



Summer School Funding

(Summertime, and the Learning Ain't Easy)

What if the state offered an unlimited amount of funding to provide extra instruction to students in your school who are struggling academically? It may sound too good to be true, but over the past several years, California has come close by expanding funding for supplemental hourly instruction (a.k.a. "summer school") programs, even loosening many of the restrictive purse strings. These expanded programs are the political "sugar" that enabled the controversial "medicine" of rigorous state standards, "social promotion" prohibitions, and the High School Exit Exam to pass through the legislature. Due to their relative flexibility, these supplemental hourly instruction programs represent a substantial financial and programmatic opportunity for charter schools serving struggling students.

It's Always Summer in California

"Summer school" is in many ways a misnomer for these supplemental hourly funding programs. In fact, the supplemental instruction may be operated at virtually any time other than during the "regular school day," including before school, after school, on Saturdays, during summer vacation, and intersessions. Unfortunately, the concept "regular school day" has no clear definition in law. In the non-charter system, the term is not defined either, but the minimum day length provisions that govern traditional schools arguably come close. Charter schools, meanwhile, are subject only to annual minute requirements, which also arguably provide fair parameters for this definition. Recently, the Department of Finance has proposed to restrict charter schools' access to supplemental programs, stemming from their concern that charter schools may "double dip" and claim both "regular" and supplemental funding for the same instructional day. To avoid such conflicts, CSDC suggests that charter schools operating supplemental programs adopt an official school calendar that meets the

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minimum annual minute requirements specified in law and ensure that any supplemental hourly funding be claimed only for those hours of instruction in addition to their “base” offering.

Currently, there are six separate supplemental hourly programs, and charter schools are eligible to participate in five of them. (Funds associated with the sixth program are automatically allocated to charter schools through the categorical block grant.) A brief overview of these five programs, along with strategic suggestions on how to maximize their effect, is outlined below.¹

Show Me the Money

Each of the five programs listed below is funded on the basis of the eligible number of student-hours of instruction provided at a rate of \$3.25 during the current (2000-01) fiscal year. The hourly rate is anticipated to increase slightly to \$3.38 per hour for the 2001-02. For some schools and districts, the funding provided is ample to pay the cost of the program, depending on how regularly students actually attend and whether facilities, materials, and utilities costs are managed.

Unlike many other special purpose funding programs, there exists virtually no official guidance from the California Department of Education (CDE) or other sources on how to access these programs, nor is there a special application form. In order to access these funds, we first recommend reviewing the summaries of the several available programs provided in this article. If the programs appear to fit the needs of your school and students, review the actual text of the authorizing legislation. (The detailed text of the laws governing supplemental hourly instruction programs, with helpful clarifying annotations, is available on the CSDC website at www.cacharterschools.org, under “Resources for Charter Schools/Finance.” Also check the website for any updates on legislation that may affect charter schools’ access to these programs.)

Next, consider whether your students would meet the eligibility requirements specified in the laws. If, “yes,” then consider various options for establishing and configuring a supplemental program to meet your students needs and in compliance with the laws and funding constraints governing the program(s). If you believe your students qualify and that you can provide a quality supplemental instructional program, then report any qualifying hours of instruction to the CDE in the appropriate box on the same form as your attendance data (Form J18/19). We also recommend that you consult with your school’s auditor to ensure that your recordkeeping systems constitute a complete “audit trail” documenting your school’s eligibility.

The five supplemental hourly programs that charter schools are eligible to participate in are:

1. Hourly Instruction for Students at Risk of Failing the High School Exit Exam

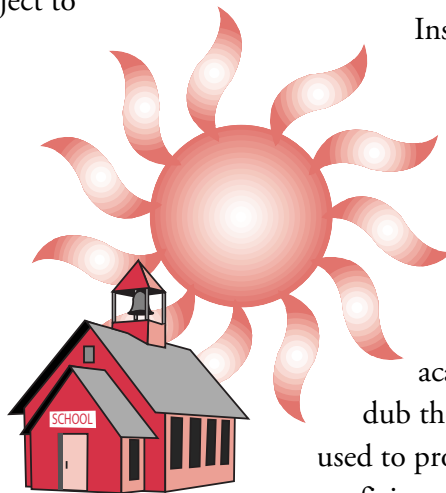
Under this program, charter schools may offer “supplemental instructional programs for pupils enrolled in grades 7-12 who do not demonstrate sufficient progress toward passing” the state-mandated high school exit exam. According to the current law, insufficient progress towards passing will be measured by either (1) proficiency on the STAR testing program pursuant to State Board adopted proficiency standards, or (2) “the pupil’s grades and other indicators of academic achievement designated by the district [and presumably designated by the charter school].” (See Education Code Section 37252 for details.)

Since the second of these criteria is arguably the more flexible definition, charter schools may want to adopt school-level policies regarding what types of grades and/or other indicators will be used by the school to determine student eligibility. There is no cap on the number of hours of instruction that may be funded under this program, provided the eligibility requirements are met.

¹ Portions of this article are drawn from “California Charter School Finance 2000-01” with permission of the author.

2. Hourly Instruction for Retained Students Grades 2-9 or Students at Risk of Retention Grades 2-6

This program permits charter schools to offer supplemental hourly instruction to students in grades 2-9 who have been “recommended for retention” or “retained” from progressing to the next grade level. It also permits instruction for students in grades 2-6 who have been identified as “at risk” for retention. (See Education Code Section 37252.5.) According to the laws governing this program, eligible students must be identified pursuant to retention policies developed in accordance with Education Code Section 48070.5. However, while districts are required to establish and enforce retention policies, charter schools are not generally subject to these requirements by virtue of the charter school “mega waiver.” Presumably, charter schools that wish to operate this program should “voluntarily” develop their own retention policies, consulting the detailed Education Code provisions when doing so. Such retention policies could be developed quite flexibly since the law provides that eligibility may be based on STAR testing results or “other evaluative criteria.” There is no cap on the number of eligible hours of instruction that may be funded under this program.



3. Hourly Instruction for Students Identified as Academically “Deficient” Grades 2-6

This program permits charter schools to offer “programs of direct, systematic, and intensive supplemental instruction” to students in grades 2-6 who “have been identified as having a deficiency in mathematics, reading, or written expression based on the results of any test” that is administered as part of the state’s STAR program (currently the SAT-9 and California Standards Tests). (See Education Code Section 37252.6.)

Unlike the first two programs described above, this

program is subject to a cap on the total hours of instruction that may be claimed by the school. A school’s total cap is calculated at roughly 6 hours per student enrolled in the school during the prior year. The total hours within a school’s cap may be used to serve any number of eligible students (e.g., individual students may receive more than 6 hours of instruction, provided the school does not exceed its total cap). Unfortunately new schools may not be eligible for funding under this program for lack of prior year enrollment figures.

4. Hourly Instruction for Core Subjects in Grades K-12

This program is unique in that it is not limited to students who are experiencing academic difficulties.

Instead, it permits funding for hourly instruction provided to students in “mathematics, science, or other core academic areas designated by the Superintendent of Public Instruction.” (See Education Code Section 37253.) This is the most flexible of the hourly programs because any student may be served, without regard to their grade level or academic progress. Some schools and districts dub these funds as “nerd money” because they may be used to provide enrichment programs for academically proficient students.

There are few restrictions on this program other than that the instruction must be in a “core” subject area (see Education Code Sections 51210 and 51220 for further detail on how to define “core”). To avoid a run on the state treasury for this largely unrestricted program, funding for this program is capped at the school-wide level to a rate that is approximately 8.4 hours per student enrolled in the prior year. Additional hours may be funded to the extent that surplus funds are available at the statewide level.

5. Hourly Instruction for Grades 7-8 Intensive Algebra Academies

This program provides funding for hourly instruction to provide “intensive opportunities for pupils [in grades 7 or

8] to practice skills in pre-algebra, algebra, or both.” (See Education Code Section 42239.15.) Pupils are eligible for this program for up to three calendar months after completing 8th grade.

These programs must include the following components:

- “Mathematics principles generally used in a pre-algebra course or an introductory algebra course.”
- “Ongoing diagnostic techniques that inform teaching and assessment.”
- “Early intervention techniques.”

Offering this program will require staff experienced in teaching algebra and in using diagnostic and intervention techniques. Schools lacking such experienced staff can apply to have their staff attend a related statewide algebra teaching academy program. Funding for this program is capped at a school-wide level equal to 7.2 hours per students enrolled in grades 7-8 during the prior year.

Maximizing Student Achievement through Supplemental Hourly Funding

There are many charter schools that are currently eligible for these funds but that are not taking advantage of this opportunity. For example, many charter schools that serve academically struggling students are offering before school and after school programs and an extended school year without claiming any additional funding. By applying for supplemental hourly funds, qualifying charter schools could potentially receive compensation for their extended hours.

There are some drawbacks, however, to these funds. Even the flexible requirements governing these programs require extensive documentation and recordkeeping to generate the requisite “audit trail.” They also presumably require hiring qualified and dedicated staff to work at a time when many skilled teachers would prefer to be at the beach or at home. The programs also require significant planning and logistics such as facilities, instructional materials, and the like.

Charter schools that are considering starting supplemental programs should consider the following steps to maximize these programs’ value as a tool to leverage student achievement:

- Establish and adopt a set of academic proficiency standards for the school in alignment of with adopted state standards and the goals specified in your charter.
- Establish a system to accurately track academic performance of all students in the school. Such a system, in combination with the school’s adopted standards, will likely require at least a simple electronic database to accurately identify which students are eligible to generate funding under each of the five programs available to charter schools.
- Establish and annually adopt an official school-wide instructional calendar that documents which calendar days are “regular” school days and which hours of the day are “regular” instructional hours. These will enable a charter school to clearly document that their “summer school” hours are distinguishable from “regular” instructional hours and avoid allegations of “double dipping” for state funds.
- Carefully examine all of the restrictions and eligibility criteria for each of the five programs available to charter schools. Focus first on tapping the two programs with no funding caps to ensure maximum eligibility for summer school funding. Think of funding from the Core Academic program (see number 4 above) as the most valuable source to be tapped only after all other sources have been exhausted—or reserved for more advanced students who are not eligible for other supplemental programs.
- Schools serving few students may need to combine students served under different programs in the same supplemental instruction classroom, provided each student hour is funded only once and all applicable requirements of the relevant hourly programs are met. Teachers in such settings might need to implement small group instructional strategies, rotating among and between students, to ensure that each student receives the specific instruction that he or she needs.

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SPOTLIGHT ON INNOVATION

The Shasta County Charter Schools Special Education Consortium

Background

California has a unique system for serving its special education students. The state is divided into 116 Special Education Local Planning Areas (SELPA). Each SELPA is comprised of one or more school districts, also known as Local Education Agencies (LEAs). A written SELPA plan details how the extensive continuum of special education and related services will be provided for all students who reside in the SELPA. Special education funding is allocated by the state to the SELPAs based largely on the member districts' "average daily attendance" (ADA), which is a per pupil allocation based upon the students' attendance rates. (Funding is calculated according to the districts' total ADA, not just the ADA of their special education students.) The SELPA, in turn, doles out the money to its member districts based on the SELPA's financial allocation policies. These funding distribution policies vary from SELPA to SELPA. Some are structured to pool risk for high cost special education students among member districts. Others are based solely on ADA without regard to the actual cost or numbers of students served, leaving member LEAs on their own to manage the financial risks of serving special needs students.

Before 1999, charter schools' status within California's special education laws and systems was very unclear. In January 2000, the law was changed to give charter schools three legal options on how to serve special education students. The first option is to remain a legal "arm of the school district" for special education purposes. Under this option, the district represents the charter school in the SELPA, and the charter school pays the district a

proportionate share of district-wide special education costs. In return, the district assumes ultimate responsibility for providing special education and related services for the charter school by either (1) providing the services to the school and/or (2) providing funding to the school. The second legal option is for a charter school to become its own LEA, with the ability to join a SELPA on equal footing as a school district. The third option is for a charter school to become a SELPA itself.

To date, very few charter schools have become their own LEAs for special education purposes, and none have become their own SELPAs. Many charter schools that wanted to become their own LEA had trouble finding a SELPA that would accept them. Others were too small to generate enough revenue to provide the range of special education services that their district could. Still others pursuing the LEA option found that the district began to "steer" exceptionally high cost special education students to the charter school. At the other extreme, some charter schools have been forced by their charter-granting districts to "walk the plank" and become an independent LEA without regard to the potential risks and pitfalls (a practice that is now widely regarded as illegal). A few charter schools are exploring the option of banding together to form a charter special education SELPA, but no such SELPA has been developed to date.

One charter school that chose to become an LEA for special education purposes is the Redding School of the Arts (RSA) in Redding, CA. Not only did it become its own LEA, but RSA also formed the Charter Schools Special Education Consortium so that other charter

schools could benefit from its LEA status and services. The Consortium has just completed its first year of operation.

How the Charter School Special Education Consortium Works

Run by special education veteran and RSA director Jean Hatch, the Consortium is open to charter schools that are sponsored by a district or county office of education in Shasta County. Member schools must serve grades K-8 (no high schools), agree to join for at least three years, learn and comply with all applicable special education laws, and believe in “neverstreaming,” an early prevention service model that seeks to identify and address students’ educational needs before they reach the point of needing special education services. Applicant charter schools must sign an “Agreement of Participation” with the Consortium and a Memorandum of Understanding (MOU) with their granting district, agreeing that all special education services will be provided by the Consortium and that funds (\$480/student) will be transferred from the district to the Consortium as the representative LEA. In essence, the charter school becomes a legal arm of a new LEA, RSA, which in turn represents the charter school in the SELPA.

Once accepted into the Consortium, the member school is entitled to one representative on the Consortium Council and is granted a weighted vote according to how many students it has enrolled. (Bigger schools get more votes; smaller schools get fewer votes.) Each member school agrees to pool its individual special education enrollment allocations into a shared consortium resource allocation pool. Any remaining balance in the pooled resources is carried forward to the next year. If the actual cost of services exceeds the amount in this “community chest,” the Consortium can charge the member schools a per student “encroachment” fee. In addition, each member school agrees to maintain a 5% special education contingency reserve. In order to maintain cash flow, the Council can request from each member school a transfer of up to 50% of its contingency reserve, up to two

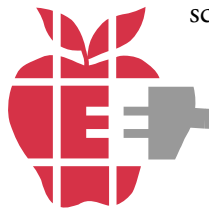
requests per year. Should a member school enroll a high cost special education student whose service costs exceed half of the 5% reserve, then the charter school must cover the costs through its general fund or appeal to the SELPA for additional funds.

In exchange for receiving member schools’ funds, the Consortium delivers all special education (SPED) services. Consortium staff go to the school sites and administer diagnostic reading and math assessments to identify potential special education students. The staff assist with all SPED referrals and Individualized Education Plans (IEPs), although member schools are expected to appoint a school-site designee to chair the IEP meetings and maintain student records at the school. Member schools are also expected to send credentialed employees to an annual in-service hosted by RSA or the SELPA in order to learn proper referral criteria and systems, notification, and paperwork.

Trained staff and aides from the Consortium deliver the special education instructional program, a mix of commercially published curriculum and individualized instruction, utilizing both mainstreaming and pull-out programs for those who are two or more years below grade level. Consortium staff also assist with due process hearings and complaints.

Jean Hatch and SELPA Director Tom Scovill have developed a very positive working relationship. Hatch, a credentialed special education educator, has worked with several members of the SELPA in various professional capacities over the past 10-15 years, and members of the SELPA have visited the RSA school site. Hatch believes this history and her strong reputation as a special education veteran helped her school to gain entrance to the SELPA as its own LEA.

Redding School of the Arts sits as a full member of the Shasta County SELPA, given a weighted vote equal to the other districts her size. With only two charter schools currently in the Consortium (RSA and Monarch Learning Center, also in Redding), the Consortium’s ADA is small, with approximately 350 students. (Of these, 26 are special education students.) One other charter school



will join the Consortium next year, North Woods Discovery School in Redding, a recently approved charter with a projected 175 students. All three of the member schools are small K-8 programs that are primarily site-based but also have a small home school component. Acorn to Oaks Charter School in neighboring Tehama County would also like to join, but it is unclear at this point as to whether the Consortium will be able to accept members from a different county and SELPA.

Six other charter schools have requested membership into the Consortium, one of them with an enrollment of 5,000 students. However, both Hatch and Scovill are reluctant to grow too large at this point. Hatch does not feel that she currently has the staff capacity to provide quality services long-distance or to large numbers of students. She closely monitors all of her special education staff and personally oversees all service delivery. She worries that expansion might cause her to lose this quality control. As Director of both the RSA and the Consortium, she also has her plate more than full. However, she does not rule out the possibility of expansion of staff and services in the future. SELPA Director Scovill, meanwhile, fears the increased potential legal liability that increased enrollment might bring. Although he trusts the quality of current Consortium special education services, he also worries about quality service delivery and oversight from afar.

Keys to Success

For those considering forming their own charter school special education consortium, Hatch lists the following elements necessary to ensure success:

- An experienced, expert special education person as the coordinator, someone who knows the laws and their school-based implementation
- Someone who has connections to or can build a positive relationship with the SELPA
- Member schools that have a clear mission and vision and knowledge of or willingness to learn special education laws
- An open-minded SELPA director who cares about serving all special education students, whether they are in a regular district or charter school

Hatch sees the greatest advantages to the Consortium as the ability to engage in independent decision-making and to provide alternative special education services according to the school's mission and philosophy. She sees the greatest challenges as supplying assurances to the SELPA, maintaining appropriate staffing, and assuming liability and fiscal responsibility.

While the Shasta County Consortium is the first charter school special education consortium in California, other states, including Texas and Washington, D.C., have also created such consortia. The D.C. Consortium is currently incorporating as a non-profit corporation so that they can fundraise to get more money. For further information about charter school special education services in other states, contact Eileen Ahearn at eahearn@nasdse.org. For more information about the Shasta County Charter Schools Special Education Consortium, contact Jean Hatch at jhatch@SUHSD.net.

An Isolated Innovation or a Model to Others?

Another group has already approached Hatch to help start another charter school special education consortium in another county. Whether or not the Consortium is a model that can and should be replicated is open to debate. There are many pros and cons to becoming part of such a consortium. On the pro side, as mentioned above, the charter school could gain instructional freedom to serve their special education students with service models not provided by the district. In addition, leftover pooled funds in the Consortium get carried forward each year, whereas charter schools that pay large encroachment fees as a legal arm of a district cannot recuperate those funds if services are not needed. Furthermore, charter school development groups that are having trouble getting approved due to districts' reluctance to cover special education costs and liability (especially for those charter schools that attract out-of-district students), will likely have a better chance of being approved if they

affiliate with a special education consortium. Hatch has found that charter-granting agencies are extremely willing to “wash their hands” of responsibility and liability for charter school special education students and turn them over to the Consortium.

On the down side, joining a special education consortium is extremely risky. As noted above, member charter schools in this Consortium are only covered for expenses up to a point. Should one of them enroll an extremely high cost special education student, or even a moderate number of moderate cost students, the school could go bankrupt. (If the school were a legal arm of the district, the school would only need to cover its proportionate share of district-wide costs.) In addition, a consortium like this would only work for a group large enough to generate sufficient scale to hire experienced staff and cover other related costs. Furthermore, there must be a strong, competent school serving as the lead LEA; if it makes a grave error, it could take several charter schools down with them. Finally, starting or participating in a charter school special education consortium involves serious potential legal liability. Should a special education parent be unhappy with his or her child’s services, the charter school and the consortium must pay the costs associated with the fair hearing and other legal processes.

Room for Growth

While an exciting possibility, the Shasta County Charter Schools Special Education Consortium model is currently limited to a small experiment in one county. Currently, only school districts within the same SELPA have been willing to transfer funds to another LEA (i.e. RSA) in the SELPA. Whether or not other districts in outside SELPAs would be willing to transfer funds to an LEA in a different SELPA, “sending the money with the student,” remains to be seen. It also remains to be seen whether the Shasta County SELPA would be willing to accept outside students and funds. Should all parties be willing, with a little creativity in creating new funding transfer mechanisms, it could be logistically possible for the Consortium to expand, providing an option for more charter schools. For example, if Redding School of the

Arts were a regular school district LEA and suddenly received an influx of new students, it would just report this increased ADA to the SELPA. It should not technically matter that the increased ADA comes from additional charter schools joining the Consortium. Meanwhile, however, should it be found that this model only works within a given SELPA, another possibility could be to develop a series of these consortia across the state.

Conclusion

The consortium model offers a creative solution to serving charter school special education students effectively, a model that presents both exciting opportunities and considerable risks. Other charter schools have developed other solutions, by becoming their own LEAs without forming a consortium or by gaining a high degree of independence while remaining a legal arm of the district. For example, Prosser Creek Charter School is an arm of the Tahoe-Truckee Unified School District. The school pays the district an encroachment fee, and the district covers the school’s special education liability. However, the school retains many of the funds at the school to provide its own special education services. This option is more costly than joining the Consortium (the school lost \$50-60,000 to the district this year in special education fees), but still offers a high degree of freedom with significantly less risk.

Charter schools exploring their special education legal options should research and weigh all possibilities carefully, choosing the option that makes the most sense for the size, goals, finances, and level of risk appropriate to the school. Schools considering starting or joining a special education consortium should carefully study the terms of all SELPA plans and policies, annual service and budgets, and other relevant documents. They should also think through likely and low-incidence scenarios, considering whether or not they could handle the service, program, and financial responsibilities. If the school feels it could manage all of the above, then it may be worth taking the leap and trying this interesting and innovative approach.

—Laurie Gardner

FAQs

(Frequently Asked Questions)

Q • *Do charter schools have to administer the state physical fitness test?*

A • Although the law is not clear, we believe the physical fitness test is optional for charter schools.

Background

The state physical performance test, also called the “Fitnessgram” or the “physical fitness test,” is to be administered to students in grades 5, 7, and 9 in March, April or May (Education Code section 60800). Students are assessed in six areas: aerobic capacity, body composition, trunk extensor strength and flexibility, upper body strength and flexibility, abdominal strength and endurance, and overall flexibility. Results of the test must be submitted to the state by July 31 each year, and test results will be posted to the Internet by October. Test materials, which include a test kit, software, and manual, cost approximately \$200 and can be ordered through Human Kinetics at 1-800-747-4457 or www.humankinetics.com. (For more information about the required physical fitness test, see www.cde.ca.gov/statetests/pe/pe.html.)

While many schools do not offer physical education classes, the California Department of Education’s preparation manual for the physical fitness test states, “Students are required to participate whether or not they are in a physical education class.” In addition, it states that students with special needs must take as much of the test as they are able, with modifications as needed.

Applicability to Charter Schools

Whether charter schools are required to administer the physical fitness test is unclear. The Charter Schools Act states that charter schools are required to “conduct the pupil assessments required pursuant to Section 60605 i.e. the STAR tests, including the Stanford-9, California Standards Test, and writing exam] and any other statewide...pupil assessments applicable to pupils in non-charter public schools” (Education Code section 47605(c)(1)). Whether this general requirement reaches to the physical performance test is a matter of debate.

On the one hand, one could argue that the physical fitness test is a “statewide assessment” of the sort required by the assessment requirement contained in the Charter Act. On the other hand, the laws establishing California’s testing systems (Education Code Section 60603(j)) define the term “statewide pupil assessment program” to include the STAR tests and make no reference to the separate physical performance test. Thus, we conclude that the physical fitness test is not required of charter schools.

Charter schools are required to certify that they have participated in the STAR testing program in order to claim state funding. There is no similar requirement for the physical fitness test. Given the range of possible legal interpretations and the lack of a fiscal penalty, we believe that charter schools may choose whether to implement the physical fitness test. To avoid misunderstandings, however, we recommend that charter schools discuss this issue with both their legal counsel and their charter-granting agency.

—Laurie Gardner

FAQs

(Frequently Asked Questions)

Q • *Can a charter school have teachers on the charter school’s governing board?*

A • Yes, a charter school probably can have paid employees on the charter school’s governing body.¹

Many charter schools desire to have the teachers and other employees of the charter school be members of the governing body of the charter school. Usually, but not always, teachers and other paid employees of the charter school were part of the founding group that established the school. Not surprisingly, these “stakeholders” want to be involved at the policy setting level of the charter school’s governance. At first blush, this would seem consistent with the legislative intent of the Charters Schools Act: “...to provide opportunities for teachers...to establish and maintain [charter] schools.”² However, in the last year, concerns have been raised by school law attorneys and school districts that having paid employees on the governing board of a charter school is an impermissible conflict of interest. Whether this practice is legal depends largely upon how one interprets a complex body of statutes, regulations, and court decisions known as “conflict of interest” laws.

Overview of Conflict of Interest Laws

Public officials of state and local governmental entities in the state of California are subject to a complicated body of law dubbed “conflict of interest” laws. The stated

purpose of the conflict of interest laws is to ensure that “public officials...perform their duties in an impartial manner, free from bias caused by their own financial interests or the financial interests of persons who have supported them”³ and to make certain that...every public officer [is] guided solely by the public interest, rather than by personal interest, when dealing with contracts in an official capacity.” The primary goal of the conflict of interest laws is to eliminate temptation, to avoid the appearance of impropriety, and to assure a public employee’s undivided and uncompromised allegiance to the public purpose of his/her job.⁴

California’s public entity conflict of interest laws consist primarily of six components:

- (1) Government Code Section 1090 et seq. which provides that a public officer or employee may not make a contract in which he or she is financially interested;
- (2) Government Code Section 81700 et seq. (Chap. 7 of the Political Reform Act) which provides that public officials are disqualified from participating in government decisions in which they have a financial interest;
- (3) Government Code Section 1125 et seq. which prohibits certain public officials from engaging in employment or holding an office that is incompatible with his/her official duties;
- (4) Penal Code Section 70 which prohibits public officials from soliciting gratuities;
- (5) Education Code Section 35107 (b) (1) and Government Code Section 53227 which prohibit an employee of a local agency from serving on the board of that local agency; and
- (6) Decisions from courts of law based upon public policy. The application of these decisions creates the conflict of interest “common law” doctrine.

¹ This note provides general information about events of current legal importance and does not constitute legal advice. As the information contained herein is necessarily general, its application to a particular set of facts and circumstances may vary. The author does not recommend that you act on this information without consulting legal counsel.

² See Education Code Section 47601.

³ Government Code Section 81001.

⁴ Id. at p. 648.

Meanwhile, many charter schools incorporate as not-for-profit public benefit corporations. For these non-profit charter schools, the following conflict of interest laws may apply instead of the public entity conflict of interest laws above:

- (1) California Corporations Code Section 5227(a), which limits the number of “interested” board members;
- (2) California Corporation Code Section 5231(c), which limits self-dealing transactions between a board member and the corporation, and
- (3) California Corporation Code Section 5231(a), the statutory “duty of care” to act in the corporation’s best interests.

The first set of above-referenced conflict of interest laws apply to “public officials” or employees of state and “local governments and agencies.” The second set applies to board of directors of not-for-profit public benefit corporations. Thus, the debate begins: Are charter schools part of local government such that the school is considered a “local agency” and its employees and board members are considered to be “public officials” for purposes of public entity conflict of interest laws? Will the answer differ depending upon how the charter school is organized, e.g., as a charter legally dependent upon the school district vs. a legally independent, nonprofit charter school? Does a different set of conflict of interest laws apply to nonprofit charter schools?

The answer to these questions becomes more difficult when we consider the implications of arguing a particular position: arguing for inapplicability may impact charter schools negatively in the application of other statutes that provide benefits to local governmental entities. For example, if a position is taken that charter schools do not hold the status of a local government entity so that those conflict of interest laws do not apply, this position may be used against the charter schools when they seek the applicability of statutes that benefit local government entities, such as the California Tort Claims Act, exemption from building and zoning laws, or property tax exemptions. On the other hand, if charter schools are

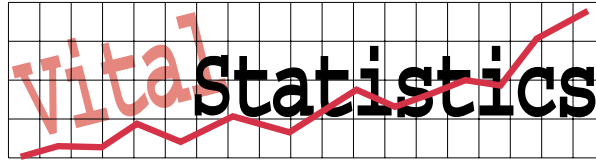
deemed to be public entities for conflict of interest purposes, will this legal status rope them into other statutes to which they might not want to be constrained?

Unfortunately, for purposes of providing clear guidance to charter schools, the arguments on either side of the applicability debate are equally persuasive. Many of these arguments focus around whether or not the laws that apply to school districts also apply to charter schools and on the legislative intent of the Charter Schools Act. For a comprehensive summary and analysis of the legal positions for and against the applicability of the various conflict of interest laws, see CSDC’s website at www.cacharterschools.org under “Resources for Charter Schools/Legal.”

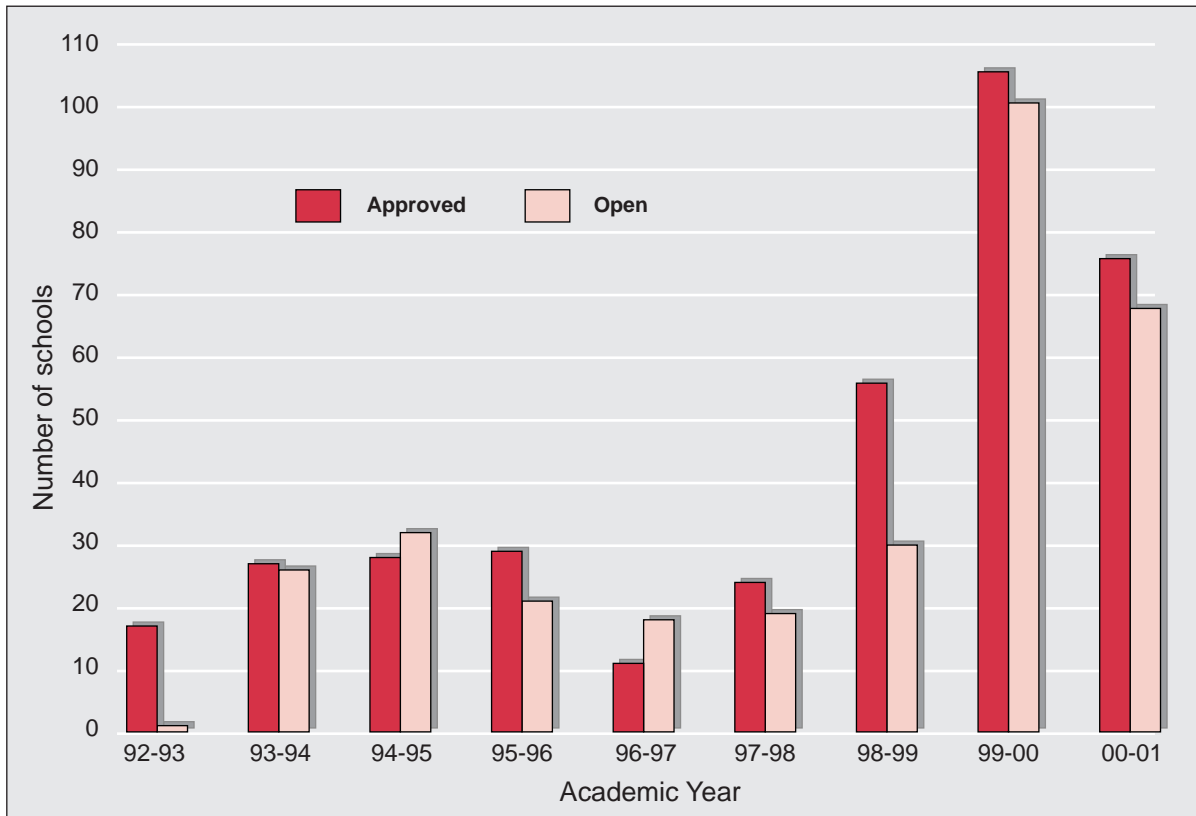
Given the extent of the current practice of having paid employees on the governing body of a charter school (to which a court is likely to grant deference) and the heavy public policy and legislative interest in achieving stakeholder involvement in the policy setting authority of the charter schools, a court of law is likely to find that a charter school is not subject to the conflict of interest laws which preclude paid employees from sitting on the governing body. However, it is less clear how a court would rule in regard to applicability of those conflict of interest laws that would not preclude employees from sitting on the governing body, but would require disclosure and abstention (e.g. the Political Reform Act). Without judicial, state agency, or legislative directive, charter schools will continue to be faced with the conflict of having to assume the bureaucratic weight of compliance or risk potential sanctions and penalties.

Some charter schools have achieved the interest of employee influence in the charter school governance by creating a group or classification of employees that select a candidate for the governing board that is not a paid employee of the school. Others have formed other, non-voting governance structures, such as faculty councils, to give their paid teachers a “voice” in the school’s governance. Still others have adopted condensed versions of the conflict of interest policies that school districts

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Number of California Charter Schools Approved and Opened



Noteworthy Trends:

1. In the 1992-93 school year, several charter schools were approved, yet very few charter schools opened. The reason is that the Charter Schools Act of 1992 didn't take effect until January 1, 1993. Many schools decided to wait until the following academic year to open, rather than opening mid-year.
2. Effective January 1, 1999, the cap on the number of charter schools was raised from 100 schools statewide to 250 with 100 additional schools each year. Also in 1999, the Palisades and Crenshaw-Dorsey charter clusters, comprised of 24 schools under two multi-campus charters, were renumbered into 24 individual

charter schools. These two actions caused a dramatic increase in the number of charter schools approved and opened during the 1999-2000 academic year.

3. Since the cap was lifted, the number of charter school approvals and openings remains high. Whether the implementation of Proposition 39, the legislation which requires districts to provide a facility to their charter schools (see October 2000 and March 2001 issues of *Charter Currents*) will cause the number of charter school approvals and openings to drop remains to be seen. Many districts are increasingly reluctant to approve charter schools if they have no place to house them.

New STRS and PERS Legislation for Charter Schools

Two recent pieces of legislation have passed regarding charter schools' administration of the State Teachers Retirement System (STRS) and the Public Employees Retirement System (PERS). The first addresses new employer disclosure requirements for charter schools; the second assists charter schools in STRS reporting. Charter schools who offer STRS and PERS to their employees should become familiar with the implementation of both of these new provisions.

New Employer Disclosure Requirements

Effective January 2001, California law was amended to require that charter schools specifically inform prospective employees concerning retirement system coverage offered. (Unfortunately, the charter school community only recently became aware of this provision, which was buried in an omnibus bill dealing with teacher retirement system operations, after it took effect.)

California's charter school law previously required that each charter contain an element specifying the retirement system options available to employees. Charter schools were to choose whether to offer coverage under the State Teachers Retirement System (STRS), the Public Employees Retirement System (PERS), and/or federal social security. These laws provide charters with a broader range of choice than is afforded to most non-charter public school employers, who must offer STRS to eligible certificated employees and offer PERS to those not eligible for STRS.

STRS' purpose in adding the new law was to 'beef-up' employer notification and to reduce problems for STRS and PERS members who accept charter school employment. According to STRS staff, charter employees

sometimes were not acquainted with their school's provisions for retirement system coverage. For example, problems had arisen for some charter school employees who had previously worked for a school district and had membership in PERS. These employees accepted employment with a charter school, only to learn later that the charter school did not offer PERS. The new language, added to Education Code Section 47611, requires that prospective charter school employees (including, but not limited to, teachers) receive specific notification as to whether the charter school makes available coverage under STRS, or PERS, or both. Included must be a statement that accepting employment with the charter school may have the effect of excluding a person from further coverage in the applicant's current retirement system, should the options offered by the charter school not conform with the requirements of the applicant's present retirement system.



Charter school employers should review these new legal requirements and make the appropriate notifications to prospective employees. In addition, they should ensure that these pre-employment notices are in accordance with the employee retirement provisions written in the school's charter. A brief discussion with your legal counsel concerning your school's current employment policies and practices may be prudent.

Assistance with STRS Reporting

Many charter schools operating outside of district payroll systems have experienced obstacles when trying to make deposits and report earnings for their STRS members. Legislation enacted last fall (Senate Bill 2105, now Education Code section 47611.3) requires that charter-granting districts and county offices of education report charter school employee earnings to STRS or PERS at the

request of their charter schools. (See the October 2000 issue of *Currents* for more details on this legislation.)

Grantors may not require that charter schools purchase a full package of payroll processing services as a condition of reporting to PERS or STRS. However, grantors are authorized to assess their actual costs of the retirement reporting services. SB 2105 was designed to help assure cooperation between charter schools and district or county offices of education so that STRS members working in charter schools would have equal opportunity to make contributions and build retirement credits.

Enactment of SB 2105 brought welcome relief to charters unable thus far to report on behalf of their employees participating in the state's second largest public employee retirement program, STRS. School district and county office payroll systems are designed to generate reports that meet periodic reporting requirements set by PERS and STRS. School districts operating their own payroll systems normally provide digital files to their county office of education for STRS purposes. These files are usually transmitted through proprietary accounting systems designed specifically for K-12 financial reporting.

Many charter schools that perform payroll in-house or through commercial payroll services do not use these proprietary systems. STRS maintains that reporting directly from individual charter schools that use different accounting systems will create errors and complications and that the interests of STRS members are best served by assuring that charter schools report to STRS through the same channels districts use, the county office of education. Given that posture, charter schools need the cooperation of a district or county office of education, either their charter-granting agency or another district or county office willing to do their STRS reporting for them. Fortunately, charter school experience reporting to PERS for classified employees has been generally positive. PERS information specifications are far less complex, and PERS accepts reporting directly from individual employers, including charter schools, no matter what payroll or accounting system they use.

Although SB 2105 imposes a requirement intended to assure that charters can report on behalf of STRS members, it does not address situations where reporting capability is lacking. Have charter schools and their charter-granting agencies worked together to make these new provisions work? We asked county offices of education to describe experiences where charter schools operating payroll "off-line" have sought to take advantage of this change in law and where district and county offices have accommodated them in finding solutions to assist with charter school STRS reporting. Following is what we discovered.

San Diego County Office of Education devised data file specifications for STRS reporting by off-line charter schools. Monthly earnings, service credits and other employee information for each STRS member are entered into a digital file, either manually or as an output of an existing automated payroll process. These digital files are merged with those from other San Diego County STRS entities by the County Office of Education's accounting system. Later, the data is merged into the quarterly earnings report sent to STRS for all STRS employers in the county, including charter schools operating independently of their grantors' payroll systems.

In addition, several county offices are reporting charter school STRS earnings using manual input. In such cases, rather than requiring charter schools to submit STRS earnings information in a digital format, county offices have allowed charters to submit hard copy reports. County office benefits personnel enter the data provided by the charter school directly into STRS own data system, a labor-intensive task.

The manual input approach fails to take advantage of the capabilities of readily available and inexpensive file transfer methods. Placer County Office of Education (COE) is currently working with a charter school using a commercial payroll service to explore such file transfer possibilities, whereby the county office system would "read" a digital file sent by the payroll contractor on

behalf of the charter school. Placer COE is one of many county offices using the QSS accounting system for payroll processing. (The QSS system is one of several proprietary accounting systems designed specifically for K-12 financial reporting and is widely used in California.) Should this file transfer method succeed, this system could readily be duplicated by the many districts and county offices of education using integrated accounting systems already capable of providing reports meeting STRS requirements.

The new automated solutions being developed by San Diego and Placer counties provide hope for charter schools whose granting district or county office lacks expertise or resources to convert data from off-line payroll systems into the integrated file formats STRS requires. Charter schools and their granting districts and county offices of education should pay close attention to these efforts as potential solutions for their own reporting. Only through such solutions will we ensure that this new legislative change is actually implemented.

—Carl Treseder

Summer School Funding - from page 4

- Do not assume that you need to wait until after a student has failed to meet goals to intervene. Some of the programs targeted toward struggling students allow for and encourage early intervention.

Summary

Though somewhat detailed and complex, the laws governing supplemental hourly programs are remarkably flexible. They provide an important opportunity for all schools, including charter schools, to provide enrichment instruction to struggling students. They also reflect a significant commitment of state funding in the face of an otherwise daunting task of meeting rigorous state standards and often-lofty goals specified in charters.

—Eric Premack

Conflict of Interest - from page 11

normally follow which generally preclude employees from participating and voting on compensation for employees within their own classification.

Regardless of the position a charter school takes regarding the applicability of the conflict of interest laws, it is good practice to preclude paid employees from participating and voting on matters that directly affect the level of their wages. Likewise, charter schools should adopt policies and practices for the charter school that will help the school avoid the appearance of impropriety by governing board members. For example, some schools adopt a policy requiring the school to obtain three competitive quotes for contracts or purchases over a certain amount – typically \$1,000. Other advisable precautionary measures include adoption of a conflict of interest policy, annual statements of economic interests, disclosure, disqualification, and abstention from action on certain matters.

In sum, there does not appear to be a clear path through the complex maze of the conflict of interest laws for charter schools. This area of the law remains unsettled and heavily influenced by political viewpoints. Applicability of the statutes discussed herein may depend upon how the charter school is legally organized or operates. However, the arguments in opposition to applicability of the statutory provisions that would prevent charter school employees from serving on the charter school's governing body are more persuasive and out-number those in favor of applicability of such laws. Nonetheless, because the penalties for violation of conflict of interest laws can be severe, a charter school must study this issue carefully and make an informed decision with the help of expert legal counsel as to how best to proceed under its individual circumstances.

—Paul Minney

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Updated Charter School Legal Tool Kit

CSDC has recently revised and greatly expanded its *Charter School Legal Tool Kit* (edition 2). Based upon our former legal tool kit and previous legal workshops, this edition addresses critical, oft-contested legal issues. Available soon; check the CSDC website for updates.

3rd Annual Charter School Leadership Institute

50 participants from 38 charter schools will be joining CSDC and other charter school experts from around the country for a six-day, intensive leadership "boot camp" at Lake Tahoe from June 27-July 2. Topics covered will include charter school finance, law, personnel, facilities, student performance, special education, governance and conflict resolution. Applications far exceeded the number of spots available. For those of you whom we were unable to accommodate at this year's Institute, we welcome you to reapply next year, and we look forward to seeing you at our upcoming monthly workshops.



Upcoming Workshops

CSDC will be offering all of our most popular workshops and "boot camps" as well as several new sessions this year. Stay posted to our website for an updated schedule and registration form.

Welcome!

A warm welcome to Jerry Simmons, CSDC's new Senior Associate. Jerry has degrees in political science, journalism, education, and law and recently completed his Master's Degree at the Harvard Graduate School of Education. We are excited to have him join our team!



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