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MEMORANDUM

TO: Members, Utah State Board of Education

FROM: Joel Coleman
Interim Chief Executive Officer

DATE: November 7, 2014

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

Background:

Amendments to R277-481 *Charter School Oversight, Monitoring and Appeals* were proposed to the Board Law and Licensing Committee on May 9, 2014. The Law and Licensing Committee requested that the Board's attorney review the rule before it was considered. The Assistant Attorney General has reviewed the rule and suggestions for changes have been incorporated.

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.

- Sets minimum charter school benchmarks, as recommended by the State Charter School Board;
- Changes "chartering entity" to "charter authorizer," as appropriate under HB 419, 2014 Legislative Session;
- Requires a charter school to notify the Board and school authorizer if a school is in default under a loan agreement or bond covenant;
- Allows a charter authorizer to notify a charter school if the school violates its agreement or state or federal law. Allows for suggestions or plan of compliance from authorizer and assistance from the USOE;
- Provides an appeals process under Section 63G-4-301.

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]~~receiving
24 a notice of noncompliance;

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

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

35 operation of the school.

36 G. "Charter School Performance Standards" means academic,
37 student engagement, financial, and governance benchmarks
38 developed by the State Charter School Board in conjunction
39 with staff, USOE personnel, and charter school leaders. The
40 standards characterize sound academic and operational
41 performance. Charter School governing boards have
42 mission-specific standards in their Charter Agreements,
43 consistent with UCA 53A-1a-508(3)(e).

44 H. "Notice of noncompliance" means a written notice to a
45 charter school from a charter school authorizer or the USOE
46 that the charter school is out of compliance with its charter
47 agreement, or laws, rules or regulations that apply to the
48 charter school specifically or to public schools.

49 [G]I. "Probation" means a formal process and time period
50 during which a school is permitted to demonstrate its full
51 compliance with its charter agreement and all applicable laws,
52 rules and regulations.

53 [H]J. "State Charter School Board" means the board
54 designated in Section 53A-1a-501.5.

55 [I]K. "Superintendent" means the State Superintendent of
56 Public Instruction as designated under Section 53A-1-301.

57 [J]L. "USOE" means the Utah State Office of Education.

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

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

63 A. This rule is authorized under Utah Constitution
64 Article X, Section 3 which vests general control and
65 supervision over public education in the Board, Section
66 53A-1-401(3) which allows the Board to adopt rules in
67 accordance with its responsibilities, and 20 U.S.C., Section

68 8063[+3] which directs the Board to submit specific
69 information prior to charter schools' receipt of federal
70 funds.

71 B. The purpose of this rule is to establish procedures
72 for oversight and monitoring of charter agreements and charter
73 school[s ~~for compliance with minimum standards~~] performance.
74 The rule also provides appeals criteria and a process for
75 schools found out of compliance [~~with chartering entity~~
76 ~~findings~~] by charter school authorizers consistent with this
77 rule.

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

80 A. The State Charter School Board shall provide direct
81 oversight to the charter schools for which it is the
82 [~~chartering entity~~] charter school authorizer, including
83 requiring all charter schools to:

84 (1) comply with their charter agreements containing clear
85 and meaningful expectations for measuring charter school
86 quality[~~-~~];

87 (2) annually review charter agreements, as maintained by
88 the USOE;

89 (3) regularly review other matters specific to effective
90 charter school operations, including a comprehensive review of
91 governing board performance at least once every five years;
92 [~~and~~]

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

95 [~~B.~~](5) [~~All charter schools authorized by the State~~
96 ~~Charter School Board shall also~~] meet the[~~following minimum~~]
97 standards described in the Charter School Performance
98 Standards.[+]

99 ~~— (1) charter schools shall have no unresolved material~~
100 ~~findings, financial condition findings or repeat significant~~

101 ~~findings in the school's independent financial audit, federal~~
102 ~~single audit or USOE audits;~~

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

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

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

110 ~~—— (5) charter school governing boards shall ensure all~~
111 ~~employees and board members have criminal background checks on~~
112 ~~file.~~

113 ~~C. Warning status~~

114 ~~—— (1) A charter school that fails to meet any of the~~
115 ~~minimum standards or a significant number of performance~~
116 ~~standards may be placed on warning status and notified in~~
117 ~~writing by the USOE.~~

118 ~~—— (2) While a school is on warning status, the school may~~
119 ~~seek technical assistance from the USOE staff to remedy any~~
120 ~~deficiencies.]~~

121 B. Charter School Performance Standards are:

122 (1) developed and set by the State Charter School Board
123 for State Charter School Board-authorized charter schools.

124 (2) set in cooperation with charter school leaders
125 consistent with the definition in R277-481-1G.

126 (3) reviewed by the State Charter School Board at least
127 every five years, or more often as necessary.

128 (4) posted on the Charter School Board website and the
129 Charter Board shall send notice to charter schools of proposed
130 changes for discussion and final standards.

131 ~~[D]C. Probation status~~

132 ~~(1) [If any minimum standard or a significant number of~~
133 ~~performance standards has not been met by an assigned date~~
134 ~~following designation of warning status, the State Charter~~

135 ~~School Board shall notify the school]~~The State Charter School
136 Board may place on probation a charter school that falls far
137 below standards described in the Charter School Performance
138 Standards or a charter school's charter agreement due to a
139 significant structural or organizational problem, knowingly
140 violates its charter agreement, places students in an unsafe
141 environment, does not meet the terms of its notice of
142 noncompliance, or knowingly violates state or federal law,
143 rule or regulation. The State Charter School Board shall
144 notify the charter school in writing of the specific~~[-minimum]~~
145 standard(s) the school did not meet.

146 (2) ~~[Based on the State Charter School Board's review of~~
147 ~~the charter school's noncompliance, progress and response to~~
148 ~~technical assistance, the State Charter School Board may place~~
149 ~~the school on probation for up to one calendar year following~~
150 ~~the designation of warning status.~~

151 ~~—(3)—~~Upon placing a school on probation, the State
152 Charter School Board shall set forth a written plan outlining
153 those provisions in the charter agreement, applicable laws,
154 rules and regulations with which the school is not in full
155 compliance. This written plan shall set forth the terms and
156 conditions and the timeline that the school shall follow in
157 order to be removed from probation.

158 ([4]3) If the school complies with the written plan in a
159 timely manner, the State Charter School Board shall remove the
160 school from probation.

161 ([5]4) ~~[while a]~~A school~~[-is]~~ on probation~~[-it]~~ shall be
162 required to satisfy certain requirements and conditions set
163 forth by the State Charter School Board. If the school fails
164 to satisfy specific requirements and conditions by a date
165 established by the State Charter School Board, the State
166 Charter School Board may take additional action, including
167 terminat[e]ing the school's charter.

168 ([6]5) While a school is on probation, the school may

169 seek technical assistance from the USOE staff to remedy any
170 deficiencies.

171 ([7]6) The State Charter School Board may, for good
172 cause, or if the health, safety, or welfare of the students at
173 the school is threatened at any time during the probationary
174 period, terminate the charter immediately.

175 **R277-481-4. Charter School Governing Board Compliance with**
176 **Law.**

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

179 (1) failure to meet measures of charter school quality
180 which include[~~s~~] adherence to a charter agreement required and
181 monitored by [~~chartering entities~~]charter school authorizers;
182 [~~or~~]

183 (2) charter school deficiencies; or

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

186 B. If a charter school's charter conflicts with
187 applicable federal or state law or rule, the charter shall be
188 interpreted to require compliance with such law or rule; all
189 other provisions of the school's charter shall remain in full
190 force and effect.

191 C. A charter school governing board may amend its
192 charter agreement by receiving approval from its [~~chartering~~
193 ~~entity~~]charter school authorizer consistent with Section 53A-
194 1a-508.

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

202 E. A charter school shall notify the Board and the
203 ~~[chartering entity]~~charter school authorizer of any and all
204 lawsuits filed against the charter school within 30 days of
205 the filing of the lawsuit.

206 **R277-481-5. ~~[Chartering Entity]~~Charter School Authorizer**
207 **Oversight, ~~[and]~~Monitoring, and Notice.**

208 A. Local school board and institutions of higher
209 education ~~[chartering entities]~~charter school authorizers
210 shall:

211 (1) visit a charter school at least once during its first
212 year of operation in order to ensure adherence to and
213 implementation of the approved charter and to finalize a
214 review process;

215 (2) visit a charter school as determined in the review
216 process;

217 (3) provide written reports to a charter school after the
218 visits that set forth strengths, deficiencies, corrective
219 actions, timelines and the reason for charter termination, if
220 applicable; and

221 (4) audit and investigate claims of fraud or misuse of
222 public assets or funds.

223 B. ~~[Chartering entities]~~Charter school authorizers shall
224 notify the Board within 20 days of charter school deficiencies
225 that initiate corrective action by ~~[chartering~~
226 ~~entities]~~charter school authorizers.

227 C. Notice of noncompliance

228 (1) A charter school authorizer or USOE Director or agent
229 may notify a school in writing if the charter school does not
230 meet standards described in its charter agreement or
231 authorizer-developed standards due to a significant structural
232 or organizational problem, fails to follow its charter
233 agreement, or violates state or federal law, rule or
234 regulation. A charter school authorizer or USOE Director or

235 agent shall send a copy of the notice of noncompliance to the
236 State Charter School Board. The charter school authorizer or
237 USOE Director or agent may send suggestions or a plan for
238 compliance with the notice of noncompliance.

239 (2) If the USOE Director or agent sends a notice of
240 noncompliance to a charter school, the USOE Director or agent
241 shall send a copy of the notice of noncompliance to the
242 charter school authorizer within a reasonable time after the
243 USOE Director or agent sends the notice of noncompliance to
244 the charter school. A charter school that has received a
245 notice of noncompliance may seek technical assistance from the
246 USOE staff to remedy deficiencies.

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

248 A. Charter school business administrators shall attend
249 USOE required business meetings for charter schools.

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

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

257 D. A charter school shall appoint a business
258 administrator consistent with Sections 53A-3-302 and 303. The
259 business administrator shall be responsible for the submission
260 of all financial and statistical information required by the
261 Board.

262 E. The Board may interrupt disbursements to charter
263 schools for failure to comply with financial and statistical
264 information required by law or Board rules.

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

267 G. Charter schools are not eligible for necessarily

268 existent small schools funding under Section 53A-17a-109(2)
269 and R277-445.

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

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

275 B. The [~~chartering entity or the~~] Board [~~through the~~
276 ~~chartering entity~~] may direct a charter school governing board
277 or the charter school administration to take reasonable action
278 to protect state or federal funds consistent with Section 53A-
279 1a-510.

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

- 281 (1) allow a charter school governing board to hold a
282 hearing to determine financial responsibility and assist the
283 charter school governing board with the hearing process;
284 (2) immediately terminate the flow of state funds;
285 (3) recommend cessation of federal funding to the school;
286 (4) take immediate or subsequent corrective action with
287 employees who are responsible for charter school deficiencies
288 consistent with Section 53A-1a-509; or
289 (5) any combination of the foregoing (1), (2), (3) and
290 (4).

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

294 ~~E. The chartering entity may exercise flexibility for~~
295 ~~good cause in making recommendation(s) regarding~~
296 ~~deficiency(ies).~~

297 ~~F. The Board shall consider and affirm or modify the~~
298 ~~chartering entity's recommendation(s) for remediating a charter~~
299 ~~school's deficiency(ies) within 60 days of receipt of~~
300 ~~information from the chartering entity.]~~

301 [G]D. In addition to remedies provided for in Section
302 53A-1a-509, the [~~chartering entity~~]Board may provide for a
303 remediation team to work with the school.

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

305 A. Only an operating charter school, a charter school
306 that has been recommended for approval to the Board, or a
307 charter school applicant that has met [~~State Charter School~~
308 ~~Board~~]charter school authorizer requirements for review by the
309 [~~full State Charter School Board~~]charter school authorizing
310 body, may appeal [~~chartering entity~~]charter school authorizer
311 administrative decisions or recommendations to the Board.

312 B. The following [~~chartering entity~~]charter school
313 authorizer administrative decisions may be appealed to the
314 Board, consistent with Sections 53A-1a-505(1)(e), 53A-1a-
315 510(2)(d), 53A-1a-504(4) and 53A-1a-509:

- 316 (1) termination of a charter;
317 (2) [~~denial of proposed amendments to charter agreement;~~
318 ~~—(3)—~~]denial or withholding of funds from charter school
319 governing boards; and
320 ([4]3) denial of a charter.

321 C. Appeals procedures and timelines

322 (1) The charter[~~ing entity~~]school authorizer shall, upon
323 taking any of the administrative actions:

324 (a) provide written notice of denial to the charter
325 school[~~or approved charter school~~];

326 (b) provide written notice of appeal rights and
327 timelines[~~to the charter school governing board chair or~~
328 ~~authorized agent~~]; and

329 (c) post information about the appeals process on its
330 website[~~and provide training to charter school governing~~
331 ~~board members and authorized agents regarding the appeals~~
332 ~~procedure~~].

333 (2) A charter school governing board chair or authorized

334 agent (appellant) may submit a written appeal to the State
335 Superintendent within ~~[14]~~30 calendar days of the charter~~[ing~~
336 ~~entity]~~ school authorizing body administrative action.

337 (3) The Superintendent shall, in consultation with Board
338 Leadership, review the written appeal within 15 days and
339 determine if the appeal addresses an administrative decision
340 by a charter~~[ing—entity]~~ school authorizer. If the
341 Superintendent and Board Leadership determine that the appeal
342 is appropriate, Board Leadership shall designate ~~[three to~~
343 ~~five]~~a panel of Board members and a ~~[hearing]~~presiding
344 officer, or a presiding officer acting alone, [who is not a
345 ~~Board member, to act as an objective hearing panel]~~to preside
346 over the hearing.

347 (4) The ~~[hearing]~~presiding officer~~[, in consultation with~~
348 ~~the Superintendent,]~~ shall set a hearing date and provide
349 notice to all parties, including the charter~~[ing—entity]~~
350 school authorizer and staff.

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

353 (6) The ~~[hearing]~~presiding officer shall establish
354 procedures that provide fairness for all parties, which may
355 include:

356 (a) a request for parties to provide a written
357 explanation of the appeal and related information and
358 evidence;

359 (b) a determination of time limits and scope of testimony
360 and witnesses;

361 (c) a determination for recording the hearing;

362 (d) preliminary decisions about evidence; and

363 (e) decisions about representation of parties.

364 (7) The ~~[hearing panel]~~presiding officer shall make
365 written findings ~~[and provide an appeal~~
366 ~~recommendation]~~consistent with Section 63G-4-208(1) to the
367 Board no more than ~~[10]~~15 calendar days following the hearing.

368 (8) The Board shall take action on the [~~hearing~~
369 ~~report~~]presiding officer's written findings at the next
370 regularly scheduled Board meeting.

371 [~~(9)~~]D. The recommendation of the [~~chartering~~
372 ~~entity~~]charter school authorizer shall be in place pending the
373 conclusion of the appeals process, unless the Superintendent
374 in his sole discretion, determines that the [~~chartering~~
375 ~~entity~~]charter school authorizer's recommendation or failure
376 to act presents a serious threat to students or an imminent
377 threat to public property or resources.

378 [~~(10)~~] All parties shall work to schedule and conclude
379 hearings as fairly and expeditiously as possible.

380 ~~— (11) The Board's acceptance or rejection of the hearing~~
381 ~~report is the final administrative action on the issue.]~~

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

383 **Date of Enactment or Last Substantive Amendment: [February 7,]**
384 **201[4]5**

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

386 **Authorizing, and Implemented or Interpreted Law: Art X Sec 3;**
387 **53A-1-401(3); 53A-1a-501.3; 53A-1a-515; 53A-1a-521; 53A-1a-**
388 **505; 53A-1a-501.5; 53A-1a-510; 53A-1a-509; 53A-1-301; 53A-3-**
389 **302; 53A-3-303; 53A-17a-109**