

# CVUSD

## Administrative Regulations

AR 0420.4

### Facilities

#### Charter School Facilities

##### Definitions

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)

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)

Contiguous facilities are those contained on a school site or immediately adjacent to a school site. If the charter school's students cannot be accommodated on any single district 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. In evaluating and accommodating a charter school's request for facilities pursuant to Education Code section 47614, the charter school's in-district students must be given the same consideration as students in the district-run schools, subject to the requirement that the facilities provided to the charter school must be contiguous. If a school district's preliminary proposal or final notification presented pursuant to subdivisions (f) or (h) of section 11969.9 does not accommodate a charter school at a single school 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 written statement of reasons explaining the finding. (5 CCR 11969.2)

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

2. Capacity, in accordance with 5 CCR 11969.3, including equivalency of the ratio of teaching stations (classrooms) to average daily attendance as those provided to students in the school district attending comparison group schools, allocation of specialized classroom space and access to nonteaching station space
3. Condition of facilities, including:
  - 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. The 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. The condition of the facility's furnishings and equipment.
  - g. The condition of athletic fields and/or play area space.

(cf. 7111 - Evaluating Existing Buildings)

#### Provision of Facilities by District

As of November 8, 2003, or on the first day of July following the passage of a local school bond measure, the district shall make available to a charter school operating in the district facilities within the district sufficient for the charter school to accommodate all of its in-district students in conditions reasonably equivalent to those in other district schools. Facilities provided to charter schools shall be contiguous and shall be furnished and equipped as necessary to conduct classroom-based instruction.

This obligation does not entitle the charter school to a particular facility, or to its first choice of facilities. Proposition 39 obligates the District to offer to the charter school a facility that meets the reasonable equivalence requirements set forth herein. A charter school that declines such an offer shall be responsible for obtaining its own facilities for the school year in question.

(Education Code 47614; 5 CCR 11969.2, 11969.4)

(cf. 0420.4 - Charter Schools)

(cf. 7110 - Facilities Master Plan)

If a charter school was established through the conversion of an existing public school, the charter school shall not be automatically entitled to be located at its original site, and the charter school's facilities request shall be handled in accordance with the terms of 5 CCR 11969.3(d)(1) and (2).

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 a pro rata share of its facilities costs that the district pays with unrestricted general fund revenues. (Education Code 47614; 5 CCR 11969.7)

Procedures for requesting facilities shall include the following steps:

1. A charter school must be operating in the district as defined in Education Code 47614 before it submits a request for facilities. A new or proposed charter school is eligible to request facilities for a particular fiscal year only if it submitted its charter petition before November 1 of the fiscal year preceding the year for which facilities are requested. A new charter school is entitled to be allocated and/or provided access to facilities only if its petition was approved before March 15 of the fiscal year preceding the year for which facilities are requested. (5 CCR 11969.9)
2. An existing charter school shall submit a written facilities request to the Governing Board by November 1 of the preceding fiscal year. The request consists of: (Education Code 47614; 5 CCR 11969.9)
  - a. Reasonable projections of in-district and total average daily attendance and total classroom average daily attendance, broken down by grade level and by the schools that the students would otherwise attend, based on ADA claimed for appointment 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;
  - 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 in-district 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 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

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.

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

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

On or before February 1, the school district shall prepare in writing a 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 (1) the projections of in-district classroom ADA on which the proposal is based, (2) the specific location or locations of the space, (3) all conditions pertaining to the space, including a draft of any proposed agreement pertaining to the charter school's use of the space, and (4) the projected pro rata share amount and a description of the methodology used to determine that amount. The district shall also provide the charter school a list and description of the comparison group schools used in developing its preliminary proposal, and a description of the differences between the preliminary proposal and the charter school's facilities request as submitted pursuant to subdivision (b).

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

On or before April 1, having reviewed any concerns and/or counter proposals made by the charter school pursuant to subdivision (g), the school 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 proposals (if any). The notification shall specifically identify:

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

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

(3) the in-district classroom ADA assumptions 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 subdivision (e), a written explanation of the reasons for the differences;

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

(5) all conditions pertaining to the space;

(6) the pro rata share amount; and

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

The charter school must notify the school district in writing whether or not it intends to occupy the offered space. This notification must occur by May 1 or 30 days after the school district notification pursuant to subdivision (h), whichever is later. The charter school's notification can be withdrawn or modified before this deadline. After the deadline, if the charter school has notified the school 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 school district by this deadline that it intends to occupy the offered space, then the space shall remain available for school district programs and the charter school shall not be entitled to use facilities of the school district in the following fiscal year.

(5 CCR 11969.9)

4. The district may deny a facilities request when the projected average daily attendance for the year is less than 80. (Education Code 47614)

5. The district and charter school shall negotiate an agreement regarding the use of and payment for the space. The agreement shall contain at a minimum, the information included in the notification provided by the school district to the charter school pursuant to 5 CCR 11969.9, subdivision (h). In addition,

(1) The charter school shall maintain general liability insurance naming the school district as an additional insured to indemnify the school district for damage and losses for which the charter school is liable. The school district shall maintain first party property

insurance for the facilities allocated to the charter school. ;

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

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

(4) The school district shall be responsible for any modifications necessary to maintain the facility in accordance with Education Code section 47610(d) or 47610.5. (5 CCR 11969.9)

The space allocated to the charter school, or to which the school district provides the charter school access, shall be furnished, equipped and available for occupancy for a period of at least ten working days prior to the first day of instruction of the charter school. For good cause, the period is subject to reduction by the school district, but to no fewer than seven working days. (5 CCR 11969.9)

Space allocated for use by the charter school shall not be sublet or assigned or used for purposes other than those that are consistent with Board policies and district practices without permission of the Superintendent or designee. (cf. 1330 - Use of School Facilities)

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 11969.2, 11969.4)

The charter school shall report actual in-district and total average daily attendance and classroom average daily attendance to the district every time that the charter school reports average daily attendance for apportionment purposes. If the charter school generates less average daily attendance than projected, the charter school shall reimburse the district for the over-allocated space at rates set by the State Board of Education. (Education Code 47614; 5 CCR 11969.9)

Legal Reference:

47600-47616.5 Charter Schools Act of 1992, as amended

48204 Residency requirements for school attendance

GOVERNMENT CODE

53094 Authority to render zoning ordinance inapplicable

53097.3 Charter school ordinances

CODE OF REGULATIONS, TITLE 2

1859.160-1859.171 Charter school facilities program, new construction

CODE OF REGULATIONS, TITLE 5

11969.1-11969.9 Charter school facilities

COURT DECISIONS

Sequoia Union High School District v. Aurora Charter High School (2003) 112 Cal.App.4th 185

Ridgecrest Charter School v. Sierra Sands Unified School District, (2005) 130 Cal.App.4th 986

ATTORNEY GENERAL OPINIONS

80 Ops.Cal.Atty.Gen. 52 (1997)

Management Resources:

WEB SITES

California Department of Education, Charter Schools Office: <http://www.cde.ca.gov/sp/cs>

CSBA: <http://www.csba.org>

Coalition for Adequate School Housing: <http://www.cashnet.org>

Office of Public School Construction: <http://www.opsc.dgs.ca.gov>

Global Adoption: July 1, 2008