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Implementation Regulations

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TITLE 5. EDUCATION
DIVISION 1. CALIFORNIA DEPARTMENT OF EDUCATION
CHAPTER 11. SPECIAL PROGRAMS
SUBCHAPTER 19. CHARTER SCHOOLS
ARTICLE 3. FACILITIES FOR CHARTER SCHOOLS

5 CCR 11969.1 (2011)

§ 11969.1. Purpose and Stipulation

(a) This article governs provision of facilities by school districts to charter schools under *Education Code section 47614*.

(b) If a charter school and a school district mutually agree to an alternative to specific compliance with any of the provisions of this article, nothing in this article shall prohibit implementation of that alternative, including, for example, funding in lieu of facilities in an amount commensurate with local rental or lease costs for facilities reasonably equivalent to facilities of the district.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Section 47614, Education Code*.

HISTORY:

1. New article 3 (sections 11969.1-11969.9) and section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section heading, section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).



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5 CCR 11969.2 (2011)

§ 11969.2. Definitions

(a) Average Daily Classroom Attendance. As used in *Education Code section 47614(b)*, "average daily classroom attendance," or "classroom ADA," is average daily attendance (ADA) for classroom-based apportionments as used in *Education Code section 47612.5*. "In-district classroom ADA" is classroom ADA attributable to in-district students. Nothing in this article shall prohibit a school district from allowing a charter school to include nonclassroom-based ADA in average daily classroom attendance, but only:

(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 and control of an employee of the charter school; and

(2) if the school district and charter school agree upon the time(s) that facilities devoted to students generating nonclassroom-based ADA will be used.

(b) Operating in the School District. As used in *Education Code section 47614(b)*, a charter school is "operating in the school district" if the charter school meets the requirements of *Education Code section 47614(b)(5)* regardless of whether the school district is or is proposed to be the authorizing entity for the charter school and whether the charter school has a facility inside the school district's boundaries.

(c) In-district Students. As used in *Education Code section 47614(b)*, a student attending a charter school is an "in-district student" of a school district if he or she is entitled to attend the schools of the school district and could attend a school district-operated school, except that a student eligible to attend the schools of the school district based on inter-district attendance pursuant to *Education Code section 46600-46611* or based on parental employment pursuant to *Education Code section 48204(b)* shall be considered a student of the school district where he or she resides.

(d) Contiguous. As used in *Education Code section 47614(b)*, facilities are "contiguous" if they are contained on the school site or immediately adjacent to the school site. If the in-district average daily classroom attendance of the charter school cannot be accommodated on any single school district school site, contiguous facilities also includes facilities located at more than one site, provided that the school district shall minimize the number of sites assigned and shall consider 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.

(e) **Furnished and Equipped.** As used in *Education Code section 47614(b)*, a facility is "furnished and equipped" if it includes reasonably equivalent furnishings 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 section 11969.3(a), and if it has equipment that is reasonably equivalent to that in 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) by use. Equipment has relatively permanent value, and its purchase increases the total value of a Local Educational Agency's (LEA'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 non-district resources are excluded when determining reasonable equivalence.

(f) **General Fund.** As used in *Education Code section 47614(b)(1)*, "general fund" means the main operating fund of the LEA. It is used to account for all activities except those that are required to be accounted for in another fund. In keeping with the minimum number of funds principle, all of an LEA's activities are reported in the general fund unless there is a compelling reason to account for an activity in another fund. An LEA may have only one general fund.

(g) **Unrestricted Revenues.** As used in *Education Code section 47614(b)(1)*, "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 LEA's governing board, will be accounted for and reported as unrestricted.

(h) **Facilities Costs.** As used in *Education Code section 47614(b)(1)*, "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. This includes plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Sections 46600-46611, 47612.5, 47614 and 48204, Education Code*.

HISTORY:

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).



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5 CCR 11969.3 (2011)

§ 11969.3. Conditions Reasonably Equivalent

The following provisions shall be used to determine whether facilities provided to a charter school are sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district providing facilities, as required by *Education Code section 47614(b)*.

(a) Comparison Group.

(1) The standard for determining whether facilities are sufficient to accommodate charter school students in conditions reasonably equivalent to those in which the students would be accommodated if they were attending public schools of the school district providing facilities shall be a comparison group of district-operated schools with similar grade levels. If none of the district-operated schools has grade levels similar to the charter school, then a contiguous facility within the meaning of subdivision (d) of section 11969.2 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 is not obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration.

(2) The comparison group shall be the school district-operated schools with similar grade levels that serve students living in the high school attendance area, as defined in *Education Code section 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.

(3) For school districts whose students do not attend high school based on attendance areas, the comparison group shall be three schools in the school district with similar grade levels that the largest number of students of the charter school would otherwise attend. For school districts with fewer than three schools with similar grade levels, the comparison group shall be all schools in the school district with similar grade levels.

(4) Although the district is not obligated to pay for the modification of an existing school site to accommodate the charter school's grade level configuration, nothing in this article shall preclude the district from entering into an agreement with the charter school to modify an existing school site, with the costs of the modifications being paid exclusively by the charter school or by the school district, or paid jointly by the district and the charter school.

(b) Capacity.

(1) Facilities made available by a school district to a charter school shall be provided in the same ratio of teaching stations (classrooms) to ADA as those provided to students in the school district attending comparison group schools. School district ADA shall be determined using projections for the fiscal year and grade levels for which facilities are

requested. Charter school ADA shall be determined using in-district classroom ADA projected for the fiscal year and grade levels for which facilities are requested. The number of teaching stations (classrooms) shall be determined using the classroom inventory prepared pursuant to *California Code of Regulations, title 2, section 1859.31*, adjusted to exclude classrooms identified as interim housing. "Interim housing" means the rental or lease of classrooms used to house pupils temporarily displaced as a result of the modernization of classroom facilities, as defined in *California Code of Regulations, title 2, section 1859.2*, and classrooms used as emergency housing for schools vacated due to structural deficiencies or natural disasters.

(2) If the school district includes specialized classroom space, such as science laboratories, in its classroom inventory, the space allocation provided pursuant to paragraph (1) of subdivision (b) shall include a share of the specialized classroom space and/or a provision for access to reasonably equivalent specialized classroom space. The amount of specialized classroom space allocated and/or the access to specialized classroom space provided shall be determined based on three factors:

- (A) the grade levels of the charter school's in-district students;
- (B) the charter school's total in-district classroom ADA; and
- (C) the per-student amount of specialized classroom space in the comparison group schools.

(3) The school district shall allocate and/or provide access to non-teaching station space commensurate with the in-district classroom ADA of the charter school and the per-student amount of non-teaching station space in the comparison group schools. Non-teaching 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 space, kitchen, multi-purpose room, and play area space. If necessary to implement this paragraph, the district shall negotiate in good faith with the charter school to establish time allocations and schedules so that educational programs of the charter school and school district are least disrupted.

(c) Condition.

(1) All of the factors listed below shall be used by the school district and charter school to determine whether the condition of facilities provided to a charter school is reasonably equivalent to the condition of comparison group schools. Condition is determined by assessing such factors as age (from latest modernization), quality of materials, and state of maintenance.

(A) School site size.

(B) The condition of interior and exterior surfaces.

(C) The condition of mechanical, plumbing, electrical, and fire alarm systems, including conformity to applicable codes.

(D) The 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.

(2) Notwithstanding paragraph (1) of subdivision (c), at a charter school established at an existing public school site pursuant to *Education Code sections 47605(a)(2), 52055.5, 52055.55, or 52055.650*, the condition of the facility previously used by the school district at the site shall be considered to be reasonably equivalent to the condition of school district facilities for the first year the charter school uses the facility. During its first year of operation, the charter school shall be subject to charges for pro rata costs pursuant to section 11969.7, but shall not be subject to reimbursement for over-allocated space pursuant to section 11969.8.

(d) Additional Provisions Relating to a Charter School Established at an Existing Public School Site.

The following provisions apply only to a charter school established at an existing public school site pursuant to *Education Code sections 47605(a)(2), 52055.5, 52055.55, or 52055.650* and that operated at the site in its first year pursuant to paragraph (2) of subdivision (c).

5 CCR 11969.3

(1) The school site, as identified in the school's charter, shall be made available to the school for its second year of operation and thereafter upon annual request pursuant to *Education Code section 47614*. The district is entitled to charge the charter school pro rata costs for the school site pursuant to section 11969.7, and the district is entitled to receive reimbursement for over-allocated space from the charter school pursuant to section 11969.8, except as provided in paragraph (3).

(2)(A) If, by material revision of the charter, the location of a charter school is changed, or if one or more additional sites are approved pursuant to *Education Code section 47605(a)(4)*, then the school is entitled to request and the district shall provide for the use of facilities by the school in accordance with the revised charter, *Education Code section 47614*, and the provisions of this article.

(B) If the charter school was established pursuant to *Education Code section 47605(a)(2)*, the district shall change the school's attendance area only if a waiver is first secured from the State Board of Education (SBE) pursuant to *Education Code sections 33050-33053* of the requirement in *Education Code section 47605(d)(1)* that the school continuously give admission preference to students residing in the former attendance area of the school site.

(C) If the charter school was established pursuant to *Education Code sections 52055.5, 52055.55, or 52055.650*, the district shall relocate the school or change the school's attendance area only if a waiver is first secured from the SBE pursuant to *Education Code sections 33050-33053* of the provision of statute binding the school to the existing school site.

(D) If a school district decides to change a charter school's attendance area as provided in subparagraphs (B) or (C), 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 section 11969.8 in the forthcoming fiscal year.

(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-allocated space pursuant to section 11969.8 in the following year or thereafter, and the district is entitled to occupy all or a portion of the space identified. To recover space surrendered to the district pursuant to this paragraph, a charter school must apply to the district. An application to recover surrendered space shall be evaluated by the district in accordance with the provisions of this article.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Sections 33050-33053, 47605, 47614, 52055.5, 52055.55 and 52055.650, Education Code*.

HISTORY:

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).



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5 CCR 11969.4 (2011)

§ 11969.4. Operations and Maintenance

(a) Facilities and furnishings and equipment provided to a charter school by a school district shall remain the property of the school district.

(b) The ongoing operations and maintenance of facilities and furnishings and equipment is the responsibility of the charter school. Projects eligible to be included in the school district deferred maintenance plan established pursuant to *Education Code section 17582* and the replacement of furnishings and equipment supplied by the school district in accordance with school district schedules and practices, shall remain the responsibility of the school district. The charter school shall comply with school district policies regarding the operations and maintenance of the school facility and furnishings and equipment, except to the extent variation is approved by the district. However, the charter school need not comply with policies in cases where actual school district practice substantially differs from official policies.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Section 47614, Education Code*.

HISTORY:

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).



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5 CCR 11969.5 (2011)

§ 11969.5. Availability

The 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 school district's instructional year or class schedule and may not be sublet or used for purposes other than those that are consistent with school district policies and practices for use of other public schools of the school district without permission of the school district.

AUTHORITY:

Note: Authority cited: *Section 47614(b), Education Code*. Reference: *Section 47614, Education Code*.

HISTORY:

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).



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5 CCR 11969.6 (2011)

§ 11969.6. Location

A school district may satisfy the requirements of *Education Code section 47614* by providing facilities that are located outside the school district's boundaries, subject to other provisions of this article and subject to the restrictions on location of charter schools established in *Education Code sections 47605* and *47605.1*. No school district is required to provide facilities that are located outside the school district's boundaries to a charter school.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Sections 47605, 47605.1 and 47614, Education Code*.

HISTORY:

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).



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5 CCR 11969.7 (2011)

§ 11969.7. Charges for Facilities Costs

If the school district charges the charter school a pro rata share of its facilities costs for the use of the facilities, the pro rata share shall not exceed (1) a per-square-foot amount equal to those school district facilities costs that the school district pays for with unrestricted revenues from the district's general fund, as defined in sections 11969.2(f) and (g) and hereinafter referred to as "unrestricted general fund revenues," divided by the total space of the school district times (2) the amount of space allocated by the school district to the charter school. The following provisions shall apply to the calculation of the pro rata share of facilities costs:

(a) For purposes of this section, facilities costs that the school district pays with unrestricted general fund revenues includes those costs associated with plant maintenance and operations, facilities acquisition and construction, and facilities rents and leases, as defined in section 11969.2(h). For purposes of this section, facilities costs also includes:

(1) contributions from unrestricted general fund revenues to the school district's Ongoing and Major Maintenance Account (*Education Code section 17070.75*), Routine Restricted Maintenance Account (*Education Code section 17014*), and/or deferred maintenance fund,

(2) costs paid from unrestricted general fund revenues for projects eligible for funding but not funded from the deferred maintenance fund, and

(3) costs paid from unrestricted general fund revenue for replacement of facilities-related furnishings and equipment, that have not been included in paragraphs (1) and (2), according to school district schedules and practices.

For purposes of this subdivision, facilities costs do not include any costs that are paid by the charter school, including, but not limited to, costs associated with ongoing operations and maintenance and the costs of any tangible items adjusted in keeping with a customary depreciation schedule for each item.

(b) For purposes of this section, the cost of facilities shall include debt service costs.

(c) "Space allocated by the school district to the charter school" shall include a portion of shared space where a charter school shares a campus with a school district-operated program. Shared space includes, but is not limited to, those facilities needed for the overall operation of the campus, whether or not used by students. The portion of the shared space to be included in the "space allocated by the school district to the charter school" shall be calculated based on the amount of space allocated for the exclusive use of the charter school compared to the amount of space allocated to the exclusive use of the school-district-operated program.

(d) The per-square-foot charge shall be determined using actual facilities costs in the year preceding the fiscal year in which facilities are provided and the largest amount of total space of the school district at any time during the year preceding the fiscal year in which facilities are provided.

(e) The per-square-foot charge shall be applied equally by the school district to all charter schools that receive facilities under this article, and a charter school using school district facilities pursuant to *Education Code section 47614* shall report the per-square-foot charge it is paying in the current fiscal year to the California Department of Education (CDE) in any notification the charter school makes to the CDE pursuant to *Education Code section 47630.5(b)*. The CDE shall post the per-square-foot amounts reported by charter schools on its publicly accessible Web site. The CDE shall offer the opportunity to each school district to provide explanatory information regarding its per-square-foot charge and shall post any information received.

(f) If a school district charges a charter school for facilities costs pursuant to this article, and if the district is the charter school's authorizing entity, the facilities are not substantially rent free within the meaning of *Education Code section 47613*, and the district may only charge for the actual costs of supervisorial oversight of the charter school not to exceed one percent of the school's revenue.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Sections 17014, 17070.75, 47613, 47614 and 47630.5, Education Code*.

HISTORY:

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).

(j) The space allocated to the charter school by the school district (or to which the school district provides the charter school access) must be furnished, equipped and available for occupancy by the charter school 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.

(k) The school district and the charter school shall negotiate an agreement regarding 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 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*.

(l) The charter school must report actual ADA to the school district every time that the charter school reports ADA for apportionment purposes. The reports must include in-district and total ADA and in-district and total classroom ADA. The charter school must maintain records documenting the data contained in the reports. These records shall be available on request by the school district.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Sections 47605, 47605.5, 47605.6, 47605.8, 47610, 47610.5 and 47614, Education Code*.

HISTORY:

1. New section filed 7-30-2002; operative 8-29-2002 (Register 2002, No. 31).
2. Amendment of section and Note filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).



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5 CCR 11969.10 (2011)

§ 11969.10. Mediation of Disputes

If a dispute arises between a school district and a charter school concerning the provisions of *Education Code section 47614* or this article, nothing in this article shall preclude the dispute being subject to mediation in accordance with the procedures set forth in this section, if agreeable to both parties. Mediation consists of the following:

(a) The initiating party shall select a mediator, subject to the agreement of the responding party. If, though agreeing to mediation, the parties are unable to agree upon a mediator, the CDE shall be requested by the initiating party 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.

(b) Within seven days of the selection or appointment of the mediator, the party initiating the dispute resolution process shall prepare and send to both the responding party and the mediator a notice of dispute that shall include the following information:

- (1) The name, address, and phone numbers of designated representatives of the parties;
- (2) A statement of the facts of the dispute, including information regarding the parties' attempts to resolve the dispute;
- (3) The specific sections of the statute or regulations that are in dispute; and
- (4) The specific resolution sought by the initiating party.

(c) Within seven days of receiving the information specified in subdivision (b), the responding party shall file a written response.

(d)(1) The mediation procedure shall be entirely informal in nature. However, copies of exhibits upon which either party bases its case shall be shared 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. The rules of evidence will not apply and no record of the proceedings will be made.

(2) If an agreement is reached, the agreement shall be reduced to writing and shall be signed by the school district and the charter school. The agreement shall not set a precedent for any other case.

(3) If the school district and the charter school fail to meet within the specified time line, have not reached an agreement within 15 days from the first meeting held by the mediator, or if the mediator declares the parties at impasse, the mediation is terminated.

(e) The costs of the mediation shall be divided equally by the two parties and paid promptly.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Section 47614, Education Code*.

HISTORY:

1. New section filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9). For prior history, see Register 2002, No. 37.



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5 CCR 11969.11 (2011)

§ 11969.11. Operative Date of Changes

The changes to this article made during 2007 and 2008 and filed with the Secretary of State in February 2008 shall become operative with the requests submitted by charter schools during fiscal year 2008-09 for the use of facilities in fiscal year 2009-10.

AUTHORITY:

Note: Authority cited: *Sections 33031 and 47614(b), Education Code*. Reference: *Section 47614, Education Code*.

HISTORY:

1. New section filed 2-28-2008; operative 3-29-2008 (Register 2008, No. 9).