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LEGAL UPDATE

July 2, 2020

To: Superintendents, Member School Districts (K-12)
From: Damara Moore, Senior Associate General Counsel *DM*
Subject: Education Budget Trailer Bill and Charter Schools
Memo No. 42-2020

The Governor signed the budget trailer education Senate Bill (“SB”) 98 on June 29, 2020. Our office is issuing a Legal Update that summarizes the main implications of SB 98, as it relates to charter schools.

I. SB 98 IS LARGELY APPLICABLE TO CHARTER SCHOOLS

Under SB 98’s distance learning and apportionment provisions, the term “local educational agency” [“LEA”] includes classroom based charter schools, county offices of education, and school districts, but excludes a charter school classified as a nonclassroom-based charter school pursuant to Education Code Sections 47612.5 and 47634.2 as of the 2019–20 fiscal year. Please see our Distance Learning Legal Update 41-2020, simultaneously released with this Legal Update, for a thorough review of distance learning requirements and apportionment implications affecting all LEAs.

II. HIGHLIGHTS OF SB 98 SPECIFIC TO CHARTER SCHOOLS

The following list of changes to the law is provided to highlight matters of interest and are not intended to be a comprehensive statement of all revisions that may affect charter schools for the 2020-2021 school year.

- Any classroom-based charter school may offer distance learning, as defined in more detail in Legal Update 41-2020, without seeking a material revision to their charter petition.¹
- A classroom-based charter school does not need to submit a request for a funding determination as required for non-classroom-based charter schools.²
- The minimum number of instructional days required remains 175.³ The California Department of Education (“CDE”) shall withhold from a classroom-based charter school’s local control funding formula (“LCFF”) grant apportionment for the prior

¹ Cal. Educ. Code §§ 43506, 47612.5.

² Id.

³ Cal. Code of Regs., Tit. 5, § 11960.



year average daily attendance of each affected grade level, the sum of .0056 multiplied by that apportionment for each day less than what is required.

- Requirements for charter schools to follow the Brown Act, Conflict of Interest laws, and the California Public Records Act now cannot be waived by the State Board of Education (“SBE”).⁴
- “Continuing charter schools,” i.e. charter schools that met requirements to operate outside of the district boundaries of where the charter is authorized pursuant to Education Code Section 47605(a)(5), must notify the CDE by May 15 before the fiscal year in which the charter school is to be regarded as a continuing charter school, and this notification must follow a format to be established by the CDE.⁵
- A charter school that is scheduled to open or to add grade levels in the 2020–21 school year may delay opening or adding grade levels for one year without requesting a material revision to its charter petition, although there are requirements to notify the authorizer, the CDE and parents, **no later than July 17, 2020.**⁶
- Classroom-based charter schools in operation before October 1, 2019 which are located on tribal land are exempt from some geographical restrictions.⁷
- When a charter authorizer is reviewing a charter petition due to a material revision, the revision may only be denied on the following grounds if the material revision itself causes the defect: (1) The charter school [due to the revision] is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate, or (2) the school district is not positioned to absorb the fiscal impact of the proposed charter school revision.⁸
- A charter renewal petition, where two consecutive years immediately preceding the renewal decision include the 2019–20 school year, shall not be renewed if either of the following apply for two of the three years immediately preceding the renewal decision:
 - The charter school has received the two lowest performance levels schoolwide on all the state indicators included in the evaluation rubrics adopted pursuant to Education Code Section 52064.5 for which it receives performance levels.
 - For all measurements of academic performance, the charter school has received performance levels schoolwide that are the same or lower than the state average and, for a majority of subgroups performing statewide below the state average in each respective year, received performance levels that are lower than the state average.⁹

Please contact our office with questions regarding this Legal Update or any other legal matter.

The information in this Legal Update is provided as a summary of law and is not intended as legal advice. Application of the law may vary depending on the particular facts and circumstances at issue. We, therefore, recommend that you consult legal counsel to advise you on how the law applies to your specific situation.

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⁴ Cal. Educ. Code § 47604.1(g).

⁵ Cal. Educ. Code § 47653.

⁶ Sec. 105 of SB 98.

⁷ Cal. Educ. Code § 47605(a)(5)(D)(1).

⁸ Cal. Educ. Code § 47607; note that other grounds for denial remain available to the authorizer.

⁹ Cal. Educ. Code § 47607.2.