

Regulation 7160: Charter School Facilities

Status: ADOPTED

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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. (5 CCR 11969.2)

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 interdistrict attendance agreement or parent/guardian employment shall be considered students of the district where they reside. (5 CCR 11969.2)

Operating in the district means the charter school is either currently providing public education to in-district students or has identified at least 80 in-district students who are meaningfully interested in enrolling in the charter school for the following year, regardless of whether the district is or is proposed to be 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)

Reasonably equivalent facilities are facilities that are 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. Reasonable equivalency shall be determined based on a comparison group of district schools with similar grade levels, the capacity of facilities, and the condition of facilities, as described below in the section "Submission and Review of Facilities Requests." (5 CCR 11969.2, 11969.3)

Furnished and equipped means the facilities 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 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 nondistrict resources are excluded when determining reasonable equivalence. (5 CCR 11969.2)

Contiguous facilities are those facilities contained on a school site or immediately adjacent to a school site. If the in-district classroom ADA of the charter school cannot be accommodated on any single school site, contiguous facilities also include facilities located at more than one site, provided that the district minimizes the number of sites assigned and considers student safety. If none of

the district-operated schools has grade levels similar to the charter school, then a contiguous facility shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school. (5 CCR 11969.2, 11969.3)

Conversion charter school is a charter school established through the conversion of an existing public school. (Education Code 47605)

Eligibility for District Facilities

A charter school shall be operating in the district, as defined above, before it submits a request for facilities. A new or proposed charter school operating in the district is eligible to request facilities for a particular fiscal year only if it submits its charter petition before November 1 of the fiscal year preceding the year for which facilities are requested. A new charter school is entitled to be allocated and/or provided access to facilities only if it receives approval of its charter petition before March 15 of the fiscal year preceding the year for which facilities are requested. (5 CCR 11969.9)

Submission and Review of Facilities Requests

The following procedures shall apply to a charter school's request for 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: (Education Code 47614; 5 CCR 11969.2, 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 students would otherwise attend.

Nonclassroom ADA may be included in the ADA calculation only to the extent of instructional time that students generating nonclassroom ADA are actually in the classroom under the direct supervision and control of a charter school employee, and only if the district and the charter school agree upon the time(s) that the facilities devoted to students generating nonclassroom-based ADA will be used.

- b. A description of the methodology for the projections
 - 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, but that need not be verifiable for precise arithmetical accuracy
 - 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
- f. Information on the charter school's educational program that is relevant to assignment of facilities, if any

In submitting a facilities request, the charter school shall use a form specified by the district. The charter school shall distribute a reasonable number of copies of the written request to parents/guardians, school staff, and/or other interested parties, or shall otherwise make the request available for review.

- 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)
- 4. The district shall determine what facilities it will offer to the charter school, ensuring that the facilities are reasonably equivalent to other district facilities. (5 CCR 11969.3)

If a charter school was established through the conversion of an existing public school pursuant to Education Code 47605(a)(2), 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)

For any other charter school, reasonable equivalency shall be based on the following criteria as detailed in 5 CCR 11969.3: (5 CCR 11969.3)

- a. A comparison group of district schools with similar grade levels

If a charter school's grade-level configuration is different from the configuration of the district's schools, the district shall not pay for the modification of a school site to accommodate the charter school's configuration

- b. Capacity, including equivalency of the ratio of teaching stations (classrooms), specialized classroom space, and nonteaching space to ADA
- c. Condition of facilities, as determined by assessing such factors as age of facilities (from last modernization), quality of materials, and state of maintenance, including:
 - i. School site size
 - ii. Condition of interior and exterior surfaces

- iii. Condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes
 - iv. Availability and condition of technology infrastructure
 - v. 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
 - vi. Condition of the facility's furnishing and equipment
 - vii. Condition of athletic fields and/or play area space
5. 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. 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. At a minimum, the preliminary proposal shall include: (5 CCR 11969.2, 11969.3, 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
 - 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
6. On or before March 1, the charter school shall respond in writing to the district's preliminary proposal made pursuant to item #5 above and shall express any concerns, including differences between the preliminary proposal and the charter school's request, and/or make a counter proposal. (5 CCR 11969.9)
7. On or before April 1, having reviewed any concerns and/or counter proposals made by the charter school pursuant to item #6 above, the district shall submit, in writing, a final notification of the space to be 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 nonteaching station spaces offered for the exclusive use of the charter school and the teaching stations, specialized classroom spaces, and nonteaching 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 assumptions of in-district classroom ADA 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
 - g. The payment schedule for the pro rata amount, which shall take into account the timing of revenues from the state and from local property taxes
8. By May 1 or within 30 days after the district notification pursuant to item #7 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)

Availability of Facilities

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 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 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. (5 CCR 11969.5)

For a conversion charter school, the school site identified in the school's charter 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 this administrative regulation. If, as a result of a material revision of the charter, either the location of the conversion charter school is changed or the district approves the operation of additional sites by the school, then the school may request, and the district shall provide, facilities in accordance with law, the revised charter, and this administrative regulation. (5 CCR 11969.3)

Written Agreement Regarding Facilities Operations

The district and charter school shall negotiate an agreement regarding the use of and payment for the space which contains, at a minimum, the information included in the district's final notification pursuant to item #7 in the section "Submission and Review of Facilities Requests" above. (5 CCR

11969.9)

A reciprocal hold-harmless/indemnification provision shall be established between the district and the charter school. 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. The district shall maintain first party property insurance for the facilities allocated to the charter school. (5 CCR 11969.9)

Responsibilities for facility maintenance and improvements shall be as follows: (5 CCR 11969.4, 11969.9)

1. The district shall be responsible for:
 - a. Modifications necessary to maintain the facility in accordance with applicable building codes pursuant to Education Code 47610 or 47610.5
 - b. Replacement of district-provided furnishings and equipment in accordance with district schedules and practices
 - c. Projects eligible to be included in the district's deferred maintenance plan
2. The charter school shall be responsible for the ongoing operations and maintenance of facilities, furnishings, and equipment.

The charter school shall not sublet or use the facilities for purposes other than those that are consistent with district policies and practices without permission of the Superintendent or designee. (5 CCR 11969.5)

Facilities, furnishings, and equipment provided to a charter school by the district shall remain the property of the district. (5 CCR 11969.4)

The district may charge the charter school, in accordance with 5 CCR 11969.7, for a pro rata share of the district's facilities costs for activities related to keeping the physical plant open, comfortable, and safe for use and keeping the grounds, buildings, and equipment in working condition. Such activities include maintaining safety in buildings, on grounds, and in the vicinity of schools; plant maintenance and operations; facilities acquisition and construction; and facilities rents and leases. (Education Code 47614; 5 CCR 11969.2)

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. If the charter school generates less ADA than projected, the following provisions shall apply to any overallocated space: (Education Code 47614; 5 CCR 11969.3, 11969.8, 11969.9)

1. The charter school shall reimburse the district for the overallocated space as set forth in 5 CCR 11969.8, unless the district agrees, in response to the notification by the charter school of overallocation, to exercise its sole discretion to use the overallocated space for district programs.
2. In the case of a conversion charter school, the overallocated space shall not be subject to reimbursement under the following circumstances:

- a. The school notifies the district, by February 1 of its first year of operation, that it will have overallocated space in the following fiscal year. In such cases, the district may occupy all or a portion of the space identified. A charter school that wants to recover space surrendered to the district shall apply to the district and the district shall evaluate the application in accordance with law and this administrative regulation.
- b. Based on the State Board of Education's waiver of attendance area requirements in Education Code 47605(d)(1), the district makes a decision, between November 1 and June 30, to change the school's attendance area in the forthcoming fiscal year.

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, in accordance with the following procedures: (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
 - 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.
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. 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.

These references are not intended to be part of the policy itself, nor do they indicate the basis or authority for the board to enact this policy. Instead, they are provided as additional resources for those interested in the subject matter of the policy.

State	Description
2 CCR 1859.160-1859.172	<u>Leroy F. Greene School Facilities Program, specifically: Charter school facilities program</u>
2 CCR 1859.2	<u>Definitions</u>
2 CCR 1859.31	<u>Classroom inventory</u>
5 CCR 11969.1-11969.10	<u>Charter school facilities</u>
Ed. Code 17070.10-17080	<u>Leroy F. Greene School Facilities Act of 1998</u>
Ed. Code 17078.52-17078.66	<u>Charter schools facility funding; state bond proceeds</u>
Ed. Code 17280-17317	<u>Field Act; approval of plans and supervision of construction</u>
Ed. Code 47600-47616.5	<u>Charter Schools Act</u>
Ed. Code 48204	<u>Residency requirements for school attendance</u>
Gov. Code 53094	<u>Authority to render zoning ordinances inapplicable</u>
Gov. Code 53097.3	<u>Charter school ordinances</u>
Management Resources	Description
Attorney General Opinion	80 Ops.Cal.Atty.Gen. 52 (1997)
Court Decision	Ridgecrest Charter School v. Sierra Sands Unified School District (2005) 130 Cal.App.4th 986
Court Decision	Bullis Charter School v. Los Altos School District (2011) 200 Cal.App.4th 1022
Court Decision	Sequoia Union High School District v. Aurora Charter High School (2003) 112 Cal.App.4th 185
CSBA Publication	Charter School Facilities and Proposition 39: Legal Implications for School Districts, 2005
CSBA Publication	Charter Schools: A Guide for Governance Teams, rev. June 2021
CSBA Publication	The Role of the Charter School Authorizer, Online Course
Office of Public School Construction Publication	School Facility Program Handbook, May 2008
Website	<u>CSBA District and County Office of Education Legal Services</u>

Website	California Charter Schools Association
Website	California Department of Education, Charter Schools
Website	Coalition for Adequate School Housing
Website	Department of General Services, Office of Public School Construction
Website	CSBA

Cross References

Code	Description
0420.4	Charter School Authorization
0420.4	Charter School Authorization
0420.41	Charter School Oversight
0420.41-E(1)	Charter School Oversight
1330	Use Of School Facilities
1330	Use Of School Facilities
3100	Budget
3100	Budget
3280	Sale Or Lease Of District-Owned Real Property
3280	Sale Or Lease Of District-Owned Real Property
3530	Risk Management/Insurance
3530	Risk Management/Insurance
5111.1	District Residency
5111.1	District Residency
5117	Interdistrict Attendance
5117	Interdistrict Attendance
7110	Facilities Master Plan
7111	Evaluating Existing Buildings
9323.2	Actions By The Board
9323.2-E(1)	Actions By The Board