

CHARTER SCHOOL AUTHORIZATION

The Board of Trustees (Board) recognizes that charter schools may assist the District in offering diverse learning opportunities for District students. In considering any petition to establish a charter school within the District, the Board shall give careful consideration to the potential of the charter school to provide students with a high-quality education that enables them to achieve to their fullest potential.

These schools shall operate under the provisions of their charters, federal laws, specified state laws and general oversight of the Board. The District and any charter school approved by the Board shall comply with all requirements in California's Charter Schools Act (Education Code section 47600, et seq.).

One or more persons may submit a petition for a charter school to be established within the District or for the conversion of an existing District school to a charter school. (Ed. Code, § 47605.)

Any petition for a charter school shall include all components, signatures, and statements required by law. The proposed charter shall be attached to the petition. (Ed. Code, § 47605.)

The Superintendent or designee shall consult with legal counsel, as appropriate, regarding compliance of the charter petition with legal requirements.

The Superintendent or designee may work with charter school petitioners prior to the formal submission of the petition in order to ensure compliance of the petition with legal requirements. As needed, the Superintendent or designee may also meet with the petitioners to establish workable plans for contracted services, which the District may provide, to the proposed charter school.

The Board shall not require any District student to attend the charter school nor shall it require any District employee to work at the charter school. (Ed. Code, § 47605.)

Timelines for Board Action

Within 60 days of receiving a charter petition, the Board shall hold a public hearing on the charter provisions, at which time the Board shall consider the level of support for the petition by teachers, other employees of the District, and parents/guardians. A petition is deemed received on the day the petitioner submits a petition to the District office, along with a signed certification that the petitioner deems the petition complete. (Ed. Code, § 47605)

The Board shall either grant or deny the petition at a public hearing held within 90 days of receiving the petition, or within 120 days with the consent of both the petitioner and the Board. (Ed. Code, § 47605.)

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At least 15 days before the public hearing at which the Board will grant or deny the charter, the District shall publish all staff recommendations regarding the petition, including any recommended findings and, if applicable, certification from the County Superintendent of Schools regarding the potential fiscal impact of the charter school on the District. During the public hearing, the petitioners shall have equal time and opportunity to present evidence and testimony in response to the staff recommendations and findings. (Ed. Code, § 47605.)

The Superintendent or designee shall maintain accurate records, in relation to each charter petition, of documents submitted, the Board's proceedings, and the findings upon which the Board's decision is made.

A. Petition Submission Protocol

A charter petition is deemed received by the District, for purposes of commencing the timelines for Board action, on the day the petitioner submits a complete Charter School Petition Package to the District's Charter School Office. The package must include a signed certification that the petitioner deems the submitted petition to be complete. The certification form and the complete submission protocol can be found on the District's website.

B. Approval of Petition

A charter petition shall be granted only if the Board is satisfied that doing so is consistent with sound educational practice and the interests of the community in which the school is proposing to locate. In granting charters, the Board shall consider the academic needs of the students the charter school proposes to serve and shall give preference to petitions that demonstrate the capability to provide comprehensive learning experiences for students who are identified by the petitioner as academically low-achieving, based on standards established by the California Department of Education (CDE). (Ed. Code, § 47605.)

Prior to authorizing any charter, the Board shall verify that the charter includes adequate processes and measures for monitoring and holding the school accountable for fulfilling the terms of its charter and complying with all applicable laws, including Education Code section 47604.1. Such processes and measures shall include, but are not limited to, fiscal accountability systems, multiple measures for evaluating the educational program, inspection and observations of any part of the charter school, and regular reports to the Board.

The approval or denial of a charter petition shall not be controlled by collective bargaining agreements nor subject to review or regulation by the Public Employment Relations Board. (Ed. Code, § 47611.5.)

The Board may approve one or more memoranda of understanding to clarify the financial and operational agreements between the District and the charter school. Any such memorandum of

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understanding shall be annually reviewed by the Board and charter school governing body and amended as necessary.

The Board may initially grant a charter for a specified term not to exceed five years. (Ed. Code, § 47607.)

When a petition is approved by the Board, it shall be the responsibility of the petitioners to provide written notice of the Board's approval and a copy of the charter to the County Superintendent of Schools, the CDE, and the State Board of Education (SBE). (Ed. Code, § 47605.)

C. Denial of Petition

The Board shall summarily deny any charter petition that proposes to:

1. Operate a charter school as or by a for-profit corporation, a for-profit educational management organization, or a for-profit charter management organization (Ed. Code, §47604.)
2. Convert a private school to a charter school (Ed. Code, § 47602.)
3. Serve students in a grade level that is not served by the District, unless the petition proposes to serve students in all the grade levels served by the District (Ed. Code, § 47605.)
4. Offer non classroom-based instruction (Ed. Code , § 47612.7.)

Regarding all other charter petitions, the Board shall deny a petition only if the Board makes written factual findings specific to the petition that one or more of the following conditions exist: (Ed. Code, § 47605; 5 CCR § 11967.5.1.)

1. The charter school presents an unsound educational program that has a likelihood of physical, educational, or psychological harm to, or which is not likely to provide an educational benefit for, the students 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.
4. The petition does not contain a clear, unequivocal statement described in Education Code section 47605(e), including that the charter school will be nonsectarian and that the school shall not charge tuition or discriminate against any student based on the characteristics specified in Education Code section 220.

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5. The petition does not contain reasonably comprehensive descriptions of the charter provisions in Education Code section 47605, subdivision (c).
6. The petition does not contain a declaration of whether or not the charter school shall be deemed the exclusive public employer of the school's employees for purposes of collective bargaining pursuant to Government Code sections 3540-3549.3.
7. The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school. A written factual finding shall detail specific facts and circumstances regarding:
 - a. The extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings.
 - b. Whether the proposed charter school would duplicate a program currently offered within the District, when the existing program has sufficient capacity for the students proposed to be served within reasonable proximity to where the charter school intends to locate.
8. The District is not positioned to absorb the fiscal impact of the proposed charter school. The District meets this criterion if it has a negative interim certification, or has a qualified interim certification and the County Superintendent certifies that approving the charter school would result in the District having a negative interim certification.

The Board shall not deny a petition based on the actual or potential costs of serving students with disabilities, nor shall it deny a petition solely because the charter school might enroll students with disabilities who reside outside the special education local plan area in which the District participates. (Ed. Code, §§ 47605.7, 47647.)

D. Approval of Petition Subject to Entry into Memorandum of Understanding; Operation as Denial Unless Charter School Agrees in Memorandum of Understanding to Address Identified Issues and Revise Petition Accordingly

The Board is cognizant of the intent of the Legislature that charter schools are, and should become, an integral part of the California educational system, and that the establishment of charter schools should be encouraged.

Therefore, if the Board determines that a petition for a start-up charter school or conversion charter school presents a program that has the potential to provide students with a high-quality education but fails to include all components and/or signatures required by law, and that the

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petition may be revised to include the requisite components and/or signatures, the Board may consider the option of approving the petition subject to the charter school's agreement to enter into a memorandum of understanding (MOU) addressing the identified issues. The terms of the MOU will become part of the charter petition. (Ed. Code, §§ 35160, 35160.1.)

If the Board elects to approve the petition subject to the charter school's entry into an MOU, the Board shall present written factual findings specific to the petition setting forth the issues to be addressed in the MOU and the time frame within which the issues must be resolved. The Board shall also specify a date by which the revised petition must be submitted.

If the charter school fails to comply with the terms of the MOU, the District may take appropriate action including issuance of a Notice of Concern, Notice of Violation(s) and revocation of the charter, as appropriate.

E. Appeals

If the Board denies a petition, the petitioner may choose to submit the petition to the County Board of Education and, if then denied by the County Board, to the SBE. (Ed. Code, § 47605.)

At the request of the petitioner, the Board shall prepare the documentary record, including a transcript of the public hearing at which the Board denied the charter, no later than 10 business days after the petitioner makes the request. (Ed. Code, § 47605.)

Within 30 days of receipt of an appeal submitted to the SBE, the Board may submit a written opposition to the SBE detailing, with specific citations to the documentary record, how the Board did not abuse its discretion in denying the petition. (Ed. Code, § 47605.)

If either the County Board or SBE remands the petition to the Board because the petition on appeal contains new or different material terms, the Board shall reconsider the petition and shall grant or deny the petition within 30 days. (Ed. Code, § 47605.)

Legal Reference:

EDUCATION CODE:

200 Equal rights and opportunities in state educational institutions

220 Nondiscrimination

1240 Duties of County Superintendent

17078.52-17078.66 Charter schools facility funding; state bond proceeds

17280-17317 Field Act

17365-17374 Field Act, fitness for occupancy

32282 Comprehensive safety plan

33126 School Accountability Report Card

41365 Charter school revolving loan fund

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42131 Interim certification
42238.51-42238.2 Funding for charter districts
44237 Criminal record summary
44830.1 Certificated employees, conviction of a violent or serious felony
45122.1 Classified employees, conviction of a violent or serious felony
46201 Instructional minutes
47600-47616.7 Charter Schools Act of 1992
47640-47647 Special education funding for charter schools
47650-47652 Funding of charter schools
49011 Student fees
51745-51749.6 Independent study
52052 Accountability: numerically significant student subgroups
52060-52077 Local control and accountability plan
56026 Special education
56145-56146 Special education services in charter schools
CORPORATIONS CODE
5110-6910 Nonprofit public benefit corporations
GOVERNMENT CODE
1090-1099 Prohibitions applicable to specified officers
3540-3549.3 Educational Employment Relations Act
6250-6270 California Public Records Act
54950-54963 Ralph M. Brown Act
81000-91014 Political Reform Act of 1974
CODE OF REGULATIONS, TITLE 5
11700.1-11705 Independent study
11960-11968.5.5 Charter schools
UNITED STATES CODE, TITLE 20
7223-7225 Charter schools
COURT DECISIONS
Ridgecrest Charter School v. Sierra Sands Unified School District, (2005) 130 Cal.App.4th 986
ATTORNEY GENERAL OPINIONS
Opinion No. 11-201 (2018)
89 Ops.Cal.Atty.Gen. 166 (2006)
80 Ops.Cal.Atty.Gen. 52 (1997)
78 Ops.Cal.Atty.Gen. 297 (1995)

Policy

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CAPISTRANO UNIFIED SCHOOL DISTRICT

San Juan Capistrano, California