

**State of California
Office of Administrative Law**

In re:
California School Finance Authority

Regulatory Action:

Title 4, California Code of Regulations

Adopt sections:

Amend sections: 10152, 10153, 10154,
10155, 10157, 10159,
10160, 10161, 10162

Repeal sections: 10156, 10158, 10164

NOTICE OF APPROVAL OF EMERGENCY
REGULATORY ACTION

Government Code Sections 11346.1 and
11349.6


OAL File No. 2011-1024-01 E

In this emergency rulemaking action, the California School Finance Authority proposed amendments to the Charter School Facilities Program to clarify, cleanup, and update the program regulations.

OAL approves this emergency regulatory action pursuant to sections 11346.1 and 11349.6 of the Government Code.

This emergency regulatory action is effective on 11/3/2011 and will expire on 5/2/2012. The Certificate of Compliance for this action is due no later than 5/1/2012.

Date: 11/3/2011



Richard L. Smith
Staff Counsel

For: DEBRA M. CORNEZ
Assistant Chief Counsel/Acting Director

Original: Katrina Johantgen
Copy: Katrina Johantgen

NOTICE PUBLICATION REGULATIONS SUBMISSION

EMERGENCY

See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. 01-09)

OAL FILE NUMBERS	NOTICE FILE NUMBER Z-	REGULATORY ACTION NUMBER	EMERGENCY NUMBER 2011-1024-01E
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For use by Office of Administrative Law (OAL) only

NOTICE 2011 OCT 24 PM 1:05 OFFICE OF ADMINISTRATIVE LAW	REGULATIONS
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NOV -3 PM 2:33

[Signature]
 STATE OF CALIFORNIA
 SECRETARY OF STATE

AGENCY WITH RULEMAKING AUTHORITY California School Finance Authority	AGENCY FILE NUMBER (if any)
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A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE	TITLE(S)	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON	TELEPHONE NUMBER	FAX NUMBER (Optional)
OAL USE ONLY ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn	NOTICE REGISTER NUMBER	PUBLICATION DATE	

B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) Charter School Facilities Program	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S)
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2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics related)				
<table border="1"> <tr> <td rowspan="3">SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)</td> <td>ADOPT</td> </tr> <tr> <td>AMEND ^{10153,} 10152, 10154, 10155, 10156, 10157, 10158, 10159, 10160, 10161, 10162, and 10164</td> </tr> <tr> <td>REPEAL 10156, 10158, 10164</td> </tr> </table>	SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)	ADOPT	AMEND ^{10153,} 10152, 10154, 10155, 10156 , 10157, 10158 , 10159, 10160, 10161, 10162, and 10164	REPEAL 10156, 10158, 10164
SECTION(S) AFFECTED (List all section number(s) individually. Attach additional sheet if needed.)		ADOPT		
		AMEND ^{10153,} 10152, 10154, 10155, 10156 , 10157, 10158 , 10159, 10160, 10161, 10162, and 10164		
	REPEAL 10156, 10158, 10164			
TITLE(S) Title 4				

per agency RS/OAL

3. TYPE OF FILING			
<input type="checkbox"/> Regular Rulemaking (Gov. Code §11346) <input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code §11349.3, 11349.4) <input checked="" type="checkbox"/> Emergency (Gov. Code, §11346.1(b))	<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Gov. Code §11346.2-11347.3 either before the emergency regulation was adopted or within the time period required by statute. <input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, §11346.1)	<input type="checkbox"/> Emergency Readopt (Gov. Code, §11346.1(h)) <input type="checkbox"/> File & Print <input type="checkbox"/> Other (Specify) _____	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, §100) <input type="checkbox"/> Print Only

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §44 and Gov. Code §11347.1)

5. EFFECTIVE DATE OF CHANGES (Gov. Code, §§ 11343.4, 11346.1(d); Cal. Code Regs., title 1, §100)
<input type="checkbox"/> Effective 30th day after filing with Secretary of State <input checked="" type="checkbox"/> Effective on filing with Secretary of State <input type="checkbox"/> \$100 Changes Without Regulatory Effect <input type="checkbox"/> Effective other (Specify) _____

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660) <input type="checkbox"/> Fair Political Practices Commission <input type="checkbox"/> State Fire Marshal <input checked="" type="checkbox"/> Other (Specify) <u>State Allocation Board</u> <i>per agency RS/OAL</i>

7. CONTACT PERSON Katrina Johantgen	TELEPHONE NUMBER (213) 620-2305	FAX NUMBER (Optional) (213) 620-6309	E-MAIL ADDRESS (Optional)
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8. I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE <i>[Signature]</i>	DATE 10/21/2011
TYPED NAME AND TITLE OF SIGNATORY Katrina Johantgen, Executive Director	

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ENDORSED APPROVED NOV 03 2011 Office of Administrative Law
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Title 4. Business Regulations
Division 15. California School Finance Authority
Article 1. Charter School Facilities Program

Section 10152. Definitions.

- (a) "Account" shall have the meaning set forth in Education Code section 17078.52(c)(2).
- (b) "Advance Apportionment" shall mean an advance release of funds for design or site acquisition pursuant to Preliminary Apportionment and submission of a completed application to the State Allocation Board, and prior to the approval of the project by the Department of General Services.
- ~~(b)~~(c) "Applicant" shall mean the charter school or, school district, or an entity that sponsors and applies on behalf of a charter school, that has applied for financing pursuant to and meets the criteria set forth in Education Code section 17078.53(b).
- ~~(c)~~(d) "Application" shall mean a completed Form SAB 50-09, as defined and developed by the Board, and Form CSFA 03-01, revised 3/04, as developed by the Authority and available on its Web site (www.treasurer.ca.gov/csfa/charter/application.pdf), and all other documents required to be submitted to the Board and Authority. Form CSFA 03-01, revised 3/04, is incorporated by reference for purposes of this Article.
- ~~(d)~~(e) "Authority" shall have the meaning set forth in Education Code section 17078.52(d)(1).
- ~~(e)~~(f) "Board" shall mean the State Allocation Board.
- ~~(f)~~(g) "Charter school" shall mean a school as established in California pursuant to Education Code Section 47600, et seq.
- ~~(g)~~(h) "Chartering authority" shall mean the governing board of the school district, county office of education or the State Board of Education that granted a school's petition to become a charter school pursuant to Education Code section 47605.
- (i) "Co-borrower" or "Guarantor" shall mean an entity other than the applicant that has agreed to secure the payment of the local matching share, either separately or in conjunction with the applicant.
- (j) "Final Apportionment" shall mean a Preliminary Apportionment that has been converted to Final Apportionment in accordance with California Code of Regulations, title 2, Section 1859.165.
- ~~(h)~~(k) "Financial hardship" for purposes of this Article shall mean the demonstrated inability, to the Authority's satisfaction, to make lease payments as required in an applicant's lease agreement. The revocation of a school's charter shall not qualify as financial hardship.
- ~~(i)~~(l) "Financially sound" shall have the meaning set forth in Education Code section 17078.52(c)(4).

- (m) “Funding Agreement” shall mean the agreement describing the terms of payment of the local matching share.
- (n) “Intercept” shall mean the specific method for repayment of the local matching share pursuant to Education Code section 17199.4(a)(4).
- (o) “Local Matching Share” shall mean 50% of total project costs that is to be repaid to the State.
- (j)(p) “Material contract” shall mean a contract between a charter school and any vendor that is in excess of 5 percent of charter school gross revenues.
- (q) “Memorandum of Understanding” shall mean the agreement setting forth the terms of use of program funds and project facilities.
- (k)(r) “Preliminary apportionmentApportionment” shall have the meaning set forth in shall mean a reservation of funds made pursuant to Education Code section 17078.52(cd)(3).
- (s) “Program Agreements” shall mean the Memorandum of Understanding and the Funding Agreement.
- (t)(t) “Program” shall mean the Charter School Facilities Program as established pursuant to Article 12 of Chapter 12.5 of Part 10 of the Education Code.

NOTE: Authority cited: Sections 17078.57, 17179, and 17180, Education Code.

Reference: Sections 17078.52, 17078.53, and 17078.57, and 17199.4, Education Code; and Title 2, Division 4, Part 26.8 (commencing with section 47600), Education Code.

Section 10153. Application.

When an applicant voluntarily applies to the ~~board~~Board for a ~~preliminary~~Preliminary Apportionment~~apportionment~~, as a condition of receiving a ~~preliminary apportionment~~Preliminary Apportionment from the ~~board~~Board, the applicant will provide concurrently all information required by the ~~Authority~~authority as described in section 10155, by submitting a completed Form CSFA 03-01 to the ~~Authority~~authority. If the information provided in Form CSFA 03-01 is insufficient to allow the ~~Authority~~authority to determine whether a charter school is financially sound, the ~~Authority~~authority shall notify the applicant and ~~Board~~board, and reserves the right to request such additional information as will be necessary to make the determination. If after such request, the required information is not provided, the ~~Authority~~authority reserves the right to find the application incomplete and the application not eligible for consideration.

NOTE: Authority cited: Section 17078.57, Education Code.

Reference: Sections 17078.52, 17078.53 and 17078.57, Education Code.

Section 10154. ~~Financially Sound~~ Financial Soundness Review and Determination.

- (a) A financially sound charter school shall have been a financially capable concern for at least 24 months prior to submission of the application. In addition, a financially sound charter school shall have at least two academic years of instructional operations of a charter school prior to submission of the application.
- (b) Where the application is for new construction or rehabilitation for a charter school with less than two years of instructional experience, the organization that is applying on behalf of the school shall demonstrate it has an approved charter or charter amendment for the new charter school at the time of submission and that it has operated or managed another charter school or charter schools for at least two full academic years of instructional operations of a charter school prior to submission of the application. In addition, if the application is for a new school, and the organization applying on behalf of the charter school does not have experience operating other charter schools in California for at least two academic years, the applicant may satisfy the requirements of this section by providing evidence of its educational plan, financial resources, facilities expertise, and management expertise. Management expertise must be established by demonstrating, to the Authority's authority's satisfaction, that key personnel (e.g., Chief Executive Officer, President, Operations Manager, Chief Financial Officer, Principal, etc.) involved in operating the applicant charter school have at least two academic years of experience in management positions at other charter schools in California. To establish the required level of management experience, the applicant must provide:
- (1) Name(s) and address(es) of the charter schools in California where experience was earned;
 - (2) Titles, responsibilities and duties of the key personnel at the charter school(s);
 - (3) Length of tenure of the key personnel at the charter school(s);
 - (4) Name(s), address(es), phone number(s) and other contact information of the key personnel's immediate supervisor(s) and the President(s) of the charter school(s)' governing board;
 - (5) Student performance data for the charter school(s) covering the period of service; and
 - (6) Available information regarding performance of the key personnel at the charter school(s) where the experience was earned.
- (c) Where the application is submitted by a school district or county office of education and the charter school has not operated for at least two academic years as a charter school, the school district or county office of education's experience operating public schools may be used to satisfy the requirements of this section.
- (d) ~~In making its determination regarding whether a charter school is financially sound, the authority shall consider certain factors, including but not limited to:~~ The Authority shall review and evaluate Form CSFA 03-01, revised 3/04, and supporting information that is requested or otherwise received by the Authority for purposes of determining whether an applicant

is financially sound. In making this determination, the Authority will utilize the apportionment eligibility amounts provided by the Board and will rely on such amounts as being sufficient to complete the project, without verification by the Authority. The Authority shall consider certain factors, including but not limited to:

- (1) Whether the charter school has complied with the terms of its charter agreement;
- (2) Whether the charter school is in good standing with its chartering authority;
- (3) Whether the charter school is in imminent danger of having its charter revoked or not renewed;
- (4) Whether the applicant's charter school's audited financial statements are free of material exceptions and "going concern" issues;
- (5) Whether financial results and projections demonstrate the charter school's applicant's ability to operate at least on a break-even basis, historically, as well as in the future, taking into consideration the increased obligations resulting from the applicant's participation in the Program.~~program;~~ The Authority will evaluate the reasonableness of projected financial performance and corresponding assumptions based on current and historical performance and the charter school's business and/or strategic plans. The Authority will consider current and historical performance, including cash flow, major revenues, degree of reliance on grants and fundraising, enrollment trends, student performance data, projected average daily attendance, expenses, and debt service coverage, if applicable;
- (6) Whether the applicant~~charter school~~ has the ability to make the its proposed lump-sum payment, if applicable; ~~proposed by the applicant and/or estimated lease payments determined by the authority;~~
- (7) Whether the applicant's financial condition is consistent with its planned contributions to the project;
- (8) Whether the applicant has the ability to pay the matching share through lease payments at the interest rate prescribed in Education Code, Section 17078.57 (a)(1)(D) and (E) and achieve a minimum debt service coverage ratio determined by the Authority to be sufficient, but in no event to be less than 1.0x. The Authority may allow an applicant to subordinate specific oversight fees to a chartering authority or educational management organization where such subordination allows an applicant to meet the minimum debt service coverage requirement. In addition, the Authority may allow applicants to use restricted fund reserves or other funding sources to achieve the minimum debt service coverage ratio;
- ~~(7)~~(9) Whether the charter school consistently meets recognized academic achievement standards;

- (8) ~~In circumstances where a charter school has a guarantor or co-borrower, whether the guarantor or co-borrower has the financial stability, resources, and authority to secure the charter school's commitment to make required lease payments; and~~
- ~~(9)(10) Whether the charter school has sufficient qualified management and staff- to perform necessary administrative, curricular, financial and human resource functions;~~
- (11) Whether the applicant is free of any material risks that would threaten the financial or operational viability of the applicant or the charter school;
- (12) Where the charter school has contracted with an organization to provide educational management services, the Authority will perform an analysis of the current and historical financial and operational condition of the organization.
- (e) The ~~authority~~ Authority ~~will~~may perform a site visit of the charter school facility currently used by any applicant that is located outside of the school district that chartered it. Such visit shall be during hours when pupils are present and instruction is being provided. The authority reserves the right to perform such a visit of any other applicant.
- (f) Where a charter school is using a guarantor or co-borrower, the Authority will evaluate the financial resources, stability, and authority of the guarantor or co-borrower, and the extent to which the applicant is reliant on the guarantor or co-borrower to meet minimal debt service coverage ratios for the purpose of determining financial soundness.
- ~~(f)(g)~~ (g) The ~~authority~~ Authority also may consider any information voluntarily submitted by the chartering authority, the school district in which the charter school will be located, the county office of education for the county in which the charter facility will be located, and any school district or county office of education whose students currently or are projected to attend the charter school.
- ~~(g)(h)~~ (h) The ~~authority~~ Authority will provide the ~~board~~ Board with an initial determination of whether a ~~charter school~~ an applicant is financially sound for the purposes of the ~~board~~ Board establishing the preliminary apportionment Preliminary Apportionment.
- (i) For purposes of Advance or Final Apportionment, the Authority shall conduct reviews of an applicant's updated information and provide the Board with updated determinations of whether an applicant has maintained its financial soundness.
- (j) The Authority's determination of financial soundness shall be valid for a period of six months for purposes of the Board's approval of an application for Preliminary and Advance Apportionment, or for Final Apportionment, which shall satisfy the Board's requirement of current financial soundness certification set forth in California Code of Regulations, title 2, section 1859.167.
- (k) As a condition for the Authority's determination of financial soundness, the Authority may require the applicant to agree to specific contingencies.

(l) As a condition for the Authority's determination of financial soundness, the intercept method may be required for payment of the local matching share pursuant to Education Code section 17199.4(a)(4).

~~(h)(m)~~ Prior to the ~~board's final apportionment~~Board's Final Apportionment, the ~~authority~~Authority will provide the ~~board~~Board with a final determination of whether the charter school is financially sound. The ~~authority~~Authority reserves the right to withdraw its initial determination that a charter school is financially sound prior to the ~~final apportionment~~Final Apportionment by the ~~board~~Board if any material change to the charter school occurs, or an identified area of concern has not been remedied between the ~~preliminary~~Preliminary and ~~final apportionment~~Final Apportionment which, in the opinion of the ~~authority~~Authority, makes the charter school no longer financially sound.

NOTE: Authority cited: Section 17078.57, 17179, and 17180, Education Code.

Reference: Sections 17078.52, 17078.53, 17078.56, and 17078.57, and 17199.4, Education Code.

Section 10155. Preliminary Application Information for Preliminary, Advance, and Final Apportionment.

(a) Preliminary Apportionment - In determining whether a charter school is financially sound for the purposes of the ~~board's~~Board's ~~preliminary apportionment~~Preliminary Apportionment, the ~~authority~~Authority shall require the following information be provided by the applicant with its application (Form CSFA 03-01, revised 3/04) for ~~preliminary apportionment~~Preliminary Apportionment:

~~(a)~~(1) Organizational information.

~~(1)~~(A) History of charter school and founding group

~~(A)~~1. Date charter school commenced instructional operations;

~~(B)~~2. Description of charter school curriculum, including specific focus or theme;

~~(C)~~3. Analysis of competition and charter school's competitive advantage(s), including method of student recruitment and marketing;

~~(D)~~4. Description of relationships with the chartering authority and all major funding sources, both public and private;

~~(E)~~5. Copy of Articles of Incorporation and Corporate Bylaws (or documentation of charter school's current legal status in the event the charter school is not incorporated); and

~~(F)~~6. Copy of charter agreement/approved charter amendment/contract.

- (2)(B) ~~Copies of reports to and from the chartering authority, including annual report and evidence that the chartering authority is engaged in due diligence in its monitoring of the charter school's student and organizational performance data and evidence of the chartering authority's oversight and approval of the charter school's instruction and curriculum. In addition, if~~ If the applicant's charter is due to expire within 12 months of application submission, include written documentation describing the applicant's plan for charter renewal along with any available information regarding the chartering authority's support for the renewal. For any applicant, regardless of the timing of charter renewal, the authority ~~Authority~~ reserves the right to request additional and specific information regarding the applicant's charter renewal status, including information directly from the chartering authority;
- (3)(C) The charter school's most recent business plan and/or strategic plan. If possible, such plans should encompass the next three academic years. For expansions, staffing plans also must be submitted;
- (4)(D) The operational agreement or memorandum of understanding between the charter school and the chartering authority;
- (5)(E) Historical, current, and projected enrollment and attendance, by grade level, for the next five years or through the first two fiscal years following the occupancy of the program-funded facility, whichever is longer, and the charter school's waiting list, if available;
- (6)(F) Targeted student population and student year-to-year retention rates for all years of operation of the charter school;
- (7)(G) Student performance data for the past three academic years;
- (8)(H) List of the charter school's ~~Board of Directors~~ board of directors including their occupations, cities of residence, and terms of office; and
- (9)(I) Resumes of key staff members (e.g., Chief Executive Officer, President, Operations Manager, Chief Financial Officer, Principal, etc.) of the charter school.
- (2) Project Information
- (A) Overview of project, including size in square feet, number of classrooms, type of facility, and student capacity;
- (B) Project type, including new construction, renovation, or rehabilitation;

- (C) Project address, if known. If yet to be determined, a general description of the proposed project location;
- (D) School district where project is located;
- (E) Anticipated date that instructional operations will begin at the project; and
- (F) Anticipated total project costs.

(b) (3) Financial information.

- ~~(1)~~ (A) The charter school's organizational budgets for the current and next fiscal years;
- ~~(2)~~ (B) The charter school's projected income statements and cash flows, including written assumptions, for the next five years or through the first two fiscal years following the occupancy of the program~~Program~~-funded facility, including written assumptions~~whichever is longer~~;
- ~~(3)~~ (C) The charter school's audited financial statements, including notes, for the last three fiscal years. If the charter school is in its third year of operation, only two fiscal years of audited financial statements are necessary;
- ~~(4)~~ (D) The charter school's anticipated financial contribution to the project, including any lump sum payment to be made to meet its local match requirements by or on behalf of the charter school, and the source of the anticipated financial contribution;
- ~~(5)~~ (E) The charter school's most current available ~~monthly~~ financial statement (unaudited), including a year-to-date actual and estimated annual financial statement, ~~with a comparison to budgeted year-to-date, and a current total annual budget, and prior year actual-to-date; and~~
- (F) A listing of historical, current, and anticipated future funding through private contributions; and
- ~~(6)~~ (G) Where a charter school has a guarantor or co-borrower, financial information, as described in Section ~~40159~~10157, related to the guarantor or co-borrower.

(c) (4) All Existing and Anticipated Debt Obligations.

- ~~(1)~~ (A) List the total amounts, annual amounts, interest rates, and maturity dates of all existing and anticipated short- and long-term debt obligations of the applicant or charter school;
- ~~(2)~~ (B) A description of the equipment or facilities financed with the debt obligations;

- (3) (C) If applicable, provide information about any debt covenants that could impact the ~~program~~Program debt obligation; and
- (4) (D) Provide copies of all financing documents associated with the debt obligations.
- (d) (5) All Material Contracts.
 - (1) (A) List and copy of all material contracts, including, but not limited to, management, support services, transportation contracts, and any such anticipated contracts involving use of space or equipment to be financed with Program funds;
 - (2) (B) A description of services provided by the vendor to the charter school; and
 - (3) (C) For those charter schools contracting with educational management organizations, the following information also must be provided:
 - (A) 1. Brief history of the organization, including most recent annual report;
 - (B) 2. Description of who is served by the organization, including mission and targeted geographic area;
 - (C) 3. Budget of the organization for the current and next three fiscal years;
 - (D) 4. Financial audits of the organization for the last three fiscal years;
 - (E) 5. Resumes for key staff of the organization;
 - (F) 6. List of ~~Board of Directors~~board of directors of the organization, including their occupations and cities of residence;
 - (G) 7. Contact information for the organization; and
 - (H) 8. A narrative describing the organization's scope and strategic plan for the next three years.
- (e) (6) Legal Status Questionnaire.
 - (A) A completed Legal Status Questionnaire submitted in the form set forth by the ~~authority~~Authority as part of Form CSFA 03-01, revised 3/04, and which can be found at www.treasurer.ca.gov/csfa/charter/application.pdf.
- (f) (7) For a charter school which is governed by a school district, county office of education, or the State Board of Education, if any of the specific documentation requested in this section is not available, the applicant must provide a justification for not providing the specific documentation requested and provide alternative documentation that addresses the requested information.

- (g) (8) For organizations which operate multiple schools or which are applying on behalf of multiple schools, the information requested in this section must be submitted specifically with respect to each school for which an application is submitted, along with such information for the organization as a whole.
- (h) (9) Failure to provide sufficient required information as described in this section, in a timely manner, may result in the ~~authority's~~Authority's inability to determine the financial soundness of an applicant and the applicant's disqualification from the ~~program~~Program.

(b) Advance Apportionment-Where an applicant has applied to the Board for an advance release of funds, the following holds:

- (1) The Authority will conduct a review of the applicant's financial status at the time of the application for Advance Apportionment to determine whether the charter school has maintained a financially sound status. The Authority will, in connection with this review, request updates of any information that was provided in the applicant's preliminary application, as described in Section 10155(a). Furthermore, where the applicant has a guarantor or co-borrower, the review may include a request of updates of any information that was provided by the guarantor or co-borrower in connection with the applicant's preliminary application, as described in Section 10157;
- (2) Prior to the release of funds for site acquisition for advance apportionments, a charter school holding title to the project facility must comply with Sections 17078.62 and 17078.63 of the Education Code; and
- (3) Advance funds will only be released when Program Agreements have been executed by all parties.

(c) Final Apportionment-In determining whether an applicant is financially sound prior to the Final Apportionment, the Authority will require the applicant to update information submitted in the original application for Preliminary Apportionment, or submitted for Advance Apportionment, including, but not limited to:

- (1) Any material changes to information provided pursuant to sections 10155(a)(1), (2), (3), (4), (5), and (6), and updates, including, but limited to:
 - (A) If applicable, renewals and amendments to the charter agreement/contract and any operational agreement or memorandum of understanding between the charter school and the chartering authority;

- (B) Copies of all written reports to and from the chartering authority, including the annual report and evidence that the chartering authority continues to engage in due diligence in its monitoring of the charter school's student and organizational performance data, and evidence of the chartering authority's oversight and approval of the charter school's instruction and curriculum, since the preliminary application was submitted;
- (C) Updated business and strategic plans encompassing the next five academic years;
- (D) Current enrollment, targeted student population, and student retention rates for all years after the date of the Preliminary Apportionment but prior to the Final Apportionment;
- (E) Projected enrollment and attendance, by grade level, for the next five years or through the first two fiscal years following the occupancy of the Program-funded facility, whichever is longer, and current waiting list, if available;
- (F) Student performance data for all years after the date of the Preliminary Apportionment but prior to Final Apportionment;
- (G) Current list of board of directors, including their occupations, cities of residence, and terms of office;
- (H) Resumes of new key staff, along with notice of any resignations or terminations of key staff originally identified in the application;
- (I) Audited financial statements for all years ending not less than 180 days after the Preliminary Apportionment and prior to the Final Apportionment;
- (J) Most current unaudited financial statement, including year-to-date actual and estimated annual financial statement and a current total annual budget;
- (K) Projected income statements and cash flows, including written assumptions, for the next five years or through the first two fiscal years following the occupancy of the Program-funded facility, whichever is longer;
- (L) Updated financial information regarding the guarantor or co-borrower, if applicable;
- (M) Any material changes in material contracts and debt obligations existing as of the date of the Preliminary Apportionment and additional material contracts and debt obligations entered into since the Preliminary

- Apportionment, including any changes to educational management organization contracts, if applicable; and
- (N) A completed Legal Status Questionnaire submitted in the form set forth by the Authority, as part of Form CSFA 03-01, revised 3/04, and found on the Authority's website reflecting any changes since the application.
- (d) Prior to the release of funds for site acquisition or new construction for final charter school apportionments, a charter school holding title to the project facility must comply with Sections 17078.62 and 17078.63 of the Education Code.
- (e) In the event that the charter school's charter is no longer valid, the Authority will notify the Board that the charter school is no longer financially sound.
- (f) Final Apportionment funds will only be released when Program Agreements have been executed by all parties.

NOTE: Authority cited: Section 17078.57, Education Code.
Reference: Sections 17078.52, 17078.53 and 17078.57, Education Code.

Section 10156. Method of Determining Whether a Charter School is Financially Sound.

~~Form CSFA 03-01, revised 3/04, and any other information that is requested or otherwise received by the authority, will be reviewed and evaluated by the authority for purposes of determining whether a charter school is financially sound. In making this determination, the authority will utilize the apportionment eligibility amounts provided by the board and will rely on such amount being sufficient to complete the project, without evaluation or verification by the authority. The authority will consider the following information as a basis for determining a charter school's financial soundness:~~

- ~~(a) — the charter school's expected ability to maintain stable financial operations and make estimated lease payments, if applicable;~~
- ~~(b) — any material risks that would threaten the financial or operational viability of the applicant or the charter school;~~
- ~~(c) — current and historical performance, including cash flow, major revenues, degree of reliance on grants and fundraising, enrollment trends, student performance data, projected average daily attendance, expenses, and debt service coverage, if applicable;~~
- ~~(d) — reasonableness of projected financial performance and corresponding assumptions based on current and historical performance and the charter school's business and/or strategic plans;~~
- ~~(e) — whether the applicant's financial condition is consistent with its planned contributions to the project;~~

- ~~(f) — adequacy of the qualifications and performance of management and personnel to perform necessary administrative, curricular, financial and human resource functions;~~
- ~~(g) — evidence that the applicant is meeting the terms of its charter and is not in imminent danger of having its charter revoked or not renewed by the chartering authority;~~
- ~~(h) — evidence that the chartering authority performs its required oversight responsibilities, including review of student and school performance data;~~
- ~~(i) — adequacy of material contracts and ability of the charter school to manage such contracts and meet its obligations under such contracts. Where the charter school has contracted with an education management organization, the authority will perform an analysis of the current and historical financial and operational condition of the organization, in addition to the above;~~
- ~~(j) — results of a site visit, if made pursuant to section 10154(e);~~
- ~~(k) — the impact of any lump sum payment the charter school has indicated it intends to make; and~~
- ~~(l) — where a charter school is using a guarantor or co-borrower, the financial resources, stability, and authority of the guarantor or co-borrower, and the extent to which the applicant is reliant on the guarantor or co-borrower to meet minimal coverage ratios.~~

~~NOTE: Authority cited: Section 17078.57, Education Code.
Reference: Sections 17078.52 and 17078.57, Education Code.~~

Section ~~10156~~10157. Ongoing Monitoring of Applicant's Financial Soundness.

- (a) As a condition of the ~~authority's~~Authority's determination that a ~~charter school~~applicant is financially sound prior to the preliminary apportionment, the ~~authority~~Authority may require that all applicants ~~determined to be financially sound and receiving a preliminary apportionment~~ provide regular updates, ~~upon request,~~ to the ~~Authority~~authority on key aspects of their financial condition and operating results. Such updates, may include, but not be limited to the following:
 - (1) semi-annual unaudited financial statements;
 - (2) audited financial statements as they are completed and filed with the California Department of Education and the chartering authorityentity;
 - (3) adopted budgets and interim budget reports filed with the charter school's chartering authorityentity; and
 - (4) academic performance results;
 - (5) financial projections;
 - (6) completed legal status questionnaire;

- (7) updated enrollment and attendance; and
- ~~(4)(8)~~ notice of any material change to the enrollment, student performance, charter status, or financial condition within 30 days of such material change; notice of any material change to the enrollment, student performance, charter status, or financial condition within 45 days of such material change; and
- ~~(5)~~ reports from the chartering authority's routine oversight of the charter school's activities
- (b) As a condition for release of funds for Advance or Final Apportionment, the Authority, shall require each applicant to provide the Authority with:
 - (1) semi-annual updates regarding payment records on the matching share lease obligation; and
 - (2) notice of any material changes to the applicant's enrollment, student performance, charter status, or financial condition within 30 days of such material change.
- ~~(b)(c)~~ Where a charter school has a guarantor or co-borrower, the same or similar information to that described in subsections (a) and (b) also may be required to ensure the continuing financial stability of the guarantor or co-borrower.
- (d) Upon an applicant's submission of updated information pursuant to this section, the Authority may conduct a review to determine whether an applicant continues to maintain a condition of financial soundness. In the event that the Authority's review finds that an applicant is no longer financially sound, the Authority shall immediately notify the Board of its specific finding. At any time, the Authority may require an applicant to submit a remedial action plan or request information from the chartering authority regarding changes to the condition of the charter.

NOTE: Authority cited: Section 17078.57, Education Code.

Reference: Section 17078.52, 17078.53 and 17078.57, Education Code.

Section 10158. Final Application Information.

- (a) ~~In determining whether a charter school is financially sound prior to the final apportionment, the authority will require the applicant to update information submitted in the original application for preliminary apportionment, including, but not limited to:~~
 - (1) ~~Any material changes to information provided pursuant to section 10155(a), (b), (c) and (d), and updates, including, but not limited to:~~
 - (A) ~~If applicable, renewals and amendments to the charter agreement/contract and any operational agreement or memorandum of understanding between the charter school and the chartering authority;~~
 - (B) ~~Copies of all written reports to and from the chartering authority, including the annual report and evidence that the~~

- chartering authority continues to engage in due diligence in its monitoring of the charter school's student and organizational performance data, and evidence of the chartering authority's oversight and approval of the charter school's instruction and curriculum, since the preliminary application was submitted;
- (C) Updated business and strategic plans encompassing the next three academic years must be provided;
 - (D) Current enrollment, targeted student population, and student retention rates for all years after the date of the preliminary apportionment but prior to the final apportionment;
 - (E) Projected enrollment, by grade level, for the next five years or through two full years of occupancy at the program-funded facility, and current waiting list, if available;
 - (F) Student performance data for all years after the date of the preliminary apportionment but prior to final apportionment;
 - (G) Current list of the Board of Directors, including their occupations, cities of residence, and terms of office;
 - (H) Resumes of new key staff, along with notice of any resignations or terminations of key staff originally identified in the application;
 - (I) Audited financial statements for all years ending not less than 180 days after the preliminary apportionment and prior to the final apportionment;
 - (J) Most current monthly unaudited financial statement, including year to date financial statement, with comparison to budgeted year to date, current total annual budget, and prior year actual to date;
 - (K) Financial projections, including written assumptions, for the next five fiscal years or through two full years of occupancy at the program-funded facility;
 - (L) Updated financial information regarding the guarantor or co-borrower, if applicable;
 - (M) Any material changes in material contracts and debt obligations existing as of the date of the preliminary apportionment and additional material contracts and debt obligations entered into since the preliminary apportionment, including any changes to educational management organization contracts, if applicable; and
 - (N) A completed Legal Status Questionnaire submitted in the form set forth by the authority, as part of Form CSFA 03-01, revised 3/04, and found at www.treasurer.ca.gov/csfa/charter/application.pdf, reflecting any changes since the application.

- ~~(b) In the event that the charter school's charter is not renewed or is revoked at any time before a final apportionment, the authority will notify the board that the charter school is no longer financially sound.~~

~~NOTE: Authority cited: Section 17078.57, Education Code.
Reference: Sections 17078.52 and 17078.57, Education Code.~~

Section ~~4045910157.~~ Use of a Guarantor or Co-Borrower

If an applicant is opting to make its local share match via a lease, the applicant may support its application with a guarantor or co-borrower that is willing to provide a commitment to guarantee the lease. The guarantor or co-borrower may be an individual, government entity, or a for-profit or non-profit organization. Where an applicant intends to use a guarantor or co-borrower, the guarantor or co-borrower must demonstrate its commitment to the guaranty and its financial capability and legal authority to make such a guaranty by taking the following steps:

- (a) Submit a letter, drafted in conjunction with ~~authority~~Authority staff, describing the terms of the guarantor's or co-borrower's commitment with the charter school's application for ~~preliminary apportionment~~Preliminary Apportionment.
- (b) Submit the following information with the charter school's application for ~~preliminary apportionment~~Preliminary Apportionment:
 - (1) A Legal Status Questionnaire completed by the guarantor or co-borrower and submitted in the form set forth by the ~~Authority~~authority, as part of Form CSFA 03-01, revised 3/04, and found at www.treasurer.ca.gov/csfa/charter/application.pdf;
 - (2) If the guarantor or co-borrower is a corporation, a copy of the by-laws and ~~Articles~~articles of ~~incorporation~~incorporation. If the guarantor or co-borrower is not a corporation, other documents which describe the legal structure of the guarantor or co-borrower;
 - (3) Where applicable, a list of the guarantor's or co-borrower's ~~Board of Directors~~board of directors, including their occupations, cities of residence, and terms of office;
 - (4) Where applicable, a copy of the guarantor's or co-borrower's authorization or approval by its governing board to undertake the guaranty;
 - (5) A minimum of three letters of reference from financial institutions with which the guarantor or co-borrower does business;
 - (6) Financial statements, audited if applicable, for the three years prior to the date of application. Financial statements shall include budgets, cash flow statements, and balance sheets, and any written assumptions; and

- (7) Financial projections which include, but are not limited to, income statements, liquidity, balance of funds, and net assets for at least the next ~~five~~three years, or through the first two fiscal years following occupancy of the Program-funded facility~~full academic year of operation of the applicant school~~, whichever is longer.
- (c) Submit a fully executed guaranty or co-borrower agreement, drafted in conjunction with ~~authority~~Authority staff, at the time of release of funds, whether for an ~~advance apportionment~~Advance Apportionment or for the ~~final apportionment~~Final Apportionment.
- (d) The information required in ~~section~~Section 10157(b)~~10159(b)~~ also must be updated upon the charter school's application for ~~advance apportionment~~Advance Apportionment and ~~final apportionment~~Final Apportionment. The ~~Authority~~authority also reserves the right to request periodic updates of information provided by the guarantor or co-borrower between the ~~preliminary apportionment~~Preliminary Apportionment and ~~final apportionment~~Final Apportionment.

NOTE: Authority cited: Section 17078.57, Education Code.
Reference: Section 17078.57, Education Code.

Section 10158~~10160~~. Payment of Local Matching Share.

- (a) Facilities funded pursuant to the ~~program~~Program shall have a 50 percent local share matching obligation that may be paid by the applicant through lease payments which may be reduced in the case of a lump sum payment.
- (b) If the applicant elects to make lease payments in lieu of a lump sum local matching payment, the ~~Authority~~authority will determine the lease payment schedule by amortizing one-half of the total approved project costs, minus any lump sum payments, over the term of the lease payment period ~~for each applicant prior to the final apportionment and notify the board and the applicant.~~
- (c) If the applicant is receiving a significant contribution from a third party, the applicant shall provide information describing whether the contribution will be used to cover costs which are in excess of the eligible costs as determined by the ~~board~~Board or to be used to meet the applicant's local matching share or both.
- ~~(d) To be eligible for matching share financing, the charter school must demonstrate, to the authority's satisfaction, all of the following:~~
 - ~~(1) it is financially sound;~~
 - ~~(2) it can pay the matching share through lease payments at the interest rate prescribed in Education Code, section 17078.57(a)(1)(D) and (E); and~~
 - ~~(3) it has a minimum debt service coverage ratio determined by the authority to be sufficient, but in no event to be less than 1.0x.~~

- (e)(d) ~~Upon advance or final apportionment, the authority will prepare a lease agreement on behalf of the board for the applicant that contains Program Agreements will contain conditions for release of funding, as well as security, reporting, and default provisions as described in sectionsSections 10159 and 10160.~~
- (f)(e) In the case of a lump sum payment being used to meet the charter school's local matching share obligation, the charter school must provide documentation that said lump sum payment is available and restricted for purposes of making the payment.
- (f) As a condition for the release of funds, the intercept method may be required for payment of the local matching share pursuant to Education Code, Section 17199.4(a)(4).

NOTE: Authority cited: Sections 17078.57, 17179, and 17180, Education Code.

Reference: Sections 17078.54, 17078.57, ~~and 17078.58~~, and 17199.4, Education Code.

Section ~~10164~~10159. Security Provisions.

- (a) Title to project facilities may be held by the school district in whose boundaries the facility is to be physically located, in trust, for the benefit of the state public school system.
- (b) Title to project facilities may be held by a charter school or a local governmental entity other than the school district in accordance with Sections 17078.57, 17078.62, and 17078.63 of the Education Code.
- (c) Any person or entity providing a substantial contribution that is applied to the costs of the project in excess of the state share and the local matching share may be granted a security interest to be satisfied from the proceeds, if any, realized when the property is ultimately disposed of. If the contribution was made for the explicit purpose of purchasing any asset with a normal life expectancy of less than twenty years, the security interest will be adjusted to reflect the depreciation of the asset(s).
- (d) Any person or entity that provides a contribution to the applicant which is used solely to assist the applicant in meeting its local matching share shall not be entitled to a security interest as provided in subsection (b). Where the contribution results in total project funding beyond the state share and local matching share, the contributor's security interest shall be limited to the amount in excess of the state share and local matching share.
- (e) If a default occurs and all lease payments have not been made, the security interest of any person or entity providing a substantial contribution to the costs of the project shall be satisfied only after the account is reimbursed for any remaining unpaid local matching share.
- (f) Specific terms of security provisions for persons or entities providing a substantial contribution shall be determined on a case-by-case basis.

- (g) Prior to the release of funds, the applicant shall submit evidence of a separate and distinct account for deposits of all Program loan proceeds.

NOTE: Authority cited: Section 17078.57, Education Code.
Reference: Section 17078.57, Education Code.

Section ~~40162~~10160. Reporting and Default Provisions.

- (a) Reporting provisions within the memorandum of understanding and / or funding agreement will include, but not be limited to, the requirements that all recipients of ~~program~~Program funding shall:
- (1) provide to the ~~authority~~Authority semi-annual unaudited financial statements;
 - (2) provide to the Authority quarterly reports detailing all disbursements and interest earned as it relates to the separate Program account established pursuant to Section 10159(g), upon request;
 - ~~(2)~~(3) report to the ~~authority~~Authority any material adverse change in its financial condition that could adversely affect its ability to make its lease payments under the ~~program~~Program within 30 days of such a change;
 - ~~(3)~~(4) report to the ~~authority~~Authority if the charter school's charter has been revoked or has not been renewed within 30 days of notification of such action, including providing the ~~authority~~Authority with a copy of the document provided by the chartering authority notifying the charter school of such action;
 - ~~(4)~~(5) provide to the ~~authority~~Authority audited financial statements within ~~120~~180 days of the end of each fiscal year; and
 - ~~(5)~~(6) obtain from the ~~board~~Authority prior written consent before incurring any additional indebtedness, which consent may only be given if the ~~authority~~Authority has determined that the charter school will remain financially sound with the additional indebtedness.
- (b) Default provisions will include monetary penalties for late payments. Upon request of the ~~board~~Board, the ~~authority~~Authority may amend the terms of the lease agreement, including the amortization schedule, where the applicant has established financial hardship to the satisfaction of the ~~authority~~Authority and the ~~board~~Board, and the ~~authority~~Authority has determined that the charter school will be financially sound under the terms of the revised lease agreement. However, no such amendment may extend the amortization schedule beyond 30 years from the date of disbursement of funds. In the event the chartering authority has revoked or declined to renew the charter, the lease will be considered to be in default and the provisions of Education Code section 17078.62 shall be invoked. In instances where the lease is in default due to the revocation

