



**MAY 2003 AGENDA**

SUBJECT	X	ACTION
Permanent Regulations Regarding Claims for Average Daily Attendance for Pupils Over the Age of 19 by Charter Schools and Charter Granting Entities		INFORMATION
		PUBLIC HEARING

**Recommendation:**

Take action to adopt the proposed regulations.

**Summary of Previous State Board of Education Discussion and Action**

The State Board of Education (SBE) commenced the permanent rulemaking process for these regulations at its January 2003 meeting. At the April 2003 meeting, the SBE amended the regulations, which allowed for an additional 15-day public comment period.

*Education Code* Section 47612(b) as established by Assembly Bill (AB) 1115 (Chapter 78, Statutes of 1999) places specified limitations on pupils over the age of 19 who may be claimed for apportionment purposes by charter schools. [AB 1115 reorganized statutory provisions originally enacted by AB 544 (Chapter 34, Statutes of 1998).] The State Board of Education previously adopted regulations defining “satisfactory progress” in relation to these limitations, but did not adopt regulations further defining qualifications for the claiming of such pupils.

**Summary of Key Issue(s)**

An administrative determination by the California Department of Education has permitted a greater number of pupils over the age of 19 to be claimed for apportionment purposes than would be permitted under these regulations. The regulations are proposed to become operative beginning in 2004-05 to allow for an orderly transition or to allow for legislation to be obtained that would legally remove the limitations on pupils over the age of 19 who may be claimed. The Department of Finance and the Secretary for Education have requested approval of the proposed regulations.

**Fiscal Analysis (as appropriate)**

These regulations may result in a reduced level of expenditures for apportionments to charter schools. The expenditure reductions would occur in the funds dedicated to public schools under Proposition 98, all of which, by law must be expended each fiscal year. Thus, any reduced expenditures are more accurately characterized as expenditure shifts than as absolute savings.

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**Attachment(s)**

[Attachment 1](#): Title 5. Education, California State Board of Education, 15-Day Notice of Modifications to Text of Proposed Regulations (Page 1-1)

[Attachment 2](#): Proposed Regulations – Charter School Regular Average Daily Attendance (Pages 1-2)

[Attachment 3](#): Initial Statement of Reasons (Pages 1-2)

STATE OF CALIFORNIA  
Governor

GRAY DAVIS,

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## CALIFORNIA STATE BOARD OF EDUCATION

1430 N Street; P.O. Box 944272  
Sacramento, CA 95814-5901



April 18, 2003

### **15-DAY NOTICE OF MODIFICATIONS TO TEXT OF PROPOSED REGULATIONS**

Pursuant to the requirements of Government Code section 11346.8(c), and Section 44 of Title 1 of the California Code of Regulations, the State Board of Education (State Board) is providing notice of changes made to proposed regulation Section 11960 which was the subject of a regulatory hearing on April 9, 2003. These changes are in response to comments received regarding the proposed regulation.

If you have any comments regarding the proposed changes that are the topic of this 15-Day Notice, the State Board will accept written comments between April 22, 2003 and May 6, 2003, inclusive. All written comments must be submitted to the Regulations Adoption Coordinator via facsimile at (916) 319-0155; email at [dstrain@cde.ca.gov](mailto:dstrain@cde.ca.gov) or mailed to the following address no later than **5:00 p.m. on May 6, 2003**, and addressed to:

Debra Strain, Regulations Adoption Coordinator  
California Department of Education  
LEGAL DIVISION  
1430 N Street, Suite 5319  
Sacramento, California 95814-5901  
Telephone: (916) 319-0641

All written comments received by **5:00 p.m. on May 6, 2003**, which pertain to the indicated changes will be reviewed and responded to by California Department of Education staff as part of the compilation of the rulemaking file. Please limit your comments to the modifications to the text.

The State Board has illustrated changes to the original text in the following manner: regulation language originally proposed is underlined. The 15-Day Notice illustrates deletions from the language originally proposed using a "~~strikeout~~"; and additions to the language originally proposed using double underline.

## PROPOSED REGULATIONS

### Title 5. EDUCATION

#### Division 1. State Department of Education

#### Chapter 11. Special Programs

#### Subchapter 19. Charter Schools

#### Article 1. Charter School Regular Average Daily Attendance

*Amend Section 11960 to read:*

#### **§11960. Regular Average Daily Attendance for Charter Schools.**

(a) As used in Education Code section 47612, “attendance” means the attendance of charter school pupils while engaged in educational activities required of them by their charter schools, on days when school is actually taught in their charter schools. “Regular average daily attendance” shall be computed by dividing a charter school's total number of pupil-days of attendance by the number of calendar days on which school was actually taught in the charter school. For purposes of determining a charter school's total number of pupil-days of attendance, no pupil may generate more than one day of attendance in a calendar day.

(b) The State Superintendent of Public Instruction shall proportionately reduce the amount of funding that would otherwise have been apportioned to a charter school on the basis of average daily attendance for a fiscal year, if school was actually taught in the charter school on fewer than 175 calendar days during that fiscal year.

(c) (1) Beginning in 2003-04 2004-05, a pupil who is over the age of 19 years may generate attendance for apportionment purposes in a charter school only if the both of the following conditions are met:

(A) The pupil was enrolled in a public school in pursuit of a high school diploma (or, if a student in special education, an individualized education program) while 19 years of age and, without a break in public school enrollment since that time, is enrolled in the charter school and is making satisfactory progress towards award of a high school diploma (or, if a student in special education, satisfactory progress in keeping with an individualized education program) consistent with the definition of satisfactory progress set forth in subdivision (b) of Section 11965.

(B) The pupil is not over the age of 22 years.

(2) This subdivision shall not apply to a charter school program specified in Education Code section 47612.1. A charter school program as specified in Education Code section 47612.1 may be either:

(1)(A) the whole of a charter school, if the school has an exclusive partnership agreement with one or more of the programs specified in Education Code section 47612.1 and serves no other pupils; or

(2)(B) an instructional program operated by a charter school that is exclusively dedicated to pupils who are also participating in one of the programs specified in Education Code section 47612.1, provided that arrangement is set forth in an exclusive partnership agreement between the charter school and one or more of the programs specified in Education Code section 47612.1.

(d) No individual who is ineligible to generate attendance for apportionment purposes in a charter school pursuant to subdivision (c) may be claimed as regular attendance for apportionment purposes by a local education agency that is authorized by law to grant charters. This subdivision shall not apply to claims other than claims for regular attendance for apportionment purposes.

NOTE: Authority cited: Section 33031, Education Code. Reference: Sections 41420, 46301 and 47612, Education Code.

**INITIAL STATEMENT OF REASONS****SECTION 11960. Regular Average Daily Attendance for Charter Schools.****SPECIFIC PURPOSE OF THE REGULATIONS**

The proposed regulations clarify the requirements for individuals to be eligible for claiming as K-12 average daily attendance when the individuals are over the age of 19.

**NECESSITY/RATIONALE**

The provisions of Education Code section 47612(b) have been implemented under an administrative interpretation not codified in regulations, thus demonstrating that the statute per se is in need of clarification. Regulations are the appropriate manner in which to clarify statutory requirements that control potentially substantial amounts of state funding.

**SECTION 11960(c)**

Clarifies that, beginning in 2004-05, a pupil who is over the age of 19 years may generate attendance for apportionment purposes in a charter school only if all of the following conditions are met:

- (1) the pupil was enrolled in a public school in pursuit of a high school diploma (or, if a student in special education, an individualized education program) while 19 years of age;
- (2) without a break in public school enrollment since that time, the pupil is enrolled in the charter school and is making satisfactory progress towards award of a high school diploma (or, if a student in special education, satisfactory progress in keeping with an individualized education program) consistent with the definition of satisfactory progress elsewhere set forth in regulation; and
- (3) the pupil is not over the age of 22 years.

This subdivision makes clear that it does not apply to a charter school program specified in Education Code Section 47612.1.

This subdivision defines a charter school program as specified in Education Code Section 47612.1 as being either:

- (1) the whole of a charter school, if the school has an exclusive partnership agreement with one or more of the programs specified in Education Code Section 47612.1 and serves no other pupils; or
- (2) an instructional program operated by a charter school that is exclusively dedicated to pupils who are also participating in one of the programs specified in Education Code Section 47612.1, provided that arrangement is set forth in an exclusive partnership agreement between the charter school and the program or programs specified in Education Code Section 47612.1.

**SECTION 11960(d)**

This subdivision specifies that no individual who is ineligible to generate attendance for apportionment purposes in a charter school pursuant to subdivision (c) may be claimed as regular attendance for apportionment purposes by a local education agency that is authorized by law to grant charters. This provision, which is not inconsistent with statute, is needed to ensure that charter granting entities do not claim individuals for ADA purposes who are ineligible under the provisions of subdivision (c) then assign

them to charter schools for instructional purposes. Such an outcome would defeat the clear intent of the statute.

The subdivision clarifies that its restrictions apply only to claims for regular average daily attendance. Thus, statutorily separate programs, such as adult education, would not be affected in any way by these regulations. This provision avoids any confusion with respect to the authority of local education agencies that grant charters to claim individuals for such separate programs in accordance with applicable law.

**TECHNICAL, THEORETICAL, AND/OR EMPIRICAL STUDIES, REPORTS, OR DOCUMENTS.**

The State Board did not rely upon any other technical, theoretical, or empirical studies, reports, or documents in proposing the adoption of these regulations.

**REASONABLE ALTERNATIVES TO THE REGULATIONS AND THE AGENCY'S REASONS FOR REJECTING THOSE ALTERNATIVES.**

The State Board was not presented with other viable alternatives to the adoption of these regulations.

**REASONABLE ALTERNATIVES TO THE PROPOSED REGULATORY ACTION THAT WOULD LESSEN ANY ADVERSE IMPACT ON SMALL BUSINESS.**

The State Board has not identified any alternatives that would lessen any adverse impact on small business.

**EVIDENCE SUPPORTING FINDING OF NO SIGNIFICANT ADVERSE ECONOMIC IMPACT ON ANY BUSINESS.**

The proposed regulations would not have a significant adverse economic impact on any business because they only provide clarity for charter schools for the purposes of claiming K-12 attendance for apportionment purposes. The proposed regulations do not impose additional workloads on small businesses or contractors funded by the Department.