

**AGENDA ITEM: Proposed Rulemaking**

---

**Issue**

The Board’s staff is requesting that the Board take action to initiate rulemaking by filing a Notice of Rulemaking Docket Opening and directing staff to draft rules to revise and update the Board's rules to comport with current policies and to be more effective in achieving the Board's mission.

**Background**

When it established charter schools in Arizona, the legislature created the Board but delegated to the Board the responsibility to define how its own authorizing practices would function. The legislature specifically required that the Board “adopt rules for its own government” A.R.S. § 15-182 A and E5. A “rule” is an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.

The Board initially engaged in rulemaking and adopted rules for its government in 2004. In 2006, the Board again engaged in rulemaking and revised its rules. The Board did not again engage in rulemaking until 2014, when it adopted rules to address new charter applications and execution. (See attachment A for the Board’s current rules)

The Board recognized the need to make revisions to its rules in its 2009 and 2011 Five-Year-Review Reports to the Governor’s Regulatory Review Council. In both these reports, the Board indicated that while its rules are mostly effective and the public interest is protected by the Board’s many methods of notifying the public of policies and procedures, the rules could be more effective and clearer.

Between 2006 and 2013, the legislature revised the statutes that establish broad charter school and Board policy. During that same time, the Board publicly adopted several new or revised policies and conducted its operations accordingly to implement the statutes governing charter schools and the Board. In adopting these policies, the Board allows the public the opportunity to provide input at the Board’s public meetings where the policies were adopted.

The September 2013 Performance Audit and Sunset Review of the Board prepared by the Office of the Auditor General specifically recommended that the Board adopt additional rules to implement changes to statute and help enforce the Board’s public adopted policies and practices. In response, the Board engaged in rulemaking in 2014. At the same time that the Board adopted rules for applications and execution of new charters, the Board also adopted rules to address the Board’s standards for academic, financial, and operational performance, sufficient progress toward standards, and consequences for not meeting or making progress toward standards.

While the rules governing new charter application and execution were finalized in 2014, the rules packet that was adopted by the Board to address the academic, financial and operational expectations did not get finalized. The eighteen month follow-up by the Office of the Auditor General that was released in June 2015, recognized that the Board had initiated the rulemaking process to adopt rules to define Board standards for academic, financial and operational performance, but that the Board was unable to complete the process because of the Governor’s Executive Order 2015-01, which established a rulemaking moratorium.

Recognizing the need to move forward with the rulemaking process that was started in 2014, in November 2015 Board staff submitted a request to the Governor’s Office on behalf of the Board to proceed with rulemaking. In January 2016, the Board was granted an exemption from the rulemaking moratorium by the Governor’s Office.

### **Proposed Rulemaking**

This proposed rulemaking is specifically intended to address the Office of the Auditor General's finding in the September 2013 Performance Audit and Sunset Review that the Board "should adopt rules to define board standards for academic, financial, and operational performance, sufficient progress toward standards, and consequences for not meeting or making progress toward standards."

If directed by the Board, staff will begin drafting rules to address the following:

- The Board's academic and financial performance expectations for charter holders (A.R.S. § 15-183 (R))
  - Academic Performance Expectations
  - Demonstrating Sufficient Progress Toward the Board's Academic Performance Expectations
  - Financial Performance Expectations
- Monitoring processes (A.R.S. § 15-182(E)(1) and §15-183(I))Attac
  - First Year Charter School Monitoring
  - Annual Academic Monitoring
  - Five-Year Interval Reviews
  - Compliance Checks
  - Complaints
  - Annual Audit and Financial Monitoring
  - General Oversight Responsibility; Consideration by the Board for Non-Compliance; Notice of Violation
- Procedures concerning a charter school that is designated a failing school (A.R.S. § 15-241)
  - Charter Oversight of Charter Schools Assigned an "F" Letter Grade by the Department
  - Charter Oversight of Charter Schools Assigned a "D" Letter Grade by the Department
- Procedures and policies that implement the civil penalty for fingerprinting violations and withholding of state aid payment (A.R.S. §15-185(H) and A.R.S. §15-185(I))
- Administrative hearing procedures for charter revocation (A.R.S. §15-183(Q))

### **Board Options**

Option 1: The Board may vote to initiate rulemaking regarding charter monitoring and oversight by directing staff to file a Notice of Rulemaking Docket Opening. Staff recommends the following language: I move that the board initiate rulemaking concerning charter monitoring and oversight using the Notice of Rulemaking Docket Opening.

Option 2: The Board may take no action.

**TITLE 7. EDUCATION**  
**CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS**

Authority: A.R.S. § 15-182

*Editor's Note: 7 A.A.C. 5 made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).*

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of R7-5-101, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).*

Section  
R7-5-101. Definitions

**ARTICLE 2. NEW CHARTERS**

*Article 2, consisting of R7-5-201 through R7-5-204, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).*

Section  
R7-5-201. Application for a New Charter  
R7-5-202. New Charter Application Processing Fee  
R7-5-203. Time-frames for Granting or Denying a New Charter  
R7-5-204. Review of Administratively Complete Application Package, Technical Assistance, and In-Person Interview  
R7-5-205. Execution of a Charter  
R7-5-206. Good Cause Extension to Execute a Charter  
R7-5-207. Good Cause Suspension of a Charter

**ARTICLE 3. CHARTER OVERSIGHT**

*Article 3, consisting of R7-5-301 through R7-5-304, made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).*

Section  
R7-5-301. General Supervision, Oversight, and Administrative Responsibility  
R7-5-302. Corrective Action Plan  
R7-5-303. Site Visits; Records; Notice of Violation  
R7-5-304. Disciplinary Action

**ARTICLE 4. AMENDMENT TO A CHARTER**

*Article 4, consisting of R7-5-401, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).*

Section  
R7-5-401. Amendment to a Charter

**ARTICLE 5. AUDITS AND AUDIT CONTRACTS**

*Article 5, consisting of R7-5-501 through R7-5-504, made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).*

Section  
R7-5-501. Audit Guidelines  
R7-5-502. Approval of Audit Contracts  
R7-5-503. Audit Completeness Determinations  
R7-5-504. Review of Complete Audits

**ARTICLE 1. GENERAL PROVISIONS**

*Article 1, consisting of R7-5-101, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).*

**R7-5-101. Definitions**

For the purpose of this Chapter, the following definitions apply:  
"Accounting industry regulatory body"

"Administrative completeness review time-frame" means the number of days from the Board's receipt of a submission for Board consideration until the Board staff determines whether the submission contains all components and is formatted as required by statute and rule. The administrative completeness review time-frame does not include the period during which the Board performs a substantive review of the submission.

"Annual application cycle" means a new charter application process which is conducted each year to grant charters for the operation of new charter schools and is based on the earliest fiscal year in which a new charter school may begin operation.

"Applicant" means a person that applies to the Board for a new charter, a person who applies to transfer a charter from another charter school sponsor, a charter holder who applies to renew or replicate a charter sponsored by the Board, or a charter holder who applies to transfer an existing charter school site operated under a charter sponsored by the Board to a separate Board-sponsored charter held by the same charter holder.

"Application" means the Board-approved forms and instructions used by an applicant to apply for a new charter, transfer a charter, or renew or replicate a charter sponsored by the Board.

"Application package" means an application, narratives, and documents including exhibits and attachments as submitted by an applicant.

"ASBCS Online" means the Board's web-based interface accessible through the Arizona State Board for Charter Schools' website.

"Audit" means a charter holder's annual audit, as required by A.R.S. § 15-914.

"Audit contract" means an engagement letter provided by an audit firm that describes the terms of a contract between a charter holder and the audit firm.

"Audit firm" means a business that conducts an independent audit for a charter school.

"Audit guidelines" means the Board-approved general guidance on charter school audit requirements, which is available online.

"Authorized representative" means an individual with the power to bind an applicant contractually according to the applicant's Articles of Incorporation, operating agreement, or by-laws.

"Board" means the Arizona State Board for Charter Schools.

"Charter" means a contract between a person and the Board to operate a charter school under A.R.S. § 15-181 et seq.

"Charter holder" means a person that enters into a charter with the Board.

"Charter representative" means an individual with the power to bind a charter holder contractually according to the charter holder's Articles of Incorporation, operating agreement, or by-laws and is the point of contact for the Board for the purposes of communication and accountability to contract terms and conditions.

"Charter school" means a public school operated under a charter granted under A.R.S. § 15-181 et seq.

“Date of notice” means the date on which an electronic notification is sent by the Board to an applicant or charter holder through the authorized representative or charter representative.

“Day” means a business day.

“Department” means the Arizona Department of Education.

“Fiscal year” means the 12-month period beginning July 1 and ending June 30.

“Good standing” means that a supervising certified public accountant or audit firm has no current or pending disciplinary action or any regulatory action that requires the supervising certified public accountant or audit firm to complete conditions specified by an accounting industry regulatory body.

“Overall time-frame” means the number of days after receipt of a submission for Board consideration until the Board decides whether to grant or deny the request contained within the submission. The overall time-frame consists of both the administrative completeness review time-frame and the substantive review time-frame.

“Peer review” means an external quality control review as required by generally accepted government auditing standards that determines whether an audit firm’s internal quality control system is in place and operating effectively, and provides assurance that established policies and procedures and applicable auditing standards are being followed.

“Person” means an individual, partnership, corporation, association, or public or private organization of any kind.

“Preliminary application package” means an administratively complete application package that is forwarded to the Technical Review Panel for scoring.

“Principals” means the officers, members, partners, or board of an applicant.

“Revised application package” means an application package including revisions submitted by an applicant after receiving written notification that the applicant’s preliminary application package failed to meet the scoring requirements of R7-5-204.

“Serious impact finding” means an issue identified by the Board that in the opinion of the Board has or potentially has a significant impact on the operation of the charter school or students, such as threat to the health and safety of children, failure to meet the academic needs of the children, gross violation of generally accepted accounting principles that increases the opportunity for fraud or theft, or repeat issues of non-compliance.

“Submission deadline” means a date and time established each year by the Board and identified in the application for a new charter by which a new charter application package shall be submitted to the Board to be considered in a specified annual application cycle.

“Substantive review time-frame” means the number of days after a submission for Board consideration is determined to be administratively complete until the Board decides whether to grant or deny the request contained within the submission.

“Sufficiently qualified” means the Board’s determination that an applicant’s application package, knowledge and understanding of the application package, experience, qualifications, current and prior charter compliance, capacity, personal and professional background, and creditworthiness indicate an ability to implement a charter or operate a charter school in accordance with the performance frameworks adopted by the Board and requirements of statute and rule.

“Supervising certified public accountant” means the certified public accountant responsible for leading the audit work or signing the final audit.

“Technical Review Panel” means individuals approved by the Executive Director of the Board who use their expertise in charter school development, curriculum, and finance to assist in the evaluation of a preliminary or revised application package.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

### ARTICLE 2. NEW CHARTERS

*Article 2, consisting of R7-5-201 through R7-5-204, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).*

#### R7-5-201. Application for a New Charter

- A. By March 31 of each year, the Board shall approve and make available online at its web site an application for a new charter for a specified annual application cycle.
- B. A person desiring to establish a charter school shall submit an application package online through the web-based application wizard on ASBCS Online by the submission deadline identified in the application. A person may utilize an alternate submission process:
  1. A person utilizing the alternate submission process shall submit by hand delivery or mail a signed, notarized waiver request to the Board in the form and by the waiver deadline set out in the application.
  2. The Board shall send an acknowledgment of timely receipt of a waiver request within 10 days of receipt of a waiver request.
  3. Any person who submits a timely waiver request waives the right to have the Board consider any application package submitted through ASBCS Online in the same annual application cycle. Instead, such a person shall only submit an application package according to the alternate submission process instructions and by the alternate submission process submission deadline identified in the application.
  4. An application package shall not be accepted through the alternative submission process unless a waiver request has been received by the waiver deadline and acknowledged as timely by the Board.
- C. An applicant for a new charter shall ensure that the submitted application package contains all the information, materials, documents, and attachments identified in the application for a new charter for the current annual application cycle and in the format specified in that application, which shall together constitute:
  1. A detailed educational plan,
  2. A detailed business plan,
  3. A detailed operational plan, and
  4. Any other materials the Board requires.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

**R7-5-202. New Charter Application Processing Fee**

Each applicant shall pay a new charter application processing fee, in accordance with A.R.S. § 15-183(CC).

1. The new charter application processing fee is \$6,500 for each application package an applicant submits to the Board.
2. Each applicant shall pay the new charter application processing fee in the form of a single personal check or cashier's check with the applicant's name clearly identified on the front of the check made payable to Arizona State Board for Charter Schools. The check shall be delivered by mail or hand delivery to the Board office during regular business hours by the submission deadline.
3. Failure to timely submit the new charter application processing fee shall result in the application package being deemed administratively incomplete under R7-5-203(B).
4. All checks shall be deposited within five days of submission. If an applicant's new charter application processing fee payment to the Board is dishonored for any reason including an insufficient funds check:
  - a. The application package shall be deemed administratively incomplete under R7-5-203(B), and
  - b. The applicant shall use a cashier's check to pay the new charter application processing fee for any application package submitted to the Board by the applicant at any later date.
5. If an application package is found to be administratively incomplete, under R7-5-203(B), and the applicant paid the new charter application processing fee, the fee shall be refunded to the applicant. The fee refund shall be mailed by U.S. Postal Service regular mail to the authorized representative at the address provided in the application package.
6. If an application package is found to be administratively complete under R7-5-203(B), the new charter application processing fee shall become non-refundable.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Section R7-5-202 renumbered to Section R7-5-203; new Section R7-5-202 made by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

**R7-5-203. Time-frames for Granting or Denying a New Charter**

- A. For granting or denying a charter, the time-frames required are:
  1. Administrative completeness review time-frame: 25 days;
  2. Substantive review time-frame: 175 days; and
  3. Overall time-frame: 200 days.
- B. An application package for a charter school shall be administratively complete if:
  1. The application package contains all the information, materials, documents, attachments, signatures, and notarizations identified in the application for a new charter for the current annual application cycle;
  2. All the application package's components are formatted as required by that application;
  3. All curriculum samples address the required standard;
  4. All templates are unmodified, completely filled out, and from the current annual application cycle; and
  5. The application processing fee has been paid according to R7-5-202(1), (2), and (4).

- C. The administrative completeness review time-frame, as listed in subsection (A)(1), begins the day after the Board receives an application package.
  1. If the application package is administratively incomplete when received, the Board staff shall provide to the applicant a notice of deficiency that states the reasons the application package was found to be administratively incomplete.
  2. Upon written notice to the applicant that the application package is administratively incomplete, the Board staff shall close the applicant's file.
    - a. If the submission deadline has not yet passed, an applicant may correct deficiencies in an administratively incomplete application package and submit a new application package in the same annual application cycle, under R7-5-201; the applicant shall pay a new application processing fee, under R7-5-202.
    - b. An applicant who believes their application was erroneously designated as administratively incomplete may submit a written request for reconsideration to the Board within 10 days of the date of notice.
      - i. The request for reconsideration shall contain a clear statement indicating how the previously submitted application package fulfilled each of the requirements that were identified as having been deficient. The request for reconsideration shall not provide any new or additional information, documents, or materials.
      - ii. A request for reconsideration that does not address each deficiency identified in the notice or that contains new or additional information, documents, or materials shall not be considered and the applicant shall be notified that the request was not submitted according to subsection (i) and the applicant's file is closed.
      - iii. The Board staff shall review a request for reconsideration that is submitted according to subsection (i) and provide a decision on the request for reconsideration within 10 days of receipt.
      - iv. If the Board staff determines the application package was erroneously designated as administratively incomplete, the Board staff shall reopen the applicant's file and send a written notice of administrative completeness to the applicant. If the Board staff determines the application package was correctly designated as administratively incomplete, the applicant's file shall remain closed.
3. If the application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
4. If the Board does not provide a notice of deficiency or administrative completeness to the applicant within the administrative completeness review time-frame, the application package is deemed administratively complete.
- D. A substantive review time-frame, as listed in subsection (A)(2), begins when an application package is determined to be administratively complete. The substantive review is conducted according to R7-5-204.
- E. Within the time provided in subsection (A)(3), the Board shall provide the applicant with written notice of its decision to grant or deny a charter.

1. The Board shall deny a charter if it determines that the application package does not meet the requirements of statute or rule or the applicant is not sufficiently qualified to operate a charter school. The written notice shall include the basis for the denial. The applicant may:
  - a. Submit a new application package under R7-5-201 for consideration by the Board in any later annual application cycle; or
  - b. Appeal the Board's decision.
2. The Board shall grant a charter if it determines that the application package meets the requirements of statute and rule and the applicant is sufficiently qualified to operate a charter school.
  - iii. The application package receives a score of Meets the Criteria for at least 95% of the evaluation criteria in each plan (educational plan, operational plan, and business plan).
2. The Board staff shall conduct a background and credit check of each principal of the applicant and confirm each principal possesses a valid fingerprint clearance card.
  - a. If issues arise from the information obtained during the background and credit checks of any principal, the Board staff shall provide the pertinent principal written notice of the issues and the principal will have the opportunity to provide a written response clarifying the information.
  - b. Information obtained and communications conducted during this process shall be considered by the Board in making its decision on whether to grant or deny a charter.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Section R7-5-203 renumbered to Section R7-5-204; new Section R7-5-203 renumbered from R7-5-202 and amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

#### R7-5-204. Review of Administratively Complete Application Package, Technical Assistance, and In-Person Interview

The review of an administratively complete application package is as follows:

1. The Technical Review panel shall score the preliminary application package using the evaluation criteria identified in the application to determine whether an application package meets the Board's scoring requirements.
  - a. An application package shall be assigned a score of "Meets the Criteria," "Approaches the Criteria," or "Falls Below the Criteria" for each evaluation criterion.
    - i. An evaluation criterion shall be scored "Meets the Criteria" when the section within which that evaluation criterion is identified by the application:
      - (1) Addresses the evaluation criterion fully with specific and accurate information;
      - (2) Reflects a thorough understanding of the evaluation criterion; and
      - (3) Is clear and coherent.
    - ii. An evaluation criterion shall be assigned a score of "Approaches the Criteria" when the section within which that evaluation criterion is identified by the application:
      - (1) Addresses the evaluation criterion partially and lacks specific and accurate information for some aspect of the evaluation criterion;
      - (2) Presents a partial understanding of the evaluation criterion; or
      - (3) Is not clear and coherent.
    - iii. An evaluation criterion shall be assigned a score of "Falls Below the Criteria" when the section within which that evaluation criterion is identified by the application does not address the evaluation criterion.
  - b. An application package meets the Board's scoring requirements if:
    - i. No evaluation criterion receives a score of Falls Below the Criteria;
    - ii. No more than one evaluation criterion in each section is scored as Approaching the Criteria; and
3. The Board staff shall notify the applicant if the preliminary application package fails to meet the scoring requirements as evaluated by the Technical Review Panel. The Board staff shall provide reasons the application package fails to meet the scoring requirements and include the comments of the Technical Review Panel, which will serve as technical assistance and suggestions for improving the application package.
4. An applicant who receives notification that a preliminary application package fails to meet the scoring requirements as evaluated by the Technical Review Panel may, within 20 days of the date of notice, submit a revised application package or a written request that the preliminary application package be forwarded to the Board.
5. If a revised application package or written request is not submitted to the Board within 20 days of the date of notice that a preliminary application package fails to meet the scoring requirements, the Board staff shall close the applicant's file. An applicant whose file is closed and who wants to obtain a charter shall apply again under R7-5-201 in any later annual application cycle.
6. If a revised application package is submitted, the Technical Review Panel shall score the revised application package using the scores and scoring requirements described in subsection (1).
7. If a revised application package fails to meet the scoring requirements as evaluated by the Technical Review Panel, the Board staff shall notify the applicant of the intent to close the file. The Board staff shall include with the notice the comments of the Technical Review Panel.
8. An applicant who receives notification of the Board staff's intent to close the file may, within 20 days of the date of notice, submit a written request that the revised application package be forwarded to the Board.
9. If a written request is not submitted to the Board within 20 days of the date of notice that a revised application package fails to meet the scoring requirements, the Board staff shall close the applicant's file. An applicant whose file is closed and who wants to obtain a charter shall apply again under R7-5-201 in any later annual application cycle.
10. At least 30 days prior to the last Board meeting before the substantive review time-frame expires, and within 90 days of the determination that a preliminary or revised application package meets the scoring requirements as evaluated by the Technical Review Panel, or the receipt of an applicant's request under subsection (4) or (8) that the Board consider an application package that fails to meet the scoring requirements as evaluated by the Tech-

nical Review Panel, the principals of the applicant shall make themselves available for an in-person interview with two or more members of the Technical Review Panel. In the interview, the members of the Technical Review Panel shall assess:

- a. The applicant's understanding of the components presented in the written application package;
  - b. The applicant's capacity to implement a plan to operate a charter school in accordance with the performance frameworks adopted by the Board;
  - c. The applicant's clarification of any issues that arise in the course of the due diligence process for any applicant, principal, or Education Service Provider; and
  - d. Any other factors relevant to determining whether the applicant is sufficiently qualified to operate a charter school.
11. The Board shall consider an application package to determine whether to approve or deny the application package and whether to grant or deny the charter if the Technical Review Panel determines that the application package meets or exceeds the scoring requirements or if the applicant requests under subsection (4) or (8) that the Board consider an application package that fails to meet the scoring requirements as evaluated by the Technical Review Panel.
- a. For the purpose of deciding whether to approve or deny the application package, the Board shall consider:
    - i. The application package; and
    - ii. A copy of the scoring rubric completed by the Technical Review Panel.
  - b. For the purpose of deciding whether to grant or deny a new charter, the Board shall determine whether the applicant is sufficiently qualified by considering the following:
    - i. The application package;
    - ii. A copy of the scoring rubric completed by the Technical Review Panel;
    - iii. The results of the in-person interview of the applicant's principals;
    - iv. Information obtained through verification and investigation of the backgrounds including employment, experience, education, fingerprint clearance card, and assessment of creditworthiness for each of the principals of the applicant;
    - v. Information concerning any current or former charter operations for any Education Service Provider or principal of the applicant;
    - vi. A Board staff report; and
    - vii. Testimony presented at the Board meeting.
12. The Board shall provide an applicant, with at least seven days written notice of the date, time, and place of the meeting at which the Board will consider the applicant's application package.

#### Historical Note

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1). Amended by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1). Section R7-5-204 renumbered to Section R7-5-205; new Section R7-5-204 renumbered from R7-5-203 and amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

#### R7-5-205. Execution of a Charter

- A. After the Board's decision to grant a new charter, and before the charter is signed, the applicant shall submit to the Board the following:
  1. No change
  2. Charter school site location information including:
    - a. Certificate of occupancy for each charter school site approved for educational use, and
    - b. Fire marshal report for each charter school site approved for educational use, or
    - c. If the certificate of occupancy and fire marshal report are not available, a completed Occupancy Compliance Assurance form;
  3. General Statement of Assurances form obtained from the Department;
  4. A statement indicating where all public notices of meetings will be posted as required by the Secretary of State under A.R.S. § 38-431.02; and
  5. Copy of the lease agreement or other documentation of a secured charter school facility for each charter school site.
- B. A charter shall be signed by the Board President or designee and authorized representative of the applicant within 12 months after the Board's decision to grant the charter.
  1. If a charter is not timely signed, the Board's decision to grant the new charter expires, unless the applicant applies for and is granted a good cause extension to execute the charter under R7-5-206.
  2. If an applicant who is granted a new charter but does not timely sign the charter and does not obtain a good cause extension wants to obtain a new charter, the applicant shall apply again under R7-5-201 in any later annual application cycle.
- C. A charter holder shall begin providing educational instruction no later than the second fiscal year after the Board's decision to grant the charter, unless the charter holder is granted a good cause extension to execute a charter under R7-5-206 or good cause suspension of a charter under R7-5-207.
  1. A charter holder who is granted a good cause extension to execute a charter under R7-5-206 or good cause suspension of a charter under R7-5-207 shall begin providing educational instruction no later than the third fiscal year after the Board's decision to grant the charter.
  2. If a charter holder does not begin providing educational instruction as required by subsections (C) and (C)(1) the Board shall issue the charter holder a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I).
- D. A charter holder shall submit to the Board written proof that the charter school is in compliance with federal, state, and local rules, regulations, and statutes relating to health, safety, civil rights and insurance at least 10 days before the first day it will begin providing educational instruction by submitting:
  1. Charter school site contact information;
  2. Insurance policy binder issued by an insurance company licensed to do business in Arizona;
  3. County health certificate for each site at which students will be taught;
  4. Evidence of a public meeting, required by A.R.S. § 15-183(C)(7), at least 30 days before the charter holder opens a site for the charter school;
  5. Certificate of attendance of the charter representative or principal at the special education training for new charters offered by the Department's Exceptional Student Services Division; and
  6. Any other documents required to demonstrate compliance with federal, state, and local rules, regulations, and

statutes relating to health, safety, civil rights and insurance.

- E.** If a charter holder has completed an Occupancy Compliance Assurance form, state aid funding shall not initiate until the Board has determined that the required certificate of occupancy and fire marshal report submissions are complete and sufficient.
- F.** A new charter is effective upon the signing of both parties for a term of 15 years commencing on the date stated in the charter, unless revoked under A.R.S. § 15-183(I).

#### Historical Note

New Section R7-5-205 renumbered from R7-5-204 and amended by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

#### **R7-5-206. Good Cause Extension to Execute a Charter**

Before the Board's decision to grant a new charter expires, an applicant who has not yet executed the charter may submit to the Board a written request for a good cause extension to execute a charter.

1. The written request for a good cause extension to execute a charter shall:
  - a. Explain and provide evidence of why the applicant is unable to implement the plans contained in the application package and execute the charter within the allotted 12 months;
  - b. Explain the applicant's new timeline for implementing the plans contained in the application package, and why the timeline is viable and adequate for achieving the proposed start-up date of the school and appropriate for operating a charter school in accordance with the performance frameworks adopted by the Board and requirements of statute and rule.
  - c. Provide clear and specific action steps with target completion dates that will enable the applicant to implement the plans contained in the application package in accordance with the timeline provided and the requirements of R7-5-205(C)(1).
2. The Board may grant a good cause extension to execute a charter if an applicant demonstrates good cause. When considering a request for a good cause extension to execute a charter, the Board shall consider:
  - a. The timeliness of the submission of the request and the proposed extension date;
  - b. The viability of the applicant's new timeline for implementing the plans contained in the application package;
  - c. Whether the new timeline provided by the applicant is adequate to begin providing educational instruction as required under R7-5-205(C)(1) and complies with the plans contained in the application package;
  - d. Unforeseen circumstances affecting the applicant's ability to execute the charter within the allotted 12 months;
  - e. Whether there have been changes in the principals of the applicant; and
  - f. The status of compliance with all applicable federal, State and local laws, and with all of the terms of a charter.
3. The Board shall not grant more than one good cause extension to execute a charter to any applicant for the same charter.
4. If the Board grants a good cause extension to execute a charter, the Board shall specify the date by which the applicant shall execute the charter and begin providing educational instruction based on the timeline provided by

the applicant and the requirements of R7-5-205(C)(1). If the applicant does not execute the charter by the specified date, the Board's decision to grant the charter shall expire.

#### Historical Note

Section R7-5-206 made by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

#### **R7-5-207. Good Cause Suspension of a Charter**

Prior to the first day of the fiscal year that a charter holder must begin providing educational instruction, the charter holder of a not-yet-operational charter may submit to the Board a written request for a good cause suspension of a charter.

1. A charter holder is eligible to apply for a good cause suspension of a charter if:
  - a. The charter holder has not been granted a good cause extension to execute a charter,
  - b. The charter holder has not begun providing educational instruction under the charter, and
  - c. The charter holder has not received or has returned state equalization or other state or federal funding for which provision of instruction is a requirement of receipt.
2. The written request for a good cause suspension of a charter shall:
  - a. Explain and provide evidence for why the charter holder is unable to implement the plans contained in the application package and begin providing educational instruction as required under R7-5-205(C);
  - b. Explain the charter holder's new timeline for implementing the plans contained in the application package, and why the new timeline is viable and adequate for achieving the proposed start-up date of the school and appropriate for operating a charter school in accordance with the performance frameworks adopted by the Board and requirements of statute and rule.
  - c. Provide clear and specific action steps with target completion dates that will enable the charter holder to implement the plans contained in the application package in accordance with the timeline provided and the requirements of R7-5-205(C)(1).
3. The Board may grant a good cause suspension of a charter if the charter holder demonstrates good cause. When considering a request for a good cause suspension of a charter, the Board shall consider:
  - a. The timeliness of the submission of the request and the proposed extension date;
  - b. The viability of the charter holder's new timeline for implementing the plans contained in the application package;
  - c. Whether the new timeline provided by the charter holder is adequate to begin providing educational instruction as required under R7-5-205(C)(1) and complies with the plans contained in the application package;
  - d. Unforeseen circumstances affecting the charter holder's ability to begin providing educational instruction as required under R7-5-205(C);
  - e. Whether there have been changes in the principals of the charter holder; and
  - f. The status of compliance with all applicable federal, State and local laws, and with all of the terms of the charter.
4. The Board shall not grant more than one good cause suspension of a charter to any charter holder for the same charter and shall not grant a good cause suspension of a



charter to any charter holder who previously received a good cause extension to execute a charter for the same charter.

5. A charter holder who is granted a good cause suspension may execute and submit an amendment to the charter indicating a new effective date which shall conform to the date on which the charter holder shall begin providing educational instruction.
6. A charter holder who is granted a good cause suspension of a charter shall not apply to receive any state equalization or other state or federal funding for which provision of instruction is a requirement of receipt until the fiscal year in which the charter holder plans to begin providing educational instruction and shall promptly return any such funding it receives prior to the fiscal year in which it begins providing educational instruction.
7. A charter holder granted a good cause suspension of a charter shall begin providing educational instruction as required by R7-5-205(C). If a charter holder does not begin providing educational instruction as required, the Board shall issue the charter holder a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I).

#### Historical Note

Section R7-5-207 made by final rulemaking at 20 A.A.R. 437, effective April 5, 2014 (Supp. 14-1).

### ARTICLE 3. CHARTER OVERSIGHT

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

- A. A charter holder shall comply with the provisions of its charter and with federal and state laws at all times.
- B. The Board may use any of the following means in performing its administrative responsibilities to and general supervision and oversight of a charter holder:
  1. Oral, written, and electronic communication with the authorized representative or charter school personnel;
  2. Oral, written, and electronic communication with representatives of federal, state, and local agencies having jurisdiction over the operation of the charter school or having the authority to investigate or adjudicate allegations of misconduct by any member of the charter school's staff;
  3. Oral, written, and electronic communication with students, parents, or outside parties regarding any activity or program conducted by or for the charter school or regarding allegations of misconduct by any member of the charter school's staff;
  4. Collection and review of reports, audits, data, records, documents, files, and communication from any source relating to any activity or program conducted by or for the charter school;
  5. A corrective action plan as described in R7-5-302; and
  6. A site visit as described in R7-5-303.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

#### R7-5-302. Corrective Action Plan

- A. Upon receipt of information under R7-5-301(B) that a charter holder is not in compliance with the provisions of its charter or federal or state laws, the Board shall consider the following factors in determining whether a corrective action plan (CAP) is required:
  1. The seriousness of the offense;
  2. The charter holder's history of compliance with the provisions of its charter and federal and state laws;

3. The length of time the offense has been occurring; and
4. Any other factors relating to the charter holder's compliance with the provisions of its charter and federal or state laws.

- B. If the Board requires a CAP, it shall make a written request to the charter holder for the submission of a CAP to be implemented to remedy the offense. The request shall include:
  1. A description of the offense,
  2. A list of the specific criteria to be included in the CAP,
  3. A deadline for the submission of the CAP,
  4. A timeline for the implementation of the CAP, and
  5. The consequences for failure to submit or implement the CAP.
- C. The Board shall decide to accept the CAP based on whether the specified criteria stated in the request are included in the CAP.
  1. The Board shall provide written notification to the authorized representative regarding the acceptance or rejection of the CAP.
  2. Written notification that the Board rejected the CAP shall include the reason for the rejection, the deadline for submission of the revised CAP, and the consequences for failure to submit a CAP that meets the specified criteria.
- D. The Board shall monitor the charter holder's implementation of the approved CAP to ensure the offense is rectified.
  1. The charter holder shall demonstrate to the Board through documentation or a site visit that steps have been taken to correct the offense or, in the case of a serious impact finding, that the charter holder is currently in compliance.
  2. The Board shall consider possible disciplinary action under R7-5-304 against the charter holder if the charter holder fails to implement the CAP and rectify the offense.

#### Historical Note

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

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

- A. A designee of the Board or Department may conduct a site visit of a charter school to a review or evaluate the charter school's financial operations, academic program, or compliance with the provisions of its charter and federal and state laws.
- B. A designee of the Board or Department may conduct a site visit to corroborate information submitted to the Board and to gather information, documentation, and testimony that permit the Board to fulfill its oversight function under the law and ensure the charter school is in compliance with the provisions of its charter and federal and state laws.
- C. A designee of the Board or Department shall conduct a site visit during regular operational hours of a charter school or at any other reasonable time.
- D. A designee of the Board or Department may conduct either an announced or unannounced site visit.
- E. A designee of the Board or Department may conduct an investigation of a charter school in response to concerns raised by students, parents, employees, members of the community or other individuals or groups regarding any activity or program conducted by or for the charter school or regarding allegations of misconduct by any member of the charter school's staff.
- F. Upon request by a designee of the Board or Department, a charter holder shall open for inspection all records, documents, and files relating to any activity or program conducted by or for the charter school or the charter holder relating to the charter school.
- G. Upon request by a designee of the Board or Department, a charter holder shall provide access to all school facilities.

1. During a site visit, a charter holder shall provide access to classrooms for the purpose of counting students, observing a program of instruction, or documenting individuals providing instruction.
  2. In conducting a site visit, the designee of the Board or the Department shall make every effort not to disrupt the classroom environment.
- H.** The Board or Department shall inform a charter holder in writing of any offense identified during a site visit and shall specify any further action that must be taken by the charter holder. In determining the appropriate action to take, the Board shall consider the items in R7-5-304(A).
- I.** The Board shall require a charter holder with a serious impact finding to appear before the Board for possible disciplinary action under R7-5-304.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

**R7-5-304. Disciplinary Action**

- A.** The Board may discipline a charter holder for violation of its charter or federal or state laws. In determining the appropriate disciplinary action to take, the Board shall consider the following:
1. Threat to the health or safety of children;
  2. Whether the charter holder's historical compliance record indicates repeated or multiple breaches of the provisions of its charter or federal or state laws;
  3. Whether the charter holder has failed to meet the academic needs of the children;
  4. Length of time the offense has been occurring;
  5. The charter holder's compliance with and response to staff investigation in providing necessary information and documentation within requested time-frames;
  6. Whether there has been a misuse of funds; and
  7. Any other factor that has a bearing on the charter holder's ability and willingness to operate in compliance with the provisions its charter and federal and state laws.
- B.** The Board shall take disciplinary action against a charter holder based on the Board's assessment of the factors listed in subsection (A). Disciplinary action may include any of the following:
1. Requiring a corrective action plan as described in R7-5-302;
  2. Requesting the Department to withhold up to 10 percent of the charter school's monthly state aid in accordance with A.R.S. § 15-185(H). Upon proof of corrected deficiencies and that the charter holder is in compliance, the Board shall request the Department to restore the full amount of state aid payments to the charter school;
  3. Entering into a consent agreement with the charter holder for the resolution of the non-compliance. The Board shall ensure that the consent agreement:
    - a. Describes each offense;
    - b. Stipulates the facts agreed to by the Board and the charter holder;
    - c. Specifies the actions the charter holder must take to demonstrate compliance and avoid further disciplinary action;
    - d. Provides a timeline for the charter holder to complete the actions specified in the consent agreement;
    - e. Stipulates that if the charter holder fails to comply with the terms and conditions of the consent agreement, the Board may, after giving the number of days notice specified in the consent agreement, hold a hearing at which the Board receives information to

determine whether evidence exists that the charter holder has failed to comply with the consent agreement. If the Board determines that the charter holder has breached the consent agreement, the Board may revoke the charter holder's charter; and

- f. Is approved by the Board and the charter holder and signed by the Board president or designee and the authorized representative;
4. Issuing a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I) if the Board determines there is cause to believe that the charter holder may have breached one or more provisions of its charter; and
  5. Revoking the charter in accordance with A.R.S. § 15-183(I).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

**ARTICLE 4. AMENDMENT TO A CHARTER**

*Article 4, consisting of R7-5-401, made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).*

**R7-5-401. Amendment to a Charter**

- A.** A charter holder that wishes to amend its charter shall submit to the Board:
1. A completed charter amendment form approved by the Board,
  2. The support documentation indicated on the charter amendment form, and
  3. Evidence that the proposed charter amendment has been approved by the charter school's governing body.
- B.** For approving or disapproving an amendment, the time-frames required by A.R.S. § 41-1072 et seq. are:
1. Administrative completeness review time-frame: 20 days.
  2. Substantive review time-frame: 40 days.
  3. Overall time-frame: 60 days.
- C.** A charter holder shall conform to the terms of the charter until an amendment is approved by the Board.

**Historical Note**

New Section made by final rulemaking at 10 A.A.R. 1141, effective March 2, 2004 (Supp. 04-1).

**ARTICLE 5. AUDITS AND AUDIT CONTRACTS**

**R7-5-501. Audit Guidelines**

By July 1 of each year, the Board shall make available to the public at its office and online at its web site, written audit guidelines that provide general guidance on charter school audit requirements, including the deadline for submitting the completed audit to the Board and information that must be included for the audit to be deemed complete.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 577, effective February 7, 2006 (Supp. 06-1).

**R7-5-502. Approval of Audit Contracts**

- A.** In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit to the Board for approval an audit contract for each audit before the audit begins.
- B.** The Board shall disapprove an audit contract only for the following reasons:
1. Board knowledge that a person employed by the audit firm has been convicted under a federal or state statute for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury,

- forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
2. Failure of the audit firm or supervising certified public accountant to maintain good standing with an accounting industry regulatory body;
  3. Violation of or failure of the audit firm to meet generally accepted auditing standards or generally accepted government auditing standards as identified by an accounting industry regulatory body;
  4. Failure of the audit firm to receive an unmodified opinion during the audit firm's most recent peer review or failure of any auditor working on the audit to meet the continuing professional education requirements prescribed by generally accepted government auditing standards; or
  5. Failure to acknowledge that the audit firm shall adhere to the audit requirements listed in the Board's audit guidelines.
- C. The Board shall provide written notification of approval or disapproval of an audit contract to the charter holder and the audit firm within 10 days of receipt of the audit contract.
  - D. The Board shall include the cause for disapproval in a notice of disapproval.
  - E. If the charter holder or audit firm provides documentation that demonstrates the cause for disapproval no longer exists, the Board shall approve the audit contract and notify all parties of the approval.
- B. The Board shall find that an audit is incomplete if it does not include all of the items listed in the Board's audit guidelines.
  - C. The Board shall provide written notification of a complete audit to the charter holder within five days of the receipt of the audit. The Board shall provide written notification of an incomplete audit to the charter holder and the audit firm within five days of receipt of the audit.
  - D. The Board shall include the cause for the determination in a notice of an incomplete audit.
  - E. If the charter holder or audit firm provides documentation that demonstrates the cause for an incomplete audit no longer exists, the Board shall deem the audit complete and notify the charter holder.
  - F. The Board shall require that a charter holder whose audit does not include the items stated in the audit guidelines appear before the Board for possible disciplinary action under R7-5-304.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 577,  
effective February 7, 2006 (Supp. 06-1).

**R7-5-504. Review of Complete Audits**

- A. The Board staff shall review each audit deemed complete.
- B. The Board shall send a letter to a charter holder after the audit is reviewed. If the Board identifies an issue in the audit, the Board shall direct the charter holder to address the issue and based on an assessment of the factors in R7-5-302(A), may require the charter holder to submit a corrective action plan.
- C. The Board shall require that a charter holder with a serious impact finding appear before the Board for possible disciplinary action under R7-5-304.

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 577,  
effective February 7, 2006 (Supp. 06-1).

**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 577,  
effective February 7, 2006 (Supp. 06-1).

**R7-5-503. Audit Completeness Determinations**

- A. In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit an audit to the Board for a determination regarding the audit's completeness.