

WHAT TO DO WHEN A CHARTER PETITION HITS YOUR DOORSTEP

The Basics You Need to Know About the Charter Review Process

I. BEFORE THE STORM

A. Have A Policy In Place. The CSBA charter school policy is a good beginning and our recommendation is to have at least something like that policy in place.

B. Really Know Your Own Agency. It is obviously important to know and understand the status of any educational agency, to know its strengths, weaknesses, opportunities, and threats. Absent such knowledge, the agency is merely reacting to whatever wind is blowing instead of charting its own course. To best understand these factors, it is also wise to look at them from many different perspectives or viewpoints.

The world can often see what a public agency cannot see about itself. The world will look at your agency through different filters, and from a different perspective may see something within your agency that could use some work. You should be open to discussion about your agency and receptive to public input. If valid information comes forth about a perceived deficiency within the agency, you have an opportunity to create a “fix” for the deficiency and quick action may head off an offer of “help” from the outside, as from a charter petitioner who wants to fix the deficiency for you.

Who are your agency’s stakeholders? Each of them has a point of view about your agency and it is advisable to know and understand each of those points of view and have a plan of action addressing any perceived deficiencies. Debunking perceived deficiencies without acknowledging that they come from a stakeholder may bring visitors to your door, like charter school petitioners who will fill the perceived deficiency.

Other people may see exactly what they want to see, whether or not it really exists. Charter petitioners often like to see deficiencies and may see them even when and where deficiencies do not exist. Many charter petitioners would like to step in and meet those deficiencies so you must be prepared at all times to discuss other people’s perceptions of your agency. You should be willing and able to answer questions and provide information to show how any perceived deficiencies are being addressed and how the situation is improving. This provides as few opportunities as possible for outsiders to offer unsolicited help.

C. Be Aware Of What’s Going On Around You. While your agency may be running smoothly in your mind, notice when and where there is dissension, dissatisfaction, and/or resistance to change. While not all charter schools arise from these matters, a number of them do. For example, are you terminating a special program or closing a school? Charter schools have arisen from teacher and/or parental resistance to such decisions. Have other agencies in the area received charter petitions from a group looking for a place to land? Is there any particular political movement in the community that could involve the education of students? Our recommendation is to stay as connected to the public school system, and to your community, as you can, working to build positive connections, communication, and information exchange.

D. Talk To Charter Petitioners. When you are contacted by a charter petitioner, our recommendation is not to ignore the contact but to respond quickly. Be willing to meet or at least talk with charter petitioners who contact your agency. This takes time, but the time it takes to speak or meet with them is nothing compared to the amount of time it takes to deal with a charter petition in an adversarial setting. Whether you are for or against any particular charter petition, meeting before the

petition is “served” on the agency is a good idea, even if it only creates a relationship where you “agree to disagree.” Creating even this form of relationship with charter petitioners will make your future easier. Whether or not your agency is interested in sponsoring charter schools, quick action supports a better outcome.

If you are in favor of supporting the efforts of a charter school, becoming involved early in the process gives you greater input into their program’s operations and the impacts on your agency. If your agency is not supportive of a charter school, quick action may divert their attention away from your agency. Doing nothing permits charter petitioners to make up whatever they want to believe about your agency, including a belief that there may be weak leadership at the top.

E. Extra Credit - Taking It To The Next Level. When information about some dissension, dissatisfaction, or resistance comes to your attention, or you get any other information that indicates someone else may see a void or deficiency in your agency, consider taking action to fill the perceived void. Remember, their opinion on a void in the agency, even if “wrong” in your eyes, may be what drives them to become, or to support, a charter petitioner. Their view is just as valid to them as your view is to you. Taking the position that they are simply “wrong,” and doing nothing more, is what may drive someone to establish a charter school impacting your agency.

F. Identify Possible Sources Of Assistance/Expertise. Charter school petition review will involve all aspects of operating a school, from instructional programs to special education to finance and governance as well as others. To be fully prepared for a charter petition, you should identify who will be available to review, evaluate, and comment on the petition on your behalf, in their areas of expertise. Many larger districts are staffed by people with a wide array of expertise, and some smaller agencies may rely on outside support in one or more areas. If your agency does not have in-house expertise, you should make contact with local resources available to you, such as other local agencies with such expertise or your county office of education. Your goal is to make an initial contact and have an understanding that you can count on these resources, should there ever be a need to call on them.

G. Know What The Governing Board Of The Agency Will Want To Receive If A Charter Petition Is Received And Reviewed. Some governing boards will want an analysis of the petition and a recommendation whether to approve or deny the petition; other governing boards will want only the analysis with no recommendation. This is entirely up to the governing board and how it operates within the agency. Dual resolutions, one to approve and one to deny the petition, can be drafted and presented in each case.

II. THE LEGAL OBLIGATIONS DURING PETITION REVIEW BY THE “POTENTIAL” CHARTERING AGENCY

There are only a few statutory requirements but they are broad and oftentimes consuming. While each of these obligations will be discussed later in detail, the basic obligations are:

A. Schedule And Hold A Public Hearing After Giving Proper Notice. The purpose of the hearing is for the board to “. . . consider the level of support for the petition by teachers employed by the district, other employees of the district, and parents”

B. Review The Petition To Determine If Any Of The Following Conditions Exist:

1. The charter school presents an unsound educational program for the pupils to be enrolled in it.

2. The petitioners are demonstrably unlikely to successfully implement the program set forth in the petition.

3. The petition does not contain the number of signatures required by subdivision 47605(a).

4. The petition does not contain an affirmation of each of the conditions described in subdivision 47605(d).

5. The petition does not contain reasonably comprehensive descriptions of all of the required elements specified in subdivision 47605(b)(5).

C. Vote On Whether Or Not To Grant The Charter, Making “Findings” As Needed. There are only a few possible actions when voting on whether or not to grant a charter. Those choices are: 1) grant the charter, 2) conditionally grant the charter, 3) grant the charter with conditions to be met before commencing operations, or 4) deny the charter and make findings.

The vote on whether or not to grant the charter must be taken within the timeline set forth in the Education Code. If the vote is to deny the charter, the reviewing agency must make factual findings supporting the denial; if the decision is to conditionally grant the charter, the charter will not be recognized by the state until the conditions are met. For this reason, there is great opposition to, and legal questions on, the validity of conditionally granting a charter. The better method for “fixing” issues in the charter is to deny the charter or grant the charter with conditions imposed on when the charter can commence operations.

Most charters require an MOU to further identify and clarify the relationship between the granting agency and the charter school, including information on such issues as funding, special education, and business relationships. The MOU is also a great way to list those issues that must be resolved before the charter is permitted to start educating pupils, with the corrections within the MOU becoming amendments to the charter.

III. THE CLOCK STARTS TICKING

A. Things To Do NOW! A charter petition has come to you. It’s not a draft and it’s not a free look; this is the real thing and the clock is now ticking on your obligations to act. While it may be that charter petitioners will contact you in advance, and even work with you, that is not always the case. Sometimes, the first thing you hear or see is the petition in your in-basket. Find out if a copy of the petition has been sent to your board members. If not, provide them with a copy and confirm the date on which the petition was received by the agency.

B. Things To Do In The First Week. As set forth in your charter school policy, the agency representative should appoint staff and others, as needed, in the areas of curriculum, finance, facilities, special education, legal, and any other subject matter needed, as a committee to review the petition and provide advice on the viability of the proposed educational program as it applies to their specialty areas.¹ Hopefully, you already have an understanding with these people, whether they work in your agency or in another agency.

¹ In order to avoid the committee having to comply with “open meeting” requirements, we suggest that the superintendent or designee initiate these staff appointments instead of having the board organize a committee.

These are areas in which legal counsel may be able to provide some assistance; however, it is the responsibility of the agency, and its committee, to develop a recommendation to the board whether or not, in their opinion, the educational program is viable, capable of implementation, and meets the requirements of the Code.

You should also be checking the petition signatures to determine validity. Do the signatures represent at least half of the anticipated first-year teachers or parents of at least half of the first-year's anticipated students? Is there an indication that a copy of the petition accompanied the signature sheets?

Select a date and give notice of a public hearing, in the fashion of noticing other public hearings, for the purpose of "ascertaining the level of support for the petition from teachers, staff, parents, and others." Send a letter to the petitioners advising them of the date, time, and location of the public hearing. This hearing may be set for the time of a regular board meeting, or at any other time the board desires to hold it by calling a special meeting of the board. Whether at a regular or special meeting, the hearing must be held within 30 days of your receipt of the petition. If the timing requires calling a special meeting, you must do so.

If not included with the petition and other materials received, you should send a written request for the following information:

1. The proposed operation and potential effects of the school, including but not limited to:
 - The facilities to be utilized by the school, specifying where the school intends to locate;
 - The manner in which administrative services of the school are to be provided;
 - The potential civil liability effects, if any, upon the school and upon the school district.
2. Financial statements that include a proposed first-year operational budget, including startup costs and cashflow and financial projections for the first three years of operation.

Give legal counsel copies of the hearing notice and letter to petitioners, and request that all members of the review committee begin their review and comments on the petition.

In addition, SELPAs have charter school provisions in their plans. Many SELPA plans require their members to timely submit a copy of any charter petition received for review by the SELPA. You should send a copy of the petition to your SELPA. It is likely that any request for feedback on the special education provisions of the charter petition would be well received.

C. Things To Do Within The First 30 Days. Hold the public hearing and permit any interested individuals to speak on the subject. You may limit the time, both for individual speakers and for the hearing as a whole, just as you do for other public hearings. The board does not have to answer questions raised at the hearing and is not required to ask questions or do anything else except permit others to talk. It is permissible to ask questions, if it appears advisable to do so. It is customary to permit the petitioners an opportunity to make their own brief presentation to the board if they so desire, but this is not a legal requirement.

D. Things To Do Within The First 60 Days. Decide whether you need more time to complete the review and, if so, negotiate more time with the charter petitioners. If more time is not needed, complete the review of the charter petition and determine what recommendation to make to the board. There are several possible recommendations: approval, approval with restrictions on commencing operations, denial, denial unless certain conditions are met. In many instances, there will be areas in which the petition does not meet what the committee sees as appropriate standards, but these items could be “fixed” to remove the potential objection.

An example would be the application of Government Code Section 1090 rules (conflict of interest) to charter officers and employees. While most charter petitioners do not automatically include such restrictions, feeling they do not apply to charter schools, many have accepted the restrictions in order to get their petitions granted. There may be other technical deficiencies in the petition that require revision. If the petition is otherwise appropriate, these “technicalities” can be fixed before the charter school begins to operate with those requirements included in an MOU and made mandatory.

E. Extra Credit - Taking It To The Next Level. The next level involves looking into the future. It is likely that an appropriate charter petition will be granted on appeal, either by the County Board of Education or the State Board of Education. This gives you an opportunity to contemplate whether it would be better for an outside agency, such as the state (which provides little oversight) or your agency, or another local agency, to provide oversight of the future charter school.

Remember, adverse impact on your agency is not a valid reason to deny a charter petition although there is currently a bill in the Legislature to establish this as a criteria for denial.² Creating a clear picture of, and getting a good grip on, the motivation behind the charter petition and the potential impact of the charter school on your agency may give you valuable information for future, proactive action by your agency to mitigate adverse impacts.

For example, if the petition is the result of some significant dissatisfaction with your agency’s educational program, you can take some remedial action. If the petition provides a glimpse at valuable educational opportunities not currently available in your agency, you can take quick action to obtain and offer those opportunities. Both of these courses of action give you a head start in the upcoming competition for students. If you see something good, you can take the idea, improve on it, and start offering it before they do. If they have a good program, you can clone it and operate it yourself. Remember, the Legislature’s intent in adopting the charter school program was to:

1. **Improve pupil learning.**
2. **Increase learning opportunities** for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving.
3. **Encourage the use of different and innovative teaching methods.**
4. **Create new professional opportunities** for teachers, including the opportunity to be responsible for the learning program at the schoolsite.
5. **Provide parents and pupils with expanded choices** in the types of educational opportunities available within the public school system.

² AB 1172 (2011-12)

6. Hold charter schools accountable for meeting measurable pupil outcomes and provide a method to **change from rule-based to performance-based accountability systems**.
7. **Provide vigorous competition within the public school system** to stimulate continual improvements in all public schools.

Call legal counsel for additional information as needed.