

**To:** Sue Burr  
**From:** Eric Premack  
**Date:** May 9, 1994  
**Subject:** Charter school cleanup/SB1264

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Here are some thoughts and concerns regarding cleanup legislation for charter schools.

### **SUMMER SCHOOL**

The current version (as amended April 20) of SB1264 provides that charter schools may receive summer school funding as part of the apportionment to "its parent district, pursuant to Section 42239. . . ." Ideally, it would be nice if charter schools could receive summer school moneys and use them with a high degree of flexibility. I am currently unclear as to whether the current language in SB1264 achieves this.

### **SUMMER SCHOOL FUNDING FOR "REGULAR" SCHOOLS**

Under current law, school districts can receive summer school funding for two separate summer school programs known as (1) "core" and (2) "proficiency" to the school finance world.

The **core** program funding is restricted to several core academic areas such as English, math, science, and social studies. Districts receive around \$2.26 per pupil hour for core summer school instruction. The funding is capped at 120 hours times 7% of enrollment, or around 8.4 hours per student. Despite the 120 hour/7% language, districts may choose to serve any percentage of its enrollment for any amount of hours.

The **proficiency** funding is not formally capped, but is only funded for 11th and 12th grade students taking classes that are needed for the student to reach the district's officially adopted proficiency standards and graduate. Funding for proficiency summer schools hours is split. The number of hours a district provided in 1983 is funded at a district-specific rate (usually higher than \$2.26). Any growth hours over the 1983 level are funded at the lower "core" rate.

For most districts, summer school must occur in the summer, though special Ed Code provisions allow for Saturday and year-round school intersession programs to be funded as if they were summer school. The Saturday and year-round sections have several restrictions including specific student:teacher ratios, maximum day length, etc.

### **CONCERNS WITH SB1264 SPECIFICS**

The current language seems carefully crafted, but raises several questions/issues.

- It may require that charter schools follow all the annoying requirements that are normally associated with summer school such as using credentialed staff.
- It may imply that the sponsor district has control over whether the charter school should receive the funds because of the "as part of its parent district" language.
- It may limit charter schools to "core" summer school funding.



- If "proficiency" funding is included, it is not clear whether the charter school would have to use district-adopted proficiency standards.

I have been trying to get in touch with John Gilroy and Bob Oliphant at the Department to solicit their ideas and find out if my concerns are valid, but haven't heard from them yet. If there is shared concern about these technical and policy issues, I would be glad to discuss potential solutions with all concerned.

### **YEAR-ROUND INCENTIVE FUNDING**

Nothing in current law seems to explicitly allow charter schools to receive year round incentive funds. Though I've never been a big fan of this program, it may be helpful to schools that are year-round and converting to charter status if legislation explicitly states that they're entitled to the funding. The following language may work.

In Education Code Section 47612 (a)(3), insert "*Sections 42260 through 42263,*" after "54761."

### **STRS & PERS**

I have been doing a bit of research into the issues raised by STRS in its communications with charter schools regarding covering charter school teachers in STRS. My lay opinion is that one can make a very solid case for charter school staff participation in teacher and public employee pension funds. At the very least, there are a number of quasi-public entities with staff in public employee pension funds in California and other states. If it is illegal for charter staff to participate in such plans, they will be in good company.

### **IRS OPINION**

The IRS revenue ruling provided by STRS analyzes whether a non-profit, volunteer fire department staff may participate in a public retirement system. The ruling refers to several factors that influence whether an entity is considered to be a government entity and which disqualified the volunteer fire department discussed in the opinion. As noted below, I believe that such an analysis, applied to charter schools, would lead to the conclusion that charter schools are eligible to participate in such retirement systems.

- *Degree of sponsor control.* The IRS opinion notes that in the case of the fire department, the municipalities exerted "minimal" control over the fire department. School districts, however, have a high degree of control over charter schools in that they review, approve, and may revoke the charter at any time for a material violation. This probably allows a higher degree of control than a school board would typically enjoy over its "regular" schools.
- *Whether specific legislation creates the organization.* SB1448 is quite specific and affiliates the charter school with both its sponsor and the State of California. The case of the fire department differs sharply as, "there was no legislation which affiliated the company with the state."
- *Source of funding.* Charter schools are funded in a fashion virtually identical to a public school. In contrast, the fire department raised funds "through community donations," according to the ruling.



- *Selection of governing board.* Charter school governance structures must be described in the charter and approved by the sponsor district.

#### SAME ISSUE IN MINNESOTA

Charter school developers in Minnesota are fighting with their teacher retirement system over the same set of issues. One particularly feisty (former Minneapolis city council member) charter director plans to sue over the issue. He tells me that their teacher retirement system "is hiding behind the same smoke screen" despite the fact that in Minnesota both major teacher unions and other non-governmental organizations have staff currently contributing to and participating in their public pension systems. Ironically there are also apparently quite a number of nonprofit, volunteer fire departments in Minnesota whose employees are in tax-exempt government pension plans (see enclosed letter). I have done a bit of research to check if any such organizations in California have staff participating in public pension systems.

#### CATS AND DOGS IN CALIFORNIA PUBLIC PENSION SYSTEMS

In California I am told that PERS has a number of non-governmental and quasi-governmental entities covered in its plans. The California School Boards Association's (CSBA) staff, were shifted into PERS' "miscellaneous employee" group two years ago when they bailed out of their private defined contribution plan and bought prior service credit for its employees. I am told that CSBA is a duly constituted non-profit corporation and is tax exempt pursuant to 501(c)(4) of the IRS code and has a 501(c)(3) foundation arm. Other non-government and quasi-governmental agencies in PERS include the Veterans Home, CSU and Community College foundations, the California Interscholastic Federation, and others deemed to be public agencies in Section 20009.1 of the Public Employees Retirement Law. I am told that ACSA and CTA have their own private plans, though I haven't asked them directly.

I noted that you opted not to include the language on STRS and PERS that the Department had suggested in it's draft clean-up legislation. The CDE language, which I presume originated with STRS staff, struck me as circular and unhelpful. Perhaps charter schools could be added to the laundry list in Section 20009 and add other language to get things moving. Ideally, I'd prefer the language to be as permissive as possible and allow individual charter employees to opt in or out of the plans. As you know, current law requires that all teaching staff be either in or out of the STRS system. Here too, I would be available to meet and discuss these issues in more detail with all concerned.

#### CATCHALL PROVISION

Perhaps a line could be added to indicate legislative intent and to explicitly authorize school districts to share any other miscellaneous revenues with their charter schools, unless otherwise prohibited by federal law.



## **LIABILITY**

I spoke with John Wilson, Executive Director of Schools Excess Liability Fund (the statewide deep pocket liability insurance joint powers authority), and Joe Myers of the Redwood Empire Schools Insurance Group (one of several local schools insurance joint powers authorities) and asked if they still have any insurance-related charter school legislative concerns or suggestions. Both indicated that they are currently covering charter schools and see no problem in doing so beyond the normal liability concerns facing any school. It may still be worth adding the clause suggested by Bill Piper to gently encourage some of the more reluctant local JPAs.