

COLORADO STATE BOARD OF EDUCATION

2008 REVISED ADMINISTRATIVE POLICY

ON CHARTER SCHOOL APPEALS

A. CHARTER SCHOOL APPEAL ADMINISTRATIVE PROCEDURES

1. A charter applicant or any other person (the appellant) who wishes to appeal a decision of a local board of education (local board) concerning the denial of a charter school application, the non-renewal or revocation of a charter school's charter, or the unilateral imposition of conditions on a charter applicant, shall file a notice of appeal with the State Board of Education (State Board) and the local board within thirty (30) days after the local board's decision. Any disputes arising with regard to governing policy provisions of a charter school's charter contract shall be resolved as provided for in section B. below. For purposes of these procedures, the term "governing policy provisions" shall include any provision entered into pursuant to sections 22-30.5-105 and 106, C.R.S. The term "governing policy provisions" shall exclude any service contracts between the charter school and the district entered into pursuant to section 22-30.5-104(7)(b), C.R.S.

B. DISPUTE RESOLUTION PROCESS

1. This section applies to any disputes that may arise between a charter school and its chartering school district concerning governing policy provisions of the school's charter contract.
2. A charter school or its chartering school district may initiate a resolution to any dispute concerning a governing policy provision of the school's charter contract by providing reasonable written notice to the other party of an intent to invoke section 22-30.5-107.5, C.R.S. Such notice shall include, at a minimum, a brief description of the matter in dispute and the scope of the disagreement between the parties.
3. Within thirty (30) days after receipt of the written notice, the charter school and the school district shall agree to use any form of alternative dispute resolution to resolve the dispute, including but not limited to any of the forms described in the "dispute resolution act," Part 3 of Article 22 of Title 13, C.R.S.; except that any form chosen by the parties shall result in final written findings by a neutral third party within one hundred twenty days after receipt of such written notice. The neutral third party shall apportion all costs reasonably related to the mutually agreed upon dispute resolution process between the charter school and the school district.

4. A charter school and its chartering school district may agree to be bound by the written findings of the neutral third party resulting from the alternative dispute resolution process. In such case, these findings shall be considered final and not subject to appeal.
5. If the parties do not agree to be bound by such written findings of the neutral third party, the parties may appeal such findings to the State Board. A party who wishes to appeal such findings shall provide the State Board and the other party with a notice of appeal within thirty (30) days after the release of such findings. The notice of appeal shall contain a brief description of the grounds for appeal, and must be accompanied by the written findings of the neutral third party. Within fifteen (15) days of filing the notice of appeal, the appellant may file a position statement, attaching any relevant materials, with the State Board. The appellee may then file its position statement, attaching any relevant materials, with the State Board within fifteen (15) days after service of the appellant's position statement on the appellee. The appellant may then file a reply to the appellee's position statement within ten (10) days of service of the appellee's position statement on the appellant. Said position statements must conform to the rules for briefs set forth in section F. of these procedures. The State Board may then, without holding a hearing, consider said written findings, position statements and other relevant materials in reaching its decision.
6. The State Board may, on its own motion, conduct, after sufficient notice, a *de novo review* of and hearing on the underlying matter. Any such review shall be conducted, to the extent practicable, pursuant to the procedures set forth in sections D through G of these procedures.
7. After review of the notice of appeal and any relevant materials, the State Board shall:
 - A. Issue its decision on the written findings of the neutral third party resulting from any alternative dispute resolution entered into pursuant to this section within sixty (60) days after receipt of the notice of appeal; or
 - B. Make its own findings within sixty (60) days after making its own motion for a *de novo review* and hearing as described in paragraph 6 of this section.
8. If the State Board, after motion by one of the parties and sufficient notice and hearing, finds that either of the parties to an alternative dispute resolution process held pursuant to this section has failed to participate in good faith in such process or has refused to comply with the decision reached after agreeing to be bound by the result of such process, the State Board shall resolve the dispute in favor of the aggrieved party.
9. Any decision by the State Board pursuant to this section shall be final and not subject to appeal.

C. NOTICE OF APPEAL OR FACILITATION

1. A notice of appeal or facilitation shall identify all parties involved in the proceeding before the local board, including the charter applicant and the school district.
 - a. Notice of appeal A notice of appeal shall be limited to the grounds for the appeal; the facts and information which support the appeal; the written findings of the local board; names, addresses, and phone numbers of the appellants; and the requested remedies. If the appeal is of a denial, a non-renewal, or revocation of a charter, the appellant shall limit the grounds of appeal to the grounds for denial specified by the local board.
 - b. Notice of facilitation A notice of facilitation shall include the names, addresses and phone numbers of the parties, and the proposed name of the school.

2. The notice of appeal or facilitation must be received by the State Board and all affected parties within thirty (30) days after the local board's decision. All filings must be submitted electronically to the State Board email box: state.board.efilings@cde.state.co.us. Electronic files shall be less than 20 MB and provided in PDF format or Microsoft Word. Three (3) hard copies shall be hand delivered or mailed via U.S. Mail contemporaneously with the electronic filing to: State Board of Education Office, 201 East Colfax Ave., Suite 506, Denver, CO 80203.

A copy of all documents filed with the State Board shall be filed contemporaneously with all parties involved and proof of mailing shall be provided to the State Board. Facsimile transmissions of documents shall not be accepted. The parties may waive timelines upon mutual agreement of both parties and with State Board approval.

D. PREPARATION AND FILING OF THE RECORD ON APPEAL

1. The appellant shall request the record on appeal, prepared in conformance with this section, from the school district no later than twenty (20) days after the decision of the local board, which is the subject of the appeal. The record on appeal shall be prepared by the school district at its own cost. One copy shall be delivered to the charter applicants forthwith. Appellants shall follow the filing instructions outlined in section C.2. above. The cost of copying the record on appeal shall be borne by the appellants.
2. The record on appeal shall consist of all the documents and other materials considered by the local board in rendering its decision. At a minimum, the record on appeal shall include, but not be limited to, the following:
 - A. The charter application (if applicable), including all proposed written amendments thereto;
 - B. The written grounds for denial required by section 22-30.5-107(4), C.R.S.;

- C. The report of the district accountability committee prepared pursuant to section 22-30.5-107(1);
 - D. Any written record of the local board meetings at which the application or other action concerning the charter school was considered;
 - E. All written correspondence between the school district and the charter applicants/charter school concerning the application/ renewal or board action; and
 - F. All other documents, reports, correspondence and other written or electronic materials considered by the local board relating to the matters at issue.
3. The appellants shall have five (5) days from the date of receipt of the record on appeal to file any objections or proposed additions to the record with the Commissioner. The Commissioner shall rule forthwith on any such objections or proposed additions, and such ruling shall be final.

E. PROCESSING NOTICES OF APPEAL

- 1. Within ten (10) business days of receipt of the notice of appeal, the affected parties shall be notified in writing if the appeal is accepted or rejected by the State Board. The appeal will be accepted if it meets the legal standards set forth in the Act, is timely, and is within the jurisdiction of the State Board.
- 2. If the State Board accepts the appeal, it shall conduct a hearing and *de novo review* of the appeal, and issue a decision within sixty (60) days of the date upon which the notice of appeal is received. The notification sent to the parties shall include the date, time, and location of the public hearing to be held regarding the appeal. Additionally, public notice of the hearing shall be made in the same manner as public notice of the State Board's regularly scheduled meetings.
- 3. The appeal process may be initiated by the State Board upon its own motion at any time. The State Board may review, on its own motion, any decisions of any local board of education concerning the denial of a charter school application, the nonrenewal or revocation of a charter school's charter or the unilateral imposition of conditions on a charter applicant or charter school. If the State Board moves to review a local board decision regarding charter schools, the State Board shall notify all affected parties of the reasons for the review, of the date, time and location of the public hearing, and shall require pertinent information to be submitted from the affected parties. A decision on the State Board's own motion to review a charter school shall be rendered within sixty (60) days of the making of a motion to review by the State Board.

F. BRIEFING

1. In any appeal, each party shall submit to the State Board and the other parties briefs limited to the specific grounds for the appeal and to the evidence contained in the record on appeal. Prior to the filing of the opening brief, the parties should attempt to determine which facts are not in dispute and can be stipulated to. Each party's initial brief must contain a recitation of facts divided into two sections: stipulated facts and disputed facts. All filings shall follow the guidelines in section C.2. The State Board may refuse to consider briefs not submitted to the other parties in a timely manner, and will not consider arguments that do not relate to the specific grounds of the appeal, or evidence that is not contained in the record in appeal.
2. The Director of State Board Relations shall schedule a Scheduling Conference with the parties for the purpose of setting briefing deadlines. The intent of the Scheduling Conference is to reach an agreement on briefing deadlines, using the following guideline: The Commissioner shall issue a Scheduling Order on behalf of the State Board which shall be binding upon the parties. The Scheduling Order shall include deadlines for briefs, using the following guidelines. Appellant's opening brief will be filed within fifteen (15) days after the filing of the notice of appeal. The local board's answer brief will be filed within fifteen (15) days after service of the opening brief on the local board. The appellant may then file a reply brief no later than ten (10) days after service of the answer brief on the appellee.
3. Except by permission of the State Board, pursuant to paragraph 4 below, briefs shall not exceed twenty (20) pages, and may be produced by any duplicating or copying process which produces a clear black image on white paper. All briefs shall be on 8.5 X 11 inch paper, with double spacing between each line of text, except quoted material and footnotes, and bound at the top left corner, if submitted in hard copy format. Typewritten text, including footnotes must be no smaller than 10-pitch spacing, and there must be no more than twenty-six (26) lines of text per page. Margins shall be no less than one (1) inch at the top, bottom, left, and right.
4. The Scheduling Order shall include deadlines for motions, using the following guidelines: Motions to exceed page limitations shall be filed no later than five (5) calendar days before the brief at issue is due. Objections to briefs submitted by the opposing party are due no later than five (5) calendar days after the brief at issue was served.
5. The Commissioner may refuse to accept any brief that does not comply with the above policies.

G. PROCEDURES FOR SECOND APPEALS

1. If, after a remand from the State Board and subsequent decision of the local board or a failure of facilitation and subsequent final decision of a local board, a party chooses to appeal a denial of an application, a refusal to renew or revocation of a charter, or the unilateral imposition of conditions on a charter school applicant, the notice of appeal must be filed with the State Board within thirty (30) days following such decision. Within five (5) business days of the receipt of the notice of appeal, the affected parties shall be notified in writing if the appeal is accepted or rejected by the State Board. The appeal will be accepted if it meets the legal standards set forth in the Act, is timely, and is within the jurisdiction of the State Board.
2. The supplemental record on appeal shall be prepared as provided for in section D and filed by the appellant at the same time as the notice of appeal. The supplemental record on appeal shall consist of the written decision of the local board and any materials considered by the local board and/or enumerated in section D that are not already contained in the record on appeal.
3. If the State Board accepts the appeal, it shall conduct a hearing and issue a decision within thirty (30) days of the date upon which the notice of appeal is received. The notification sent to the parties shall include the date, time, and location of the public hearing to be held regarding the appeal. Briefs shall be filed by the parties no later than five (5) calendar days prior to the date of the hearing. Briefs shall be limited to the specific grounds for appeal and to the evidence contained in the record and supplemental record on appeal. Any motions must be filed no later than five (5) calendar days prior to the date of the hearing.
4. The hearing of an appeal after remand or after a decision following the failure of facilitation will be conducted in the same manner provided in section H. below.
5. Upon appeal after remand or after a decision following the failure of facilitation, if the State Board finds that the local board's decision to deny an application, to refuse to renew, to revoke a charter, or to unilaterally impose conditions that are unacceptable to the charter school applicant was in the best interests of the pupils, school district or community, the State Board shall uphold the local board's decision. The decision of the State Board shall be a final agency action.
6. Upon appeal after remand or after a decision following the failure of facilitation, if the State Board finds that the local board's decision was contrary to the best interests of the pupils, school district, or community, the State Board shall remand such decision to the local board, the second time with instructions to approve the application, to renew or reinstate the charter, or to approve or disapprove the conditions imposed on the charter applicant. The decision of the State Board constitutes a final agency action.

H. CONDUCT OF THE HEARING

1. The burden of proof shall be on the appellant.
2. The Scheduling Order shall contain deadlines pertaining to the following matters, using the following as guidelines: No later than ten (10) days prior to the hearing, the parties shall designate in writing the person who shall present oral arguments at the hearing, and serve such designation on the opposing party. The parties may, in their discretion, additionally designate up to three (3) other individuals at this time who shall not present oral arguments, but who shall be available at the hearing to answer questions from the State Board. The designation shall identify each individual by name, title and area of designated expertise. The parties may amend their designations no later than five (5) days prior to the hearing, and serve such amendments on the opposing party. Copies of the designations shall be delivered to the State Board.
3. At the hearing, each party shall have a maximum of thirty (30) minutes to present oral arguments based on the briefs and record on appeal presented to the State Board. The State Board may interrupt with questions.
4. At the beginning of the hearing, each party shall designate the amount of time it wishes to reserve for rebuttal.
5. The hearing shall proceed as follows:
 - a. The appellant shall present its arguments, including questions from the State Board.
 - b. The appellee shall present its arguments, including questions from the State Board.
 - c. The appellant shall present its rebuttal.
 - d. The appellee shall present its rebuttal.
 - e. The State Board shall deliberate and render its decision.
6. Public record shall be kept of the hearing.
7. If the State Board finds that the local board's decision: a) to deny an application; b) to refuse, to renew, or to revoke a charter; or c) to unilaterally impose conditions on the charter school applicant; was contrary to the best interests of the pupils, school district, or community, the State Board shall remand such decision to the local board the second time with instructions to approve the application, to renew or reinstate the charter, or to approve or disapprove the conditions imposed on the charter applicant. The decision of the State Board constitutes a final agency action. The State Board's instructions shall include specific

recommendations related to the grounds for appeal which the State Board finds shall be reconsidered by the local board.

8. If the State Board finds that the local board's decision: a) to deny an application; b) to refuse to renew or to revoke a charter; or c) to unilaterally impose conditions on the charter school applicant; was not contrary to the best interests of the pupils, school district, or community, the State Board shall uphold the decision of the local board.

I. ISSUANCE OF STATE BOARD OF EDUCATION DECISIONS

1. As required under the Charter Schools Act, the written decision of the State Board will be issued within sixty (60) days of receipt of an appeal. In the case of an appeal of a remand or a failure of facilitation and subsequent final decision of a local board, the State Board will render a decision within thirty (30) days. The parties by mutual agreement and State Board approval may extend the period of time within which the State Board will issue its decision.

J. EXTENSION OF PROCEDURAL TIMELINES

1. Once the State Board accepts an appeal, the parties may mutually request an extension of the procedural timelines but will make every effort to adhere to the agreed-upon deadlines set forth in the Scheduling Order. It is within the discretion of the State Board to grant or deny the request.

K. REVIEW OF CHARTER APPLICATIONS ON ITS OWN MOTION

1. The State Board may review, on its own motion, any local board of education decision concerning the denial of a charter school application, the nonrenewal or revocation of a charter school's charter, or the unilateral imposition of conditions on a charter applicant or charter school. The State Board's motion to review will be processed in accordance with these guidelines.

L. CHARTER SCHOOL WAIVERS

1. If waivers are imbedded in a charter, the applicant and local board must jointly file a separate waiver request with the State Board following the approval of the charter. The process required when seeking a State Board waiver of statute and/or rule is outlined in 22-2-117, *Colorado Revised Statutes*, and *Colorado Code of Regulations*, 1 CCR 301-35. The applicant and local board shall send charter school waiver requests to the Colorado Department of Education, Charter Schools, 201 East Colfax Avenue, Denver, CO 80203.

M. CHARTER SCHOOL CONTRACTS

1. Within fifteen (15) days following approval, a local board of education shall send a copy of each charter school contract to the Colorado Department of Education, School of Choice Unit, 201 East Colfax Avenue, Denver, CO 80203.

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