

OFFICE OF PUBLIC SCHOOL CONSTRUCTION  
AND CALIFORNIA SCHOOL FINANCE AUTHORITY  
STAKEHOLDER MEETING  
May 26, 2021  
Webcast

Identifying a Successor Charter School for the Charter School Facilities Program (CSFP)

PURPOSE

To continue a discussion and provide responses to comments received on proposed regulatory amendments to School Facility Program (SFP) and California School Finance Authority (CSFA) regulations pertaining to selecting a qualifying successor Charter School in the event a CSFP funded Charter School is no longer occupying its facility.

DESCRIPTION

In the event a Charter School is no longer using a facility funded under the CSFP, Education Code Section 17078.62 allows for a qualifying successor Charter School to meet its facility needs by occupying the CSFP funded facility on equal terms as the prior occupant. Regulatory amendments are being proposed to clarify this process. A public meeting was held on February 25, 2021 to discuss the proposed regulation amendments and to allow comments from stakeholders. This item provides responses to comments that were received and continues the discussion.

AUTHORITY

See Attachment A.

BACKGROUND

OPSC has been notified of two separate Charter Schools that will no longer be using their CSFP funded facilities. In working through facility disposition under the existing regulatory framework, OPSC and CSFA have determined that regulations need to be amended to provide more specific guidance to Districts and interested successor Charter Schools on how the process of selecting a successor Charter School will occur for future occurrences.

STAFF ANALYSIS

The following comments were received during the February 25, 2021 stakeholder meeting and/or submitted as written correspondence:

1. Can more than one charter school apply jointly as a successor charter school?

Yes. This would allow small size charter schools to compete in the selection process if the available site exceeded their capacity needs. If multiple charter schools were to apply to co-occupy an available site, preference points would be determined based on the criteria for the charter school with the enrollment majority. The regulation amendments have been modified to address this requirement.
2. Provide clarification on the financial responsibilities of the departing charter school, such as when loan payments cease and what happens if a charter school no longer needs the facility for reasons other than the non-renewal of their petition be clarified?

Education Code (EC) 17078.62 allows for the provision of a successor charter school in the event the charter school occupying the CSFP funded facility ceases to use the facility for charter school purposes. It is not restricted to only the scenario of charter petition non-renewal. The regulation amendments apply to any scenario when the occupying charter school is no longer using the facility for charter school purposes. The Charter School Agreements already address the specific information related to financial responsibilities including when loan payments cease (specifically, Section 4.2 C.(2) of the MOU states that the original charter school is liable under the Funding Agreement until the charter school vacates the facilities and relinquishes all right, title, and interest in the occupancy and use of the Facilities under the School District's or State's remainder interest). As the Charter School Agreements address this topic, no changes are proposed to the regulations.

3. Currently there is nothing that allows for the applicant or other significant contributor that made a financial investment in the project to be reimbursed in the event the facility is taken over by a successor charter school.

EC Sections 17078.57(a)(3)(B) and 17078.62(b)(5)(A) provide for persons or entities who provide a substantial contribution that is applied to the project in excess of the state and local matching share to be satisfied by any remaining funds after the state and any unpaid local match are paid back, when the project facility and site are sold. There is no provision in statute that would allow regulations to be modified to allow for a significant contributor to be satisfied if the project site and facility are not sold.

4. Statute does not delegate a role in the process of selecting a successor charter school to the state.
5. As administrators of the bond funds and CSFP, OPSC, on behalf of the State Allocation Board, and CSFA maintain that they have a role in the process of selecting a successor charter school.
6. The entity that holds title should be responsible for identifying the successor charter school.
7. Statute allows for title to be held by a school district, local governmental entity or the charter school in trust for the benefit of the public school system. Statute also specifies that the state or the district are ultimately responsible for the disposal of the facility. When a charter school or local entity holds title, a remainder interest to the school district (or if the school district disclaims, the remainder interest to the State Allocation Board) is recorded in the chain of title and is triggered if the first charter school no longer needs the facilities (this is found in EC Section 17078.63(a)(3)(B)(ii) for charters holding title, and EC 17078.63(a)(2)(B)(ii) for local governmental entities holding title).
8. Allowing charter schools to identify a successor charter school does not appear to be contemplated in statute and further, would pose challenges in circumstances where a facility is being transferred due to lack of charter petition renewal or revocation of the charter.
9. The state alone should be the entity responsible for selecting the successor charter school or oversee the process with input from the district.

As with the response to the prior question, OPSC and CSFA believe that statute provides a role for the school district in the selection of the successor charter school by virtue of the remainder interest provision in 17078.63(a)(3)(B)(ii) or 17078.63(a)(2)(B)(ii). While a district potentially could decline this role, the state believes it is best to work with districts

due to the interrelated nature of CSFP projects, district unhoused students, and other obligations school districts have for housing charter students.

10. Charter schools that are currently authorized should receive preference.

The Regulations already require that only charter schools with approved petitions be notified of the available project facility and site. Charter schools without an approved petition would not be eligible.

11. Remove the preference for a charter school serving the same grade levels as the constructed facility. The successor charter school would then be financially responsible for making any necessary changes to make the facilities age appropriate.

This preference is provided as an example of an allowable category that a district may use in selecting a successor charter school. Staff is allowing this category to remain as it is tied both to how the original charter school was identified and ranked on the funding matrix, the district's unhoused pupil certification for new construction projects when the original charter school was funded, and how the modernization and new construction eligibility adjustment was calculated for the project.

12. Preference to charters that serve district students should be removed.

This preference is provided as an example of an allowable category that a district may use in selecting a successor charter school. Staff is allowing this category to remain as it is tied to the district's unhoused pupil certification for new construction projects when the original charter school was funded, and the modernization and new construction eligibility adjustment.

13. The preference for charter schools serving district students should be a preference of the state versus an example of an allowable district preference.

While staff recognizes this as an allowable preference to be used by districts due to its connection with the district's unhoused pupil certification and eligibility adjustments, it is not a category that is provided in statute for the state to use when selecting a successor charter school. EC Section 17078.56(b) provides for preference to be given to charter schools in overcrowded school districts, in low-income areas, operated by not-for-profit entities and utilizing school district facilities. The amended regulations have only listed state required preference categories that are in line with what is required in statute. Additionally, all charter schools authorized to operate in a district are eligible to apply the CSFP, regardless of their authorizer.

14. A clear process for selecting a successor charter school should be established by the state

The intent behind the regulation amendments is to provide guidance to district and charter schools on the successor charter school notification and selection process. As these regulations will be used by districts and charters schools throughout the state of California, we intentionally did not create a detailed process as it may not work for all succession scenarios.

15. The state should notify all charter schools authorized to operate in a school district, even if authorized by an entity other than the school district, when a facility becomes available.

Staff intends the district to have the role of notifying all authorized charter schools. However, it is required in the amended regulations that all charter schools authorized to

operate within the district be notified. This would include charter schools authorized by entities other than the district. Exceptions to this may be considered in circumstances such as when local bond funds are used towards the project and the local bond funds are restricted to only district authorized charter schools.

## DISCUSSION

Discussion on the submitted comments and OPSC/CSFA response is welcome. Please note that the comments presented in this item have been paraphrased. If a stakeholder feels that a comment has been misrepresented or is not included, please feel free to comment during the discussion or directly to OPSC and CSFA.

## CLOSING REMARKS/NEXT STEPS

## ATTACHMENT A

### Education Code Section 17078.62.

(a) As a first priority, the existing charter school shall be permitted to continue to use the facility until it is no longer needed by the charter school for charter school purposes.

(b) If the charter school occupying a facility funded pursuant to this article ceases to utilize the facility for a charter school purpose, all of the following apply:

(1) If the charter school is no longer using the facility because the school district in which the charter school is located has revoked or declined to renew the charter, the school district, as a necessary component of the first priority established in subdivision (a), may not immediately occupy the facility, but shall allow a reasonable time, not to exceed six months, for completion of the review process contemplated in Section 47607 or 47607.5.

(2) As a second priority, any qualifying successor charter school shall be permitted to meet its facility needs by occupying the facility on equal terms as the prior charter school occupant, including, but not limited to, assumption of fee simple title to the facility, as described in paragraph (3) of subdivision (a) of Section 17078.63.

(3) As a third priority, the school district in which the charter school is physically located may notify the authority and take possession and take title to the facility, if the title is not already held by the district, and make the facility available for continued use as a public school facility.

(4) If the school district in which the charter school is physically located elects to take possession of a facility pursuant to paragraph (3), it shall pay the balance of the unpaid local matching share or demonstrate that it is willing and able to continue to make the lease payments in lieu of the local matching share on the same terms. However, the payments shall be reduced or eliminated, as appropriate, if the school district complies with all of the following:

(A) It demonstrates that it would have been eligible for hardship funding under Article 8 (commencing with Section 17075.10) at the time that the application for funding the facility under this article was originally submitted.

(B) It certifies to the board that it will utilize the facilities for public school purposes for a period of at least five years from the date that it occupies the facility.

(5) (A) If the school district declines to take possession pursuant to paragraph (3), or if the facility is subsequently no longer needed for public school purposes, the school district shall dispose of the facilities in a manner otherwise applicable to the disposal of surplus public schoolsites. Any unpaid local matching share shall be paid from the net proceeds, if any, of the disposition and shall be deposited into the respective 2002, 2004, or 2006 Charter School Facilities Account. To the extent that funds remain from the proceeds of the disposition after repayment of the local matching share, any security interest granted to a person or entity pursuant to subparagraph (B) of paragraph (3) of subdivision (a) of Section 17078.57 shall be satisfied. Funds remaining from the proceeds after any security interest has been satisfied shall be paid to the school district in which the facility is located to be used for capital improvements in the school district.

(B) If title to the facility is held by a charter school or a local governmental entity other than the school district, and the school district declines to dispose of the facility, the board shall dispose of the facility in accordance with the provisions that would otherwise apply to the disposal of surplus school property by the school district, including, but not limited to, Chapter 4 (commencing with Section 17385) of Part 10.5. The proceeds of the disposition shall be distributed in accordance with subparagraph (A).

(6) If the lease payments in lieu of the local matching share are fully paid, the school district shall continue to hold title to the facility, in trust, for the benefit of the state public school system. The school district shall permit continued use of the facility for charter school purposes as long as the facility is needed for those purposes.

*(Amended by Stats. 2009, Ch. 192, Sec. 2. (SB 592) Effective October 11, 2009.)*

Education Code Section 17078.63.

(a) Prior to the release of funds for an application submitted pursuant to paragraph (2) of subdivision (b) of Section 17078.53 for site acquisition or new construction final apportionments, applicants shall provide one of the following:

(1) Documentary evidence that the school district in which the facility is to be physically located holds title to the project facilities in trust for the benefit of the state public school system.

(2) Documentary evidence that a local governmental entity, including, but not limited to, a county board of education, a city, a county, or a city and county, holds title to the project facilities in trust for the benefit of the state public school system, subject to both of the following conditions:

(A) Consistent with the prohibition in Section 6 of Article IX of the California Constitution regarding governance of public schools, a city, county, city and county, or other local governmental entity not included within the public school system that holds title pursuant to this paragraph shall not exercise any control over the operation of the charter school.

(B) The following shall be recorded in the chain of title for the property:

(i) A restrictive covenant specifying that the facility shall be used only for public school purposes as authorized in the California Constitution and statute.

(ii) A remainder interest to the school district in which the facility is physically located or, if the school district disclaims the interest to the facility, to the board. The remainder interest shall be triggered when the facility is no longer needed for charter school purposes and shall then be subject to paragraphs (2) to (6), inclusive, of subdivision (b) of Section 17078.62.

(3) (A) A request that the charter school be authorized to hold fee simple title to the subject property in trust for the benefit of the state public school system, on which a lien shall be recorded in favor of the board for the total amount of funds allocated pursuant to this article, including any loan received in lieu of a local matching share pursuant to Section 17078.57. The charter school shall include with the request a statement outlining the reasons why ownership of the project facilities is not vested with an entity set forth in paragraph (1) or (2). Prior to releasing any project funds, the board shall make findings that the applicant has submitted all of the information required by this paragraph.

(B) The following shall be recorded in the chain of title for the property:

(i) A restrictive covenant specifying that the facility shall be used only for public school purposes as authorized in the California Constitution and statute.

(ii) A remainder interest to the school district in which the facility is physically located or, if the school district disclaims the interest to the facility, to the board. The remainder interest shall be triggered when the facility is no longer needed for charter school purposes and shall then be subject to paragraphs (2) to (6), inclusive, of subdivision (b) of Section 17078.62.

(b) A charter school may request a school district to transfer title to project facilities to an entity authorized by paragraph (2) or (3) of subdivision (a) if the school district entered into an agreement, prior to January 1, 2010, to hold title to those facilities. A school district that receives a request pursuant to this subdivision may transfer the title to the entity designated in the request pursuant to terms and conditions mutually agreed upon by the district and the charter school.

(c) The board may adopt regulations to implement this section.

*(Added by Stats. 2009, Ch. 192, Sec. 3. (SB 592) Effective October 11, 2009.)*

Section 1859.171. Use of Facility.

If an applicant that has received funding pursuant to Section 1859.164.2(b) and has not met the timelines established in Section 1859.166 on a Preliminary Charter School Apportionment, or is no longer occupying the facility constructed with funds derived through a Final Charter School Apportionment, and the review process outlined in Education Code Section 17078.62(b)(1) has been completed (if applicable), then the following events shall occur:

(a) Any qualifying successor Charter School shall be permitted to occupy the facility pursuant to Education Code Section 17078.62(b)(2). A qualifying successor Charter School will be selected in the following manor:

(1) The District in which the project is physically located that serves the same grade level as the pupils housed in the project shall publicly notify all eligible Charter Schools authorized to operate in the District's boundaries. An eligible Charter School is at minimum a Charter School with an approved petition that provides classroom-based instruction as defined by EC Section 47612.5(e)(1). A qualifying successor Charter School must be able to assume payment of any funds owed pursuant to SFP Regulations, Section 1859.168, enter into the Charter School Agreements, and be found Financially Sound by CSFA, in addition to any District requirements approved by both OPSC and CSFA. Examples of possible District requirements may include, but are not limited to:

(A) requirements to avoid a health and/or safety concern, such as grade levels of charter schools that are co-located on other school sites,

(B) if local funds were provided to construct the facility, requirements or restrictions related to local fund sources that do not conflict with CSFP requirements.

(2) If more than one eligible Charter School responds to the District's notification, the District must use a fair and competitive process, such as a request for proposal, to identify and rank eligible Charter Schools. When ranking eligible charter schools, preference shall be provided to charter schools that serve Low Income students as determined by the percentage of students eligible to receive Free and Reduced Price Meals, as well as charter schools that meet the definition of a Non-Profit Entity. Districts may add additional preference point categories approved by OPSC and CSFA. The combined total eligible points and/or weighting provided by the additional District categories shall not exceed the combined total eligible points and/or weighting for Low Income and Non-Profit Entity categories. Examples of possible District preference points categories that may be used upon approval by OPSC and CSFA include, but are not limited to:

(A) Charter Schools that will relocate from a District property that is not a school,

(B) Charter School's serving students in the same grade level as the constructed classrooms in the facility,

(C) Charter Schools whose use of the Facility will resolve a current health and/or safety issue at its current location on District property,

(D) Charter Schools that serve a certain threshold of in-district students, or will serve district unhoused students.

(3) The District, with approval from the OPSC and CSFA, must identify, in ranking order if applicable, a successor Charter School.

(4) If multiple Charter Schools apply jointly to be a successor charter school, they will be treated as one applicant for purposes of assigning preference points and ranking. Preference points will be assigned based on the school with the enrollment majority as documented in the approved charter petition(s) for the grade levels that will use the Facility.

(b) If after the steps in subsection (a) are complete, no qualifying successor Charter School is identified or chooses to occupy the facility, the school district in which the project is physically located that serves that same grade level as the pupils housed in the project,

may elect to take possession of the facility and pay the balance of the local matching share. The District may qualify for a waiver of repayment if it can meet all the following:

- (1) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to Section 1859.81; and,
- (2) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).

(c) If the school district chooses not to take possession of the facility, it shall dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.

(d) Pursuant to Education Code Section 17078.62(b)(5)(B), if the school district declines to dispose of the facility it shall provide written notice of its rejection to the Board in the form of written action taken by the governing board of the school district and the Board shall dispose of the property.

## Title 4. Business Regulations

### Division 15. California School Finance Authority Article 1. Charter School Facilities Program

#### Section 10152. Definitions.

- (a) "Account" shall have the meaning set forth in Education Code Section 17078.52(c)(2).
- (b) "Advance Apportionment" shall mean an advance release of funds for design or site acquisition pursuant to Preliminary Apportionment and submission of a completed application to the State Allocation Board, and prior to the approval of the project by the Department of General Services.
- (c) "Applicant" shall mean the Charter School or school district that has applied for financing pursuant to and meets the requirements set forth in Education Code Section 17078.53(b).
- (d) "Application" shall mean a completed Form SAB 50-09, as defined, and developed by the Board, and Form CSFA 03-01, revised 3/04, as developed by the Authority and available on its website, and all other documents required to be submitted to the Board and Authority. -Form CSFA 03-01, revised 3/04, is incorporated by reference for purposes of this Article.
- (e) "Authority" shall mean the California School Finance Authority as further defined in Education Code, Sections 17172 and 17173.
- (f) "Board" shall mean the State Allocation Board.
- (g) "Certification of Financial Soundness" shall mean the Authority's adoption of a resolution determining that a Charter School is "Financially Sound" for a period of 12 months, assuming that if no material financial, operational, or legal changes have occurred during this period that would otherwise change the determination.
- (h) "Charter School" shall mean a school as established in California pursuant to Education Code Section 47600, et seq.
- (i) "Chartering Authority" shall mean the school district, county office of education, or the State Board of Education that granted a school's petition to become a Charter School pursuant to Education Code Section 47605.
- (j) "Final Apportionment" shall mean a Preliminary Apportionment that has been converted to Final Apportionment in accordance with California Code of Regulations, title 2, Section 1859.165.
- (k) "Financial Hardship" for purposes of this Article shall mean the demonstrated inability, to the Authority's satisfaction, to make Matching Share Payments as required in an Applicant's Funding Agreement. -The revocation of a school's charter shall not qualify as financial hardship.
- (l) "Financially Sound" shall have the meaning set forth in Education Code Section 17078.52(c)(4).
- (m) "Funding Agreement" shall mean the agreement describing the terms of payment of the Local Matching Share.
- (n) "Funding Round" shall mean the opportunity for submission of Applications for purposes of Preliminary Apportionment, as authorized by the Board based on the availability of bond authority.
- (o) "Intercept" shall mean the method for repayment of the Local Matching Share pursuant to Education Code Section 17199.4.
- (p) "Local Matching Share" (also "Matching Share") shall mean 50% of total

project costs that is to be repaid, or the unpaid portion of these costs remaining after a lump-sum payment is made.

(q) "Matching Share Payment(s)" shall mean payments made against the Program loan with the State for purposes of repaying the Local Matching Share pursuant to a payment schedule.

(r) "Material contract" shall mean a contract between a Charter School and any vendor that is more than in excess of 5 percent of Charter School gross revenues.

(s) "Memorandum of Understanding" shall mean the agreement setting forth the terms of use of program funds and project facilities.

(t) "Obligor" shall mean the entity responsible for the Local Matching Share, which may or may not be the same as the Applicant.

(u) "Preliminary Apportionment" shall mean a reservation of funds made pursuant to Education Code Section 17078.52(c)(3).

(v) "Program Agreements" shall mean the Memorandum of Understanding and the Funding Agreement.

(w) "Program" shall mean the Charter School Facilities Program as established pursuant to Article 12 of Chapter 12.5 of Part 10 of the Education Code.

(x) "Project" shall mean the specific facilities-related project that is the subject for Program funding within an Application and that has been approved for Program funding by the Office of Public School Construction.

(y) "SFP Regulation(s)" shall mean regulations relating to the Leroy F. Green School Facilities Act of 1998: (School Facility Program)(SFP) as promulgated by the Department of General Services (DGS) Office of Public School Construction (OPSC).

Note: Authority cited: Sections 17078.57, 17179, 17180, and 17180.5, Education Code.

Reference: Sections 17078.52, 17078.53, 17078.57, and 17199.4, Education Code; and Title 2, Division 4, Part 26.8 (commencing with Section 47600), Education Code.

### **Section 10153. Application Submission.**

(a) For purposes of participating in any Funding Round, one completed Application in hard-copy (Form CSFA 03-01) with original signatures and one CD-ROM or flash drive with a copy of the completed and signed Application along with the additional required documents as set forth in the Application and Section 10155 must be received by the Authority during regular business hours no later than the final filing date and time posted on the Authority's website. -Applications shall be delivered to the Authority by mail or hand-delivery. -The Authority will not accept emailed or faxed Applications. Applications received after the final filing date and time will not be accepted for review. -Upon the development of an online Application system, an Applicant may submit an Application and all supporting documents via the online Application system.

(b) For purposes of Preliminary Apportionment, if the information provided in Form CSFA 03-01 is insufficient to allow the Authority to determine whether a Charter School is financially sound, the Authority shall notify the Applicant, and reserves the right to request such additional information as will be necessary to make the determination. -If after such request, the required information is not provided, the

Authority reserves the right to find the Application incomplete and not eligible for consideration at which time the Authority shall notify the Board of that determination.

Note: Authority cited: Section 17078.57, Education Code.

Reference: Sections 17078.52, 17078.53 and 17078.57, Education Code.

#### **Section 10154. Financial Soundness Review and Determination.**

- (a) A Financially Sound Charter School shall have been a financially capable concern for at least 24 months prior to submission of the Application. In addition, a Financially Sound Charter School shall have at least two academic years of instructional operations of a Charter School prior to submission of the Application.
- (b) Where the Application is for new construction or rehabilitation for a Charter School with less than two years of instructional experience, the organization that is applying on behalf of the school shall demonstrate it has an approved charter or charter amendment for the new Charter School at the time of submission and that it has operated or managed another Charter School or Charter Schools for at least two full academic years of instructional operations of a Charter School prior to submission of the Application. In addition, if the Application is for a new school, and the organization applying on behalf of the Charter School does not have experience operating other Charter Schools in California for at least two academic years, the Applicant may satisfy the requirements of this section by providing evidence of its educational plan, financial resources, facilities expertise, and management expertise.

Management expertise must be established by demonstrating, to the Authority's satisfaction, that key personnel (e.g., Chief Executive Officer, President, Operations Manager, Chief Financial Officer, Principal, etc.) involved in operating the Applicant Charter School have at least two academic years of experience in management positions at other Charter Schools in California. To establish the required level of management experience, the Applicant must provide:

- (1) Name(s) and address(es) of the Charter Schools in California where experience was earned;
- (2) Titles, responsibilities and duties of the key personnel at the Charter School(s);
- (3) Length of tenure of the key personnel at the Charter School(s); Name(s), address(es), phone number(s) and other contact information of the key personnel's immediate supervisor(s) and the President(s) of the Charter School(s)' governing board;
- (4) Student performance data for the Charter School(s) covering the period of service; and
- (5) Available information regarding performance of the key personnel at the Charter School(s) where the experience was earned.

- (c) Where the Application is submitted by a school district or county office of education and the Charter School has not operated for at least two academic years as a Charter School, the school district or county office of education's experience operating public schools may be used to satisfy the requirements of this section.

(d) The Authority shall review and evaluate Form CSFA 03-01, revised 3/04, and supporting information that is requested or otherwise received by the Authority for purposes of determining whether an applicant is Financially Sound. In making this determination, the Authority will utilize the apportionment eligibility amounts provided by the Board and will rely on such amounts as being sufficient to complete the project, without verification by the Authority. -The Authority shall consider certain factors, including but not limited to:

- (1) Whether the Charter School has complied with the terms of its charter agreement and is in good standing with its Chartering Authority. -Charter Schools that fail to demonstrate compliance with the terms of the charter agreement and good standing with the Chartering Authority shall be deemed as not Financially Sound. The Authority will rely on information from the Chartering Authority regarding the Charter School's good standing and compliance with the terms of its charter. -Charter Schools may appeal any response by the Chartering Authority's staff directly to the Chartering Authority's governing board. -It shall be the Charter School's responsibility, and not the Authority's, to ensure that the good standing and compliance response letter is received by the stated deadline;
- (2) Whether the Charter School is in imminent danger of having its charter revoked or not renewed;
- (3) Whether the Applicant's or Obligor's audited financial statements are free of material exceptions and "going concern" issues;
- (4) Whether financial results and projections demonstrate the Applicant's or Obligor's ability to operate at least on a break-even basis, historically, as well as in the future, taking into consideration the increased obligations resulting from the applicant's participation in the Program. The Authority will evaluate the reasonableness of projected financial performance and corresponding assumptions based on current and historical performance and the Charter School's business and/or strategic plans. -The Authority will consider current and historical performance, including cash flow, major revenues, degree of reliance on grants and fundraising, enrollment trends, student performance data, projected average daily attendance, expenses, and debt service coverage, if applicable;
- (5) Whether the Applicant or Obligor has the ability to make its proposed lump-sum payment, if applicable;
- (6) Whether the Applicant's or Obligor's financial condition is consistent with its planned contributions to the project;
- (7) Whether the Applicant or Obligor has the ability to pay the Matching Share through Matching Share Payments at the interest rate prescribed in Education Code, Section 17078.57 (a)(1)(D) and (E) and achieve a minimum debt service coverage ratio determined by the Authority to be sufficient, but in no event to be less than 1.0x. The Authority may allow an applicant to subordinate specific oversight fees to a Chartering Authority or educational management organization where such subordination allows an applicant to meet the minimum debt service coverage requirement. -In addition, on a case-by-case basis, the Authority may allow applicants to use restricted fund reserves or other funding sources to achieve the minimum debt service coverage ratio;
- (8) Whether the Charter School consistently meets recognized academic achievement standards;
- (9) Whether the Charter School has sufficient qualified management and

staff to perform necessary administrative, curricular, financial and human resource functions;

(10) Whether the Applicant or Obligor is free of any material risks that would threaten the financial or operational viability of the Applicant or the Charter School;

(11) Where the Applicant is a Charter School that contracts with an organization to provide educational management services and oversee its operations, and the Charter School does not meet the minimum debt service coverage ratio of 1.0x pursuant to subdivision (d)(7), the Authority shall perform an analysis of the current and historical financial and operational condition of the organization. In this case, the overseeing organization shall be considered the Obligor.

(e) The Authority will perform a site visit of the Charter School facility currently used by any Applicant that is located outside of the school district that chartered it. Such visit shall be during hours when pupils are present, and instruction is being provided. -The Authority reserves the right to perform such a visit of any other applicant.

(f) The Authority also may consider any information voluntarily submitted by the Chartering Authority, the school district in which the Charter School will be located, the county office of education for the county in which the charter facility will be located, and any school district or county office of education whose students currently or are projected to attend the Charter School. The Authority will provide the Board with an initial determination of whether an Applicant is financially sound for the purposes of the Board establishing the Preliminary Apportionment.

(g) For purposes of Advance or Final Apportionment, the Authority shall conduct reviews of an Applicant's or Obligor's updated information and provide the Board with updated determinations of whether an Applicant or Obligor has maintained its financial soundness.

(h) The Authority's determination of financial soundness shall be valid for a period of 12 months for purposes of the Board's approval of an application for Preliminary and Advance Apportionment, or for Final Apportionment, which shall satisfy the Board's requirement of current financial soundness certification set forth in California Code of Regulations, title 2, Section 1859.167.

(i) As a condition for the Authority's determination of financial soundness, the Authority may require the applicant to agree to specific contingencies.

(j) As a condition for the Authority's determination of financial soundness, to the extent feasible, the Intercept method shall be required for payment of the Local Matching Share pursuant to Education Code Section 17199.4.

(k) Prior to the Board's Final Apportionment, the Authority will provide the Board with a final determination of whether the Charter School is Financially Sound. -The Authority reserves the right to withdraw any prior determination that a Charter School is Financially Sound if any material change to the Charter School occurs, or an identified area of concern has not been remedied between the Preliminary and Final Apportionment which, in the opinion of the Authority, makes the Charter School no longer financially sound.

(l) As a condition of, or subsequent to, the Authority's determination that an Applicant is financially sound, the Authority may require that an Applicant provide regular updates to the Authority on key aspects of its legal status, or financial or

operating condition. The Authority shall have the discretion to establish the specific support documents that an Applicant must submit for purposes of such updates.

(m) As a condition for release of funds for Advance or Final Apportionment, the Authority shall require each Applicant to provide the Authority with notice of any material changes to the Applicant's legal status, operating condition, or financial condition within 30 days of such material change.

(n) Upon an Applicant's submission of updated information pursuant to subdivision (n) within this Section, the Authority may conduct a review to determine whether an Applicant continues to maintain a condition of financial soundness. ~~If the event that~~ the Authority's review finds that an Applicant is no longer Financially Sound, the Authority shall immediately notify the Board of its specific finding. At any time, the Authority may require an Applicant to submit a corrective action plan or request information from the Chartering Authority regarding changes to the condition of the charter.

Note: Authority cited: Section 17078.57, 17179, 17180, and 17180.5, Education Code.

Reference: Sections 17078.52, 17078.53, 17078.56, 17078.57, and 17199.4, Education Code.

### **Section 10155. Content of Application for Preliminary, Advance, and Final Apportionment.**

(a) Preliminary Apportionment – In determining whether a Charter School is Financially Sound for the purposes of the Board's Preliminary Apportionment, the Authority shall require the following information be provided by the applicant with its application (Form CSFA 03-01, revised 3/04) for Preliminary Apportionment:

(1) Organizational information.

(A) History of Charter School and founding group

1. Date Charter School commenced instructional operations;
2. Description of Charter School curriculum, including specific focus or theme;
3. Analysis of competition and Charter School's competitive advantage(s), including method of student recruitment and marketing;
4. Description of relationships with the Chartering Authority and all major funding sources, both public and private;
5. Copy of articles of incorporation and corporate bylaws
6. (or documentation of Charter School's current legal status in the event the Charter School is not incorporated); and
7. Copy of charter agreement/approved charter amendment/contract.

(B) If the applicant's charter is due to expire within 12 months of application submission, written documentation describing the Applicant's plan for charter renewal along with any available information regarding the Chartering Authority's support for the renewal. For any applicant, regardless of the timing of charter renewal, the Authority reserves the right to request additional and specific information regarding the Applicant's charter renewal

status, including information directly from the Chartering Authority;

(C) The Charter School's most recent business plan and/or strategic plan. If possible, such plans should encompass the next three academic years. For expansions, staffing plans also must be submitted;

(D) The operational agreement or memorandum of understanding between the Charter School and the Chartering Authority;

(E) Historical, current, and projected enrollment and attendance, by grade level, for the next five years or through the first two fiscal years following the occupancy of the Project, whichever is longer, and the Charter School's waiting list, if available;

(F) Targeted student population and student year-to-year retention rates for all years of operation of the Charter School;

(G) Student performance data for the past three academic years;

(H) List of the Charter School's board of directors including their occupations, cities of residence, and terms of office; and

(I) Resumes of key staff members (e.g., Chief Executive Officer, President, Operations Manager, Chief Financial Officer, Principal, etc.) of the Charter School.

(2) Project information

(A) Overview of Project, including size in square feet, number of classrooms, type of facility, and student capacity;

(B) Project type, including new construction, renovation, or rehabilitation;

(C) Project address, if known. If yet to be determined, a general description of the proposed project location;

(D) School district where Project is located;

(E) Anticipated date that instructional operations will begin at the Project; and

(F) Anticipated total Project costs.

(3) Financial information.

(A) The Charter School's or Obligor's organizational budgets for the current and next fiscal years;

(B) The Charter School's or Obligor's projected income statements and cash flows, including written assumptions, for the next five years or through the first two fiscal years following the first full year of occupancy of the Program-funded facility, whichever is longer;

(C) The Charter School's or Obligor's audited financial statements, including notes, for the last three fiscal years. If the Charter School is in its third year of operation, only two fiscal years of audited financial statements are necessary;

(D) The Charter School's or Obligor's anticipated financial contribution to the project, including any lump sum payment to be made to meet its Local Matching Share requirements by or on behalf of the Charter School, and the source of the anticipated financial contribution;

(E) The Charter School's or Obligor's most current available financial statement (unaudited), including a year-to-date actual and estimated annual financial statement and a current total annual budget;

(F) A listing of historical, current, and anticipated future funding through

private contributions; and

(4) All existing and anticipated debt obligations.

(A) List the total amounts, annual amounts, interest rates, and maturity dates of all existing and anticipated short- and long-term debt obligations of the applicant or Charter School;

(B) A description of the equipment or facilities financed with the debt obligations;

(C) If applicable, provide information about any debt covenants that could impact the Program debt obligation; and

(D) Provide copies of all financing documents associated with the debt obligations.

(5) All Material contracts.

(A) List and copy of all material contracts, including, but not limited to, management, support services, transportation contracts, and any such anticipated contracts involving use of space or equipment to be financed with Program funds;

(B) A description of services provided by the vendor to the Charter School; and

(C) For those Charter Schools contracting with educational management organizations, the following information also must be provided:

1. Brief history of the organization, including most recent annual report;

2. Description of who is served by the organization, including mission and targeted geographic area;

3. Budget of the organization for the current and next three fiscal years;

4. Financial audits of the organization for the last three fiscal years;

5. Resumes for key staff of the organization;

6. List of board of directors of the organization, including their occupations and cities of residence;

7. Contact information for the organization; and

8. A narrative describing the organization's scope and strategic plan for the next three years.

(6) Legal Status Questionnaire.

(A) A completed Legal Status Questionnaire submitted in the form set forth by the Authority as part of Form CSFA 053-01, revised 01/20203/04, and which can be found on the Authority website. For a Charter School which is governed by a school district, county office of education, or the State Board of Education, if any of the specific documentation requested in this section is not available, the applicant must provide a justification for not providing the specific documentation requested and provide alternative documentation that addresses the requested information.

(7) For organizations which operate multiple schools or which are applying on behalf of multiple schools, the information requested in this section must be submitted specifically with respect to each school for which an Application is submitted, along with such information for the organization as a whole.

(8) Failure to provide sufficient required information as described in this

section, in a timely manner, may result in the Authority's inability to determine the financial soundness of an applicant and the applicant's disqualification from the Program.

(b) Advance Apportionment – Where an Applicant has applied to the Board for an advance release of funds, the following holds:

- (1) If the Certification of Financial Soundness for the Preliminary Apportionment is no longer valid, the Authority will conduct a review of the Applicant's financial status at the time of the Application for Advance Apportionment to determine whether the Charter School has maintained a financially sound status. -The Authority will, in connection with this review, request updates of any information that was provided in the Applicant's Preliminary Application, as described in Section 10155(a).
- (2) Prior to the release of funds for site acquisition for Advance Apportionments, a Charter School holding title to the Project facility must comply with Section 17078.63 of the Education Code; and
- (3) Advance funds will only be released when Program Agreements have been executed by all parties.

(c) Final Apportionment – In determining whether an Applicant is Financially Sound prior to the Final Apportionment, the Authority will require the Applicant to update information submitted in the original Application for Preliminary Apportionment, or submitted for Advance Apportionment, including, but not limited to:

- (1) Any material changes to information provided pursuant to Sections 10155(a)(1), (2), (3), (4), (5), and (6), and updates, including, but not limited to:
  - (A) If applicable, renewals and amendments to the charter agreement/contract and any operational agreement or memorandum of understanding between the Charter School and the Chartering Authority;
  - (B) Updated business and strategic plans encompassing the next five academic years;
  - (C) Current enrollment, targeted student population, and student retention rates for all years after the date of the Preliminary Apportionment but prior to the Final Apportionment;
  - (D) Projected enrollment and attendance, by grade level, for the next five years or through the first two fiscal years following the occupancy of the Program-funded facility, whichever is longer, and current waiting list, if available;
  - (E) Student performance data for all years after the date of the Preliminary Apportionment but prior to Final Apportionment;
  - (F) Current list of board of directors, including their occupations, cities of residence, and terms of office;
  - (G) Resumes of new key staff, along with notice of any resignations or terminations of key staff originally identified in the Application;
  - (H) Audited financial statements for all years ending not less than 180 days after the Preliminary Apportionment and prior to the Final Apportionment;
  - (I) Most current unaudited financial statement, including year-to-date actual and estimated annual financial statement and a

(d) Prior to the release of funds for site acquisition or new construction for Final Charter School Apportionments, a Charter School holding title to the Project facility must comply with Section 17078.63 of the Education Code.

(e) In the event that the Charter School's charter is no longer valid, the Authority will notify the Board that the Charter School is no longer Financially Sound.

(f) Final Apportionment funds will only be released when Program Agreements have been executed by all parties.

(J) current total annual budget;

(K) Projected income statements and cash flows, including written assumptions, for the next five years or through the first two fiscal years following the occupancy of the Program-funded facility, whichever is longer;

(L) Any material changes in material contracts and debt obligations existing as of the date of the Preliminary Apportionment and additional material contracts and debt obligations entered into since the Preliminary Apportionment, including any changes to educational management organization contracts or any sale of accounts receivable associated with anticipated Program proceeds, if applicable; and

Note: Authority cited: Section 17078.57, Education Code.

Reference: Sections 17078.52, 17078.53, 17078.57, and 17078.63, Education Code.

## **Section 10156. Payment of Local Matching Share.**

- (a) Facilities funded pursuant to the Program shall have a 50 percent Local Matching Share obligation that may be paid by the applicant through payments which may be reduced in the case of a lump sum payment.
- (b) If the Applicant or Obligor elects to make Matching Share payments in lieu of a lump sum Matching Share Payment, the Authority will: determine the Matching Share Payment schedule by amortizing one half of the total approved project costs, minus any lump sum payments, over the term of the Matching Share Payment period, and such a payment schedule shall be an exhibit to the Applicant's or Obligor's Funding Agreement.
- (c) As a part of the determination of the Matching Share Payment schedule within subdivision (b) of this Section, at the Authority's discretion, the Authority shall consider the option of either a semi-annual or monthly payment schedule. -Under both payment schedules, the first payment shall occur no less than one full year after the occupancy date of CSFP project, and the final payment shall be scheduled for no more than 30 years from the date on which Final Apportionment funds were last disbursed. -For a semi-annual payment schedule, accrued interest shall commence six months prior to the first payment date. -For a monthly payment schedule, accrued interest shall commence one month prior to the first payment date. -All scheduled payments shall be intercepted pursuant to Education Code, Section 17199.4.
- (d) If the Applicant is receiving a significant contribution from a third party, the

Applicant shall provide information describing whether the contribution will be used to cover costs which are in excess of the eligible costs as determined by the Board or to be used to meet the Applicant's Local Matching Share or both.

- (e) Program Agreements will contain conditions for release of funding, as well as security, reporting, and default provisions as described in Sections 10159 and 10160.
- (f) In the case of a lump sum payment being used to meet the Charter School's Local Matching Share obligation, the Charter School must provide documentation that said lump sum payment is available and restricted for purposes of making the payment.
- (g) As a condition for the release of funds, the intercept method shall be required for payment of the Local Matching Share pursuant to Education Code, Section 17199.4.

Note: Authority cited: Sections 17078.57, 17179, and 17180, Education Code.

Reference: Sections 17078.54, 17078.57, 17078.58, and 17199.4, Education Code.

### **Section 10157. Succession and Security Provisions**

#### **Title to Project Facilities.**

- (a) Pursuant to Education Code, Section 17078.62(b)(3), the school district in which the Charter School is physically located may take possession and title of the facility only after having demonstrated due diligence in soliciting alternative Charter Schools within the local area to take possession and title of the facility, as permitted by Education Code Section 17078.62(b)(2). Such demonstration of due diligence shall be at the Authority's discretion, but shall include, but not be limited to, documentary evidence of solicitation of Charter Schools within the district boundaries, where applicable.

If an applicant that has received funding pursuant to SFP Regulation Section 1859.164.2(b) and has not met the timelines established in SFP Regulation Section 1859.166 on a Preliminary Apportionment, or is no longer occupying the facility constructed with funds derived through a Final Apportionment, and the review process outlined in Education Code Section 17078.62(b)(1) has been completed (if applicable), then the following events shall occur:

- (1) Any qualifying successor Charter School shall be permitted to occupy the facility pursuant to Education Code Section 17078.62(b)(2). A qualifying successor Charter School will be selected in the following manner:
  - (A) The District in which the project is physically located that serves the same grade level as the pupils housed in the project shall publicly notify all eligible Charter Schools authorized to operate in the District's boundaries. An eligible Charter School is at minimum a Charter School with an approved petition that provides classroom-based instruction as defined by EC Section 47612.5(e)(1). A qualifying successor Charter School must be able to assume payment of any funds owed pursuant to SFP Regulations, Section 1859.168, enter into the Program Agreements, and be found Financially Sound by the Authority, in addition to any District requirements approved by both OPSC and the Authority. Examples of possible District requirements may include, but are not limited to:

1. requirements to avoid a health and/or safety concern, such as grade levels of charter schools that are co-located on other school sites,
2. if local funds were provided to construct the facility, requirements or restrictions related to local fund sources that do not conflict with CSFP requirements.

(B) If more than one eligible Charter School responds to the District's notification, the District must use a fair and competitive process, such as a request for proposal, to identify and rank eligible Charter Schools. When ranking eligible Charter Schools, preference shall be provided to Charter Schools that serve Low Income students as determined by the percentage of students eligible to receive Free and Reduced Price Meals, as well as Charter Schools that meet the definition of a Non-Profit Entity. Districts may add additional preference point categories approved by OPSC and the Authority. The combined total eligible points and/or weighting provided by the additional District categories shall not exceed the combined total eligible points and/or weighting for Low Income and Non-Profit Entity categories. Examples of possible District preference points categories that may be used upon approval by OPSC and the Authority include, but are not limited to:

1. Charter Schools that will relocate from a District property that is not a school,
2. Charter School's serving students in the same grade level as the constructed classrooms in the facility,
3. Charter Schools whose use of the Facility will resolve a current health and/or safety issue at its current location on District property,
4. Charter Schools that serve a certain threshold of in-district students or will serve district unhoused students.

(C) The District, with approval from the OPSC and the Authority, must identify, in ranking order if applicable, a successor Charter School.

(D) If multiple Charter Schools apply jointly to be a successor Charter School, they will be treated as one applicant for purposes of assigning preference points and ranking. Preference points will be assigned based on the school with the enrollment majority as documented in the approved charter petition(s) for the grade levels that will used the Facility.

(2) If after the steps in subsection (a)(1) are complete no qualifying successor Charter School is identified or chooses to occupy the facility, the school district in which the project is physically located that serves that same grade level as the pupils housed in the project, may elect to take possession of the facility and pay the balance of the Local Matching Share. The District may qualify for a waiver of repayment if it can meet all the following:

(A) Demonstrate that at the time the Form SAB 50-04 was submitted for Final Charter School Apportionment, the district would have qualified for financial hardship, pursuant to SFP Regulation Section 1859.81; and,

(B) Certify to the Board that it will comply with the requirements of Education Code Section 17078.62(b)(4)(B).

(3) If the school district chooses not to take possession of the facility, it shall

dispose of the facilities in the manner applicable to the disposal of surplus school sites pursuant to Education Code Sections 17455 through 17484. The proceeds from the sale shall be used to pay off the remaining loan balance, if any.

(4) Pursuant to Education Code Section 17078.62(b)(5)(B), if the school district declines to dispose of the facility it shall provide written notice of its rejection to the Board in the form of written action taken by the governing board of the school district and the Board shall dispose of the property.

(b) Title to project facilities may be held by the school district in whose boundaries the facility is to be physically located, in trust, for the benefit of the state public school system.

(c) Title to project facilities may be held by a Charter School or a local governmental entity other than the school district in accordance with Sections 17078.57, 17078.62, and 17078.63 of the Education Code.

(d) Any person or entity providing a substantial contribution that is applied to the costs of the project in excess of the state share and the Local Matching Share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of. -If the contribution was made for the explicit purpose of purchasing any asset with a normal life expectancy of less than twenty years, the security interest will be adjusted to reflect the depreciation of the asset(s).

(e) Any person or entity that provides a contribution to the Applicant which is used solely to assist the Applicant in meeting its Local Matching Share shall not be entitled to a security interest as provided in subsection (b). Where the contribution results in total Project funding beyond the State share and Local Matching Share, the contributor's security interest shall be limited to the amount in excess of the State share and Local Matching Share.

(f) If a default occurs and all Matching Share Payments have not been made, the security interest of any person or entity providing a substantial contribution to the costs of the Project shall be satisfied only after the account is reimbursed for any remaining unpaid Local Matching Share.

(g) Specific terms of security provisions for persons or entities providing a substantial contribution shall be determined on a case-by-case basis.

(h) Prior to the release of funds, the Applicant shall submit evidence of a separate and distinct account for deposits of all Program loan proceeds.

Note: Authority cited: Section 17078.57, Education Code.

Reference: Section 17078.57, Education Code.

### **Section 10158. Reporting and Default Provisions.**

(a) Reporting provisions within the Memorandum of Understanding and / or Funding Agreement will include, but not be limited to, the requirements that all recipients of Program funding shall:

- (1) Provide to the Authority semi-annual unaudited financial statements;
- (2) Provide to the Authority quarterly reports detailing all disbursements and interest earned as it relates to the separate Program account established pursuant to Section 10159(g), upon request;
- (3) Report to the Authority any material adverse change in its financial condition that could adversely affect its ability to make its Matching Share Payments under the Program within 30 days of such a change;

- (4) Report to the Authority if the Charter School's charter has been revoked or has not been renewed within 30 days of notification of such action, including providing the Authority with a copy of the document provided by the Chartering Authority notifying the Charter School of such action;
- (5) Provide to the Authority audited financial statements within 180 days of the end of each fiscal year; and
- (6) Obtain from the Authority prior written consent before incurring any additional indebtedness, which consent may only be given if the Authority has determined that the Charter School will remain Financially Sound with the additional indebtedness.

(b) Default provisions will include monetary penalties for late payments. Upon request of the Board, the Authority may amend the terms of the Funding Agreement, including the amortization schedule, where the Applicant has established financial hardship to the satisfaction of the Authority and the Board, and the Authority has determined that the Charter School will be Financially Sound under the terms of the revised Funding Agreement. However, no such amendment may extend the amortization schedule beyond 30 years from the date of disbursement of funds. In the event the Chartering Authority has revoked or declined to renew the charter, the Matching Share obligation will be considered to be in default and the provisions of Education Code Section 17078.62 shall be invoked. In instances where the Matching Share obligation is in default due to the revocation of the charter or failure to renew the charter, monetary penalties will not be incurred so long as the school district complies with Education Code Section 17078.62.

Note: Authority cited: Section 17078.57, Education Code. Reference: Section 17078.57, Education Code.