
SENATE COMMITTEE ON EDUCATION

Senator Carol Liu, Chair
2015 - 2016 Regular

Bill No: AB 1084
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Consultant: Lenin Del Castillo
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Fiscal: No

Subject: Charter schools: for-profit entities

NOTE: This bill has been amended to replace its contents and this is the first time the bill is being heard in its current form.

SUMMARY

This bill prohibits an online charter school from being owned or operated by, or operated as, a for-profit entity, and also prohibits a nonprofit charter virtual academy or a nonprofit online charter school from contracting with a for-profit entity for the provision of instructional services.

BACKGROUND

Existing law:

- 1) Establishes the Charter Schools Act of 1992 which provides for the establishment of charter schools in California for the purpose, among other things, to improve student learning and expand learning experiences for pupils who are identified as academically low achieving. A charter school may be authorized by a school district, a county board of education, or the State Board of Education, as specified. Except where specifically noted otherwise, California law exempts charter schools from many of the statutes and regulations that apply to schools and school districts.
- 2) Authorizes a charter school to elect to operate as, or be operated by, a nonprofit public benefit corporation, formed and organized pursuant to the Nonprofit Public Benefit Corporation Law.
- 3) Specifies that the governing board of a school district that grants a charter for the establishment of a charter school shall be entitled to a single representative on the board of directors of the nonprofit public benefit corporation.
- 4) Specifies that an authority that grants a charter to a charter school to be operated by, or as, a nonprofit public benefit corporation is not liable for the debts or obligations of the charter school, or for claims arising from the performance of acts, errors, or omissions by the charter school, if the authority has complied with all oversight responsibilities required by law, including, but not limited to, those required by Education Code § 47604.32 and 47605(m).
(Education Code § 47604)

ANALYSIS

This bill:

- 1) Provides that a virtual or online charter school shall not be owned or operated by, or operated as, a for-profit entity.
- 2) Provides that a nonprofit online charter school, nonprofit charter virtual academy, or a nonprofit entity that operates an online or virtual charter school shall not contract with a for-profit entity for the provision of instructional services.
- 3) Defines virtual or online charter school as a charter school in which at least 80 percent of teaching and pupil interaction occurs via the Internet.

STAFF COMMENTS

- 1) ***Need for the bill.*** According to the author's office, "there have been troubling examples of for profit online charter schools in California that are not serving the academic needs of their students. Some are structured as nonprofit entities, but contract with for-profit entities to provide all services, including instructional services. Charter schools receive funding from the State of California to educate their students. It is an inherent conflict-of-interest for a charter school to be operated as a for-profit entity or solely contract with for-profit entities for instructional services. Taxpayer dollars should be spent on academic services and improving the educational experience of California students, not on paying shareholders or enriching a company."
- 2) ***Premature due to current efforts to address charter oversight issues?*** This Committee will have an informational hearing on August 3, 2016 to investigate the charter school petition process, the role of charter school authorizers and their specific oversight responsibilities in current law, and whether there are sufficient mechanisms in place to ensure adequate oversight and accountability. The objective of the hearing will be to identify opportunities for improvement and reform with respect to charter school oversight. Additionally, the Superintendent of Public Instruction recently announced that it has contracted with the State Controller's Office to conduct an audit of the California Virtual Academies and related charter schools because of serious questions raised about a number of their practices. Specifically, "the goal of the audit is to make sure these schools are spending public education funds properly and serving their students well." Further, the Joint Legislative Audit Committee recently approved a request for an audit of the Alliance College-Ready Public Schools charter management organization and the charter schools under their operational jurisdiction within the Los Angeles Unified School District. Similarly, the audit is intended to address, in part, whether the resources provided to these schools are being used appropriately.

The Committee may wish to consider whether advancing this bill is premature at this point since it could likely benefit from information that will be provided by the

Committee's informational hearing in August as well the findings and recommendations resulting from the related audits.

- 3) ***Appropriate use of taxpayer dollars?*** While current law explicitly authorizes a charter school to operate as a nonprofit corporation, statute is silent on whether a charter school is permitted to operate as a for-profit corporation. Because of the permissive nature of the Education Code and absent a clear prohibition, several charter schools are currently operating as for-profit corporations. The California Charter School Association indicates there are six for-profit charter schools in the state. California Virtual Academies (CAVA) is California's largest provider of online public K-12 education and a public charter school network that may exist entirely online, serving approximately 15,000 students. Students take classes from home, primarily communicating with teachers via computer. CAVA's primary vendor and manager is K-12, Inc., a for-profit corporation that operates virtual schools nationwide.

Is it an appropriate use of state taxpayer dollars for-profit corporations to operate public schools? Specifically, does this model provide a perverse incentive for these charter schools to limit services for students in order to increase profits?

- 4) ***Similar bill vetoed.*** This bill is similar to AB 787 (Hernandez, 2015) from last year which would have prohibited a charter school from operating as, or being operated by, a for-profit corporation. AB 787 passed this Committee but was eventually vetoed by the Governor with the following message:

Under this bill, beginning January 1, 2017, a charter school could not "operate as" or be "operated by" a for-profit corporation.

I don't believe the case has been made to eliminate for-profit charter schools in California. Moreover, the somewhat ambiguous terms used in this bill could be interpreted to restrict the ability of non-profit charter schools to continue using for-profit vendors.

It does not appear that the bill addresses the concerns raised in the Governor's veto message. However, the author's office indicates that "AB 1084 is different in that its language is much more specific about what an online charter school cannot contract with a for-profit to provide—instructional services. Online schools should not be having a for-profit employ its teachers."

- 5) ***Clarification is necessary.*** Similar to the concern raised in the Governor's veto message, can the terms regarding the bill's prohibition on online charters being owned or operated by, or operated as, a for-profit entity be interpreted to limit their ability to contract with a for-profit entity, even for day-to-day operations such as payroll, human resources or janitorial services? Further, the bill prohibits nonprofit online charter schools from contracting with a for-profit entity for the provision of instructional services. It is unclear if this prohibition would extend to contracts in place for other instructional related operations such as the provision of assessments, instructional materials, classroom learning tools, professional

development, or more importantly, services required as part of a special education student's individualized education plan? Or is the bill limited only to the actual instructors employed by for-profit entities? To prevent differing practical interpretations, the author may wish to consider clarifying amendments if the bill moves forward.

- 6) ***Impact on students.*** Notwithstanding the issues regarding the appropriateness of using taxpayer dollars for charter schools operating as for-profit corporations, the Committee may wish to consider whether the bill contemplates what would happen to students attending these schools if the bill were to become law. Presumably, the operating entities could restructure or reorganize themselves as nonprofit corporations to comply. If not, would a charter school need to shut down its operations? The bill also extends to nonprofit online charter schools that contract with for-profit entities for the provision of instructional services. To the extent that these entities are unable to enter into new contracts exclusively with nonprofit entities, similarly, would these charter schools be required to close? Additionally, as the bill would become operative commencing with the 2017-18 school year, it is not clear if this allows for a sufficient transition period for students that are displaced to find placement in a new school, particularly students that are disabled or have unique learning needs.

Currently, there are virtual schools which identify special education or at-risk children and youth as their target student populations. These include students in the juvenile justice system and students who are at risk of dropping out. Virtual charter schools may also be a more viable option among non-traditional students, including exceptional athletes, actors, and high-mobility students, such as children from military families. On the other hand, there are charter schools and school districts that currently contract with for-profit entities to offer online curriculum for advanced courses that they are unable to provide. Could the bill potentially lead to a disruption in the educational services provided to these students? Could it also limit local discretion and prohibit arrangements with online programs that have provided students with successful options?

- 7) ***Local control and accountability plan (LCAP) process.*** Implementing Local Control Funding Formula (LCFF) statutes include the requirement that all school districts and county offices of education complete LCAPs and an annual update to an local control and accountability plan (LCAP). While the various statutes governing charter school authorizations only reference the annual update section of the LCAP, the regulations adopted by the State Board of Education in 2015 regarding the LCAP template reflect the requirement that all local educational agencies, including charter schools, complete an LCAP each year. Further, the current education trailer bill for the 2016-17 budget includes a provision specifying that charter schools must complete an LCAP.

Current statute requires an LCAP to include both of the following, a description of the annual goals (for all students and each subgroup of students) to be achieved for each of the state priorities and for any additional local priorities identified by the governing board, and a description of the specific actions the school district will take during each year of the LCAP to achieve these goals, including the enumeration of any specific actions necessary for that year to correct any

deficiencies in regard to the state priorities. To the extent there are concerns from parents, students, or the local community regarding the delivery of instruction or the outcomes of students attending a particular online charter school, does the local control and accountability plan process provide an effective means to promote change?

- 8) **Responsibility for charter authorizers.** As part of the process for considering petitions for the establishment or renewal of a charter school, a description of the educational program of the school is required. This should include the mode of instruction and whether it is online, blended, or classroom-based. Statute provides that a school district shall grant a charter if it is satisfied that granting the charter is consistent with sound educational practice, and specifies that the districts shall not deny the petition unless it makes specific findings, including a finding that the charter school present as unsound educational program or that the petitioners are demonstrably unlikely to successfully implement the program.

As part of the charter petition renewal process, the authorizer is required to consider increases in pupil academic achievement for all groups of pupils served by the charter school as the most important factor in determining whether to grant a charter renewal. To the extent there are concerns regarding the use of online instruction provided by a for-profit entity, does the existing petition process allow the opportunity for charter authorizers to sufficiently address these concerns?

- 9) **Nonclassroom-based instruction.** Online or virtual charter schools operate within the context of nonclassroom-based instruction. A charter school that does not meet the requirements to be a classroom-based instruction school is considered to be nonclassroom-based and must have a funding determination approved by the State Board of Education. Classroom-based instruction occurs only when pupils are under the immediate supervision and control of a certificated teacher. Further, the charter school must offer at least 80 percent of its instructional time at the school site (for classroom instruction) and attendance must be required at the school site for at least 80 percent of the minimum instructional time required to be offered. Charter schools can only claim average daily attendance for pupils who are residents of the county in which the charter school is authorized, or who are residents of a county immediately adjacent to that county.

Existing law defines a virtual or online charter school as one in which at least 80 percent of teaching and student interaction occurs via the Internet. In order for a virtual or online charter school to be funded, it must demonstrate specified conditions. For example, the online charter school would need to demonstrate that instructional expenditures are at least 85 percent of the overall school budget and at least 25 percent is spent on technology that directly benefits students and teachers and results in improved student achievement.

- 10) **Independent study.** Independent study programs provide school districts with the ability to offer alternative education settings for students. These programs utilize alternative instructional strategies that respond to individual student needs and learning styles. The flexibility afforded by these programs makes it possible

to serve a wide variety of students, including those who otherwise may not be able to graduate from school. Students who enroll in independent study include students who have health problems, are parents, need to work, or are child actors. Independent study may also serve students who desire to accelerate more quickly or more slowly through a course. Students may also utilize independent study to make up a course that they may have missed or failed in a traditional classroom. School districts may offer independent study through a variety of formats, including online courses, home-based formats, through alternative schools, and as special or advanced courses.

According to information provided by the California Department of Education, there were 1,418 schools that reported students engaged in independent study with an enrollment of more than 128,000 students in grades K-12 in October 2008. For the 2007-08 school year, more than 19,000 independent study students graduated from high school or passed a high school equivalency exam.

It is unclear to what extent the existing independent study programs utilize online instruction offered by for-profit entities. K-12, Inc. indicates that it works with approximately 60 traditional school districts in the state serving just under 20,000 students. If part of the rationale for introducing this measure is the concern over the use of online instruction, why does it apply only to charter schools and not traditional school districts or county offices of education?

11) ***Related legislation.***

AB 787 (Hernandez, 2015) would have prohibited a charter school from operating as, or being operated by, a for-profit corporation. This bill passed this Committee but was vetoed by the Governor.

AB 2007 (Grove, Chapter 807, Statutes of 2014), until January 1, 2018, authorizes a virtual or online charter school to claim independent study average daily attendance for a pupil who is enrolled in a virtual or online charter school and moves to a residence outside of the geographic boundaries in which the virtual or online charter school is authorized to operate for the duration of the pupil's courses or until the end of the school year, whichever occurs first.

SUPPORT

California State PTA
California Teachers Association
Letters from individuals

OPPOSITION

California Connections Academy
California Parents for Public Virtual Education
Charter School Capital
Charter Schools Development Center
K-12, Inc.
Learn4Life

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