



LEGAL CHALLENGES FACING NONCLASSROOM-BASED CHARTERS IN CALIFORNIA

BY MELANIE WOLFE '20

California passed the California Charter School Act in 1992, becoming only the second state (after Minnesota) to offer families in its 1,025 districts the opportunity to choose whether their needs were better met by a public charter school. The state intended to offer parents an alternative to traditional public schools and encourage local leaders to experiment with new educational techniques. Early proponents believed that charter schools may better suit low-income students facing an opportunity gap, along with students seeking an education tailored to a certain disability, academic interest, or demanding professional schedule.

Charter schools receive public funding and must meet three basic state requirements. They must provide nonsectarian education,

charge no tuition, and admit all interested California students up to school capacity. Charter schools are established through a petition process. For a new charter school that is not a conversion of an existing public school, the petition must have the signatures of either 50 percent of the teachers meaningfully interested in teaching at the school, or 50 percent of the parents of pupils expected to enroll at the school. For a charter school that is a conversion of an existing public school, the petition must have signatures of 50 percent of the teachers at the school to be converted. The petition must include a description of the schools educational program, student outcome measurements, student discipline policy, employee policies, governance structure, and fiscal plans.

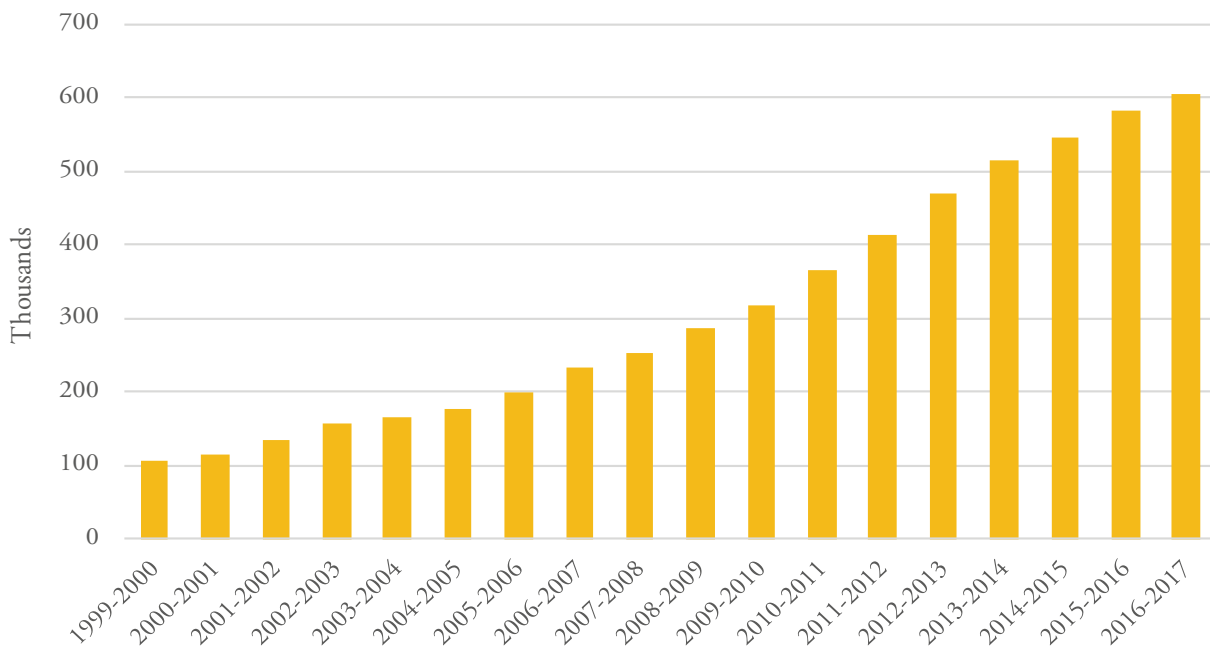
There are three entities that can authorize charter petitions: the district where the charter school will be located, its county office of education, or the State Board of Education. A charter school whose petition is rejected by its district may appeal to its county office of education or the State Board of Education. The initial authorization is for a period of up to five years.

Since the legislature authorized charter schools in 1992, California now leads the country with the most charter schools and charter school students. According to the California Charter Schools Association, enrollment has steadily increased from 104,730 students in 1999-2000 to 603,632 students in 2016-17. There are now 1,254 charter schools in California, enrolling 9.2 percent of the state’s K-12 students. The California Charter School Association reports that 56 charter

schools opened in the 2016-2017 school year, adding 30,880 new charter school students. Although 28 charter schools closed over the same period, Southern California remains the region with the highest growth of new charter schools, and the greater Los Angeles area is the region with the second highest growth in the country. Nationally, public charter school enrollment had grown at an even faster pace. According to the National Alliance for Public Charter Schools enrollment has grown from 1.2 million students in 2006-07 to an estimated 3.1 million in 2016-17.

Charter Schools are also popular in the Inland Empire. Riverside County has 26 charter schools, of which six hold charters from the county office of education. Twenty of the charter schools in Riverside County offer site-based instruction, three are for independent study students, and three offer a combination

CALIFORNIA CHARTER SCHOOL ENROLLMENT 1999-2017



Source: National Alliance for Public Charter Schools

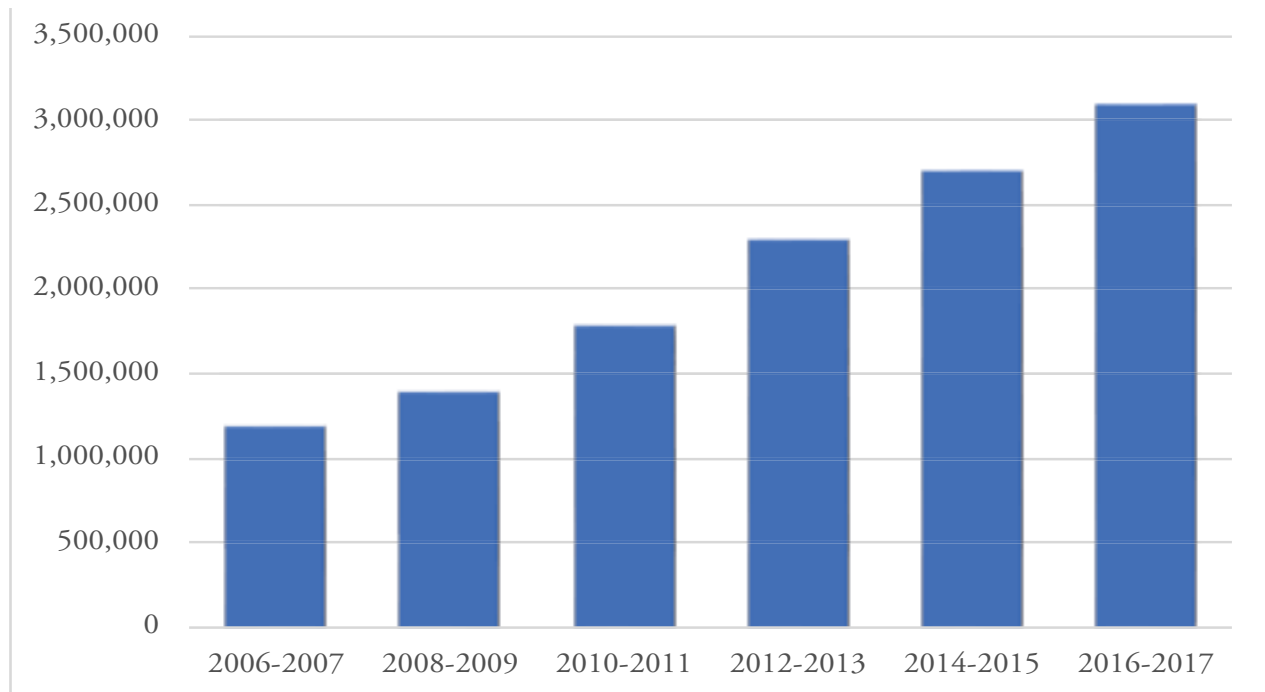
of site-based and independent study. San Bernardino has 38 charter schools. Twenty-three offer site-based instruction, 13 are for independent study students, and two offer a combination of site-based and independent study. Of the 38 charter schools in San Bernardino County, only two are chartered through the county office of education.

Charter schools are exempt from most state laws and regulations. Instead, each charter school is accountable to the entity that grants its charter, a legal agreement between the school and the authorizer. The school must comply with the terms of its charter, the Charter Schools Act, and other specified laws. The authorizing entity (school district, county office of education, or the State Board of Education) is responsible for ongoing oversight of the charter school and typically charges a fee of up to one percent of the charter school’s rev-

enue to cover the cost of oversight activities. As charter schools have grown, their charge has expanded in turn—many education commentators and charter school advocates credit charters with fostering innovation and filling a need for a creative and flexible public education. In turn, charter schools add support to the broader school choice movement, which also encompasses programs such as magnet schools, education vouchers, scholarship tax credits, and education savings accounts.

California charter schools offer two types of instruction. About 80 percent of charter schools offer traditional, classroom-based instruction and about 20 percent offer some form of independent study, such as distance learning or home study. Independent study schools are also known as nonclassroom-based schools. They usually consist of a combination of homeschooling, optional

NATIONAL CHARTER SCHOOL ENROLLMENT 2006-2017



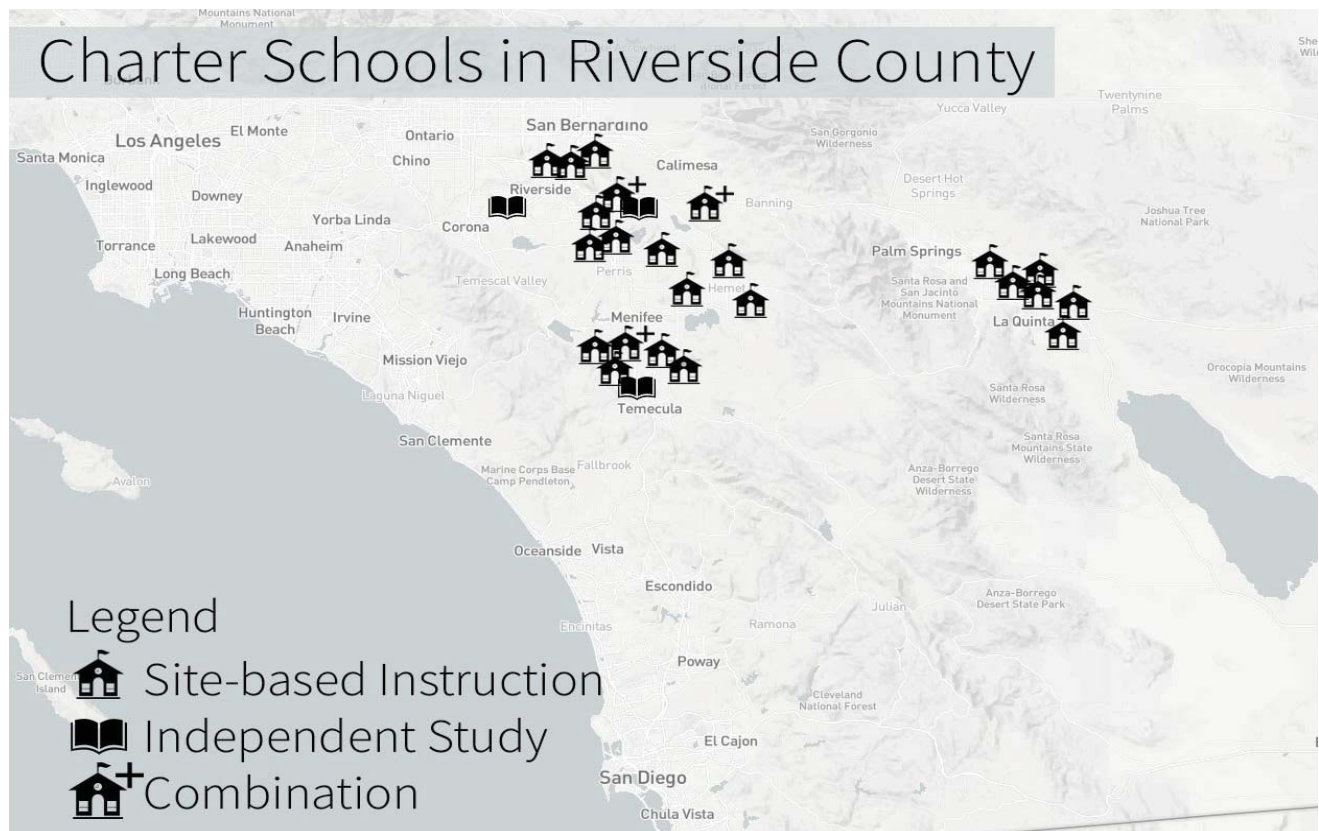
Source: National Alliance for Public Charter Schools

group classes, online courses, student driven electives, concurrent enrollment at a campus site of the authorizing school district, and college level courses.

A recent judicial ruling in a northern California case may slow down the rapid growth of the state’s nonclassroom-based charter schools. *Anderson Union High School District v. Shasta Secondary Home School* (hereafter *Anderson v. Shasta*), involved a challenge to a nonclassroom-based charter school. The issue presented is whether state law governing charter schools permits a charter school – that is authorized by a school district and provides support for nonclassroom-based independent study – to locate a resource center outside

the geographic boundaries of the authorizing school district but within the same county.

Resource centers often serve as satellites for nonclassroom-based independent study charter schools. In this case, the defendant, Shasta Secondary Home School (SSHS) was a nonclassroom-based school established in 1999. The Shasta Union High School District authorized the charter and is responsible for oversight of SHSS. SHSS had two resource centers located within the boundaries of the authorizing district to provide students with tutoring, special education services, computer and science labs, and student work spaces. SSHS opened a third resource center in July 2013. The new resource cen-



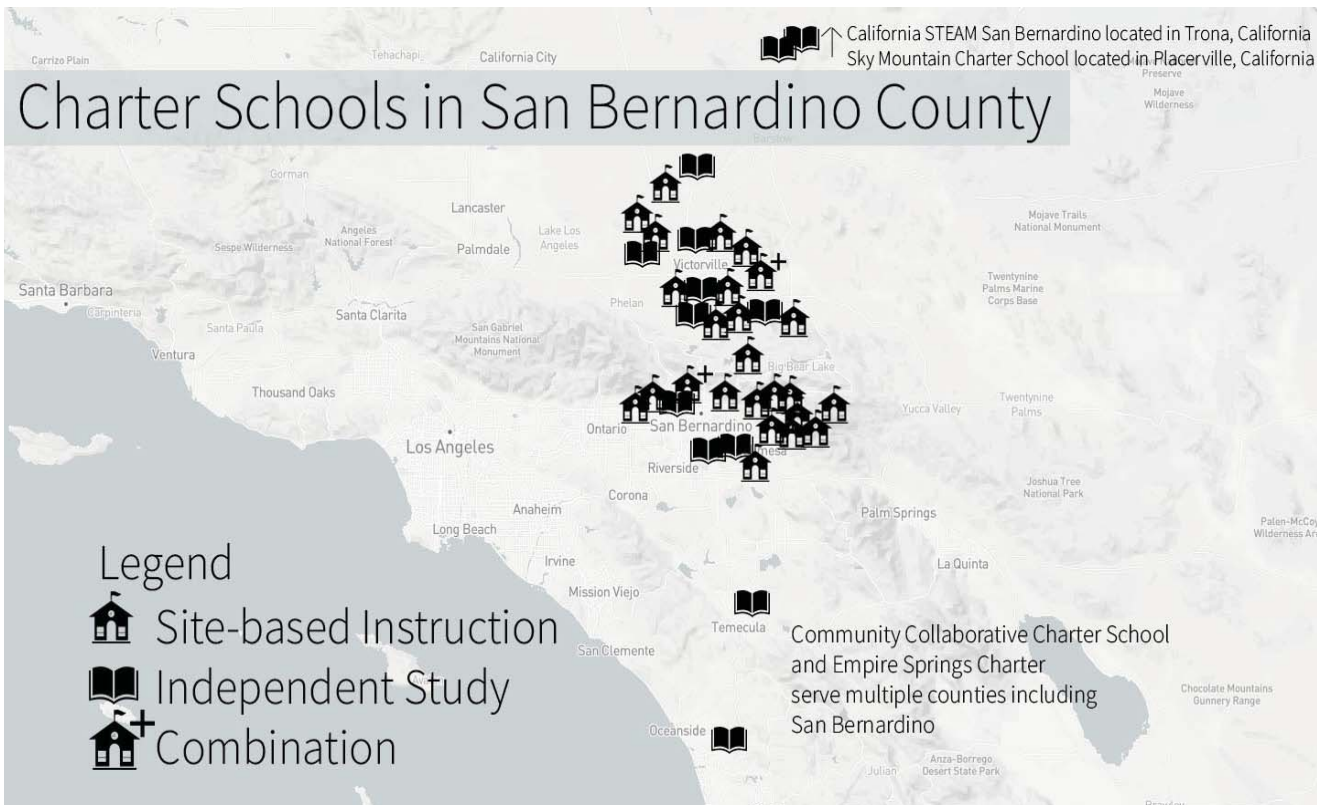
Source: California Department of Education, *Charter Schools in California*, <https://www.cde.ca.gov/ds/si/cs/ap1/imagemap.aspx>, accessed 10/11/2017.

Graphic: Melissa Muller '18

ter was housed in one room of an elementary school in the neighboring district, Anderson Unified School District, located within Shasta County (the home county of the charter and the authorizing district) but outside the boundaries of the authorizing district, Shasta Union High School District. In August 2013, the Anderson Unified School District filed a complaint against the SSHS arguing that the new resource center violated the geographic site restrictions found in the California Charter School Act. That law requires charters to operate school sites in the geographic boundaries of the school district but allows nonclassroom-based schools to establish resource centers, meeting space, or other satellite facilities located in a county adjacent to that in which the charter school is authorized.

The trial court sided with Shasta based on its understanding that omitting a provision authorizing in-county resource centers did not amount to a prohibition on these resource centers. That decision was reversed by the Third District Court of Appeals in a decision issued on October 17, 2016. The appellate court emphasized “the plain language of the statute” and was unconvinced by the trial court decision rooted in legislative intent. The California State Supreme Court declined to hear SSHS’s subsequent appeal so the Third District’s decision stands.

Nonclassroom-based charters tend to rely on resource centers so that their students—who spend most of their time engaging in some form of independent study—have access



Source: California Department of Education, *Charter Schools in California*, <https://www.cde.ca.gov/ds/si/cs/ap1/imagemap.aspx>, accessed 10/11/2017.

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to a nearby satellite of the main charter site that can provide them with educational support. The Charter Schools Act section of California's Education Code specifically establishes this narrow functional definition of resource centers. The statute also draws a distinction between support sites that students use regularly for academic support and sites that schools use solely to facilitate standardized testing or occasional meetings for students of NCBs. The latter do not count as resource centers, and thus are not affected by the *Anderson v. Shasta* ruling.

The statutory peculiarity that led to this decision—and the reason it has been so contentious—is that the Education Code explicitly permits resource centers to exist outside of the charter's parent district so long as the satellite resource center is also outside of the home county. The code is silent on the issue of resource centers outside of the district in the same county as the parent charter. Charter

school proponents argue that an out-of-county allowance encompasses the more moderate out-of-district allowance and further claim that there is no logical reason to limit resource centers geographically. Doing so, they say, only harms the students who need access to them. In response, charter school opponents argue for a strict statutory construction, saying that if state lawmakers had wanted to allow for out-of-district resource centers within the parent charter's county, they would have written that into the law.

There is a policy argument behind limiting the expansion of NCBs via networks of resource centers. By their very nature, resource centers are auxiliary to an educational program, and policymakers may be reluctant to treat them as a replacement for one. A student attending a charter school who does not have access to a main charter campus, but only an auxiliary resource center, may not have a tangible connection to her charter school. Furthermore,



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CALIFORNIA STUDENT DEMOGRAPHICS

Student Demographic	Charter Public School % Enrollment	Traditional District School % Enrollment
African American	5%	5%
Latino	51%	55%
Asian	5%	9%
White	28%	23%
Other	8%	7%
English Learner	17%	22%
Free or Reduced	59%	62%
Students with Disabilities*	10%	11%

*Percentage of 2016 CAASPP test-takers; may not be a direct reflection of actual enrollment.

Source: 2016-2017 California Charter Public Schools Fact Sheet, August 2017.

under California law, authorizing school districts are responsible for oversight of charter schools. Charter school opponents argue that districts cannot do this if the charter is located outside of the district. Proponents respond that the law allows resource centers in other counties so oversight within the same county should not be an impediment.

Charter schools are quite sensitive to enrollment shifts, while traditional public schools rarely close due to poor performance or shrinking enrollment. If charter schools continue to expand at the expense of public school enrollment, policymakers and district school boards may have to reconsider their reluctance to close traditional public schools. On the oversight question, the *San Diego Union Tribune* reports that “tens of thousands of California students attend satellite charter schools that operate in shopping malls, office parks and other unlikely campus venues within boundaries of school districts that did not authorize them.” *Tribune* reporter Maureen Magee notes that “the appellate court decision puts at stake the education of students and millions

of dollars in revenue generated by the charters for privately run organizations.”

The *Anderson v. Shasta* ruling has left resource centers with three apparent options: close their doors, relocate to outside of the county in which their parent charter has been authorized, or apply for a wholly separate charter through the same process that their parent charter was authorized. Resource centers that take on the risk and financial burden of pursuing the latter option face the real possibility that the authorizer can reject their charter application. At this point, the resource center (or any other nontraditional school whose charter application is rejected) has the opportunity to appeal to the county board of education or the State Board of Education. Ultimately a trend of charter rejections at the lowest level of authorization will result in fewer charters overall, even if appeals to the State Board of Education may be successful.

Given the reality of resource center closures, it is worth considering who exactly will be forced to seek out a new NCB or traditional school option. The *San Diego Tribune* re-



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ports that nonclassroom-based charters were educating 72,459 students in 2008; this number rose to 141,752 in 2016. California's nonclassroom-based schools commonly serve "children home-schooled for religious reasons, students who struggled in a regular school environment, and child actors and athletes needing a flexible schedule" according to *EdSource*, estimating that up to 38,000 students could face readjustments to their charter school arrangements as a result of *Anderson v. Shasta*.

According to the California Charter Schools Association, the demographics of charter schools in the state mirror those of traditional public schools. Latino students make up 51% of charter school enrollment and 55% at traditional public schools. African American

students make up 8% at charters and 5% at traditional public schools. Roughly two-thirds of the students in both populations are eligible for free or reduced lunch, 59% at charters and 62% at traditional schools. This consistency of socio-economic integration between traditional and charter schools is also reflected nationally, according to education researchers at RAND in their report, *Charter Schools in Eight States: Effects on Achievement, Attainment, Integration, and Competition*. They also found that the kinds of students transferring to charter schools were generally low-achieving, but are more successful at charter schools than traditional public schools. The Rand researchers found that states with data on education attainment outcomes reflect "statistically significant and substantial increases in the probability of graduating and

of enrolling in college” for students attending charter schools.

The battle between California’s traditional and charter schools has been brewing since the turn of the millennium. School districts have resorted to expanding online programs and making use of technology that makes it easier to supplement classroom instruction with teacher-guided independent-study programs in an attempt to compete with independent-study charters. Even in terms of access to facilities—an area where traditional schools would seem to have a leg up—state law requires school districts to share unused space with charter schools. That requirement was enacted by Proposition 39, a voter initiative in 2000. This can result in a charter school and a traditional public school operating in the same building.

This tension came to a head (quite publicly) leading up to the most recent Los Angeles Board of Education elections in May 2017. The *Los Angeles Times* reported that \$15 million poured into the contest. The California Teachers Association and the California School

Boards Association organized and spent on the side of traditional schools and the California Charter Schools Association represented the interests of the state’s charter schools. This was one of the few school board elections in which the unions were outspent by their opponents. The pro-charter entities spent \$9.7 million, defeating the incumbent board chair and resulting in a board with a majority of charter-friendly members. The unions spent \$5.2 million opposing the chart-friendly candidates. Two of the highest overall contributions to the race were \$5,144,716 from the Parent Teacher Alliance on behalf of charter groups and \$4,128,206 from the United Teachers Los Angeles conglomerate on the behalf of teachers’ union groups. Given the current countervailing forces at the local level (school boards), courts, and the opening that remains for legislative action, the issue of resource centers and charter schools is far from settled. With a tenth of California’s total K-12 public-school student population currently enrolled in charter schools, charter schools will continue to be in the news. ◆