

CVUSD

Administrative Regulation

AR 7160

Charter School Facilities

Facilities

Note: Education Code 47614, as added by Proposition 39 (operative November 8, 2000), requires that districts make available to eligible charter schools facilities that are reasonably equivalent to those in other district schools. The State Board of Education has developed implementing regulations (5 CCR 11969.1-11969.10). These regulations were substantially revised and amended in January 2008 and became operative on March 29, 2008. Thus, the new requirements in the amended regulations are applicable to requests for facilities submitted to districts by charter schools beginning in the fall of 2008 for the 2009-10 school year. Although the revised regulations are likely to be challenged in court, until a decision is reached, districts must begin implementing the new requirements, as reflected in the provisions below.

Definitions

Average daily classroom attendance (ADA) or classroom ADA is ADA for classroom-based apportionment as used in Education Code 47612.5. (5 CCR 11969.2)

In-district classroom ADA is classroom ADA attributable to in-district students. In-district students are those charter school students who are entitled to attend a district school. Students eligible to attend district schools based on an interdistrict attendance agreement or parent/guardian employment shall be considered students of the district where they reside. (5 CCR 11969.2)

(cf. 5111.1 - District Residency)

(cf. 5117 - Interdistrict Attendance)

The district may allow a charter school to include nonclassroom ADA in the ADA calculation only: (5 CCR 11969.2)

1. To the extent of the instructional time that the students generating the nonclassroom-based ADA are actually in the classroom under the direct supervision of and control of a charter school employee
2. If the district and charter school agree upon the time(s) that the facilities devoted to students generating the nonclassroom-based ADA will be used

***Note: 5 CCR 11969.2 clarifies that the district need not be the authorizing entity, nor contain the charter school within its boundaries, in order to be responsible for the provision of facilities to an eligible charter school that satisfies the definition of "operating in the district," as specified

below.***

An eligible charter school operating in the district is one that is either currently providing public education to in-district students or has identified at least 80 in-district students who are meaningfully interested in enrolling in the charter school for the following year, regardless of whether the district is or is proposed to be the chartering entity and whether or not the charter school has a facility inside the district's boundaries. (Education Code 47614; 5 CCR 11969.2)

Note: Register 2008, No. 9 amended 5 CCR 11969.2 to significantly expand the definition of "furnished and equipped" for purposes of calculating whether the offered facilities are reasonably equivalent, as specified below.

Furnished and equipped means the facilities include reasonably equivalent furnishing necessary to conduct classroom instruction and to provide for student services that directly support classroom instruction as found in the comparison group schools established under 5 CCR 11969.3(a) and that the facilities have equipment that is reasonably equivalent to the comparison group schools. Equipment means property that does not lose its identity when removed from its location and is not changed materially or consumed immediately (e.g., within one year). Equipment has relatively permanent value and its purchase increases the total value of the district's physical properties. Examples include furniture, vehicles, machinery, motion picture film, videotape, furnishings that are not an integral part of the building or building system, and certain intangible assets such as major software programs. Furnishings and equipment acquired for a school site with nondistrict resources are excluded when determining reasonable equivalence. (5 CCR 11969.2)

Determination of Reasonably Equivalent Facilities

The district shall provide facilities to a charter school sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending other public schools of the district. (Education Code 47614; 5 CCR 11969.3)

***Note: In determining whether the offered facilities are sufficient to accommodate the charter school students in "reasonably equivalent" conditions, 5 CCR 11969.3 requires the district to develop a comparison group of district-operated schools with similar grade levels. As amended by Register 2008, No. 9, 5 CCR 11969.3 provides that if none of the district-operated schools has grade levels similar to the charter school, then a "reasonably equivalent" facility is an existing facility most consistent with the needs of students in the grade levels served at the charter school. 5 CCR 11969.3, as amended, states that the district is not required to modify a school site to accommodate the charter school's grade-level configuration; however, the district and charter school may enter into an agreement to modify an existing school site with the costs to be paid exclusively by the charter school, the district, or jointly. ***

***Note: Once the comparison group is selected, the district must then compare the condition and capacity of the comparison group schools with the offered facilities, including an analysis of the ratio of teaching stations, specialized classroom space, and nonteaching space. Register

2008, No. 9 amended 5 CCR 11969.3 to significantly modify the calculation of the comparison group, capacity, and condition, as specified below.***

Reasonably equivalent conditions shall be determined on the basis of: (5 CCR 11969.3)

1. A comparison group of district schools with similar grade levels, selected in accordance with 5 CCR 11969.3 (5 CCR 11969.3)

If a charter school's grade-level configuration is different from the configuration of the district's schools, the district is not obligated to pay for the modification of a school site to accommodate the charter school's configuration. (5 CCR 11969.3)

Note: 5 CCR 11969.3, as amended by Register 2008, No. 9, provides different methods for selecting the comparison group for districts with high schools depending on whether or not students in the district attend high school based on attendance areas. Districts maintaining high schools should select Option 1 or 2 below; districts without high schools should delete both options.

For high schools, the comparison group shall be the district-operated schools with similar grade levels that serve students living in the high school attendance area, as defined in Education Code 17070.15(b), in which the largest number of students of the charter school reside. The number of charter school students residing in a high school attendance area shall be determined using in-district classroom ADA projected for the fiscal year for which facilities are requested. (5 CCR 11969.3)

2. Capacity, in accordance with 5 CCR 11969.3, including equivalency of the ratio of teaching stations (classrooms) to ADA as those provided to district students attending comparison group schools, as well as a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space. District ADA shall be determined using projections for the fiscal year and grade levels for which facilities are requested. (5 CCR 11969.3)

The number of teaching stations shall be determined using the classroom inventory prepared pursuant to 2 CCR 1859.31, adjusted to exclude classrooms identified as interim housing. Interim housing means the rental or lease of classrooms used to house students temporarily displaced as a result of the modernization of classroom facilities, as defined in 2 CCR 1859.2, and classrooms used as emergency housing for schools vacated due to structural deficiencies or natural disasters. (5 CCR 11969.3)

The district shall allocate and/or provide access to nonteaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of nonteaching station space in the comparison group schools. Nonteaching station space is all of the space that is not identified as teaching station space or specialized classroom space and includes, but is not limited to, administrative, kitchen, multipurpose room, and play area space. (5 CCR 11969.3)

3. Condition of facilities, as determined by assessing such factors as age of facilities (from last modernization), quality of materials, and state of maintenance, including: (5 CCR 11969.3)
 - a. School site size
 - b. Condition of interior and exterior surfaces
 - c. Condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes
 - d. Availability and condition of technology infrastructure
 - e. Condition of the facility as a safe learning environment, including, but not limited to, the suitability of lighting, noise mitigation, and size for intended use
 - f. Condition of the facility's furnishing and equipment
 - g. Condition of athletic fields and/or play area space

(cf. 7111 - Evaluating Existing Buildings)

If a charter school was established through the conversion of an existing public school, the condition of the facility previously used by the district shall be considered to be reasonably equivalent for the first year the charter school uses the facility. (5 CCR 11969.3)

Request and Provision of Facilities: Timelines and Procedures

Note: Items #1-10 below reflect timelines and procedures specified in 5 CCR 11969.9 and Education Code 47614 for facilities requests and approvals. Register 2008, No. 9 amended 5 CCR 11969.9 to revise the process and modify and develop new timelines by which the charter school must submit a request facilities, express any objections to the district's ADA projection, or make a counter proposal to the district's preliminary proposal. 5 CCR 11969.9 was also amended relative to the timelines and procedure for the district to respond to the charter school's attendance projections, prepare a preliminary proposal, and submit a final notification regarding its offer of facilities. In addition, 5 CCR 11969.9 was amended to delete the provision that authorized the district and charter school to mutually establish different timelines and procedures other than those specified in 5 CCR 11969.1-11969.10.

The following procedures shall apply to a charter school's request for and the district's provision of facilities:

1. On or before November 1, a charter school shall submit a written request for facilities to the Superintendent or designee for the next fiscal year. The request shall include: (Education Code 47614; 5 CCR 11969.9)

- a. Reasonable projections of in-district and total ADA and in-district and total classroom ADA, based on ADA claimed for apportionment, if any, in the fiscal year prior to the fiscal year in which the facilities request is made, adjusted for expected changes in enrollment in the forthcoming fiscal year

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

- b. A description of the methodology for the projections
- c. If relevant (i.e., when a charter school is not yet open or to the extent an operating charter school projects a substantial increase in ADA), documentation of the 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
- d. The charter school's operational calendar
- e. Information regarding the district's school site and/or general geographic area in which the charter school wishes to locate
- f. Information on the charter school's educational program, if any, that is relevant to assignment of facilities

Note: Pursuant to 5 CCR 11969.9, the district may require the charter school to submit its request on a form available from the California Department of Education (CDE) or another form specified by the district. The district may also require the charter school to either distribute a reasonable number of copies of the request for review by other interested parties or otherwise make the request available for review. The following optional paragraph may be revised to reflect district practice.

In submitting a facilities request, the charter school shall use a form specified by the district. The charter school shall distribute, or otherwise make available for review, the written request to interested parties, including, but not limited to, parents/guardians and school staff.

2. On or before December 1, the district shall review the charter school's projections of in-district and total ADA and in-district and total classroom ADA, express any objections in writing, and state the projections the district considers reasonable. If the district does not express any objections in writing and state its own projections by the deadline, the charter school's projections are no longer subject to challenge and the district shall base its offer of facilities on those projections. (5 CCR 11969.9)
3. On or before January 2, the charter school shall respond to any objections expressed by the district and to the district's attendance projections provided pursuant to item #2 above. The charter school shall reaffirm or modify its previous projections as necessary to

respond to the information received from the district pursuant to item #2. If the charter school does not respond by January 2, the district's projections provided pursuant to item #2 are no longer subject to challenge and the district shall base its offer of facilities on those projections. (5 CCR 11969.9)

4. On or before February 1, the district shall prepare a written preliminary proposal regarding the space to be allocated to the charter school and/or to which the charter school is to be provided access. At a minimum, the preliminary proposal shall include: (5 CCR 11969.9)
 - a. The projections of in-district classroom ADA on which the proposal is based
 - b. The specific location(s) of the space
 - c. All conditions pertaining to the space, including a draft of any proposed agreement pertaining to the charter school's use of the space
 - d. The projected pro rata share amount and a description of the methodology used to determine that amount
 - e. A list and description of the comparison group schools used in developing the district's preliminary proposal and a description of the difference between the preliminary proposal and the charter school's request submitted pursuant to item #1 above

Note: Pursuant to 5 CCR 11969.2, charter school facilities must be "contiguous," meaning that the facilities are contained on the school site or immediately adjacent to the school site. However, 5 CCR 11969.2, amended by Register 2008, No. 9, requires that, if the district's preliminary or final facilities offer does not accommodate the charter school's students at a single school site, the Governing Board must make that specific finding and adopt a written statement of reasons explaining the finding. See the accompanying Board policy.

In evaluating and accommodating the charter school's request, the charter school's in-district students shall be given the same consideration as students in the district's schools, subject to the requirement that the facilities provided must be contiguous. (5 CCR 11969.2)

Contiguous facilities are those facilities contained on a school site or immediately adjacent to a school site. If the in-district classroom ADA of the charter school cannot be accommodated on any single school site, contiguous facilities also include facilities located at more than one site, provided that the district minimizes the number of sites assigned and considers student safety. (5 CCR 11969.2)

If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility 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 shall not be obligated to pay for the modification of an existing school site to accommodate the charter school's grade level

configuration. (5 CCR 11969.3)

5. On or before March 1, the charter school shall respond in writing to the district's preliminary proposal made pursuant to item #4 above and shall express any concerns, including addressing differences between the preliminary proposal and the charter school's request, and/or make a counter proposal. (5 CCR 11969.9)
6. On or before April 1, having reviewed any concerns and/or counter proposals made by the charter school pursuant to item #5 above, the district shall submit, in writing, a final notification of the space offered to the charter school. The notification shall include a response to the charter school's concerns and/or counter proposal, if any. The final notification shall specifically identify: (5 CCR 11969.9)
 - a. The teaching stations, specialized classroom spaces, and nonteaching station spaces offered for the exclusive use of the charter school and the teaching stations, specialized classroom spaces, and nonteaching spaces to which the charter school is to be provided access on a shared basis with district-operated programs
 - b. Arrangements for sharing any shared space
 - c. The assumptions of in-district classroom ADA for the charter school upon which the allocation is based, and if the assumptions are different than those submitted by the charter school pursuant to item #3 above, a written explanation of the reasons for the differences
 - d. The specific location(s) of the space
 - e. All conditions pertaining to the space
 - f. The pro rata share amount
 - g. The payment schedule for the pro rata amount, which shall take into account the timing of revenues from the state and from local property taxes
7. By May 1 or within 30 days after the district notification pursuant to item #6 above, whichever is later, the charter school shall notify the district in writing whether or not it intends to occupy the offered space. (5 CCR 11969.9)

The charter school's notification may be withdrawn or modified before this deadline. After the deadline, if the charter school has notified the district that it intends to occupy the offered space, the charter school is committed to paying the pro rata share amount as identified. If the charter school does not notify the district by this deadline that it intends to occupy the offered space, then the space shall remain available for district programs and the charter school shall not be entitled to use facilities of the district in the following fiscal year. (5 CCR 11969.9)

Note: As amended by Register 2008, No. 9, 5 CCR 11969.9 requires that the agreement contain the items listed in #8(a)-(e) below.

8. The district and charter school shall negotiate an agreement regarding the use of and payment for the space. In addition, the district shall provide a draft of any proposed agreement pertaining to the charter school's use of the space in conjunction with the preliminary offer, as detailed in item #4 above. (5 CCR 11969.9)
 - a. At a minimum, the agreement shall contain the information included in the district's final notification, as listed in item #6 above.
 - b. The charter school shall maintain general liability insurance naming the district as an additional insured in order to indemnify the district for any damage and losses. The district shall maintain first party property insurance for the facilities allocated to the charter school.

(cf. 3530 - Risk Management/Insurance)

- c. The charter school shall comply with Board policies regarding the operations and maintenance of school facilities, furnishings, and equipment.
- d. A reciprocal hold-harmless/indemnification provision shall be established between the district and the charter school.
- e. The district shall be responsible for any modifications necessary to maintain the facility in accordance with Education Code 47610(d) or 47610.5.

Note: Register 2008, No. 9 amended 5 CCR 11969.9 to specify that the district must make the space available for at least 10 working days prior to the first day of instruction, as specified below, except for circumstances of "good cause." However, the district may not provide the space less than seven days prior to the first day of instruction.

9. The space allocated to the charter school by the district, or the space to which the district provides the charter school access, shall be furnished, equipped, and available for occupancy at least 10 working days prior to the first day of instruction of the charter school. For good cause, the district may reduce the period of availability to a period of not less than seven working days. (5 CCR 11969.9)

Space allocated for use by the charter school, subject to sharing arrangements, shall be available for the charter school's entire school year regardless of the district's instructional year or class schedule. The charter school shall not sublet or use the facilities for purposes other than those that are consistent with Board policies and district practices without permission of the

Superintendent or designee. (5 CCR 11969.5)

(cf. 1330 - Use of School Facilities)

10. Facilities, furnishings, and equipment provided to a charter school by the district shall remain the property of the district. The district shall be responsible for projects eligible to be included in the district's deferred maintenance plan and the replacement of district-provided furnishings and equipment in accordance with district schedules and practices. The ongoing operations and maintenance of facilities, furnishings, and equipment shall be the responsibility of the charter school. (Education Code 47614; 5 CCR 11969.4)

Charges for Facilities Costs

Note: Education Code 47614 authorizes the district to charge the charter school a pro-rata share of the district facilities costs which the district has paid with unrestricted general fund resources. 5 CCR 11969.7 specifies the formula for calculating the district's facilities costs. Register 2008, No. 9 amended 5 CCR 11969.7 to require charter schools to annually report to the CDE the per-square foot cost charged by the district and for the CDE to post the information on its web site. The district may provide the CDE with explanatory information regarding its charges, which shall also be posted on the CDE's web site.

The district shall not be required to use unrestricted general fund revenues to rent, buy, or lease facilities for charter schools. The district may charge the charter school for a pro-rata share of the district's facilities costs for the charter school's use of the facilities in accordance with 5 CCR 11969.7. (Education Code 47614)

General fund means the main operating fund of the district which is used to account for all activities except those that are required to be accounted for in another fund. (5 CCR 11969.2)

Unrestricted revenues are those funds whose uses are not subject to specific constraints and that may be used for any purposes not prohibited by law. Restricted revenues are those funds received from external sources that are legally restricted or that are restricted by the donor to specific purposes. Programs funded by a combination of restricted and unrestricted sources will be accounted for and reported as restricted. Funds or activities that are not restricted or designated by the donor, but rather by the Governing Board, shall be accounted for and reported as unrestricted. (5 CCR 11969.2)

Facilities costs are those activities concerned with keeping the physical plant open, comfortable, and safe for use and keeping the grounds, buildings, and equipment in working condition and a satisfactory state of repair. These include the activities of maintaining safety in buildings, on the grounds, and in the vicinity of schools, as well as plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases. (5 CCR 11969.2)

The charter school shall report actual in-district and total ADA and classroom ADA to the district every time that the charter school reports ADA for apportionment purposes. If the charter school generates less ADA than projected, the charter school shall reimburse the district for the

over-allocated space as set forth in 5 CCR 11969.8, unless the district agrees, in response to the notification by the charter school of over-allocation, to exercise its sole discretion to use the over-allocated space for district programs. (Education Code 47614; 5 CCR 11969.8, 11969.9)

Additional Provisions for Charter School Established at an Existing School Site

Note: Register 2008, No. 9 amended 5 CCR 11969.3 to add new requirements for a charter school established at an existing school site either as a conversion charter school or because the school failed to achieve its growth target as part of the Immediate Intervention/Underperforming Schools Program or High Priority Schools Grant Program, as specified below.

The following provisions apply only to a charter school established at an existing school site pursuant to Education Code 47605(a)(2), 52055.5, 52055.55, or 52055.650 that operated at the site in its first year pursuant to 5 CCR 11969.3(c)(2). (5 CCR 11969.3)

1. The school site, as identified in the school's charter, shall be made available to the charter school for its second year of operation and thereafter upon annual request for facilities from the district pursuant to Education Code 47614 and this administrative regulation. (5 CCR 11969.3)

The district may charge the charter school the pro-rata costs for the site pursuant to 5 CCR 11969.7 and the district shall be entitled to receive reimbursement for over-allocated space from the charter school pursuant to 5 CCR 11969.8. (5 CCR 11969.3)

If, by February 1 of its first year of operation, a charter school notifies the district that it will have over-allocated space in the following fiscal year, the space identified is not subject to reimbursement for over-allocation space pursuant to 5 CCR 11969.8 in the following year or thereafter. The district may occupy all or a portion of the space identified. (5 CCR 11969.3)

A charter school that wants to recover space surrendered to the district shall apply to the district and the district shall evaluate the application in accordance with law and this administrative regulation. (5 CCR 11969.3)

2. If, as a result of a material revision of the charter, either the location of the charter school is changed or the district approves the operation of additional sites by the charter school, then the charter school may request, and the district shall provide, facilities in accordance with the revised charter, law, and this administrative regulation. (5 CCR 11969.3)
 - a. If the charter school was established pursuant to Education Code 47605(a)(2), the district shall change the school's attendance area only if the State Board of Education (SBE) grants a waiver of the requirement in Education Code 47605(d)(1) that the charter school continuously give admission preference to students residing in the former attendance area of the school site. (5 CCR 11969.3)

- b. If the charter school was established pursuant to Education Code 52055.5, 52055.55, or 52055.650, the district shall relocate the school or change the school's attendance area only if the SBE grants a waiver of the provision of statute binding the school to the existing site. (5 CCR 11969.3)
- c. If the district decides to change the charter school's attendance areas as provided in #2(a) or 2(b) above, and if the decision occurs between November 1 and June 30 and becomes operative in the forthcoming fiscal year, then the space allocated to the charter school is not subject to reimbursement for over-allocated space pursuant to 5 CCR 11969.8 in the forthcoming fiscal year. (5 CCR 11969.3)

Mediation of Disputes

Note: As added by Register 2008, No. 9, 5 CCR 11969.10 authorizes the charter school and the district to resolve any disputes regarding facilities through the use of mediation, as long as both parties agree.

If a dispute arises between the district and a charter school pursuant to Education Code 47614 or 5 CCR 11969.1-11969.10 both parties may agree to settle the dispute using mediation.

Mediation consists of the following steps: (5 CCR 11969.10)

1. If both parties agree to mediation, the initiating party shall select a mediator, subject to the agreement of the responding party. If the parties are unable to agree on a mediator, the initiating party shall request the CDE to appoint a mediator within seven days to assist the parties in resolving the dispute. The mediator shall meet with the parties as quickly as possible.
2. Within seven days of the selection or appointment of the mediator, the party initiating the dispute resolution process shall send a notice to the responding party and the mediator. The notice shall include the following information:
 - a. Name, address, and phone numbers of designated representatives of the parties
 - b. A statement of the facts of the dispute, including information regarding the parties' attempts to resolve the dispute
 - c. The specific sections of the statute or regulations that are in dispute
 - d. The specific resolution sought by the initiating party
3. Within seven days of receiving the notice, the responding party shall file a written response.
4. The mediation shall be entirely informal in nature. Each party shall share copies of exhibits upon which its case is based with the other party. The relevant facts shall be

elicited in a narrative fashion to the extent possible, rather than through examination and cross-examination of witnesses.

5. Any agreement reached by the parties shall be in writing and shall not set a precedent for any other case.
6. The mediation shall be terminated if the district and the charter school fail to meet within the specified timelines, have not reached an agreement within 15 days from the first meeting held by the mediator, or if the mediator declares an impasse.
7. The costs of the mediation shall be divided equally between the parties and paid promptly.

CSBA: (11/02 7/04) 7/08

CVUSD Global Adoption: August 19, 2008