

**KENTUCKY DEPARTMENT OF EDUCATION**

**STAFF NOTE**

**Action/Discussion Items:**

701 KAR 8:010, Charter school student application, lottery, and enrollment.  
701 KAR 8:020, Evaluation of charter school authorizers.  
701 KAR 8:030, Charter school appeal process.  
701 KAR 8:040, Conversion charter school petition, conversion, and operation.  
(*Second Reading*)

**Commissioner's Recommendation:**

The Commissioner recommends approval of these administrative regulations to promote the start of a quality, transparent charter school sector in the Commonwealth of Kentucky and give students, schools, and authorizers a clear roadmap.

**Rationale:**

To bring forward proposed administrative regulations implementing the requirements of HB 520 from the 2017 General Assembly authorizing public charter schools in the Commonwealth of Kentucky. These administrative regulations are specifically required by HB 520 (2017). Feedback from the second reading will be utilized for filing the administrative regulations with the Legislative Research Commission (LRC) to proceed through the regulatory promulgation/review process.

**Action Question:**

Should the Kentucky Board of Education (KBE) approve 701 KAR 8:010, Charter school student application, lottery, and enrollment; 701 KAR 8:020, Evaluation of charter school authorizers; 701 KAR 8:030; Charter school appeal process and 701 KAR 8:040, Conversion charter school petition, conversion, and operation?

**Applicable Statute or Regulation:**

HB 520 (2017) created new statutes that are now codified as KRS 160.1590, 160.1591, 160.1592, 160.1593, 160.1594, 160.1595, 160.1596, 160.1597, 160.1598, 160.1599, and 161.141.

**History/Background:**

*Existing Policy:* HB 520 from the 2017 General Assembly establishes a public charter school program in the state. The law became effective on June 29, 2017. The law requires

that the KBE promulgate administrative regulations governing student application, lottery, and enrollment; governing the evaluation of charter school authorizers; governing the appeal process for a charter school's appeal of an authorizer's decision; and governing conversion charter school petition, conversion, and operation.

**Summary:** See below for a summary of each administrative regulation, as well as the changes that have occurred to each since the first reading.

### ***701 KAR 8:010, Charter school student application, lottery, and enrollment***

This administrative regulation guides student application, lottery, and enrollment in public charter schools. Section 1 defines terms utilized in the administrative regulation. Section 2 and Section 3 outline the application and lottery processes, respectively. Section 4 details the student enrollment policies that must be adopted by a public charter school, prohibits discrimination in enrollment, and addresses enrollment in conversion charter schools. Section 5 incorporates by reference a uniform charter school student application.

Additions or edits to definitions in this section have been made since the first reading of the administrative regulation to include more of the terms that appear in the remainder of the sections. Changes were also made to assure that a student may enroll after the beginning of the school year, so long as the school has grade level capacity for the new enrollee. The wait list lottery process was also amended to clarify that if a student applied after the waitlist lottery the student would be placed at the end of the waitlist in the order of receipt of the application. Another addition detailed prohibited requirements placed upon students prior to enrollment in a charter school. Also, a Title IX reference was added on page 7 for clarity in applications. Content was added clarifying the outcome of a lottery drawing if a student is a multiple, defined as a person who was born on the same date as at least one other sibling. Content was added to prevent unintended rigidity that would prevent a charter school and family from correcting a good faith error in listing the student's grade level on the student application. Content was added to require the charter school policy to include enrollment preference status information when the student's former school is no longer a Persistently Low Achieving school. Content was added to recognize that a court order could remove the student from the charter school. The Kentucky Charter School Student Application is included in the second reading as a document incorporated by reference.

### ***701 KAR 8:020, Evaluation of charter school authorizers***

This administrative regulation establishes the process to be used to evaluate the performance of a charter school authorizer and to address deficits in that performance. Section 1 defines terms utilized in the administrative regulation. Section 2 requires authorizers to create policies and procedures governing the authorizer's duty to review charter applications, including a strategic vision for chartering, and transparency in the criteria and evaluation of charter applications, charter performance, renewal, non-renewal, and revocation. Section 3 creates the general standards for authorizer

performance, including training requirements for authorizers. Section 4 outlines standards of authorizer performance related to the charter application process. Upon request, we added a provision requiring an authorizer to submit a charter application to not only the local Superintendent, but other authorizers in the district as well. This should only impact Jefferson and Fayette County where the possibility for multiple authorizers exists. Section 5 outlines standards of authorizer performance related to charter contracts, including pre-opening requirements, financial solvency requirements, closure requirements, and requirements related to the duties of the charter board of directors. Section 6 outlines standards of authorizer performance related to charter school monitoring, including enforcement of the charter contract by the authorizer and actions required of an authorizer if a charter school's operating revenues fall below two percent (2%) of the total projected annual operating revenues included in the school's approved budget, or if an authorizer otherwise suspects a charter school may close prior to the end of the school year or charter term. Section 7 outlines standards of authorizer performance generally regarding charter approval, revocation, renewal, and non-renewal, including requirements for charter application approval. Section 8 provides the charter school closure protocol requirements. Section 9 provides the KBE the authority to require investigation of an authorizer. Section 10 provides the actions to be taken in response to failures in authorizer performance. Section 11 provides the annual reporting requirements for the Kentucky Department of Education (KDE) on the statewide performance and evaluation of charter authorizers and charter schools. Section 12 incorporates by reference a uniform charter contract, charter application, and notice of intent.

Additions or edits to definitions in this section have been made since the first reading of the regulation to include more of the terms that appear in the regulation and in the documents incorporated by reference. Section 3 changes allow for a competency-based training program, approved by the Commissioner, to be used in authorizer training in lieu of the seat time requirements in this section. Section 4 changes clarify the prohibition on authorizers from approving a charter from a for-profit organization and an organization that is organized for religious purposes or a business entity and that the religious organization prohibition is only to the extent not prohibited by federal law. There was an addition of a publication requirement for any superintendent letters or information provided during the application process. Content was added to prohibit the approval of an application that did not meet the requirements of the statutes and regulations. Section 5 changes were only technical editing changes. Section 6 edits clarify that the authorizer is to take certain actions if projected annual revenues fall below two percent of the projected revenue in the school's approved budget. Section 7 edits clarify the procedure for an authorizer's oversight of a due process student suspension or expulsion hearing, including adding language as to when the superintendent of the resident school district may attend. Additional edits to this section clarified the restrictions on expenditure of school resources based on the Kentucky Constitution's requirements for school funds. Section 8 edits allow the Commissioner of Education to appoint an independent third party to manage a charter school closure. Sections 9-11 only had minor technical editing changes. The Charter Authorizer's Notice of Intent, the Kentucky Charter School Application and Addendum, and the Charter School Contract are included in the second reading as documents incorporated by reference.

***701 KAR 8:030. Charter school revocation and non-renewal process***

This administrative regulation establishes the procedural requirements for a charter school's appeal of an authorizer's decision to revoke or non-renew a charter. Section 1 defines terms utilized in the administrative regulation. Section 2 provides the authorizer policy and procedure requirements for transparency in its revocation and non-renewal of charters and appeals of these decisions. Section 3 includes the requirements for an appeal of a revocation or non-renewal decision. Section 4 provides the procedural requirements for an emergency action by the authorizer. Section 5 provides the circumstance for the KBE's automatic affirmation of an authorizer's decision to revoke or non-renew a charter. Section 6 incorporates by reference a uniform notice of appeal form.

Additions or edits to related definitions in this section have been made since the first reading of the regulation to include more of the terms that appear in the later sections. Changes were also made to clarify the authorizer's policies and timelines for notifying a charter school of possible closure. Substantive changes were made to apply the regulatory appeal process to all the authorizer decisions which a charter applicant or a charter school can appeal. A substantive addition to Section 5 has added a due process hearing on the issue of whether or not a knowing violation of the assessment code occurred prior to an automatic affirmation of revocation or nonrenewal. The Notice of Appeal is included in the second reading as a document incorporated by reference.

***701 KAR 8:040, Conversion charter school petition, conversion, and operation.***

This administrative regulation establishes the process to be used to convert an existing public school to a charter school. Section 1 defines terms utilized in the administrative regulation. Section 2 provides the requirements for a petition to convert an existing public school to a charter school and for the separate charter application required in addition to the petition for conversion of an existing public school. Section 3 provides the requirements for conversion of an existing public school to a charter school after authorizer approval. Section 4 includes provisions regarding school district employees and conversion charter schools. Section 5 includes provisions regarding students and conversion charter schools. Section 6 includes provisions for operation and reversion of a conversion charter school to a school under the authority of the district. Section 7 incorporates by reference a uniform charter school conversion petition.

In Section 1, additions or edits to related definitions in this section have been made since the first reading of the regulation to reflect the terms included in the other sections. In Section 2, a provision was added to clarify that the document incorporated by reference had to be utilized when circulating a petition to convert an existing public school to a charter school. Additional edits were technical in nature or to clarify language in this section. Sections 3 and 4 had technical edits to clarify language. There were no edits to Section 5. Section 6 was edited in response to the concerns expressed in the first reading

by the Charter School Advisory Committee to clarify that the intent of the language is to provide the local school community an opportunity to provide feedback to the district when a conversion charter school is closing and reverting to a district public school. The Public Charter School Conversion Petition is included in the second reading.

As a reminder, the timeline for the regulatory process for public charter schools can be found in the chart below.

April – August 2017	Regulation drafting and development
June 29, 2017	HB 520 takes effect
July 24, 2017	Charter School Advisory Council review of draft regulations
July 25, 2017	LSAC review of draft regulations
August 23, 2017	KBE 1 <sup>st</sup> read of regulations
August – September 2017	Edits to regulations based upon KBE feedback
September 21, 2017 (tentative)	Charter School Advisory Council review of draft regulations
September 26, 2017	LSAC review of draft regulations
October 3-4, 2017	KBE final read and approval of regulations for filing
October 13, 2017	Regulations filed with LRC’s regulation compiler
November 1, 2017	Regulations published in the KY Administrative Register
November 1-30, 2017	Public Comment Period
November 21, 2017	Public Hearing on regulations

**Budget Impact:** These administrative regulations have an indeterminable fiscal impact upon the KDE’s budget. A public charter school division with an anticipated four (4) staff members is being created within KDE to provide guidance, assistance and resources to both charter authorizers and charter schools. This division will also be tasked with securing federal charter school grants available to state education agencies. Including personnel and operating costs, it is anticipated this division will require approximately \$400,000 in funding within the KDE budget. Administrative hearings required when an authorizer denies a charter school application will result in increased costs for the KBE/KDE in staffing the hearing and obtaining the services of a hearing officer.

**Groups Consulted and Brief Summary of Responses:**

On September 19, 2017 the Division of Charter Schools convened a broad shareholder meeting that included the Kentucky Association of School Superintendents, the Kentucky Education Association, the Kentucky School Boards Association, the Prichard Committee, Kentucky Charters Now, the Kentucky Association of Professional Educators, the Charter School Advisory Council and representatives from the Louisville and Lexington Mayor’s offices to review the administrative regulations.

On September 21, 2017, the Charter Schools Advisory Council (CSAC) reviewed the

administrative regulations. Feedback from CSAC will be shared with the KBE at the October meeting. On September 26, 2017, the Local Superintendent Advisory Committee (LSAC) reviewed the administrative regulations for a second time. Feedback from LSAC is included in their letter to the KBE.

KDE has consulted, in the drafting and editing of the administrative regulations, with staff from the Education and Workforce Development Cabinet.

KDE has utilized best practices from other states and from national charter school and charter school authorizer organizations, as well as directly communicated with state-level charter school program staff in other states to gain additional insight as to other states' experiences with charter school regulation and oversight.

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**Commissioner of Education**

**Date:**

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