

Date of Hearing: April 10, 2019

ASSEMBLY COMMITTEE ON EDUCATION

Patrick O'Donnell, Chair

AB 1507 (Smith, McCarty and O'Donnell) – As Amended March 26, 2019

SUBJECT: Charter schools: location: resource center

SUMMARY: Eliminates the authorization for a charter school to be located outside the boundaries of their authorizer in specified instances; and, authorizes a nonclassroom-based charter school to establish one resource center within the jurisdiction of the school district where the charter school is located. Specifically, **this bill:**

- 1) Deletes the authorization for a charter school that is unable to locate within the geographic boundaries of the chartering school district to establish one site outside the boundaries of the school district, but within the county, if the school district in which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools is notified of the location of the charter school before it commences operations, and either of the following circumstances exist:
 - a) The charter school has attempted to locate a single site or facility to house the entire program, but such a facility or site is unavailable in the area in which the charter school chooses to locate.
 - b) The site is needed for temporary use during a construction or expansion project.
- 2) Specifies that, notwithstanding any other law, a charter school may establish one resource center within the jurisdiction of the school district where the charter school is physically located if the following conditions are met:
 - a) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school.
 - b) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the charter school is authorized.

EXISTING LAW:

- 1) Authorizes a charter school that is unable to locate within the jurisdiction of the chartering school district to establish one site outside the boundaries of the authorizer, but within the county in which that school district is located, if the school district within the jurisdiction of which the charter school proposes to operate is notified in advance of the charter petition approval, the county superintendent of schools and the Superintendent of Public Instruction are notified of the location of the charter school before it commences operations, and either of the following circumstances exists:
 - a) The school has attempted to locate a single site or facility to house the entire program, but a site or facility is unavailable in the area in which the school chooses to locate.

- b) The site is needed for temporary use during a construction or expansion project. (Education Code 47605 and 47605.1)
- 2) Authorizes a charter school to establish a resource center, meeting space, or other satellite facility located in a county adjacent to that in which the charter school is authorized if the following conditions are met:
- a) The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study of the charter school; and
 - b) The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the charter school is authorized.

FISCAL EFFECT: This bill is keyed non-fiscal by the office of Legislative Counsel.

COMMENTS: This bill deletes the current authorization for a charter school to locate outside the jurisdiction of the chartering school district, when a site is unavailable within the jurisdiction of the chartering school district. Further, the bill authorizes a nonclassroom-based charter school to establish one resource center within the jurisdiction of the school district where the school is located.

Background on Charter Schools: According to the California Department of Education (CDE), in the 2018-19 academic year there were 1,317 charter schools in California, with an enrollment of over 630,000 students. Some charter schools are new, while others are conversions from existing public schools. Charter schools are part of the state's public education system and are funded by public dollars. A charter school is usually created or organized by a group of teachers, parents and community leaders, a community-based organization, or an education management organization. Charter schools are authorized by school district boards, county boards of education or the State Board of Education. A charter school is generally exempt from most laws governing school districts, except where specifically noted in the law. Specific goals and operating procedures for the charter school are detailed in an agreement (or "charter") between the sponsoring board and charter organizers.

According to the Author: "I am authoring AB 1507 to continue to address charter transparency goals that have been set forth by Governor Newsom and the Legislature. This bill eliminates loopholes in current law which allow charter schools to operate outside of their authorizing district. This bill restores the right of individual districts to have oversight of schools located within their boundaries. In my tenure as a school board member, neighboring school districts abused this loophole and authorization privilege, and families were impacted because of this. The bill clarifies the jurisdictional sovereignty of the duly elected school boards and their role in charter authorization."

Location of Charter Schools. In general, brick-and-mortar charter schools must be located within the boundaries of the chartering authority. However, a charter school may locate outside of the boundaries of the chartering authority, but within the same county, if either of the following conditions occurs:

- A site or facility is not available in the area in which the school chooses to locate; or
- The site is needed for temporary use during a construction or expansion project.

History of Charters Sited Outside their Authorizing Agency: California law gives school districts and county offices of education the authority to authorize and oversee charter schools operating within their boundaries. In most cases, charter schools are located within the boundaries of the local educational agency that authorized the school. However, current law allows a charter school to locate a facility in a school district other than the one it is authorized by under a limited number of circumstances.

There have been a number of high-profile cases in which school districts have authorized charter schools outside of the district in order to generate revenue through “oversight fees.” In the Santa Clarita area, the Acton-Agua Dulce Unified School District authorized a charter school that was subsequently located in another school district that had previously denied the school. In return, the school then paid a 3.5% oversight fee to the school district. Though the situation in Santa Clarita has brought more attention to this statewide problem, other school districts, including Los Angeles Unified, Culver City Unified, Beverly Hills Unified, Pomona Unified, and San Diego Unified have all had charter schools located within their boundaries by other school districts.

State Audit Report: A 2017 report by the State Auditor found:

- “Requirements related to districts’ authorizations of charter schools outside their geographical boundaries are vague and ineffective.
 - Districts we visited authorized charter schools outside of their districts that, in effect, expanded the districts’ reach into neighboring communities.
 - Districts that authorize out-of-district charter schools are not accountable to the communities in which the schools are located (host districts) because residents in host districts cannot vote for an authorizing district’s school board.
 - Authorizing districts can significantly increase their enrollments and revenue by authorizing out-of-district schools.
- The State is unable to determine how many out-of-district charter school locations exist. We found that over 10 percent of the State’s charter schools have at least one school outside of the authorizing district’s boundaries.
- We identified oversight issues at the three districts we visited.
 - None had formal procedures for evaluating their charter schools’ financial information so as to respond to indicators of financial distress.
 - The level of financial and academic oversight conducted by each district varied significantly due to vague state laws.
 - The three districts could not demonstrate that they consistently monitored the academic performance of their charter schools, even though they performed below the average of comparable schools.”

What is Nonclassroom-based Instruction? Existing law defines charter school nonclassroom-based instruction as instruction that does **not** meet the requirements of classroom-based instruction. Those requirements are:

- Charter school pupils are engaged in required educational activities and are under the immediate supervision and control of a certificated teacher;

- At least 80% of the instructional time offered by the charter school is at the schoolsite (defined as a facility that is used primarily for classroom instruction); and
- Pupil attendance at the schoolsite is required for at least 80% of the minimum instructional time.

Existing law specifies that nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education.

The rules for the location of facilities for nonclassroom-based charter schools are different. A nonclassroom-based charter school may establish a resource center, meeting space, or other satellite facility in a county adjacent to the county in which the school was approved if the following apply:

- The facility is used exclusively for the educational support of pupils who are enrolled in nonclassroom-based independent study; and
- The charter school provides its primary educational services in, and a majority of the pupils it serves are residents of, the county in which the charter was authorized.

These geographic restrictions were enacted in 2002 by AB 1994 (Reyes), Chapter 1058, Statutes of 2002, partly in response to the activities of the Gateway Academy Charter School, which was approved by the Fresno Unified School District. After receiving its charter, Gateway established "satellite" facilities (actually, additional schools) in other areas of the state, including Oakland (where it claimed state funding for private school enrollment) and Sunnyvale (where it allegedly provided sectarian instruction and charged tuition). The school's charter was eventually revoked by Fresno and its founder was sentenced to 14 years in prison for financial fraud associated with the operation of the charter school. In the meantime, Fresno claimed that it was difficult to exercise its oversight role over schools that were located so far outside its jurisdiction. AB 2002 addressed this problem by restricting the location of charter school facilities to only adjacent counties and only under specific circumstances.

Anderson Case. A 2016 court decision in *Anderson Union High School District v. Shasta Secondary Home School*, upheld the geographic restrictions on the location of satellite facilities. The specific issue was the provision in existing law whereby a nonclassroom-based charter can locate a facility in a county that is adjacent to the county in which the authorizer is located, but not in another district within the same county as the authorizing district. This decision led numerous charter schools to apply for waivers from the SBE, as the location of their resource centers were out of compliance with the law. In 2017, the SBE received 55 waivers that were approved on a one time basis, to give time for these resource centers to come into compliance with the law.

The ***committee may wish to consider*** the impact of this bill on existing schools that are located outside their authorizer's jurisdiction and resource centers that will be out of compliance with this bill. It is unclear whether existing schools and resource centers will be grandfathered in, or whether these schools and resource centers will need to seek authorization from their local school district in the future.

Ineffective Instruction at Virtual Schools: The ability to enroll pupils and locate satellite facilities anywhere in the state is especially beneficial to virtual schools, which offer instruction

online. However, numerous studies indicate online instruction is not as effective as regular classroom instruction:

- A 2011 study of charter school performance in Pennsylvania by the Center for Research on Education Outcomes (CREDO) at Stanford University found that each of that state's 8 online charter schools ("cyber schools") significantly underperformed brick and mortar schools and regular (non-virtual) charter schools in reading and math.
- Another CREDO study in 2015 concluded that the learning deficit of virtual schools is equivalent to receiving 180 fewer days of math instruction and 72 fewer days of reading instruction. The study's author said that the learning in math was so small that it was "literally as though the student did not go to school for the entire year."
- A review of virtual schools in Wisconsin by the Gannett Wisconsin Media Investigative Team found that students receiving online instruction "often struggle to complete their degrees and repeat grades four times as often as their brick-and-mortar counterparts," and they "trail traditional students in every subject but reading."
- A 2011 report from the Office of the Legislative Auditor in Minnesota reported that full-time online students were more likely to completely drop out of school and made less progress on state standardized math tests than students in traditional schools.
- A 2011 report from the Ohio Department of Education rated only three of Ohio's 27 virtual schools as "effective" or "excellent."
- A 2006 performance audit by the Colorado Department of Education of that state's virtual schools found that, "in the aggregate, online students performed poorly on the CSAP (Colorado State Assessment Program) exams and had higher repeater, attrition, and dropout rates."
- The Florida Virtual Academy, a statewide virtual school, reports that 81% of its students who complete their courses receive a passing grade. However, the Tampa Bay *Times* reports that the Virtual Academy's records show that two-thirds of students who enroll in a course don't finish it. When dropouts are included, the actual pass rate is 28%. The *Times* was unable to get Virtual School Florida Comprehensive Assessment Test scores from either the Virtual School or the Florida Department of Education.

A report by "In the Public Interest" ("Virtual Public Education in California," 2015) focused specifically on California Virtual Academy (CAVA) schools, and concluded that "students at CAVA are at risk of low quality educational outcomes, and some are falling through the cracks entirely, in a poorly resourced and troubled educational environment." Among the concerns identified by the report are the following:

- In every year since it began graduating students, except 2013, CAVA has had more dropouts than graduates.
- Students are eligible to be counted as having attended with as little as one minute of log in time each day.

- K12 California (the California subsidiary of K-12, Inc.) pays itself for services out of CAVA school bank accounts that it (K12 California) manages.
- Competitive bidding is prohibited: K12 California contractually prohibits CAVA schools from seeking another vendor for services that K12 California is willing and able to perform.
- CAVA teachers report that the "vast majority" of the work they do is clerical, preventing them from spending sufficient time teaching.
- Limited local control: individual CAVA location governing boards operate under contract to K12 California and do not "have much leeway in terms of budget, program and contracting decisions independent from K12 California."
- K12, Inc. charges CAVA schools more than they can reasonably pay for administrative and technology services. The shortfall is covered by "budget credits" that are extended by K12, Inc., which results in a "perpetual debt" relationship between CAVA schools and K12, Inc.
- CAVA students have lower academic achievement, higher dropout rates, and higher turnover than students enrolled in brick-and-mortar schools.

Many virtual schools in California use a curriculum provided by K12, Inc., a private, for-profit company headquartered in Virginia. In 2014, the NCAA recently announced that it will stop accepting coursework at any Division I or Division II college or university from 24 schools nationwide (13 in California) that use the K12, Inc. curriculum, because "their courses were found to not comply with the NCAA's nontraditional course requirements." Other K12, Inc. schools are currently being evaluated by the NCAA for compliance with its "core course and nontraditional course requirements." A 2012 report by the National Education Policy Center ("Understanding and Improving Full-Time Virtual Schools: A Study of Student Characteristics, School Finance, and School Performance in Schools Operated by K12, Inc.") found that students in K12, Inc. schools have lower academic achievement, higher dropout rates, and higher turnover than students in brick-and-mortar schools.

On every measure of student performance, virtual schools have been shown to consistently underperform brick-and-mortar schools by wide margins. At the same time, pursuant to legislative direction, California has invested heavily in policies to improve student outcomes, including the adoption of rigorous academic content standards, assessments aligned to those standards, and the use of evaluation rubrics (the "Dashboard") to monitor school and district performance and identify districts for targeted assistance.

Arguments in Support: According to the School Employers Association of California, "State and local entities have little authority to enforce the law. Charter schools in various parts of the state have abused this lack of enforcement authority by taking advantage of the narrow circumstances under which a charter school to locate outside of the authorizing district. Once the charter school has set up operations in a neighboring district, it often stays. No government entity, except the authorizing district, has the practical ability to require the charter school comply with current law. This clearly violates the sovereign ability of each school district to

determine which charter schools meet the statutory requirements for approval. In fact, despite school board votes to deny a particular charter school, the same charter school has attempted to locate in those districts.”

Arguments in Opposition: According to the Charter Schools Development Center, “This measure deletes the authority in current law that allows charter schools to locate outside of the charter-granting district’s boundaries when facilities are either (1) unavailable inside district boundaries or (2) during a temporary construction or expansion project. Previously, a charter school that was unable to locate a facility within the boundaries of its authorizing district, could locate in a facility within the same county. This common sense rule allowed new or growing charters some flexibility and was welcomed by both charters and by authorizing districts that were unable or unwilling to make taxpayer-funded district space available as the law requires. Deleting this provision from law will likely increase charter pressure on the authorizing district to find existing district buildings for new and growing charter schools and it even means sharing facilities and co-locating on traditional district public school sites.”

Committee Amendments: *Staff recommends* the bill be amended to:

- 1) Clarify that a nonclassroom-based charter school may not open any other type of meeting space or satellite facility in any other location.
- 2) Require non classroom based charter schools to notify their authorizer of the name and physical location of any resource centers, meeting spaces, or satellite facilities they operate.
- 3) Prohibit the requirements in this bill from being waived by the SBE.

Prior Legislation: AB 2011 (Kiley), from 2018, which failed passage in this committee, would have authorized nonclassroom-based charter schools to enroll students anywhere in the state by exempting them from existing geographical restrictions.

SB 808 (Mendoza) from 2017, which was held in the Senate Education Committee, would have required all charter school petitions to be approved by the governing board of the school district in which the charter school is located, prohibited a charter school from locating outside of its authorizer’s district boundaries, and limited the current charter appeal process to claims of procedural violations. Further, the bill specified that charter schools previously approved by a county board or the state board, and charter schools operating outside of their authorizer’s district boundaries may continue to operate until the charter is required to be renewed.

SB 739 (Pavley) from 2015, which was vetoed by the Governor, would have prohibited the governing board of a school district to authorize new charter schools located outside the boundaries of the school district if the school district is assigned a negative budget certification. Governor’s veto message:

This bill would prohibit a school district that has a negative budget certification from authorizing a charter school to operate outside of their attendance boundaries. This bill attempts to address an issue, currently being reviewed by the State Auditor, whereby school districts authorize multiple charter schools outside of district boundaries to collect oversight fees. Let’s review the audit when it’s released next spring to better determine the scope of the issue and what, if any, policy changes are necessary.

SB 1263 (Pavley) from 2014, which was vetoed by the Governor, would have authorized a charter school to locate outside the jurisdiction of the chartering school district with written approval from the school district within the jurisdiction of which the charter school chooses to operate and for purposes of construction, as specified; authorized existing charter schools that are located outside the jurisdiction of the chartering school district to continue operation if they were approved prior to April 1, 2013, and are in operation with students enrolled and attending before September 15, 2014; and, prohibited a school district with a negative certification from authorizing new charter schools located outside of their jurisdiction. Governor's veto message:

This bill seeks to reverse the application of a limited exemption in law that allows a charter school petitioner to locate a single school site outside of its authorizing school district, under specific circumstances. This bill would instead require the charter school to first get permission from the host district where it intends to locate.

Unfortunately, it appears that some districts and charter schools have gone against the spirit of the law and the exemption has instead become the rule. This has led to litigation and strained relationships among districts and charter schools.

While this bill attempts to solve a real problem, I am not comfortable with the retroactive language that could force existing charter schools to change locations.

I have assembled a team to examine this situation and come back with solutions that minimize disruption to students and parents.

AB 2954 (Liu) from 2006, which was vetoed by Governor Schwarzenegger, would have added "negative fiscal impact" as a reason for a school district to deny a charter school petition and authorizes a condition for approval of a petition as it relates to providing free and reduced priced meals. Governor's veto message:

While I understand the plight of school districts faced with fiscal challenges of declining enrollment and other management issues, I cannot condone allowing them to deny parents and students their rights to petition for the establishment of a charter school. In essence, this bill would grant school districts the authority to punish charter petitioners because of problems caused by their own fiscal management issues or their unwillingness to make tough decisions, or both.

In addition, allowing school districts to require, as a condition of approval, that the petition describe how the charter school will provide free and reduced-priced meals to eligible pupils would simply provide districts with another pretext on which to deny a charter. Charter schools are generally exempt from most laws and regulations governing school districts and they should continue to be exempt from this one.

In sum, this bill runs counter to the intent of charter schools, which is to provide parents and students with other options within the public school system and to stimulate competition that improves the quality not only of charter schools, but of non-charter schools as well.

REGISTERED SUPPORT / OPPOSITION:

Support

American Federation Of State, County And Municipal Employees, Afl-Cio
California Association Of School Business Officials (Casbo)
California Association Of Suburban School Districts
California Federation Of Teachers
California Labor Federation, Afl-Cio
California School Boards Association
California School Employees Association
California State Association Of Electrical Workers
California State Pipe Trades Council
California State Pta
California Teachers Association
Educators For Democratic Schools
Fresno Unified School District
Newhall School District
Oakland Unified School District
Placer County Superintendent of Schools
San Francisco Unified School District
Santa Barbara Unified School District
School Employers Association Of California
Western States Council Sheet Metal, Air, Rail And Transportation
Individual

Opposition

Aplus+
California Charter Schools Association
Charter Schools Development Center
Core Charter School
Edvoice
Forest Charter School
Hickman Community Charter District
Individual Citizen
Pathways Charter School
Phoenix Charter Academy
Twin Ridges Home Study Charter School
Individuals

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