

COLORADO STATE BOARD OF EDUCATION

2007 ADMINISTRATIVE POLICY

CHARTER SCHOOL INSTITUTE APPEAL PROCEDURES

I. GENERAL PROCEDURES

The following procedures shall apply to all appeals pursuant to §22-30.5-510(4) and (5) and §22-30.5-511(5), C.R.S., (as amended).

A. Notice of Appeal

1. The Notice of Appeal shall include a brief statement of the reasons the person or entity filing the appeal (“appellant”) contends that the decision of the Charter School Institute Board was in error.
2. The Notice of Appeal shall be filed with the State Board of Education (“State Board”) and the Charter School Institute Board within thirty (30) days of the date of the decision of the Charter School Institute Board being appealed.

B. 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 Institute Charter School Act, §22-30.5-501, et seq., C.R.S., as amended, is timely, and is within the jurisdiction of the State Board.

C. Record on Appeal

1. The appellant shall request the record on appeal, prepared in conformance with this section, from the Charter School Institute Board no later than twenty (20) days after the decision of the Charter School Institute Board which is the subject of the appeal.
2. The record on appeal, except for the cost of any transcript, shall be prepared by the Charter School Institute Board at its own cost.
 - a) If a transcript of proceedings before the Charter School Institute Board is requested, the party requesting the transcript

shall bear the cost.

3. One copy of the record shall be delivered to the appellant within five (5) days of the filing of the Notice of Appeal. The appellant shall then file the record with the State Board within ten (10) days of receiving it from the Charter School Institute Board. In filing the record, Appellant shall submit twelve (12) hard copies of the record to the State Board. The cost of copying the record on appeal shall be borne by the appellant.

4. The record on appeal shall consist of all the documents and other materials considered by the Charter School Institute Board in rendering its decision. At a minimum, the record on appeal shall include, but not be limited to, the following:

a) The charter or renewal application (if applicable), including all proposed written amendments thereto;

b) The resolution stating the reason(s) for the Charter School Institute Board's action;

c) Any written record of the Charter School Institute Board meetings at which the application or other action concerning the charter school was considered;

d) All written correspondence between the Charter School Institute Board and the charter applicants/charter school concerning the application/ renewal or board action; and

e) All other documents, reports, correspondence and other written or electronic materials considered by the Charter School Institute Board relating to the matters at issue.

5. 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.

D. 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. All filings shall follow the guidelines in section I(F) below. 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. Appellant's opening brief shall be filed within fifteen (15) days after the filing of the notice of appeal. The Charter School Institute Board's answer brief shall be filed within fifteen (15) days after service of the opening brief on the Charter School Institute Board. The appellant may then file a reply brief no later than ten (10) days after service of the answer brief on the appellant.

3. Except by permission of the State Board, pursuant to paragraph I(D)(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 by 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. 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.

E. Time

1. Except as otherwise indicated, "days", as used herein, means calendar days. Where the last day of a given period falls on a Saturday, Sunday, or legal holiday, the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

2. The procedural timelines herein may be extended for cause shown. It is within the discretion of the State Board to grant or deny the request.

F. Filing

1. All filings can be submitted either electronically or in hard copy. If submitted electronically, one hard copy shall accompany the electronic files, mailed by the U.S. Mail to the address below.

- a) For motions of extension of time or supplemental records, an electronic filing alone will suffice.
 - b) In all cases, regardless of the manner of filing with the State Board, a hard copy of any paper filed with the State Board shall be served contemporaneously on all parties involved.
2. Electronic files shall be less than 20 MB in PDF format (preferred) or Microsoft Word. Such documents shall be emailed to state.board.efilings@cde.state.co.us.
 3. If submitted in hard copy only, twelve (12) copies must be sent to the State Board of Education Office, 201 East Colfax Ave., Suite 506, Denver, CO 80203.
 4. The State Board will not accept facsimile transmissions of briefs, motions or accompanying documentation.

G. Hearing

1. If hearing is allowed, the burden of proof shall be on the appellant.
2. No later than ten (10) days prior to the hearing:
 - a) The parties shall designate in writing the person who shall present oral arguments at the hearing, and serve such designation on the opposing party.
 - b) 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.
 - (1) The designation shall identify each individual by name, title and area of designated expertise.
 - c) 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 filed with 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 to the State Board. The State Board may interrupt with questions.
4. The hearing shall be limited to oral argument on the record on appeal.

5. At the beginning of the hearing, each party shall designate the amount of time it wishes to reserve for rebuttal.

6. The hearing shall proceed as follows:

a) The appellant shall present its arguments, including questions from the State Board.

b) The Charter School Institute Board shall present its arguments, including questions from the State Board.

c) The appellant shall present its rebuttal.

d) The Charter School Institute Board shall present its rebuttal.

7. The State Board shall deliberate and render its decision.

8. Public record shall be kept of the hearing.

H. Issuance of State Board of Education Decision

1. The written decision of the State Board will be issued within sixty (60) days of receipt of the Notice of Appeal. The parties by mutual agreement and State Board approval may extend the period of time within which the State Board will issue its decision.

II. APPEAL FROM DENIAL OF AN INITIAL APPLICATION

A. Parties on Appeal - A Notice of Appeal may be filed by the entity that submitted the charter school application.

B. Standard of Review - The State Board shall review the decision of the Charter School Institute Board and determine whether the decision of the Charter School Institute Board was arbitrary and capricious.

C. Hearing

1. Any party may petition the State Board for a hearing. A hearing may be allowed at the discretion of the State Board.

2. A request for hearing shall be made in a separate, appropriately titled document and filed (pursuant to the filing requirements of I(F) above) no later than four (4) days after the requesting party's initial brief is filed. Any party opposing a hearing may file a response to a request within 5 days of the filing of any such request.

D. Decision by the State Board.

1. If the State Board finds that the Institute Board's decision to deny an application was arbitrary and capricious, the State Board shall remand such decision to the Institute Board with instructions to approve the application.
2. If the State Board finds that the Institute Board's decision to deny an application was not arbitrary and capricious the State Board shall uphold the decision of the Institute Board.
3. The decision of the State Board constitutes a final agency action not subject to appeal.

III. APPEAL OF THE CHARTER SCHOOL INSTITUTE BOARD'S DECISION CONCERNING THE NONRENEWAL OR REVOCATION OF AN INSTITUTE CHARTER SCHOOL CONTRACT.

A. Parties on Appeal

1. A Notice of Appeal may be filed by the institute charter school or any other person who wishes to appeal the Charter School Institute Board's decision concerning the nonrenewal or revocation of an institute charter school contract.
2. 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, the decision of the Charter School Institute Board concerning the nonrenewal or revocation of an institute charter school contract.
 - a) If the State Board moves to review a decision of the Charter School Institute Board concerning the nonrenewal or revocation of an institute charter school contract, the State Board shall notify all affected parties of the reasons of the review, of the date, time and location of the public hearing, and shall require pertinent information to be submitted from the affected parties.

B. Standard of Review – The State Board shall determine whether the Charter School Institute Board's decision was contrary to the best interests of the pupils attending the institute charter school.

C. Hearing - The State Board shall conduct a hearing on the appeal concerning the nonrenewal or revocation of an institute charter school contract.

D. Decision by the State Board.

1. If the State Board finds that the Charter School Institute Board's decision concerning the nonrenewal or revocation of an institute charter school contract was contrary to the best interests of the pupils attending the institute charter school, the State Board shall remand such decision to the Charter School Institute Board with instructions to renew or reinstate the contract of the institute charter school.
2. If the State Board finds that the Charter School Institute Board's decision concerning the nonrenewal or revocation of an institute charter school contract was not contrary to the best interests of the pupils attending the institute charter school, the State Board shall uphold the decision of the Charter School Institute Board.
3. The decision of the State Board constitutes a final agency action not subject to appeal.

Adopted: April 12, 2007