
SENATE COMMITTEE ON EDUCATION

Senator Josh Newman, Chair

2023 - 2024 Regular

Bill No:	SB 426	Hearing Date:	April 26, 2023
Author:	Niello		
Version:	April 17, 2023		
Urgency:	No	Fiscal:	No
Consultant:	Ian Johnson		

Subject: Charter schools: flex-based instruction

SUMMARY

This bill would replace the term “nonclassroom-based instruction” with “flex-based instruction” throughout existing law and expand the description of flex-based instruction.

BACKGROUND

Existing law:

- 1) Establishes the Charter Schools Act of 1992 which authorizes a school district governing board or county board of education 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 pupil learning, increased learning opportunities for all pupils, with special emphasis on expanded learning experiences for pupils who are identified as academically low achieving, holding charter schools accountable for meeting measurable pupil outcomes, and providing the schools with a method to change from rule-based to performance-based accountability systems.
- 2) Prohibits the authorization and establishment of new nonclassroom-based (NCB) charter schools between January 1, 2020 and January 1, 2025.
- 3) Authorizes a charter school to receive funding for NCB 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 NCB instruction that apply to all charter schools and to the process for determining funding of NCB instruction by charter schools offering NCB instruction. Defines NCB instruction to include, but not be limited to, independent study, home study, work study, and distance and computer-based education.
- 4) Requires the SBE to adopt regulations setting forth criteria for the determination of funding for NCB instruction, at a minimum the regulation to specify that the NCB instruction is conducted for the instructional benefit of the pupil and is 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.

ANALYSIS

This bill:

- 1) Replaces the term “nonclassroom-based instruction” with “flex-based instruction” throughout existing law.
- 2) Expands the description of flex-based instruction to include, but not be limited to, part-time classroom instruction, personalized learning, hybrid, career-focused, college-ready, adult reengagement, constructivist, content-focused, and synchronous or asynchronous distance and computer-based education, or any combination of these types of instruction.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author, “SB 426 would help clearly name and define one segment of the education system without changing any existing laws regarding the current funding determination process, nor the designation in which students are physically present for less than 80 percent of their time in the classroom. The term flex-based instruction is being proposed to replace the outdated and confusing nonclassroom-based term to foster a clearer, more positive and accurate representation of the unifying and distinguishing characteristic of the array of innovative instructional models within the segment.

COVID highlighted the need for changes in education delivery to be more flexible and adaptable, and the realization that many students are more successful in a flexible learning environment as opposed to the traditional classroom-only setting. A more flexible and personalized learning environment has proven beneficial for many low income, minority, special needs, and other disadvantaged students, especially those at risk of dropping out and credit deficient.”

- 2) ***Background on charter schools.*** Charter schools are public schools that provide instruction in any combination of grades kindergarten through 12. In 1992, the state enacted legislation allowing charter schools in California to offer parents an alternative to traditional public schools and encourage local leaders to experiment with new educational programs. Except where specifically noted otherwise, California law exempts charter schools from many of the statutes and regulations that apply to school districts. Generally, all charter schools must (1) provide nonsectarian instruction, (2) charge no tuition, and (3) admit all interested students up to school capacity. To both open and continue operating, a charter school must have an approved charter setting forth a comprehensive vision for the school.

There are over 1,000 charter schools in California with an enrollment of around 700,000 pupils. Most charter schools are small, compared to traditional public schools, and located in urban areas. The median charter school enrolls about 250 students, whereas the median traditional public school enrolls about 525 students. Together, nine Bay Area counties, Los Angeles County, and San Diego County account for more than 60 percent of all charter schools and charter school enrollment in the state.

Charter schools can be conversions of existing public schools or new startup schools. About 15 percent of charter schools are conversions, with the remaining 85 percent being startups. Of these, about 80 percent offer traditional, classroom-based instruction and 20 percent offer some form of independent study, such as distance learning or home study.

- 3) ***What is nonclassroom-based instruction?*** NCB instruction includes computer-based instruction using software modules, teacher-directed independent study, and traditional home school parents who enroll their children in independent study charter school programs.

An NCB charter school is defined as a school with less than 80 percent of its total average daily attendance (ADA) that is classroom based, in which instruction takes place in a classroom setting. As of April 2021, there were 304 charter schools considered to be NCB. Of that number, 105 charter schools self-identified as providing exclusively virtual or primarily virtual instruction.

Existing law defines charter school NCB instruction as instruction that does not meet the requirements of classroom-based instruction. Those requirements are:

- a) Charter school pupils are engaged in required educational activities and are under the immediate supervision and control of a certificated teacher;
- b) At least 80 percent 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
- c) Pupil attendance at the schoolsite is required for at least 80 percent of the minimum instructional time.

- 4) ***Funding determination.*** As noted earlier in this analysis, 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 percent NCB funding determination. To do so, they must meet the following criteria:

- a) Spend at least 40 percent of total public revenue on instructional certificated salary and benefits;
- b) Spend at least 80 percent of total public revenue on instruction related services; and,

- c) Not exceed a 25:1 pupil to teacher ratio.

The vast majority of NCB charter schools receive a 100 percent funding determination, which causes some to speculate about the effectiveness of the analysis performed by the California Department of Education (CDE) and SBE.

- 5) ***Temporary prohibition on new NCB charter schools.*** Existing law provides that from January 1, 2020, to January 1, 2025, inclusive, the approval of the petition for the establishment of a new NCB charter school is prohibited. This prohibition was initially added by Assembly Bill 1505 (O'Donnell), Chaptered 486, Statutes of 2019, which was approved by the Governor on October 3, 2019, and then amended by AB 130 (Committee on Budget), Chaptered 44, Statutes of 2021, which was approved by the Governor on July 9, 2021.

- 6) ***Arguments in support.*** The APLUS+ Personalized Learning Network Association writes, "Charter school education statute itself is very clear as to what distinguishes classroom based instruction from nonclassroom-based instruction (NCB). It is the term "nonclassroom-based instruction" itself that has proven for more than two decades to be confusing, misleading, and problematic for many lawmakers, policymakers, and members of the public who are not intimately familiar with the subtle distinctions of the statutory definition. Classroom based instruction is when a pupil is required be at a school site for 80 percent or more of their instructional minutes under the immediate supervision of an employed credentialed teacher and nonclassroom-based instruction is anything less than 80 percent"

"Yet, the reality is that of the approximately 310 public charter schools within the NCB segment, only 9 percent are online only, according to a recent 2021 California Charter Schools Association report. Such confusion and misunderstanding tragically has led to exclusionary policy decisions through the years that have harmed the nearly 200,000 public school students in this segment. These exclusions include systematic ineligibility of funding support in all state facility subsidy programs and hold harmless provisions even for public schools within this segment that operate one or more school campuses and facilities."

- 7) ***Arguments in opposition.*** The California Teachers Association writes, "Despite assertions to the contrary, the law is not unclear about what constitutes a nonclassroom-based charter school. Any charter school that is not conducting instruction in a classroom at least 80 percent of the time is considered a nonclassroom-based charter school. Education Code 47612.5 (d) (1) points out that "nonclassroom-based instruction includes, but is not limited to, independent study, home study, work study, and distance and computer-based education." This is not limiting language and simply provides examples of types of instruction that is not occurring in the classroom."

The educational modalities included in this bill are vague and will be difficult to define and regulate. Words like "personalized learning" or "college-ready" could likely apply to every public school in the State of California, and do not identify

any kind of unique focus for this instructional model or indicate that instruction is not happening in a classroom with other students. This bill will make it more difficult to ensure that students will receive an appropriate education within environments that have not always produced strong educational outcomes for students.”

SUPPORT

APLUS+ (sponsor)
Alder Grove Charter School
California Charter Schools Association
Connecting Waters Charter Schools
Excel Academy Charter School
Golden Eagle Charter School
Sage Oak Charter Schools
Visions in Education, Inc.

OPPOSITION

California School Employees Association
California Teachers Association

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