



PATRICK O'DONNELL
ASSEMBLYMEMBER, SEVENTIETH DISTRICT

MEMORANDUM

November 9, 2022

RE: AB 1505 (O'Donnell, Bonta, McCarty, Smith), Statutes of 2019

FROM: Patrick O'Donnell, Assemblymember, 70th District

This memorandum is regarding the Charter Schools Act, and the legislative changes made to the Act in 2019 through my bill, AB 1505 (O'Donnell, Bonta, McCarty, Smith). I would like to clarify the Legislative intent behind the changes the bill made to the charter school authorization and appeal process.

Fiscal impact and community impact. While working on the bill, I heard clearly from school districts and county offices of education that some school districts were struggling with the fiscal and community impact of charter school expansion in their districts. Therefore, we added two new tools for authorizers to use in determining the fiscal impact of a new charter school (or the expansion of an existing charter school) to a school district and its students, as follows:

- Education Code (EC) Section 47605(c)(7): The charter school is demonstrably unlikely to serve the interests of the entire community in which the school is proposing to locate. Analysis of this finding shall include consideration of the fiscal impact of the proposed charter school, including an analysis of the extent to which the proposed charter school would substantially undermine existing services, academic offerings, or programmatic offerings; as well as whether the proposed charter school would duplicate a program currently offered within the school district.
- EC Section 47605(c)(8): The school district is not positioned to absorb the fiscal impact of the proposed charter school. A school district satisfies this paragraph if it has any of the following:
 - A qualified interim certification pursuant to Section 42131 and the county superintendent of schools, in consultation with the County Office Fiscal Crisis and Management Assistance Team, certifies that approving the charter school would result in the school district having a negative interim certification pursuant to Section 42131,
 - Has a negative interim certification pursuant to Section 42131, or
 - Is under state receivership (districts with an outstanding state loan).

Charter schools proposed in a school district satisfying one of these conditions shall be subject to a rebuttable presumption of denial.

While these two additional reasons that a school district or county board of education can deny a new charter school petition (or request to expand) may seem similar because they both address fiscal impact, they are intentionally different and have differing requirements when they are utilized.

Fiscal impact as part of community impact. Section 47605(c)(7) applies when the approval of the charter will present a negative fiscal impact to the school district's programs, and the school district presents an analysis of how the charter school would substantially undermine existing services, academic offerings, or programmatic offerings because of that fiscal impact. When drafting the bill, we used the word "substantial" to indicate that a financial impact of \$1.00 or other nominal amount is not enough, but instead it must be substantial to the school district, according to their analysis. The language was left broad intentionally, due to the fact that each school district is different and therefore the financial impact is different in each case.

The main requirement of a denial under Section 47605(c)(7), is that the school district must present a basic analysis of the financial impact of opening (or expanding) the charter school on the school district and how that financial impact will substantially undermine existing services to the school district's students. In completing such analysis, the school district may determine the appropriate definition of "entire community," which could be expansive and include services and programs provided to all students in the entire school district, services to specific populations of students within the district, or be narrowly defined to include services or facilities provided to students at a single school site that will be most impacted by the charter school. The lack of definition of "community" was intentional, to allow each school district to determine its own definition of the community and how it will be impacted.

Examples of such an analysis include, but are not limited to, situations where a charter school opens and the school district loses the projected average daily attendance (ADA), the school district may have to adjust their budget accordingly by eliminating the music program, closing a school site, or by requiring two schools to share a single school facility. Similarly, if the charter school petition does not sufficiently lay out a plan to serve a balance of both mild/moderate and moderate/severe special education students and English learner students, compared to the district, the district may have to adjust their budget and services accordingly to serve the needs of the community's most vulnerable student populations. Further, if a school district is experiencing declining enrollment and the loss of projected ADA to the charter school would exacerbate the budget reductions or school closures/consolidations planned in the school district, an authorizer could consider those items as community impact. Similarly, if a school district closes/consolidates a school due to declining enrollment, and a charter petition proposes to serve that student population, the school district can consider how the opening of the charter school will compound the budget reductions that have taken place in the district, and how those additional reductions would affect programs and services to students. The analysis should lay out the impact on the school district and the impact to the community, including the specific student populations, student services or programs that may be impacted by the new or expanding charter school.

Further examples of the Legislative intent in this area can be found in the Bill Analysis presented to the Assembly Floor prior to that body's passage of the bill. As cited in the analysis, my intent was to allow authorizers to, among other things:

"... consider the impact that a charter school would have on school district programs, such as English Learner instruction, hands-on science, music and theater.... Further, school districts may consider the staffing needs of district services and programs that might be impacted by the charter school, and if layoffs of custodial positions, teachers, school resource officers, and other school staff is likely to be exacerbated by the addition of a new or expanding charter schools, school boards must take this into account in order to meet the needs of all their students."

Again, the Legislative intent was to give school district and county boards of education broad discretion to consider what the fiscal and community impacts of a proposed charter school might be, and deny a charter school under Section 47605(c)(7) if they felt that impact would be substantial for their students, schools, and broader community.

To deny a charter school petition under Section 47605(c)(7), a school district or county board of education need only find that there will be a fiscal and community impact of the proposed school that will "substantially undermine existing services, academic offerings, or programmatic offerings."

The school district does not need to meet any criteria of fiscal distress, or be in fiscal distress to deny a charter petition under Section 47605(c)(7).

Further, a charter school petition can be denied for any of the eight reasons established in the Charter Schools Act. School districts may choose to deny a charter school for multiple reasons or any single reason. School districts may deny a charter school petition under Section 47605(c)(7) alone, or in combination with other reasons for denial. Likewise, a school district may deny a charter school petition under Section 47605(c)(8) alone, or in combination with other reasons for denial.

Fiscal impact as part of school district fiscal distress. To further clarify the difference between Sections 47605(c)(7) and 47605(c)(8), a denial of a charter school under Section 47605(c)(8) requires that the school district meet one of the three criteria of financial distress. By meeting one of the three criteria, that school district may deny the charter school without further analysis. Denial under Section 47605(c)(8) provides a rebuttable presumption of denial, which means the charter petition is presumed to be denied, and may only be rebutted on appeal if the school district does not meet one of the three criteria, based on fact. The Legislature intended for a denial under Section 47605(c)(8) to be an objective measure, not a subjective measure. If the school district is in fiscal distress, and meets one of the three criteria, that school district may deny the charter school petition without further analysis. Denial under Section 47605(c)(8) does not require an analysis of the fiscal impact of the charter school on the district.

When we enacted Section 47605(c)(8), the Legislative intent was to allow school districts that are in fiscal distress to focus on the school district's financial health without additionally having to struggle financially due to an increase in the number of charter schools opening within the district, therefore diverting funds from existing school district programs and services. This provision was explicitly written for school districts experiencing fiscal distress, as evidenced by their budget projections, fiscal certification and status under state receivership.

Again, the *only* requirement for denying a charter petition under Section 47605(c)(8) is that the district meets one of the three categories listed.

The intent of AB 1505 was to provide greater local control to school districts and provide more flexibility to school districts to deny charter school petitions if the proposed charter school (or expansion) would have a substantial impact on the school district's programs under Section 47605(c)(7), or if the school district was in financial distress under Section 47605(c)(8).

Rebuttable presumption of denial. In passing AB 1505, the Legislature wanted to ensure that school districts experiencing fiscal distress, that denied charter petitions for that reason, would not be overturned by the county board of education or State Board of Education on appeal. Therefore, the bill created a rebuttable presumption of denial for appeals of charter petitions that are denied under Section 47605(c)(8), which means that a county board of education and State Board of Education shall deny an appeal petition for a charter school denied under Section 47605(c)(8), if the school districts meets the listed criteria based on fact. The law was intentionally written to make a high bar for a county board of education or the State Board of Education to overturn such an appeal. In order to overturn such a denial, a county board of education or the State Board of Education must be presented with factual evidence that the district does not meet one of the three fiscal distress criteria.

County board of education appeals. AB 1505 maintains the ability for a charter school petitioner to appeal a denial by a school board, to the local county board of education. The charter petitioner must submit such an appeal within 30 days of the denial, and must submit the appeal petition to the school district at the same time as the County Board of Education. The county board of education then has 60 days to hold a hearing on the appeal petition, once the petition is received by both the county board of education and the school board of the school district that denied the petition.

In review of the charter school appeal petition, Education Code Section 47605 (k)(1)(A)(ii) states:

“The county board of education shall review the appeal petition pursuant to subdivision (c). If the denial of the petition was made pursuant to paragraph (8) of subdivision (c), the county board of education shall also review the school district’s findings pursuant to paragraph (8) of subdivision (c).”

The county board of education shall review the charter school appeal petition, after it is confirmed that there are not different material terms than the petition that was submitted to the school district board. In reviewing the petition, the county board should consider the reasons for denial by the school district board, including denial for community impact under Section 47605 (c)(7) and fiscal distress under Section 47605 (c)(8). Since the school district knows and understands the needs of their local community the best, the school district’s analysis as part of a denial based on community impact, should be considered by a county board of education on appeal. If the school board denied for fiscal distress under 47605 (c)(8), the county board of education is required to review that finding under the rebuttable presumption of denial standard.

Material terms. AB 1505 defines “material terms” and states that different material terms do “not include minor administrative updates to the petition or related documents due to the changes in circumstances based on the passage of time related to fiscal affairs, facilities arrangements, or state law, or to reflect the county board of education as the chartering authority.” This definition was discussed extensively during the drafting of the bill and the Legislative intent was that “minor administrative updates” are updates that do not have an impact on the program. In other words, these are minor updates needed to adjust the petition to make it relevant for the appeal proceedings that are directly related to the passage of time between the time the petition was heard by the school district and when it is heard by the county board of education. For example, the fiscal affairs of the proposed charter school may have changed from the time the petition was presented to the school district, due to the loss of grant funding, and the budget of the proposed charter school would need to be updated to reflect that new information as it is presented for appeal at the county board of education. Similarly, a change to facilities arrangements, due to losing a lease for a facility in a specified location due to the passage of time between hearings, would also meet this definition. Changing facilities from one location to another location across town, or to another school’s enrollment boundary, would change the student population at the proposed charter school, and would therefore not be considered a minor administrative update. Likewise, a change to the school opening date, would not be considered a minor administrative update.

State Board of Education appeals. While working on the bill, I heard from school districts and county offices of education that they sought broader discretion and more tools to evaluate charter petitions and how those charters would impact their students, schools and the broader community. In order to give school districts and county offices of education more local control over the charter schools that are approved in their communities, the bill substantially limited the charter school appeal process at the State Board of Education and authorized the State Board of Education to summarily deny an appeal without a hearing. These changes were important to protect local control and limit the State Board of Education’s time spent on charter school appeals as a whole.

Abuse of discretion standard. In drafting the bill, appeals to the State Board of Education were limited to only those that can prove a clear abuse of discretion occurred. The term abuse of discretion was intentionally used, in order to create a high legal standard for appeals submitted to the State Board of Education. The intent was for only charter petitions that did not receive a legal hearing at the local level (at both the school district and the county board of education), to be able to seek an appeal before the State Board of Education. In the past, there were instances where school districts and county offices of education failed to or refused to hold hearings on charter petitions, and it was the Legislative intent to allow for an appeal to the State Board of Education only in these extreme cases where the school district and county board of education egregiously refused to follow the law.

The Legislative intent was to prohibit charter school appeals to the State Board of Education for charter schools that were unsatisfied by the outcome of a decision by a school board and county board of education. The right to an appeal to the State Board of Education was meant to be rare and only in the

instance where egregious procedural violations occurred at the school board and county board of education, and those procedural violations prohibited the charter from having a fair and legal hearing before the school board and the county board of education. More specifically, the abuse of discretion must occur at both the school board and county board of education in order for a charter school to be able to receive an appeal hearing before the State Board of Education. For example, if the school board is alleged to have had an abuse of discretion, but the county board review of the appeal and subsequent denial is not alleged to have had an abuse of discretion then the charter petitioners have had a fair and legal review of their petition and it is consistent with our Legislative intent that the charter petition should not be eligible for appeal to the State Board of Education.

Overturning a local decision. EC Section 47605(k)(2)(E) states:

“The state board shall either hear the appeal or summarily deny review of the appeal based on the documentary record. If the state board hears the appeal, the state board may affirm the determination of the governing board of the school district or the county board of education, or both of those determinations, or may reverse only upon a determination that there was an abuse of discretion.”

Should the State Board of Education find there was an abuse of discretion, the Board is not under any obligation to approve the charter petition. If, for example, the petition does not present a sound educational program, or the school district’s evidence is clear that the charter presents a negative community impact, the State Board of Education may deny the charter school, despite the abuse of discretion finding.

Documentary record. AB 1505 requires the documentary record to be provided during the appeal process, and references a transcript. The law does not specify that a transcription service is required, and as such, any record of the meeting, including a video with closed captioning, should be sufficient. Additionally, it seems reasonable that any video recording that includes audio could be sufficient to meet this definition, as it would clearly provide a record of the board meeting.

Most importantly, in order for a charter school to prove there was an abuse of discretion, the egregious procedural violations would need to have occurred at the local level (while the petition was under review by the school board or the county board of education). Therefore, merely failing to provide a transcript as part of the documentation filed at the time that an abuse of discretion appeal is submitted to the State Board of Education, many months after the school board and county board decisions were made, would not lead to a determination of an abuse of discretion.

The intent of AB 1505 was for petitions to be heard and appealed at the local level, by boards who are most directly connected to community, and for appeals to the State Board of Education to be limited and rare.

Charter petition renewals and the balance of pupil populations. The Legislature has repeatedly made changes to the law to address the concern that charter schools historically have not enrolled the same percentages of low-income students, English learners, students with moderate/severe disabilities, and students of similar racial/ethnic backgrounds as compared to their local school district. To further address this issue, I included stronger language in AB 1505 requiring a charter petition to describe the means by which the school will achieve balance among all of these student populations. Further the law provides authorizers the ability, as part of the renewal process, to request the charter school’s demographic and enrollment data from the California Department of Education (CDE) and allows the authorizer to deny a renewal of a charter school that is not serving all students who wish to attend, after a corrective action plan. This means, during the renewal process, an authorizer has the responsibility to consider the balance of student populations at the charter school, whether students have been discouraged to apply or counseled into leaving the charter school, and take steps toward corrective actions to ensure that each charter school they renew is meeting these requirements.

Charter petition renewals and academic performance. AB 1505 defines, during the renewal process, charter schools as either low performing, middle performing or high performing. AB 1505 states that charter schools identified as low performing shall be denied on renewal. The Legislative intent was that charter schools that are not adequately serving the needs of students should not continue to operate. AB 1505 allows authorizers to choose to renew a charter school identified as low performing, only in narrow circumstances, with significant evidence. It was not the Legislative intent to allow low performing schools to be renewed over and over again.

AB 1505 states that charter schools identified as high performing be renewed for between 5-7 years. The intent was that renewal for charter schools identified as high performing be slightly more streamlined and less onerous.

Charter schools not identified as either low performing or high performing are considered middle performing. For this group of charter schools, “the chartering authority shall provide greater weight to performance on measurements of academic performance in determining whether to grant a charter renewal.” The Legislative intent was that the authorizer give greater weight to academic performance measures, and that the authorizer has the discretion to decide how much greater weight to give to these measures. For example, if an authorizer had three key considerations during renewal, they could choose to provide greater weight by considering academic measures as 36% and the other two measures as 32% each.

Further, during the renewal process, all charter schools regardless of status as low performing, middle performing or high performing, can be denied renewal by their authorizer for fiscal and governance concerns, and for failure to enroll all students who wish to attend, pursuant to Section 47607(e).

Countywide benefit charter schools. AB 1505 authorizes school boards to deny a charter petition for community impact (Section 47605(c)(7)) or because the school district is experiencing fiscal distress (Section 47605(c)(8)). Community impact and fiscal distress were not added as reasons for denying a countywide benefit charter school, because county boards of education have longstanding authority to deny a charter petition as stated in Section 47605.6 (b)(7):

“A county board of education shall deny a county wide benefit charter school petition for ‘any other basis that the county board of education finds justifies the denial of the petition.’”

This provision of law authorizes a county board of education to deny a countywide benefit charter petition for community impact, the fiscal distress of the school district, or any other reason justifying the denial.

Differentiated assistance. Prior to the passage of AB 1505, charter schools were identified for support (including for differentiated assistance) based on the evaluation rubrics adopted by the State Board of Education, pursuant to Section 52052, on disparate criteria and timelines compared to school districts. The Legislative intent of amending Section 47607.3 was to create parity for charter schools with regard to identification for support and for services offered, compared to school districts.

Equivalent time and procedures. AB 1505, in Section 47605(b) states that charter schools shall be given “equivalent time and procedures to present evidence and testimony to respond to the staff recommendations and findings.” The Legislative intent was that the school district staff and charter school staff be given the opportunity to present to the school district governing board for approximately the same amount of time. In other words, whatever amount of time the school district staff uses to present, the charter should have the opportunity to use approximately the same amount of time to present. The word “equivalent” was used indicate that it should be nearly the same, but not necessarily identical. It does not mean that if the school district staff presents for thirty seconds more than the charter school staff, that it would be grounds for an abuse of discretion appeal, for example. The intent was to ensure both sides had a fair opportunity to present, and the school district staff did not get one hour and the charters school staff got only 10 minutes. Additionally, the intent was that the equivalent time shall apply only to the presentation portion of the hearing, and not include any time taken by school board members to ask questions.

The term “equivalent procedures” was used to state that whatever means by which the school district staff presents information, the charter school staff should have the same opportunity. For example, if the school district staff uses power point technology during their presentation, then the charter school staff shall have access to utilize power point technology as well.

Teacher credentials. After becoming aware that not all charter school teachers held the appropriate credential for their assignment, or held any credential at all, the AB 1505 clarified the law to ensure all students in charter schools are taught by credentialed teachers in all subjects. This means the law requires charter school elementary and middle school students to be taught by multiple subject credentialed teachers and charter school high school students to be taught by single subject credential holders, which provides parity with students in school districts. More specifically, charter school teachers are required to be credentialed in the subject they are teaching, as is required in school districts. In other words, a charter school high school student in mathematics is required to be taught by a single subject math credentialed teacher.

The bill provided a five year phase in for this requirement for teachers in charter schools employed during the 2019-2020 school year, to allow existing charter school teachers time to earn their credential. These teachers, however, were required to obtain a certificate of clearance to ensure they have passed a full background check. All new teachers hired after the enactment of the bill are required to hold the appropriate credential for their assignment.

The Legislative intent was to create parity in teacher credentialing standards between school districts and charter schools.

Nonclassroom based charter school moratorium. In response to the numerous financial scandals and poor academic outcomes at nonclassroom based charter schools in California, a moratorium on the establishment of new nonclassroom based charter schools was included in AB 1505. The moratorium was included in AB 1505, and then extended in the 2021 budget act to give the Legislature and Governor time to identify and implement appropriate solutions to both the fiscal and academic concerns identified at nonclassroom based charter schools, before the moratorium expires.

My staff, Chelsea Kelley, Principal Consultant, Assembly Education Committee, who assisted Assemblymember Rob Bonta, Assemblymember Kevin McCarty, Assemblymember Christy Smith and me in drafting the language in AB 1505, is available to answer any detailed questions you might have. Ms. Kelley can be reached by email at chelsea.kelley@asm.ca.gov or by phone at 916-319-2087.

Sincerely,

A handwritten signature in black ink, appearing to read "Patrick O'Donnell". The signature is fluid and cursive, with the first name "Patrick" and last name "O'Donnell" clearly distinguishable.

Patrick O'Donnell
70th Assembly District
Chair, Assembly Education Committee