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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Martell Menlove, Ph.D.
Chief Executive Officer

DATE: May 9, 2014

ACTION: R277-481 *Charter School Oversight, Monitoring and Appeals* (Amendment)

Background: The State Charter School Board adopted Charter School Performance Standards for the schools it authorizes in the areas of finance, academics, enrollment, and governance. All schools will be held to these standards, in addition to mission specific or governing board determined standards in the school's charter agreement.

Key Points: The recommended changes to this rule clarify (1) the deficiencies that may place a charter school on Warning Status or Probation Status and (2) the direct oversight of the USBE specific to financial deficiencies.

- Changes "chartering entity" to "charter school authorizer" throughout.
- Removes minimum standards and incorporates all Charter School Performance Standards.
- Changes warning status criteria to a charter school that receives a "does not meet standard" rating based on a significant structural or organizational problem, fails to follow its charter agreement, or violates state or federal law, rule, or regulation.
- Changes probation status criteria to a charter school that receives a "falls far below standards" rating based on a significant structural or organizational problem, knowingly violates its charter agreement, places students in an unsafe environment, does not meet the terms of its warning status, or knowingly violates state or federal law, rule or regulation.
- Clarifies a charter school does not have to be on warning status prior to being placed on probation status.
- Clarifies the Board has authority to directly respond to and act on charter school financial deficiencies.

Anticipated Action: It is proposed that the Law and Licensing Committee consider approving R277-481, as amended, on first reading, and if approved by the Committee, the Board consider approving R277-481, as amended, on second reading.

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1 **R277. Education, Administration.**

2 **R277-481. Charter School Oversight, Monitoring and Appeals.**

3 **R277-481-1. Definitions.**

4 A. "Board" means the Utah State Board of Education.

5 B. "[~~Chartering entities~~]Charter school authorizers"
6 means entities that authorize a charter school under Section
7 53A-1a-501.3(3).

8 C. "Charter schools" means schools acknowledged as
9 charter schools by [~~chartering entities~~]charter school
10 authorizers under Sections 53A-1a-515, 53A-1a-521, and this
11 rule or by the Board under Section 53A-1a-505.

12 D. "Charter school agreement (charter agreement)" means
13 the terms and conditions for the operation of an approved
14 charter school. The charter school agreement shall be
15 maintained at the USOE and is considered the final, official
16 and complete agreement.

17 E. "Charter school deficiencies" means the following
18 information:

19 (1) a charter school is not satisfying financial,
20 academic or operational obligations as required in its charter
21 agreement;

22 (2) a charter school is not providing required
23 documentation after being placed on warning status;

24 (3) compelling evidence of fraud or misuse of funds by
25 charter school governing board members or employees. Fraud or
26 misuse of funds need not rise to the minimal standard. It may
27 include failure to properly account for funds received at the
28 school; failure to follow regularly established accounting and
29 receipting practices or failure to provide data, financial
30 records or information as requested by the State Charter
31 School Board or the Board.

32 F. "Charter school governing board" means the board
33 designated by the charter school to make decisions for the
34 operation of the school.

35 G. "Probation" means a formal process and time period
36 during which a school is permitted to demonstrate its full
37 compliance with its charter agreement and all applicable laws,
38 rules and regulations.

39 H. "State Charter School Board" means the board
40 designated in Section 53A-1a-501.5.

41 I. "Superintendent" means the State Superintendent of
42 Public Instruction as designated under Section 53A-1-301.

43 J. "USOE" means the Utah State Office of Education.

44 K. "Warning status" means an informal status in which a
45 school is placed through written notification from the
46 ~~[USOE]~~Board for the school's failure to maintain compliance
47 with its charter agreement, applicable laws, rules or
48 regulations.

49 **R277-481-2. Authority and Purpose.**

50 A. This rule is authorized under Utah Constitution
51 Article X, Section 3 which vests general control and
52 supervision over public education in the Board, Section
53 53A-1-401(3) which allows the Board to adopt rules in
54 accordance with its responsibilities, and 20 U.S.C., Section
55 8063(3) which directs the Board to submit specific information
56 prior to charter schools' receipt of federal funds.

57 B. The purpose of this rule is to establish procedures
58 for oversight and monitoring of charter agreements and charter
59 school~~[s for compliance with minimum standards]~~ performance.
60 The rule also provides appeals criteria and a process for
61 schools found out of compliance ~~[with chartering entity]~~ by
62 charter school authorizers ~~[findings]~~ consistent with this
63 rule.

64 **R277-481-3. State Charter School Board Oversight, Minimum**
65 **Standards, and Consequences.**

66 A. The State Charter School Board shall provide direct

67 oversight to the charter schools for which it is the
68 ~~[chartering entity]~~charter school authorizer, including
69 requiring all charter schools to:

70 (1) comply with their charter agreements containing clear
71 and meaningful expectations for measuring charter school
72 quality~~[-]~~;

73 (2) annually review charter agreements, as maintained by
74 the USOE;

75 (3) regularly review other matters specific to effective
76 charter school operations, including a comprehensive review of
77 governing board performance at least once every five years;
78 and

79 (4) audit and investigate claims of fraud or misuse of
80 public assets or funds~~[-]~~; and

81 ~~[B.](5) [All charter schools authorized by the State~~
82 ~~Charter School Board shall also] meet the[following minimum]~~
83 ~~standards described in the Charter School Performance~~
84 ~~Standards.[+]~~

85 ~~—— (1) charter schools shall have no unresolved material~~
86 ~~findings, financial condition findings or repeat significant~~
87 ~~findings in the school's independent financial audit, federal~~
88 ~~single audit or USOE audits;~~

89 ~~—— (2) charter schools shall maintain a minimum of 30 days~~
90 ~~cash on hand or the cash or other reserve amount required in~~
91 ~~bond covenants, whichever is greater;~~

92 ~~—— (3) charter schools shall have no violations of federal~~
93 ~~or state law or regulation, Board rules or Board directives;~~

94 ~~—— (4) charter schools shall have all teachers properly~~
95 ~~licensed and endorsed for teaching assignments in CACTUS; and~~

96 ~~—— (5) charter school governing boards shall ensure all~~
97 ~~employees and board members have criminal background checks on~~
98 ~~file.]~~

99 [E]B. Warning status

100 (1) The USOE may place [A]a charter school ~~[that fails to~~

101 ~~meet any of the minimum standards or a significant number of~~
102 ~~performance]~~on warning status and notify the school in writing
103 if the school does not meet standards described in the Charter
104 School Performance Standards due to a significant structural
105 or organizational problem, fails to follow its charter
106 agreement, or violates state or federal law, rule or
107 regulation]~~may be placed on warning status and notified in~~
108 ~~writing by the USOE].~~ A copy of the USOE warning letter shall
109 be sent to the State Charter School Board.

110 (2) While a school is on warning status, the school may
111 seek technical assistance from the USOE staff to remedy any
112 deficiencies.

113 [D]C. Probation status

114 (1) [~~If any minimum standard or a significant number of~~
115 ~~performance standards has not been met by an assigned date~~
116 ~~following designation of warning status, the State Charter~~
117 ~~School Board shall notify the school]~~The State Charter School
118 Board, may place on probation a charter school that falls far
119 below standards described in the Charter School Performance
120 Standards or a charter school's charter agreement due to a
121 significant structural or organizational problem, knowingly
122 violates its charter agreement, places students in an unsafe
123 environment, does not meet the terms of its warning status, or
124 knowingly violates state or federal law, rule or regulation.
125 The State Charter School Board shall notify the charter school
126 in writing of the specific[~~minimum~~] standard(s) the school
127 did not meet.

128 (2) [~~Based on the State Charter School Board's review of~~
129 ~~the charter school's noncompliance, progress and response to~~
130 ~~technical assistance, the State Charter School Board may place~~
131 ~~the school on probation for up to one calendar year following~~
132 ~~the designation of warning status.~~

133 ~~—(3)—~~Upon placing a school on probation, the State
134 Charter School Board shall set forth a written plan outlining

135 those provisions in the charter agreement, applicable laws,
136 rules and regulations with which the school is not in full
137 compliance. This written plan shall set forth the terms and
138 conditions and the timeline that the school shall follow in
139 order to be removed from probation.

140 ([4]3) If the school complies with the written plan in a
141 timely manner, the State Charter School Board shall remove the
142 school from probation.

143 ([5]4) [~~While a~~A school[~~is~~] on probation[~~, it~~] shall be
144 required to satisfy certain requirements and conditions set
145 forth by the State Charter School Board. If the school fails
146 to satisfy specific requirements and conditions by a date
147 established by the State Charter School Board, the State
148 Charter School Board may take additional action, including
149 terminat[~~e~~ing the school's charter.

150 ([6]5) While a school is on probation, the school may
151 seek technical assistance from the USOE staff to remedy any
152 deficiencies.

153 ([7]6) The State Charter School Board may, for good
154 cause, or if the health, safety, or welfare of the students at
155 the school is threatened at any time during the probationary
156 period, terminate the charter immediately.

157 **R277-481-4. Charter School Governing Board Compliance with**
158 **Law.**

159 A. The Board may review or terminate the charter based
160 upon factors that may include:

161 (1) failure to meet measures of charter school quality
162 which include[~~s~~] adherence to a charter agreement required and
163 monitored by [~~chartering entities~~]charter school authorizers;
164 or

165 (2) charter school deficiencies; or

166 (3) failure of the charter school to comply with federal
167 or state law or regulation, Board rules or Board directives.

168 B. If a charter school's charter conflicts with
169 applicable federal or state law or rule, the charter shall be
170 interpreted to require compliance with such law or rule; all
171 other provisions of the school's charter shall remain in full
172 force and effect.

173 C. A charter school governing board may amend its
174 charter agreement by receiving approval from its [~~chartering~~
175 ~~entity~~]charter school authorizer consistent with Section 53A-
176 1a-508.

177 D. [~~Chartering entities shall obtain approval by t~~]The
178 Board shall give approval to charter school authorizers before
179 amending charter agreements specific to (1) changes to mission
180 and purpose; (2) waivers from Board administrative rule; (3)
181 expansions of student enrollment; (4) expansions of grade
182 levels that will put students in different weighted pupil unit
183 grade level categories; and (5) revolving loans.

184 E. A charter school shall notify the Board and the
185 [~~chartering entity~~]charter school authorizer of any and all
186 lawsuits filed against the charter school within 30 days of
187 the filing of the lawsuit.

188 F. A charter school shall notify the Board and the
189 charter school authorizer of any notice from a lender or other
190 creditor alleging that the charter school is in default under
191 any loan agreement or bond covenant within 30 days of the
192 charter schools' receipt of notice.

193 **R277-481-5. [~~Chartering Entity~~Charter School Authorizer**
194 **Oversight and Monitoring.**

195 A. Local school board and institutions of higher
196 education [~~chartering entities~~]charter school authorizers
197 shall:

198 (1) visit a charter school at least once during its first
199 year of operation in order to ensure adherence to and
200 implementation of the approved charter and to finalize a

201 review process;

202 (2) visit a charter school as determined in the review
203 process;

204 (3) provide written reports to a charter school after the
205 visits that set forth strengths, deficiencies, corrective
206 actions, timelines and the reason for charter termination, if
207 applicable; and

208 (4) audit and investigate claims of fraud or misuse of
209 public assets or funds.

210 B. [~~Chartering entities~~]Charter school authorizers shall
211 notify the Board within 20 days of charter school deficiencies
212 that initiate corrective action by [~~chartering~~
213 ~~entities~~]charter school authorizers.

214 **R277-481-6. Charter School Financial Practices and Training.**

215 A. Charter school business administrators shall attend
216 USOE required business meetings for charter schools.

217 B. The Board shall invite [e]charter school governing
218 board members and school administrators [~~shall be invited~~]to
219 all appropriate Board-sponsored training, meetings, and
220 sessions for traditional school district financial personnel.

221 C. The Board shall work with other education agencies to
222 encourage their inclusion of charter school representatives at
223 training and professional development sessions.

224 D. A charter school shall appoint a business
225 administrator consistent with Sections 53A-3-302 and 303. The
226 business administrator shall be responsible for the submission
227 of all financial and statistical information required by the
228 Board.

229 E. The Board may interrupt disbursements to charter
230 schools for failure to comply with financial and statistical
231 information required by law or Board rules.

232 F. Charter schools shall comply with the Utah State
233 Procurement Code, [~~Title~~]-63G, [~~Chapter~~]-6a.

234 G. Charter schools are not eligible for necessarily
235 existent small schools funding under Section 53A-17a-109(2)
236 and R277-445.

237 **R277-481-7. Remediating Charter School Financial Deficiencies.**

238 A. Upon receiving credible information of charter school
239 financial deficiencies, the [~~chartering entity shall~~
240 ~~immediately~~]Board may direct an [~~independent~~]external review
241 or audit through the charter school governing board.

242 B. The [~~chartering entity or the~~] Board [~~through the~~
243 ~~chartering entity~~] may direct a charter school governing board
244 or the charter school administration to take reasonable action
245 to protect state or federal funds consistent with Section 53A-
246 1a-510.

247 C. The [~~chartering entity or the~~] Board may:

248 (1) allow a charter school governing board to hold a
249 hearing to determine financial responsibility and assist the
250 charter school governing board with the hearing process;

251 (2) immediately terminate the flow of state funds;

252 (3) recommend cessation of federal funding to the school;

253 (4) take immediate or subsequent corrective action with
254 employees who are responsible for charter school deficiencies
255 consistent with Section 53A-1a-509; or

256 (5) any combination of the foregoing (1), (2), (3) and
257 (4).

258 [~~D. The recommendation by the chartering entity shall be~~
259 ~~made within 20 school days of receipt of complaint of~~
260 ~~deficiency(ies).~~

261 ~~E. The chartering entity may exercise flexibility for~~
262 ~~good cause in making recommendation(s) regarding~~
263 ~~deficiency(ies).~~

264 ~~F. The Board shall consider and affirm or modify the~~
265 ~~chartering entity's recommendation(s) for remediating a charter~~
266 ~~school's deficiency(ies) within 60 days of receipt of~~

267 ~~information from the chartering entity.]~~

268 [G]D. In addition to remedies provided for in Section
269 53A-1a-509, the ~~[chartering entity]~~Board may provide for a
270 remediation team to work with the school.

271 **R277-481-8. Appeals Criteria and Procedures.**

272 A. Only an operating charter school, a charter school
273 that has been recommended for approval to the Board, or a
274 charter school applicant that has met State Charter School
275 Board requirements for review by the full State Charter School
276 Board, may appeal ~~[chartering entity]~~charter school authorizer
277 administrative decisions or recommendations to the Board.

278 B. The following ~~[chartering entity]~~charter school
279 authorizer administrative decisions may be appealed to the
280 Board:

- 281 (1) termination of a charter;
- 282 (2) denial of proposed amendments to charter agreement;
- 283 (3) denial or withholding of funds from charter school
284 governing boards; and
- 285 (4) denial of a charter.

286 C. Appeals procedures and timelines

287 (1) The ~~[chartering entity]~~charter school authorizer
288 shall, upon taking any of the administrative actions:

289 (a) provide written notice of denial to the charter
290 school or approved charter school;

291 (b) provide written notice of appeal rights and timelines
292 to the charter school governing board chair or authorized
293 agent; and

294 (c) post information about the appeals process on its
295 website and provide training to charter school governing board
296 members and authorized agents regarding the appeals procedure.

297 (2) A charter school governing board chair or authorized
298 agent (appellant) may submit a written appeal to the State
299 Superintendent within 14 calendar days of the ~~[chartering~~

300 ~~entity~~charter school authorizer administrative action.

301 (3) The Superintendent shall, in consultation with Board
302 Leadership, review the written appeal and determine if the
303 appeal addresses an administrative decision by a [~~chartering~~
304 ~~entity~~]charter school authorizer. If the Superintendent and
305 Board Leadership determine that the appeal is appropriate,
306 Board Leadership shall designate three to five Board members
307 and a hearing officer, who is not a Board member, to act as an
308 objective hearing panel.

309 (4) The hearing officer, in consultation with the
310 Superintendent, shall set a hearing date and provide notice to
311 all parties, including the [~~chartering entity and~~
312 ~~staff~~]charter school authorizer.

313 (5) The [#]hearing shall be held no more than 45 days
314 following receipt of the written appeal.

315 (6) The hearing officer shall establish procedures that
316 provide fairness for all parties, which may include:

317 (a) a request for parties to provide a written
318 explanation of the appeal and related information and
319 evidence;

320 (b) a determination of time limits and scope of testimony
321 and witnesses;

322 (c) a determination for recording the hearing;

323 (d) preliminary decisions about evidence; and

324 (e) decisions about representation of parties.

325 (7) The hearing panel shall make written findings and
326 provide an appeal recommendation to the Board no more than 10
327 calendar days following the hearing.

328 (8) The Board shall take action on the hearing report
329 findings at the next regularly scheduled Board meeting.

330 (9) The recommendation of the [~~chartering entity~~]charter
331 school authorizer shall be in place pending the conclusion of
332 the appeals process, unless the Superintendent in his sole
333 discretion, determines that the [~~chartering entity~~]charter

334 school authorizer's recommendation or failure to act presents
335 a serious threat to students or an imminent threat to public
336 property or resources.

337 (10) All parties shall work to schedule and conclude
338 hearings as fairly and expeditiously as possible.

339 (11) The Board's acceptance or rejection of the hearing
340 report is the final administrative action on the issue.

341 **KEY: charter schools, oversight, monitoring, appeals**

342 **Date of Enactment or Last Substantive Amendment: [~~February 7,~~**
343 **2014**

344 **Notice of Continuation: August 2, 2013**

345 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**
346 **53A-1-401(3); 53A-1a-501.3; 53A-1a-515; 53A-1a-521; 53A-1a-**
347 **505; 53A-1a-501.5; 53A-1a-510; 53A-1a-509; 53A-1-301; 53A-3-**
348 **302; 53A-3-303; 53A-17a-109**