

October 6, 2008

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## C.A.S.H. Fall Conference

### SBE Revised Charter School Regulations

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## Basic Requirement

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- **Basic requirement for housing remains the same:**

“To 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 of regular schools of the district”

2

## Basic Requirement

- **Court opinions interpreting Prop 39 under the prior regulations**
  - Sequoia UHSD v. Aurora Charter High School (2003)
    - Duty to provide facilities not limited to chartering authority
  - Environmental Charter High School v. Centinela UHSD (2004)
    - Facility request may be denied if charter projections lack proper foundation
  - Ridgecrest Charter v. Sierra Sands Unified School District (2005)
    - Considers a district's discretion in allocating multiple sites to house in-District charter students.

3

## Prop 39 Options and Alternatives

- **Alternatives to Prop 39:** Mutually agreed upon alternatives to providing a facility are acceptable
- **Independent Study:** A district *may* include non-classroom based ADA based on seat-time requirements under control of teacher

4

## “Conditions Reasonably Equivalent”

- **Factors used to determine “reasonable equivalence” remain the same**
  - Comparison Group
  - Capacity
  - Condition
- **But definition of key factors has changed**

5

## “Conditions Reasonably Equivalent”

- **Comparison Group**
  - Existing: District schools with similar grade levels that serve students living in the HS attendance area in which the largest number of charter students reside; or the three schools with similar grade levels that the largest number of charter students would attend
  - Added: *If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 shall be an existing facility that is most consistent with the needs of students in the grade levels served at the charter school. The district is not obligated to pay for the modification of an existing school site to accommodate the charter school’s grade level configuration.*

6

## “Conditions Reasonably Equivalent”

### ■ Capacity

- Facilities provided in the same ratio of teaching stations (*classrooms*) to ADA as those attending comparison schools (i.e. use district loading) excluding “interim housing”
- Added: “Interim housing” means the rental or lease of classrooms used to house pupils temporarily displaced as a result of the modernization of classroom facilities and classrooms used as emergency housing for schools vacated due to structural deficiencies or natural disasters.

7

## “Conditions Reasonably Equivalent”

### ■ Capacity (cont.)

- Space allocation to include “specialized classroom space” or access to reasonably equivalent specialized classroom space in the same per-student ratio of specialized classroom space in the comparison group schools
- Access to non-teaching stations space must be provided in the same per student ratio of non-teaching station space in the comparison group schools
- Shared use is legally sufficient but not required – the district shall negotiate in good faith to establish time allocations and schedules so that educational programs of the charter school and school district are least disrupted

8

## “Conditions Reasonably Equivalent”

### ■ **Condition**

- *Condition is determined by assessing such factors as age (from last modernization), quality of materials, and state of maintenance.*
- Factors:
  - Site size
  - Condition of surfaces
  - Condition of systems (mechanical, electrical)
  - Conformity to code

9

## “Conditions Reasonably Equivalent”

### ■ **Condition (cont.)**

- Factors:
  - Availability of technology infrastructure
  - *Condition of facility as a safe learning environment*
  - *Condition* of furniture & equipment
  - *Condition of athletic fields and/or play area space*

10

## “Contiguous, Furnished and Equipped”

- **Contiguous** (contained on the school site or immediately adjacent, unless unable to accommodate the charter school on a single site)
  - *In evaluating and accommodating a charter school's request for facilities the charter school's in-district students must be given the same consideration as students in district-run schools, subject to the requirement that the facilities provided to the charter school must be contiguous*
  - *If a district's preliminary proposal or final notification does not accommodate a charter school at a single site, the district's governing board must first make a finding that the charter school could not be accommodated at a single site and adopt a statement of reasons explaining the finding*

11

## “Contiguous, Furnished and Equipped”

- **Furnished & equipped**
  - a facility is furnished and equipped if it includes reasonably equivalent furnishings and equipment necessary to conduct classroom instruction *and to provide for student services that directly support classroom instruction as found in the comparison group schools and if it has equipment that is reasonably equivalent to that in the comparison group schools.*

12

## “Contiguous, Furnished and Equipped”

### ■ **Equipment**

- “Equipment” means property that does not lose its identity when removed from its location and is not changed materially or consumed immediately by use. Equipment has relatively permanent value, and its purchase increases the total value of a LEA’s physical properties. Examples include furniture, vehicles, machinery, motion picture film, videotape, furnishings that are not integral part of the building or building system, and certain tangible assets such as software programs. Furnishings and equipment acquired for a school site with non-district resources are excluded when determining reasonable equivalence

13

## Location, Location, Location

### ■ **Location of Facility**

- District must make reasonable effort to provide facilities near where school wants to locate
- No change

14

## "Conversion" Charters

### ■ Conversion Charters

- Site shall be made available to the school annually upon request (i.e., Charter retains presumptive allocation of site)
- For charter schools established under [II/USP], district may not relocate without first obtaining waiver from State;
- District may not change charter school's "attendance area boundaries" unless waiver is obtained from State of obligations of section 47605(d)(1)

15

## Timeline/Process

### ■ New Charters

- Must have petition submitted by November 1 of fiscal year prior to year of occupancy
- Must have a charter approval in hand by March 15 of the fiscal year prior to year of occupancy

### ■ All Charters

- Must submit request by November 1 of the fiscal year prior to year of occupancy

16

## Timeline/Process

### ■ Facilities request “consists of”

- Reasonable projection of in-district and total ADA *based on ADA claimed for appointment ... in the [prior] fiscal year, adjusted for expected changes in enrollment in the forthcoming fiscal year*
- Description of methodology for projections
- If a new school *or to the extent an operating charter school projects a substantial increase in in-district ADA*, documentation of 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;*
- Use of CDE form is a complete request

17

## Timeline/Process

- **November 1** – charter facility requests due (Facility request form created by CDE deemed complete if all information provided)
- **December 1** – district to express any objections, in writing, regarding charter school’s projections and state projections district considers reasonable
- **January 2** – charter school to respond to district objections and either reaffirm or modify its projections

18

## Timeline/Process, cont.

- **February 1** – *Preliminary proposal must include:*
  - *Projections offer is based upon*
  - *Specific location(s)*
  - *All conditions pertaining to space, including a draft of any proposed agreement pertaining to the charter school's use of the space*
  - *Projected pro-rata and description of methodology used to calculate the amount*
  - *List and description of comparison group schools*
  - *Description of the differences between preliminary proposal and the charter school facility request*

19

## Timeline/Process, cont.

- **March 1** – *charter school written response to preliminary proposal*
  - *Expressing any concerns*
  - *Addressing differences between preliminary proposal and charter school's facility request*
  - *Counter proposals*

20

## Timeline/Process, cont.

- **April 1** – District final notification of space offered the charter school including a response to charter school's concerns and/or counterproposals and setting forth:
  - Teaching station, specialized classroom space and non-teaching space for exclusive and shared use
  - Arrangements for sharing
  - In-district classroom ADA assumptions (explained if different than charter school projections)
  - Location(s) of space
  - All conditions pertaining to the space
  - Pro-rata share
  - Payment schedule

21

## Timeline/Process, cont.

- **May 1** – charter school must notify district in writing whether or not it intends to occupy the offered space (no date change)

22

## The Money

### ■ Pro-Rata Share

- District may charge a pro-rata share of those facilities costs paid for with unrestricted general fund revenues;
- Includes contributions to OMM and RMM Accounts from general fund
- Pro-rata share based on ratio of square footage of facilities occupied by charter to total district space;
- Districts required to post pro-rata calculation on CDE website

23

## The Money

### ■ Reimbursement for over-allocation

- rate shall be equal to the statewide average cost avoided per pupil set pursuant to Education Code §42263 for 2005-06, adjusted annually thereafter by CDE by the cost of living adjustment provided for school district revenue limits, rounded to the next highest dollar
- No reimbursement required for over-allocated space in first year for conversion charters
- If district charges pro-rata and if the district is the chartering entity, the facilities are not substantially rent free within the meaning of Education Code § 47613 (no increased oversight fee)

24

## Additional Changes

- Reciprocal hold harmless/indemnification
- School district to maintain first party property insurance
- District responsible for modifications necessary to maintain the facility in accordance with EC §47610(d)
- Parties may agree to voluntary modifications of sites to accommodate charter
- Voluntary mediation

25

## CSBA Litigation

- CSBA has filed suit against SBE, CDE, SPI for exceeding scope of authority with revised regulations (joined by ACSA/CASBO);
  - MBD is Co-Counsel for CSBA Coalition
- CCSA has intervened;
  - Procopio is Co-Counsel for CCSA
- Hearing on writ October 17, 2008

26

1 Title 5. EDUCATION

2 Division 1. California Department of Education

3 Chapter 11. Special Programs

4 Subchapter 19. Charter Schools

5 Article 3. Facilities for Charter Schools

6  
7 **§ 11969.1. Purpose and Stipulation.**

8 (a) This article governs provision of facilities by school districts to charter schools  
9 under Education Code section 47614.

10 (b) If a charter school and a school district mutually agree to an alternative to  
11 specific compliance with any of the provisions of this article, nothing in this article shall  
12 prohibit implementation of that alternative, including, for example, funding in lieu of  
13 facilities in an amount commensurate with local rental or lease costs for facilities  
14 reasonably equivalent to facilities of the district.

15 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Section 47614,  
16 Education Code.

17  
18 **§ 11969.2. Definitions.**

19 (a) Average Daily Classroom Attendance. As used in Education Code section  
20 47614(b), "average daily classroom attendance," or "classroom ADA," is average daily  
21 attendance (ADA) for classroom-based apportionments as used in Education Code  
22 section 47612.5. "In-district classroom ADA" is classroom ADA attributable to in-district  
23 students. Nothing in this article shall prohibit a school district from allowing a charter  
24 school to include nonclassroom-based ADA in average daily classroom attendance, but  
25 only:

26 (1) to the extent of the instructional time that the students generating the  
27 nonclassroom-based ADA are actually in the classroom under the direct supervision  
28 and control of an employee of the charter school; and

29 (2) if the school district and charter school agree upon the time(s) that facilities  
30 devoted to students generating nonclassroom-based ADA will be used.

31 (b) Operating in the School District. As used in Education Code section 47614(b), a

1 charter school is "operating in the school district" if the charter school meets the  
2 requirements of Education Code section 47614(b)(5) regardless of whether the school  
3 district is or is proposed to be the authorizing entity for the charter school and whether  
4 the charter school has a facility inside the school district's boundaries.

5 (c) In-district Students. As used in Education Code section 47614(b), a student  
6 attending a charter school is an "in-district student" of a school district if he or she is  
7 entitled to attend the schools of the school district and could attend a school district-  
8 operated school, except that a student eligible to attend the schools of the school district  
9 based on interdistrict attendance pursuant to Education Code section 46600 et seq. or  
10 based on parental employment pursuant to Education Code section 48204(f) shall be  
11 considered a student of the school district where he or she resides.

12 (d) Contiguous. As used in Education Code section 47614(b), facilities are  
13 "contiguous" if they are contained on the school site or immediately adjacent to the  
14 school site. If the in-district average daily classroom attendance of the charter school  
15 cannot be accommodated on any single school district school site, contiguous facilities  
16 also includes facilities located at more than one site, provided that the school district  
17 shall minimize the number of sites assigned and shall consider student safety. In  
18 evaluating and accommodating a charter school's request for facilities pursuant to  
19 Education Code section 47614, the charter school's in-district students must be given  
20 the same consideration as students in the district-run schools, subject to the  
21 requirement that the facilities provided to the charter school must be contiguous. If a  
22 school district's preliminary proposal or final notification presented pursuant to  
23 subdivisions (f) or (h) of section 11969.9 does not accommodate a charter school  
24 at a single school site, the district's governing board must first make a finding  
25 that the charter school could not be accommodated at a single site and adopt a  
26 written statement of reasons explaining the finding.

27 (e) Furnished and Equipped. As used in Education Code section 47614(b), a facility  
28 is "furnished and equipped" if it includes all the reasonably equivalent furnishings and  
29 equipment necessary to conduct classroom-based instruction (i.e., at a minimum,  
30 desks, chairs, and blackboards) and to provide for student services that directly support  
31 classroom instruction as found in the comparison group schools established under

1 section 11969.3(a) and (as applicable) consistent with the use of the terms furnishings  
2 and equipment in the California School Accounting Manual (CSAM), excluding  
3 furnishings and equipment acquired with non-district resources.

4 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Sections 46600  
5 et seq., 47612.5, 47614, 48204, Education Code.

6  
7 **§ 11969.3. Conditions Reasonably Equivalent.**

8 The following provisions shall be used to determine whether facilities provided to a  
9 charter school are sufficient to accommodate charter school students in conditions  
10 reasonably equivalent to those in which the students would be accommodated if they  
11 were attending public schools of the school district providing facilities, as required by  
12 Education Code section 47614(b).

13 (a) Comparison Group.

14 (1) The standard for determining whether facilities are sufficient to accommodate  
15 charter school students in conditions reasonably equivalent to those in which the  
16 students would be accommodated if they were attending public schools of the school  
17 district providing facilities shall be a comparison group of school district-operated  
18 schools with similar grade levels. If none of the district-operated schools has grade  
19 levels similar to the charter school, then ~~the comparison group of schools shall be~~  
20 ~~all of the district-operated schools that serve any of the grade levels served by~~  
21 ~~the charter school. When a comparison group includes schools that do not serve~~  
22 ~~similar grade levels,~~ a contiguous facility within the meaning of subdivision (d) of  
23 section 11969.2 shall be **a an existing** facility that is most consistent with the needs of  
24 students in the grade levels served at the charter school. **The district is not obligated**  
25 **to pay for the modification of an existing school site to accommodate the charter**  
26 **school's grade level configuration.**

27 (2) The comparison group shall be the school district-operated schools with similar  
28 grade levels that serve students living in the high school attendance area, as defined in  
29 Education Code section 17070.15(b), in which the largest number of students of the  
30 charter school reside. The number of charter school students residing in a high school  
31 attendance area shall be determined using in-district classroom ADA projected for the

1 fiscal year for which facilities are requested.

2 (3) For school districts whose students do not attend high school based on  
3 attendance areas, the comparison group shall be three schools in the school district  
4 with similar grade levels that the largest number of students of the charter school would  
5 otherwise attend. For school districts with fewer than three schools with similar grade  
6 levels, the comparison group shall be all schools in the school district with similar grade  
7 levels.

8 ~~(4) Although if a charter school's grade level configuration is different from the~~  
9 ~~configuration of the district's schools,~~ the district is not obligated to pay for the  
10 ~~modification of a an existing school site to accommodate the charter school's grade~~  
11 ~~level configuration. However,~~ nothing in this article shall preclude the district from  
12 ~~entering into an agreement with the charter school to modify a an existing school site,~~  
13 ~~with the costs of the modifications being paid exclusively by the charter school or by the~~  
14 ~~school district, or paid jointly by the district and the charter school.~~

15 (b) Capacity.

16 (1) Facilities made available by a school district to a charter school shall be provided  
17 in the same ratio of teaching stations (**classrooms**) to ADA as those provided to  
18 students in the school district attending comparison group schools. School district ADA  
19 shall be determined using projections for the fiscal year and grade levels for which  
20 facilities are requested. Charter school ADA shall be determined using in-district  
21 classroom ADA projected for the fiscal year and grade levels for which facilities are  
22 requested. The number of teaching stations (**classrooms**) shall be determined using  
23 the classroom inventory prepared pursuant to California Code of Regulations, title 2,  
24 ~~sSection 1859.30 1859.31 of Title 2 of the California Code of Regulations,~~ adjusted to  
25 exclude classrooms identified as interim housing. **"Interim housing" means the rental**  
26 **or lease of classrooms used to house pupils temporarily displaced as a result of**  
27 **the modernization of classroom facilities, as defined in California Code of**  
28 **Regulations, title 2, section 1859.2, and classrooms used as emergency housing**  
29 **for schools vacated due to structural deficiencies or natural disastersportables.**

30 (2) If the school district includes specialized classroom space, such as science  
31 laboratories, in its classroom inventory, the space allocation provided pursuant to

1 paragraph (1) of subdivision (b)(4) shall include a share of the specialized classroom  
2 space and/or a provision for access to reasonably equivalent specialized classroom  
3 space. The amount of specialized classroom space allocated and/or the access to  
4 specialized classroom space provided shall be determined based on three factors:

5 (A) the grade levels of the charter school's in-district students;

6 (B) the charter school's total ~~and shall be commensurate with the~~ in-district  
7 classroom ADA ~~of the charter school~~; and

8 (C) the per-student amount of specialized classroom space in the comparison group  
9 schools.

10 (3) The school districts shall allocate and/or provide access to non-teaching station  
11 space commensurate with the in-district classroom ADA of the charter school and the  
12 per-student amount of non-teaching station space in the comparison group schools.

13 Non-teaching station space is all of the space that is not identified as teaching station  
14 space or specialized classroom space and includes, but is not limited to, administrative  
15 space, kitchen, multi-purpose room, and play area space. If necessary to implement this  
16 paragraph, the district shall negotiate in good faith with the charter school to establish  
17 time allocations and schedules so that educational programs of the charter school and  
18 school district are least disrupted.

19 ~~(4) Space allocated to a charter school may be shared with school district operated~~  
20 ~~programs. Sharing arrangements may involve use of a space by a charter school and a~~  
21 ~~school district operated program at the same time or at different times.~~

22 (c) Condition.

23 (1) All of the factors listed below shall be used by the school district and charter  
24 school to determine whether the condition of facilities provided to a charter school is  
25 reasonably equivalent to the condition of comparison group schools. Condition is  
26 determined by assessing such factors as age (from latest modernization), quality of  
27 materials, and state of maintenance.

28 (A) School site size.

29 (B) The condition of interior and exterior surfaces.

30 (C) The condition of mechanical, plumbing, electrical, and fire alarm systems.

31 (D) The ~~conformity~~ condition of mechanical, plumbing, electrical, and fire alarm

1 systems, including conformity to applicable codes.

2 (E) The availability and condition of technology infrastructure.

3 (F) The suitability condition of the facility as a safe learning environment including,  
4 but not limited to, the suitability of lighting, noise mitigation, and size for intended use.

5 (G) ~~The manner in which the facility is furnished and equipped~~ condition of the  
6 facility's furnishings and equipment.

7 (H) The condition of athletic fields and/or play area space.

8 (2) Notwithstanding ~~subdivision paragraph (1) of subdivision (c)~~, at a charter schools  
9 established through the ~~conversion from~~ at an existing public school site as described in  
10 pursuant to Education Code sections 47605(a)(2), 52055.5, 52055.55, or 52055.650,  
11 the condition of the facility previously used by the school district at the conversion site  
12 shall be considered to be reasonably equivalent to the condition of school district  
13 facilities for the first year the charter school uses the facility. During its first year of  
14 operation, the charter school shall be subject to charges for pro rata costs pursuant to  
15 section 11969.7, but shall not be subject to reimbursement for over-allocated space  
16 pursuant to section 11969.8.

17 (d) Additional Provisions Relating to a Charter School Established at an Existing  
18 Public School Site.

19 The following provisions apply only to a charter school established at an existing  
20 public school site pursuant to Education Code sections 47605(a)(2), 52055.5, 52055.55,  
21 or 52055.650 and that operated at the site in its first year pursuant to paragraph (2) of  
22 subdivision (c).

23 (1) The school site, as identified in the school's charter, shall be made available to  
24 the school for its second year of operation and thereafter upon annual request pursuant  
25 to Education Code section 47614. The district is entitled to charge the charter school  
26 pro rata costs for the school site pursuant to section 11969.7, and the district is entitled  
27 to receive reimbursement for over-allocated space from the charter school pursuant to  
28 section 11969.8, except as provided in paragraph (3).

29 (2)(A) If, by material revision of the charter, the location of a charter school is  
30 changed, or if one or more additional sites are approved pursuant to Education Code  
31 section 47605(a)(4), then the school is entitled to request and the district shall provide

1 for the use of facilities by the school in accordance with the revised charter, Education  
2 Code section 47614, and the provisions of this article.

3 **(B) If the charter school was established pursuant to Education Code section**  
4 **47605(a)(2), the district shall change the school's attendance area only if a waiver**  
5 **is first secured of the requirement in Education Code section 47605(d)(1) that the**  
6 **school continuously give admission preference to students residing in the former**  
7 **attendance area of the school site.**

8 **(C) If the charter school was established pursuant to Education Code sections**  
9 **52055.5, 52055.55, or 52055.650, the district shall relocate the school or change**  
10 **the school's attendance area only if a waiver is first secured of the provision of**  
11 **statute binding the school to the existing school site.**

12 **(D) If a school district decides to change a charter school's attendance area as**  
13 **provided in subparagraphs (B) or (C), and if the decision occurs between**  
14 **November 1 and June 30 and becomes operative in the forthcoming fiscal year,**  
15 **then the space allocated to the charter school is not subject to reimbursement for**  
16 **over-allocated space pursuant to Section 11969.8 in the forthcoming fiscal year.**

17 **(3) If, by February 1 of its first year of operation, a charter school notifies the district**  
18 **that it will have over-allocated space in the following fiscal year, the space identified is**  
19 **not subject to reimbursement for over-allocated space pursuant to section 11969.8 in**  
20 **the following year or thereafter, and the district is entitled to occupy all or a portion of**  
21 **the space identified. To recover space surrendered to the district pursuant to this**  
22 **paragraph, a charter school must apply to the district. An application to recover**  
23 **surrendered space shall be evaluated by the district in accordance with the provisions of**  
24 **this article.**

25 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Sections **47605,**  
26 **47614, 52055.5, 52055.55, 52055.650** Education Code.

27  
28 **§ 11969.4. Operations and Maintenance.**

29 (a) Facilities and furnishings and equipment provided to a charter school by a school  
30 district shall remain the property of the school district.

31 (b) The ongoing operations and maintenance of facilities and furnishings and

1 equipment is the responsibility of the charter school. Projects eligible to be included in  
2 the school district deferred maintenance plan established pursuant to Education Code  
3 section 17582 and the replacement of furnishings and equipment supplied by the school  
4 district in accordance with school district schedules and practices, shall remain the  
5 responsibility of the school district. ~~The school district may require that the charter~~  
6 school shall comply with school district policies regarding the operations and  
7 maintenance of the school facility and furnishings and equipment, except to the extent  
8 variation is approved by the district. However, ~~school districts may not require the~~  
9 charter schools to need not comply with policies in cases where actual school district  
10 practice substantially differs from official policies.

11 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Section 47614,  
12 Education Code.

13

#### 14 **§ 11969.6. Location.**

15 A school district may satisfy the requirements of Education Code section 47614 by  
16 providing facilities that are located outside the school district's boundaries, subject to  
17 other provisions of this article and subject to the restrictions on location of charter  
18 schools established in Education Code sections 47605 and 47605.1. No school district  
19 is required to provide facilities that are located outside the school district's boundaries to  
20 a charter school.

21 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Sections 47605,  
22 47605.1, 47614, Education Code.

23

#### 24 **§ 11969.7. Charges for Facilities Costs.**

25 ~~If t~~The school district may charge the charter school a pro rata share of its facilities  
26 costs for the use of the facilities. ~~t~~The pro rata share amount shall not exceed (1) a per-  
27 square-foot amount equal to those school district facilities costs that the school district  
28 pays for with unrestricted general fund revenues, as described on pages 203-1 and  
29 305-1 of Part I of the 2001 edition in Procedures 105 and 305 of the California School  
30 Accounting Manual (CSAM) (at [www.cde.ca.gov/fiscal/saes/esam](http://www.cde.ca.gov/fiscal/saes/esam)  
31 <http://www.cde.ca.gov/fq/ac/sa>), divided by the total space of the school district times

1 (2) the amount of space allocated by the school district to the charter school. The  
2 following provisions shall apply to the calculation of the pro rata share of facilities costs:

3 (a) For purposes of this section, facilities costs that the school district pays with  
4 unrestricted general fund revenues includes those costs associated with plant  
5 maintenance and operations, facilities acquisition and construction, and facilities rents  
6 and leases, as defined ~~on page 81 of Part II of the 2001 edition~~ in Procedure 325 of the  
7 California School Accounting Manual (CSAM) (at [www.cde.ca.gov/fiscal/sacs/esam](http://www.cde.ca.gov/fiscal/sacs/esam)  
8 <http://www.cde.ca.gov/fg/ac/sa>). For purposes of this section, facilities costs also  
9 includes:

10 (1) the contributions from unrestricted general fund revenues to the school district's  
11 Ongoing and Major Maintenance Account (Education Code section 17070.75), Routine  
12 Restricted Maintenance Account (Education Code section 17014), and/or deferred  
13 maintenance fund,

14 (2) costs paid from unrestricted general fund revenues for projects eligible for  
15 funding but not funded from the deferred maintenance fund, and

16 (3) costs paid from unrestricted general fund revenue for replacement of facilities-  
17 related furnishings and equipment, that have not been included in paragraphs (1) and  
18 (2) subdivisions (a)(1) and (a)(2), according to school district schedules and practices.

19 For purposes of this section, facilities costs do not include any costs that are paid by  
20 the charter school, including, but not limited to, costs associated with ongoing  
21 operations and maintenance. The value of any tangible items paid for by the charter  
22 school shall be adjusted in keeping with a customary depreciation schedule for each  
23 item.

24 (b) For purposes of this section, the cost of facilities shall include debt service costs.

25 (c) "Space allocated by the school district to the charter school" shall include a  
26 portion of shared space where a charter school shares a campus with a school district-  
27 operated program. Shared space ~~may~~ includes but is not limited to those facilities  
28 needed for the overall operation of the campus, whether or not used by students. The  
29 portion of the shared space to be included in the "space allocated by the school district  
30 to the charter school" shall be calculated based on the amount of space allocated for  
31 the exclusive use of the charter school compared to the amount of space allocated to

1 the exclusive use of the school-district-operated program.

2 (d) The per-square-foot charge shall be determined using actual facilities costs in the  
3 year preceding the fiscal year in which facilities are provided and the largest amount of  
4 total space of the school district at any time during the year preceding the fiscal year in  
5 which facilities are provided.

6 (e) The per-square-foot charge shall be applied equally by the school district to all  
7 charter schools that receive facilities under this article and, beginning in 2008-09, each  
8 charter school using school district facilities pursuant to Education Code section 47614  
9 shall report the per-square-foot charge it is paying in the current fiscal year to the  
10 California Department of Education (CDE). The per-square-foot charge information (as  
11 applicable) shall be included in the notification each charter school makes to the CDE  
12 by June 1 pursuant to Education Code section 47630.5(b). The CDE shall post the per-  
13 square-foot amounts reported by charter schools on its publicly accessible Web site.  
14 The CDE shall offer the opportunity to each school district to provide explanatory  
15 information regarding its per-square-foot charge and shall post any information  
16 received.

17 (f) If a school district charges a charter school for facilities costs pursuant to this  
18 article, and if the district is the charter school's authorizing entity, the facilities are not  
19 substantially rent free within the meaning of Education Code section 47613, and the  
20 district may only charge for the actual costs of supervisory oversight of the charter  
21 school not to exceed 1 percent of the school's revenue.

22 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Sections 17014,  
23 17070.75, 47613, 47614, 47630.5, Education Code.

24  
25 **§ 11969.8. Reimbursement Rates for Over-Allocated Space.**

26 (a) Space is considered to be over-allocated if (1) the charter school's actual in-  
27 district classroom ADA is less than the projected in-district classroom ADA upon which  
28 the facility allocation was based and (2) the difference is greater than or equal to a  
29 threshold ADA amount of 25 ADA or 10 percent of projected in-district classroom ADA,  
30 whichever is greater. The per-pupil rate for over-allocated space shall be equal to the  
31 statewide average cost avoided per pupil set pursuant to Education Code section 42263

1 for 2005-06, adjusted annually thereafter by the CDE by the cost-of-living  
2 adjustment provided for school district revenue limits, rounded to the next  
3 highest dollar, and posted on the CDE Web site. The reimbursement amount owed  
4 by the charter school for over-allocated space shall be equal to (1) this rate times the  
5 difference between the charter school's actual in-district classroom ADA and the  
6 projected in-district classroom ADA upon which the facility allocation was based, less  
7 (2) this rate times one-half the threshold ADA. For purposes of this subdivision, the  
8 actual in-district classroom ADA shall be determined using the report submitted  
9 pursuant to ~~§~~section 11969.9~~(i)(I)~~ in conjunction with the second principal  
10 apportionment under Education Code section 41601.

11 (b) A charter school must notify the school district when it anticipates that it will have  
12 over-allocated space that could be used by the school district. Upon notification by a  
13 charter school that the charter school anticipates having over-allocated space, a school  
14 district may elect to use the space for school district programs. The school district must  
15 notify the charter school whether or not it intends to use the over-allocated space within  
16 30 days of the notification by the charter school. If the school district notifies the charter  
17 school that it intends to use all or a portion of the over-allocated space, payments for  
18 over-allocated space and pro rata share payments shall be reduced accordingly  
19 beginning at the time of the school district notification to use the space. If the school  
20 district notifies the charter school that it does not intend to use the space, the charter  
21 school must continue to make payments for over-allocated space and pro rata share  
22 payments. The school district may, at its sole discretion, reduce the amounts owed by  
23 the charter school.

24 (c) With respect to charter schools established at existing public school sites  
25 pursuant to Education Code sections 47605(a)(2), 52055.5, 52055.55, or 52055.650,  
26 the provisions of this section are limited by the applicable provisions of subdivisions (c)  
27 and (d) of section 11969.3.

28 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Sections 41601,  
29 42263, 47605, 47614, 52055.5, 52055.55, 52055.650, Education Code.

1 § 11969.9. Procedures and Timelines for the Request for, Reimbursement for, and  
2 Provision of, Facilities.

3 (a) A charter school must be operating in the school district as defined in Education  
4 Code section 47614 before it submits a request for facilities. A new or proposed new  
5 charter school is operating within the school district and, therefore, eligible to request  
6 facilities for a particular fiscal year only if it submitted its charter petition to a local  
7 education agency pursuant to Education Code sections 47605, 47605.5, 47605.6, or  
8 47605.8 on or before November 15 of the fiscal year preceding the year for which  
9 facilities are requested. A new charter school is entitled to receive be allocated and/or  
10 provided access to facilities only if it received receives approval of the petition before  
11 March 15 of the fiscal year preceding the year for which facilities are requested.

12 (b) To receive facilities during a particular fiscal year, a charter school must submit a  
13 written facilities request to the school district ~~by October~~ on or before November 1 of the  
14 preceding fiscal year. ~~However, a new charter school, defined as a charter school that~~  
15 ~~did not receive funds pursuant to Education Code section 47633 in the fiscal year~~  
16 ~~preceding the fiscal year for which facilities are requested, must submit its written~~  
17 ~~facilities request before January 1 of the preceding fiscal year. In the absence of a~~  
18 ~~successful local school bond measure, a charter school making a request for facilities~~  
19 ~~under this article in compliance with the procedures and timelines established in this~~  
20 ~~section shall be entitled to receive facilities beginning on November 8, 2003.~~

21 (c)(1) The written facilities request **consists of** ~~must include~~:

22 (A) reasonable projections of in-district and total ADA and in-district and total  
23 classroom ADA, **based on ADA claimed for appointment, if any, in the fiscal year**  
24 **prior to the fiscal year in which the facilities request is made, adjusted for**  
25 **expected changes in enrollment in the forthcoming fiscal year;**

26 (B) a description of the methodology for the projections;

27 (C) if relevant **(i.e., when a charter school is not yet open or to the extent an**  
28 **operating charter school projects a substantial increase in in-district ADA),**  
29 documentation of the number of in-district students meaningfully interested in attending  
30 the charter school **that is sufficient for the district to determine the reasonableness**  
31 **of the projection, but that need not be verifiable for precise arithmetical accuracy;**

1 (D) the charter school's instructional calendar;

2 (E) information regarding the general geographic area in which the charter school  
3 wishes to locate; and

4 (F) information on the charter school's educational program that is relevant to  
5 assignment of facilities.

6 (2) Projections of in-district ADA, in-district classroom ADA, and the number of in-  
7 district students shall be broken down by grade level and by the school in the school  
8 district that the student would otherwise attend.

9 (3) (A) Until subparagraph (B) becomes operative, Sschool districts may require the  
10 charter school to submit its facilities request containing the information specified in  
11 subdivisions (c)(1) and (2) on a form available from the California Department of  
12 Education CDE and developed in consultation with the Advisory Commission on Charter  
13 Schools (ACCS) or another form specified by the school district. School districts may  
14 also require the charter school either to distribute a reasonable number of copies of the  
15 written facilities request for review by other interested parties, such as parents and  
16 teachers, or to otherwise make the request available for review.

17 (B) Beginning with the facilities to be used in 2008-09, the charter school shall  
18 submit its facilities request containing the information specified in paragraphs (1) and  
19 (2) of subdivisions (c)(1) and (c)(2) on a form made available (and periodically revised)  
20 by the CDE following consultation with the ACCS and the Office of Public School  
21 Construction. The CDE shall post and maintain the form and the instructions for  
22 completing the form on its publicly accessible Web site. A facilities request that is  
23 submitted on the form specified in this paragraph is a complete request, provided  
24 that the form is filled out in accordance with the instructions and that any  
25 attachments specified in the instructions are concurrently submitted.

26 (C) Unless the CDE posts the form described in subparagraph (B) by October  
27 1, 2007, subparagraph (A) shall continue to be operative for facilities to be used in  
28 2008-09.

29 (d) The school district shall review the projections and provide the charter school a  
30 reasonable opportunity to respond to any concerns raised by the school district  
31 regarding the projections charter school's projections of in-district and total ADA and in-

1 district and total classroom ADA and, on or before December 1, express any objections  
2 in writing and state the projections the district considers reasonable. If the district does  
3 not express objections in writing and state its own projections by the deadline, the  
4 charter school's projections are no longer subject to challenge, and the school district  
5 shall base its offer of facilities on those projections.

6 (e) On or before January 2, the charter school shall respond to any objections  
7 expressed by the school district and to the district's projections provided pursuant to  
8 subdivision (d). The charter school shall reaffirm or modify its previous projections as  
9 necessary to respond to the information received from the district pursuant to  
10 subdivision (d). If the charter school does not respond by the deadline, the district's  
11 projections provided pursuant to subdivision (d) are no longer subject to challenge, and  
12 the school district shall base its offer of facilities on those projections.

13 (f) On or before February 1, The the school district shall prepare **in writing** a  
14 preliminary proposal regarding the space to be allocated to the charter school and/or to  
15 which the charter school is to be provided access. At a minimum, the preliminary  
16 proposal shall include (1) the projections of in-district classroom ADA on which the  
17 proposal is based, (2) the specific location or locations of the space, (3) all conditions  
18 pertaining to the space, **including a draft of any proposed agreement pertaining to**  
19 **the charter school's use of the space**, and (4) the associated projected pro rata share  
20 amount and a description of the methodology used to determine that amount provide  
21 the charter school a reasonable opportunity to review and comment on the proposal.  
22 The district shall also provide the charter school a list **and description** of the  
23 comparison group schools used in developing its preliminary **proposal, and a**  
24 **description of the differences between the preliminary proposal and the charter**  
25 **school's facilities request as submitted pursuant to subdivision (b)offer.**

26 (g) On or before March 1, the charter school shall respond **in writing** to the school  
27 district's preliminary proposal made pursuant to subdivision (f), expressing any  
28 concerns, **addressing differences between the preliminary proposal and the**  
29 **charter school's facilities request as submitted pursuant to subdivision (b), and/or**  
30 **making counter proposals.**

31 (h) On or before April 1, having reviewed any concerns and/or counter proposals

1 made by the charter school pursuant to subdivision (g), the school district shall submit  
2 in writing a final notification of the space offered to the charter school. The notification  
3 shall include a response in writing to the charter school's concerns and/or counter  
4 proposals (if any). The notification shall

5 ~~(e) The school district must provide a final notification of the space offered to the~~  
6 ~~charter school by April 1 preceding the fiscal year for which facilities are requested. The~~  
7 ~~school district notification must specifically identify:~~

8 (1) the teaching station, specialized classroom space, and non-teaching station  
9 space offered for the exclusive use of the charter school and the teaching station,  
10 specialized classroom space, and non-teaching station space to which the charter is to  
11 be provided access on a shared basis with district-operated programs;

12 (2) for shared space, the arrangements for sharing;

13 (3) the in-district classroom ADA assumptions for the charter school upon which the  
14 allocation is based and, if the assumptions are different than those submitted by the  
15 charter school pursuant to subdivision (e), a written explanation of the reasons for the  
16 differences;

17 (4) the specific location or locations of the space;

18 (5) all conditions pertaining to the space;

19 ~~(4)~~(6) the pro rata share amount; and

20 ~~(5)~~(7) the payment schedule for the pro rata share amount, which shall take into  
21 account the timing of revenues from the state and from local property taxes.

22 ~~(f)~~(i) The charter school must notify the school district in writing whether or not it  
23 intends to occupy the offered space. This notification must occur by May 1 or 30 days  
24 after the school district notification pursuant to subdivision (h), whichever is later. The  
25 charter school's notification can be withdrawn or modified before this deadline. After the  
26 deadline, if the charter school has notified the school district that it intends to occupy the  
27 offered space, the charter school is committed to paying the pro rata share amount as  
28 identified. If the charter school does not notify the school district by this deadline that it  
29 intends to occupy the offered space, then the space shall remain available for school  
30 district programs and the charter school shall not be entitled to use facilities of the  
31 school district in the following fiscal year.

1       ~~(g)~~(i) The space allocated to the charter school by the school district (or to which the  
2 school district provides the charter school access) must be furnished, equipped and  
3 available for occupancy by the charter school for a period of at least seven ~~ten~~ working  
4 days prior to the first day of instruction of the charter school. ~~For good cause, the period~~  
5 is subject to reduction by the school district, but to no fewer than seven working days.

6       ~~(h)~~(k) The school district and the charter school shall negotiate an agreement  
7 regarding use of and payment for the space. The agreement shall contain at a  
8 minimum, the information included in the notification provided by the school district to  
9 the charter school pursuant to subdivision ~~(e)~~(h). ~~In addition, if required by the school~~  
10 ~~district, the agreement shall provide that the charter school shall:~~

11       (1) ~~Maintain~~ The charter school shall maintain general liability insurance naming the  
12 school district as an additional insured to indemnify the school district for damage and  
13 losses for which the charter school is liable. The school district shall maintain first party  
14 property insurance for the facilities allocated to the charter school. ; and/or

15       (2) ~~Comply~~ The charter school shall comply with school district policies regarding the  
16 operations and maintenance of the school facility and furnishings and equipment.

17       (3) A reciprocal hold-harmless/indemnification provision shall be established  
18 between the school district and the charter school.

19       (4) The school district shall be responsible for any modifications necessary to  
20 maintain the facility in accordance with Education Code section 47610(d).

21       ~~(i)~~(l) The charter school must report actual ADA to the school district every time that  
22 the charter school reports ADA for apportionment purposes. The reports must include  
23 in-district and total ADA and in-district and total classroom ADA. The charter school  
24 must maintain records documenting the data contained in the reports. These records  
25 shall be available on request by the school district.

26       ~~(j)~~ ~~The charter school and the school district may negotiate separate agreements~~  
27 ~~and/or reimbursement arrangements for specific services not considered part of~~  
28 ~~facilities costs as defined in Section 11969.7. Such services may include, but are not~~  
29 ~~limited to, the use of additional space and operations, maintenance, and security~~  
30 ~~services.~~

31       ~~(k)~~ ~~Notwithstanding any of the other provisions of this section, a charter school and~~

1 the school district may mutually establish different timelines and procedures than  
2 provided in this section. A school district may establish timelines as much as two  
3 months earlier than provided in this section provided that (1) it notify charter schools of  
4 the changes, (2) it does not change the dates for submission of facility requests, and (3)  
5 charter schools have the same amount of time to respond to the school district's offer of  
6 space.

7 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Sections 47605,  
8 47605.5, 47605.6, 47605.8, 47610, 47614, Education Code.

9  
10 § 11969.10. Procedures and Timelines for Dispute Resolution Regarding Facilities  
11 for Charter Schools Mediation of Disputes.

12 (a) A charter school has standing to initiate the dispute resolution process  
13 established in this section only if one of the following conditions applies:

14 (1) The charter school believes it filed a facilities request in accordance with  
15 Education Code section 47614 and this article, but that the school district did not  
16 meet its obligations by the deadlines specified in subdivisions (d), (e), or (f) of  
17 section 11969.9. Initiation of the dispute resolution process for this purpose must  
18 occur not later than ten working days following the deadline alleged to have been  
19 missed.

20 (2) The charter school believes the facilities offer it was provided pursuant to  
21 subdivision (h) of section 11969.9 does not comply with Education Code section  
22 47614 or this article. Initiation of the dispute resolution process for this purpose  
23 must occur not later than April 15.

24 (3) The charter school believes the school district otherwise failed to comply  
25 with Education Code section 47614 or this article.

26 (b) A school district has standing to initiate the dispute resolution process  
27 established in this section only if the school district believes the charter school  
28 has failed to comply with Education Code section 47614 or this article.

29 (c) If a school district is also the authorizing entity of a charter school,  
30 disputes between the school district and the charter school regarding an alleged  
31 violation, misinterpretation, misapplication, or failure to comply with Education

1 ~~Code section 47614 or this article shall be resolved using the dispute resolution~~  
2 ~~process identified in the school's charter. If either party does not want to resolve~~  
3 ~~the dispute in the manner identified in the school's charter, or if the school~~  
4 ~~district is not the charter school's authorizing entity, then the following steps~~  
5 ~~apply to resolve the dispute:~~

6 ~~(1) The first step in the dispute resolution process is:~~

7 ~~(A) If the charter school initiates the dispute resolution process, it shall bring~~  
8 ~~the dispute before the school district's governing board, and the district~~  
9 ~~governing board shall respond within 30 days or at the conclusion of the~~  
10 ~~governing board's next regularly scheduled meeting at which the matter can be~~  
11 ~~appropriately noticed for action, whichever is earlier.~~

12 ~~(B) If the school district initiates the dispute resolution process, it shall bring~~  
13 ~~the dispute before the charter school's governing authority as identified in the~~  
14 ~~charter, and the school's governing authority shall respond within 30 days or at~~  
15 ~~the conclusion of the governing authority's next regularly scheduled meeting at~~  
16 ~~which the matter can be appropriately noticed for action, whichever is earlier.~~

17 ~~(C) If a school district governing board or charter school governing authority~~  
18 ~~response pursuant to paragraph (1) of subdivision (c)(1) does not resolve the~~  
19 ~~dispute, or if a response is not received within 30 days, the party initiating the~~  
20 ~~dispute resolution process shall notify the other party (responding party) in~~  
21 ~~writing that it intends to proceed with the second step of the dispute resolution~~  
22 ~~process.~~

23 ~~(2) The second step in the dispute resolution process If a dispute arises~~  
24 ~~between a school district and a charter school concerning the provisions of~~  
25 ~~Education Code section 47614 or this article, the dispute is subject to mediation,~~  
26 ~~but it is applicable only if agreeable to both parties. If mediation is not agreeable to~~  
27 ~~both parties, the third step in the dispute resolution process applies. Mediation~~  
28 ~~consists of the following:~~

29 ~~(A)(a) The initiating party shall select a mediator, subject to the agreement of the~~  
30 ~~responding party. If, though agreeing to mediation, the parties are unable to agree upon~~  
31 ~~a mediator, the CDE shall be requested by the initiating party to appoint a mediator~~

1 within seven days to assist the parties in resolving the dispute. The mediator shall meet  
2 with the parties as quickly as possible.

3 (B)(b) Within seven days of the selection or appointment of the mediator, the party  
4 initiating the dispute resolution process shall prepare and send to both the responding  
5 party and the mediator a notice of dispute that shall include the following information:

6 (i)(1) The name, address, and phone numbers of designated representative of the  
7 parties;

8 (ii)(2) A statement of the facts of the dispute, including information regarding the  
9 parties' attempts to resolve the dispute;

10 (iii)(3) The specific sections of the statute or regulations that are in dispute; and

11 (iv) (4) The specific resolution sought by the initiating party.

12 (C)(c) Within seven days of receiving the information specified in subparagraph  
13 (B) of paragraph (2) of subdivision (c)(2)(B), the responding party shall file a written  
14 response.

15 (D)(i)(d)(1) The mediation procedure shall be entirely informal in nature. However,  
16 copies of exhibits upon which either party bases its case shall be shared with the other  
17 party. The relevant facts should be elicited in a narrative fashion to the extent possible,  
18 rather than through examination and cross-examination of witnesses. The rules of  
19 evidence will not apply and no record of the proceedings will be made.

20 (ii)(2) If an agreement is reached, the agreement shall be reduced to writing and  
21 shall be signed by the school district and the charter school. The agreement shall not  
22 set a precedent for any other case.

23 (iii)(3) If the school district and the charter school fail to meet within the specified  
24 time line, have not reached an agreement within 15 days from the first meeting held by  
25 the mediator, or if the mediator declares the parties at impasse, the mediation is  
26 terminated, and the parties proceed to the third step in the dispute resolution  
27 process.

28 (E)(e) The costs of the mediation are divided equally by the two parties and paid  
29 promptly.

30 (3) The third and final step in the dispute resolution process is immediate  
31 resolution. Immediate resolution consists of the following:

1 (A) The party initiating the dispute resolution process shall request the CDE to  
2 immediately resolve the dispute. CDE, at its discretion, shall take either of the  
3 following actions, balancing in that decision its determination of the method that  
4 will be less expensive and more expeditious:

5 (i) Submit the matter to the Office of Administrative Hearings (OAH) for  
6 consideration and resolution by an administrative law judge.

7 (ii) Prepare within five working days a list of five charter school facility  
8 arbitrators. Beginning with the responding party, the parties shall alternatively  
9 strike names from the list until only one name remains. Striking names from the  
10 list shall occur within five days of the receipt of the list by the responding party.  
11 The initiating party shall contact the CDE regarding the selection of the arbitrator.  
12 Arbitration shall be scheduled and conducted as quickly as possible following  
13 the selection of the arbitrator.

14 (B) Prior to the administrative hearing or the arbitration, the parties shall meet  
15 to attempt to frame the issue or issues to be submitted to the administrative law  
16 judge or arbitrator, share all evidence, determine whether a court reporter is  
17 necessary, and attempt to settle the dispute, if possible.

18 (C) The administrative law judge or arbitrator shall hold an administrative  
19 hearing or arbitration concerning the dispute and render a decision. Both parties  
20 shall comply with the decision. The administrative law judge or arbitrator is  
21 empowered to include the award of any remedies he or she determines to be  
22 reasonable, proper, and in compliance with Education Code section 47614 and  
23 this article.

24 (D) Unless otherwise specified by the administrative law judge or arbitrator, all  
25 costs of the administrative hearing or arbitration, including, but not limited to, the  
26 fees of the OAH or the arbitrator's fees, per diem, travel, and subsistence  
27 expenses, and the cost, if any, of a hearing room and transcription of the hearing,  
28 shall be divided equally by the school district and the charter school and paid  
29 promptly.

30 (E) Only after the administrative procedures established in this section have  
31 been exhausted may judicial review be sought regarding a dispute related to an

1 ~~alleged violation, misinterpretation, misapplication, or failure to comply with~~  
2 ~~Education Code section 47614 or this article.~~

3 ~~(F) If judicial review is sought of a decision rendered pursuant to subdivision~~  
4 ~~(e)(3)(C), it shall be incumbent upon the party pursuing judicial review to~~  
5 ~~establish conclusively that the decision does not comply with a provision of~~  
6 ~~Education Code section 47614 or of this article.~~

7 NOTE: Authority cited: Section 47614(b), Education Code. Reference: Section 47614,  
8 Education Code.