

## TEXT OF REGULATIONS

### CALIFORNIA CODE OF REGULATIONS Title 4, Division 15, Article 1.5 Charter School Facility Grant Program

#### 10170.2. Definitions.

For the purposes of this article, the following words and phrases shall have the meaning as described below:

- (a) "Applicant" shall mean the Charter School, educational management organization, or charter management organization applying on behalf of a Charter School for a grant under this article.
- (b) "Application" shall mean a completed Charter School Facility Grant Program Online Application (CSFA Form 740-01; revised July 2018), incorporated herein by reference, as developed by the Authority, and described in Section 10170.6.
- (c) "Authority" shall mean the California School Finance Authority.
- (d) "Average Daily Attendance" (ADA) shall mean the unit of attendance, as reported by the Department for the second period of the school year.
- (e) "Average Daily Attendance Cap" (ADA Cap) shall mean for the 2017-18 fiscal year, an amount equal to one thousand one hundred seventeen dollars (\$1,117) per unit of ADA. Commencing with the 2018-19 fiscal year and moving forward, the amount of funding provided per unit of ADA in the preceding fiscal year, as adjusted by the Cost Of Living Adjustment Index or the amount specified in the current Budget Act.
- (f) "Chartering Authority" shall mean the school district, county board of education, or State Board of Education that granted a Charter School's petition to become a Charter School pursuant to Education Code Section 47605.
- (g) "Charter School" shall mean a school established and operating pursuant to the Charter Schools Act of 1992 (Education Code Section 47600, et seq.). Except where the defined term First Year Charter School is specifically used, Charter School shall also be meant to include schools that otherwise meet the definition of First Year Charter School.
- (h) "Cost Of Living Adjustment Index" (COLA Index) shall mean a percentage change in the annual average value of the Implicit Price Deflator for State and Local Government Purchases of Goods and Services for the United States, as published by the United States Department of Commerce for the 12-month period ending in the third quarter of the prior fiscal year. This percentage change shall be determined using the latest data available as of May 10 of the preceding fiscal year compared with the annual average value of the same deflator for the 12-month period ending in the third quarter of the second preceding fiscal year, using the latest data available as of May 10 of the preceding fiscal year, as reported by the Department of Finance.
- (i) "Department" shall mean the California Department of Education.
- (j) "Estimated Annual Entitlement" shall mean the estimated grant amount to which a Charter School is entitled as calculated pursuant to Section 10170.7 prior to the first apportionment.
- (k) "Facility Invoice Expenditure Report" shall mean the annual Charter School Facility Grant Program Facility Invoice Expenditure Report (CSFA Form 740-02; revised October 2017) herein incorporated by reference.

- (l) “Fair Market Rent” shall be the mean amount of money a property would rent or lease for if it was available at the time the appraisal was conducted.
- (m) “Final Fiscal Year Entitlement” shall mean the final calculated grant amount to which a Grantee is entitled based on the calculation prescribed in Section 10170.8.
- (n) “First Year Charter School” shall mean a school that anticipates beginning operations as a Charter School in the Fiscal Year for which it submits an Application and was not open the previous school year.
- (o) “Fiscal Year” shall mean the school year for which an Application for grant funds is submitted.
- (p) “Free or Reduced-Price Meal Eligibility” or “FRPM Eligibility” shall mean the percentage of enrolled students in grades Kindergarten through 12th grade or students ages 5 through 17, whichever is greater, eligible for free or reduced-price meals, as reported by the Department and certified through the annual Fall 1 data submission to the California Longitudinal Pupil Achievement Data System (CALPADS).
- (q) “Grantee” shall mean a Charter School determined by the Authority to be eligible for a grant.
- (r) “Independent Appraisal” shall mean a value assessment of rent and lease costs for a charter school facility completed in the Fiscal Year and signed by a Certified Real Estate Appraiser or Certified General Appraiser. The Appraiser must be licensed by the California Department of Real Estate Appraisers who and shall confirm ~~that~~ the appraisal is in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).
- (s) “New Facility Agreement” shall mean either 1) a rental or lease agreement for a facility not previously occupied by the charter school; 2) a rental or lease agreement that includes additional square footage not included in the previous year's agreement; or 3) a new agreement for existing facilities or square footage when the existing lease is up for renewal or expires.
- (t) “Prior Year” shall mean the school year prior to the school year for which an Application is submitted.

Note: Authority cited: Section 47614.5, Education Code.

Reference: Sections 47614.5, 47600 et seq. and 47605, Education Code.

### **10170.3. Eligible Applicant.**

Any Applicant shall be eligible to apply for a grant if all of the following conditions are met:

- (a) The Application is submitted by or on behalf of a Charter School.
- (b) An approved charter has been awarded, is in place, and is current at the time of Application.
- (c) In the case of a First Year Charter School, a charter petition has been submitted for approval to the Chartering Authority and evidence, such as a copy of the charter petition, is submitted that the school anticipates beginning operations in the Fiscal Year for which an Application is submitted.
- (d) The Charter School meets one of the following criteria:
  - (1) Fifty-five percent (55%) or more of the student enrollment at the charter school site is eligible for prior year FRPM; or
  - (2) The charter school site for which grant funds are requested is physically located in the attendance area of a public elementary school in which fifty-five percent (55%) or more of the pupil enrollment is eligible for prior year FRPM

and the school site gives a preference in admissions to pupils who are currently enrolled in that public elementary school and to pupils who reside in the elementary school attendance area where the charter school site is located, as determined by the local school district.

- (3) First Year Charter Schools not operational in the prior year shall be eligible in the current year if the school meets the FRPM Eligibility requirements based on current year data.
- (4) In all subsequent funding rounds, all schools shall adhere to application dates outlined in Section 10170.5.
- (e) The Charter School, educational management organization, or charter management organization is not in default with the requirement of all programs administered by the Authority.
- (f) The charter school is in good standing with its chartering authority and is in compliance with the terms of its charter at the time of application submission, and without interruption throughout the term of the grant. The Authority will rely on information from the chartering authority regarding the 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.
  - (1) Requests for good standing will be sent out to the chartering authority as follows:
    - (A) Upon receipt of the Application;
    - (B) The Authority reserves the right to request an additional good standing confirmation during the fiscal year. In February, prior to the disbursement of the second apportionment as described in Section 10170.9(c); and
    - (C) In June, prior to the disbursement of the Final apportionment as described in Section 10170.9(d).
- (g) The Charter School shall not operate as, or be operated by, a for-profit corporation, a for-profit educational management organization, or a for-profit charter organization.

Note: Authority cited: Section 47614.5, Education Code.

Reference: Section 47614.5, Education Code.

#### **10170.4. Eligible Costs.**

- (a) Grant funds may be applied toward a Charter School's facilities costs for all of the following:
  - (1) Costs associated with facility rents or leases as evidenced by an executed rental or lease agreement and beginning with the 2017-18 funding round, shall be subject to one of the following conditions:
    - (A) Reimbursable facility rent or lease costs do not exceed prior year's reimbursable costs on file with the Authority, subject to an adjustment of the annual COLA Index (COLA Cap); or
      - (i) The Authority shall base the annual COLA Index adjustment on the end of the prior year's monthly rent.
    - (B) The rent or lease costs of New Facility Agreements are at or below Fair Market Rent based on an Independent Appraisal as described in section 10170.6(d) and paid for by the Applicant.

- (i) The Authority will use the Independent Appraisal on file if the following conditions are met:
  - (a) An Independent Appraisal completed within the last three fiscal years is on file with the Authority; and
  - (b) Rent or lease costs do not exceed prior year's reimbursable costs, subject to an adjustment of the annual COLA Index (COLA Cap).
- ~~(i)~~(ii) If the Independent Appraisal finds the rent and lease costs above the Fair Market Rent, the costs will be based on Fair Market Rent as determined by the Independent Appraisal.
- (iii) Options to renew contained in existing rent or lease agreements on file with the Authority, executed by the charter school and the lessor, will not be considered a New Facility Agreement.

(C) Rent or lease costs are reimbursable from time of occupancy based on Certificate of Occupancy obtained during the Fiscal Year.

- (2) If funds remain, costs associated with the facility but not limited to, remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites, and common area maintenance charges that are based on the Charter School's usage of the facility and are limited to maintaining and repairing the facility and its common areas will be evaluated for an award.
  - (3) Costs described in subdivisions (a)(1) and (a)(2) and associated with portions of school district or county office of education facilities that are not existing school district or county office of education facilities and are not reasonably equivalent facilities received from their charter authorities.
  - (4) Costs associated with a ground lease as evidenced by an executed rental or lease agreement where there is no existing district facility on the ground being leased.
- (b) Grant funds may not be apportioned for any of the following:
- (1) Units of ADA generated through nonclassroom-based instruction as defined in Education Code Section 47612.5;
  - (2) Facility rent and lease costs associated with a Charter School's occupancy of existing district or county office of education facilities;
  - (3) Facility rent and lease costs associated with a Charter School's occupancy of reasonably equivalent facilities received from its chartering authority pursuant to Education Code Section 47614;
  - (4) Costs incurred to meet a Charter School's local match obligation for charter school facilities that receives funds pursuant to the Charter School Facilities Program; or
  - (5) Costs incurred for instructional or administrative costs including, but not limited to, salaries and benefits paid to teachers, instructional aides, the educational management organization or charter management organization responsible for managing the Charter School, or the chartering authority and existing district personnel.
  - (6) Lease costs assessed to the charter school based on grant funds awarded to the school by the Authority during the same funding round.
  - (7) Facility rent and lease costs associated with a facility previously purchased and paid in full by the Charter School with State Charter School Facilities

Incentive Grants Program funds unless those costs are associated with capital improvements.

- (8) Facility rent and lease costs associated with lease-to-purchase agreements where the rent and lease costs lower the final purchase price.
- (c) Grant funds must be expended and liquidated within the guidelines of this article and the Charter School Facility Grant Program.
- (d) No grant, whether for costs described in subdivision (a)(1), (a)(2), (a)(3), (a)(4), or a combination of, shall exceed the ADA Cap as defined in Section 10170.2(e) or 75% of the annual facility rent and lease costs for the Charter School for the Fiscal Year for which the Application is submitted, whichever is less.
- (e) Where an application is for multiple school sites, each site's eligibility and costs will be evaluated separately. The ADA applied to the determination of the grant, as described in subdivision (d), shall only be based on the eligible site(s).
  - (1) Where the Charter School's students migrate between eligible and ineligible school sites, the ADA applied shall be based upon the square footage ratio of eligible facilities to all facilities.
  - (2) Where the Charter School's students do not migrate between eligible and ineligible schools sites, the ADA applied shall be based upon the schools self-certification of the ADA for the facility the students are assigned to.

Note: Authority cited: Section 47614.5, Education Code.

Reference: Sections 47612.5 and 47614.5, Education Code

#### **10170.5. Application Submission.**

- (a) Application for grant funds shall be made on an online form (CSFA Form 740-01) prescribed by the Authority, and will be available as described below. The Authority will accept applications during the application periods described. ~~Applications received after the final filing date will not be accepted for review.~~ Applications may not be submitted by email or facsimile.
- ~~(b)~~ (1) The Initial Application period for each grant year shall be made available by the Authority in the month of April. Application deadlines shall be 5:00 p.m. on the date five weeks from the date the application is made available by the Authority. The Authority shall make application materials available on the Authority's website and notify the public of the application release date.
- (2) The Second Application period for each grant year shall be made available by the Authority on September 10 of the Fiscal Year. The Application deadline shall be 5:00 p.m. on October 15 of the Fiscal year. The Authority shall make application materials available on the Authority's website and notify the public of the application release date. Under the following circumstances, an Application may be submitted during the second Application period:
  - (A) A Charter School relocates from a facility that was ineligible for a grant award to a facility that is eligible and the Application includes a description of the change in facility circumstances; or
  - (B) A First Year Charter School.
- (3) Late Applications and late Facility Invoice Expenditure Reports are ineligible for Program funds and are not eligible for the appeal process described in section 10170.10.

- ~~(c)~~ For any funding round, under the following circumstances, an Application may be submitted after the initial Application deadline, but in no case later than October 15 of the Fiscal Year for which the Application is submitted:
  - ~~(1)~~ A Charter School relocates from a facility that was ineligible for a grant award to a facility that is eligible and the Application includes a description of the change in facility circumstances; or
  - ~~(2)~~ A First Year Charter School
- ~~(b)~~~~(d)~~ The Authority's review and evaluation of an Application for purposes of calculating the Estimated Annual Entitlement shall be based on the information contained in and submitted with the Application, and supporting information obtained directly from other state and local agencies.
- ~~(c)~~~~(e)~~ Organizations operating more than one Charter School, as identified by separate County District School (CDS) codes, must submit a separate Application for each Charter School with a separate CDS code for which a grant award is sought. Organizations operating more than one facility location under the same CDS code must combine all facilities operating under that CDS code in one Application.
- ~~(f)~~ ~~The Authority may waive procedural defects in the submission of an Application, such as an Application filed past the deadline.~~

Note: Authority cited: Section 47614.5, Education Code.  
 Reference: Section 47614.5, Education Code.

**10170.6. Content of Application.**

Completed Applications and all attachments shall be submitted to the Authority via the online application form (CSFA Form 740-01) and shall include all of the following items.

- (a) Application. The Application shall include identifying information, a completed Legal Status Questionnaire, and signed certification that the data and information reported is true and correct and the charter will continue to comply with state and federal laws.
- (b) Copy of current charter agreement and verification of Authorizing Board adoption and expiration date.
- (c) Copy of the rent or lease agreement contract, or other documentation, verifying the Charter School's facilities rent or lease costs for the Fiscal Year for which a grant award is requested, and evidence that the rent or lease term matches or exceeds the anticipated grant term. If the Charter School does not have an executed rent or lease agreement for the Fiscal Year, the Applicant shall produce an executed lease or rental agreement for the Prior Year or other documentation sufficient to show the Charter School's actual facilities rent or lease costs for the Prior Year. If the Charter School does not have a rental or lease agreement for the Fiscal Year or Prior Year, the Applicant shall provide such other evidence to the satisfaction of the Authority, such as a pending lease agreement, that establishes the Applicant's best estimate of such costs for the Fiscal Year.
- (d) After the Authority has confirmed the applicant's eligibility and determined one or more of the applicant's facilities is a New Facility Agreement, the Authority will request an Independent Appraisal. The Appraisal shall be consistent with the USPAP, and at a minimum contain the following items:
  - (1) Use a Certified Real Estate Appraiser or Certified General Appraiser licensed by the California Department of Real Estate Appraisers;

- (2) The Appraiser shall not be a Related Party as defined in Section 10170.14(a)(3);
  - (3) "Client" shall be the Charter School;
  - (4) "Intended User" shall be the California School Finance Authority for Charter School Facility Grant Program eligibility;
  - (5) Provide a Fair Market Rent Analysis including an explanation that supports the conclusions reached; and
  - (6) Signed Certification consistent with language found in USPAP.
- (e) An Applicant requesting reimbursement for Charter School costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites and common area maintenance charges shall submit no later than July 15 following the applicable Fiscal Year all of the following:
- (1) A description of the work for which the reimbursement is requested, including how it meets one of the categories of eligible work;
  - (2) A Facility Invoice Expenditure Report, as provided by the Authority, detailing the costs to be reimbursed; and
  - (3) Applicable contracts for work to be performed to the extent they exist at the time of the Application.
- (f) An Applicant applying for or on behalf of a First Year Charter School shall submit an Application and the supporting documentation listed in subdivisions (f)(1)-(3), as they are made available. Grant funds will not be disbursed until items (1), (2) and (3) have been received by the Authority.
- (1) An approved charter agreement evidencing the First Year Charter School's intention of operating a Charter School during the Fiscal Year for which grant funds are requested. If an approved charter agreement is not available, the Applicant shall submit the charter petition and application and additional documentation demonstrating its intent to receive charter approval to operate a Charter School during the Fiscal Year for which grant funds are requested;
  - (2) An executed rental or lease agreement for the Fiscal Year for which grant funds are requested. If an executed rent or lease agreement is not available at the time of Application, the Applicant shall submit an estimate of rent or lease costs for the Fiscal Year; and
  - (3) A Charter School 20 Day Attendance Report shall be submitted within 20 days of initial California Department of Education application submission date.
- (g) The Authority shall be entitled to the return of all grant funds from an Applicant if it is determined that the Applicant failed to provide complete and accurate information, or provided misleading information, that resulted in the disbursement of grant funds for which an Applicant is not eligible.
- (h) All requested documentation required in order to complete the applicant's eligibility review or award calculation shall be due to the Authority within 60 calendar days of notification. Failure to submit this documentation by the stated deadline will result in ineligibility of the Program or applicable facility costs described in section 10170.4 (a)(1) - (a)(4).

Note: Authority cited: Section 47614.5, Education Code.  
 Reference: Section 47614.5, Education Code.

### **Section 10170.7. Estimated Annual Entitlement Calculation.**

- (a) Authority staff will make an initial determination regarding each Charter School's eligibility pursuant to section 10170.3.
- (b) For each eligible Charter School, the Authority will determine the Estimated Annual Entitlement, pursuant to section 10170.4(d).
- (c) The Estimated Annual Entitlement Calculation shall not include reimbursement of invoices as defined by 10170.4(a)(2).
- (d) If an Applicant is unable to provide an executed rental or lease agreement for the Charter School for either the Fiscal Year or for the Prior Year, the Authority may base the Estimated Annual Entitlement on information provided by the Applicant that constitutes an estimate of the Charter School's expected facilities rent or lease costs for the Fiscal Year.
- (e) For Charter Schools that submit an Application pursuant to section 10170.5~~(e)~~(a)(2), or Charter Schools that do not have Prior Year enrollment data, the Authority will make the Estimated Annual Entitlement calculation within 30 days of receipt of a complete Application and enrollment data from the Department.
- (f) For Charter Schools that do not have Prior Year enrollment data, the Authority shall base the units of ADA on 90% of the school's enrollment as reported in the Charter School 20 Day Attendance Report pursuant to section 10170.6(f)(3).

Note: Authority cited: Section 47614.5, Education Code.

Reference: Section 47614.5, Education Code.

### **Section 10170.9. Apportionment of Grant Funds.**

- (a) The first apportionment of 50% of the Estimated Annual Entitlement shall be disbursed to each Grantee by October 31 of the Fiscal Year for which the grant is requested, or 30 days after enactment of the annual Budget Act, whichever is later.
- (b) For a Grantee that submitted an Application pursuant to section 10170.5~~(e)~~(a)(2), the first apportionment of 50% of the Estimated Annual Entitlement shall be made within 30 days after the Authority determines eligibility and the Estimated Annual Entitlement.
- (c) No later than March 1 of each Fiscal Year, the Authority shall provide to each Grantee a second disbursement of 75% of the Estimated Annual Entitlement less the initial disbursement and less any adjustments due to receipt of the executed rental or lease agreement for the designated Fiscal Year.
- (d) No later than 30 days after the end of each Fiscal Year or 30 days after receiving the data and documentation needed to compute the Charter School's total annual entitlement, whichever is later, the Authority shall provide to each Grantee a third disbursement of 100 percent of the Final Fiscal Year Entitlement less the first two disbursements and adjusted for any changes to the FRPM Eligibility data, ADA, and executed rental or leases agreements for the designated Fiscal Year. If reimbursement of invoices considered eligible pursuant to section 10170.4(a)(2) is requested and Program funds remain, these costs will be incorporated into this final disbursement.
- (e) If there are insufficient funds to cover all eligible costs, the following conditions shall be in effect:
  - (1) Facility rent and lease costs as described in to section 10170.4(a)(1), (a)(3), and (a)(4) shall be awarded first. If funds remain, the Authority shall determine the pro rata share for each Grantees' invoice costs as described in section 10170.4(a)(2) by calculating the percentage of the remaining funds available as compared to the funds needed to award all Grantees



eligible invoice costs. This percentage shall be applied to the Grantee's eligible invoice costs, as described in subsection (A) below.

- (A) Eligible invoice costs = If  $75\%$  of (invoice costs + lease costs) > ADA Cap, then ADA Cap - ( $75\%$  x lease costs), otherwise invoice costs.
- (2) If insufficient funds remain available from the Fiscal Year's appropriation to reimburse grantee's facility rent and lease costs, the award shall be based solely on rent and lease costs as described in section 10170.4(a)(1), (a)(3) and (a)(4). The Authority shall determine the pro rata share to which each Grantee is entitled by calculating the percentage of the Fiscal Year's appropriation as compared to the funds needed to fully award all Grantees' rent and lease costs. This percentage shall be applied to the Grantee's annual award and shall serve as the Grantee's pro rata share.
- (3) The Authority shall disburse funds in three apportionments pursuant to subsections (b) - (e).
  - (A) The first apportionment shall be 50% of the pro rata share of the Estimated Annual Entitlement as determined by calculating the percentage of the Fiscal Year's appropriation as compared to the funds needed to fully award all Grantee's Maximum ADA Cap.
  - (B) The second apportionment shall be 25% of the pro rata share of the Estimated Annual Entitlement as determined by calculating the percentage of the Fiscal Year's appropriation as compared to the funds needed to fully award all Grantee's Maximum ADA Cap.
  - (C) The third apportionment shall be the pro rata share of the Grantee's remaining balance of the Final Fiscal Year Entitlement.
- (4) Until the current year FRPM data is made available, Charter Schools with no Prior Year enrollment data shall have their FRPM based solely on the charter school sites' Period 1 FRPM submission to the Department.
- (5) During the Final Fiscal Year Entitlement Calculation, each eligible Applicant shall receive a Notice of Eligible Facility Costs (CSFA Form 740-03; October 2017), incorporated herein by reference. This notice shall serve as the section 10170.10 Notification of Grantee and upon receipt, the Applicant shall have 30 days to review and execute the notice.
- (6) The Applicant shall have the opportunity to appeal the Notice of Eligible Facility Costs and the Appeal Process under section 10170.10 (b)-(g) shall be implemented.
- (7) The Authority shall not disburse the third apportionment under subsection (e) until each eligible Applicant's executed Notice of Eligible Facility Costs has been received or October 30, whichever is earliest.
- (f) If a Grantee's Final Fiscal Year Entitlement is less than the amount disbursed to the Grantee through the first two apportionments, the Authority shall provide the Grantee with notice and require that the Grantee reimburse the Authority for the excess within 60 days of the Grantee's receipt of such notice.
- (g) Prior to disbursement of funds for costs associated with remodeling buildings, deferred maintenance, initially installing or extending service systems and other built-in equipment, improving sites, and common area maintenance, the Grantee shall complete the annual Facility Invoice Expenditure Report, provided by the Authority. Grantee shall also submit supporting invoices, work orders, or other evidence of completed work to the Authority. Upon presentation of such evidence of actual costs incurred, such costs shall be reimbursed as a portion of the final apportionment. Such evidence shall be provided to the Authority no later than July 15 of the applicable Fiscal Year.
- (h) At any time during each Fiscal Year the Authority reserves the right to:
  - (1) Adjust each Grantee's Estimated Annual Entitlement on a pro rata basis based on the number of approved Grantees, the total amount of Estimated Annual Entitlements, and the amount of funds available;

- (2) Adjust Estimated Annual Entitlements for individual Grantees based on the Authority's receipt of updated data from the Grantee or the Department; and
- (3) If final data for FRPM Eligibility provided by the Department establishes that the Grantee is not eligible for the program pursuant to section 10170.3(d), request reimbursement of grant funds already disbursed to the Grantee consistent with subdivision (d).

Note: Authority cited: Section 47614.5, Education Code.  
Reference: Section 47614.5, Education Code.

Note: Authority cited: Section 47614.5, Education Code.  
Reference: Section 47614.5, Education Code.