



2008 Fall Conference Coalition for Adequate School Housing

Pre-Conference Workshop
"State Board of Education Revised Charter School Regulations"

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Prior to Proposition 39

- Charter schools were entitled to use at no charge facilities not in use by school districts.

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 rental purposes provided the charter school shall be responsible for reasonable maintenance of those facilities.

- Districts were permitted to charge for oversight costs up to 3 percent of charter schools' revenues if providing them substantially rent free facilities.

A chartering agency may charge for the actual costs of supervisory 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.



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Proposition 39 Approved

- Passed by voters on November 7, 2000.
 - Yes - 5,431,152 (53.4%)
 - No - 4,756,311 (46.6%)
- Primarily noted for reducing the local vote requirement for school bonds from two-thirds to 55 percent.
- Also established Education Code Section 47614 that entitles charter schools to the use of school district facilities, subject to certain conditions.

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Proposition 39: Key Charter School Provisions (1)

- The intent of the people... 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.

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Proposition 39: Key Charter School Provisions (2)

- The school district may charge the charter school a pro rata share (based on the ratio of space allocated by the school district to the charter school divided by the total space of the district) of those school district facilities costs which the school district pays for with unrestricted general fund revenues.
- No school district shall be required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter school students.
- The [California] Department of Education shall propose, and the State Board of Education may adopt [implementing regulations], including but not limited to defining the terms "average daily classroom attendance," "conditions reasonably equivalent," "in-district students," "facilities costs," as well as defining the procedures and establishing timelines for the request for, reimbursement for, and provision of, facilities.

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2002 Regulations: Overview

- An initial set of implementing regulations was developed during 2001 and became operative in 2002. The regulations were (and are) located in California Code of Regulations (CCR), Title 5, Sections 11969.1-11969.10. The regulations:
 - Defined key terms and provided elaboration on what constitutes "conditions reasonably equivalent" (using the idea of a comparison group of local schools).
 - Covered issues such as operations and maintenance, availability of facilities, out-of-district location, allowable charges, and reimbursement for over-allocated space.
 - Provided considerable detail about procedures and time lines for facilities requests.
- The regulations were developed with extensive input from a workgroup with representatives of charter schools and school districts, as well as other stakeholders, such as school boards, school administrators, teachers, and parents. The regulations, as adopted, did not reflect complete consensus. Provisions were supported or opposed by the different interest groups.

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2002 Regulations: Outline (1)

- **Section 11969.1 – Purpose Statement**

To implement Proposition 39's statutory provisions.

- **Section 11969.2 – Definitions**

Defined key terms, including average daily classroom attendance, operating in a school district, in-district students, contiguous, and furnished and equipped.

- **Section 11969.3 – Conditions Reasonably Equivalent**

Look at comparable schools. Determine ratio of teaching stations to ADA. Evaluate condition of facilities.

- **Section 11969.4 – Operations and Maintenance**

Facilities, furnishings, and equipment remain district property. Charter school generally responsible for ongoing operations and maintenance of facilities.

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2002 Regulations: Outline (2)

- **Section 11969.5 – Availability**

For use for the entire school year. May not be sublet except as consistent with district policy or with district permission.

- **Section 11969.6 – Location**

May satisfy the Proposition 39 facilities requirement by providing the use of facilities that are located outside district, but not required to do so.

- **Section 11969.7 – Charges for Facilities Costs**

May charge charter school a pro rata share of unrestricted general fund costs for facilities based on a per-square-foot amount established on a districtwide basis.

- **Section 11969.8 – Over-Allocated Space Reimbursement**

Minimum threshold established for levying over-allocated space reimbursement. Reimbursement based on statewide cost-avoidance amount.

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2002 Regulations: Outline (3)

- **Section 11969.9 – Procedures and Time Lines**

- Required submission of facilities requests by October 1 (for continuing schools) and November 15 (for new schools).
- Established minimum content requirements for a facilities request.
- Had CDE construct a template facilities request form, but allowed districts to create their own forms.
- Required districts to provide a final notification of facilities (and associated conditions) to each charter school by April 1, and required the charter school to accept or reject in 30 days.
- Provided for negotiation of side agreements as necessary.
- Provided for modifications of time lines by mutual consent.
- Allowed districts to shorten time lines set in regulations subject to certain conditions.

- **Section 11969.10 – Dispute Resolution**

The SBE adopted a separate regulatory package pertaining to mediation and binding arbitration to resolve disputes, but the regulations did not become operative.

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2008 Regulations: Overview

- A workgroup process was undertaken in 2006 to review the existing regulations with representatives of charter schools and school districts, as well as other stakeholders.
- Input received during months of workgroup meetings helped the CDE craft a package of regulatory changes that was considered by the Advisory Commission on Charter Schools and, through a continuing process of revision and refinement, by the SBE.
- The SBE formally commenced the rulemaking process in January 2007 and completed it a year later in January 2008, considering multiple amendments in response to public comments during that time.
- The regulatory changes became operative in March 2008 and affect the facilities requests to be made during 2008-09 for the use of facilities in 2009-10.

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2008 Regulations: Outline (1)

- **Section 11969.1 – Purpose and Stipulation**

An additional subdivision stipulates that nothing in the regulations prohibits, by mutual agreement, an alternative to specific compliance. An example of an alternative is provided.

- **Section 11969.2 – Definitions**

- Mentions possible use of district facilities by hybrid charter schools.
- Elaborates on definition of “contiguous,” incorporating language from a key court decision.
- Modifies provisions relating to furnishings and equipment.
- Incorporates definitions for general fund, unrestricted revenues, and facilities costs based on language drawn from the California School Accounting Manual.

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2008 Regulations: Outline (2)

- **Section 11969.3 – Conditions Reasonably Equivalent**

- Addresses potential that none of a district's schools may have a grade level configuration similar to a proposed charter school. Defines a contiguous facility, in such a circumstance, as being the existing facility most consistent with the needs of the charter school's students. States that district is not obligated to pay for site modifications, but authorizes site modifications paid for by district, charter school, or both (collaboratively).
- Narrows a pre-existing exclusion of “interim housing,” when determining a district's teaching stations. Has the effect of increasing the number of teaching stations counted.
- Adds a tie back to the comparison group schools when determining a charter school's access to specialized classroom space.
- Requires “good faith” consultation in establishing time allocations for shared non-teaching space (as necessary).
- Modifies the general guidance provided for examining the condition of facilities, organizing into overriding factors such as age, quality of materials, and state of maintenance.
- Adds a reference to athletic fields and/or play area space.

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2008 Regulations: Outline (3)

- **Section 11969.3 – Conditions Reasonably Equivalent (continued)**
 - Provides considerably more elaboration regarding conversion charter schools, including:
 - Makes explicit that conversion charter schools can be charged pro rata for facilities costs in the first year of operation.
 - Exempts a first-year conversion charter school from over-allocated space reimbursement, but has the school notify the district of over-allocated space by February 1. Empowers the district to immediately recover and utilize surrendered space. Requires the school to seek the return of any space surrendered through the customary annual request process.
 - Provides for a conversion charter school to remain at the conversion site if annually requested.
 - Establishes a means for a conversion charter to be relocated with appropriate modification of the charter and waiver relief from the requirement to continually give preference to students residing in the school's former attendance area.

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2008 Regulations: Outline (4)

- **Section 11969.4 – Operations and Maintenance**

Technical changes only.
- **Section 11969.5 – Availability**

No change.
- **Section 11969.6 – Location**

Technical changes only.

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2008 Regulations: Outline (5)

- **Section 11969.7 – Charges for Facilities Costs**
 - Makes clarifying changes related to unrestricted general fund contributions to maintenance accounts.
 - Excludes facilities costs paid a charter school, as well as value of tangible items paid for by charter school.
 - Requires charter schools to report the per-square-foot amount charge to the CDE. Requires CDE to post listing of per-square-foot charges on Internet. Allows districts to submit explanatory material concerning per-square-foot charge to the CDE which will also be posted.
 - Declares that if a district charges for facilities costs and is also the school's chartering authority, the facilities are not substantially rent free and, thus, the district is limited to a maximum of 1 percent of the charter school's revenues for oversight costs.

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2008 Regulations: Outline (6)

- **Section 11969.8 – Over-Allocated Space Reimbursement Rates**
 - Replaces basis for reimbursement with a fixed amount of \$1,425 per pupil adjusted annually for cost-of-living from 2005-06. Largely a technical change.
- **Section 11969.9 – Procedures and Timelines**
 - Brings new, proposed new, and continuing charter schools onto a uniform timeline for submission of facilities requests. Requests are now due November 1.
 - Extends final charter approval date for new schools (in order to qualify for facilities) to March 15.
 - Clarifies that prior-year ADA claimed for apportionment will be the starting point for facilities requests for continuing charter schools.

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2008 Regulations: Overview (7)

- Section 11969.9 – Procedures and Timelines (continued)
 - Makes some changes in the required elements of written facilities request, such as adding a requirement for documentation of projected ADA.
 - Sets up a more specific schedule for consideration of facilities requests. Projected ADA is the initial focus (November, December, January). Preliminary proposal is next focus (January, February, March). Final notification remains due April 1, with charter school's acceptance or rejection due 30 days later.
 - Allows charter school access to space 10 working day before opening, but can be reduced to seven with good cause.
 - Modifies minimum content of space agreements to include reciprocal hold-harmless/indemnification.
 - Requires district to ensure that space meets minimum requirements of law for occupancy by charter school.

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2008 Regulations: Overview (8)

- Section 11969.10 – Mediation of Disputes
 - Establishes provisions for mediation of disputes with mutual agreement, including selection of a mediator, preparation and distribution of notice of dispute, parameters for the mediation process and its completion, and cost sharing.
- Section 11969.11 – Operative Date of Changes
 - Specifies that 2008 changes apply to requests submitted in 2008-09 for the use of facilities in 2009-10.

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Questions/Contacts

- Questions?

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