basis from accessing funding associated with three of these programs. This was because funding for these particular programs—adult education, adults in correctional facilities, and COE

Figure 8

Number of Programs in the Charter School Categorical Block Grant Has Been Shrinking



[a]Based on SDE determinations per its annual listing of programs included in the block grant.
[b]Based upon Department of Finance determinations per the charter school funding model. Does not count Economic Impact Aid (for which charter schools receive an in-lieu apportionment). Also does not count K-12 programs funded through the University of California and the California State University, for which charter schools also need to apply separately.

fiscal oversight—did not flow directly to school districts for K-12 purposes. Charter schools could apply for funding associated with the remaining 15 programs, but they had to apply separately for each program. These 15 programs included some of the largest categorical programs, such as special education, K-3 Class Size Reduction, supplemental instruction, Home-to-School Transportation, Staff Development Buy-Out Days, and deferred maintenance. As Figure 8 shows, by 2003-04, the list of categorical programs excluded from the block grant had grown to 34 programs. Of these programs, charter schools were precluded on a de facto basis from applying to three programs, but they could apply separately to the remaining 31 programs. These programs continued to include the largest of the categorical programs and had notable new additions, such as instructional materials and school accountability programs.

Categorical Block Grant Funding as Proportion of Total Available Categorical Funding Also at All-Time Low. Not only has the number of programs excluded from the block grant increased and the number included decreased, the programs that remain in the block grant are representing a smaller and smaller share of total available categorical funding. In 2000-01, the 45 programs included in the block grant were associated with a total of $3 billion, or 27 percent of all available categorical funding in that year. This means that charter schools were able to access directly through the block grant 27 percent of all available categorical funds. To access the remaining 73 percent of categorical funds, charter schools had to apply separately and meet all of the associated programmatic requirements. Since 2000-01, the share of categorical funding charter schools have been able to access directly has decreased each year—reaching an all-time low of 15 percent in 2003-04 (see Figure 9).

Total Level of Funding Associated With Programs in Block Grant Also at All-Time Low. Not only has the *share* of available funding been reduced, the actual *level* of available funding also has declined. Between 2000-01 and 2003-04, total categorical funding associated with programs in the charter school block grant declined by $1.3 billion—a 45 percent decline. This decline cannot be fully attributed to the state's general fiscal situation because total categorical funding remained essentially con-

Figure 9

Block Grant Funding Shrinking as Percentage of Total K-12 Categorical Funding

(Dollars in Billions)

	2000-01	2001-02	2002-03	2003-04	Average Annual Change
Funding Associated With:					
K-12 programs in block grant	$2.95	$2.82	$1.84	$1.63	-18%
K-12 programs excluded from block grant	7.89	9.93	9.92	9.19	5
Totals	**$10.84**	**$12.76**	**$11.76**	**$10.82**	**0%**
Block-grant funding as percentage of total	27%	22%	16%	15%	—

stant over the same period. Similarly, from 2000-01 through 2003-04, funding associated with programs in the block grant declined by an average annual rate of 18 percent compared to essentially no change for all K-12 categorical programs.

Per Pupil Block Grant Funding Rates Have Declined Each Year Since 2000-01. The decline in the level of available funding associated with programs in the block grant has yielded reductions in the underlying per pupil block grant funding rates. Figure 10 tracks these per pupil funding rates from 2000-01 through 2003-04. As the figure shows, per pupil funding rates for each of the four grade spans peaked in 2000-01 and have since declined every year. As with aggregate funding, the annual declines in per pupil funding rates have been substantial. For example, the per pupil funding rate for grades 9-12 dropped from a high of $313 in 2000-01 to a low of $164 in 2003-04.

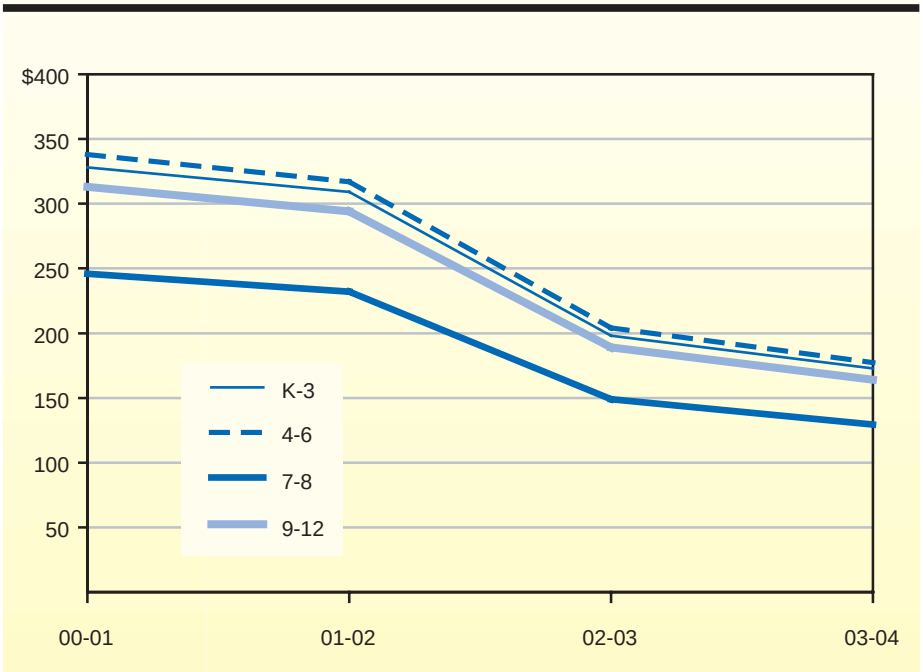
Modify Categorical Block Grant

We recommend the Legislature shift 14 currently excluded programs into the general charter school block grant, shift 10 currently excluded programs into the disadvantaged-student component of the block grant, and make the associated cost-neutral adjustments to the underlying per pupil funding rates. We further recommend the Legislature: (1) list all categorical programs requiring charter schools to apply separately in charter school law, (2) list all categorical programs for which charter schools are prohibited from applying in charter school law, and (3) modify these two lists, as needed, when categorical programs are newly established. Finally, we recommend the Legislature require the Department of Finance (DOF) to calculate and publicly release block grant growth rates each January, May, and upon final passage of the annual budget act.

Given the trends identified above, we recommend the Legislature undertake a general restructuring of the charter school categorical block grant. This restructuring would simplify the block grant structure and address the current discrepancy in average daily atten-

Figure 10

Per Pupil Block Grant Funding Rates Have Steadily Declined Since 2000-01



dance (ADA) funding rates, thereby better meeting the legislative intent of the block grant. It also would enhance the timeliness and accessibility of charter school funding calculations, thereby allowing policymakers to better understand, oversee, and ensure accuracy in budgeting.

Shift 14 Currently Excluded Programs Into General Block Grant. Of the 34 categorical programs excluded from the block grant in 2003-04, we recommend 14 programs be transferred to the general block grant (see Figure 11). Given the legislative intent of the block grant, we think the defining criterion for whether a categorical program should be included in the block grant is whether it serves students, teachers, or administrators in a typical public K-12 school. Other public K-12 schools are able to access funding associated with all 14 programs identified in the top section of Figure 11,

Figure 11

Restructuring the Charter School Categorical Block Grant

Of the 34 programs currently excluded from the charter school categorical block grant, we recommend the Legislature:

Move the Following 14 Programs Into the General Block Grant

- After School Programs
- Core Supplemental Instruction
- Deferred Maintenance
- Home-to-School Transportation
- Instructional Materials
- K-3 Class Size Reduction
- Mathematics and Reading Professional Development
- Principal Training
- Public School Library Materials
- Regional Occupational Programs and Centers
- Staff Development Day Buy-Out
- Teacher-Incentive Programs (Intern, Preintern, and Paraprofessional programs)

Move the Following Ten Programs Into the "Disadvantaged-Student" Component of the Block Grant[a]

- California School Age Families Education
- English Language Learners Student Assistance
- Gang Risk Intervention Program
- Mandatory Supplemental Instruction
- National Board Certification for Teachers Working in Low-Performing Schools
- Public School Accountability Programs (Immediate Intervention/Underperforming Schools, Low-Performing Schools, and Corrective Actions)
- Remedial Supplemental Instruction
- Targeted Instructional Improvement Block Grant

Keep the Following Ten Programs Outside of the Block Grant

Allow charter schools to apply separately for following six programs:

- California School Information Services
- Charter School Facility Grant Program
- Child Care
- Mandates
- Pupil Testing
- Special Education

Prohibit charter schools from receiving separate funding for following four programs:

- Adult Education
- Adults in Correctional Facilities
- California Technology Assistance Project and Statewide Education Technology Services
- County Fiscal Oversight

[a] Currently, this component provides funding in lieu of Economic Impact Aid.

so we do not think sufficient justification exists for excluding them from the general block grant. (As shown in the last section of Figure 11, we recommend the Legislature continue to exclude ten programs from the block grant. Funding for four of these programs—such as adults in correctional facilities—do not flow directly to typical public K-12 schools serving charter-school-equivalent students. Each of the remaining six programs is of a distinct, special nature and we recommend the Legislature continue to allow charter schools to apply separately for them.)

We further note that the basic objective of the block grant is to enable charter schools to receive discretionary funding through a simple administrative process—being held accountable for meeting the educational objectives delineated in their charter. This is why charter schools are allowed to use block grant funding at their discretion. We also think this fiscal flexibility is important given the lack of rigorous, empirical cost-benefit analyses comparing specific categorical programs. A more inclusive block-grant structure would enhance schools' ability to assess their needs and make important trade-offs—such as between investing in teacher quality and reducing class size.

Shift Ten Currently Excluded Programs Into Disadvantaged-Student Component of Block Grant. As noted above, the block grant has a special disadvantaged-student component in which charter schools receive supplemental funding for certain students in lieu of receiving Economic Impact Aid. We recommend the Legislature shift ten currently excluded programs into the disadvantaged-student component of the block grant (see second section of Figure 11) because all these programs are associated with serving disadvantaged students. We recommend that total funding continue to be based on a count of disadvantaged students enrolled in charter schools. (Students are considered disadvantaged if they participate in a federal free or reduced-price meal program or are classified as English Language Learners. A student who meets both criteria is counted twice.) This consolidation would increase the amount of funding charter schools would receive for disadvantaged students without increasing administrative burdens or adding new fiscal complexities. Moreover, it would respond to one of the core legislative objectives of charter schools—to enhance and expand services for disadvantaged students.

Adjust Per Pupil Funding Rates in Cost-Neutral Manner. Shifting these 24 programs into the block grant would result in charter schools being able to access more categorical funding, which in turn would increase per pupil block grant funding rates. This would thereby address the current discrepancy in state funding between charter schools and other public schools that RAND identified. Including additional programs in the block grant, however, raises the total amount needed to fund the block grant. To manage the restructuring in a cost-neutral manner, we recommend the Legislature shift some funding currently associated with each categorical program into the block grant. Specifically, as charter school ADA is approximately 2.5 percent of total public school ADA, we recommend the Legislature shift about 2.5 percent of funding associated with currently excluded categorical programs into the block grant. Additionally, some grade-span adjustments would need to be calculated as some of the categorical programs that would be moved into the block grant, such as K-3 Class Size

Reduction and Regional Occupational Programs, are grade specific.

Require All Programs Excluded From Block Grant to Be Identified in Charter School Law. Currently, block grant calculations are extremely opaque because statute does not contain a comprehensive list of programs either excluded from or included in the block grant. Thus, each year, DOF uses its knowledge of and judgment about the statutes associated with the state's categorical programs to determine which programs should be excluded from the block grant. Unsurprisingly, growing controversy has emerged regarding which programs are to be excluded. For example, in 2002-03, DOF decided to exclude the Teaching As A Priority program from the block grant even though statute does not require charter schools to apply separately for this program. Technically, therefore, it should have been included. Similarly, in 2003-04, DOF decided, for the first time, to exclude three other longstanding categorical programs, even though statute does not require charter schools to apply separately for them.

To reduce this kind of confusion and controversy, we recommend the Legislature codify in a single section (specifically, in Education Code Section 47634 [b]), all programs that are excluded from the charter school block grant. This section should specify programs for which charter schools must apply separately as well as programs for which charter schools are prohibited from receiving funding. This section also should state explicitly that all programs not specifically excluded are to be included in the categorical block grant. Finally, we recommend the Legislature adopt a new statutory provision requiring all newly established categorical programs that are to be excluded from the block grant to be specified in this code section. Together, these actions would help generate a common understanding of excluded programs and make block grant calculations less controversial and confusing.

Require DOF to Release and Update Funding Model During Budget Process. Currently, DOF estimates the charter school funding model once a year—approximately 30 days after the enactment of the budget act. It does not prepare the model in January or May. This means policymakers and the public school community do not have access to estimates of charter school funding rates until after the budget has been signed. Moreover, even once DOF has determined the final charter school funding rates, it often does not share its underlying model with the public. Additionally, no systematic process is in place for correcting any potential technical budgeting errors. For these reasons, we recommend the Legislature include a statutory provision requiring DOF to estimate per pupil block grant funding rates three times each budget season—at the release of the Governor's January budget proposal, the Governor's May Revision, and 30 days after enactment of the budget. We also recommend the Legislature require: (1) DOF to publicly release the underlying charter school funding model each time it estimates these funding rates and (2) SDE to post the model on its website. This formalized process for publicizing charter school information would help policymakers more easily track changes in charter school funding and would clarify expectations for the charter school community.

In sum, the trend in charter school finance over the last several years has been toward increasing complexity and regulation. A major

component of this trend has been the increasing number of categorical programs that are excluded from the charter school block grant. These programs include some of the largest K-12 programs, and charter schools may access associated funding only if they apply separately to each of the programs and adhere to all their regulations. The block grant also is representing less and less of total available categorical funding and is not providing charter schools with operational funding comparable to that of other public schools serving similar students—the basic intent of charter school finance. To counter these trends, we recommend a general restructuring of the charter school block grant. This restructuring would move a total of 24 categorical programs into the block grant and rebench per pupil funding rates. We further recommend a more systematic process for releasing charter school funding calculations that would provide policymakers and the charter school community more information in a more timely manner.

ENHANCING CHARTER SCHOOL OVERSIGHT AND ACCOUNTABILITY

In addition to funding, oversight and accountability have been perennial issues of legislative concern. Much of this concern has arisen as a result of specific instances of wrongdoing. In particular, over the last decade, some charter schools and charter authorizers have engaged in inappropriate fiscal practices and/or have lacked the prerequisite fiscal acumen needed to manage school sites. Regarding charter school practices, RAND's evaluation found that, since their inception: (1) about 4 percent of all charter schools have closed or had their charters revoked, and (2) a common reason charter authorizers cite for revoking charters is fiscal mismanagement. Similarly, the BSA report uncovered fiscal irregularities in the accounting and reporting practices of four large charter authorizers.

State Already Has Taken Action to Promote Better Oversight and Accountability

These instances of wrongdoing have prompted the Legislature to take actions intended to promote more meaningful oversight and a stronger system of state and local accountability. Below, we discuss these actions.

State Institutes Charter School Reporting Requirements. Given concerns with fiscal mismanagement, and the corollary desire to improve the quality and regularity of the fiscal information charter schools provide to their overseers, the state recently established two specific charter school reporting requirements. Chapter 1058 requires each charter school to approve an annual statement of all receipts and expenditures for the preceding fiscal year and submit the statement to its charter authorizer. Additionally, Chapter 892 now requires each charter school, on an annual basis, to prepare and submit to its charter authorizer: (1) a preliminary budget, (2) an interim financial report, (3) a second interim report, and (4) a final unaudited report.

State Gives COEs and SPI Special Investigative Powers. In addition to routine reporting requirements, the state has strengthened oversight capabilities by providing counties and the state with special investigative powers. Specifically, current law requires charter schools to respond promptly to all reasonable inquiries

made by their charter authorizer, COE, or the SPI. Additionally, current law gives both charter authorizers and COEs the authority to monitor and conduct investigations of charter schools located within their jurisdictions.

State Enacts New Provisions Clarifying Charter Authorizers' Responsibilities. In addition to improving charter school oversight, the state has focused over the last several years on developing a stronger system of charter school accountability. To this end, the state recently codified charter authorizers' basic responsibilities. Specifically, charter school law now requires each charter authorizer, on behalf of each charter school under its authority, to: (1) identify at least one charter school staff member as a primary contact person, (2) visit each school at least annually, (3) ensure that each school complies with all statutory reporting requirements, (4) monitor the fiscal condition of each school, and (5) provide timely notification to SDE if a school will cease its operations or its charter is to be renewed or revoked. These specific requirements were intended to ensure that charter authorizers would be aware of their responsibilities and could be held legally liable for not exercising them.

State Entrusts SBE With Ultimate Revocation Power. In addition to requiring charter authorizers to undertake certain responsibilities, the state has given SBE the authority to revoke charters. The original 1992 law only allowed a charter authorizer to revoke a charter. Chapter 34 modified the original law to allow SBE to act as a final judge, revoking a charter if it finds fiscal mismanagement, illegal behavior, or a "departure from measurably successful practices." Thus, SBE now has the authority to intervene directly to revoke charters and close charter schools.

Despite Recent Actions, Some Charter Authorizers Continue to Face Poor Incentives

Although the state's actions over the last ten years have strengthened charter school oversight and accountability, issues remain relating to charter authorizers. Currently, California essentially has a single-authorizer system, which requires a charter school group, in most instances, to obtain authorization from its local school district. Except on appeal or in other special instances, alternative authorizer options simply are not available. Two basic problems are inherent in single-authorizer systems: (1) some authorizers lack the capacity to conduct meaningful oversight and yet they remain obligated to assume authorizer responsibilities, and (2) a general lack of competition among authorizers results in inefficiencies that might increase costs and lower the overall quality of oversight efforts. Below, we discuss these problems.

Some Charter Authorizers Lack Capacity. The current single-authorizer system has no "opt-out" provision whereby certain types of school districts can decide not to become a charter authorizer. For example, school districts with very limited staff or extreme fiscal difficulties have no legal recourse to opt out of the charter authorizing process. The inability of school districts to opt out of charter authorizing and the inability of charter schools to pursue alternative authorizers are particularly troubling in California. This is because more than two-thirds of charter authorizers in California have chartered only a single charter school. Many

authorizers, therefore, tend to be inexperienced in conducting rigorous oversight. The local cost of oversight also is likely to be high because many authorizers must construct an oversight system essentially from scratch.

Lack of Competition Might Result in Inefficiencies. Given the lack of alternative authorizers, a charter group that is interested in opening a school in a certain area must accept a local school district's terms—even if these terms are inappropriate or burdensome. As discussed above, the 2002 BSA report did find instances of inappropriate fiscal practices across four large charter authorizers. In particular, the BSA report found that these authorizers could justify neither the oversight fees they charged charter schools nor the mandate-cost claims they submitted to the State Controller.

Lack of Competition Might Reduce Quality of Oversight. Some school districts might be particularly receptive or unreceptive to charter schools. In either case, these authorizers are unlikely to conduct appropriate, meaningful oversight. For example, unreceptive school districts might make charter authorization or renewal unnecessarily onerous. Alternatively, especially receptive school districts, such as those facing local facility shortages, might be overly friendly to charter schools—thinking these schools might be an inexpensive means for accommodating additional students. Whereas unreceptive authorizers might conduct inappropriately rigorous oversight, overly friendly authorizers might be inappropriately lax in their oversight—particularly if they have a vested interest in maintaining charter schools in their area.

Allow for Multiple Authorizers and Opt-Out Option, Create Safeguards Against Potential Misconduct

We recommend the Legislature adopt a three-pronged strategy for overcoming the weaknesses of California's single-authorizer system. Specifically, we recommend the Legislature modify charter school law by: (1) permitting school districts to opt out of charter authorizing, (2) allowing for multiple authorizers, and (3) creating safeguards against potential misconduct.

We believe the weaknesses and perverse incentives inherent in the current oversight system could be addressed in large part by taking the following three steps.

Provide Opt-Out Option. We recommend the Legislature allow school districts to opt out of charter authorizing. Specifically, if a school district believes it lacks the infrastructure or expertise to assess charter documents and conduct meaningful oversight, then we recommend the Legislature allow the school district to opt out of the authorizing process. This opt-out option would ensure that a school district would not find itself in the awkward position of overseeing a school when it realistically did not have the capacity to conduct meaningful oversight.

Allow for Multiple Authorizers. We also recommend the Legislature modify existing charter school law to allow multiple types of organizations to authorize charter schools. For instance, authorizers could include SBE, school districts, COEs, accredited colleges and universities, and nonprofit organizations that can meet certain criteria discussed below. (Many other states currently allow multiple authorizers—see shaded box.) A multiple-authorizer system

would address the perverse incentives that currently weaken oversight efforts. For example, if interested in locating within a very small school district, a charter group could seek authorization from a nearby university or a COE—either of which is likely to be better positioned than the small school district to conduct appropriate petition review and oversight. A multiple-authorizer system also would promote competition among authorizers. This competition is particularly important because it would generate efficiencies, potentially lowering costs and substantially reducing the likelihood of excessive overhead fees and other inappropriate charter conditions. Competition among authorizers also would be likely to improve the quality of oversight and technical assistance available to interested charter school groups. Furthermore, a multiple-authorizer system might promote valuable and educationally beneficial partnerships between K-12 schools and teacher education programs, higher education more generally, and nonprofit community groups.

Establish Minimum Criteria for Authorizers. To promote stronger accountability, we recommend the Legislature direct SDE to develop basic criteria that organizations must meet to become charter authorizers. The SDE could then be directed to submit these criteria back to the Legislature in the following legislative session for review and codification. (At a minimum, the criteria should include an understanding of contracts and fiscal management as well as school assessment and accountability.) These codified criteria would provide the state the means by which to remove authorizing power from a particular entity without having to institute a complex licensing or regulatory process for approving charter authorizers. To further enhance oversight, we recommend the Legislature review these criteria after the first five years of implementation and make any necessary changes.

Create Safeguards. Allowing for multiple authorizers generates two special concerns: (1) charter schools could select only the most lenient authorizers that promised them the greatest autonomy, and (2) charter authorizers that were not elected by popular local vote

MULTIPLE-AUTHORIZER SYSTEMS ALREADY EXIST IN SEVERAL STATES

If California were to establish a multiple-authorizer system, it would join the ranks of several other states that already have established these types of systems. Currently, seven states—Indiana, Michigan, Minnesota, Missouri, New York, Ohio, and Wisconsin—have multiple-authorizer systems. In addition to local school boards (and, for some, the state board of education), these seven states allow public universities, private universities, community colleges, technical colleges, mayors, and/or nonprofit educational organizations to approve charter schools. Each state has a slightly different set of allowable charter authorizers. For example, Michigan allows local school boards, joint school boards, community colleges, and public state universities to authorize charter schools whereas Ohio allows local school boards, joint school boards, the state board of education, nonprofit education organizations, a special county education center, and the University of Toledo to authorize charter schools.

could conduct poor oversight without facing appropriate repercussions. To address these concerns, we recommend the Legislature adopt two special safeguards.

- ***Require Specific Information Annually From Charter Authorizers.*** We recommend the Legislature require each charter authorizer to report basic information to the state on an annual basis, including: (1) documentation showing that it satisfies the minimum "authorizer criteria" outlined above, (2) a copy of all memoranda governing its policies, (3) certification that it has completed the responsibilities outlined in Education Code Section 47604.32 (such as conducting an annual site visit), and (4) an audit of all revenue and expenditures related to each of the charter schools under its jurisdiction. We think these safeguards would improve the accessibility and quality of the information about charter authorizers' performance and would enable the state to detect any noncompliant or inappropriate authorizer behavior.

- ***Entrust State With Power to Remove Authorizing Power.*** Whereas the above reporting requirements promote a healthier oversight system, charter authorizers ultimately need to be held accountable if any untoward behavior is detected. To address this concern and establish a stronger system of checks and balances, we recommend the Legislature allow SBE to remove an organization's authorizing power if certain violations have occurred. Specifically, we recommend the Legislature allow SBE to remove authorizing power from any charter authorizer that: (1) fails to satisfy statutory charter authorizer criteria, (2) fails to undertake its statutory oversight responsibilities, or (3) engages in gross financial mismanagement.

Make Two Corollary Changes. Two additional policy changes would need to be made in tandem with the policy changes recommended above.

- ***Appeals Process No Longer Needed.*** In a multiple-authorizer system, an appeal process would no longer be necessary. Any interested group would be able to approach multiple authorizers, thereby allowing a group whose petition was initially rejected by one authorizer to seek an alternative authorizer. This essentially serves the same function as an appeal process—allowing for second chances—without generating the need for a formal appeal process involving multiple layers of government. Although a charter group might "shop" for a lenient authorizer, given the recommendations made above, all authorizers would need to meet minimum standards. Furthermore, charter groups, for their own benefit, would have an incentive to select authorizers that were experienced, provided valuable technical expertise, and ran an efficient operation. Indeed, over time, many authorizers might develop reputations for providing high quality services—which would itself improve accountability.

- ***Existing Geographic Restrictions Would Need to Be Removed But Notification Requirements Could Be Retained.*** Chapter 1058 placed several new geographic restrictions and notification requirements on charter schools. In a multiple-authorizer system, geographic restrictions would need to be removed because certain types of authorizers (for example, universities and nonprofit organizations) do not have easily defined territorial jurisdictions. Although geographic restrictions would need to be removed, all notification provisions established by Chapter 1058 could be retained. For example, charter schools still could be required to list all specific school-site locations in their charter. Additionally, if charter schools wanted to open additional school sites in new locations, they still could be required to revise their charter and obtain formal approval from their authorizer. Retaining these notification requirements would ensure that the impetus for the state's current geographic restrictions—clearly identifying and being able to track charter school locations—would continue to be addressed.

In sum, the state has taken several actions over the last decade to strengthen charter school oversight and accountability, but some problems remain. Most importantly, some charter authorizers continue to have either little incentive or little ability to conduct meaningful oversight. To address these lingering oversight problems, we recommend the Legislature employ a three-pronged strategy that would permit school districts to opt out of charter authorizing, allow for multiple authorizers, and create safeguards against potential authorizer misconduct.

Clarifying and Capping Oversight Fees

As with the state's general system of charter school oversight, some improvements could be made to the state's specific policies regarding charter school oversight fees. Currently, charter school law allows a charter authorizer to charge for the actual cost of oversight but caps the total charge that may be assessed depending on a charter school's facility arrangements. Specifically, if a charter school is using rent-free district facilities, then a charter authorizer's oversight fee is capped at 3 percent of the charter school's total revenue. By comparison, if a charter school is renting nondistrict facilities, a charter authorizer's oversight fee may not exceed 1 percent of the charter school's total revenue. These existing fee policies have three basic problems, which we discuss below.

Facility Fees and Oversight Fees Inappropriately Linked. Current law combines facility fees with oversight fees even though these two types of fees are intended to fund quite different services. Whereas the facility fee is intended to help a school district pay maintenance costs for buildings it has provided to charter schools, the oversight fee is intended to help a school district pay for such activities as reviewing charter petitions, evaluating charter school reports, responding to complaints from charter school parents, investigating charter school fiscal irregularities, and visiting charter school sites. Combining the two fees reduces the ability to track actual costs and makes fiscal accountability unnecessarily difficult.

Current Oversight Fee Not Linked to Appropriate Underlying Cost Variables. Current law also does not link allowable oversight fees with appropriate underlying cost variables. For example, although charter authorizers currently may charge higher oversight fees to charter schools using rent-free facilities, these schools actually might be located closer to the district office and be less costly to monitor than charter schools located further away and renting nondistrict facilities. Moreover, oversight fees are likely to vary according to important variables other than facility arrangements—such as the distance of the charter school from the charter authorizer, the type of instruction offered by the charter school, the enrollment at the charter school, or the level of experience of the charter school operators. Existing policies, however, do not account for these other factors.

Charter Authorizers Might Double Charge the State. Currently, charter authorizers may both charge charter schools an oversight fee and file mandate claims for oversight costs. Moreover, current law does not delineate the types of activities that may be covered with direct charter school oversight fees versus mandate reimbursement claims to the state. As noted in the recent BSA report, this system has the peculiar danger of allowing charter authorizers to double charge the state.

Modify Fee Policies and Eliminate Mandate-Claims Process

We recommend the Legislature amend charter school law to: (1) delineate more clearly between allowable facility fees and oversight fees, (2) cap facility fees and oversight fees at 2 percent and 1 percent, respectively, of a charter school's total revenues, and (3) eliminate the mandate-claims process for oversight costs. Under a multiple-authorizer system, the mandate-claims process could be eliminated because charter authorizing would no longer be a state mandate.

Specifically, we recommend the Legislature modify charter school law in the following ways.

Distinguish More Clearly Between Facility Fees and Oversight Fees. Specifically, we recommend the Legislature clarify that facility fees are to cover maintenance costs and are distinct from oversight fees, which are to cover actual charter school monitoring and oversight activities. Distinguishing between these two types of fees is particularly important in a multiple-authorizer system in which the facility owner (a school district) may be different from the charter authorizer (for example, a university). We further recommend the Legislature specify major monitoring activities in statute—making explicit that oversight fees are intended to cover costs associated with petition reviews, annual assessments of fiscal and academic performance, and charter-renewal determinations.

Cap Facility Fee at 2 Percent of Charter School's Total Revenue. Regarding facility fees, we recommend the Legislature cap the fee a school district may levy at 2 percent of a charter school's total revenue. This is consistent with current law and is a reasonable estimation of the amount schools need to maintain their facilities. Although current estimates and practices suggest that the 2 percent cap is reasonable, we recommend the Legislature periodically review the cap to determine if an adjustment is needed. We recommend the cap be kept aligned with the facility requirements for other public schools.

Cap Oversight Fee at 1 Percent of Charter School's Total Revenue. Regarding oversight

fees, we recommend the Legislature cap the fee a charter authorizer may levy at 1 percent of a charter school's total revenue. A 1 percent cap would be consistent with current law and practice. Given existing ambiguity regarding actual oversight costs, we further recommend, however, that the Legislature periodically reassess the oversight cap to determine if an adjustment is needed. Although capping oversight fees is particularly important in a single-authorizer system, it is less important in a multiple-authorizer system. Until a multiple-authorizer system is well-developed, however, we recommend the cap be maintained. We further recommend the Legislature encourage groups to stipulate agreed-upon oversight fees either in their charter or in an associated MOU.

Eliminate Mandate Claims for Oversight Costs. We recommend the Legislature disallow a charter authorizer from filing mandate reimbursement claims with the state for oversight costs. Under a system of multiple authorizers, no school district is required to be an authorizer. Those school districts, COEs, universities, and nonprofit organizations that choose to be charter authorizers would be doing so voluntarily. Hence, charter authorizing and associated oversight responsibilities become akin to a voluntary-participation program in which a specified funding rate (up to 1 percent of a charter school's total revenue) could be offered in exchange for charter authorizers undertaking specified responsibilities (such as annual fiscal and programmatic reviews).

In sum, existing charter school fee policies are problematic in several ways. Most importantly, existing fee policies inappropriately link facility fees with oversight fees, are not cost-based, and risk double charging the state for oversight costs. To address these concerns, we recommend the Legislature create distinct facility and oversight fee policies, cap fee charges, and disallow mandate claims for charter school oversight activities.

SUMMARY

Charter schools are now in their eleventh year of operation in California. Two statewide evaluations of charter schools in California have concluded that they are meeting original legislative intent—expanding families' choices, encouraging parental involvement, increasing teacher satisfaction, and raising academic achievement, particularly for certain groups of disadvantaged students. Despite these strengths, some challenges remain regarding the funding and oversight of charter schools. Most importantly, RAND found that, despite legislative intent, charter schools are not receiving state funding comparable to other public schools serving similar students. RAND also concluded that California's oversight system was still in developmental stages and could benefit from additional information about charter school and charter authorizer practices and performance.

In response to RAND's findings, we recommend the Legislature take a number of steps, particularly in the areas of charter school funding and oversight. Specifically, we recommend the Legislature:

- Remove the cap on the number of charter schools that may operate in the state.

- ➢ Restructure the charter school categorical block grant by shifting 14 currently excluded programs into the general block grant, shifting ten other currently excluded programs into the disadvantaged-student component of the block grant, and rebenching the underlying per pupil funding rates in a cost-neutral manner.
- ➢ Strengthen charter school oversight by permitting school districts to opt out of charter authorizing, allowing for multiple authorizers, and creating safeguards to promote stronger accountability.
- ➢ Modify fee policies by delineating more clearly between facility fees and oversight fees, capping these fees (at 2 percent and 1 percent, respectively, of total charter school revenues), and eliminating the mandate-claims process for oversight costs.

Taken together, these reforms would be a significant step forward in improving charter school funding and oversight in California.