

Date of Hearing: May 6, 2020

ASSEMBLY COMMITTEE ON EDUCATION
Patrick O'Donnell, Chair
AB 2990 (Cristina Garcia) – As Amended March 9, 2020

SUBJECT: Pupil instruction: educational enrichment activities

SUMMARY: Prohibits local educational agencies (LEAs), including charter schools, from providing funds to a parent or guardian of a pupil for educational enrichment activities; requires the California Department of Education (CDE) to compile a list of approved vendors; and, prohibits public funds from being used for educational enrichment activities of a religious nature. Specifically, **this bill:**

- 1) Prohibits a local educational agency to offer any financial incentives to a pupil or prospective pupil or to the parent or guardian of a pupil or prospective pupil for participation in an educational enrichment activity.
- 2) Requires the California Department of Education (CDE) to compile a list of vendors that are approved to provide or otherwise arrange educational enrichment activities for schools. Specifies that a local educational agency may only enter into an agreement for the provision or arrangement of educational enrichment activities with a vendor that is listed.
- 3) Authorizes a local educational agency to expend public funds for the provision or arrangement of educational enrichment activities, except for educational enrichment activities of a religious nature.
- 4) Defines “educational enrichment activity” to include, but not necessarily be limited to, activities relating to the arts, entertainment, recreation, technology, or other subjects that are not part of the academic curriculum but that are intended to support the intellectual and social development of pupils.
- 5) Defines “local educational agency” to mean a school district, county office of education, or charter school.

EXISTING LAW:

- 1) Establishes the Charter Schools Act of 1992 which authorizes a school district, a county board of education or the State Board of Education (SBE) to approve or deny a petition for a charter school to operate independently from the existing school district structure as a method of accomplishing, among other things, improved student learning, increased learning opportunities for all students, with special emphasis on expanded learning experiences for students who are identified as academically low achieving, holding charter schools accountable for meeting measurable student outcomes, and providing the schools with a method to change from rule-based to performance-based accountability systems. Eliminates, as of July 1, 2020, the SBE’s authority to authorize a charter school petition.
- 2) Establishes a process for the submission of a petition for the establishment of a charter school. Authorizes a petition, identifying a single charter school to operate within the geographical boundaries of the school district, to be submitted to the school district.

Authorizes, if the governing board of a school district denies a petition for the establishment of a charter school, the petitioner to elect to submit the petition to the county board of education. Authorizes, if the county board of education denies the charter, the petitioner to submit the petition to the SBE. Authorizes a school that serves a countywide purpose to submit the charter petition directly to the county office of education. Specifies, as of July 1, 2020, the SBE may only hear a charter school appeal that demonstrates that the school district governing board or county board of education abused its discretion in denying the charter school.

- 3) Authorizes until July 1, 2020, a charter school to be granted for not more than five years, and to be granted one or more renewals for five years. Requires the renewals and material revisions of the charter to be based upon the same standards as the original charter petition. Requires as of July 1, 2020, upon renewal, a charter school to be identified as either low performing, middle performing or high performing based on state dashboard accountability data. Specifies that low performing charter schools shall be denied, however, the school may be renewed for a two year period if the authorizer is presented with verified data and the authorizer finds it compelling. Specifies that middle performing charter schools may be renewed for 5 years. Specifies that high performing charter schools may be renewed for 5-7 years.
- 4) Prohibits a charter school from receiving any public funds for a pupil if the pupil also attends a private school that charges the pupil's family for tuition. Prohibits a charter from being granted that authorizes the conversion of any private school to a charter school. (Education Code (EC) 47602)
- 5) Prohibits, notwithstanding any other law, a LEA, including, but not limited to, a charter school, from claiming state funding for the independent study of a pupil, whether characterized as home study or otherwise, if the LEA has provided any funds or other thing of value to the pupil or his or her parent or guardian that the LEA does not provide to pupils who attend regular classes or to their parents or guardians. (EC 51747.3)
- 6) Authorizes a charter school to receive funding for nonclassroom-based instruction only if a determination for funding is made by the State Board of Education (SBE). Requires the determination for funding to be subject to any conditions or limitations the SBE may prescribe. Requires the SBE to adopt regulations that define and establish general rules governing nonclassroom-based instruction that apply to all charter schools and to the process for determining funding of nonclassroom-based instruction by charter schools offering nonclassroom-based instruction. Defines nonclassroom-based instruction to include, but not be limited to, independent study, home study, work study, and distance and computer-based education. (EC 47612.5)
- 7) Requires the SBE to adopt regulations setting forth criteria for the determination of funding for nonclassroom-based instruction, at a minimum the regulation to specify that the nonclassroom-based instruction is conducted for the instructional benefit of the pupil and substantially dedicated to that function. Requires the SBE to consider, among other factors it deems appropriate, the amount of the charter school's total budget expended on certificated employee salaries and benefits and on schoolsites and the teacher-to-pupil ratio in the school. Requires, for the 2003–04 fiscal year and each fiscal year thereafter, the amount of funding determined by the SBE to not be more than 70 percent of the unadjusted amount to which a

charter school would otherwise be entitled, unless the SBE determines that a greater or lesser amount is appropriate. (EC 47634.2)

- 8) Prohibits the authorization and establishment of new nonclassroom based charter schools between January 1, 2020 and January 1, 2022.
- 9) Requires a charter school to transmit a copy of its annual, independent financial audit report for the preceding fiscal year to its chartering entity, the Controller, the county superintendent of schools of the county in which the charter school is sited, (unless the county board of education of the county in which the charter school is sited is the chartering entity) and the CDE by December 15 of each year.

FISCAL EFFECT: Unknown

COMMENTS:

Need for the bill. According to the author, “It’s important to me that we protect a parent’s right to home school their children, but not at the detriment of other students. We are asking for modest changes to the process to ensure public funds are expended on proper educational activities that students at public schools also have access to and not extravagant things like trips to Disneyland or as a way to pay for private or religious education.

Recently, numerous news articles have spotlighted current questionable practices of homeschool charters and their use of public funding for educational enrichment activities – the exact way the money (typically \$2,800 to \$3,200 per pupil) is dispersed to the parents of these students is unclear. The ‘educational enrichment activities’ purchased by parents through charter vendors lacks accountability and proper oversight.

During a time when schools are struggling to pay for essential instructional material and valid educational enrichment, there has been the blatant misuse of funds – some examples of activities offered to homeschool charter students through vendors include trips to Disneyland, Legoland tickets, horseback riding lessons, Medieval Times tickets, and SeaWorld tickets.

This use of public funding raises serious questions of equity and every student, no matter what zip code they are born into, should have equal educational opportunities.

After increased critical investigative journalism, policymakers now have substantial evidence the state has not provided adequate oversight as to how some non-classroom based charter schools are using taxpayer dollars – reports and increased scrutiny of bad actors proves there are blurred lines that require increased transparency and accountability.”

What does this bill do? This bill prohibits school districts, county offices of education and charter schools from providing incentive funds to the parents of students for educational enrichment activities. The bill requires CDE to establish a list of approved vendors for educational enrichment activities. Further, the bill clarifies existing law that prohibits public education dollars from being spent on activities of a religious nature.

Background on charter schools: According to the 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, community leaders, a community-based organization, or an education management organization. Charter schools are authorized by school district boards and county boards 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 authorizing board and charter organizers.

Nonclassroom based (NCB) charter schools. According to the Fiscal Crisis Management Assistance Team (FCMAT), nonclassroom-based charter schools differ from traditional charter schools in that they deliver instruction outside of the classroom. Nonclassroom-based instruction includes home schooling and various forms of independent study, including computer-based instruction using software modules and teacher-directed distance learning.

A nonclassroom based charter school is defined as a school with less than 80% of its total average daily attendance (ADA) that is classroom based, in which instruction takes place in a classroom setting. In 2018-19, there were 316 charter schools considered to be NCB. NCB charter schools are required to obtain a funding determination that is approved by the SBE. This funding determination establishes the percentage of funding the NCB charter school will receive compared to all other traditional classroom based schools. Most charter schools apply for a 100% NCB funding determination. To do so, they must meet the following criteria:

- Spend at least 40% of total public revenue on instructional certificated salary and benefits;
- Spend at least 80% of total public revenue on instruction related services; and,
- Exceed a 25:1 pupil to teacher ratio.

Some homeschool charter schools give education dollars to parents. The term homeschool has traditionally been used to describe private homeschool instruction. Some homeschool parents choose to enroll their children in NCB charter schools. While these students are public charter school students, often families refer to themselves as homeschool charter school families. When a student enrolls in any public charter school, that student becomes a public school student and is no longer a private school homeschool student. Some NCB charter schools cater to these families and offer to share state funding with parents or allow parents to direct how their child's homeschool funds are spent.

The Horizon Charter Schools website advertises that they offer "More Student Funds for Educational Needs" and states, "Since we're a public charter school, there are never any tuition fees and most classes, study trips and educational materials can be paid for with your state-provided student funds. To help families get even more from their homeschooling experience, this year we raised the amount of funds you have to spend -- \$2,600 per K-8th grade student and \$2,800 for high school students. That's \$1,000 more per student than the previous years and more than most other area charter schools provide. In addition, funds can be shared between family members, providing even greater flexibility and choices for parents."

Feather River Charter School, which is part of the Inspire Public Schools, provides the following description of the instructional funds available to students on their website:

	Enrollment Date	Total Fund Amount	Funds upon Enrollment	Funds available December 1, 2019
TK-8 th grade	July 1, 2019- October 9, 2019	\$2,600	\$1,500	\$1,100
High School	July 1, 2019- October 9, 2019	\$2,800	\$1,700	\$1,100

Inspire describes the appropriate use of these funds to include but not be limited to the following:

Product	Service
<ul style="list-style-type: none"> • Academic Enrichment Materials • Curriculum • Technology Items • Educational Field Trips 	<ul style="list-style-type: none"> • Fine Art Lessons & Classes • Performing Art Lessons & Classes • Academic Enrichment Classes • Tutoring Services • Driver’s Education Courses • Cooking Classes • Gardening Classes • Reading and Writing Classes • STEM Classes

Investigative journalism found examples of inappropriate use of public school funds through vendor contracts. Investigations in to the operations of a few NCB charter schools regarding possible inappropriate use of public school funds are on-going and little public information has yet to be published. Reports from investigative journalists provide the most up to date insight about these ongoing investigations.

An investigation by the San Diego Union Tribune found:

- ***Trips to Disneyland and SeaWorld.*** “In California, there’s a way parents can use money from the government to buy multi-day Disneyland Park Hopper passes, San Diego Zoo family memberships, tickets to Medieval Times and dolphin encounters at SeaWorld. There are a handful of charter schools that give students’ families as much as \$2,800 to \$3,200 — tax dollars sent to the charter schools — every year to spend on anything they want from a list of thousands of home-school vendors approved by the charters, according to the schools’ websites. “If you live in

California and you're not taking advantage of this, I don't know what to say," said Karen Akpan, a home-school charter parent of four who lives in Beaumont. She wrote a recent blog article describing how she used the educational funds to pay for a family trip to Disneyland, Chicago CityPASSes and Legoland tickets, as well as computer coding kits, educational toys, books and subscription cooking kits for her kids."

- ***California is the only state paying for these types of services.*** "I don't know of any states where they're paying for the kinds of things they're paying for in California," said Mike Smith, president of the Home School Legal Defense Assn. a national group that advocates for home-schooling families. "Those schools don't have as many fixed costs as a school that would have a large campus, paying for heat and custodians and all of that. But yet, they get the same amount of money per student from the state," said Stephanie Hood, a charter school adviser with the Homeschool Assn. of California. It is relatively easy for home-school charters to recruit students, because enrollment happens online and families can request vendors near where they live. Valiant advertised enrollment to families in 34 counties on its website, even though its schools were authorized to operate in only three counties. "As you know, that's why some of the problems have occurred, because there's so much money in it," Smith said. "It's very easy to do. ... It's just ripe for the kind of things that are going on."
- ***Public education dollars spent at private schools.*** "Some charter school vendors are businesses or nonprofits that cater to home-schoolers and operate like private schools in that they charge tuition and employ their own teachers, who often are not credentialed by the state. Some vendors provide a wide variety of classes, ranging from electives such as sewing and cooking, to core classes such as traditional English, math and science. Many of these vendors don't call themselves schools, but rather enrichment centers, learning centers, home school co-ops or tutoring academies. Some larger vendors, such as Homeschool Campus and Discovery of Learning, have several campuses, often at churches. Enrolling in a home school charter can allow the student to use the charter school's funds to pay the tuition for these schools, if their assigned charter school teacher approves it.
- ***Public education dollars spent at religious schools.*** "There also are religiously affiliated vendors, like the Christian-owned Eden Learning Academy, which until recently said on its website that it is based on a 'Christian Worldview,' or the Christian Youth Theater, which says on its website that part of its objective is to 'share the love of Christ in word and deed.'" Inspire Charter School lists Eden Learning Academy and the Christian Youth Theater as vendors on their website.

San Diego County District Attorney indictment of A3 charter school leaders for dual enrolling students in charter schools and private schools. According to the San Diego County District Attorney in the May 17, 2019, indictment of 11 individuals from A3 charter schools, including Sean McManus the Chief Executive Officer of A3 charter schools and Jason Schrock the President of A3 charter schools, "McManus would direct co-defendants or their employees to

backdate student enrollment information in order to receive additional funding. The state pays school districts based on ‘average daily attendance’ (ADA) and the defendants used their knowledge of how the state doles out funding to collect as much money as possible. For example, McManus and Schrock dual enrolled students from private schools into their charter schools. In exchange for enrollment documentation, McManus and Schrock would pay private schools a fraction of what the state pays in ADA and pocket the rest – anywhere from \$2,000 to \$5,000 per child.”

What does research say about NCB charter schools? There are few studies of NCB charter schools and their academic outcomes. A 2015 national analysis of NCB charter schools found, “The differences were much larger between classroom-based and non-classroom-based charter schools with the nonclassroom-based charter schools having lower achievement. This result is consistent with a study of Ohio charter schools that found virtual schools performing poorly relative to traditional public schools (TPSs) and other charter schools (Zimmer, et al., 2009). It is consistent as well with findings for Pennsylvania, which has among the highest proportion of online charter students. The CREDO (2011) report on Pennsylvania charter schools found that all eight cyber schools then operating performed significantly and substantially worse on both mathematics and reading than TPSs.” (Epple, et al., 2015)

Arguments in opposition. The California Charter Schools Association opposes the bill and argues, “The California Charter Schools Association (CCSA) has taken an Oppose Unless Amended position on AB 2990 by Assemblymember Cristina Garcia and respectfully submits the following concerns for your consideration. While we appreciate the spirit of this bill to increase transparency related to local contracting, AB 2990 would impose a significant new set of mandates, requirements, and processes on school districts, charter schools, and charter authorizers that is over-prescriptive and costly at a time when all local educational agencies (LEAs) are facing significant fiscal challenges and in need of optimal operational flexibility.”

Committee Amendments. Staff recommends the following amendments:

- 1) Update the definition of educational enrichment program to include all vendors that provide programs that support the educational program offered by the school.
- 2) Delete the requirement that the CDE establish an approved list of vendors.
- 3) Prohibit LEAs from providing financial incentives to teachers for recruiting or retaining students.
- 4) Require all educational enrichment activities, materials, programs and the organizations that provide these services to be nonsectarian.
- 5) Prohibit the use of educational enrichment activity funds from being used for tuition at a private school.
- 6) Require LEAs to adopt a policy for approving educational enrichment program vendors and certify that vendors meet the requirements for approval. Require charters to submit the policy and certification as a material revision to the authorizer of the charter school by July 1, 2021.
- 7) Require charter school authorizers to provide spot audits to verify that vendors meet the required policy.
- 8) Require the LEA’s vendor contract policy to be included in the State Controller’s Education Audit Guide.
- 9) To create parity with school districts, require charter schools to comply with Education Code 17604, 17605 and Public Contracts Code 20111, which require contracts over an inflation

adjusted amount of \$92,600 to be approved through a competitive bidding process by the governing body of the charter school.

10) Require educational enrichment activities to be approved and verified by the student's teacher.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file

Opposition

California Charter School Association

An individual

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