



**SEPTEMBER 2003 AGENDA**

<b>SUBJECT</b>	<b>X</b>	<b>ACTION</b>
Funding Determinations for Charter Schools Offering Nonclassroom-based Instruction Pursuant to Senate Bill (SB) 740 (Chapter 892, Statutes of 2001) – Adopt Proposed Title 5 Regulations		<b>INFORMATION</b>
		<b>PUBLIC HEARING</b>

**Recommendation:**

Consider comments received during the 15-day public comment period and take action to adopt the proposed regulations.

**Summary of Previous State Board of Education (SBE) Discussion and Action**

In July 2002, the SBE approved permanent regulations regarding funding determinations for nonclassroom-based charter schools. In May 2003, the Office of Administrative Law (OAL) disapproved those regulations citing technical deficiencies in the rulemaking package and that certain documentation should have been made available during the public review period. In June 2003, the SBE directed staff to correct the technical deficiencies in the rulemaking file and to send the necessary documentation out for an additional 15-day public comment period.

**Summary of Key Issue(s)**

The documentation sent out for public comment was revenue and expenditure data reported to the California Department of Education in the standardized account code structure (SACS) by small school districts (defined as districts with fewer than 1,000 units of average daily attendance) (Attachment 1). These data were used by the Advisory Commission on Charter Schools in its development of the percentages for certificated employee salaries and benefits expenditures, and instruction and instruction-related expenditures that are included as funding criteria in the SB 740 regulations.

Two individuals submitted comments during the 15-day period. The first individual’s comments were not related to the data; therefore, no changes to the proposed regulations are necessary. The other individual’s comments were specifically related to the data; however, staff are not recommending any changes be made to the proposed regulations. The specific comments and staff responses are included in Attachment 3.

**Fiscal Analysis (as appropriate)**

N/A

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**Attachment(s)**

- Attachment 1: Selected Financial Data for Small School Districts (Pages 1-5) (not available electronically)
- Attachment 2: Title 5, California Code of Regulations, Division 1, Chapter 11, Subchapter 19, Charter Schools (Pages 1-16) (not available electronically)
- Attachment 3: Draft Summary and Response to the Substantive Comment Received During the Second Period the Modified Text was Available to the Public (June 24, 2003 through July 9, 2003) (Pages 1-6)

**Draft Summary and Response to the Substantive Comment Received During the Second Period the Modified Text was Available to the Public (June 24, 2003 through July 9, 2003)**

**Comment:** Michael Coppess, representing Opportunities for Learning Charter Schools, made nine specific comments related to the revenue and expenditure data being entered into the rulemaking file:

- 1) It is questionable whether the State Board could have relied upon the document containing data for small school districts because a partially obscured date on the document appears to be May 8, 2003, but the proposed regulations were initially adopted in June 2002.
- 2) There is no justification for requiring charter schools to devote significantly greater percentages of revenues to certificated employees than do the sampled small school districts. Based on the data provided, the sample of small school districts spent 38.37 percent of revenues on certificated employee salaries and benefits, but the proposed regulations require charter schools to spend 50 percent; there is no discernable nexus between the percentages presented in the data for small school districts and the percentages in the proposed regulations, and it is unreasonable for the State Board to require charter schools to spend significantly more on certificated employees than small school districts do. The rulemaking file does not contain any document or analysis explaining how the small school district data forms the basis for spending requirements in the proposed regulations.
- 3) There is no justification for requiring charter schools to devote significantly greater percentages of revenues to instruction related expenditures than do the sampled small school districts. Based on the data provided, the sample of small school districts spent 50.12 percent of revenues on instruction or instruction-related activities, but the proposed regulations require charter schools to spend 80 percent; there is no discernable nexus between the percentages presented in the data for small school districts and the percentages in the proposed regulations, and it is unreasonable for the State Board to require charter schools to spend significantly more on instruction-related expenses than do small school districts. The rulemaking file does not contain any document or analysis explaining how the small school district data forms the basis for spending requirements in the proposed regulations.
- 4) The data for small school district refutes the proposed regulation's conclusion that charter schools spending less than 40 percent of revenues on certificated employees are not substantially dedicated to instruction and must be denied funding. The proposed regulations summarily equate school substance with the amount spent on certificated employees. It is unreasonable that charter schools are denied funding for certificated employee spending that exceeds that of the districts used as the model for the regulations, and the small school district data bears no discernable relationship to the spending levels required in the proposed regulations to avoid zero funding.

The rulemaking file does not contain any document or analysis explaining that disparity. The State Board has largely unguided discretion to continue to fund schools not spending at the required levels and the proposed regulations do not contain any clear guidance on how the State Board may exercise its discretion to fund.

5) The data for small school district refutes the proposed regulation's conclusion that charter schools spending less than 60 percent of revenues on instruction-related activities are not substantially dedicated to instruction and must be denied funding. The proposed regulations summarily equate school substance with the amount spent on certificated employees. It is unreasonable that charter schools are denied funding for instruction-related spending that exceeds that of the districts used as the model for the regulations, and the small school district data bears no discernable relationship to the spending levels required in the proposed regulations to avoid zero funding. The rulemaking file does not contain any document or analysis explaining that disparity. The State Board has largely unguided discretion to continue to fund schools not spending at the required levels and the proposed regulations do not contain any clear guidance on how the State Board may exercise its discretion to fund.

6) Small district spending as a percentage of expenditures is not relevant to determine desirable charter school spending as a percentage of revenue. The chart on page 4 of the data made available for public comment is the only place in the document that expresses total certificated employee spending and total instruction-related spending in any form of percentage; however, the chart is not relevant to the proposed regulations. There is a significant difference between percentages calculated based on expenditures and percentages calculated based on revenues.

7) It is unclear what the data for small school districts represents; there is no description of what kinds of districts are included in the sample other than the fact that they are small districts and there is no description of the types of programs offered in the sampled small districts. The data could encompass a range of distinct districts that each present distinct funding and spending patterns. Since it is unclear what the data represents, average small school district spending data should not be used to assess or judge any school or program. There is no reason to believe that the average spending patterns in the selected small districts represent a desirable goal for any school. The Department of Education has previously cautioned against using data derived from statewide averages, such as in the 2001 Fact Book. Using small school district spending averages as the determining factor for nonclassroom-based charter schools is contrary to the rationale underlying the Charter School Act in that it requires them to conform to traditional small district spending patterns when charter schools are supposed to be (and are) different from traditional school districts.

8) The teacher-pupil ratios are mentioned in SB 740 as criteria that must be considered in fixing funding, but the proposed regulations list ratios as a factor that may be considered. It is unreasonable to rely on teacher spending data rather than teacher student ratios because schools with higher pupil-teacher ratios will be declared substantially devoted to instruction as long as it's spending at least 40 percent of revenue on certificated employees. In contrast, a school with a low pupil-teacher ratio but that does not spend at least 40 percent of revenue on certificated employees will not be declared substantially devoted to instruction.

9) The proposed regulations do not meet the requirements for the necessity standard because the rulemaking file did not contain any documents supporting the proposed regulations spending requirements, no documentation was presented of the source of the percentages, how the percentages were derived, or how the percentage related to charter school independent study programs. The document containing data from small school districts still does not provide facts from which a reasonable person could reach any conclusion about the spending requirements in the proposed regulations. The rulemaking file contains no basis explaining how the small school data was extrapolated to support the spending requirements in the proposed regulations or how those spending determinations were determined.

**Response:**

1) The document in question is a print out of the financial data for small school districts that was used in developing these regulations. The commenter has a legible, but relatively “dirty” copy of that print out, and the date that it was produced is obscured on that copy. However, the actual date of the print out is May 8, 2002 and the data itself was reported by the school districts for the 2000-01 fiscal year and publicly available. Therefore, this data was available to and used by the State Board as a resource in developing the criteria in the proposed regulations adopted June 2002.

2) As stated in responses to previous comments made by Mr. Coppess and others during the first 15-day public comment period (June 12, 2002 to June 26, 2002) on the modified text of the regulations, the percentages in the proposed regulations are not drawn directly from the school district data. These data were used as a starting point for the development of the percentages in the proposed regulations, because the data provided the State Board with a sense of how small school districts spent their revenues. That sense of how school districts spend their revenues was important in developing expenditure criteria for the proposed regulations that are not arbitrary and that can actually be achieved by nonclassroom-based charter schools. Small school districts only were used because those districts are the closest in size to charter schools. The relevant expenditure percentages for small school districts are generally lower than those for all school districts and for large school districts. This is because the fixed costs related to administration and other noninstructional activities in small school districts will be a higher percentage of revenues in small districts versus large ones.

From there, the actual school district expenditure percentages were adjusted to reflect expenditures that in the judgment of the State Board, would demonstrate that a charter school’s nonclassroom-based instruction is substantially dedicated to the instructional benefit of pupils. The 50 percent standard (and the 80 percent standard related to instruction-related activities) in the proposed regulations is high, but the State Board determined that SB 740 intended that the standards be exceptional in order for schools to receive full funding. The 50 percent and 80 percent criteria are in the State Board’s judgment, necessary to demonstrate a *substantial* dedication to instruction. In addition, the 38.37 percent of revenues spent by the sample of small school districts on certificated employee salaries and benefits is a percentage of total revenues. The 50 percent expenditure criteria in the proposed regulations is a percentage of public revenues, which is a subset of total revenues. Although the school district data was not examined in this way in the development of the proposed regulations, if a subset of the districts’ total

revenues were used rather than total revenues, the 38.37 percent figure would also be higher for small school districts. In any case, the two expenditure percentages are not, and are not intended to be, directly comparable.

The documents made available for public comment reflect the totality of the information used as a reference by the Advisory Commission on Charter Schools and State Board in developing the criteria in the proposed regulations. These documents reflect the raw revenue and expenditure data and percentage calculations by individual expenditure categories that comprised the working documents used. As previously explained, none of these percentages were directly used in the development of the criteria in the proposed regulations; that is, the percentages derived from these data are not the same, nor intended to be the same, as the percentage criteria in the proposed regulations. The data were an informative starting point.

3) This comment is similar to the previous comment, and the response describing how and why small school district data were used, and why the percentage standards are high, are the same as in the previous response.

4) How the small school district data was used in the development of the percentage criteria in the proposed regulations has been described previously. Because this data was not used directly to set the percentage criteria in the regulations, there will not be a direct link between what small school districts spend on certificated employee salaries and benefits and the minimum required percentage expenditures on certificated employee salaries and benefits that charter schools must meet in these proposed regulations. See also the response to comment #7 for additional discussion of the data.

Comments related to the determination of a school's "substance" and the discretion to set funding levels provided to the State Board by these proposed regulations are not related to the specific reason (i.e., the data) for the additional 15-day public comment period, and therefore, do not require a response. However, to summarize information already provided in response to previous comments and in the necessity sections of the final statement of reasons that address these comments, the following response is provided. The State Board determined that it is not unreasonable to expect that nonclassroom-based charter schools spend at least 40 percent of public revenues on certificated employees and at least 60 percent of total revenues on instruction-related activities in order for a school to demonstrate minimal dedication to instruction. The proposed regulations do equate the amount spent by the school on certificated employee salaries and benefits, in addition to the amount spent on all instruction-related activities, with a school's "substance," that is, whether the instruction provided by the school is substantially dedicated to the instructional benefit of the pupils. SB 740 (*Education Code* Section 47634.2(a)(1)) requires that the proposed regulations specify that the nonclassroom-based instruction of a school receiving a determination of funding be substantially dedicated to the instructional benefit of the student, but provides the State Board broad discretion in establishing the criteria for making that determination of funding. Contrary to Mr. Coppess' assertion that the proposed regulations do not provide any clear guidance how the State Board may exercise its discretion to fund, the regulations do provide very specific guidance in the expenditure criteria. However, the regulations do need to provide the ability for the State Board to exercise discretion (which Mr. Coppess concedes that the State Board legitimately has) on a

potentially different circumstances of each school.

5) This comment is similar to the previous comment, and that response also addresses these comments.

6) Mr. Coppess is correct that spending as a percentage of expenditures is not relevant to determine desirable charter school spending as a percentage of revenue, and that the chart and percentage in it are not relevant to the proposed regulations. The chart on page 4 was provided for public comment because it was developed as a working document based on the raw data, and because the Advisory Commission on Charter Schools and the State Board did consider establishing percentage criteria based on expenditures rather than revenues. The Advisory Commission on Charter Schools and State Board decided not to look at percentage of expenditures because of the very discrepancy described by the commentor. Most charter schools (and school districts for that matter) do not spend all of the revenues that they receive in a fiscal year, leaving some funds unspent in reserve. This is a legitimate practice so that there will be funds available to handle any unforeseen economic circumstances that may arise during the year. However, in the context of developing the criteria in these proposed regulations, there was concern by the Advisory Commission on Charter Schools and the State Board that if those unspent revenues were not part of the percentage calculations, then there would be an incentive for schools to keep funds in reserve and not spend them. If expenditures is the denominator in the calculation of the percentages, then the certificated employee and instruction-related expenditure percentages are going to be larger than if total revenues form the denominator of the calculation. The result could have been that schools could have inflated their percentages by spending less. And spending less could lead to less instructional benefit to the students, which is contrary to what SB 740 itself encourages.

7) The data provided for small school districts and the descriptions of what kinds of districts are included in the sample are exactly as described on the document. It is data from all school districts with less than 1,000 units of average daily attendance (ADA) reporting financial data in SACS (the standardized account code structure). The expenditure and revenue data reflects revenues and expenditures from all funds, except the charter school fund (which reflects financial data reported for charter schools), and for all programs. Charter schools data were excluded from the data to obtain “pure” district data. Mr. Coppess is correct that the data could encompass a range of district funding and spending patterns, and that the types of programs offered by these districts may or may not include independent study or nonclassroom-based programs. These are all reasons that the percentage criteria in the proposed regulations do not mirror the percentages that may result from this data. The Advisory Commission on Charter Schools and the State Board recognized that small school district revenue and expenditure patterns are not directly or perfectly comparable to those of charter schools. The school district data provided a starting point for the development of the percentage criteria and for the discussion of what might be considered “reasonable” expenditure expectations from charter schools. The Advisory Commission on Charter Schools and the State Board then exercised their own expert judgment, based on the direct experience of many of those individuals in operating charter schools, to establish the desirable spending goals for nonclassroom-based charter schools. As the commentor previously noted, the percentage criteria in the proposed regulations

are different from percentages that would result from small school district data. These differences reflect the

fact that nonclassroom-based charter schools are different from school districts, and the presumption of SB 740 that nonclassroom-based charter schools do not have the same expenditure requirements as school districts and classroom-based charter schools (such as related to operating and maintaining facilities), and that they could dedicate significantly more of their revenue directly to instruction and instruction-related activities.

The proposed regulations do not require nonclassroom-based charter schools to conform to traditional small district spending patterns because they specifically establish different percentage criteria from the percentages that can be derived from the small school district data. The proposed regulations also recognize that not all nonclassroom-based charter schools conform to average spending patterns or to each other in their spending patterns by preserving the ability of the State Board to deviate from the specific criteria on a “reasonable basis” in making funding determinations for schools (Section 11963.4 of the proposed regulations). SB 740 and the proposed regulations allow for case-by-case consideration of each charter school’s funding determination request to allow for the consideration of circumstances unique to a particular charter school in making a funding determination for that school.

8) These comments related to the pupil-teacher ratios are not directly related to the specific reason (i.e., the data) for the additional 15-day public comment period, and therefore, do not require a response. The pupil-teacher ratio that nonclassroom-based charter schools are required to maintain is required by other statutes and regulations, unrelated to SB 740. There were verbal concerns expressed by members of the charter school community and members of the Advisory Commission on Charter Schools that these proposed regulations not establish standards for these pupil-teacher ratios that would differ from those already required in law. In addition to the inconsistency that would result, there was a concern that otherwise legal pupil-teacher ratios would be used to penalize charter schools in the SB 740 funding determination process. Therefore, these regulations only require that nonclassroom-based charter schools demonstrate that they have legally compliant pupil-teacher ratios as one of the criteria for receiving full funding. There was no need to consider school district pupil-teacher ratios in developing this criterion.

9) The data that were examined by the Advisory Commission on Charter Schools and the State Board was made available. The direct link between that data and the expenditure criteria in the proposed regulations that Mr. Coppess does not exist. In the end, the Advisory Commission on Charter Schools and the State Board of Education exercised their judgment in setting expenditure criteria that would demonstrate that a charter school’s nonclassroom-based instruction is substantially dedicated to the instructional benefit of the pupils. The previous responses to other components of this comment thoroughly explain how the data was used and the resulting criteria in the proposed regulations were derived.