

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (New Administrative Regulation)

5 701 KAR 8:020. Evaluation of charter school authorizers.

6 RELATES TO: KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596,

7 160.1597, 160.1598, 160.1599, 161.141

8 STATUTORY AUTHORITY: KRS 160.1596

9 NECESSITY, FUNCTION, AND CONFORMITY: KRS 160.1596 requires the Kentucky Board
10 of Education to promulgate an administrative regulation to establish the process to be used to
11 evaluate the performance of a charter school authorizer, based upon the requirements of KRS
12 160.1590 to 160.1599 and 161.141, and the actions to be taken in response to failures in
13 performance.

14 Section 1. Definitions.

15 () “Applicant” is defined in KRS 160.1590(3).

16 () “Authorizer” or “public charter school authorizer” is defined in KRS 160.1590(13).

17 () “Authorizer’s board of directors” means:

18 (a) The board of education for the school district for an authorizer described in KRS 160.1590
19 (13)(a); and

20 (b) The boards of education that have collaborated to set up a regional public charter school
21 for an authorizer described in KRS 160.1590(13)(b).

- 1 () “Charter application” is defined in KRS 160.1590(4).
- 2 () “Days” means calendar days and shall be calculated pursuant to KRS 446.030.
- 3 () “Governing board of the authorizer” means the authorizer’s board of directors.
- 4 () “Governing body of the authorizer” means the authorizer’s board of directors.
- 5 () “Parent” is defined in KRS 160.1590(11).
- 6 () “Person with custody or charge” means any adult, pursuant to KRS 159.010, who falls
7 within the definition of KRS 387.010(2) for interested person or entity and with whom the student
8 resides.
- 9 () “Student” is defined in KRS 160.1590(19) and includes any person who is entitled to
10 enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.
- 11 () “Substantial hardship” means a significant, unique, and demonstrable economic,
12 technological, legal, or other impact on a school district which impairs its ability to continue to
13 successfully meet the requirements of educational programs or services to its students.
- 14 Section 2. Policies and Procedures. (1) Pursuant to KRS 160.1594, an authorizer shall create
15 policies and procedures governing the authorizer’s performance of its duties under KRS 160.1590
16 to 160.1599 and 161.141 and 701 KAR Chapter 8 and include in its policies and procedures:
- 17 (a) The authorizer’s strategic vision for chartering, including a clear statement of any
18 preference for a charter application that demonstrates the intent, capacity, and capability to provide
19 comprehensive learning experiences to students identified in KRS 160.1594(2);
- 20 (b) Identification of any charter application preferences that the authorizer pursuant to KRS
21 160.1595(2);
- 22 (c) Information on the performance contract, including academic, financial, and operational
23 measures, and the performance framework, with which the authorizer shall evaluate the charter

1 school's performance under the charter contract, that the authorizer has developed for public
2 charter school oversight and evaluation, in accordance with KRS 160.1594 and 701 KAR Chapter
3 8;

4 (d) The evidence the authorizer shall require, the evaluation the authorizer shall conduct
5 using the performance framework, and other aspects of the authorizer's ongoing monitoring of
6 the charter school including:

- 7 1. Ensuring a charter school's legally entitled autonomy;
- 8 2. Protecting student rights;
- 9 3. Informing intervention, revocation and renewal decisions; and
- 10 4. Providing annual reports as required by KRS 160.1597(5);

11 (e) The requirements for reporting to the public;

12 (f) The authorizer's authority to intervene in charter schools, when and if necessary;

13 (g) Guidelines concerning the format and content essential for an applicant to demonstrate the
14 capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590 to
15 160.1599 and 161.141 and 701 KAR Chapter 8;

16 (h) The timeline for submission, review, decision, and appeal of the charter application
17 decision, and a request for renewal. An authorizer described in KRS 160.1590(13)(c) and (d) shall
18 consult with the superintendent of the resident school district when planning this timeline;

19 (i) A template of the assurances an authorizer shall require in a charter contract;

20 (j) The following evidence sufficiency requirements for the charter application:

- 21 1. The charter board of director's ability to meet the financial solvency and sustainability
22 demands of their proposed budget;
- 23 2. Competent and timely charter school start-up and operation;

- 1 3. Foreseen and unforeseen closure; and
- 2 4. All debts and obligations during each year of the charter contract and during the entire
3 contract term;
- 4 (k) The financial transparency requirements that will apply to a charter school, including
5 specific provisions regarding publication on the authorizer’s website and the charter school’s
6 website;
- 7 (l) The charter school closure protocol and requirements;
- 8 (m) A description of the authorizer’s organizational capacity, including its commitment of
9 human and financial resources necessary to conduct authorizing duties effectively and efficiently;
- 10 (n) The authorizer’s requirements for solicitation and evaluation of a charter application,
11 including its implementation of a comprehensive application process that includes use of the
12 Kentucky Charter School Application and Addendum, incorporated by reference, and rigorous
13 criteria, and grants a charter only to an applicant that demonstrates a strong capacity to establish
14 and operate a charter school;
- 15 (o) The authorizer’s requirements for performance contracting, including requirements for
16 executing a contract with a charter school board of directors that articulates:
- 17 1. The rights and responsibilities of each party regarding school autonomy;
- 18 2. Funding
- 19 3. Administration and oversight;
- 20 4. Outcomes;
- 21 5. Measures for evaluating success or failure;
- 22 6. Performance consequences; and
- 23 7. Other material terms;

1 (p) The authorizer’s charter renewal and revocation processes and rigorous criteria, including
2 its design and implementation of a transparent and rigorous process that uses comprehensive
3 academic, financial and operational performance data to make merit-based renewal and
4 revocation decisions; and

5 (q) The requirements of KRS 160.1590 to 160.1599 and 161.141 and 701 KAR Chapter 8 for
6 a charter school applicant, a board of directors, an education service provider, a charter school,
7 and their employees.

8 Section 3. Standards of Authorizer Performance Generally. (1) Prior to authorizing a charter
9 school, an authorizer described in KRS 160.1590(13)(c) and (d) shall file with the Board the Notice
10 of Intent, incorporated by reference.

11 (2) An authorizer shall only utilize funds received as a result of charter authorization and
12 oversight for the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to
13 160.1599 and 161.141 and 701 KAR Chapter 8.

14 (3) Pursuant to KRS 160.1596(5)(e), an authorizer shall include in its report and place in a
15 publicly accessible location on its website information on the following:

16 (a) The oversight and any services provided by the authorizer to the public charter schools
17 under the authority of the authorizer;

18 (b) The authorizing functions provided by the authorizer to the public charter schools under its
19 jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual
20 audited financial statements that conform to generally accepted accounting principles;

21 (c) All use of charter authorizing revenue including expenditures, contracts, and revenues, in
22 the format required by the commissioner of education; and

23 (d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599

1 and 701 KAR Chapter 8.

2 (4) The authorizer, or its designee for charter authorizing, shall participate in annual training
3 as follows:

4 (a) Each authorizer or member of the authorizer's board of directors shall complete nine (9)
5 hours of annual training, with six (6) additional hours of training for new authorizers or new
6 members;

7 (b) The training shall include certain topics of authorizer responsibility and charter school
8 formation and operation, including but not limited to:

9 1. Financial governance and transparency;

10 2. Conflict of interest;

11 3. Charter school application;

12 4. Charter school contracting;

13 5. Charter school monitoring;

14 6. Charter school renewal, non-renewal, and revocation;

15 7. Charter school closure; and

16 8. Ethics; and

17 (c) The training shall be conducted by a provider approved by the commissioner of education.

18 (5) An authorizer shall submit to the department a written assurance of a charter school's
19 compliance with the pre-operating requirements in this administrative regulation and in the charter
20 contract before the opening of the charter school.

21 (6) An authorizer shall require the sharing of best practices between the charter school and the
22 resident school district.

23 Section 4. Standards of Authorizer Performance Concerning Charter Applications.

- 1 (1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2, an authorizer shall not approve a charter
2 application that includes in the applicant or the board of directors:
- 3 (a) A for-profit organization;
- 4 (b) An organization that is organized for religious purposes, within the meaning of 501(c)(3)
5 of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant
6 to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
- 7 (c) A business entity that is not authorized to do business and in good standing in the
8 Commonwealth of Kentucky, pursuant to KRS Chapter 14A.
- 9 (2) An authorizer shall require a charter application to be submitted on the Kentucky Charter
10 School Application and Addendum, incorporated by reference.
- 11 (3) An authorizer shall publish a copy of a submitted charter application on its website within
12 three (3) days of submission by the applicant to the authorizer.
- 13 (4) An authorizer described in KRS 160.1590(13)(c) and (d) shall provide a copy of a
14 submitted charter application to the resident school district superintendent within three (3) days of
15 submission by the applicant to the authorizer.
- 16 (5) An authorizer described in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted
17 charter application for a regional achievement academy within a regional achievement zone to the
18 superintendents of the other school districts of the regional achievement zone within three (3) days
19 of submission by the applicant to the authorizer.
- 20 (6) An authorizer shall allow a resident school district superintendent to file a letter with
21 supporting evidence objecting to the approval of the charter application on the basis of the
22 substantial hardship that may result for the students of the resident district who do not attend the
23 charter school. An authorizer shall review this evidence prior to approving a charter application.

- 1 (7) An authorizer shall allow a resident school district superintendent to file a letter of support
2 for a charter school application.
- 3 (8) An authorizer may require a resident school district superintendent to provide information
4 and evidence regarding the academic performance of the students identified in the charter
5 application as the targeted student body or community.
- 6 (9) An authorizer shall comply with the following requirements in reviewing the charter
7 application:
- 8 (a) Request and secure a certificate of existence for the applicant and the proposed charter
9 board of directors from the Secretary of State, pursuant to KRS Chapter 14A.2-130; and
- 10 (b) If the applicant or the board of directors includes a foreign entity, request and secure a
11 certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS
12 Chapter 14A.2-140.
- 13 (10) The department shall develop a charter application scoring rubric that an authorizer may
14 utilize in reviewing a charter application. **OR An authorizer may utilize the Charter Application
15 Review Rubric when evaluating a charter application.**
- 16 (11) An authorizer shall require an applicant or proposed board of directors for a charter school
17 to include in the charter application the following:
- 18 (a) Performance information, financial information, and closure information for any charter
19 school under the applicant or board of directors;
- 20 (b) Details and documentation of the outreach the applicant or proposed board of directors has
21 had with the students or community that is the focus of the charter application; and
- 22 (c) Details of whether the charter application replicates or substantially replicates:
- 23 1. An application that the applicant, the proposed board of directors, or another entity

1 previously withdrew from consideration and the reasons the application was withdrawn;

2 2. An application that was rejected by an authorizer and the reasons the application was
3 rejected; or

4 3. A charter school that was previously closed and the reasons for the closure.

5 (12) An authorizer shall provide on the authorizer’s website the names of all persons, and their
6 roles, who are involved in the review of charter applications. Review of charter applications shall
7 be conducted pursuant to the requirements of the Open Meetings Act.

8 Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to
9 negotiating a charter contract with a board of directors, an authorizer shall verify the board of
10 directors’ tax-exempt application or status under 501(c)(3) of the Internal Revenue Code of 1986,
11 as amended.

12 (2) An authorizer shall utilize the Charter Contract, incorporated by reference, when forming
13 a charter contract with a charter school board of directors.

14 (3) An authorizer shall include in the charter contract pre-opening requirements or conditions
15 as follows:

16 (a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions
17 to monitor the start-up progress of a newly approved public charter school, ensure that the charter
18 school is prepared to open timely and smoothly on the date agreed, and ensure that the charter
19 school meets all benchmarks related to facilities, health, safety, insurance, school personnel,
20 enrollment, curriculum and instruction, operations and fiscal management, governance, and other
21 legal requirements for the charter school opening; and

22 (b) Failure by the board of directors to comply with the pre-opening requirements or conditions
23 may result in the immediate revocation of the charter contract and may result in the delay in the

1 opening of the charter school by up to one year if the authorizer does not determine that the charter
2 school is more likely than not to close during the school year; and

3 (c) Failure by the board of directors to comply with the pre-opening requirements or conditions
4 may result in the immediate revocation of the charter contract and shall result in the delay in the
5 opening of the charter school by up to one year if the authorizer does determine that the charter
6 school is more likely than not to close during the school year.

7 (4) An authorizer shall include in the charter contract with the charter board of directors
8 provisions for charter school financial solvency and sustainability, including:

9 (a) A requirement that no member of the charter school's board of directors, no education
10 service provider, and no charter school employee shall recommend and no member of the charter
11 school's board of directors shall knowingly vote for an expenditure in excess of the charter
12 school's income and revenue of any year, as shown by the budget adopted by the charter school
13 board of directors and approved by the authorizer;

14 (b) A requirement that a member of the charter school's board of directors, an education
15 service provider, or a charter school employee who knowingly expends or authorizes the
16 expenditure of charter school funds or who knowingly authorizes or executes any employment,
17 purchase, or contract, in violation of this section, shall be jointly and severally liable in person and
18 upon any official bond given to the authorizer to the extent of any payments on the void claim. For
19 purposes of this subsection, "knowingly" shall mean a person acts with respect to conduct or to a
20 circumstance described by a statute defining an offense when he is aware that his conduct is of
21 that nature or that the circumstance exists; and

22 (c) A requirement that, if at any time during any fiscal year of the charter school's existence,
23 a member of the charter school's board of directors, an education service provider, or a charter

1 school employee knows or reasonably should know that the charter school has or will become
2 unable to pay in full its projected expenses as they fall due, the charter school shall immediately
3 so advise the department and the authorizer, and shall provide the department and the authorizer
4 with all financial information relating to revenues and expenses of the school necessary for the
5 department and the authorizer to determine the extent and cause of any potential operating deficit.
6 If the member of the charter school board of directors, the education service provider, or the charter
7 school employee fails to provide the notice to the department and the authorizer required by this
8 subsection or fails to cooperate with the department and the authorizer in the production of
9 financial information pursuant to this subsection, the authorizer shall determine whether grounds
10 exist to revoke the charter contract, and the member of the charter school board of directors, the
11 education service provider, or the charter school employee may be subject to the liability described
12 in paragraph (1)(b) of this section.

13 (5) An authorizer shall include in the charter contract the specific, exclusive reasons and
14 timelines for closure initiated by the charter school board of directors, and the closure protocol and
15 policies and procedures applicable to closure of the charter school.

16 (6) An authorizer shall require in the charter contract the closure requirements of KRS
17 160.1590 to 160.1599 and 161.141 and 701 KAR Chapter 8.

18 (7) An authorizer shall require in the charter contract that the charter school shall not prohibit
19 a student from attending or withdraw and shall not unenroll a student unless the charter school has
20 complied with KRS 158.150.

21 (8) An authorizer shall require in the charter contract that the charter school board of directors
22 maintain separate accountings of all funds received and disbursed by each charter school under the
23 charter school board of directors.

- 1 (9) An authorizer shall require in the charter contract that any contract the charter school board
2 of directors enters with an education service provider has to be approved by the authorizer prior to
3 execution and that any contract the charter school board of directors enters with an education
4 service provider shall comply with the following:
- 5 (a) Clearly establish the primacy of the charter contract over the contract between the charter
6 board of directors and the education service provider;
 - 7 (b) Clearly identify the charter school board of directors as the party ultimately responsible for
8 the success or failure of the school, and clearly define the education service provider as a vendor
9 of services;
 - 10 (c) Prohibit the education service provider from selecting, approving, employing,
11 compensating, or serving as members of the charter school board of directors;
 - 12 (d) Require the charter school board of directors to directly select, retain, and compensate the
13 charter school's legal counsel, finance staff, and audit firm;
 - 14 (e) Provide for payments from the authorizer to the charter school to be made to an account
15 controlled by the charter school board of directors, not the education service provider;
 - 16 (f) Require all instructional materials, furnishings, and equipment purchased or developed
17 with public funds be the property of the charter school, not the education service provider;
 - 18 (g) Identify and describe the roles and responsibilities of the charter school board of directors
19 and the education service provider, including all services to be provided under the contract between
20 the charter school board of directors and the education service provider;
 - 21 (h) Identify and describe the performance measures and consequences by which the charter
22 school board of directors shall hold the education service provider accountable for performance,
23 aligned with the performance measures in the charter contract;

- 1 (i) Identify and describe with specificity all compensation to be paid to the education service
2 provider, including all fees, bonuses, and the conditions, consideration, and restrictions on such
3 compensation;
- 4 (j) Identify and describe the terms of any facility agreement that may be part of the
5 relationship;
- 6 (k) Identify and describe financial reporting requirements and provisions for the charter school
7 board of directors' financial oversight of the education service provider and the charter school;
- 8 (l) Identify and describe all other financial terms of the contract, including disclosure and
9 documentation of all loans or investments by the education service provider to the charter school
10 board of directors, and provision for the disposition of assets upon closure in accordance with KRS
11 160.1590 to 160.1599 and 161.141 and 701 KAR Chapter 8;
- 12 (m) Include assurances that the charter school board of directors, at all times, shall maintain
13 independent fiduciary oversight and authority over the school budget and ultimate responsibility
14 for the school's performance;
- 15 (n) Include provisions for contract termination without penalties for the charter school board
16 of directors and without costs beyond the pro-rated value of the services provided;
- 17 (o) Assure that the charter school board of directors will be structurally independent from the
18 education service provider and shall set and approve school policies, that the terms of the contract
19 between the charter school board of directors and the education service provider are reached
20 through arm's-length negotiations in which the charter school board of directors is represented by
21 legal counsel that does not also represent the education service provider; and
- 22 (p) Identify and describe the respective responsibilities of the charter school board of directors
23 and the education service provider in the event of school closure.

1 (10) An authorizer shall prohibit a charter school board of directors, in the charter contract, from
2 delegating the charter school board of directors' responsibilities in subsection (9) of this section to
3 the education service provider.

4 (11) No authorizer shall enter a charter contract for start-up, conversion, or renewal of a charter
5 school, or agree to any charter contract amendment, unless the charter contract or amendment is
6 approved by the commissioner of education. An authorizer shall provide the commissioner of
7 education a copy of a proposed charter contract or proposed amendment. Within (15) days of
8 receipt of the proposed charter contract or amendment from the authorizer, pursuant to KRS
9 160.1594(9) the commissioner of education shall provide to an authorizer and the charter school
10 board of directors the reasons for a denial and any suggestions for remedy of these reasons and
11 notice of the opportunity for resubmission of the remedied contract or amendment to the
12 commissioner of education. Any failure by an authorizer to meet the commissioner of education's
13 requirements for approval shall render the charter contract or its amendment void.

14 **Section 6. Standards of Authorizer Performance Concerning Charter Monitoring.**

15 (1) An authorizer, that determines a charter school board of directors has governance over
16 more than one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall
17 commence an investigation to determine if the charter school board of directors is in compliance
18 with the charter contract for any other charter school under the authorizer's jurisdiction.

19 (2) An authorizer shall monitor the performance of the charter contract by a charter school
20 board of directors, and any educational service provider. If the authorizer believes there is an issue
21 with any aspect of performance of the charter contract, or compliance with any of the requirements
22 of KRS 160.1590 to 160.1599 and 161.141 or 701 KAR Chapter 8, the authorizer shall commence
23 an investigation.

1 (3) An authorizer that verifies an issue with any aspect of performance of the charter contract,
2 or compliance with any of the requirements of KRS 160.1590 to 160.1599 and 161.141 or 701
3 KAR Chapter 8, shall notify the commissioner of education and may request assistance from the
4 commissioner of education in addressing and remedying the issue.

5 (4) An authorizer that verifies an issue with any aspect of the performance of the charter
6 contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599 and 161.141
7 or 701 KAR Chapter 8, shall take necessary action, including unilateral imposition of conditions
8 on the charter school, amendment, revocation, or non-renewal of the charter contract, to resolve
9 the issue and to provide notice of the issue and the resolution to the charter school's adult students,
10 emancipated youth students, and parents or persons with custody or charge.

11 (5) An authorizer shall at least monthly review the financial budget reports of the charter
12 school and take the following action:

13 (a) If the projections indicate that the charter school's annual operating expenses may at any
14 time during the school year cause the annual operating revenues to fall below two percent (2%),
15 the authorizer shall:

16 1. Require the charter school to implement a cash management plan approved by the
17 authorizer;

18 2. Commence a more in-depth review, and an audit if necessary, of the financial budget
19 reports, the expenditures and revenues;

20 3. Seek financial management assistance for the charter school from the department; and

21 4. Restrict the charter school's expenditures and require the authorizer's approval prior to
22 expenditure of charter school funds for the remainder of the school year; and

23 (b) If the authorizer otherwise suspects the charter school may close prior to the end of the

1 school year or the charter contract term, the authorizer shall:

2 1. Consult with the commissioner of education;

3 2. Communicate with the charter school board of directors to determine the need for charter
4 revocation;

5 3. Commence actions under (a) above; and

6 4. Review the closure protocol, review the charter contract termination provisions,
7 communicate with the charter school board of directors regarding the closure protocol and contract
8 provisions for termination, and notify students and resident districts, as necessary.

9 (6) An authorizer shall revoke the charter contract, take over operation of the charter school
10 for the rest of the school year, and determine the timeline for closure if the authorizer determines
11 the charter school:

12 (a) Is financially insolvent;

13 (b) Is financially unsustainable for the remainder of the school year or the charter contract
14 term; or

15 (c) Has violated or threatened the health and safety of the students of the public charter school,
16 pursuant to KRS 160.1598(7).

17 (7) The department shall develop a charter contract performance framework that an authorizer
18 may utilize in developing a charter contract performance framework. The charter contract
19 performance framework shall include targets in the following areas:

20 (a) Student assessment and accountability;

21 (b) Student graduation rates;

22 (c) Student promotion rates;

23 (d) Student attendance rates; and

1 (e) Student admission and enrollment in postsecondary institutions; and

2 (f) other outcomes.

3 Section 7. Standards of Authorizer Performance Concerning Charter Approval, Revocation,
4 Renewal, and Non-renewal. (1) An authorizer shall not approve an application, contract with, or
5 renew a contract with a charter school board of directors for a charter school that:

6 (a) Does not operate a breakfast program under the Child Nutrition Act of 1966, 42 U.S.C.
7 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School
8 Lunch Act, 42 U.S.C. 1751 et seq. (NSLA) or a breakfast and lunch program with provision of
9 meals at no cost to students who qualify for free meals under the CNA and NSLA and with the
10 provision of meals at a reduced cost to students who qualify for reduced price meals under the
11 CNA and NSLA; or

12 (b) Does not provide initial and continuing evidence and assurances of the charter school's
13 financial solvency and financial sustainability, as demonstrated initially by the budget plan in the
14 charter application, to cover the expenses of start-up or conversion, operation, and any foreseen or
15 unforeseen closure of the charter school during the fiscal year or during the contract term.

16 (2) An authorizer shall require for approval of a charter application, for contracting with a
17 charter board of directors, for performance of a charter contract, and for renewal of a charter
18 contract, the following:

19 (a) Inclusion of at least two (2) resident parents or persons with custody or charge of resident
20 students who will attend the charter school in a charter school board of directors;

21 (b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4
22 and 5 only as allowed for local boards of education in KRS 160.540;

23 (c) Participation of all members of a charter school board of directors in nine (9) hours of

- 1 annual training, with six (6) additional hours of training for new charter school board members
2 and members of newly-approved charter schools during the first year after approval. The training
3 shall include certain topics, including financial governance and transparency, conflict of interest,
4 and ethics, and be conducted by a provider approved by the commissioner of education;
- 5 (d) Attendance by at least one member of the authorizer’s board of directors at any due process
6 hearing conducted pursuant to KRS 158.150 to suspend or expel a charter school student;
- 7 (e) Provision by the charter school board of directors, and any education service provider, to
8 the authorizer of information and copies of all records of use of the Individual with Disabilities
9 Education Act dispute resolution procedures, 707 KAR 1:340, regarding the services provided by
10 a charter school or a student attending a charter school;
- 11 (f) Provision by the charter school board of directors, and any education service provider, to
12 the authorizer of information and copies of all records of use of physical restraint or seclusion of
13 charter school students;
- 14 (g) Provision by the charter school board of directors, and any education service provider, to
15 the authorizer of information and copies of all records of allegations received or substantiation of
16 violation of any health, safety, civil rights, and disability rights of students, staff, or parents or
17 persons with custody or charge;
- 18 (h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any
19 education service provider, to the requirements of KRS 160.300 and 702 KAR 3:220 for the waiver
20 of fees for students eligible for free or reduced price lunch;
- 21 (i) Provision to the public of updates on the charter school’s performance of the charter
22 contract, according to the charter contract and performance framework;
- 23 (j) Restriction of expenditure of charter school resources and funds for educational purposes

1 only;

2 (k) Restriction on expenditure or disposal of charter school resources and funds for the fair
3 market value of the expenditure or disposal;

4 (l) Restriction on the addition or moving of any location of the charter school without the
5 written consent of the authorizer and amendment of the charter contract; and

6 (m) Provision of student enrollment and attendance records and data at least monthly during
7 the school year.

8 (3) An authorizer shall revoke, effective at the end of the school year, a charter contract for
9 any of the reasons in KRS 160.1598(6).

10 (4) An authorizer shall require continuous enrollment at a charter school of at least eighty
11 percent (80%) of the minimum student enrollment targets of KRS 160.1593(3)(f)2 or the charter
12 contract minimum student enrollment requirements and shall monitor and take action as follows:

13 (a) The charter school shall provide at least monthly reports to the authorizer on student
14 enrollment and attendance; and

15 (b) Failure of the charter school to maintain this minimum student enrollment shall result in
16 an immediate review by the authorizer of:

17 1. The charter school's operations,

18 2. The charter school's financial solvency;

19 3. The charter school's financial sustainability through the end of the school year and the end
20 of the charter contract term;

21 4. The potential for closure;

22 5. Violation of the charter contract; and

23 6. The need for imposition of unilateral conditions, amendment, non-renewal, or revocation

1 of the charter contract, or immediate revocation of the charter contract pursuant to KRS
2 160.1598(7).

3 (5) An authorizer shall not approve a charter application for a start-up or conversion charter
4 school if the applicant or proposed member of the board of directors has been previously found to
5 have knowingly violated the requirements for interscholastic athletic activity sanctioned by the
6 Board or its designated agency, and the authorizer shall ensure compliance with this requirement
7 as follows:

8 (a) The authorizer shall consult with the Board's designated agency to ensure compliance with
9 this requirement;

10 (b) The Board's designated agency may provide copies of its relevant written reports described
11 in 702 KAR 7:065 Section 3(17) to the authorizer; and

12 (c) If the authorizer does determine a member of the applicant or the proposed board of
13 directors has previously been found to have knowingly violated the requirements for
14 interscholastic athletic activity sanctioned by the Board or its designated agency, the authorizer
15 may only approve a charter application, contract with, or renew a charter for a start-up or
16 conversion charter school that does not sponsor interscholastic athletic activities, unless approved
17 by the Board.

18 (6) An authorizer shall remove a member of a board of directors that has been convicted of a
19 crime described in KRS 61.040 and remove any or all of the members of the board of directors of
20 the public charter school in connection with ensuring a smooth and orderly closure when the
21 member or members threaten the health, safety, civil rights, or disability rights of the students or
22 the community pursuant to KRS 160.1598(11).

23 (7) An authorizer shall revoke or non-renew a charter school if the department's investigator

1 has determined a member of the board of directors, or an education service provider at the direction
2 of a member of the board of directors, or an employee at the direction of a member of the board of
3 directors, has intentionally violated 703 KAR 5:080, Administration Code for Kentucky's
4 Assessment Program or KRS 160.1592(3)(g) for a student assessment included in the academic
5 performance goals of the charter contract or the state accountability system.

6 (8) For issues in a charter school's performance that do not require immediate action by the
7 authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise, to
8 protect the safety, civil rights, and well-being of students and the community, an authorizer may
9 utilize a progressive system of monitoring consequences including notices of deficiencies or
10 conditions unilaterally imposed on the charter school prior to revocation or non-renewal. An
11 authorizer shall share publicly a notice of deficiency or a condition unilaterally imposed on the
12 charter school as well as the underlying charter school performance issue and shall provide a copy
13 to the commissioner of education and to the Board.

14 (9) An authorizer shall comply with the following prior to approving an application for a
15 charter school or renewing a charter school contract:

16 (a) Holding in the resident district a public hearing to allow for public comment on the
17 application; and

18 (b) Allowing public comment to be submitted in writing prior to the hearing, or oral or written
19 public comment at the hearing and allowing comment at the public hearing by a resident
20 superintendent who has filed an objection to the charter school application.

21 Section 8. Standards of Authorizer Performance Concerning Charter Closure. (1) An
22 authorizer's charter school closure protocol shall include the following:

23 (a) Provision by the charter school of contact information and resident school district

1 information for all parents, persons with custody or charge, adult students, and emancipated youth
2 to the authorizer;

3 (b) Notification to all parents, persons with custody or charge, adult students, and emancipated
4 youth students of the following:

- 5 1. The closure decision;
- 6 2. The closure process;
- 7 3. Information on student instruction and reassignment;
- 8 4. Information on courses, levels, and credits completed by the student;
- 9 5. Information on process for obtaining a copy of the student's education records; and
- 10 6. Contact information for additional information;

11 (c) Notification to the resident school districts and the department of the following:

- 12 1. The closure decision;
- 13 2. The closure date;
- 14 3. The closure process;
- 15 4. Availability and timeline for appeals and their intersection with the closure protocol;
- 16 5. A copy of the notification provided to charter school parents, persons with custody or
17 charge, adult students, and emancipated youth;
- 18 6. Information on student instruction and reassignment; and
- 19 7. Contact information for additional information;

20 (d) Budget review and revision to limit expenditures to only those in the approved budget
21 required for fulfilling the obligations through closure;

22 (e) Communication of the budget information to parents, persons with custody or charge, adult
23 students, and emancipated youth students, to resident school districts, to the department, and to the

- 1 Board;
- 2 (f) Meeting of the authorizer with the charter school board of directors and charter school
3 employees to notify and coordinate the following:
- 4 1. The closure;
 - 5 2. The closure process;
 - 6 3. The closure timeline and dates;
 - 7 4. Information on student instruction and reassignment;
 - 8 5. Employment, payroll, and benefits information;
 - 9 6. Transfer of federal and state funds and assets according to the federal and state
10 requirements; and
 - 11 7. Contact information for additional information;
- 12 (g) Additional and final notification to parents and resident districts, including the following:
- 13 1. Information on the existence and role of any appeal of the closure;
 - 14 2. Identifying the last day of instruction;
 - 15 3. Detailing end of the year activities and transition activities for students; and
 - 16 4. Providing information and assistance for reassignment of students;
- 17 (h) Procedures and requirements for establishment of transition teams, development of closure
18 plan, and assignment of roles for closure;
- 19 (i) Procedures and requirement for scheduling closure meetings with transition team, parents,
20 persons with custody or charge, adult students, and emancipated youth students, resident districts,
21 the department, and employees;
- 22 (j) Procedures and requirements for a final report from the charter board of directors to the
23 authorizer and the department detailing completion of the closure plan;

- 1 (k) Maintenance of the charter school facilities;
- 2 (l) Identification and notification of all creditors and debtors of the board of directors and the
3 Teachers' Retirement System and the County Employees Retirement System;
- 4 (m) Notification of federal, state, local, and private grantors;
- 5 (n) Termination of any contract with an education service provider;
- 6 (o) Accounting, inventory, and protection of assets;
- 7 (p) Notification of employee benefit providers;
- 8 (q) Notification of all contractors and termination of all contracts;
- 9 (r) Transfer of student and personnel records;
- 10 (s) Notification of the IRS;
- 11 (t) Issuance of final grades to students;
- 12 (u) Dissolution of the charter school;
- 13 (v) Maintenance of records; and
- 14 (w) Completion of an independent final audit within six months of the closure of the school
15 that may function as the annual audit, and that includes at least the following:
 - 16 1. An accounting of all financial assets, including cash and accounts receivable and an
17 inventory of property, equipment, and other items of material value;
 - 18 2. An accounting of the liabilities, including accounts payable and any reduction in
19 apportionments as a result of audit findings or other investigations, loans or grants, and unpaid
20 staff compensation; and
 - 21 3. An assessment of the disposition of any restricted funds received by or due to the charter
22 school.
- 23 (2) An authorizer's charter school closure protocol shall include the following regarding

1 distribution of assets upon closure:

2 (a) The assets of the school, if sufficient to satisfy all the outstanding debts of the charter
3 school, shall be distributed in the following order:

4 1. To satisfy outstanding payroll obligations for employees of the public charter school;

5 2. To creditors of the school; and

6 3. To the resident school districts, in direct proportion to the percentage of the charter school
7 student body that will be returning to each resident school district after closure;

8 (b) If the assets of the public charter school are insufficient to satisfy all debts of the charter
9 school, the prioritization of the distribution of assets may be determined by a court of law; and

10 (c) A charter school board of directors shall distribute its assets within six (6) months of
11 closure of the charter school, unless granted an extension by the authorizer or ordered otherwise
12 by a court of law.

13 (3) The department shall develop a charter closure protocol guide that an authorizer may utilize
14 in developing the closure protocol.

15 Section 9. Investigation of an Authorizer. (1) The Board shall conduct a special review of an
16 authorizer as follows:

17 (a) If there is persistently unsatisfactory performance of the portfolio of the public charter
18 schools of the authorizer;

19 (b) If there is a pattern of well-founded complaints about the authorizer or its public charter
20 schools; or

21 (c) If the Board finds other objective circumstances warranting investigation.

22 (2) The Board shall request investigation by the commissioner of education.

23 (3) In reviewing and evaluating the performance of an authorizer, the Board shall apply

1 nationally recognized standards for quality in charter authorizing, in addition to the standards of
2 performance included in KRS 160.1590 to 160.1599 and 161.141 and 701 KAR Chapter 8.

3 (4) If at any time the Board determines that an authorizer is not in compliance with an existing
4 charter contract or the requirements for an authorizer, the Board shall either:

5 (a) Notify the authorizer in writing of any identified problem and the authorizer shall have a
6 reasonable opportunity to respond and remedy the problem; or

7 (b) If deemed necessary, take action against the authorizer under Section 10.

8 Section 10. Consequences.

9 (1) The Board may, in addition to its authority over authorizers and their action on a charter
10 application, renewal, nonrenewal, revocation, charter amendment, or unilateral imposition of
11 conditions on a charter school pursuant to KRS 160.1595(1), place an authorizer on probation and
12 require the following during probation of an authorizer:

13 (a) Additional training for the authorizer;

14 (b) Meeting with the commissioner of education to provide status reports and solicit feedback
15 on charter school performance during a charter contract;

16 (c) Written and in-person status reports to the Board on the authorizer's monitoring of charter
17 schools and other authorizing activity;

18 (d) Approval by the commissioner of education on the authorizer's monitoring activities,
19 imposition of unilateral conditions, and revocation decisions;

20 (e) Approval of the Board for any renewal, nonrenewal, revocation, charter amendment, or
21 unilateral imposition of conditions on a charter contract; and

22 (f) Any other consequences the Board deems necessary to ensure compliance with KRS
23 160.1590 to 160.1599 and 161.141 and 701 KAR Chapter 8.

1 (2) The Board shall set the length and extent of the probation of the authorizer’s authority
2 and reporting requirements for the authorizer to report on the progress of the charter schools
3 authorized by the authorizer.

4 (3) The Board shall state in its order probating the authority of the authorizer the following:

5 (a) The extent of the probation of the authorizer’s authority;

6 (b) The length of the probation of the authorizer’s authority;

7 (c) The grounds under KRS 160.1590 to 160.1599 and 161.141 and 701 KAR Chapter 8 for
8 the probation of the authorizer’s authority; and

9 (d) The anticipated changes that would have to occur for the Board to consider ending the
10 probation of the authorizer’s authority under KRS 160.1590 to 160.1599 and 161.141 and 701
11 KAR Chapter 8.

12 (4) The Board may entertain a request by the authorizer for termination of the probation if
13 the authorizer submits, at least forty (45) days prior to the Board’s regular meeting, the
14 following:

15 (a) The authorizer’s request for ending the probation; and

16 (b) The authorizer evidence of:

17 1. Its efforts to correct the grounds for the probation of its authorizing authority;

18 2. The changes required in the Board’s order; and

19 3. Its plan to ensure future compliance with the requirements of KRS 160.1590 to 160.1599
20 and 161.141 and 701 KAR Chapter 8.

21 Section 11. Statewide Evaluation of Charter Authorizers. (1) Beginning with the conclusion of
22 the 2018-2019 fiscal year, the department shall provide an annual report on the state’s public
23 charter authorizers and their charter schools to the Governor, the Interim Joint Committee on

1 Education, the secretary of the Education and Workforce Development Cabinet, and the public
2 that includes information from the annual reports submitted by every authorizer as well as any
3 additional relevant data compiled by the department.

4 (2) The annual report shall include:

5 (a) For all public charter schools in the state, by individual charter school and by authorizer:

6 1. The academic performance;

7 2. The number of students enrolled, withdrawn, suspended, and expelled;

8 3. Financial audit results;

9 4. Financial solvency and sustainability for the fiscal year and the contract term; and

10 5. Closure information;

11 (b) A comparison of the performance and growth of public charter school students with the

12 performance and growth of comparable groups of students in non-charter public schools;

13 (c) A detailed update on the authorizing process;

14 (d) Recommendations for adjustments to public charter school governance and oversight;

15 and

16 (e) The department's assessment of the successes, challenges, and areas for improvement in

17 meeting the purposes of KRS 160.1591, including the department's recommendations as to any

18 suggested changes in state law or policy necessary to strengthen the state's public charter

19 schools.

20 Section 12. Incorporation by Reference. (1) "Charter Contract", January 2018, is incorporated by

21 reference.

22 (2) "Kentucky Charter School Application and Addendum", January 2018, is incorporated by

23 reference.

1 (3) “Notice of Intent”, January 2018, is incorporated by reference.
2 This material may be inspected, copied, or obtained, subject to applicable copyright law, at the
3 Department of Education, Office of Legal, Legislative and Communication Services, 5th floor,
4 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to
5 4:30 p.m.

This is to certify that the chief state school officer has reviewed and recommended this administrative regulation prior to its adoption by the Kentucky Board of Education, as required by KRS 156.070(5).

(Date)

Stephen L. Pruitt, Ph.D.
Commissioner of Education

(Date)

William Twyman, Chairperson
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on _____, 2017, at 10 a.m., in the State Board Room, Fifth Floor, Sower Building, 300 Sower Boulevard, Frankfort, Kentucky. Individuals interested in being heard at this hearing shall notify this agency in writing by 5 workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be cancelled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through _____, 2017. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kevin C. Brown, Associate Commissioner and General Counsel, Kentucky Department of Education, 300 Sower Boulevard, Fifth Floor, Sower Building, Frankfort, KY 40601, phone 502-564-4474, fax 502-564-9321, email kevin.brown@education.ky.gov.