

MEMORANDUM

Staff Summary No. 11

Date: March 30, 2023
To: Members of the California School Finance Authority
From: Katrina M. Johantgen, Executive Director
Re: Resolution 23-16 - Adoption of the Emergency Regulations for the Charter School Facility Grant Program

The Charter School Facility Grant Program or SB 740 Program (Program) provides annual assistance with facilities rent and lease costs for pupils in California’s charter schools. Since 2013-14, the Authority has made changes to the regulations that guide this Program. The Authority is requesting approval of the following revisions based on feedback from stakeholders and to improve Program efficiencies. Upon board approval, the changes will become part of the program regulations once approved by the Office of Administrative Law.

These recent proposed amendments to the regulations address the following: 1) define "Attendance Area"; 2) add "COVID-19 mitigation" to other facility related costs; and 3) add specific dates regarding the opening and closing of the Program application.

The Authority intends to submit these proposed regulations through the Emergency Rulemaking Action upon the Authority Board’s approval of the following proposed regulations:

Section 10170.2. Definitions

(c) — "Attendance Area". Defined to clarify and explain which local elementary school referenced in Program Regulation Section 10170.3(d)(2) is chosen during eligibility review.

(c)-(u) — Each subsection will be amended to the next letter alphabetically.

Section 10170.3. Eligible Applicant

(d)(2) –Capitalize "Attendance Area" due to the added definition.

Section 10170.4. Eligible Applicant

(a)(2) –Add "COVID-19 mitigation" as prescribed by AB 187 (2022) providing additional funding for other facility related costs as well as the addition of any improvements and/or modification to mitigate COVID-19 during the 2022-23 and 2023-24 funding rounds.

Section 10170.5. Application Submission

(a)(1) – Add "by 9:00 a.m. on April 10." and "on June 2 of the same year." and "and deadlines" were added and remove "in the month of" and "the date five weeks from the date the Application is made available by the Authority" to have static dates for the initial application.

(a)(4) - Add "If any of the dates listed in 10170.5(a)(1) & (2) fall on a Saturday or Sunday or a holiday listed in Education Code Section 45203, the new date will be the following business day."

Recommendation: Authority staff recommends the Board adopt Resolution 23-16, approving the proposed emergency regulations for the administration of the Charter School Facility Grant Program. If approved, the Executive Director will include the Resolution demonstrating the Board approval with the rulemaking file to the Office of Administrative Law.

**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) "Attendance Area" shall mean the geographical area within a school district established by the school board thereof for the purpose of designating the public school which pupils residing within the area normally would attend. In cases where the school district does not establish the area, the area will be determined based on a radius using the distance from the applicant to the nearest public elementary school with the applicant school as the center point of said radius.
- ~~(e)~~ (d) "Authority" shall mean the California School Finance Authority.
- ~~(e)~~ (e) "Average Daily Attendance" (ADA) shall mean the unit of attendance, as reported by the Department for the second period of the school year.
- ~~(e)~~ (f) "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)~~ (g) "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)~~ (h) "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)~~ (i) "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.

- (j) (i) "Department" shall mean the California Department of Education.
- (k) (k) "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.
- (l) (l) "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.
- (m) (m) "Fair Market Rent" shall mean the mean amount of money a property would rent or lease for if it was available at the time the appraisal was conducted.
- (n) (n) "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.
- (o) (o) "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.
- (p) (p) "Fiscal Year" shall mean the school year for which an Application for grant funds is submitted.
- (q) (q) "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).
- (r) (r) "Good Standing" shall mean the Applicant satisfies all three both of the following conditions: 1) The Applicant compliance with the terms of its Charter Agreement, 2) no pending or outstanding Notices of Violation described in Education Code Section 47607(g), and 3) no pending or outstanding Notices of Intent to Revoke described in Education Code Section 47607(h). The Authority will rely on information prepared by the Chartering Authority and the submission of a Good Standing Confirmation Form (GSCF) (CSFA Form 1119), incorporated herein by reference.
- (s) (s) "Grantee" shall mean a Charter School determined by the Authority to be eligible for a grant.
- (t) (t) "Independent Appraisal" shall mean a value assessment of rent and lease costs for a Charter School facility completed and signed by a Certified Real Estate Appraiser or Certified General Appraiser licensed by the California Department of Real Estate Appraisers who confirms that the appraisal is in compliance with the Uniform Standards of Professional Appraisal Practice (USPAP).
- (u) (u) "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. 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.
- (v) (v) "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~~

~~see~~ [47604](#), [47604.1](#), [47604.2](#), 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 Applicant is in Good Standing, as described in Section 10170.2(q), during the Fiscal Year. An Applicant found not to be in Good Standing, as determined by their Chartering Authority, shall be ineligible for grant funds. An Applicant may cure ineligibility for grant funds by meeting one of the following criteria:
 - (1) The Applicant receives a confirmation of Good Standing within the Fiscal Year.
 - (2) An Applicant found not to be in Good Standing solely due to the Applicant failing to meet the requirements of Education Code Section 47607(f)(3) must provide evidence demonstrating fiscal solvency to the satisfaction of the Authority. Such evidence may include the Applicant's organizational budgets and audited financials.
- (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.

§ 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
 - (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) 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.
 - (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, [COVID-19 mitigation](#), 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 the Charter Authority.
 - (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;
 - (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;
 - (9) Facility rent and lease costs associated with a facility that is inaccessible to the Applicant. The Authority reserves the right to request evidence such as a Certificate of Occupancy or letter from the lessor that establishes the date the Applicant began to occupy the leased site; or

- (10) Costs incurred during any period the Applicant is found not to be in Good Standing.
- (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 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 school sites, the ADA applied shall be based upon the school's 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 may not be submitted by email or facsimile.
 - (1) The Initial Application period for each grant year shall be made available by the Authority by 9:00 a.m. on in the month of April 10th. Application deadlines shall be 5:00 p.m. on June 2nd of the same year. 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 and deadline dates.
 - (2) The Second Application period for each grant year shall be made available by the Authority on September 10 of each Fiscal Year. The Application deadline shall be 5:00 p.m. on October 15 of each 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.
 - (4) If any of the dates listed in Section 10170.5(a)(1) and (2) fall on a Saturday, Sunday, or a holiday listed in Education Code Section 45203, the new date will be the

following business day. The Authority shall notify the public of dates subject to this subsection.

- (b) 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) 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.

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