

# Charter School Oversight Part I "

## CASBO - Southern Section Spring Event Workshop "

March 16, 2018 #  
Sue Ann Salmon Evans #

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## What is Oversight

- Authorizer has responsibility for ongoing oversight
  - must ensure compliance with charter and governing laws
  - district may charge 1-3% of charter revenue for supervisorial oversight
  - charter schools must respond to district's reasonable requests for information #
- Role of County Superintendent
  - Monitor operations of charter schools within county (Ed. Code 47604.4)
  - Review & audit expenditures/internal controls of charter schools within county (Ed. Code 1241.5)
  - Request Fiscal Crisis & Management Assistance Team (FCMAT) review fiscal and administrative condition of charter school (Ed. Code 42127.8)

# What is Oversight

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- Ed. Code § 47604(c) – ties District liability to performance of oversight duties
- Ed. Code § 47604.32 – defines duties of chartering authority:
  - identify contact person for charter school
  - visit charter school at least annually
  - ensure that charter school complies with all reporting requirements (including Ed. Code section 47605(m) regarding annual audit report) #
  - monitor charter school's fiscal condition
  - notify State Department of termination
- *All other oversight duties required by law*



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# What is Oversight?

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- Oversight is...
  - Monitoring the charter school operations to evaluate compliance on an ongoing basis
  - Meeting the statutory obligations of oversight
  - Investigating complaints or potential violations by charter school
  - Taking action to seek compliance when authorizer knows or has reason to know of a potential grounds for revocation
  - Action to revoke as necessary
- What is *not* oversight?
  - Controlling or directing the operations of the charter school



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# What is Oversight?

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- Laws governing charter schools include:
  - Charter Schools Act
    - (Ed. Code, § 47600, *et seq.*)
  - State Teachers Retirement
    - (Ed. Code, § 47611.)
  - Charter School Revolving Loan Fund
    - (Ed. Code, § 41365.)
  - Laws establishing minimum age for public school attendance
    - (Ed. Code, § 47610.)
  - California Building Standards Code
    - (Cal. Code of Reg., Title 24, Part 2, § 101 *et seq.*)



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# What is Oversight?

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- ...and:
  - Personnel-related requirements:
    - credentialing,
    - background checks,
    - TB testing,
    - retirement reporting.
  - State pupil assessments.
    - E.g., ESL assessments.
  - Student data reporting.
    - E.g., enrollment, CALPADS reporting.
  - LCAP updates, annually.



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# What is Oversight?

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- Oversight includes monitoring charter school:
  - Fiscal Status
  - Educational Program
  - Personnel/Labor Practices
  - Governance



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# Fiscal Status

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- Fiscal issues can be identified in the charter petition review process:
  - are the enrollment and ADA projections supported?
  - does the budget support the promises of the charter petition?
  - does the budget reflect appropriate staffing and staffing costs?
  - is the budget based on correct LCCF calculations?



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# Fiscal Status "

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- does the budget include reserves?
- does the budget rely on donations and are they documented?
- does the budget include borrowed funds or reflect a plan to borrow or sell receivables?
- is the budget complete – does it account for *all* financial # obligations? #

# Fiscal Status

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- District oversight responsibilities :
  - #Ensure that charter school complies with all reporting requirements
  - #Education Code section 47605(m): Charter school must provide annual audit report to chartering entity, State Controller and County Superintendent
- Monitor the charter's fiscal condition
  - #Ensure audit is timely received and reviewed for exceptions or fiscal issues

# Fiscal Status

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- Charter school statutory financial reporting requirements
  - Charter schools required to prepare and submit annually to the chartering authority the following reports:
    - #Preliminary budget (*by July 1*)
    - #Interim financial report (*by 12/15 – for changes through 10/31*)
    - #Second interim financial report (*by 3/15 – for changes through 1/31*)
    - #Final unaudited report (*by September 15, for previous fiscal year*)



# Fiscal Status

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- Charter can be revoked if charter school:
  - “Violated any provision of law.” (Ed. Code §47607(c)(1)(D))
  - “Failed to meet generally accepted accounting principles, or engaged in fiscal mismanagement.” (Ed. Code §47607(c)(1)(C))



# Fiscal Status

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- Monitoring fiscal condition:
  - Multiple Year Financial Plan
  - Short or long-term debt
  - Bank account balances/cash flow
  - Audit information
  - Reserves
  - Staffing and enrollment projections
  - Internal controls regarding disbursements, etc.
  - Student attendance reporting
  - Teacher credentials



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# Fiscal Status

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- Other areas of oversight:
  - STRS/PERS/Benefits
  - Payroll/Wages
  - Funding determination for independent study charter
  - Insurance compliance
  - Potential liability claims



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# Effective Oversight

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- **Organization:**
  - Require the charter school to provide information/documents demonstrating credentials, clearances, and safety plan before school begins.
  - Require charter to provide all necessary permits, insurance, etc. before school begins.
  - Set timelines for receiving documentation to permit enough time to evaluate (e.g., budgets, proof of insurance, etc.).
- **Communication:**
  - Visit more than once a year.
  - Require charter attendance and participation in any additional meetings (e.g., LCAP, facilities issues, instructional minutes, etc.).
  - Require the charter school provide all agendas and meeting minutes.
  - Require notification regarding debt.
  - Require a performance audit.
- **Cooperation: the MOU.**



# Oversight: The MOU

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- A Memorandum of Understanding (MOU) should be incorporated into the charter school's operative charter petition.
- Establishes additional logistical/practical details.
- Addresses subjects not necessarily discussed in the charter petition.





## Oversight: The MOU

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- Key MOU terms:
  - Access to all information, including CMO documents (if applicable).
  - State funding under the new Local Control Funding Formula.
    - #LCAP development, adoption, and annual updates.
    - #LCFF compliance with funding expenditures
    - #Compliance with revised/updated LCAP evaluation rubrics.
    - #Compliance with additional/revised/updated SBE accountability requirements.
  - Fiscal issues: budgetary, cash flow, fiscal reserve, debt, financial audit requirement/limitations.
  - Oversight fees.



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## Oversight: The MOU

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- More key MOU terms:
  - Legal relationship between charter school and authorizer.
  - Compliance with Common Core Standards.
  - Special Education – e.g., IDEA, enrollment, Section 504, relationship with LEA.
  - Special Education encroachment calculation.
  - Insurance and indemnity obligations.
  - Charter risk management policies.



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# Oversight: The MOU

- More key MOU terms:
  - Educational Program and programmatic/performance reviews.
  - Facilities issues.
  - Administrative services.
  - Closure obligations.



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# Fiscal Accountability

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Q: When is a charter out of compliance?

A: When the charter is “fiscally mismanaged.”

- Unreasonable budget (e.g., based on excessive ADA)
- Failure to meet statutory reporting requirements
- Failure to fund payroll/benefits/insurance
- Inadequate reserves/deficit spending
- Unapproved contracts or financial commitments



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# Fiscal Accountability

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- Failure to pay vendors
- Violation of conflict of interest and/or misappropriation #
- Excessive debt
- Audit reflects not operating in compliance with GAAP or other fiscal issues



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## Authorizer Response to Violations

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Q: What is the proper oversight response?

A: Written request that charter school remedy.

- If the violation is one that the authorizer is unlikely to consider as grounds for revocation or “material” violation, authorizer may send letter documenting concern and requesting correction.
- If material violation, authorizer is expected to seek compliance pursuant to the revocation process.



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## Authorizer Response to Violations

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- Notice of Violation:
  - At least 72 hours prior to any board meeting in which a chartering authority will consider issuing a Notice of Violation
  - Notice of Violation: chartering authority shall provide the charter school with notice and all relevant documents related to the proposed action
    - #Identify all facts demonstrating fiscal mismanagement
    - #Provide all documents supporting allegations
    - #Provide deadline for “reasonable opportunity to remedy”



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## What if the Violation is Not Remedied?

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Q: # What if the problem is not fixed?

A: # Move forward with revocation and/or seek corrective action plan

- If the chartering authority has substantial evidence that the charter school failed to refute or remedy a violation, authorizer issues Notice of Intent to Revoke to the charter school's governing body.



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## Revocation Process

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Q: # What are the limitations on revocation?

A: # If seeking revocation, public hearing must be held within 30 days; Final Decision must be made within 60 days; and, Final Decision must be supported by substantial evidence.

- If authorizer fails to act within timeline, revocation is terminated and Notice of Intent to Revoke is void.
- Final Decision must be provided to CDE and county board of education.
- Appeal rights to county board and State Board – if overturned, charter remains under the district's authorization.



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## Alternatives to Revocation

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Q: # What are the alternatives to revocation?

A: # None in statute but parties may agree to stay proceedings to allow for corrective action plan.

▪ Ensure agreement:

- Stays the proceedings and waives or “tolls” statutory and regulatory timelines
- Provides that failure to meet the requirements of the agreement will result in revocation without further proceedings and/or require surrender of the charter (e.g., parties agree that failure to meet the terms demonstrates substantial evidence of failure to timely remedy violations)



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## Alternatives to Revocation

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Ensure agreement:

- Provides clear timelines for required actions
- Provides authorizer with discretion to determine whether charter has met the requirements
- Protects authorizer from claims related to charter actions
- **Does not make authorizer responsible for charter school operational decisions**



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# Charter School Closure

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- Ed. Code, § 47607(i):
  - A charter school is required to close immediately upon revocation where the charter is revoked based on fiscal mismanagement or violation of law.
  - A charter school “shall continue to qualify as a charter school for all purposes” after revocation through the appeal process if revocation is based on violation of the charter and/or failure to meet pupil outcomes – entitled to full funding, “grants, resources, and facilities in order to ensure that the education of pupils enrolled in the school is not disrupted.”



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# Charter School Closure

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- Closure procedures governed by 5 CCR, §§ 11962, 11962.1
- Unclear who is responsible for closure
  - Charter? Authorizer?
  - Regs refer to “Procedures” without imputing responsibility for compliance and “Duties of Chartering Authority” #
- Authorizer as oversight agent is ultimately responsible for ensuring that proper action is taken to close school



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# Charter School Closure

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- Procedures for Closure:
  - Designation of a “responsible entity” to conduct closure-related activities
    - #Auditor?
    - #Charter Director or Employee?
    - #Authorizer Staff?
    - #Charter Business Services Vendor?



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# Charter School Closure

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- Procedures for Closure:
  - Completion of an independent final audit within six months after the closure of the school that may function as the annual audit, and that includes at least the following:
    - #Accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value
    - #Accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans, and unpaid staff compensation
    - #Assessment of the disposition of any restricted funds received by or due to the charter school



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# Charter School Closure

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- Procedures for Closure:
  - Disposal of any net assets remaining after all liabilities of the charter school have been paid or otherwise addressed, including:
    - #Return of any grant funds and restricted categorical funds to their source in accordance with the terms of the grant or state and federal law (may include submission of final expenditure reports for entitlement grants and the filing of any required Final Expenditure Reports and Final Performance Reports)
    - #Return of any donated materials and property in accordance with any conditions established when the donation of such materials or property was accepted



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# Facilities Under Prop 39

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- School districts with charter schools operating in their boundaries may be obligated to provide facilities for charter school students under Proposition 39. (Ed. Code, § 47614.)
- The request cycle is annual and starts November 1 each year and culminates in May with the charter school's acceptance or rejection of the district's final offer.



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## Facilities Under Prop 39

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- Proposition 39 obligates school districts to provide *reasonably equivalent* facilities to charter schools who project or enroll at least 80 ADA from that district.
- This obligation applies even if the charter was *granted by another agency* (such as a county board of education or the State Board of Education.)



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## Facilities Under Prop 39

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- Facilities offered must be *contiguous, furnished and equipped, and reasonably equivalent* to district schools that the charter school students would have otherwise attended. The State Board of Education has implemented detailed regulations defining the key terms of Proposition 39. (5 CCR, §§ 11969.1 et seq.)



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