

## Facilities

### Charter School Facilities

This regulation governs the district's provision of facilities to charter schools operating in the district. Nothing in this regulation prevents the district and charter school from mutually agreeing to an alternative to specific compliance with the following.

### Definitions

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

In-district classroom ADA is classroom ADA attributable to in-district students. In-district students are those charter school students who are entitled to attend a district school. Students eligible to attend district schools based on an inter-district attendance agreement or parent/guardian employment shall be considered student(s) of the district(s) where they reside. (5 CCR 11969.2) The district and the charter school shall not include non-classroom-based ADA in the "in-district classroom ADA" for purposes of offering reasonably equivalent facilities.

An eligible charter school operating in the district is one that is either currently providing classroom based public education to more than eighty (80) in-district students or has identified at least eighty (80) in-district students who are meaningfully interested in enrolling in the charter school for the following year, regardless of whether or not the district is or may become the chartering entity, and whether or not the charter school has a facility inside the district's boundaries. (Education Code 47614; 5 CCR 11969.2)

Furnished and equipped means the facilities allocated include reasonably equivalent furnishing necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction, as found in the comparison group schools established under 5 CCR 11969.3(a), and that the facilities have equipment that is reasonably equivalent to the comparison group schools. Equipment means property that does not lose its identity when removed from its location and is not changed materially or consumed immediately (e.g., within one year). Equipment has relatively permanent value and its purchase increases the total value of the district's physical properties. Examples include furniture, vehicles, machinery, motion picture film, videotape, furnishings that are not fixtures (an integral part of the building or building system), and certain intangible assets such as major software programs. Furnishings and equipment acquired for a school site with non-district resources (i.e. grant or other third party funds) are excluded when determining reasonable equivalence. (5 CCR 11969.2)

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#### Determination of Reasonably Equivalent Facilities

The district shall provide facilities to a charter school sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. (Education Code 47614; 5 CCR 11969.3)

The district is not required to modify a school site to accommodate the charter school's grade-level configuration; however, the district and charter school may enter into an agreement to modify an existing school site with the costs modification and the return to its original condition after use to be paid exclusively by the charter school. (5 CCR 11969.3)

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

1. A comparison group of district schools with similar grade levels, selected in accordance with 5 CCR 11969.3 (5 CCR 11969.3)

If none of the district-operated schools has grade levels similar to the charter school, then the comparative facility shall be an existing facility that is most consistent with the needs of the students in the grade levels served at the charter school. If a charter school's grade-level configuration is different from the configuration of the district's schools, the district is not obligated to pay for the modification of a school site to accommodate the charter school's differing grade level configuration at a single site. (5 CCR 11969.3)

2. Facilities will include an equivalent ratio of teaching stations (classrooms) to ADA as those provided to district students attending comparison group schools. District ADA shall be determined using projections for the fiscal year and grade levels for which facilities are requested. (5 CCR 11969.3)

The number of teaching stations shall be determined using the classroom inventory prepared pursuant to 2 CCR 1859.31, adjusted to exclude classrooms identified as interim housing. Interim housing means the rental or lease of classrooms used to house students temporarily displaced as a result of the modernization of classroom facilities, as defined in 2 CCR 1859.2, and classrooms used as emergency housing for schools vacated due to structural deficiencies or natural disasters. (5 CCR 11969.3)

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If the district includes specialized classroom space, such as science laboratories, in its classroom inventory, the space allocation shall include either a share of specialized classroom space or a provision for access to reasonably equivalent specialized classroom space. The amount of specialized classroom space shall be determined by the grade levels of the charter school's in-district students, the charter school's total in-district classroom ADA, and the per-student amount of specialized classroom space in the comparison group schools. Temporary use of excess classrooms by school site administrators for non-classroom purposes shall not constitute "specialized classroom space" under this regulation.

The district shall allocate and/or provide access to non-teaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools. Non-teaching station space is all of the space that is not identified as teaching station space or specialized classroom space and includes, but is not limited to, administrative, kitchen, multi-purpose room, and play area space. (5 CCR 11969.3)

In allocated and/or providing access to space, the district and the charter school shall establish time allocations and schedules so that educational programs of the district and charter school are least disrupted. (5 CCR 11969.3)

3. Condition of facilities, as determined by assessing such factors as age of facilities (from last modernization), quality of materials, and state of maintenance, including: (5 CCR 11969.3)
  - a. School site size
  - b. Condition of interior and exterior surfaces
  - c. Condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes
  - d. Availability and condition of technology infrastructure
  - e. Condition of the facility as a safe learning environment, including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use

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- f. Condition of the facility's furnishing and equipment
- g. Condition of athletic fields and/or play area space

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

### Request and Provision of Facilities: Timelines and Procedures

A charter school must be operating in the school district, as defined by Education Code section 47614 before it submits a request for facilities. A new or proposed charter school is only eligible to request facilities if its charter petition was submitted on or before November 1 of the fiscal year preceding the year for which facilities are requested. A new charter school is entitled to be allocated or provided access to facilities only if it receives approval of the petition before March 15 of the fiscal year preceding the year for which facilities are requested. (5 CCR 11969.9)

The following procedures shall apply to a charter school's request for and the district's provision of facilities:

1. On or before November 1, a charter school shall submit a written request for facilities to the Superintendent or designee for the next fiscal year. The request shall include at least the following: (Education Code 47614; 5 CCR 11969.9)
  - a. Reasonable projections of in-district and total ADA and in-district and total classroom ADA, based on ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year. Projections of in-district ADA, in-district classroom ADA, and the number of in-district students shall be broken down by grade level and by the district school that the student would otherwise attend. The projections must contain enough information for the district to verify each student's residency within in the district;
  - b. A description of the methodology used to arrive at the projections;

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- c. If relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in ADA), documentation of the number of in-district students meaningfully interested in attending the charter school that is sufficient for the district to determine the reasonableness of the projection;
- d. The charter school's operational calendar;
- e. Information regarding the district's school site and/or general geographic area in which the charter school wishes to locate; and
- f. Information on the charter school's educational program, if any, that is relevant to assignment of facilities.

In submitting a facilities request containing at least all of the information specified in paragraph 1 above, the charter school shall use a form available from the California Department of Education (CDE) or other form specified by the district. The charter school shall distribute, or otherwise make available for review, the written request to interested parties, including, but not limited to, parents/guardians and school staff.

- 2. On or before December 1, the district shall review the charter school's projections of in-district and total ADA and in-district and total classroom ADA, express any objections in writing, and state the projections the district considers reasonable. If the district does not express any objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge and the district shall base its offer of facilities on those projections. (5 CCR 11969.9)
- 3. On or before January 2, the charter school shall respond to any objections expressed by the district and to the district's attendance projections provided pursuant to item #2 above. The charter school shall reaffirm or modify its previous projections as necessary to respond to the information received from the district pursuant to item #2. If the charter school does not respond by January 2, the district's projections provided pursuant to item #2 are no longer subject to challenge and the district shall base its offer of facilities on those projections. (5 CCR 11969.9)

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4. On or before February 1, the district shall prepare a written preliminary proposal regarding the space to be allocated to the charter school and/or to which the charter school is to be provided access. At a minimum, the preliminary proposal shall include: (5 CCR 11969.9)
  - a. The projections of in-district classroom ADA on which the proposal is based;
  - b. The specific location(s) of the space;
  - c. All conditions pertaining to the space, including a draft of any proposed agreement pertaining to the charter school's use of the space;
  - d. The projected pro rata share amount and a description of the methodology used to determine that amount; and
  - e. A list and description of the comparison group schools used in developing the district's preliminary proposal and a description of the difference between the preliminary proposal and the charter school's request submitted pursuant to item #1 above.

In evaluating and accommodating the charter school's request, the charter school's in-district students shall be given the same consideration as students in the district's schools, subject to the requirement that the facilities provided must be contiguous. (5 CCR 11969.2) Facilities are contiguous if they are contained on a school site or immediately adjacent to a school site. If the in-district classroom ADA cannot be accommodated on any single school site, contiguous facilities also includes facilities located at more than one site. Where in-district classroom ADA cannot be accommodated on any single site, the district will minimize the number of sites assigned and will consider student safety in determining available contiguous facilities. (5 CCR 11969.2)

5. On or before March 1, the charter school shall respond in writing to the district's preliminary proposal made pursuant to item #4 above and shall express any concerns, including addressing differences between the preliminary proposal and the charter school's request, and/or make a counter proposal. (5 CCR 11969.9)

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6. On or before April 1, having reviewed any concerns and/or counter proposals made by the charter school pursuant to item #5 above, the district shall submit, in writing, a final notification of the space offered to the charter school. The notification shall include a response to the charter school's concerns and/or counter proposal, if any. The final notification shall specifically identify: (5 CCR 11969.9)
  - a. The teaching stations, specialized classroom spaces, and non-teaching station spaces offered for the exclusive use of the charter school and the teaching stations, specialized classroom spaces, and non-teaching spaces to which the charter school is to be provided access on a shared basis with district-operated programs;
  - b. Arrangements for sharing any shared space;
  - c. The in-district classroom ADA assumptions for the charter school upon which the allocation is based, and if the assumptions are different than those submitted by the charter school pursuant to item #3 above, a written explanation of the reasons for the differences;
  - d. The specific location(s) of the space;
  - e. All conditions pertaining to the space;
  - f. The pro rata share amount; and
  - g. The payment schedule for the pro rata share amount, which shall take into account the timing of revenues from the state and from local property taxes.

If the district's preliminary proposal pursuant to item # 4 or final notification pursuant to item # 6 does not accommodate a charter school at a single school site, the district's governing board will make a finding that the charter school could not be accommodated at a single site and adopt a written statement of reasons explaining the finding.

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7. By May 1 or within 30 days after the district notification pursuant to item #6 above, whichever is later, the charter school shall notify the district in writing whether or not it intends to occupy the offered space. (5 CCR 11969.9) The charter school's notification may be withdrawn or modified before this deadline. After the deadline, if the charter school has notified the district that it intends to occupy the offered space, the charter school is committed to paying the pro rata share amount as identified. If the charter school does not notify the district by this deadline that it intends to occupy the offered space, then the space shall remain available for district programs and the charter school shall not be entitled to use facilities of the district in the following fiscal year. (5 CCR 11969.9)
8. The district and charter school shall negotiate an agreement regarding the use of and payment schedule for the space. In addition, the district shall provide a draft of any proposed agreement pertaining to the charter school's use of the space in conjunction with the preliminary offer, as detailed in item #4 above. (5 CCR 11969.9)
  - a. At a minimum, the agreement shall contain the information included in the district's final notification, as listed in item #6 above.
  - b. The charter school shall maintain general liability insurance naming the district as an additional insured in order to indemnify the district for any damage and losses occurring on or to the allocated space. The district shall maintain first party property insurance for the facilities allocated to the charter school. (cf. 3530 - Risk Management/Insurance)
  - c. The charter school shall comply with Board policies regarding the operations and maintenance of school facilities, furnishings, and equipment.
  - d. A reciprocal hold-harmless/indemnification provision shall be established between the district and the charter school.
  - e. The district shall be responsible for any modifications necessary to maintain the facility in accordance with Education Code 47610(d) or 47610.5.

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9. The space allocated to the charter school by the district, or the space to which the district provides the charter school access, shall be furnished, equipped, and available for occupancy at least ten (10) working days prior to the first day of instruction of the charter school. For good cause, the district may reduce the period of availability to a period of not less than seven (7) working days. (5 CCR 11969.9)

Space allocated for use by the charter school, subject to sharing arrangements, shall be available for the charter school's entire school year regardless of the district's instructional year or class schedule. The charter school shall not sublet or use the facilities for purposes other than those that are consistent with the agreement in item #8, as well as Board policies and district practices for use of other public schools of the district without permission of the Superintendent or designee. (5 CCR 11969.5)

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

#### Charges for Facilities Costs

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

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#### Charges for Facilities Costs

The charter school shall pay the district a pro-rata share, not exceeding a per-square-foot amount equal to district facilities costs which the district has paid with unrestricted general fund resources, divided by the total space of the school district, times the amount of space allocated by the district to the charter school. The per-square-foot charge shall be determined using actual facilities costs in the year preceding the fiscal year in which facilities are provided, as well as the largest amount of total space of the district at any time during the year preceding the fiscal year in which facilities are provided. Space allocated by the district shall be calculated based on the amount of space allocated for the exclusive use of the charter school compared to the amount of space allocated to the exclusive use of the district-operated programs.

General fund means the main operating fund of the district which is used to account for all activities except those that are required to be accounted for in another fund. (5 CCR 11969.2)

Unrestricted revenues are those funds whose uses are not subject to specific constraints and that may be used for any purposes not prohibited by law. Restricted revenues are those funds received from external sources that are legally restricted or that are restricted by the donor to specific purposes. Programs funded by a combination of restricted and unrestricted sources will be accounted for and reported as restricted and funds or activities that are not restricted or designated by the donor, but rather by the Governing Board, shall be accounted for and reported as unrestricted. (5 CCR 11969.2)

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

Facilities costs also include contributions from unrestricted general fund revenues to the district's Ongoing and Major Maintenance Account, Routine Restricted Maintenance Account, and/or deferred maintenance fund, costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund, costs paid from unrestricted general fund revenue for replacement of facilities-related furnishings and equipment, according to district schedules and practices, and debt services costs.

Facilities costs do not include any costs that are paid by the charter school, including costs associated with ongoing operations and maintenance, and the costs of any tangible items adjusted in keeping with a customary depreciation schedule for each item.

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The charter school shall report actual in-district and total ADA and classroom ADA to the district every time that the charter school reports ADA for apportionment purposes. The charter school must maintain records documenting the data contained in the reports, and shall make those records available on request by the district. Any space allocated for out of district students shall be rented to the charter school at fair market value.

If the charter school generates less ADA than projected, the charter school shall reimburse the district for the over-allocated space as set forth in 5 CCR 11969.8, unless the district agrees, in response to the notification by the charter school of over-allocation, to exercise its sole discretion to use the over-allocated space for district programs. (Education Code 47614; 5 CCR 11969.8, 11969.9)

If the district is the charter school's authorizing entity, the district may only charge for the actual costs of supervisory oversight of the charter school not to exceed one percent of the school's revenue for as long as it charges the charter school a pro rata share of facilities costs, as specified in this section.

#### Additional Provisions for Charter School Established at an Existing School Site

The following provisions apply only to a charter school established at an existing school site pursuant to Education Code 47605(a)(2), 52055.5, 52055.55, or 52055.650 that operated at the site in its first year pursuant to 5 CCR 11969.3(c)(2). (5 CCR 11969.3)

1. The school site, as identified in the school's charter and approved by the district in the petition process, shall be made available to the charter school for its second year of operation and thereafter upon annual request for facilities from the district pursuant to Education Code 47614 and this administrative regulation if the charter school occupied that site during its first year of operation. (5 CCR 11969.3)

The district may charge the charter school the pro-rata costs for the site pursuant to 5 CCR 11969.7 and the district shall be entitled to receive reimbursement for over-allocated space from the charter school pursuant to 5 CCR 11969.8. During the first year of operation, the charter school shall be subject to pro rata facilities costs, but shall not be subject to reimbursement for over-allocated space. (5 CCR 11969.3)

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If, by February 1 of its first year of operation, a charter school notifies the district that it will have unused space in the following fiscal year, the unused space identified is not subject to reimbursement pursuant to 5 CCR 11969.8 in the following year or thereafter. The district may occupy all or a portion of the unused space identified. (5 CCR 11969.3)

A charter school that wants to recover space surrendered to the district shall submit a request to the district and the district shall evaluate the application in accordance with law and this administrative regulation. (5 CCR 11969.3)

2. If, as a result of a material revision of the charter, either the location of the charter school is changed or the district approves the operation of additional sites by the charter school, then the charter school may request, and the district shall provide, facilities in accordance with the revised charter, law, and this administrative regulation. (5 CCR 11969.3)
  - a. If the charter school was established pursuant to Education Code 47605(a)(2), the district shall change the school's attendance area only if the State Board of Education (SBE) grants a waiver of the requirement in Education Code 47605(d)(1) that the charter school continuously give admission preference to students residing in the former attendance area of the school site. (5 CCR 11969.3)
  - b. If the charter school was established pursuant to Education Code 52055.5, 52055.55, or 52055.650, the district shall relocate the school or change the school's attendance area only if the SBE grants a waiver of the provision of statute binding the school to the existing site. (5 CCR 11969.3)
  - c. If the district decides to change the charter school's attendance areas as provided in #2(a) or 2(b) above, and if the decision occurs between November 1 and June 30 and becomes operative in the forthcoming fiscal year, then the space allocated to the charter school is not subject to reimbursement for over-allocated space pursuant to 5 CCR 11969.8 in the forthcoming fiscal year. (5 CCR 11969.3)

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A conversion charter school has no automatic entitlement to retain the converted school site during its first year of operation. The conversion charter may only operate at the converted school site if called for in the charter school petition and agreed to by the district in the charter approval process. Should a conversion charter operate at an existing public school site in its first year of operation, as identified in the school's charter, that school site shall be made available to the school for its second year of operation and thereafter upon annual request pursuant to Education Code section 47614. (5 CCR 11969.3)

### Mediation of Disputes

If a dispute arises between the district and a charter school pursuant to Education Code 47614 or 5 CCR 11969.1-11969.10 both parties may agree to settle the dispute using mediation. Mediation consists of the following steps: (5 CCR 11969.10)

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

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4. The mediation shall be entirely informal in nature. Each party shall share copies of exhibits upon which its case is based with the other party at least three business days prior to the mediation. The relevant facts shall be elicited in a narrative fashion to the extent possible, rather than through examination and cross-examination of witnesses.
5. Any agreement reached by the parties shall be in writing and shall not set a precedent for any other case.
6. The mediation shall be terminated if the district and the charter school fail to meet within the specified timelines, have not reached an agreement within 15 days from the first meeting held by the mediator, or if the mediator declares an impasse.
7. The costs of the mediation shall be divided equally between the parties and paid promptly.

Legal Reference: Education Code: 17070.10-17080, 17078.52-17078.66, 17280-17317, 46600, 47600-47616.5, 48204  
Government Code: 53094; 53097.3  
Code Of Regulations Title 5: 11969.1-11969.10  
Code Of Regulations Title 2: 1859.2, 1859.31  
Court Decisions: 1859.160-1859.171, Charter school facilities program, new construction; Ridgecrest Charter School v Sierra Sands Unified School District 130 Cal. App. 4<sup>th</sup> 986; Sequoia Union High School District v. Aurora Charter High School (2003) 112 Cal. App. 4<sup>th</sup> 185

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