



**CALIFORNIA DEPARTMENT
OF EDUCATION**

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June 6, 2019

The Honorable Governor Gavin Newsom
Governor of California
State Capitol
Sacramento, CA 95814

Dear Governor Newsom:

Enclosed please find a report from the California Charter School Policy Task Force that includes a list of recommendations for charter school reform. We look forward to your feedback, questions, and thoughts about the implications of these recommendations.

Sincerely,

A handwritten signature in blue ink that reads "Tony Thurmond".

Tony Thurmond
State Superintendent of Public Instruction

California Charter School Policy Task Force Report

Submitted June 6, 2019

Introduction

This report reflects the progress and recommendations of the Governor's Charter School Policy Task Force (CTF) through May 30, 2019. The CTF has been facilitated by the State Superintendent of Public Instruction (SSPI) Tony Thurmond, with the purpose of examining the impact of charter school growth on school districts' budgets and providing recommendations. This report includes the following sections:

- Background
- CTF Process and Level Setting
- Deliberation Process
- Recommendations
- Other Proposals Discussed
- Implications for Going Forward

Background

Since the passage of the Charter Schools Act of 1992, there has been discussion and debate about the role of charter schools in educating California students. While this debate is important, its intensity and polarization has obscured the focus on other key issues in education. For example, conversations must be prioritized that address the reality that California continues to rank 41st in the nation in per pupil spending compared to other states.

Recognizing that the lack of funding in general for public schools in California is exacerbated by the competition for resources between traditional public schools and charter schools, Governor Gavin Newsom in early 2019 appointed the CTF and asked SSPI Tony Thurmond to convene the group to analyze two matters:

- 1) The fiscal impact that charter schools have on traditional public schools; and
- 2) Inconsistencies in how charter schools are authorized throughout the state.

Many in California believe that traditional public schools and charter schools can co-exist for the benefit of students in California who are seeking diversity in the educational options that they may pursue. It is the hope of the CTF to put forward recommendations that address the issues of fiscal impact and authorization, and to do so in a way that is in the best interest of California students.

The SSPI worked with Governor Newsom's office to identify members to serve on the CTF. Eleven members representing diverse educational perspectives were selected to serve on the CTF and include representatives of the California County Superintendents

Educational Services Association, California Charter Schools Association, the California Teachers Association, Green Dot Public Schools California, Service Employees International Union Local 99, Aspire Public Schools, Fortune School of Education, California School Employees Association, Association of California School Administrators, American Federation of State County and Municipal Employees, District Council 57, El Dorado County Office of Education, and the San Diego Unified School District. The CTF blends supporters of traditional public schools and supporters of charter schools who committed to work together to identify reform recommendations for charter schools in California.

CTF Process and Level Setting

The SSPI and staff at the California Department of Education (CDE) facilitated the CTF meetings starting from March 2019 through May 2019. Meetings convened weekly for 3–5 hours. Throughout the process, although CTF members may have disagreed with one another’s perspectives, all attendees engaged in professional, respectful, and authentic conversations about their differences.

The CTF began its meetings with an attempt to provide some level setting for members to establish a baseline of understanding and knowledge about charter school trends and patterns from which all CTF members could operate. Experts presented on a variety of topics to support this level setting. Presentations came from researchers, academicians, policy experts, and representatives of school districts and charter school organizations. Some presenters served as technical assistance advisors to answer questions from CTF members about issues related to charter schools. The topics presented, as well as the organizations and individuals who presented, included the following:

Topics Covered During Level Setting

- Authorization and appeals process for charter schools
- Authorizer, charter operator, and educator perspectives on fiscal impact
- Authorization costs, facility costs, and costs to underserved students
- Creating a collaborative environment for innovation sharing and co-existing
- Data overview of charter schools in California
- Evolution of California Charter School Law
- Facilities - Proposition 39 (November 2000) and colocation
- Fiscal impact definition and challenges (overall and charter school related)
- Fiscal impacts of charter schools on large urban school districts

- Improving charter authorization practices
- State Board of Education authorization and CDE oversight of approved charter schools
- Types of charter school models (i.e. virtual, independent)

Organizations

- Alameda County Office of Education
- California Charter Authorization Professionals (CCAP)
- California Charter Schools Association (CCSA)
- California County Superintendents Educational Services Association (CCSESA)
- California Department of Education, Charter Schools Division and Fiscal Services Division
- Charter Accountability Resource and Support Network (CARNet)
- Fiscal Crisis and Management Assistance Team (FCMAT)
- Green Dot Charter Schools
- Legislative Analyst's Office (LAO)
- Los Angeles Unified School District
- Oakland Unified School District
- San Diego Unified School District

Independent Content Experts

- Sue Burr, Historian and Former Legislative Staff (during the establishment of the California Charter Schools Act of 1992)
- Stephanie Medrano Farland, Consultant, Collaborative Solutions for Charter Authorizers
- Professor Paul Hill, Founder of the Center on Reinventing Public Education
- Professor Gordon Lafer, Author, "The Breaking Point:" The Cost of Charter Schools for Public School Districts

- William Savidge, K12 School Facilities Consultant

Deliberation Process

Throughout the discussion and debate process, CTF members were encouraged to provide proposals for reform recommendations. Towards the end of the level setting process, the CTF began brainstorming and offering proposals for the group's consideration. These proposals were culled into a streamlined framework of proposals and offered to the group for more discussion and debate. The CTF reached full consensus on four proposals, listed below in the Recommendations section. On the remaining items reaching consensus proved more difficult. When CTF members could not reach agreement on the framework proposals, a vote was taken and majority and minority positions were established. In the interest of providing the public with a transparent understanding of the topics discussed by the CTF, the framework along with other key proposals are included in the section called "Other Proposals Discussed."

Recommendations

Proposal A

Extend the timeline to approve or deny a new charter school petition an additional 30 days.

Results: Unanimity and consensus reached

Current law provides 60 days after receipt for an authorizer to approve or deny a charter school petition. There is agreement among authorizers in California that 60 days is not sufficient time to conduct a thorough review that could include:

- 1) Vetting the petitioner's documentation: financial plans and proposed budgets, academic plans and goals, corporate bylaws, operational policies and handbooks, and signatures;
- 2) Identifying conditions for approval or denial;
- 3) Preparing materials for and holding a public hearing;
- 4) Responding to questions and concerns raised; and
- 5) Reaching an agreement for the terms of a Memorandum of Understanding (MOU).

The CTF agrees that the current timeline of 60 days for an authorizer to review a charter petition should be extended by 30 days, for a total review period of 90 days. As part of this discussion, the CTF reviewed the timeline for renewals after the initial authorization process, which already includes an opportunity to mutually agree to an extension. As

such, the CTF reached consensus that the current timeline of 60 days for reviewing an application to renew a charter school should remain the same.

Proposal B

Create a statewide entity to do one of the following proposals:

Proposal B(i):

Develop standards, used by authorizers, for providing oversight to charter schools.

Results: Unanimity and consensus reached

California has three types of charter school authorizers:

- 1) Districts, typically where the school will be located with limited exceptions for a school to locate outside of the authorizers boundaries,
- 2) The County Office of Education, and
- 3) The State Board of Education (SBE).

Combined, over 1,000 entities may authorize charter schools in California. The California *Education Code* Section 47604.32 outlines the duties of the authorizer, yet, there are no statewide standards, beyond the charter petition and the charter elements applicants must address, for oversight by authorizers. There is concern that authorizers provide oversight with great variance; some authorizers have established their own evaluation processes for assessing charter status, while others have not; and authorizing practice varies across the state. Clear standards for authorizers to follow would standardize oversight practices in the state.

The CTF agrees that clearly articulated, reasonable, and rigorous statewide oversight standards will ensure a fair means for evaluating charter schools throughout the state of California.

Proposal B(ii):

Create a statewide entity to provide training for authorizers.

Results: Unanimity and consensus reached

Prior to becoming an authorizer, most districts have not had experience performing the type of review and oversight required of authorizers. California does not currently have a statewide entity to provide training for authorizers that would ensure they have information and resources available from which to provide quality assistance to and oversight of charter schools. Potential training may include:

- 1) A policy handbook, checklist and template for the charter petition review,
- 2) A handbook, checklist, and template for the annual review of charter schools,
- 3) A sample MOU that outlines standards for academic, financial, and operational procedures and performance, and
- 4) Guidance on the renewal process that allows authorizers to take proactive steps prior to the revocation of a charter and closure of a charter school.

The CTF agrees that in order to reach the standards developed in Proposal B(i), authorizers would need to be trained and provided additional resources.

During the conversation, interest was expressed in ensuring the statewide entity (similar to other states) also has the ability and sufficient authority to intervene and/or impose accountability measures when disputes or inconsistencies arise related to authorization and renewal.

Proposal C

Include students transferring to charter schools in the Education Code provision for a one-year “hold harmless” to account for net loss of average daily attendance (ADA).

Results: Unanimity and consensus reached

Currently in *Education Code* sections 42238.5–42238.052, charter ADA is exempt from the declining district enrollment calculation, leaving districts no support when they lose ADA to a charter school. However, districts experience a similar loss of revenue when a student exits a traditional school for a charter school as when a student leaves for any other reason.

While the majority of CTF members recognized that this recommendation alone will not address the full fiscal impact on districts, there was consensus that providing a “soft landing” to districts for loss of ADA due to student transfer to charter schools offers one important layer of support. Because loss of charter students to independently-governed and direct-funded charter schools has substantially the same impact on the district as any other ADA loss, the CTF believes it should be recognized in the same manner. Based on self-reported 2018-2019 data submitted to CDE for the largest ten school districts in the state, the estimated amount required to provide the “soft landing” is estimated over \$96,000,000.

Proposal D

Provide additional discretion when considering a new charter school authorization and amend the role of the CDE in oversight per the considerations below.

Results: Unanimity and consensus reached

The CTF members discussed the necessity of providing boards with greater ability to consider community impacts when making a decision to approve or deny petitions to establish a new charter school. A proposal was shared that introduced a list of possible factors that would provide boards with additional discretion. The CTF debated a variety of potential factors and ultimately reached unanimous consensus to recommend that boards statewide be allowed to consider the items listed below when determining whether to approve or deny a petition to establish a new charter school; there was a widely held view that these considerations are interconnected and should be discussed based on their combined impact on the system and not as separate components.

- Saturation (including both numbers of schools and overall enrollment in those schools)
- Academic outcomes and offerings (offered by traditional schools and charter schools)
- A statement of need (based on academic outcomes and offerings)

While CTF members did not articulate specific thresholds or levels to trigger these factors, they did feel that the factors aforementioned offered governing boards a more complete community lens and were therefore important for providing additional discretion to authorizers. Together with these considerations, CTF also discussed the role of the SBE in the appeals process and the responsibility of CDE (as staff to SBE) for oversight of SBE-authorized charter schools. It was agreed that CDE should no longer be responsible for oversight of charter schools authorized by the SBE (currently three staff members are responsible for 39 charter schools). The CTF agreed unanimously that the burden of oversight was high for the CDE staff, particularly given geographic constraints. While acknowledging that districts will get broader discretion to deny petitions for new charter schools via the considerations above, CTF members recognized there needed to be a balance with appeal rights; therefore, no changes were recommended to the appeals process.

Other Proposals Voted On

Again, the proposals listed below were either a part of the framework voted on by the CTF or they represent a proposal on which the CTF members focused considerable time and debate. Although full unanimity was not reached on these proposals, they are included in this report to provide transparency and reflect the evolution to the CTF's full body of work. They represent items discussed and the evolution of the discussion and debate that took place between task force members before the task force members reached consensus on the list of recommendations listed in this report.

Proposal E

Enact a one-year moratorium on the establishment of new virtual charter schools.

Results: Supported by the majority

There has been growing concern that virtual charter schools are operated without appropriate academic rigor and oversight, providing a sub-par education for their students (for example, see California Virtual Academy—Bureau of State Audits review¹). The temporary one-year freeze on new virtual charter schools will give advocates time to study issues related to the establishment of virtual charter schools, such as their operational practices and performance, and to make further recommendations to ensure students are receiving appropriate full-time instruction, supervised by a certified teacher. Virtual charter schools with a history of providing a demonstrated benefit to students will have the ability to continue to operate during the one-year moratorium.

Proposal F

Remove the California State Board of Education from hearing appeals of charter petition denials.

Results: Supported by the majority

The SBE is an authorizer for applicants whose charter petition was denied by a district or county board of education. Some CTF members expressed growing concern that applicants whose charter petitions were denied by a district and/or County Board of Education appeal to the SBE to grant their charter, thus giving a charter school three chances to be approved. Some believe that for local control and accountability to be preserved, charter schools should only be authorized locally. In addition, authorization at the state level is problematic due to geographic limitations. Almost 65% of the current SBE authorized charter schools are located in Los Angeles or San Diego, which makes it difficult for the Sacramento-based staff to provide the appropriate level of oversight at the local level. As CDE is staff to SBE, the oversight responsibilities fall to CDE; there are currently three staff at the state level to serve the 39 SBE authorized charter schools.

Proposal G

Limit the authorization of new charter schools to local districts with an appeals process that takes place at the County Board of Education only when there was an error by the district governing board.

Results: Supported by the majority

Current law allows for any County Board of Education, or the State Board of Education to authorize charter petitions when a school district governing board has denied their

approval. By only allowing school districts and limited appeals to the county offices to authorize, this proposal allows the local community to make a determination on whether the charter school meets the needs of their students. Applicants would be allowed limited appeals of the local district's denial to the County Board of Education.

Proposal H

Prohibit districts from authorizing charter schools located outside district boundaries.

Results: Supported by the majority

Current law allows a charter school to open one site outside of the authorizing district only if the charter school has attempted to locate within the authorizer's boundaries, but an appropriate site was unavailable or the location is temporarily needed during a construction or expansion. A 2017 state audit report found that in fiscal year 2016-2017, 165 charter schools used these exceptions to operate at least 495 locations outside of their authorizers' boundaries². Further, many of these charter schools had not provided evidence of the need to locate outside of the authorizing district. Prohibiting districts from authorizing charter schools located outside of district boundaries would allow for greater local control and oversight of charter schools. In addition, such a prohibition would limit the potential for the detrimental practice of using oversight fees as a revenue stream, while incurring only limited expenses associated with authorizing the charter school.³

Proposal I

Allow authorizers to consider fiscal impact as part of the authorization process.

Results: Supported by the majority

Presentations from Oakland Unified School Districts, Los Angeles Unified School Districts, and San Diego Unified School District to the CTF demonstrated significant fiscal impact to school districts due to the cost of charter schools located within district boundaries. In addition to the oft-cited loss of ADA funding, other costs may include, but are not limited to: inability to reduce expenses proportionally without direct harm to student programs and services (utilities, staff, daily maintenance, etc.); obligations to keep schools open and facilities available; increased liability and litigation; disproportionality of special education costs; competition for state, local, and other funds; thorough oversight; and marketing in a newly competitive environment. Allowing authorizers to consider fiscal impacts of a charter petition enables them to evaluate the impact on the entirety of their local educational system. As such, the majority of the CTF recommended that authorizers should be allowed to take fiscal impact into consideration when deciding whether to authorize a new charter school.

Proposal J

Establish clear guidelines for use by authorizers and by charter applicants for new charter petitions.

Results: Supported by the majority

Current law requires charter petitions to include a description of 16 elements. Beyond these elements, there are no standards that provide guidance on the level of detail an applicant should include. As such, applicants submit charter petitions of varying quality; some contain little description of the elements while others contain extensive detail. Clear guidelines, such as rubrics or handbooks, for applicants to follow would standardize the quality of new charter schools.

Proposal K

Update Education Code requirements to reflect current state accountability.

Results: Supported by the majority

Current language in the *Education Code* is outdated as it reflects the use of the Academic Performance Index to determine whether a charter school has met the academic criteria for renewal. To make the renewal process up to date, outdated provisions that no longer apply should be removed from the *Education Code*.

Proposal L

Implement a plan for managed growth of charter schools.

Results: Did not move to a vote

Over the past 25 years, public perception suggests that charter schools have grown at an unchecked pace. Through CTF deliberations, there were various presentations providing a picture of fast-paced growth that has more recently leveled off to a more moderate rate. A managed growth proposal was considered that identified two school districts (Oakland Unified School District and Los Angeles Unified School District) and suggested limitations related to time period, geography, and who is eligible and was contingent upon local control and a sunset policy. The idea of managing growth in a select few districts and for a limited period was not acceptable to the majority who felt reasonable growth standards should be consistently applied statewide. CTF members were invited to provide an alternative set of caveats for a managed growth plan, however CTF members could not agree on the conditions for limiting growth. Conversation about the managed growth plan being applicable to districts with a specific number or percentage of charter student enrollment was further discussed but no agreement was reached.

Proposal M

Amend Education Code Section 475605(b) from “shall” to “may.”

Results: Opposed by the majority

The CTF members dedicated significant time to discussing a reform proposal to provide more discretion to authorizers that would amend *Education Code* Section 47605(b) which states, “The governing board of the school district **shall** grant a charter for the operation of a school if it is satisfied that granting the charter is consistent with sound educational practice.” In practice, this clause in the current state law indicates that an authorizer must approve a charter applicant unless it makes specific findings to deny. The proposal would have provided authorizers more discretion to approve or deny a charter school by introducing a change in the language of this section of the *Education Code* from “shall” to “may.”

This was a significant topic of discussion for all CTF members and many differing perspectives were shared. Ultimately, the CTF expressed concern about the potential legal implications of a recommendation that changed the core language of the *Education Code*. When CTF members voted on the proposal to recommend the change, there was neither consensus nor unanimity. The proposal to change from “shall” to “may” failed by the narrowest of votes, with the majority position opposing the change. In subsequent conversations, the CTF worked to identify a balance that addressed both growth concerns and the need for some form of an appeals process.

Implications for Going Forward

The recommendations for charter reform presented in this report represent important conversations currently taking place throughout California. With more than 1,300 charter schools in our state, the issues surrounding charter schools are complex and require further review, discussion, and debate. While the CTF had robust discussions with significant differences on policy, the recommendations contained in this report offer strategies to address some of these complexities. The CTF was limited in overall scope and duration, and so the conversations started here point to additional questions yet to be answered. In particular the CTF encourages future work detailing articulate and fair standards for authorization and renewal and the development of the statewide entity referenced in Recommendation B. Moreover, the CTF sees an opportunity for charter schools and traditional public schools to achieve a goal that has never been fully maximized since the passage of the Charter Schools Act of 1992: that charter schools and traditional public schools share innovations that have the potential for helping all students in the state. In conclusion, the State Superintendent’s office on behalf of the CTF respectfully submits this report and its recommendations as strategies to advance the needs of California’s six million students.

¹ Per state audit report findings, CAVA: inaccurately calculated supervisory oversight fees paid to authorizing entities; lacked sufficient documentation to support its claimed ADA; lacked sufficient documentation to support satisfactory progress of students between 19 and 22 years old; may have miscalculated its pupil-teacher ratio; schools contracted to pay their authorizing entities oversight fees in excess of legal limits.
<https://www.cde.ca.gov/nr/ne/yr17/yr17rel72.asp>

² Per CCSESA Report, page 13: State Audit Report 2016-141.
<https://www.bsa.ca.gov/pdfs/reports/2016-141.pdf>

³ For example, per State audit < <https://www.bsa.ca.gov/pdfs/reports/2016-141.pdf> >, “Through the authorization of out-of-district schools, both Acton-Agua Dulce Unified and New Jerusalem were able to increase their enrollments and revenue significantly...(the school district of Acton-Agua Dulce) received \$1.9 million total in fees from charter schools in fiscal year 2015–16...while some of Acton-Agua Dulce Unified’s charter schools appear to have made only sporadic use of the services for which the district charged them.”