



## CALIFORNIA STATE BOARD OF EDUCATION

ITEM #W-3

### MARCH 2004 AGENDA

**General Waiver**

<p><b>SUBJECT</b></p> <p>Request by <b>California Virtual Academy @ Kern Charter School</b> for a waiver of Title 5 of the <i>California Code of Regulations (CCR)</i> Section 11963.4(b)(3) to allow the charter school to receive full funding with less than 50 percent (but more than 30 percent) of expenditures required for certificated staff costs due to the characteristics of a "Virtual Education Program."</p> <p>Waiver Number: 9-9-2003</p>	<p><input checked="" type="checkbox"/> <b>Action</b></p> <p><input type="checkbox"/> <b>Consent</b></p>
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#### RECOMMENDATION

Approval  Approval with conditions  Denial

Reason: *Education Code* Section 33050(a)(6) "substantially increases state costs," and for the other reasons described in the following analysis.

#### SUMMARY OF PREVIOUS STATE BOARD OF EDUCATION DISCUSSION AND ACTION

Senate Bill (SB) 740 (Chapter 892, Statutes of 2001) allows funding reductions for charter schools that offer nonclassroom-based instruction (*Education Code* Sections 47612.5 and 47634.2). Nonclassroom-based instruction occurs when a charter school does not require attendance of its pupils at the school site under the direct supervision and control of a qualified teaching employee of the school for at least 80 percent of the required instructional time. For 2003-04 and each fiscal year thereafter, the law states that funding reductions of 30 percent of qualifying charter schools' nonclassroom-based average daily attendance (ADA) shall be made unless the State Board of Education (SBE) determines that a greater or lesser percentage is appropriate for a particular charter school. Furthermore, pursuant to SB 740, a charter school is prohibited from receiving any funding for nonclassroom-based instruction unless the SBE determines its eligibility for funding.

SB 740 also established the Advisory Commission on Charter Schools (ACCS) to develop the criteria for the SBE to use in making funding determinations. The ACCS also provides recommendations to the SBE on appropriate funding determinations for nonclassroom-based charter schools and on other aspects of the SBE's duties under the Charter Schools Act.

The SBE adopted permanent regulations that were approved in November 2003 that specified the criteria that a nonclassroom-based charter school must meet in order for the SBE to determine that the school shall receive 100 percent funding. For 2003-04

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and each fiscal year thereafter, the full funding criteria are that at least 50 percent of the school's public revenues must be spent on certificated employee salaries and benefits and at least 80 percent of all revenues must be spent on instruction and instruction-related costs. Schools must spend a minimum of 40 percent on certificated employee salaries and benefits and 60 percent on instruction and instruction-related costs or the funding percentage is zero. Pursuant to the regulations, the SBE may approve a higher or lower funding level than the criteria would prescribe based upon mitigating circumstances of the school that indicate that a higher or lower funding level is appropriate.

There have been no other waiver requests of the SB 740 statutes or regulations before the SBE.

### SUMMARY OF KEY ISSUES

California Virtual Academy @ Kern Charter School is seeking a waiver of Title 5 *CCR* Section 11963.4(b)(3) to allow the charter school to receive full funding with less than 50 percent (but more than 30 percent) of expenditures required for certificated staff costs due to the characteristics of a "Virtual Education Program." The basis of California Virtual Academy's request is that on-line charter schools are currently being treated as independent study programs, and that the SB 740 requirements do not take into consideration the required funding distribution required toward instructional materials, computer equipment, and the on-line curriculum in their particular program. The school provides information showing approximate expenditures of 55 percent of the school's state funding to provide infrastructure requirements for the program before including teacher salaries, special education services, counseling, administrative services, and other costs.

CDE recommends denial of this waiver request for the following reasons: 1) *Education Code* Section 33051(a)(6): Approval of this waiver would potentially significantly increase state costs (or result in foregone savings). See the fiscal analysis for discussion.

2) The funding determination process required by SB 740 was intended to include a variety of nonclassroom-based schools, and not just independent study charter schools. *Education Code* Section 47612.5(d)(1) states, "nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education." It was always the intent of SB 740 to include virtual schools, i.e., distance and computer-based education, in the funding determination process. There are a variety of nonclassroom-based charter schools that are required to go through the SB 740 funding determination process. The California Virtual Academy schools are not the only charter schools in the state offering on-line instructional programs. All of these schools are required to meet SB 740 requirements (or demonstrate through that process why they should be exempted).

3) The ACCS, through the SB 740 funding determination process, provides funding recommendations to the SBE on nonclassroom-based charter schools. If one or more mitigating circumstances are factors for a school in not meeting the percentage criteria required for 100 percent funding, documentation can accompany the funding determination request form and the ACCS will fully consider this information in their

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funding recommendation to the SBE. Representatives from the school always have an opportunity to appear before the ACCS and the SBE to present relevant information related to their school's operations. When the percentage criteria for full funding are not met, it is the charter school's responsibility to provide documentation to the ACCS and the SBE that demonstrates that the mitigating circumstance is compelling. Approval of this waiver would bypass a process already established for the SBE to consider this information. It would also be premature of the SBE to make this determination without the benefit of all the other information provided on the SB 740 forms.

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Authority for Waiver: *Education Code* Section 33050

Bargaining unit(s) consulted on date(s): The school does not have any employee bargaining units.

Position of bargaining unit(s) (choose only one): The school does not have any employee bargaining units.

Neutral                       Support                       Oppose

Name of bargaining unit representative(s): The school does not have any employee bargaining units.

Public hearing identified by (choose one or more):

posting in a newspaper     posting at each school     other (Notice Posted at District Offices, Notice Posted at meeting site)

Public hearing held on date(s): 12/11/03

Local board approval date(s): 12/11/03

Advisory committee(s) consulted: No parent committee. Governing Board (with parents) reviewed waiver—no objections.

Objections raised (choose one):  None     Objections are attached on separate sheet

Date(s) consulted: September 22, 2003

Period of request: 7/1/03 – 6/30/05

<b>FISCAL ANALYSIS (AS APPROPRIATE)</b>
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The SB 740 regulations for 2003-04 require that at least 40 percent of public revenues be spent on certificated employee salaries and benefits to receive a funding level of 70 percent and at least 50 percent of public revenues spent on certificated employee salaries and benefits to receive full funding. California Virtual Academy is asking for full funding with less than 50 percent (but more than 30 percent) of expenditures required for certificated staff costs. Therefore, approval of this waiver could result in foregone Proposition 98 savings to the state, assuming that the SBE would have approved this school at the 70 percent funding level through the SB 740 funding determination

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process. Based on the current enrollment of 434 students and K-6 charter school funding rates of approximately \$4,700 per pupil, these foregone savings could be at least \$611,940 per year. If the school is unable to meet the minimum 40 percent criterion for any funding, and the SBE makes a zero percent funding determination through the SB 740 process, then the foregone savings would be about \$2.0 million.

### **BACKGROUND INFORMATION**

Waiver request form and background information are attached to this summary.