CHARTER Currents

Plugged-in information for California's charter movement

May Revise May Revise Fundamental Parts of Charter School Law

May 17, 2019

Eric Premack
Founder & Executive Director
Charter Schools Development Center

Sacramento , CA – Governor Newsom released the annual May Revision to his 2019-20 state budget proposal last week, adding just a bit of additional funding and reflecting a reduced statutory cost-of-living adjustment relative to his prior proposal from January. The May Revise also reflects further funding to reduce school employers' teacher pension costs and a few other modest augmentations.

Newsom's proposals are especially unkind toward charter schools. He proposes zero additional funding for the Charter School Facilities Grant Program. He also proposes a new set of restrictive charter school admissions laws and continues to propose significant new limits on charter school flexibility related to teacher credentialing and goal-setting in the evolving “local control” planning process.

Overall Budget

The May Revise estimates that overall state revenues are up $3.2 billion relative to estimates in the Governor’s January Budget proposal. The estimates assume continued, if modest, economic growth, no recession, some one-time windfalls from initial public offerings of stock in Uber and other companies, as well as other factors. The proposal also continues to add funding to the state’s “rainy day” budget reserves in anticipation of a potential recession.

With the current economic growth cycle in its tenth year, Governor Newsom cautions that a recession could cost the state $70 billion over a three-year budget cycle. For now, however, the state budget picture continues to look good and growing revenues are driving increases, if modest, in K-14 education funding, as outlined below.

Proposition 98/Prop 98 Reserve

The constitutional education funding guarantee established by Proposition 98 (1998) establishes a minimum funding floor for K-14 education based on multiple complex formulas. The Governor’s May Revise estimates that, over a three-year (2018-2020) budget period, the minimum funding guarantee has increased by $746.5 million relative to his January estimates.

The May Revise also calls for a first-ever deposit of $398 million into a Proposition 98 “Rainy Day Fund,” a state reserve account designed to protect school funding during a recession. This deposit is mandated per complex formulas mandated by Proposition 2 (2014) that heretofore have never been triggered. Per updated estimates, a deposit into this fund will be triggered in 2019-20. This education-specific reserve account is designed to buffer cuts to K-14 education during lean budget years. It currently has a zero balance whereas the state’s larger budget reserve, which is designed to protect the state and not schools, will exceed $16 billion.

After various technical and other adjustments, funding available for spending within the guarantee is only around $150 million, leaving little room in the May Revise for significant funding increases relative to the Governor's January budget proposals—unless the state opts to fund above the minimum floor established by Proposition 98, which it rarely does.

As described in more detail in the remainder of this article, the Governor proposes to spend nearly all of this increase on special education, with few other smaller augmentations. Newsom does propose additional funding from monies outside of the Proposition 98 accounts to pay down school employer teacher retirement costs; these are also described in more detail below.

LCFF Funding Declines a Bit with "Lite-er COLA"

The statutory cost-of-living adjustment (COLA) for the Local Control Funding Formula (LCFF) and several other programs locked in at 3.26 percent for 2019-20, down two-tenths of a point from the 3.46 percent estimate in the Governor's January budget proposal. The statutory COLA is pegged to official figures on local government agency costs published quarterly by the U.S. Department of Commerce. Unlike the current-year budget, which provided nearly a one percent boost above the statutory COLA, Governor Newsom proposes funding only the usual statutory COLA for the LCFF. The table below displays LCFF funding rates reflecting the revised COLA.

2019-20 Local Control Funding Formula Rates (Governor's May Revise @ 3.26 percent COLA)				
	Grade Span			
	K-3	4-6	7-8	9-12
Base Rate (including 3.26% COLA)	$7,702	$7,818	$8,050	$9,329
K-3 CSR Grade Span Adjustment (@10.4%)	$801			
9-12 Career/Tech Grade-Span Adjustment (@2.6%)				$242
Supplemental and Concentration Factors & Funding for "Unduplicated" Pupils				
Supplemental Add-On (@20%)	$1,701	$1,564	$1,610	$1,914
Concentration Threshold	55 percent			
Concentration Add-On (@50% for pupils above threshold)	$4,252	$3,909	$4,025	$4,786

Looking forward, the Department of Finance (DOF) offers the following estimates of future COLAs, which are subject to change. These estimated COLA figures are now incorporated into the most recent version of the FCMAT's LCFF Calculator.

Statutory Cost of Living Adjustments (Actual and Estimated Future Per DOF Estimates*)				
Year	**2018-19**	**2019-20**	**2020-21**	**2021-22**
COLA (assuming no recession)	3.70%	3.26%	*3.00%*	*2.80%*
* The statutory COLA was 2.71 percent in 2018-19, but additional funding was appropriated to increase the funded COLA to 3.70 percent. Estimated figures shown in *italics*.				

If the adopted budget aligns to the May Revise and the statutory COLA, it will be the first time since the inception of LCFF that schools receive a "COLA only" increase whereas in prior years, funding was augmented by additional "gap closure" and COLA funding.

CSDC also notes that the May Revise includes a proposal to change the current definition of a "sponsoring district" for purposes of sharing local, in-lieu property tax receipts for those charter schools whose charter was granted by the State Board of Education upon appeal after local denials. Under current law, the districts that originally denied these schools' charter petitions are deemed the "sponsoring" district for these tax-sharing purposes and must share a per-ADA share of their local taxes, up to the LCFF entitlement amounts.

The May Revise includes a proposal to eliminate this current provision, instead deeming the district of residence of the charter schools' students to be the "sponsoring" district, and only if the district was a "Basic Aid[1]" district in the prior year. The intended effect of this proposal, per Department of Finance staff, is to have most students of State Board-authorized charter schools funded entirely from state aid, and that local funds would only be used to fund students of such schools who reside in "Basic Aid" districts.

Charter School Facility Grant Program

The Governor continues to propose flat funding for the Charter School Facility Grant Program (CSFGP), with zero funding for the statutory COLA that was added to the law last year for this program, and with no augmentation to fund the program's multi-million dollar deficit.

This popular program reimburses up to 75 percent of (1) rent/lease and (2) other lease-related costs (specified remodeling, maintenance, improvements, etc. costs), not to exceed a per-ADA cap ($1,184/ADA for 2019-20). Per a recent change to the law, this cap increases by the statutory COLA each year. If funding falls short, which it has in recent

[1] "Basic Aid" districts are those districts where local property tax receipts exceed the district's entitlements under the LCFF and where the district doesn't generate an entitlement to state aid. This typically occurs in areas with high levels of property wealth and/or unusually valuable commercial/industrial property (e.g., shopping malls, oil facilities) and relatively few students.

years, the law calls for pro-rata cuts. These cuts are levied first against the second, "other" costs component and are only levied against the lease/rent component after first zeroing-out the "other" cost reimbursements.

The California School Finance Authority (CSFA), which administers this program, is reducing reimbursements for "other" costs in 2018-19 and likely again in 2019-20 due to ongoing funding shortfalls. CSFA won't have final figures for 2018-19 until later this summer at the earliest, so recipient schools should note that the magnitude of estimated shortfalls described below could change.

Newsom's May Revise proposes no change to the current $137.2 million appropriation for this program, not even for the COLA mandated by statute and which was funded in the current-year (2018-19) state budget. This is the only program in the entire K-12 portion of the state budget that is supposed to receive a statutory COLA, but is not funded, so CSDC is extremely disappointed in Governor Newsom, especially given the fact that funding was already falling short.

The Governor does, however, propose to increase the funding cap by the COLA, from $1,147 to $1,184, but without any actual funds to pay for the increase. This presumably will result in an even larger shortfall in 2019-20. Due to the growing shortfall in funding for the "other" costs component, some savvy schools with flexible landlords are re-negotiating their leases to shift costs that were previously scheduled as add-ons to their basic rent/lease charges into the base charges, thereby avoiding the pro-rata funding cut. Charter schools that have the ability to implement such shifts presumably should explore doing so but should be aware that revising their lease could trigger a requirement for an appraisal.

These shifts do make it especially difficult to estimate the percentage shortfalls in the "other" costs' reimbursements for both 2018-19 and future years, so schools should anticipate some volatility in these reimbursements for 2018-19 and beyond. Based on the latest data shared by CSFA, CSDC anticipates that the rent/lease cost portion will be fully funded in 2019-20, but that the "other" costs portion will be subject to large deficits in the 30-40 percent range for 2018-19 and the 40-50 percent range for 2019-20.

CSDC also notes that the CSFA recently posted the application for funding for 2019-20 for continuing schools and that applications are due June 3, 2019 at 5:00PM. We also note that this is a hard deadline, that the online application will be closed at 5:00PM on June 3, and that CSFA will not accept late applications. Final "true-up" invoice reports for fiscal year 2018-19 must be uploaded to the CSFA's website by July 15, so schools planning to report such costs should begin now to gather these invoices so that they may report on time.

CSDC is aware that several charter schools have been unable to secure letters of "good standing" from their authorizer. We have suggested that CSFA either eliminate or clarify their regulations on this matter and hope they will do so soon. The CSFA is also considering various other technical and substantive changes to the regulations governing this increasingly-complex program. If your school is experiencing difficulties with these or other aspects of the program, please let us know.

Special Education

The May Revise adds $119.2 million, on top of the $577 augmentation proposed in the Governor's January Budget proposal, or a total of $696 million to boost special education funding. Where the January proposal was a mix of "one-time" and ongoing funding, the May Revise proposes to make this augmentation ongoing.

The Administration proposes allocating these funds to local education agencies (LEAs, including districts and charter schools) where the percentage of special needs students and the percentage of high need ("unduplicated") pupils both exceeds the statewide average figures. Under this proposal, a relatively small number of LEAs would receive huge sums, in many cases exceeding an extra $10 thousand per eligible pupil, while many would receive nothing. County offices would also do well, receiving over 20 percent of the funds, while charter schools would receive 7.8 percent, which is below their pro-rata share, if funding were allocated based on total enrollment.

The Legislative Analyst's Office (LAO) and many others are critical of this proposal noting that it would effectively reward districts with high numbers of referrals for special education whereas stated intent is prevention of such referrals. LAO instead suggests equalizing current funding rates and/or focusing the funding on prevention or preschool special education costs, which the state currently doesn't fund directly. CSDC has been advocating to direct the funding toward equalization, in part due to the fact that charter school SELPAs are funded at very low rates and presumably would do well under an equalization scenario.

Charter Admissions Practices Budget Bill Language

Governor Newsom also proposes several school admissions-related statutory changes to "level the playing field for both traditional and charter schools . . . to prevent families from being wrongfully turned away from the public school of their choice."

Instead of "leveling the playing field," however, the proposals impose several new restrictions on charter school admissions and related practices, layering them on top of those recently imposed by AB 1360 (2017, Bonta—D, Alameda). AB 1360 eliminated charter schools' ability to establish admissions requirements (even non-discriminatory ones), limited admissions preferences, and imposed other restrictions.

The Governor proposes several additional restrictions on charter schools, including the following:

- Prohibiting a charter school from discouraging a student from enrolling and/or encouraging a student to disenroll "for any reason, including but not limited to academic performance of the pupil."
- Prohibiting a charter school from asking for student records prior to enrollment.
- Requiring a charter school to provide a notice of the above, using text to be developed by CDE, when students inquire

regarding enrollment, disenrollment, during admissions lotteries, and on the school's website.

CSDC is deeply disappointed with the Governor regarding this proposal for several reasons. First, as with other recent comments and proposals by the Newsom Administration, it perpetuates pejorative myths regarding charter schools and fails to recognize that California charter school student demographics closely mirror demographics of non-charter public schools.

Second, the proposal has absolutely no colorable relationship to the state budget yet is proposed for the budget trailer bill. Third, the Administration says it is seeking to "prohibit charter schools from discouraging students . . . on the basis of academic performance or . . . special education status" and to "level the playing field" between districts and charter schools.

Instead of leveling the field, however, the proposal would allow school districts to continue to implement controversial admissions practices. Most school districts routinely require families to provide sensitive student records before enrolling. Many districts also implement strict admissions requirements, including requiring students to post specified test scores, grade point averages, submit essays, and provide letters of recommendation, etc., to gain admission to popular district-run schools. If the Administration genuinely wants to "level the playing field," it should propose barring these practices by all public schools, not only charter schools.

If the Governor chose public school for his own children, he may have recently experienced this directly. His new resident district (the Newsoms reportedly recently purchased a home in suburban Sacramento) requires new enrollees to provide all manner of records to enroll. It also implements various admissions priorities for its elite programs, including preference for those students scoring in the top 15 percent on academic tests. The district's marketing brochure for its intra-district choice programs also contains dicey verbiage directed to special education students, noting that placements are "the responsibility of a student's IEP team based on student needs and appropriate programs" and that “special education students are entitled to participate in the open enrollment process,” but “not all programs are available at all school sites,” presumably warning parents and students that needed special education services are not available at some of the schools of choice within the district.

CSDC is also concerned that the Governor’s proposals and his communications regarding them fail to recognize the fact that California charter schools’ student demographics very closely track statewide demographic trends and that the proportion of students with exceptional needs in charter schools has rapidly grown to closely approach statewide figures.

Teacher Credentialing/Assignment Monitoring

The May Revise continues to propose imposing additional restrictions on charter school teacher credentialing requirements as part of a larger set of changes on the state’s process for monitoring compliance with credentialing laws. Unfortunately, the Governor continues to propose limiting charter schools’ current flexibility with respect to assignment-specific credentials and related “assignment monitoring,” albeit with a few tweaks in the May Revise.

Current law generally requires that charter school teachers hold *a* credential or permit issued by the Commission on Teacher Credentialing (CTC), but provides two forms of flexibility on point:

- First, teachers in “noncore” and “noncollege-preparatory” courses need not hold a credential. Neither the term “noncore,” nor the term “noncollege-preparatory” is defined in current law.

- Second, charter school teachers who do hold a credential or permit issued by the CTC may teach any subject, without regard to the subject-specific “assignment.”

Many charter schools are unaware of this second form of flexibility regarding subject-matter assignment, in part because many charter authorizers preclude charter schools from availing themselves of this flexibility. This assignment-related flexibility has been a poorly-understood feature of California's Charter Act since 1998 when the current credentialing mandate was first imposed on California's charter schools. The assignment-related flexibility in particular became muddled during the era when federal "highly qualified" teacher requirements applied and undermined this flexibility.

Though this flexibility was carefully negotiated in 1998 between charter advocates and lobbyists for the California Teachers Association (CTA), rule-minded bureaucrats, teacher unions, and others have long sought to undermine it. The Newsom Administration is taking the unusual step of including language on this arcane subject to the May Revise amendments to the proposed budget trailer bill, notwithstanding the fact that there is zero apparent linkage to the actual budget.

More specifically, the May Revise proposes inclusion of new laws in the budget trailer bill that would:

- Require charter authorizers to monitor the specific assignments of charter school teachers and whether they match the specific subject authorizations in their credentials, thereby presumably undermining the assignment-specific flexibility in current law.

- Define the term "noncore" to include English, mathematics, science, and social science, presumably attempting to define this term twenty-one years after it was first put into law. The Administration apparently does not care to define the term "noncollege-prep," for which we presumably should be thankful.

The current assignment-specific flexibility is especially valued by charter schools with non-traditional programs where teachers are deployed across multiple subjects (e.g., project-based instruction, etc.). It's also a blessing to any charter school administrator who has had the pleasure of attempting to decipher California's Byzantine rules governing credential assignments (click here for the current version of California's 87-page guide on point).

CSDC continues to vigorously oppose this language, though given the fact that pending legislation on point is more restrictive and the clear lack of support from Governor Newsom, we're not terribly optimistic. Considering this grim scenario, charter schools currently availing themselves of this assignment-specific flexibility should begin to evaluate their options. The proposed language contains odd verbiage deeming misassignments as "nonconsequential" for the 2019-20 school year, apparently anticipating that a related new state reporting system may have some glitches and perhaps giving one year of breathing room to address the issue.

Newsom Proposes to Undermine Charter School's LCAP Flexibility, Too

The Newsom Administration also continues to propose to gut charter schools' flexibility provided in current law relative to the local control accountability plan (LCAP) and the related "eight state priorities." Under current law, charter schools may either address, or not, the eight state priorities in their LCAP, based on "the nature of the program operated," thereby granting charter schools a significant degree of flexibility when drafting their charters and LCAPs in cases where the goals of their school's specific program do not align with the state's long list of state priorities.

The Governor's January budget proposed to delete this program-specific flexibility for charter schools entirely and the May Revise tweaks this restrictive proposal a bit, continuing the deletion of the program-specific flexibility, while apparently carving-out the first of the eight state priorities. The first of the eight state priorities actually is three priorities in one, combining (1) teacher credentialing (including assignment-specific credentials), (2) school facilities that comply with the terms of the *Williams v. California* lawsuit settlement, (3) and provision of textbooks that also align to the lawsuit settlement.

As noted above, however, the Administration is separately seeking to limit charter flexibility with regards to teacher assignments. Thus, it appears that, if the Governor's proposed language is adopted, the only flexibility accorded to charters regarding LCAP goal-setting would be with respect to the *Williams* lawsuit settlement and charter schools would need to address all remaining seven state priorities in their entirety, without regard to the fit with their school's mission. In effect, the Governor's proposal would gut charter flexibility with respect to course offerings, defining and measuring pupil achievement, pupil and parent engagement, etc.

In combination with the proposal to undermine charter schools' flexibility with respect to teacher qualifications, this proposal would fundamentally undermine charter schools' instructional design and assessment flexibility. CSDC regards these as fundamental threats to the very definition of "charter schools" and we're dismayed that a Governor who, while campaigning, stated repeatedly that he is not just a "supporter" but is an "advocate" for charter schools, would advance such proposals.

CalSTRS/PERS Employer Rates

The May Revise proposes a slight boost to funding that would reduce school employers' CalSTRS contribution rates relative to the Governor's January budget proposal. This additional funding would buy-down the 2019-20 employer contribution to CalSTRS from the 18.13 percent rate specified in current law to 16.7 percent in 2019-20 (down four-tenths of a point from the 17.1 percent figure in the January budget proposal).

CalSTRS School Employer Contribution Rates—May Revise (estimates shown in italics)								
	2015-16	**2016-17**	**2017-18**	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**
Current Law	10.73%	12.58%	14.43%	16.28%	18.13%	19.10%	18.60%	18.10%
Governor's May Revise					*16.70%*	*18.10%*	*18.10%*	*17.60%*

CalPERS school employer contribution rates, however, will continue to climb, and at a higher-than-anticipated pace, offsetting much of the CalSTRS savings for schools participating in both systems. Specifically, the CalPERS school employer rate will climb to 20.773 percent for 2019-20, a significant boost from the current 18.062 percent rate. CalPERS anticipates that rates for 2020-21 and beyond will continue to climb, also faster-than-anticipated, as displayed in the following table:

Increasing CalPERS Contribution Rates—May 2019 (estimates shown in italics)										
	2016-17	**2017-18**	**2018-19**	**2019-20**	**2020-21**	**2021-22**	**2022-23**	**2023-24**	**2024-25**	**2025-26**
Employer Rate	13.888%	15.531%	18.062%	20.773%	*23.6%*	*24.9%*	*25.7%*	*26.4%*	*26.6%*	*26.5%*

Educator Workforce & Classified Summer Pay

The May Revise proposes additional teacher and administrator recruiting and retention funding, none of which would be allocated directly to charter schools, and only some of which may ultimately benefit them, including the following:

- $89.8 million, "one-time" funds to the Commission on Teacher Credentialing to buy out 4,500 student loans of up to $20 thousand each for newly-credentialed teachers who commit to teach for four years and who are credentialed in specified subjects (special education, STEM, bilingual education, multiple subject) with priority granted to new teachers in schools with higher numbers of teachers with emergency permits.

- $34.8 million, "one-time" funds for a new Educator Workforce Investment Grant. Most of these funds would provide grants to nonprofits and higher education institutions to build teacher capacity in various topics, including inclusion of special needs students, social/emotional learning, computer science, and school climate/restorative practices.

- $13.9 million, "one-time" funds for school administrator professional development to support diverse student populations. These funds would be allocated to the California Collaborative for Educational Excellence (CCEE).

- $36 million for a second year of funding for the new Classified Employee Summer Assistance Program (CESAP), a program that provides supplemental summer pay for classified staff who do not work during summer months. The laws establishing this new program were amended late last summer to delete charter schools from eligibility.

Computer Science & Broadband Infrastructure

The May Revise proposes to appropriate $15 million "one-time" funding to support school broadband infrastructure and an additional $1 million for the State Board of Education to fund a state Computer Science Coordinator. The State Board of Education recently approved a Computer Science Implementation Plan and last fall approved state Computer Science Standards.

The new Coordinator would be charged with implementing these plans and standards. The broadband funding would allow CDE to contract with CENIC to identify and fund broadband fiber connectivity solutions for poorly-connected school sites. These augmentations reflect a "down payment" on what the Governor says should be a larger push for computer science in California public schools.

What's Next

Budget subcommittees are rushing through their review of the May Revise with only minimal discussion and public input. We believe the Legislature is likely to concur with most of the May Revise proposals, save for the formula for allocating additional special education funding and a few other minor items.

As charter schools finalize their budgets and LCAPs for 2019-20, CSDC believes that it is prudent to assume the adopted budget will reflect the Governor's proposed LCFF rates and the proposal to buy-down the 2019-20 CalSTRS employer rate. Unfortunately, we also believe it is unlikely that the budget will include significant funding to fund the shortfall in the Charter Facility Grant Program. While we believe it is likely that the budget will include additional funding for special education, the amount and formula are very much unsettled at this time—so we caution against budgeting anything beyond a COLA for special education at this time.

Longer-term funding prospects remain unsettled. The Department of Finance's COLA estimates noted earlier in this article are plausible but assume ongoing economic growth. Given the fact that the current economic expansion is the longest on modern record, and given economic headwinds and global insecurity, CSDC continues to suggest modeling both the DOF's COLA estimates as well as a zero COLA scenario to understand the range of likely scenarios.

As always, CSDC plans to post updated information regarding the state budget, including our usual deep dive after the budget is enacted, most likely in late June.