

Arizona State Board for Charter Schools

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June 21, 2016



Nicole A. Ong, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

RE: Five-year-review Report on 7 A.A.C. 5, Articles 3 and 5

Dear Ms. Ong:

As required by A.R.S. § 41-1056, the State Board for Charter rules submits for your approval a report on a review of its rules. The Board reviewed all the referenced rules.

As required under A.R.S. § 41-1056(A), the Board certifies that it is in compliance with A.R.S. § 41-1091 regarding a substantive policy directory.

If you have questions regarding this report, please contact me at (602) 364-3091. Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Whitney Chapa".

Whitney Chapa
Executive Director

STATE BOARD FOR CHARTER SCHOOLS

Five-year-review Report: A.A.C. Title 7, Chapter 5, Articles 3 and 5

June 2016

Five-year-review Report

A.A.C. Title 7. Education

Chapter 5. State Board for Charter Schools

INTRODUCTION

Charter schools are public schools originally authorized by the legislature in 1994. Under A.R.S. § 15-181(A), charter schools provide academic choice for parents and pupils and a learning environment that improves pupil achievement. In exchange for greater accountability for improved student performance, charter holders are provided greater autonomy in operation. In the 2015-16 school year, more than 170,700 pupils attended 556 charter schools in Arizona. Approximately one in three of Arizona's public schools is a charter school and approximately 17 percent of pupils attend a charter school.

A person seeking to establish a charter school is required to have a sponsor (See A.R.S. § 15-183(A)). Almost all of Arizona's charter schools are sponsored by the State Board for Charter Schools (Board). An initial charter is issued for 15 years and can be renewed for 20 years. The sponsor of a charter school is required to review compliance with the charter every five years.

The Board's responsibilities include approving charter applications and renewals, overseeing charter school performance and accountability, and taking corrective action when necessary. The Board's oversight focuses on compliance with financial, legal, and contractual requirements, and academic performance and operational expectations.

In this report, the Board reviews its rules dealing with charter oversight and audit guidelines and contracts.

Statute that generally authorizes the agency to make rules: A.R.S. § 15-182(E)(5)

1. Specific statute authorizing the rule:

R7-5-301: A.R.S. § 15-183(R)

R7-5-302: A.R.S. § 15-183(R)

R7-5-303: A.R.S. § 15-183(R)

R7-5-304: A.R.S. §§ 15-183(I)(3) and (R) and 15-185

R7-5-501: A.R.S. §§ 15-183(E)(6) and 914 and Laws 1999, 1st S.S., Ch. 4, § 15

R7-5-502: A.R.S. §§ 15-183(E)(6) and 914 and Laws 1999, 1st S.S., Ch. 4, § 15

R7-5-503: A.R.S. §§ 15-183(E)(6) and 914 and Laws 1999, 1st S.S., Ch. 4, § 15

R7-5-504: A.R.S. §§ 15-183(E)(6) and 914 and Laws 1999, 1st S.S., Ch. 4, § 15

2. Objective of the rule including the purpose for the existence of the rule:

R7-5-301. General Supervision, Oversight, and Administrative Responsibility:

The objective of the rule is to provide notice to charter holders regarding the means by which the Board performs its administrative responsibilities and general supervision and oversight. This provides efficiency in the Board's ability to fulfill its statutory responsibilities.

R7-5-302. Corrective Action Plan:

The objective of the rule is to provide notice to charter holders of the factors considered when determining to require a corrective action plan (CAP), the requirements for preparing a CAP, and the consequences of failing to prepare or implement a CAP. This provides efficiency in the Board's supervision and oversight responsibilities.

R7-5-303. Site Visits; Records; Notice of Violation:

The objective of the rule is to provide notice to charter holders that the Board uses site visits to fulfill its supervision and oversight responsibilities, identify charter holders' responsibilities during a site visit, and possible consequences of a site visit. This provides efficiency in the Board's ability to fulfill its statutory responsibilities.

R7-5-304. Disciplinary Action:

The objective of the rule is to provide notice to charter holders regarding the factors considered by the Board when deciding on disciplinary action for a charter violation and the disciplinary options the Board may use. This provides efficiency in the Board's ability to fulfill its statutory responsibilities.

R7-5-501. Audit Guidelines:

The objective of the rule is to provide notice to charter holders of when and how the Board will make available audit guidelines. This provides efficiency in the Board’s supervision and oversight responsibilities by enabling charter holders to comply timely with the audit requirement.

R7-5-502. Approval of Audit Contracts:

The objective of the rule is to provide notice to charter holders that the Board is required to approve all audit contracts (See Laws 1999, 1st SS, Chap 4, § 15), the standards the Board uses to decide whether to approve an audit contract, and if an audit contract is disapproved, the audit firm’s ability to correct the issue causing disapproval. This provides efficiency in the Board’s ability to fulfill its statutory responsibilities by enabling charter holders to enter audit contract that meet Board standards.

R7-5-503. Audit Completeness Determinations:

The objective of the rule is to provide notice to charter holders regarding the standards the Board uses to determine whether an audit is complete and consequences of failing to submit a complete audit. This provides efficiency in the Board’s ability to fulfill its statutory responsibilities by enabling charter holders to submit complete audits.

R7-5-504. Review of Complete Audits:

The objective of the rule is to provide notice to charter holders regarding options the Board has for responding to a complete audit and expectations of charter holders following an audit. This provides efficiency in the Board’s ability to fulfill its statutory responsibilities.

3. Effectiveness of the rule in achieving the objective including a summary of any available data supporting the conclusion:

Although the rules are generally effective enabling the Board to fulfill its statutory responsibilities, the Board determined the rules could be more effective as follows:

R7-5-304(A): This subsection requires the Board to consider certain factors when determining an appropriate disciplinary action. However, all factors listed are not relevant to all disciplinary proceedings. The Board believes the rule would be more effective if the phrase “as applicable” is added to this subsection.

R7-4-502(B)(4): This standard for disapproval of an audit contract has changed. The Board will now disapprove an audit contract if the contracted audit firm receives a peer review rating of “fail” or if any auditor who will work on the audit has failed to meet required continuing education standards.

R7-5-503(B): This subsection indicates the Board will find an audit is incomplete if it does not include all items listed in the audit guidelines. The Board has determined the rule should also indicate an audit is incomplete if the audit is submitted by an audit firm that fails to meet the requirements of R7-5-502(B)(1) – (4).

R7-5-503(C): This subsection requires the Board to provide written notice to the charter holder when an audit is complete. The Board has determined the rule would be more effective if notice is also provided to the firm that prepared the complete audit.

R7-5-503(F): This subsection requires a charter holder whose audit is incomplete to appear before the Board for possible disciplinary action. However, the Board has found this is unnecessary when the charter holder is able to submit a complete audit before the Board meeting.

R7-5-504(C): This subsection requires a charter holder with a serious impact finding to appear before the Board for possible disciplinary action. However, the Board has found this is unnecessary when the charter holder is able to provide credible evidence that the charter holder will be in compliance at the time of the next audit.

4. Consistency of the rule with state and federal statutes and other rules made by the agency, and a listing of the statutes or rules used in determining the consistency:

Except as indicated below, the rules reviewed are consistent with A.R.S. Title 15, Chapter 1, Article 8, A.R.S. § 15-914, and Laws 1999, 1st S.S., Ch. 4, § 15:

R7-5-304(B), which lists possible disciplinary actions against a charter holder, is not consistent with A.R.S. § 15-185(I), which authorizes the sponsor of a charter school to impose a civil penalty for failure to comply with the fingerprinting requirement in A.R.S. §§ 15-183(C) and 15-512.

5. Agency enforcement policy including whether the rule is currently being enforced and, if so, whether there are any problems with enforcement:

The Board enforces all of the rules in a manner that is consistent with statute and in the best interest of the state. As authorized under A.R.S. § 15-185(I), the Board imposes a civil penalty for failure to comply with the fingerprinting requirement.

6. Clarity, conciseness, and understandability of the rule:

The rules are generally understandable but the conciseness and clarity of the rules could be improved. As indicated in item 7, there are important issues not addressed in the rules.

7. Summary of written criticisms of the rule received by the agency with the past five years, including letters, memoranda, reports, written analyses submitted to the agency questioning whether the rule is based on valid scientific or reliable principles or methods, and, written allegations made in litigation or administrative proceedings in which the agency was a party that the rule is discriminatory, unfair, unclear, inconsistent with statute or beyond the authority of the agency to enact, and the result of the litigation of administrative proceedings:

On January 21, 2016, two attorneys submitted a petition to the Governor's Regulatory Review Council under the provisions of A.R.S. § 41-1033(C) asserting that the Board has adopted several policy statements as "guidance" for charter holders that are actually rules as defined at A.R.S. § 41-1001. The attorneys requested that the Council consider the policy statements and find that they are void because they were not enacted in accordance with the Arizona Administrative Procedure Act. The Council decided not to hear the petition after receiving assurances from the Board that it would begin a rulemaking immediately to address

this issue. The Board opened a docket for the needed rulemaking on March 24, 2016 (See 22 A.A.R. 823, April 15, 2016).

8. A comparison of the estimated economic, small business, and consumer impact of the rule with the economic, small business, and consumer impact statement prepared on the last making of the rule or, if no economic, small business, and consumer impact statement was prepared on the last making of the rule, an assessment of the actual economic, small business, and consumer impact of the rule:

All of the rules reviewed were newly made in a rulemaking that went into effect on February 7, 2006. The economic, small business, and consumer impact statement prepared with the rulemaking is available. When the rules were made, the Board estimated the economic impact of the rules on charter holders would be minimal. This is because it is within the control of a charter holder to determine whether and to what extent the disciplinary oversight rules in Article 3 apply to the charter holder. If the disciplinary rules do apply to a charter holder, the cost of coming into compliance is minimal. Similarly, the rules in Article 5, which establish standards for statutorily required audits, impose minimal cost on qualified audit firms and charter holders. The Board believes it correctly estimated the rules would have minimal economic impact.

There are currently 556 charter schools in Arizona (443 charter holders) with an enrollment of 170,700 students. The Board sponsors 535 of the 556 charter schools. The remaining charter schools are sponsored by the Arizona State University and several school district governing boards. Beginning in FY2017, there will no longer be charter schools sponsored by school district governing boards because the authority of school district governing boards to sponsor charter schools is being phased out. In addition to the Board and ASU, the Department of Education and universities under the jurisdiction of the Arizona Board of Regents and community college districts are eligible to sponsor charter schools.

The Board fulfills its statutory responsibility to supervise charter holders by conducting site visits (76 were conducted in FY2016) and reviewing annual audit and Department of Education's performance data. As a result of supervising charter holders, the Board may determine a charter holder is not in compliance with its charter, other contractual agreements

with the Board, and statutory requirements or is not making sufficient progress towards performance expectations. When this happens, the Board may take several disciplinary steps.

The Board may require a charter holder to submit a correction action plan. During FY2016, 58 charter holders were required to submit a CAP. Issues giving rise to the need for a CAP are identified through the required audit or site visits. Frequent reasons for a CAP include failing to comply with the statutory fingerprinting requirement, failing to comply with federal or state payroll tax requirements, and failing to follow standard financial internal control procedures. A charter holder can generally prepare and complete a CAP within a month or two. However, for cases involving payroll taxes, for example, the time for completion may be longer because the charter holder's compliance cannot be determined until certain reports are submitted to taxing authorities.

Under A.R.S. § 15-185(H), the Board may ask the Department of Education to withhold funds from a charter holder. Funds were withheld from five charter holders in FY2016. The primary reason for withholding funds is failure to submit the required audit. When funds are withheld, the charter holder is required to prepare a CAP.

A charter holder that fails to meet academic performance expectations may be required to demonstrate it is making sufficient progress towards meeting the performance expectations. During FY2016, 144 charter schools (27 percent of those sponsored by the Board) were required to demonstrate sufficient progress.

A charter holder that has repeated issues of noncompliance may be required to enter a consent agreement that includes terms for compliance. During the last year, the Board determined three charter holders had serious impact findings due to repeat issues of noncompliance identified through audit. The Board has not, however, required them to enter into a consent agreement because it is continuing to gather data regarding compliance by two of the charter holders. The third charter will expire at the end of the fiscal year.

During FY2015, the Board entered consent agreements with two charter holders. If the charter holder fails to comply with a consent agreement, the Board can move to a hearing with the intent of revoking the charter. In FY2015, the Board voted to revoke two charters. One of the charter holders is still in process of appealing the revocation order.

The Board currently has 11 FTE positions filled but has 14 FTE authorized positions. During FY2016, the Board was appropriated \$990,200. Under A.R.S. § 15-183(CC), the Board charges applicants the full cost of application review and technical assistance.

9. Any analysis submitted to the agency by another person regarding the rule's impact on this state's business competitiveness as compared to the competitiveness of businesses in other states:

No analysis has been submitted.

10. How the agency completed the course of action indicated in the agency's previous 5YRR:

In a 5YRR approved by the Council on May 3, 2011, the Board indicated it would amend R7-5-303, R7-5-501, and R7-5-503. The Board did not complete the planned action because of staff shortages and a change in position for the individual who was working on revising the rules.

11. A determination after analysis that the probable benefits of the rule outweigh within this state the probable costs of the rule and the rule imposes the least burden and costs to persons regulated by the rule, including paperwork and other compliance costs necessary to achieve the underlying regulatory objective:

The Board believes the benefits of the rules reviewed outweigh their probable costs and impose the least burden and costs on charter holders. The rules in Article 3 are designed to protect the public by having the Board supervise charter holders to ensure they comply with their charters, other contractual agreements with the Board, and statutory requirements, and meet performance expectations. A charter holder that meets these expectations will incur no

costs. A charter holder that fails to meet the expectations will incur the cost of taking corrective actions.

The rules in Article 5 provide standards for the annual audit required by statute (See A.R.S. § 15-914). The rules impose minimal cost on charter holders. Charter holders are required by statute to submit the contract with an audit firm to the Board for approval before the audit is conducted. During FY2015, no audit contracts were disapproved by the Board.

12. A determination after analysis that the rule is not more stringent than a corresponding federal law unless there is statutory authority to exceed the requirements of that federal law:

There are numerous federal laws applicable to all schools including charter schools. These include the Every Student Succeeds Act, Family Educational Rights and Privacy Act, Individuals with Disabilities Education Act, and various civil rights statutes. All charters require that the holder comply with federal law. However, no federal law is specifically applicable to the rules reviewed so the rules are not more stringent than federal law.

13. For a rule made after July 29, 2010, that require issuance of a regulatory permit, license, or agency authorization, whether the rule complies with A.R.S. § 41-1037:

None of the rules was made after July 29, 2010.

14. Course of action the agency proposes to take regarding each rule, including the month and year in which the agency anticipates submitting the rules to the Council if the agency determines it is necessary to amend or repeal an existing rule or to make a new rule. If no issues are identified for a rule in the report, the agency may indicate that no action is necessary for the rule:

The Board intends to amend all the rules reviewed and make new rules to address the issue raised in the A.R.S. § 41-1033 petition submitted to the Governor's Regulatory Review Council in January 2016. The Board intends to complete the rulemaking by June 2017.