

1 EDUCATION AND WORKFORCE DEVELOPMENT CABINET

2 Kentucky Board of Education

3 Department of Education

4 (Amended After Comments)

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. (1) “Academically behind” means at risk of academic failure.

15 (2) “Achievement gap” is defined in KRS 160.1590(2) and means the same as in KRS 158.649.

16 (3) “Adult student” means a student who is eighteen (18) years or older who is still eligible for
17 enrollment and attendance at a school program pursuant to KRS 158.030 and 158.100.

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

19 (5) “Areas of exceptionality” means categories of disabilities of students with special needs.

20 (6) “At risk” means at risk of academic failure.

21 (7) “At risk of academic failure” means:

- 1 (a) Attendance at a school identified pursuant to KRS 160.346(2) for targeted support or
- 2 intervention;
- 3 (b) Attendance at a school identified pursuant to KRS 160.346(3) for comprehensive support and
- 4 improvement;
- 5 (c) Current achievement two (2) or more grade levels below the student's age group;
- 6 (d) Demonstration of poor academic skills, such as failure of two (2) or more subjects in two (2) of
- 7 the past four (4) school years;
- 8 (e) Consistent absence or tardy and absence twenty-five (25) or more unexcused student attendance
- 9 days, as defined in KRS 158.070, in the last two (2) school years and an overall grade average
- 10 below a C;
- 11 (f) Suspension (in-school suspension or home suspension) two (2) or more times during the past
- 12 school year and an overall grade average below a C;
- 13 (g) Family history of dropping out or lack of family support for the student in the completion of
- 14 school;
- 15 (h) Little or no participation in school cocurricular or extracurricular programs;
- 16 (i) Below grade level in reading or math skills;
- 17 (j) Indication of being socially isolated; or
- 18 (k) An applicant's definition for this term in its authorizer approved charter application, pursuant
- 19 to KRS 160.1594(2).
- 20 (8) "Authorizer" or "public charter school authorizer" is defined in KRS 160.1590(13).
- 21 (9) "Authorizer's board of directors" means:
- 22 (a) The board of education for the local school district for an authorizer described in KRS
- 23 160.1590 (13)(a); and

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

(10) “Bilingual students” means students who are fluent in English and a foreign language, **which may include American Sign Language.**

(11) “Charter” means charter contract.

(12) “Charter application” is defined in KRS 160.1590(4).

(13) “Charter contract” or “contract” is defined in KRS 160.1590(5).

(14) “Charter school” means a public charter school.

(15) “Charter school board of directors” is defined in KRS 160.1590(6).

(16) “Cocurricular programs” means school programs which have activities that are unequivocally instructional in nature, directly related to the instructional program, and scheduled to minimize absences from classroom instruction.

(17) “Comprehensive learning experiences” or “Expanded learning opportunities” means daily, rigorous learning experiences that build on a student’s talents, challenge the student’s skills and understandings, and develop the student’s ability to reason, problem solve, collaborate, and communicate to prepare the student for success in postsecondary.

(18) “Conversion public charter school” or “conversion charter school” is defined in KRS 160.1590(7).

(19) “Days” means calendar days calculated pursuant to KRS 446.030.

(20) “Education service provider” is defined in KRS 160.1590(8).

(21) “Emancipated youth” means a student under the age of eighteen (18) who is or has been married or has by court order or otherwise been freed from the care, custody, and control of the student’s parents.

(22) “Enrollment preference” means the priority of the student application from students identified in KRS 160.1591(5).

(23) “Extracurricular programs” means voluntary programs that are offered by a school but are not part of the required school program.

(24) “Fiscal year” is defined in KRS 160.450.

(25) “Foreign entity” is defined in KRS 14A.1-070(10).

(26) “Gifted” means a gifted and talented student as defined in KRS 157.200(1)(n).

(27) “Governing board of the authorizer” means the authorizer’s board of directors.

(28) “Governing body of the authorizer” means the authorizer’s board of directors.

(29) “Grade” or “Grade Level” means a single elementary, middle, or high school grade of school.

(30) “Knowingly” means that a person knew that in authorizing, ordering, or carrying out an act or omission that the act or omission constituted a violation of a statute or administrative regulation.

(31) “Local school district” is defined in KRS 160.1590(10).

(32) “Parent” is defined in KRS 160.1590(11).

(33) “Persistently low-achieving public schools” or “Persistently low-achieving noncharter public schools” means noncharter schools identified for comprehensive support and improvement pursuant to KRS 160.346.

(34) “Person with custody or charge” means any adult, pursuant to KRS 159.010, who falls within the definition of KRS 387.010(2) for interested person or entity and with whom the student resides.

(35) “Primary enrollment preference” means any enrollment preference other than a secondary

enrollment preference.

(36) “Public charter school” is defined in KRS 160.1590(12).

(37) “Regional achievement academy” is defined in KRS 160.1590(15).

(38) “Regional achievement zone” is defined in KRS 160.1590(16).

(39) “School level” or “Level” or “Educational level” means the configuration of grade levels that form elementary, middle, and high schools.

(40) “Secondary enrollment preference” means the priority of a resident student application for enrollment in a public charter school, after acceptance of all the student applications with primary enrollment preference, if the public charter school’s capacity has not been exceeded.

(41) “Start-up public charter school” is defined in KRS 160.1590(17).

(42) “Student” is defined in KRS 160.1590(19) and includes any person who is entitled to enrollment and attendance at a school program as provided in KRS 158.030 and 158.100.

(43) “Student attendance day” is defined in KRS 158.070(1)(e).

(44) “Students with special needs” or “Special needs students” means:

(a) Exceptional children and youth students, as defined in KRS 157.200, who are eligible pursuant to the Individuals with Disabilities Education Act, 20 U.S.C. secs. 1400 et seq. for an individual education plan, as described in KRS 157.196, or an individual education program, as described in KRS 158.281; or

(b) Students who are eligible for services under Section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. sec. 794, to prevent substantial limitation of one (1) or more major life activities.

(45) “Substantial hardship” means a significant, unique, and demonstrable economic, technological, legal, or other impact on a local school district which impairs its ability to

continue to successfully meet the requirements of educational programs or services for its students.

(46) “Superintendent” means the local school district employee tasked with the duties described in KRS 160.370.

(47) “Traditionally underperforming” means at risk of academic failure.

(48) “Unilateral imposition of conditions” means the authorizer has placed conditions or requirements that are not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8:

(a) On the applicant in the authorizer’s formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(49) “Unilaterally imposed conditions” or “Unilateral conditions” or “Conditions unilaterally imposed” means conditions or requirements not required by KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8 that the authorizer places:

(a) On the applicant in the authorizer’s formal action approving the charter application; or

(b) On the charter school in the charter contract or an amendment.

(50) “Year” or “Academic year” or “School year” means school year as defined in KRS 158.050.

Section 2. Policies and Procedures. (1) Pursuant to KRS 160.1594, an authorizer shall create policies and procedures governing the authorizer’s performance of its duties under KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8 and include in its policies and procedures:

(a) The authorizer’s strategic vision for chartering, including a clear statement of any preference for a charter application that demonstrates the intent, capacity, and capability to provide comprehensive learning experiences or expanded learning opportunities to students identified in

1 KRS 160.1594(2) or KRS 160.1592(19);

2 (b) Identification of any charter application preferences of the authorizer pursuant to KRS

3 160.1594(2);

4 (c) Information on the authorizer's performance contracting requirements:

5 1. Including academic, financial, and operational measures, and the performance frameworks,

6 that the authorizer has developed for public charter school oversight and evaluation and with

7 which the authorizer shall evaluate the charter school's performance under the charter contract,

8 in accordance with KRS 160.1594 and 701 KAR Chapter 8; and

9 2. Including requirements for executing a contract with a charter school board of directors that

10 articulates:

11 a. The rights and responsibilities of each party regarding school autonomy;

12 b. Funding;

13 c. Administration and oversight;

14 d. Outcomes;

15 e. Measures for evaluating success or failure;

16 f. Performance consequences; and

17 g. Other material terms;

18 (d) The evidence the authorizer shall require, the evaluation the authorizer shall conduct using

19 the performance framework, and other aspects of the authorizer's ongoing monitoring of the

20 charter school including:

21 1. Ensuring a charter school's legally entitled autonomy;

22 2. Protecting student's **civil, disability, safety, and educational** rights;

23 3. Informing intervention, revocation, and renewal decisions; and

- 1 4. Providing annual reports as required by KRS 160.1597(5);
- 2 (e) The requirements for reporting to the public;
- 3 (f) The authorizer's authority to intervene in charter schools, when and if necessary;
- 4 (g) Guidelines concerning the format and content essential for an applicant to demonstrate the
- 5 capacities necessary to establish and operate a public charter school, pursuant to KRS 160.1590
- 6 to 160.1599, 161.141, and 701 KAR Chapter 8;
- 7 (h) The timeline for submission, review, decision, and appeal for a charter application, and a
- 8 request for renewal. An authorizer described in KRS 160.1590(13)(c) and (d) shall consult with
- 9 the superintendent of the resident local school district when planning this timeline;
- 10 (i) A template of the assurances an authorizer shall require in a charter contract;
- 11 (j) The following evidence sufficiency requirements for the charter application:
 - 12 1. The charter school board of directors' ability to meet the financial solvency and sustainability
 - 13 demands of their proposed budget;
 - 14 2. Competent and timely charter school start-up and operation;
 - 15 3. Foreseen and unforeseen closure; and
 - 16 4. All debts and obligations during each fiscal year of the charter contract and during the entire
 - 17 contract term;
- 18 (k) The financial transparency requirements that will apply to a charter school, including specific
- 19 provisions regarding publication on the authorizer's website and the charter school's website;
- 20 (l) The charter school closure protocol and requirements;
- 21 (m) A description of the authorizer's organizational capacity, including its commitment of
- 22 human and financial resources necessary to conduct authorizing duties effectively and
- 23 efficiently;

(n) The authorizer's requirements for solicitation and evaluation of a charter application, including its implementation of a comprehensive application process that includes use of the Kentucky Charter School Application and Addendum, and rigorous criteria, and approval of only a charter application that demonstrates a strong capacity to establish and operate a charter school;

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

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

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

(2) An authorizer shall restrict the expenditure of funds received as a result of charter authorization and oversight to the purpose of fulfilling authorizing obligations pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

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

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

(b) The authorizing functions provided by the authorizer to the public charter schools under its jurisdiction, including the operating costs and expenses of the authorizer as detailed in annual

audited financial statements that conform to generally accepted accounting principles;

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

(d) The reports that an authorizer is required to make pursuant to KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

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

(a) Each authorizer or member of the authorizer's board of directors shall complete:

1. Twelve (12) hours for an authorizer or member with zero to eight (8) years of experience as an authorizer and eight (8) hours for an authorizer or a member with more than eight (8) years of experience as an authorizer ~~Nine (9) hours of annual training, with six (6) additional hours of training for new authorizers and new members; or~~

2. Competency-based annual **in-service** training;

(b) ~~The~~ **In-service** training **may also count toward the board of education member training requirements of KRS 160.180, to the extent the requirements of both are met by the content of the training, and** shall include the following topics of authorizer responsibility and charter school formation and operation:

1. Financial governance and transparency;

2. Conflict of interest;

3. Charter application;

4. Charter school contracting;

5. Charter school monitoring;

6. Charter school renewal, nonrenewal, and revocation;

7. Charter school closure; ~~and~~

8. Ethics; ~~and~~

9. Curriculum and instruction;

10. Educational services provided for special needs, at risk, English learner, gifted, and

other special population students; and

11. Physical restraint and seclusion of students; and

(c) The training shall be approved by the commissioner of education.

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

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

Section 4. Standards of Authorizer Performance Concerning Charter Applications.

(1) Pursuant to KRS 160.1591 and 160.1594(1)(e)2 and to the extent not prohibited by federal law, an authorizer shall not approve a charter application that is:

(a) From an applicant that is or includes:

1. A for-profit organization, or its designee;

2. An organization, or its designee, that is organized for religious purposes, within the meaning of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or

3. A business entity, or its designee, that is not authorized to do business and in good standing in the Commonwealth of Kentucky, pursuant to KRS Chapter 14A; or

(b) That has in the proposed board of directors:

- 1 1. A for-profit organization, or its designee;
- 2 2. An organization, or its designee, that is organized for religious purposes, within the meaning
- 3 of 501(c)(3) of the Internal Revenue Code of 1986, as amended, and qualifying for tax-exempt
- 4 status pursuant to 501(c)(3) of the Internal Revenue Code of 1986, as amended; or
- 5 3. A business entity, or its designee, that is not authorized to do business and in good standing in
- 6 the Commonwealth of Kentucky, pursuant to KRS Chapter 14A.

7 (2) An authorizer shall require a charter application to be submitted on the Kentucky Charter
8 School Application and Addendum and may require additional information from the applicant.

9 (3) An authorizer shall publish a copy of a submitted charter application on its website within
10 three (3) days of submission by the applicant to the authorizer.

11 (4) An authorizer shall provide a copy of a submitted charter application to the resident local
12 school district superintendents and to any other authorizer of charter schools in that local school
13 district within three (3) days of submission by the applicant to the authorizer.

14 (5) An authorizer described in KRS 160.1590(13)(a) or (b) shall provide a copy of a submitted
15 charter application for a regional achievement academy within a regional achievement zone to
16 the superintendents of the other local school districts of the regional achievement zone within
17 three (3) days of submission by the applicant to the authorizer.

18 (6) An authorizer shall allow a resident local school district superintendent to file a letter with
19 supporting evidence objecting to the approval of the charter application on the basis of the
20 substantial hardship that may result for the students of the resident local school district who do
21 not attend the charter school. An authorizer shall publish a copy of the letter and supporting
22 evidence from the resident local school district superintendent on the authorizer's website within
23 three (3) days of submission by the superintendent to the authorizer and the authorizer shall

1 review this evidence prior to approving a charter application.

2 (7) An authorizer shall allow a resident local school district superintendent to file a letter of
3 support for a charter application and shall publish a copy of the resident local school district
4 superintendent letter on the authorizer's website within three (3) days of submission by the
5 superintendent to the authorizer.

6 (8) An authorizer shall require a resident local school district superintendent to provide
7 information and evidence regarding the academic performance of the students identified in the
8 charter application as the targeted student body or community. An authorizer shall publish a
9 copy of this information on the authorizer's website within three (3) days of submission by the
10 superintendent to the authorizer, to the extent not prohibited by confidentiality laws.

11 (9) An authorizer shall comply with the following requirements in reviewing the charter
12 application:

13 (a) Request and secure a certificate of existence from the Secretary of State, pursuant to KRS
14 14A.2-130, for any business entity or its designee included in the applicant or in the proposed
15 charter school board of directors; and

16 (b) If the applicant or the board of directors includes a foreign entity, request and secure a
17 certificate of authorization for the foreign entity from the Secretary of State, pursuant to KRS
18 14A.2-140.

19 (10) The department shall develop a charter application scoring rubric that an authorizer may
20 utilize in reviewing a charter application.

21 (11) An authorizer shall require an applicant or proposed board of directors for a charter school
22 to include in the charter application the following:

23 (a) Performance information, financial information, and closure information for any charter

1 school under the applicant or board of directors;

2 (b) Details and documentation of the outreach the applicant or proposed board of directors has

3 had with the students or community that is the focus of the charter application; and

4 (c) Details of whether the charter application replicates or substantially replicates:

5 1. A charter application that the applicant, the proposed board of directors, or another entity

6 previously withdrew from consideration and the reasons the charter application was withdrawn;

7 2. A charter application that was rejected by an authorizer and the reasons the charter application

8 was rejected; or

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

10 (12) An authorizer shall provide on the authorizer's website the names of all persons, and their

11 roles, who are involved in the review of charter applications. Review of charter applications shall

12 be conducted pursuant to the requirements of the Open Meetings Act.

13 (13) An authorizer shall not approve a charter application that does not meet the requirements of

14 KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

15 (14) Within five (5) days of the authorizer's approval, the authorizer shall submit an approved

16 charter application to the commissioner of education for review and approval commensurate with

17 subsection (11) of Section 5.

18 Section 5. Standards of Authorizer Performance Concerning Charter Contracts. (1) Prior to

19 negotiating a charter contract with a board of directors, an authorizer shall verify the charter

20 school board of directors' registration as a non-profit business entity with the Kentucky

21 Secretary of State pursuant to KRS Chapter 14A.

22 (2) An authorizer shall negotiate and enter a charter contract with a charter school board of

23 directors in compliance with KRS 160.1590(5) and (6); 160.1591(2); 160.1592(3), (7), (8), (9),

(10), (11), and (20); 160.1593(3); 160.1594(1); 160.1596(1); 160.1597(1), (2), and (6);
160.1598(1), (5), (6), and (7).

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

(a) An authorizer shall establish mutually agreed upon pre-opening requirements or conditions to:

1. Monitor the start-up progress of a newly approved public charter school;
2. Ensure that the charter school is prepared to open timely and smoothly on the date agreed;-and
3. Ensure that the charter school meets all benchmarks related to facilities, health, safety, insurance, school personnel, enrollment, curriculum and instruction, operations and fiscal management, governance, and other legal requirements for the charter school opening; and

(b) Failure by the charter school to comply with the pre-opening requirements or conditions may result in the immediate revocation of the charter contract and:

1. May result in the delay in the opening of the charter school by up to one (1) year if the authorizer does not determine that the charter school is more likely than not to close during the school year; or
2. Shall result in the delay in the opening of the charter school by up to one (1) year if the authorizer does determine that the charter school is more likely than not to close during the school year.

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

(a) A requirement that no member of the charter school board of directors, no education service provider, and no charter school employee shall knowingly recommend and no member of the

1 charter school board of directors shall knowingly vote for an expenditure in excess of the charter
 2 school's income and revenue of any fiscal year, as shown by the budget adopted by the charter
 3 school board of directors and approved by the authorizer;

4 (b) A requirement that a member of the charter school board of directors, an education service
 5 provider, or a charter school employee who knowingly expends or authorizes the expenditure of
 6 charter school funds or who knowingly authorizes or executes any employment, purchase, or
 7 contract, in violation of this section, shall be jointly and severally liable in person and upon any
 8 official fidelity bond given to the authorizer to the extent of any payments on the void claim; and

9 (c) A requirement that, if at any time during any fiscal year of the charter school's existence, a
 10 member of the charter school board of directors, an education service provider, or a charter
 11 school employee knows or reasonably should know that the charter school has or will become
 12 unable to pay in full its projected expenses as they fall due, the charter school shall immediately
 13 so advise the department and the authorizer, and shall provide the department and the authorizer
 14 with all financial information relating to revenues and expenses of the charter school necessary
 15 for the department and the authorizer to determine the extent and cause of any potential
 16 operating deficit. If the member of the charter school board of directors, the education service
 17 provider, or the charter school employee fails to provide the notice to the department and the
 18 authorizer required by this subsection or fails to cooperate with the department and the authorizer
 19 in the production of financial information pursuant to this subsection:

20 1. The authorizer shall determine whether grounds exist to revoke the charter contract; and

21 2. The knowingly acting member of the charter school board of directors, the education service
 22 provider, or the charter school employee may be subject to the liability described in paragraph

23 (4)(b) of this section.

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

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

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

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

(9) An authorizer shall require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with the following:

(a) Clearly establish the primacy of the charter contract over the contract between the charter board of directors and the education service provider;

(b) Clearly identify the charter school board of directors as the party ultimately responsible for the success or failure of the charter school, and clearly define the education service provider as a vendor of services;

(c) Prohibit the education service provider from selecting, approving, employing, compensating, or serving as members of the charter school board of directors;

(d) Require the charter school board of directors to directly select, retain, and compensate the

- 1 charter school's legal counsel, finance staff, audit firm, and school leader;
- 2 (e) Provide for payments to the charter school to be made to an account controlled by the charter
- 3 school board of directors, not the education service provider;
- 4 (f) Require all instructional materials, furnishings, and equipment purchased or developed with
- 5 charter school funds be the property of the charter school, not the education service provider;
- 6 (g) Identify and describe the roles and responsibilities of the charter school board of directors
- 7 and the education service provider, including all services to be provided under the contract
- 8 between the charter school board of directors and the education service provider;
- 9 (h) Identify and describe the performance measures and consequences by which the charter
- 10 school board of directors shall hold the education service provider accountable for performance,
- 11 aligned with the performance measures in the charter contract;
- 12 (i) Identify and describe with specificity all compensation to be paid to the education service
- 13 provider, including all fees, bonuses, and the conditions, consideration, and restrictions on such
- 14 compensation;
- 15 (j) Identify and describe the terms of any facility agreement that may be part of the relationship
- 16 between the charter school board of directors and the education service provider;
- 17 (k) Identify and describe financial reporting requirements and provisions for the charter school
- 18 board of directors' financial oversight of the education service provider and the charter school;
- 19 (l) Identify and describe all other financial terms of the contract, including disclosure and
- 20 documentation of all loans or investments by the education service provider to the charter school
- 21 board of directors, and provision for the disposition of assets upon closure in accordance with
- 22 KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8;
- 23 (m) Include assurances that the charter school board of directors, at all times, shall maintain

independent fiduciary oversight and authority over the charter school budget and ultimate responsibility for the charter school's performance;

(n) Include provisions for contract termination without penalties for the charter school and without costs beyond the pro-rated value of the services provided by the education service provider;

(o) Assure:

1. That the charter school board of directors shall be structurally independent from the education service provider and shall set and approve charter school policies;

2. That the terms of the contract between the charter school board of directors and the education service provider are reached through arm's-length negotiations in which the charter school board of directors is represented by legal counsel that does not also represent the education service provider; and

(p) Identify and describe the respective responsibilities of the charter school board of directors and the education service provider in the event of school closure.

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

(11) No authorizer shall enter a charter contract for start-up, conversion, or renewal of a charter school, or agree to any charter contract amendment, unless the charter contract or amendment is approved by the commissioner of education as follows:

(a) An authorizer shall provide the commissioner of education a copy of a proposed charter contract or proposed amendment;

(b) Within fifteen (15) days of receipt of the proposed charter contract or amendment from the

authorizer, pursuant to KRS 160.1594(9), the commissioner of education shall provide to an authorizer and the charter school board of directors approval of the contract or:

1. The reasons for a denial and any suggestions for remedy of these reasons; and
2. Notice of the opportunity for resubmission of the remedied contract or amendment to the commissioner of education; and

(c) Any failure to meet the commissioner of education's requirements for approval shall render the charter contract or its amendment void.

Section 6. Standards of Authorizer Performance Concerning Charter School Monitoring. (1) An

authorizer, that determines a charter school board of directors has governance over more than

one (1) charter school and has failed to meet the requirements of KRS 160.1592, shall commence

an investigation to determine if the charter school board of directors is in compliance with the

charter contracts for every other charter school under the authorizer's jurisdiction.

(2) An authorizer shall monitor the performance of the charter contract by a charter school board

of directors, and any educational service provider. If the authorizer believes there is an issue with

any aspect of performance of the charter contract, or compliance with any of the requirements of

KRS 160.1590 to 160.1599, 161.141, or 701 KAR Chapter 8, the authorizer shall commence an

investigation.

(3) An authorizer that verifies an issue with any aspect of performance of the charter contract, or

compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or 701 KAR

Chapter 8, shall notify the commissioner of education and may request assistance from the

commissioner of education in addressing and remedying the issue.

(4) An authorizer that verifies an issue with any aspect of the performance of the charter

contract, or compliance with any of the requirements of KRS 160.1590 to 160.1599, 161.141, or

701 KAR Chapter 8, shall notify the charter school of the issue and take necessary action, including unilateral imposition of conditions on the charter school, revocation, or nonrenewal of the charter contract, to resolve the issue and to provide notice of the issue and the resolution to the charter school's adult students, emancipated youth students, parents, persons with custody or charge, and the department.

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

(a) If the budget projections indicate that the charter school's annual operating expenses may at any time during the school year cause the annual operating revenues to fall below two (2) percent of the total projected annual operating revenues included in the school's approved budget, the charter school shall provide specific notice of this to the authorizer and the authorizer shall:

1. Require the charter school to implement a cash management plan approved by the authorizer;
2. Commence a more in-depth review, and an audit if necessary, of the charter school's financial budget reports, expenditures, and revenues;
3. Request financial management assistance for the charter school from the department; and
4. Restrict the charter school's expenditures and require the authorizer's approval prior to expenditure of charter school funds for the remainder of the school year; and

(b) If the charter school defaults on a financial obligation or if the authorizer otherwise suspects the charter school may close prior to the end of the school year or the charter contract term, the authorizer shall:

1. Consult with the commissioner of education;
2. Communicate with the charter school board of directors to determine the need for charter contract revocation;

- 1 3. Commence actions under (a) above;
- 2 4. Review the closure protocol;
- 3 5. Review the charter contract termination provisions;
- 4 6. Communicate with the charter school board of directors regarding the closure protocol and
- 5 contract provisions for termination; and
- 6 7. Notify students and resident local school districts, as **soon as** necessary **to ensure all students**
- 7 **and resident local school districts are provided adequate time to prepare for the student**
- 8 **transitions and to provide free and appropriate public education to the returning students.**
- 9 (6) An authorizer shall revoke the charter contract and determine the timeline for closure if the
- 10 authorizer determines the charter school:
 - 11 (a) Is financially insolvent;
 - 12 (b) Is financially unsustainable for the remainder of the school year or the charter contract term;
 - 13 or
 - 14 (c) Has violated or threatened the health and safety of the students of the public charter school,
 - 15 pursuant to KRS 160.1598(7).
- 16 (7) The department shall develop a charter contract performance framework that an authorizer
- 17 may utilize in developing a charter contract performance framework. In addition to the
- 18 requirements of KRS 160.1596, the authorizer's charter contract performance framework shall
- 19 include academic, financial, and organizational performance frameworks, and targets in the
- 20 following areas:
 - 21 (a) Student assessment and accountability;
 - 22 (b) Student graduation rates;
 - 23 (c) Student promotion rates;

(d) Student attendance rates;

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

(f) Other outcomes.

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

(a) Does not operate:

1. A breakfast program under the Child Nutrition Act of 1966, 42 U.S.C. 1773, as amended (CNA), and a lunch program under the Richard B. Russell National School Lunch Act, 42 U.S.C. 1751 et seq. (NSLA); or

2. A breakfast and lunch program with provision of meals at no cost to students who qualify for free meals under the CNA and NSLA and with the provision of meals at a reduced cost to students who qualify for reduced price meals under the CNA and NSLA; or

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

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

(a) Inclusion of at least two (2) local school district resident parents or persons with custody or charge of local school district resident students who will attend the charter school in a charter

1 school board of directors;

2 (b) Exercise by a charter school board of directors of their authority in KRS 160.1592(3)(p)4 and

3 5 only as allowed for a local board of education in KRS 160.540;

4 (c) Participation of all members of a charter school board of directors in annual training,

5 approved by the commissioner of education, on topics of charter school governance and

6 operation including financial governance and transparency; conflict of interest; curriculum

7 and instruction; educational services provided for special needs, at risk, English learner,

8 gifted, and other special population students; physical restraint and seclusion of students;

9 and ethics. Fulfillment of this requirement shall occur through:

10 1. Twelve (12) hours for a new charter school board member or a member with zero to

11 eight (8) years of experience as a charter school board member and eight (8) hours for a

12 charter school board member with more than eight (8) years of experience as a charter

13 school board member ~~Nine (9) hours of annual training, with six (6) additional hours of~~

14 ~~training for new charter school board members and members of newly approved charter~~

15 ~~schools during the first year after approval;~~ or

16 2. Competency-based annual training;

17 (d) Attendance by the authorizer, or its designee for authorizing, or at least one (1) member of

18 the authorizer's board of directors at any due process hearing conducted pursuant to KRS

19 158.150 to suspend or expel a charter school student. A charter school board of directors, with

20 the consent of the parent, person with custody or charge, adult student, or emancipated youth

21 student, and as otherwise allowed by confidentiality laws, may invite the resident local district

22 superintendent to attend the due process hearing and to provide information to the charter school

23 board of directors as to the educational services the resident local school district would provide

the student:

1. If the student is expelled from the charter school; and

2. If the charter school board of directors determines, on the record and supported by clear and convincing evidence that the charter school cannot provide or assure that educational services are provided to the student in an appropriate alternative program or setting because the expelled student posed a threat to the safety of other students or school staff and could not be placed into a state-funded agency program;

(e) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of the Individual with Disabilities Education Act dispute resolution procedures, 707 KAR 1:340, regarding a student attending a charter school or the services provided by a charter school;

(f) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of use of physical restraint or seclusion of charter school students;

(g) Provision, to the authorizer by the charter school board of directors and any education service provider, of information and copies of all records of allegations received or substantiation of violation of any health, safety, civil rights, and disability rights of students, staff, or parents or persons with custody or charge;

(h) Pursuant to KRS 160.1592(14), adherence by the charter school board of directors, and any education service provider, to the requirements of KRS 160.330 and 702 KAR 3:220 for the waiver of fees for students eligible for free or reduced price lunch;

(i) Provision, to the authorizer and to the public by the charter school board of directors and any education service provider, updates on the charter school's performance of the charter contract,

- 1 according to the charter contract and performance framework;
- 2 (j) Restriction on expenditure of charter school resources and funds for school purposes only;
- 3 (k) Prohibition on the expenditure of charter school resources and funds in excess of the fair
- 4 market value of the product, service, or consideration received;
- 5 (l) Prohibition on the disposal of charter school resources for less than the fair market value of
- 6 the resource disposed;
- 7 (m) Restriction on the addition or moving of any location of the charter school without the
- 8 written consent of the authorizer and amendment of the charter contract; and
- 9 (n) Provision, to the authorizer by the charter school board of directors and any education service
- 10 provider, of student enrollment and attendance records and data at least monthly during the
- 11 school year.
- 12 (3) An authorizer shall revoke, effective at the end of the school year, a charter contract for any
- 13 of the reasons in KRS 160.1598(6).
- 14 (4) An authorizer shall require continuous enrollment at a charter school of at least eighty (80)
- 15 percent of the charter contract minimum student enrollment requirements and shall monitor and
- 16 take action as follows:
- 17 (a) The charter school shall provide reports to the authorizer on student enrollment and
- 18 attendance at least twice a month; and
- 19 (b) Failure of the charter school to maintain this continuous, minimum student enrollment shall
- 20 result in an immediate review by the authorizer of:
- 21 1. The charter school's operations;
- 22 2. The charter school's financial solvency;
- 23 3. The charter school's financial sustainability through the end of the school year and the end of

1 the charter contract term;

2 4. The potential for closure;

3 5. Violation of the charter contract; and

4 6. The need for imposition of unilateral conditions, amendment, nonrenewal, or revocation of the
5 charter contract, or immediate revocation of the charter contract pursuant to KRS 160.1598(7).

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

11 (a) The authorizer shall consult with the Kentucky Board of Education's designated agency to
12 ensure compliance with this requirement;

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

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

22 (6) An authorizer shall remove a member of a board of directors that has been convicted of a
23 crime described in KRS 61.040 and remove any or all of the members of the board of directors

1 of the public charter school in connection with ensuring a smooth and orderly closure when the
2 member or members threaten the health, safety, civil rights, or disability rights of the students or
3 the community pursuant to KRS 160.1598(11).

4 (7) An authorizer shall revoke or nonrenew a charter school contract if the commissioner of
5 education has determined a member of the board of directors, or an education service provider at
6 the direction of a member of the board of directors, or an employee at the direction of a member
7 of the board of directors, has knowingly violated 703 KAR 5:080, Administration Code for
8 Kentucky's Assessment Program or KRS 160.1592(3)(g), for a student assessment included in:

9 (a) The performance framework of the charter contract; or

10 (b) The state accountability system.

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

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

22 (a) Holding in the resident local school district a public hearing to allow for public comment on
23 the charter application; and

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

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

(a) Provision, to the authorizer by the charter school, of contact information and resident local school district information for all parents, persons with custody or charge, adult students, and emancipated youth students;

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

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

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

1. The closure decision;
2. The closure date;
3. The closure process;
4. Availability and timeline for appeals and their intersection with the closure protocol;
5. A copy of the notification provided to charter school parents, persons with custody or charge, adult students, and emancipated youth students;

6. Information on student instruction and reassignment; and
7. Contact information for additional information;
- (d) Budget review and revision to limit expenditures to only those in the approved budget required for fulfilling the obligations through closure;
- (e) Communication of the budget information to parents, persons with custody or charge, adult students, emancipated youth students, resident local school districts, the department, and the Kentucky Board of Education;
- (f) Meeting of the authorizer with the charter school board of directors and charter school employees to notify and coordinate the following:
 1. The closure;
 2. The closure process;
 3. The closure timeline and dates;
 4. Information on student instruction and reassignment;
 5. Employment, payroll, and benefits information;
 6. Transfer of federal and state funds and assets according to the federal and state requirements;
 - and
 7. Contact information for additional information;
- (g) Additional and final notification to parents and resident local school districts, including the following:
 1. Information on the existence and role of any appeal of the closure;
 2. Identifying the last student attendance day;
 3. Detailing end of the year activities and transition activities for students; and
 4. Providing information and assistance for reassignment of students;

- 1 (h) Procedures and requirements for establishment of transition teams, development of closure
- 2 plan, and assignment of roles for closure;
- 3 (i) Procedures and requirement for scheduling closure meetings with the transition team, parents,
- 4 persons with custody or charge, adult students, emancipated youth students, resident local school
- 5 districts, the department, and employees;
- 6 (j) Procedures and requirements for a final report from the charter school board of directors to
- 7 the authorizer and the department detailing completion of the closure plan;
- 8 (k) Maintenance of the charter school facilities;
- 9 (l) Identification and notification of all creditors and debtors of the board of directors and the
- 10 Teachers' Retirement System and the County Employees Retirement System;
- 11 (m) Notification of federal, state, local, and private grantors;
- 12 (n) Termination of any contract with an education service provider;
- 13 (o) Accounting, inventory, and protection of assets;
- 14 (p) Notification of employee benefit providers;
- 15 (q) Notification of all contractors and termination of all contracts;
- 16 (r) Transfer of student and personnel records;
- 17 (s) Notification of the IRS;
- 18 (t) Issuance of final grades to students;
- 19 (u) Dissolution of the charter school;
- 20 (v) Maintenance of records; and
- 21 (w) Completion of an independent final audit within six (6) months of the closure of the charter
- 22 school that may function as the annual audit, and that includes at least the following:

1. An accounting of all financial assets, including cash and accounts receivable and an inventory of property, equipment, and other items of material value;
2. An accounting of the liabilities, including accounts payable and any reduction in apportionments as a result of audit findings or other investigations, loans or grants, and unpaid staff compensation; and
3. An assessment of the disposition of any restricted funds received by or due to the charter school.

(2) An authorizer's charter school closure protocol shall include the following regarding distribution of assets upon closure:

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

1. To satisfy outstanding payroll obligations for employees of the public charter school;
2. To creditors of the charter school; and
3. To the resident local school districts, in direct proportion to the percentage of the charter school student body that will be returning to each resident local school district after closure;

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

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

(3) The commissioner of education, upon request by the authorizer, may appoint an independent third party, paid from the charter school's funds, to manage the closure with assistance from the department. The commissioner of education may remove an appointed independent third party

for cause and appoint a replacement.

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

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

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

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

(c) If the Kentucky Board of Education finds other objective circumstances warranting investigation.

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

(3) In reviewing and evaluating the performance of an authorizer, the Kentucky Board of Education shall apply nationally recognized standards for quality in charter authorizing, in addition to the standards of performance included in KRS 160.1590 to 160.1599, 161.141, and 701 KAR Chapter 8.

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

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

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

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

(a) Additional training for the authorizer;

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

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

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

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

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

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

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

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

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

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

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

(4) The Kentucky Board of Education may entertain a request by the authorizer for termination of the probation if the authorizer submits, at least forty-five (45) days prior to the Kentucky Board of Education's regular meeting, the following:

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

(b) The authorizer's evidence of:

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

2. The changes required in the Kentucky Board of Education's order; and

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

Section 11. Statewide Evaluation of Public Charter School Authorizers. (1) Beginning with the conclusion of the 2018-2019 fiscal year, the department shall provide an annual report on the state's public charter school authorizers and their charter schools to the Governor, the Interim Joint Committee on Education, the secretary of the Education and Workforce Development Cabinet, and the public that includes information from the annual reports submitted by every authorizer as well as any additional relevant data compiled by the department.

(2) The annual report shall include:

(a) For all public charter schools in the state, by individual charter school, and by authorizer, **and disaggregated by age, race, and status as a student with special needs:**

1. The academic performance;
2. The number of students enrolled, withdrawn, suspended, and expelled;
3. Financial audit results;
4. Financial solvency and sustainability for the fiscal year and the contract term; ~~and~~
5. Closure information; and
- 6. For charter schools with education service providers, information on the contracts and relationships between charter schools and education service providers and any financial risk, lack of accountability, and program performance risk resulting from the contracts and relationships between charter schools and education service providers.**

- (b) A comparison of the performance and growth of public charter school students with the performance and growth of comparable groups of students in noncharter public schools;
- (c) A detailed update on the authorizing process;
- (d) Recommendations for adjustments to public charter school governance and oversight; and
- (e) The department's assessment of the successes, challenges, and areas for improvement in meeting the purposes of KRS 160.1591, including the department's recommendations as to any suggested changes in state law or policy necessary to strengthen the state's public charter schools.

Section 12. Incorporation by Reference. (1) "Kentucky Charter School Application and Addendum", February 2018, is incorporated by reference.

(2) "Notice of Intent", February 2018, is incorporated by reference.

This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Department of Education, Office of Legal, Legislative and Communication Services, 5th floor, 300 Building, 300 Sower Boulevard, Frankfort, Kentucky, Monday through Friday, 8 a.m. to

1 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)

Mary Gwen Wheeler, Chair
Kentucky Board of Education

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 21, 2017, at 10 a.m., 300 Sower Blvd, Room 116, 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 November 30, 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 .

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation: 701 KAR 8:020

Agency Contact Person: Kevin C. Brown

Phone: 502-564-4474

Email: kevin.brown@education.ky.gov

(1) Provide a brief summary of:

(a) What this administrative regulation does: This new administrative regulation fulfills the regulation promulgation requirement of the agency in KRS 160.1590 to 160.1599 and 161.141.

(b) The necessity of this administrative regulation: KRS 160.1590 to 160.1599 and 161.141 became effective on June 29, 2017. This administrative regulation provides guidance on the evaluation of authorizer performance for authorizers of public charter schools.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations providing guidance on evaluation of authorizer performance for authorizers of public charter schools. This administrative regulation provides guidance from the agency on evaluation of authorizer performance for authorizers of public charter schools.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes:

KRS 160.1590 to 160.1599 and 161.141 requires the Kentucky Board of Education (KBE) to promulgate administrative regulations provides guidance from the agency on evaluation of authorizer performance for authorizers of public charter schools. This new administrative regulation provides guidance to facilitate transparent and equitable evaluation of authorizer performance for authorizers of public charter schools, as required by KRS 160.1590 to 160.1599 and 161.141.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A.

(b) The necessity of the amendment to this administrative regulation: The authorizing statute requires the agency to provide guidance on evaluation of authorizer performance for authorizers of public charter schools.

(c) How the amendment conforms to the content of the authorizing statutes: N/A.

(d) How the amendment will assist in the effective administration of the statutes:

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: School districts, public charter schools, students applying for enrollment in public charter schools, and the Kentucky Department of Education will be affected by this administrative regulation.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Authorizers of public charter schools. The Kentucky Department of Education shall provide support to ensure the transparent and uniform evaluation of authorizer performance for authorizers of public charter schools.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): Compliance costs for school districts should be minimal to none because school districts are already facilitating the transfer of students to other schools. Compliance costs for public charter schools should be minimal to none because this administrative regulation should assist in the organized student application, lottery, and enrollment of students in public charter schools. Same for students and the Kentucky Department of Education.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): This new administrative regulation will create standards for evaluation of authorizer performance for authorizers of public charter schools

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Compliance costs should be minimal to none.

(b) On a continuing basis: Compliance costs should be minimal to none.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Kentucky Department of Education general funds and school district funds, and funds provided to public charter schools.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change, if it is an amendment: No fees or additional funding is necessary.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: N/A.

(9) TIERING: Is tiering applied? Tiering was not appropriate in this administrative regulation because the administrative regulation applies equally to all school districts and all public charter schools.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Administrative Regulation: 701 KAR 8:020

Contact Person: Kevin C. Brown

Phone: 502-564-4474

Email: kevin.brown@education.ky.gov

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? School districts, public charter schools, and the Department of Education.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 160.1590 to 160.1599 and 161.141.

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. This administrative regulation should have no impact on the expenditures or revenues for school districts or public charter schools.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? This administrative regulation should not impact school district or public charter school revenues.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? This administrative regulation should not impact school district or public charter school revenues.

(c) How much will it cost to administer this program for the first year? Administration costs to school districts or public charter schools should be minimal to none.

(d) How much will it cost to administer this program for subsequent years? Administration costs to school districts or public charter schools should be minimal to none.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

There should be no fiscal impact resulting from the new administrative regulation.

Summary Page - Incorporation by Reference

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

The following documents are incorporated by reference:

(1) “Kentucky Charter School Application and Addendum”, February 2018. The document incorporated by reference consists of sixty-four (64) pages. This document is the form for an applicant to submit a charter school application to an authorizer.

(2) “Notice of Intent”, February 2018. The document incorporated by reference consists of one (1) page. This document is the form for an authorizer identified in KRS 160.1590(13)(c) or (d) to file with the Kentucky Board of Education notify the Kentucky Board of Education of the authorizer’s intent to serve as an authorizer of charter schools.

STATEMENT OF CONSIDERATION
RELATING TO 701 KAR 8:020
Kentucky Department of Education

Amended After Comments

1. A public hearing was held on the above regulation on November 21, 2017 at 10:00 a.m. Eastern Time, in Room 116, 300 Sower Boulevard, 5th Floor, Frankfort, Kentucky. Written comments were also received during the public comment period.

2. The following individuals attended this public hearing or submitted written or verbal comments:

Disclaimer: All titles and affiliations were provided by the commenters through public written comments or testimony at the public hearing. The titles and affiliations of each person have not been evaluated by the agency, and the listing of specific titles and affiliations in the Statement of Consideration does not confer status or actual authority upon an individual not otherwise qualified by other authoritative source.

<u>Name and Title</u>	<u>Agency/Organization/Entity/Other</u>
Joel Adams	Kentucky Public Charter Schools Association
Yvonne Adkins	Kentucky resident and charter school sector professional
Judith Bradley, Executive Director	Jack Be Nimble
Bishop Michael Ford	Kentucky Public Charter Schools Association
Lisa Grover, Senior Director	National Alliance for Public Charter Schools
Chris Harmer, Co-Chair	Fellowship of Reconciliation, Louisville Chapter
Cindy Heine	Private individual
Jill Harmer	Teacher
Lucy Heskins, Attorney Supervisor	Kentucky Protection & Advocacy
Gus LaFontaine, Administrator	Fontaine Preparatory School
Wayne Lewis, Chair	Charter School Advisory Council
Joan Lindop	Private individual
Mike Magee, CEO	Chiefs for Change
Sharon Mofield-Boswell	FCPS Equity Council Vice Chair, KAGE Board Member, LexKAGE President
Kristin Forbriger, VP	National Association of Charter School Authorizers
Patricia A. Murrell	Private individual
Paul O'Neill, Co-Founder	National Center for Special Education in Charter Schools
Carol A. O'Reilly	Kentucky resident and magnet program parent
Mary Ruble, Executive Director	Kentucky Education Association
Jean Sabharwal	Child Advocate
Anna Sanders	Private individual
Lynn Schaber	Potential regional achievement zone charter school applicant

Kerri Schelling, Executive Director Kentucky School Boards Association
 Charlie Szold, Reg. Field Manager Public School Options
 David Wickersham, Director Office of Education Accountability

3. The following people from the promulgating administrative body responded to the written comments:

Name and Title

Kevin C. Brown, General Counsel/Associate Commissioner, Office of Legal, Legislative, and Communication Services (OLLCS)

Amy Peabody, Assistant General Counsel, OLLCS

Earl Simms, Director, Division of Charter Schools

Summary of Comments and Responses

1. Subject Matter: Charter school employee salary transparency

(a) Comment: Ms. Sanders requested the following amendment to the charter school regulations: “I would like charter schools to public teacher salaries. Since they receive public money, they should be held to the same standard as public schools. This finally was passed in North Carolina and it took too long to do it. All salaries paid with government funds are published, so theirs should be no different.”

(b) Response: The commenter did not specify which administrative regulation was the recipient of this comment, but this comment appeared most relevant to 701 KAR 8:020. The agency has placed the upmost importance on the financial transparency of charter schools and their authorizers, as the commenter stated, because they will be entrusted with public funds and public school students. Kentucky statute KRS 160.1592(3)(i),(k) and (l) already requires a charter school to “[u]tilize the same system for reporting student information data and financial data as is utilized by other school districts across the state;... [c]omply with open records and open meeting requirements under KRS Chapter 61; [and c]omply with purchasing requirements and limitations under KRS Chapter 45A and KRS 156.074 and 156.480, or provide to the public charter school board of directors a detailed monthly report of school purchases over ten thousand dollars (\$10,000), including but not limited to curriculum, furniture, and technology....”

Though the current version of this administrative regulation does not require an authorizer to either publish the charter school employee salaries or to require the charter school to publish its own employee salaries, there is a provision in Section 2(1)(k) that requires an authorizer to create policies and procedures for charter school authorization that include “The [authorizer’s] financial transparency requirements that will apply to a charter school, including specific provisions regarding publication on the authorizer’s website and the charter school’s website” and the current version of the Kentucky Charter School Application and Addendum, incorporated by reference into this administrative regulation, requires a charter applicant in Section IV. G. 3 to “[o]utline the charter school’s proposed salary ranges and employment benefits for all employees as well as any incentives or reward structures that may be part of the compensation system.” For these reasons, no change to the administrative regulation is being made in response to this comment.

2. Subject Matter: Authority for content of this administrative regulation

(a) Comment: OEA commented that it questioned the authority for the agency to “prescribe the creation of policies and procedures” for authorizers in excess of those listed in KRS 160.1594(1)(i). OEA commented that it questioned the authority for the agency to require annual training of authorizers in Section 3 of the administrative regulation. OEA commented that it questioned the authority for the agency in Section 4 to establish standards of authorizer performance concerning charter applications. OEA commented that it questioned the authority of the agency for the application publication and distribution requirements of Section 4 of the administrative regulation. OEA commented that it questioned the authority of the agency to prescribe charter contract authorizer performance standards in Section 5 of the administrative regulation. OEA commented that it questioned the authority of the agency to prescribe charter school monitoring authorizer performance standards in Section 6 of the administrative regulation. OEA commented that it questioned the authority of the agency to prescribe the authorizer performance standards in Section 7 of the administrative regulation. OEA commented that it questioned the authority of the agency to prescribe the authorizer performance standards in Section 8 of the administrative regulation. OEA commented that it questioned the authority of the agency to create the Kentucky Department of Education reporting requirement in Section 11 of the administrative regulation. OEA commented that the above referenced sections of this administrative regulation required clarification to demonstrate how they do not violate various portions of KRS 13A.120(2).

(b) Response: The agency thanks OEA for its many comments on this administrative regulation. However, the legislation creating KRS 160.1590-160.1599 and 161.141 gave the agency the authority to regulate the evaluation of authorizer performance concerning the entire landscape of KRS 160.1590-160.1599 and 161.141. The legislation’s standards for authorizer performance, which are not terribly specific, are peppered throughout the statutes and are the basis for the provisions of the administrative regulation. For example, KRS 160.1594 and 160.1595 and 160.1591:

KRS 160.1594:

- (1) A public charter school authorizer shall:
 - (a) Fulfill the expectations and intent of this section and KRS 160.1590 to 160.1599 and 161.141;
 - (b) Demonstrate public accountability and transparency in all matters concerning its charter authorizing practices, decisions, and expenditures;
 - (c) Solicit, invite, and evaluate applications from applicants;
 - (d) Approve new and renewal charter applications that meet the requirements of this section and KRS 160.1593;
 - (e) Decline to approve charter applications that:
 - 1. Fail to meet the requirements of this section and KRS 160.1593; or
 - 2. Are for a school that would be wholly or partly under the control or direction of any religious denomination;
 -
 - (i) Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards

relating to:

1. Organizational capacity and infrastructure;
2. Soliciting and evaluating applications;
3. Performance contracting;
4. Ongoing public charter school oversight and evaluation; and
5. Charter approval, renewal, and revocation decision making.

KRS 160.1595:

- (7) An application shall be approved if the public charter school authorizer finds that:
- (a) The public charter school described in the application meets the requirements established by this section and KRS 160.1590 and 160.1592;
 - (b) The applicant demonstrates the ability to operate the school in an educationally and fiscally sound manner; and
 - (c) Approving the application is likely to improve student learning and achievement and further the purposes established by KRS 160.1591.

KRS 160.1591:

- (2) The General Assembly hereby establishes a public charter school project to benefit parents, teachers, and community members by creating new, innovative, and more flexible ways of educating all children within the public school system and by advancing a renewed commitment to the mission, goals, and diversity of public education. The purposes of the public charter school initiative are to:
- (a) Improve student learning outcomes by creating additional high-performing schools with high standards for student performance;
 - (b) Encourage the use of different, high-quality models of teaching, governing, scheduling, or other aspects of schooling that meet a variety of student needs;
 - (c) Close achievement gaps between high-performing and low-performing groups of public school students;
 - (d) Allow schools freedom and flexibility in exchange for exceptional levels of results-driven accountability;
 - (e) Increase high-quality educational opportunities within the public education system for all students, especially those at risk of academic failure; and
 - (f) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public education system.

The national standards of charter school authorizer performance are largely regarded as those set by the National Association for Charter School Authorizers (NACSA). These standards have been applied to charter school authorizers in several states and are applicable in Kentucky, per the requirements of the statutes cited above. To not utilize the experience and knowledge created by the other jurisdictions in the twenty-five (25) years of charter school existence in the United States would be an abrogation of the duty placed upon the agency to create these administrative regulations, specifically 701 KAR 8:020. The legislative sponsors of this legislation voiced repeatedly an intent during the 2017 Regular Session of the Kentucky General Assembly for standards for authorizer performance which are included by the agency in these administrative regulations. There can be no doubt that the General Assembly intended and provided the agency the authority for the full bounds of these administrative regulations, specifically 701 KAR 8:020, to ensure the purposes of this legislation, laid out in KRS 160.1591(2) are respected, fulfilled, and met. The standards of authorizer performance are a reflection of that legislative authority, intent, denotation, and connotation. A change to this administrative regulation has not been made

in response to this comment.

3. Subject Matter: Clarification on the administrative regulation

(a) Comment: OEA has commented that it is seeking clarification from the agency on the possibility of the following, without reference to any particular administrative regulation:

“State universities or colleges, or other entities or bodies may be charter school authorizers. See KRS 160.1590(13), which lists the activities of authorizers and a list of entities included, but not a list of entities excluded.

....

The Kentucky Board of Education may, upon direct submission from an application, be a public charter school authorizer. See KRS 160.1590.

Application may be simultaneously made to more than one authorizer with jurisdiction to contract with a charter school. See KRS 160.1590(3) and KRS 160.1593(1).

In the absence of regulation, charter applications may be made, charter contracts formed, and charter schools open and operate? See KRS 160.15906(1)(g).”

(b) Response: Though OEA did not reference this administrative regulation in these comments, the statement of consideration for this administrative regulation appears to be the most appropriate home for these comments. First, KRS 160.1590(13) provides the legislative authority to the entities listed to serve as charter school authorizers. The agency does not know of any other entity, under Kentucky law, that has been provided the authority by the Kentucky General Assembly to authorize charter schools in this state. Second, the agency (the Kentucky Board of Education) is not provided the authority by the Kentucky General Assembly to authorize charter schools but is provided the authority, on appeal or on the agency’s own motion, by the Kentucky General Assembly to order a charter school authorizer to approve an application for a charter school. See KRS 160.1595(3)(d). The agency, after ordering an authorizer to approve a charter school application, is provided by the legislation “joint oversight” of a charter school. The agency does not interpret this statutory language to convert the agency to a charter school authorizer. Third, there are no prohibitions in the legislation or in the administrative regulations preventing a charter school applicant from submitting an application, even the same application, to different authorizers. This is the case regardless of whether the application is for different charter schools under different authorizers or for the same proposed charter school under duplicative authorizers with the authority to approve an application for the same jurisdiction. Fourth, there is no prohibition in the legislation preventing the submission of a charter school application, contracting between an authorizer and a charter school board of directors, or charter school opening or operation before the promulgation of these administrative regulations. No changes have been made to the administrative regulation in response to this comment.

4. Subject Matter: Creation of ombudsman office

(a) Comment: Ms. Heine commented that she was “concerned about the implementation of charter schools in Kentucky and the threat it represents to public schools. Equal access to quality education is essential for preparing Kentucky students for the future. Because of that concern, I believe

the principles of the Annenberg Rules found in ‘Public Accountability for Charter Schools: Standards and Policy Recommendations for Effective Oversight’ (2013) should serve as the primary guide for establishing and assessing the implementation of charter schools in the Commonwealth.

....

In addition, was any consideration given to appointing an independent ombudsman with a role beyond that of a lottery monitor, to whom, as the Annenberg standards suggest, ‘parents could challenge or appeal enrollment, classification (as special education), or withdrawal decisions by the charter school.’ The ombudsman’s office should have... ‘the authority to take action or to direct the authorizer to take action against any school found to be in violation of the law...’.”

- (b) Response: Though the commenter referenced 701 KAR 8:010 in part of the comment, and summary and response to the comment are included in that administrative regulation’s statement of consideration, it appeared appropriate to include this portion of the comment in 701 KAR 8:020 as well.

The agency agrees that equal access to quality education should be paramount for all students, regardless of which public school they attend. The statutes creating charter schools have established a basis for this requirement in KRS 160.1592(14):

A public charter school shall be nonsectarian in its programs, admissions policies, employment practices, partnerships, and all other operations and shall not have entrance requirements or charge tuition or fees, except that a public charter school may require the payment of fees on the same basis and to the same extent as other public schools.

701 KAR 8:010 has language in each section to provide more specific requirements regarding the prohibitions found in KRS 160.1594(14). For this reason, the agency understands the administrative regulations to already generally address the overall concern expressed and does not believe an amendment in regard to the overall concern expressed is necessary.

As to the specific suggestions and questions about the possible creation of an ombudsman with “the authority to take action or to direct the authorizer to take action against any school found to be in violation of the law, the agency believes the authority and processes for authorizer evaluation standards, investigation, and consequences in 701 KAR 8:020 substantially occupy the space and role suggested by the commenter for an ombudsman. For this reason, the agency agrees with the sentiments expressed by the commenter but has declined to amend this administrative regulation in response to this comment.

5. Subject Matter: Strong authorization and robust oversight

- (a) Comment: KSBA commented that it agreed with the agency “that data indicates the point of authorization is critical to the success or failure of a charter school, and we believe these regulations recognize the importance of strong authorization and ongoing oversight as critical to student success in chartering. It appears the KBE and Kentucky Department of Education (KDE) staff have given due attention to many of the negative outcomes that other states have experienced in regards to charter schools and have promulgated these regulations with the goal of helping Kentucky avoid similar outcomes.”

(b) Response: The agency thanks KSBA for this and the other comments submitted on these administrative regulations. As stated above, careful and deliberative work of authorizers in the initial authorizing process is the key to ensuring only quality charter schools are approved and opened. The agency does not believe a change to the administrative regulation is necessary in response to this comment.

6. Subject Matter: Model charter contract inclusion in the administrative regulation

(a) Comment: KSBA commented that it supported the inclusion of a model charter contract in 701 KAR 8:020 as an optional resource for authorizers and charter school boards of directors to utilize in forming a charter contract.

“The current version of 701 KAR 8:020 at Section 5(2) requires an authorizer enter into a charter contract that is in compliance with all relevant statutes, including but not limited to the 16 provisions explicitly listed in Section 5(9) and the 11 items required by KRA 160.1596(1)(c). Without a model contract to look to for guidance, we believe that there is a higher likelihood that an applicant and an authorizer will overlook a critical provision when negotiating and drafting the charter. It would be helpful to all applicants, all authorizers, and to KDE as well as the KBE if the regulation incorporated by reference a model contract to use as either the foundation of the charter or, at a minimum, for reference as a safeguard against inadvertently failing to include a statutorily required provision.

Incorporating by reference the Charter School Contract aids authorizers and applicants and also adds transparency to the process. Any model contract that is presented by KDE as guidance without being incorporated by reference into the regulation is in danger of being difficult to locate, changed without notice, and existing at length without periodic review and revision to ensure accuracy and relevance. If incorporated by reference, the model contract (1) would always be readily available for review and use by the public at-large; (2) could only be changed with public awareness and input in the regulatory amendment process; and, (3) would have to be periodically renewed or revised, if needed, in order to comply with recent amendments to KRS Chapter 13A. These are very positive outcomes for all stakeholders.

Further, incorporating by reference a model contract encourages consistency among charter contracts across the state. This could prove immensely helpful to the current and future KBE members and KDE staff as they are called upon to review contracts on appeal, on their own motion, or as part of the process for evaluating authorizers. The Charter School Contract, which KDE staff has already authored and previously released publicly, could easily be incorporated by reference without being a mandate for use by any authorizer. To do so, KSBA recommends that Section 5(2) of 701 KAR 8:020 be revised to include the following: ‘As guidance, an authorizer may utilize the Charter School Contract, incorporated by reference, when forming a charter contract with a charter school board of directors.’”

KEA commented similarly.

(b) Response: The agency has weighed the option of including the model charter contract as a document incorporated by reference into this administrative regulation, with language in the administrative regulation clarifying that an authorizer and a charter school board of directors is

not required to utilize the model charter contract, but the agency has determined that the concerns expressed by the commenter can be met with creation of a model charter contract as a guidance document outside the promulgation of this administrative regulation. The agency has considered this suggestion but has not made a change in response to this comment.

7. Subject Matter: Authorizer training requirements

(a) Comment: KSBA commented that the authorizer training requirements were important but were too burdensome, especially for local board of education members who are already required to complete separate training requirements as board of education members under KRS 160.180(5) and (6). KSBA requested the number of authorizer training hours on charter-specific topics be reduced. KSBA requested that clarification be added to the training requirement language in Section 3(4)(a) to allow training hours be counted toward both the authorizer training requirements of this administrative regulation and for the training requirements of KRS 160.180(5) and (6). Mr. LaFontaine commented his support for the authorizer training as he has heard the local board of education from his community express their concerns for understanding their role and responsibilities as an authorizer. NACSA commented with its support for authorizer training and the following:

“We applaud the strong emphasis on training, with the caveat that the meaning of an authorizer ‘designee’ may be unclear. We assume this to connote charter office personnel rather than external contractors.”

(b) Response: The agency appreciates the positive comments about authorizer training and the concerns expressed by KSBA in this comment. For this reason, the number of authorizer training hours required is amended to mirror the number of hours for local board of education members in KRS 160.180(6). As well for clarification, the agency has made a change to Section 3(4)(a) of the administrative regulation to state explicitly that the training may count toward both the requirements of this administrative regulation for authorizer training and for board of education member training required under KRS 160.180(5) and (6) and 702 KAR 1:115. The agency is amending the training requirements for charter school board members as well to mirror the changes described above for authorizer training, for consistency. The agency wishes to highlight as well that competency-based training is allowed to substitute for specific seat time training requirements, as stated in the administrative regulation. As to NACSA’s comment about the authorizer designee, the agency responds that it is left to the authorizer to determine how to competently carry out its authorization duties and that an authorizer’s decision to hire or contract for support in the authorizer’s performance of its duties is within the authorizer’s discretion.

8. Subject Matter: Unilaterally imposed conditions and enrollment caps

(a) Comment: KSBA commented that:
 “‘Unilateral imposition of conditions,’ as defined in 701 KAR 8:020, Section 1(48) and 701 KAR 8:030, Section 1(15), and ‘unilaterally imposed conditions,’ as defined in 701 KAR 8:020, Section 1(49) and 701 KAR 8:030, Section 1(16), impermissibly modify or vitiate statutory intent in violation of KRS 13A.120(2)(i). Specifically, these definitions are overly broad and cover conditions and requirements not explicitly required by the charter school enabling statutes, which expands the review authority of the KBE beyond the scope intended by the legislature as indicated in KRS 160.1595. Instead, the key

statutory language grants an authorizer greater flexibility regarding the charter contract that these regulatory definitions purport to take away. Specifically, KRS 160.1596(1)(c)(11) is enabling language allowing a charter contract negotiated between the authorizer and the board of directors to include “[a]ny other terms...agreed to by the authorizer and the board of directors, including pre-opening conditions.” While the statute places certain limits on this expressly authorized flexibility, it does not purport to say that anything not expressly required by the charter statutes is deemed to constitute the “unilateral imposition of conditions.” Rather, the subsection specifically provides that *reasonable* conditions shall not include: (1) enrollment caps; (2) operational requirements that place undue constraints on a public charter school; or, (3) those that “are contradictory” to the charter school enabling statutes. Mutually agreed upon conditions that are not specifically barred by the enabling statutes should be deemed *reasonable* and should not constitute “unilaterally imposed conditions” subject to appeal under the regulations.

It should be noted that, with regard to boards of education, the express statutory authorization for “any other terms agreed to” is not tethered to the express requirements in the charter statutes or corresponding regulations. The school board’s authority to contract is granted in KRS 160.160 in furtherance of the board’s management and control of its school district. The definitions in 701 KAR 8:020, Section 1(48) and (49) and in 701 KAR 8:030, Section 1(15) and (16) unduly restrict an authorizer’s flexibility to innovate and/or address local needs as intended by the legislature.”

NACSA, upon request of the agency for information on their knowledge of the use and boundaries of this term in other jurisdictions, commented:

In Sec. 1, Definitions (48) and (40) the draft defines “unilateral imposition of conditions” as cases where authorizers have placed conditions or requirements not required by statute or regulation, either through the approval process or in the contract or an amendment. This reflects statutory language in Sec. 7(1)(c) (11): “Reasonable conditions shall not include enrollment caps or operational requirements that place undue constraints on a public charter school or are contradictory to the provisions of Sections 1 to 10 and 11 of this 22 Act. Such conditions, even when incorporated in a charter contract, shall be considered unilaterally imposed conditions.” There is no definition of enrollment caps in Sec. 1, and we would urge the state board to clarify what is expected here. While authorizers should not take arbitrary action to impede normal growth patterns agreed to in the charter contract, they are well within their rights to hold schools to those agreed levels unless there is a negotiated modification of the contract terms. And they may reject requests for expansion if they find that the school’s performance does not justify it.

(b) Response: The agency appreciates these comments and believes that the definitions provided for “unilaterally imposed conditions” and “unilateral imposition of conditions” in this administrative regulation and in 701 KAR 8:030 are within the statutory intent expressed by the General Assembly in KRS 160.1590-160.1599 and 161.141. A version of these phrases is included in the Kentucky legislation at KRS 160.1595(1) and (2) and (3) as an authorizer action

that can be appealed to the agency; and in KRS 160.1596(1)(c)11. The latter appearance in the legislation is as follows:

The executed charter contract shall become the final authorization for the public charter school. The charter contract shall include: ... 11. Any other terms and conditions agreed to by the authorizer and the board of directors, including pre-opening conditions. Reasonable conditions shall not include enrollment caps or operational requirements that place undue constraints on a public charter school or are contradictory to the provisions of KRS 160.1590 to 160.1599 and 161.141. Such conditions, even when incorporated in a charter contract, shall be considered unilaterally imposed conditions.

The language above demonstrates the statutory framework of including “any other terms and conditions agreed to by the authorizer and the [charter school] board of directors” as “unilaterally imposed conditions.” As well, an authorizer has the authority, pursuant to KRS 160.1594(3)(e) and (f), to request additional information and provide information to an applicant as to identified deficiencies to remedy in the charter application in reviewing and considering approval or denial of a charter application. Finally, KRS 160.1596(1)(c)2 (emphasis added below) states that the charter contract shall include “[t]he agreements relating to each item required under KRS 160.1592(3) and 160.1593(3), *as modified or supplemented during the approval process*”, again demonstrating that the statutes provide the authorizer the authority to unilaterally impose conditions during the approval process to modify or supplement those matters required by KRS 160.1592(3) and 160.1593(3). These would be unilaterally imposed conditions for approval of the charter application, initiated by the authorizer. As to the comment requesting clarification on the term “enrollment caps”, the agency believes the statutory language, in combination with the administrative regulation and its documents incorporated by reference, provide fully for this term and that this can be a subject in authorizer and charter school board member training, under the administrative regulation. As well, the Kentucky Department of Education can provide guidance on this issue, if it is raised in Kentucky. As a result, the agency does not understand the definitions and provisions of 701 KAR 8:020 and 701 KAR 8:030 for these terms to impermissibly modify or vitiate statutory intent in violation of KRS 13A.120(2)(i) and does not believe further explanation of “enrollment caps” is needed. Therefore, the agency is not making a change to the administrative regulation in response to this comment.

9. Subject Matter: Special education and charter schools

(a) Comment: The National Center for Special Education in Charter Schools (NCSECS) commented that the administrative regulations do not extensively address special education and that they believed that additional special education specific content should be added to the content of these administrative regulations to close the gap on the question as to whether a charter school is an independent local education LEA or not for the purpose of special education. NCSECS commented that Sections 3(17) and 8(3) of the charter statutes (i.e., Sections 3(17) and 8(3) of HB 520 (2017) which were codified at KRS 160.1592(17) and 160.1597(3)) are relevant. NCSECS pointed out that the question of LEA status for charter schools in Kentucky is important because the special education funding and ultimate responsibility for provision of special education services falls on the LEA. Mr. LaFontaine commented that he agreed with NCSECS that the LEA status question is an important one from a funding sufficiency perspective. NCSECS commented that the best source of model language for additional provisions in the administrative regulations for special education specific requirements is from

their organization, the National Center for Special Education in Charter Schools (NCSECS) in a publication from this year entitled, “Model Policy Guide”. NCSECS also commented that the NCSECS publication from two (2) years ago entitled, “Getting Lost While Trying to Follow the Money” would be helpful as well in drafting and implementing these administrative regulations. NCSECS commented that Section 3(4)(b) should be amended to include special education as a training topic for authorizers. NCSECS commented that this administrative regulation should be amended to add special education as a consideration in determining whether an authorizer is competent and effective. Kentucky Protection & Advocacy (KYPA) submitted similar comments as well as commented that restraint and seclusion training for authorizers should be included in the administrative regulation. Jack Be Nimble agreed with and supported NCSECS’ comments.

(b) Response: First, the agency appreciates the concern of the commenters regarding the lack of specific and explicit definition in the statutes as to the special education LEA status question. It is the agency’s interpretation of the charter school statutes, specifically those referenced by the commenter and others that put a charter school on par and empower a charter school with the authority and powers of a local board of education, that the charter school statutes provide charter schools with LEA status for special education purposes, both for provision of services and funding, and provide charter schools with separate public education entity status separate from the local board of education and local school district. Because this is an issue of statutory interpretation, it is one that is inappropriate for resolution in the administrative regulations promulgated under these statutes. Second, the agency agrees with the commenters that special education specific provisions should appear in the charter school administrative regulations. The administrative regulation already had special education specific provisions for authorizer monitoring in Section 7(2) but has also added special education as a training topic for authorizers and for charter school board members. The agency has reviewed the NCSECS resources referenced by the commenter, per the commenter’s suggestion, is making the above described changes to the administrative regulation in response to this comment, but finds that some of the possible changes that would mirror the model language of NCSECS are appropriate for legislative addition but not administrative law change within the authority of the agency. For this reason, the agency is making limited changes to the administrative regulation in response to this comment. Third, the agency agrees that physical restraint and seclusion should be a topic of training as this relates to the safety of students as well as the disability rights of those students who have been identified or should be identified under the Child Find obligation for special education services for a disability. The agency is adding physical restraint and seclusion as a training topic for charter school authorizers and charter school board members.

10. Subject Matter: Charter school application

(a) Comment: Ms. Adkins commented that a cautious, measured approach should be taken in establishing charter schools in Kentucky and that she believed that had been accomplished with these administrative regulations. Ms. Adkins commented that a charter school application for proposed new charter schools should be deliberate and rigorous. Ms. Adkins commented that the charter school application included as a document incorporated by reference into this administrative regulation was developed using the National Association of Charter School Authorizer (NACSA) standards and high performing authorizer practices used in New York, Colorado, and other states. Ms. Adkins commented that the charter school application’s level of

detail is critically important to avoid closing a charter school by only opening a quality charter school. Ms. Adkins commented that the charter school application and the application process included in this administrative regulation will provide authorizers with sound information and data necessary to make these decisions. Ms. Adkins commented that other states like Ohio did not have authorizer evaluation as part of their charter school law for several years and that setting these expectations now will help Kentucky authorizers know and understand the performance expectation standards against which they will be held accountable. Ms. Adkins commented that authorizer training on the topics included in the administrative regulation will help put authorizers and charter schools in Kentucky in a position for success. Ms. Adkins applauded the work and efforts to create these administrative regulations and to build off the experience of other jurisdictions over the past twenty-five (25) years. Mr. LaFontaine also commented that he thought the work on the administrative regulations was outstanding so far to prevent the “wild, wild West” situation for charter schools in Kentucky. Mr. LaFontaine commented in response to Ms. Adkins’ comment that he too agreed the charter school application is complete. Mr. LaFontaine also commented that he believed the content in the charter school application designated for inclusion in the proposed charter school’s mission and vision statement was broader than a mission and vision statement typically are and suggested moving that content to another part of the charter school application.

(b) Response: The agency appreciates the positive comments about the content of the administrative regulations and the charter school application and believes no change to the administrative regulation is necessary in response to them. A change to the charter school application incorporated by reference into this administrative regulation will be made in response to the mission and vision statement comment.

11. Subject Matter: Extended school day

(a) Comment: Mr. LaFontaine commented that the charter school application, incorporated by reference into this administrative regulation, included requests for information about an applicant’s proposed calendar including information on any extended student attendance day. Mr. LaFontaine questioned whether the 420 minute limit on student attendance days from other Kentucky laws would limit the potential length of a charter school’s extended student attendance day calendar proposal.

(b) Response: The agency understands the 420 minute limit to a student attendance day to source from KRS 158.070(4)(b)(emphasis added) which provides:

“If a local board of education amends its school calendar after its adoption due to an emergency, it may lengthen or shorten any remaining student attendance days by thirty (30) minutes or more, as it deems necessary, provided the amended calendar complies with the requirements of a student instructional year in subsection (1)(f) of this section or a variable student instructional year in subsection (1)(h) of this section.

No student attendance day shall contain more than seven (7) hours of instructional time unless the district submitted and received approval from the commissioner of education for an innovative alternative calendar.”

It is the agency’s understanding that the charter school statutes, in KRS 160.1592(3)(m), require a charter school to “[p]rovide instructional time that is at least equivalent to the student instructional year specified in KRS 158.070” but otherwise the requirements of KRS 158.070 are not applicable to a charter school unless the charter school chooses to comply with their

requirements, per KRS 160.1592(2). The agency does not understand a change to the administrative regulation to be necessary in response to this comment.

12. Subject Matter: Charter schools and participation in K-TIP program

(a) Comment: Mr. LaFontaine commented that the current teachers of his private school had questioned whether they could participate in K-TIP while working a charter school.

(b) Response: The agency understands Kentucky Teacher Internship Program (K-TIP) participation to be governed by another agency, the Education Professional Standards Board (EPSB) through their authorizing statutes and their administrative regulations, specifically 16 KAR 7:010. The agency will forward to EPSB this comment but does not believe a change to the administrative regulation in response to this comment is necessary or appropriate, due to EPSB's authority over K-TIP participation.

13. Subject Matter: Teacher certification requirements for co-curricular courses in charter schools

(a) Comment: Mr. LaFontaine commented that he was unclear whether teachers could teach in co-curricular classes, for which they did not have the subject area certification for the content of the classes, in a charter school.

(b) Response: The agency understands teacher certification to be required of charter school teachers, per KRS 160.1590(13) and 160.1592(3)(d), and teacher certification to be governed by another agency, the Education Professional Standards Board (EPSB) through their authorizing statutes and their administrative regulations. The agency will forward to EPSB this comment but does not believe a change to the administrative regulation in response to this comment is necessary or appropriate, due to EPSB's authority over teacher certification.

14. Subject Matter: Costs of student assessment under the accountability system and funding for charter schools

(a) Comment: Mr. LaFontaine commented that he understood that charter schools would be required to participate in the student assessments of the state accountability system for public schools and he was unclear what entity would bear the costs of these assessments. Mr. LaFontaine commented that educating students is expensive and he is skeptical that the current funding model for funding charter schools is sufficient.

(b) Response: The agency is not entirely clear as to the "costs" for student participation in the state accountability system that this comment references. The agency understands that any costs currently borne by a school district for student assessment participation in the state accountability system would be required of a charter school as well. The agency shares the overall funding concern for public schools, in general. The agency is not making a change to the administrative regulation in response to this comment.

15. Subject Matter: Student attendance at a charter school on an election day

(a) Comment: Mr. LaFontaine commented that he was unclear whether a charter school would have to be closed on an election day, pursuant to other Kentucky law.

(b) Response: The agency understands the following portions of KRS 158.070 to be the statutory requirement that the commenter is referencing:

(1) As used in this section: (a) "Election" has the same meaning as in KRS 121.015;

...

(5)(b) (b) 1. If any school in a district is used as a polling place, the school district shall be closed on the day of the election, and those days may be used for professional development activities, professional meetings, or parent-teacher conferences.

2. A district may be open on the day of an election if no school in the district is used as a polling place.

KRS 121.015 defines "election" as follows:

(2) "Election" means any primary, regular, or special election to fill vacancies regardless of whether a candidate or slate of candidates is opposed or unopposed in an election.

Each primary, regular, or special election shall be considered a separate election;

"Election" is defined differently in KRS 118.015 as: "The word 'election' used in reference to a state, district, county, or city election, **includes the decisions of questions submitted to the qualified voters as well as the choice of officers by them;**" so a vote on alcohol would also be an "election." The schools of the school district should close if any of the schools serve as polling places for this election. However, the agency interprets a charter school not to be a school of the school district and therefore not subject to this requirement if a school of the school district is used as an election polling place. Because the charter school statutes, in KRS 160.1592(3)(m) require a charter school to "[p]rovide instructional time that is at least equivalent to the student instructional year specified in KRS 158.070" but otherwise the requirements of KRS 158.070 are not applicable to a charter school unless the charter school chooses to comply with their requirements, per KRS 160.1592(2), the agency does not understand the election day closure requirement to apply to a charter school at all, even if the charter school serves as an election polling place. That being said, a charter school that was serving as an election polling place certainly could choose to close school on that day to ensure the safety of students and staff at school that day as well as to prevent disruption of the school day by the activities of the polling places and their visitors. The agency is not making a change to the administrative regulation in response to this comment.

16. Subject Matter: Financial transparency and accountability for charter schools

(a) Comment: Mr. Ford commented that he applauded the charter school legislation passed by the Kentucky General Assembly and its potential for helping at risk students go to college. Mr. Ford commented that he was as well supportive of the financial transparency and auditing requirements placed on charter schools in the legislation and this administrative regulation because charter schools were being entrusted with public funds. Mr. Ford commented that he was supportive of the accountability and performance contracting requirements for charter schools.

(b) Response: The agency agrees with the commenter that financial transparency and accountability requirements are appropriate for charter schools as they are entrusted with public funds and public school students. The agency does not understand a change to the administrative regulation to be appropriate in response to this comment.

17. Subject Matter: Charter school application "describe" language

(a) Comment: Mr. Ford and the National Alliance for Public Charter Schools (NAPCS) commented that there should be a change in the language of the charter school application in that the charter school application states that an applicant is to “describe a plan” rather than a requirement that an applicant describe and present the plan for that portion of the charter school application. Mr. Ford suggested that the language in the charter school application be amended to require an applicant to “describe and provide” a plan where one is required under the application, especially portions of the application concerned with student performance plans and student performance goals, and require all goals be measurable and specific. The NAPCS similarly commented suggesting “provide a plan” in these places in the charter school application.

(b) Response: The agency agrees with the commenter and is making a change throughout the charter school application, incorporated by reference into this administrative regulation to require an applicant to “describe and provide” or “describe and identify” plans for the charter school.

18. Subject Matter: Lesser sanctions than revocation or nonrenewal

(a) Comment: Mr. Ford commented that the administrative regulation’s authorizer-imposed corrective plan provisions, in response to deficiencies in charter school performance, should be more clearly defined in the administrative regulation. Mr. Ford commented that the language in an Attachment 15, number 10, should also be amended to require an authorizer to look at the data and visit the charter school to put together a corrective plan rather than to revoke the charter contract if a charter school is “in the red to be revoked” to avoid closing a charter school and creating the traumatic experience for students of a school closure.

(b) Response: The agency believes Mr. Ford is referencing Section 7(8) of this administrative regulation, which provides the possibility that an authorizer could take less draconian measures on a charter school, such as notices of deficiency or imposition of unilateral conditions, than revocation or nonrenewal of a charter contract in response to issues in a charter school’s performance that do not require immediate action by the authorizer, as stated in KRS 160.1590 to 160.1599, and 701 KAR Chapter 8, or otherwise to protect the health, safety, civil rights, disability rights, and well-being of students and the community. The agency also believes Mr. Ford is referencing the charter school application’s Attachment 14 #10 as well. Attachment 14 of the charter school application is the Statement of Assurances document which a charter school board of directors member is required to complete prior to submission of the charter school application to an authorizer. Number 10 of this attachment provides a requirement for an assurance that the proposed charter school board of directors member “understands that the authorizer may revoke the charter contract if the authorizer deems that the charter school has failed to materially fulfill the academic goals, fiscal management, or legal and operational responsibilities outlined in the charter contract.” Though the agency appreciates the sentiments of this comment, the agency believes that specific delineation, beyond that already provided, as to the circumstances and performance outcomes that will lead an authorizer to decide to revoke or nonrenew a charter contract or to take lesser sanctions, should be left to the authorizer. No change to the administrative regulation by the agency is made consequently to this administrative regulation.

19. Subject Matter: Charter school application required information on school district performance

(a) Comment: Mr. Ford commented that the administrative regulation should seek to avoid creating tension and animosity in the relationship between the authorizer and the charter school by eliminating the requirement that a charter applicant discuss the shortcomings of their would-be authorizer as this eliminates the spirit of educational collaboration that is desired by all for charter schools and local school districts in Kentucky.

(b) Response: The agency agrees with the commenter and believes that the language of the administrative regulation has already been edited to avoid creating this tension and animosity in the relationship between the authorizer and the charter in the information on the school district's current student performance outcomes for the target student population. This language is in Section 4(8), requiring the district superintendent to provide the student performance information of the target student population. As well, a requirement for the charter school applicant to provide this information has been removed from the charter school application, incorporated by reference into this administrative regulation. For this reason, it is not believed that a change to the administrative regulation, or its documents incorporated by reference, is necessary in response to this comment.

20. Subject Matter: Charter school monitoring importance

(a) Comment: Ms. Harmer commented that she was concerned charter schools would contribute to more segregated schools; would not provide quality education for students at risk; would need public accountability; would affect attrition rates and expulsions; would compete by cutting staffing costs by reducing the number of teachers or lowering the cost of teachers; would lead to hiring less experienced teachers who will burnout quickly and leave the profession and cause constant teacher turnover; would fail, which would cause chaos and disruption for children or families or communities, who should be able to depend on schools to “provide a respite from the insecurity of their lives”; would need to abide by the same requirements for acceptance and rejection of students, just like public schools of Kentucky school districts; would “transfer control of public schools and public funds to private hands or stockholders and destroy professional teachers’ rights and unions.... This transfer of public funds to private management in thousands of deregulated unsupervised and unaccountable schools may result in profiteering and exploitation by entrepreneurs”; would “perpetuate the hoax that humans have no substantial input to global warming as well as spawn schools that teach creationism” and that there needs to be “public responsibility for well-run systems of public education based on scientific evidence”; would take money from public schools “to make a profit using public funds”; should have “fair and transparent ... discipline policy”; would need “monitoring and oversight ... to protect the public interest”; and, would need to be “strong and fully funded by the state.” Ms. Murrell commented similarly that “charter schools must be monitored to prevent unfair suspension practices.” Ms. Lindop expressed concern alongside Ms. Murrell.

(b) Response: Though the first commenter did not reference any particular administrative regulation in these comments, the statement of consideration for this administrative regulation appears to be the most appropriate home for these comments. First, the charter school statutes and the administrative regulations preclude charter schools from discriminating against students, based on the statuses described by the commenter, in the charter school's application and enrollment, discipline, suspension, and expulsion practices. This administrative regulation emphasizes the authorizer monitoring responsibility for this area of concern.

Second, the staffing, staffing salary, and staffing experience concerns are left to the discretion of the charter school and the authorizer, to the extent negotiated in the charter contract, but are largely left to the discretion of the charter school, per the statutes. The only caveat to this is the statutory requirement for charter school teachers to be certified by EPSB. See response to comment 13 above.

Third, the charter school statutes and this administrative regulation put in place monitoring requirements and closure process requirements aimed at preventing sudden, unanticipated closure of charter schools, reducing the need for charter school closure, and providing notice and information for families, staff, and communities when charter school closure is anticipated.

Fourth, charter schools are required by the statutes to utilize the Kentucky academic standards for student instruction and cannot choose to do otherwise.

Fifth, the charter school application requirements include a requirement for information on the student discipline policy and the administrative regulation itself requires the authorizer to attend any suspension or expulsion hearing under KRS 158.150 to ensure the due process rights of students are provided by the charter school and to ensure the charter school is not strategically removing students from the charter school in a discriminatory manner.

Sixth, this administrative regulation establishes the evaluation of authorizer standards, including the monitoring standards, by which authorizer performance will be evaluated and addressed.

Seventh, the transfer of funding for those students who attend a charter school in the future in Kentucky, and the general matter of the public funding of charter schools in our state, is an issue for the Kentucky General Assembly, not the agency. For these reasons, it is not believed that a change to the administrative regulation, or its documents incorporated by reference, is necessary in response to this comment.

21. Subject Matter: Adequate funding for all public schools and transparent implementation

(a) Comment: Ms. O'Reilly commented that she was concerned

“about the implementation of charter schools and how they will be able to offer equal access to quality education due to funding issues that already exist in the state. As a proponent of the Annenberg Rules, the new regulations propose assurances for an open and transparent implementation. I especially applaud the message that there are no other requirements for attendance other than the desire to participate. However, I take issue with the state's ability to convert entire schools to charters. Applications from financially troubled private schools could put an unnecessary strain on the public school system. In addition, provision for adding students to a converted school might be nil as the regulations give preference to those already attending the school. Finances and financing of public education could indeed be put at risk.

As a resident of Fayette County, a former member of the FCPS Magnet School Study Committee, and the parent of a child who attended a magnet program, I have seen lessons learned from those programs as they grew. We started small and worked through recruitment, transportation, curriculum and equity issues. Retention of those in the program became a priority. Unfortunately, not all charter programs address these issues with success.

I would like to see the Department of Education work across state level

lines of authority to address housing and economic patterns that could doom any effort to improve our schools. Schools do not exist in a vacuum. Offering assistance to failing schools is as much an issue of housing patterns and poverty as it is of choice on the part of educators. The success of our school systems depends on funding. We cannot continue to adopt choice without sufficient state dollars for implementation.

(b) Response: The agency appreciates the positive comments about the open and transparent implementation requirements of the administrative regulations. The agency understands the commenter's reference to the Annenberg Rules to be a reference to the resource found at <https://www.annenberginstitute.org/sites/default/files/CharterAccountabilityStds.pdf>. As to the commenter's concerns about the financial viability for school districts following conversion of an existing public school to a charter school or start-up of a new charter school, the agency responds that the administrative regulation allows a district superintendent to provide evidence of a substantial hardship, as defined by the administrative regulation, to the authorizer for review during consideration of the charter application. More to the point, funding for all public schools is within the authority of the General Assembly, not this agency, and this concern overall is shared by the agency but is outside the agency's authority.

As to the last concern expressed by the commenter, the agency agrees that the success of school systems depends on funding and that there are many outside factors that affect the educational success of our students. The agency agrees that working with other government agencies on the issues that impact students and their learning is vital to the improvement of educational and overall success for our students. For the reasons stated above, the agency does not understand a change to the administrative regulation to be appropriate in response to this comment.

22. Subject Matter: Financial transparency and education service providers

(a) Comment: Ms. Murrell commented:
 "In several states, where charter schools must be non-profit, ESP's have been created by a for-profit company, sometimes with questionable results. Therefore, these must be carefully monitored. In the information required about the ESP's, **NAMES OF ALL OWNERS AND/OR STOCKHOLDERS MUST BE REQUIRED.** We must know who is profiting from our tax dollars. Budgets submitted must show reasonable costs for ESP's, and charters not turned into 'cash cows.'"

Ms. Lindop expressed concern alongside Ms. Murrell.

(b) Response: The agency agrees with the commenters that financial transparency for all receiving public funding from charter schools should be required. For this reason, the agency is adding a requirement for disclosure of the names of all owners and/or shareholders of a network, education service provider, or other partner in Section VIII. D.5. in response to this comment.

23. Subject Matter: Financial transparency and charter school facilities

(a) Comment: Ms. Murrell commented that:
 Charters and ESP's have found ways to tap into public charter school funds by forming real estate companies that rent to the charter school. There are several

examples of this in Florida. **FUNDING FOR FACILITIES MUST BE CLOSELY MONITORED.**

What does it mean (IV.K.12 p. 26): “Does the charter school have *specific desired location(s) from those being made available by the authorizer or the Kentucky Finance and Administration Cabinet?*” Is the state planning to subsidize charters by making state property available?

Ms. Lindop expressed concern alongside Ms. Murrell.

(b) Response: The agency agrees with the commenters that financial transparency for all receiving public funding from charter schools should be required. For this reason, the agency already has requirements in the charter school application, in Section IV.L. and Section VIII. E.3.f, for disclosure respectively of “the process for identifying and securing a facility, including any brokers or consultants the charter school is employing to navigate the real estate market, plans for renovations, timelines, financing, etc.” and “promissory notes or other negotiable instruments, or enter into a lease, lease-purchase agreement or any other facility or financing relationships with the ESP/other partner, provide evidence that such agreements are separately documented and not part of or incorporated in the charter school management contract. Any facility or financing agreements shall be consistent with the charter school board of directors’ authority and practical ability to terminate the management agreement and continue operation of the charter school.” The administrative regulation, at Section 5(9), similarly requires the authorizer to “require in the charter contract that any contract the charter school board of directors enters with an education service provider has to be approved by the authorizer prior to execution and that any contract the charter school board of directors enters with an education service provider shall comply with” the requirements of that subsection of the administrative regulation. The agency believes the above and other monitoring requirements in the administrative regulation sufficiently address the concern expressed by the commenter and therefore understand no change to the administrative regulation to be necessary in response to this comment.

As well, the agency responds to the second part of the comment, seeking clarification, that the statutes, specifically KRS 160.1592(13), governing charter schools require the Kentucky Finance and Administration Cabinet to “annually publish a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by the state and that may be suitable for the operation of a public charter school and shall provide the list to applicants for public charter schools and to existing public charter schools upon request.” This possibility of a charter school housing in a facility that is vacant and unused, owned by the state, and available for lease at fair market value, is all that is referenced in this portion of the charter school application and does not understand any property to be made available to a charter school gratuitously by a public agency or public school district. For this reason, the agency does not understand a change to the administrative regulation or its documents incorporated therein to be necessary in response to this comment.

24. Subject Matter: Charter school contracts with local school districts

(a) Comment: Ms. Murrell commented that she was concerned regarding the portions of the charter school application regarding disclosure by the applicant of plans to meet the requirements for a charter school by contracting through the district or with the district to utilize the resources

of the district. Ms. Murrell commented that she was concerned about protecting the finances of local school districts. Ms. Lindop expressed concern alongside Ms. Murrell.

(b) Response: The agency agrees with the commenters that the financial integrity of the local school district should not be impacted negatively by the creation of charter schools. The portions of the charter school application referenced by the commenter were in reference to the ability of the local school district, and the charter school, to contract separately and voluntarily, on both parties' part, for the school district to provide, at cost, services or resources to the district for the education of the charter school students. The statutes provide this ability explicitly to the two parties, in KRS 160.1592(12)(a). The agency also already has provisions in the administrative regulation providing the district superintendent the opportunity to provide the authorizer information regarding any anticipated substantial hardship to the provision of educational services to students of the school district that would result from the approval of the charter school application. While the agency shares the concerns expressed by the commenter, the agency understands the administrative regulation and the charter school application to address these concerns and does not understand a change to the administrative regulation to be necessary in response to this comment.

25. Subject Matter: Internal controls

(a) Comment: Ms. Murrell commented that she was concerned with the findings of the U.S. Department of Education (USED) in their audit of charter schools in 2016 and the lack of USED procedures to determine whether the state education agencies or the local education agencies had internal controls themselves to provide accountability for the charter schools' management and expenditures of public funds. Ms. Murrell commented questioning "What will be the cost to the state department of education and local systems to monitor charters adequately?" Ms. Lindop expressed concern alongside Ms. Murrell.

(b) Response: The agency believes the commenters are referencing the USED Office of Inspector General audit report and resource at <https://www2.ed.gov/about/offices/list/oig/auditreports/fy2016/a02m0012.pdf> in making this comment. This USED resource provides the following, relevant to this comment:

The objective of our audit was to assess the current and emerging risk that charter school relationships with charter management organizations (CMOs) and education management organizations [collectively referred to as CMOs] pose to the Office of Elementary and Secondary Education (OESE), the Office of Special Education and Rehabilitative Services (OSERS), and the Office of Innovation and Improvement (OII) program objectives and evaluate the effectiveness of OESE, OSERS, and OII internal controls to mitigate the risk.... Internal controls are integral to the operations of any organization. They are a means of identifying and managing risks associated with Federal programs and a key component in preventing and detecting fraud, waste, and abuse. The Federal Government has reemphasized the importance of internal controls through recent updates of various regulations and guidance, such as Title 2 of the Code of Federal Regulations Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards and the U.S. Government Accountability Office Standards for Internal Control in the Federal Government

issued by the Comptroller General of the United States. The development and implementation of adequate internal controls is even more important when dealing with emerging operating environments, such as the CMOs that were the focus of this audit. We determined that charter school relationships with CMOs posed a significant risk to Department program objectives. Specifically, we found that 22 of the 33 charter schools in our review had 36 examples of internal control weaknesses related to the charter schools' relationships with their CMOs (concerning conflicts of interest, related-party transactions, and insufficient segregation of duties). See Appendix 1 for details regarding the State summaries of 6 States and 33 charter schools we reviewed. We concluded that these examples of internal control weaknesses represent the following significant risks to Department program objectives: (1) financial risk, which is the risk of waste, fraud, and abuse; (2) lack of accountability over Federal funds, which is the risk that, as a result of charter school boards ceding fiscal authority to CMOs, charter school stakeholders (the authorizer, State educational agency (SEA), and Department) may not have accountability over Federal funds sufficient to ensure compliance with Federal requirements; and (3) performance risk, which is the risk that the charter school stakeholders may not have sufficient assurance that charter schools are implementing Federal programs in accordance with Federal requirements.

We also found that the Department did not have effective internal controls to evaluate and mitigate the risk that charter school relationships with CMOs pose to Department program objectives. The Department did not have controls to identify and address the risks related to CMO relationships because it did not believe the risk to be materially different than risks presented by other grantees that received Department funds. In addition, Department officials stated that OII uses a risk-based strategy in the monitoring and administration of CSP grants.

Further, the Department did not implement adequate monitoring procedures that would provide sufficient assurance that it could identify and mitigate the risks specific to charter school relationships with CMOs. With the exception of the SIG and the CSP non-SEA programs, the Department did not include in its monitoring tools any steps to review the relationships between charter schools and CMOs or to review the SEAs' oversight of those relationships. Also, the Department did not ensure that SEAs monitored the relationships between charter schools and CMOs in a manner that would have addressed financial risk, lack of accountability, and program performance risk. This occurred in part because the Department did not collect and analyze information needed to perform a risk assessment and then tailor its monitoring procedures accordingly. Without performing a risk assessment, the Department did not provide guidance to SEAs related to the potential risks posed by charter schools with CMOs.

As a result, the Department's internal controls were insufficient to mitigate the significant financial, lack of accountability and performance risks that charter school relationships with CMOs pose to Department program objectives.

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Requirements Applicable to Charter Schools With CMOs

Charter schools with CMOs that receive Federal grant funds must comply with statutes authorizing the applicable grant program, regulations, the terms and conditions of their grant awards, and relevant Department-issued guidance. Additionally, under Title 2 of the Code of Federal Regulations Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Grant Guidance), non-Federal entities that receive Federal grants must establish and maintain effective internal control over those funds starting December 26, 2014. Internal controls are processes designed to provide reasonable assurance that recipients are managing their awards in compliance with Federal statutes, regulations, and the terms and condition of their awards.

According to the Uniform Grant Guidance, non-Federal entities' internal controls should comply with the U.S. Government Accountability Office (GAO) "Standards for Internal Control in the Federal Government" (Green Book), issued in November 1999 and updated in September 2014, or the "Internal Control – Integrated Framework," issued by the Committee of Sponsoring Organizations of the Treadway Commission (COSO) in 1992 and updated in May 2013. The Green Book and the COSO Internal Control – Integrated Framework (COSO framework) provide specific requirements for assessing and reporting on controls in the Federal Government. Before the Uniform Grant Guidance became effective, non-Federal entities could adopt but were not required to follow the Green Book or the COSO framework. Because the Uniform Grant Guidance is now in effect, the Department, SEAs, LEAs, and charter schools with CMOs receiving Federal funds should consider the guidance in the Green Book and the COSO framework when assessing, updating, and applying internal control systems of charter schools with CMOs.

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Financial Risk

In our reviews, we found 24 examples at 17 charter schools of conflicts of interest, related-party transactions, and insufficient segregation of duties that, if unmitigated, present significant financial risk to Departmental programs and could put charter schools at risk of closing. Specifically, we noted weaknesses in the operating controls of charter schools that provided opportunities for key charter school personnel, charter school board members, and the CMO to have conflicts of interest. Further, we identified relationships between the charter school board members and CMOs, as well as relationships between charter schools and CMO-affiliated vendors, that may put Federal, state and local funds at risk of misuse.

Risk of Violation of Program Integrity Requirements

Recipients of Federal funds are required to ensure that they comply with applicable Federal and State rules regarding conflicts of interest. At 8 of the 17 charter schools, we identified 11 examples of relationships between charter school employees, board members, CMO officials, or vendors that presented potential conflicts of interest that, if unmitigated, could violate applicable conflict of interest rules. The following are some examples:

- Four charter school board members at one charter school in Pennsylvania had potential conflicting interests with the CMO because they were also the CMO chairman, CMO board member, CMO president, and CMO chief financial officer. The president and the chief financial officer signed the management contract on behalf of both the charter school and the CMO.
- Officials at five charter schools in Texas were also officials at the CMOs and did not disclose potential conflicts of interests they had with vendors providing services to the charter schools.²⁷ In one of the five charter schools, an official was a member of the charter school and the CMO boards, provided legal services to the charter school but did not recuse himself from voting on compensating himself for legal services he provided to the charter school. At another two charter schools in Texas, the charter school board president, CMO board member, former superintendent, and former assistant superintendent had substantial interest in two companies that provided services to the two charter schools.
- Two charter schools in Florida that had the same CMO leased their facilities through two affiliated companies of the CMO. We found a series of potential conflicts of interest between key officials of the charter school, the CMO, and the two affiliated companies. The founder of the charter school operator was also the founder of the CMO, and the sibling of the founder had managing responsibilities at the two affiliated companies that leased the buildings to the two charter schools. The siblings occupied positions including board member at the two charter schools, the CMO president, the CMO vice-president, and the manager and president at the two affiliated companies.

Risk of Misuse of Public Funds

Recipients of Federal and other public funds are required to ensure they have internal controls to prevent putting Federal and other public funds at risk of misuse. We identified 13 examples of potential conflicts of interest, related-party transactions, and insufficient segregation of duties affecting school and CMO financial transactions that may put Federal and other public funds at risk of misuse. We found that 6 of the 17 charter schools with examples that represented financial risk that had charter school governing board members that were fully or partially appointed by the contracted CMO or were the same board members as the contracted CMO's board members. This risk was also present in situations where charter schools relied on their CMOs for facilities services. We identified 9 charter schools that had lease agreements with the CMO or an affiliate of the CMO. Charter school boards that leased facilities from their CMOs and maintained the lease agreement but ended the relationship with their CMOs could

have been at risk of not being able to readily terminate their management services relationship with the CMO. The following are examples we found of charter schools that had weaknesses in internal controls that could put Federal and other public funds at risk of misuse:

- The Chief Executive Officer (CEO) of one CMO in Pennsylvania had the authority to write and issue checks without charter school board approval and wrote checks to himself from the charter school's accounts totaling about \$11 million during the 2008–2009 school year. While legal counsel for the charter school stated that the school subsequently established procedures to prevent this from reoccurring, the charter school could not provide us with documentation to support the change.
- One of the vendors that supplied services to a charter school in Pennsylvania was owned by the charter school's CMO. The charter school paid the CMO \$485,000, without charter school board approval, over the past 6 years for services the vendor rendered. The charter school board did not independently approve vendor services because the CMO had significant authority over charter school operations.
- One charter school in Florida, which shared the same board as its CMO, entered into a 10-year lease agreement with the CMO in 2006 for the charter school facility and subsequently decided to expand the facility, extend the lease, and increase the rental payments. Because the charter and the CMO had the same board there were conflicting interests that may not have been in the best interest of the charter school.

The examples above demonstrate the significant internal control risks associated with doing business with vendors closely affiliated with CMOs that exert significant control over charter schools. The CMOs that maintained controls over expenditures and lease arrangements also may have had an opportunity to charge unsupported costs to the charter school.

Lack of Accountability Over Public Funds

Recipients are required to have internal controls to properly account for and spend Federal and other public funds. We found that 13 of the 33 charter schools had examples of charter school boards ceding substantial fiscal authority to CMOs in their management contracts.

Decision-making authority granted to the CMO over charter school operations was included in the CMO contracts for two charter schools. We found that two charter school boards gave its CMO authority to select charter school board members or control charter school bank accounts, which included the ability to write checks on behalf of the charter school boards without obtaining board approval. We also found that, while charter school boards may have approved an initial budget, CMOs were able to make expenditure decisions without prior approval from the charter school board. The charter school boards that delegated

their authority could not fully exercise some of their duties as recipients of Federal and other public funds, including overseeing and administering those funds. As a result, the charter school boards were unable to mitigate risks of CMOs misusing Federal and other public funds. Charter school boards must ensure that Federal funds are used for expenses that were reasonable, allocable, and allowable for the programs implemented at the charter schools. The following are some examples of the lack of accountability over public funds:

- One CMO had significant authority over operations of three Michigan charter schools and one New York charter school. The charter school boards signed CMO contracts that required the charter schools to remit all Federal, State, and local funds to the CMO and gave the CMO responsibility for paying the charter school expenditures. The charter school boards did not approve expenditures throughout the school year or final expenditures. The CMO was contractually allowed to retain all charter school funds not spent at the end of the year as the management fee.
- As previously discussed under “Risk of Misuse of Public Funds,” the CEO of one CMO had sufficient authority and control over charter school operations to write and issue checks without charter school board approval for one charter school in Pennsylvania. We found that the CEO wrote checks to himself totaling about \$11 million during the 2008–2009 school year.
- Another CMO in Pennsylvania selected the members of a charter school’s board, and those members selected the remaining board members. The CMO handled all of the finances on behalf of the charter school and did not need the charter school board’s approval.

When charter school boards delegated financial or operational authority to CMOs, the charter school board may not have been able to review, approve, or reject decisions made by the CMO, including awarding contracts, expenditures, and personnel decisions. Therefore, the charter school board may have been unable to determine whether the CMO complied with laws and regulations to ensure that Federal funds were properly managed and spent.

Program Performance Risk

Participants in Federal programs are required to ensure that they comply with applicable program requirements. We found 2 of the 33 charter schools had examples of charter school boards ceding program operational authority to CMOs. For example, one CMO had complete authority to make personnel decisions for a charter school in Florida, including unilaterally terminating its contract with the charter school board if the board did not adopt the CMO’s personnel recommendations. The contract required the CMO to comply with Federal, State, and local laws and the school’s charter when hiring and firing personnel, determining staffing levels, and performing staff evaluations. However, given the scope of the CMO’s authority in this area, we questioned the school board’s ability to fully exercise its programmatic control. When charter

school boards did not maintain sufficient authority over charter school operations, they may not have had assurance that schools implemented Federal programs in accordance with Federal requirements, and this could potentially put charter schools at risk of closing.

OIG Investigations Have Identified Fraud That Represented the Significant Risk of Charter Schools Relationships With CMOs

From January 2005 through June 2016, the OIG investigated a number of significant criminal cases that reflected the risk of misuse and the lack of accountability over Federal and other public funds. These cases are indicative of CMOs having too much control over charter school operations without management and oversight. The following are examples of some of these cases:

- **Oregon Charter School Management Company and Two Former Executives Misused Federal and State Charter School Funds.** The CMO in this case managed about 18 charter schools in Oregon. The CMO and two executives violated various Oregon statutes related to charter schools such as failing to provide audit reports, submitting grant expenditure and activity reports that contained false statements, comingling school funds, and improperly merging charter schools. The false statements on the grant expenditure and activity reports caused the Oregon Department of Education to continue to allow the CMO to request and receive Federal charter school startup grant funds. The two executives controlled the charter schools to the extent that the charter schools functioned and operated as one singular enterprise with its central hub at the CMO. The stipulated judgment and injunction for this case required the CMO and executives to pay a total of \$475,000.

- **Board Director and Wife Defraud a Charter School in Minnesota.** In this case, the husband was the charter school's board director, and the couple jointly formed the CMO. However, the board director failed to disclose to the other board members or employees the full extent of his interest in the CMO. Over the course of 4 years, the couple repeatedly billed the charter school excessive amounts for services the CMO allegedly rendered. The couple diverted over \$400,000 in local, State, and Federal funds for personal use, including purchasing a vacation cruise, paying off personal credit card debt, and purchasing sporting event tickets. In addition, the couple had the charter school pay a vendor without a contract or board approval. The vendor was a business that the board director's wife operated. The charter school's president and board director and his wife were sentenced to 37 months and 30 months in prison, respectively, and ordered to pay more than \$480,000 in restitution.

These cases generally involved risks that resulted in potential harm to Federal and other public funds. Specifically, the cases involved one or more people taking actions that resulted in false grant expenditure and activity reports, overpayments, and fraudulent contracts used to bill charter schools for services not actually performed. These cases illustrate the potential risks that exist when charter schools and CMOs have conflicts of interest.

State and Local Auditing Entities Performed Limited Work

Between FYs 2010 and 2013, a State audit entity in New York conducted an audit involving charter schools with CMOs and a local audit entity in Pennsylvania conducted an investigative review involving various charter schools. The reports cited questionable service and lease agreements, uncertainty as to the fiscal controls maintained at the charter schools, and a CMO that refused to provide documentation to support its activities. The CMO, which operated charter schools in eight States, was unwilling to provide financial information related to its charter school management to the State auditing entity because the CMO claimed the information was private and proprietary.

Two State auditing entities had limited authority to perform audits related to charter schools with CMOs. Specifically, one State auditing entity in Michigan claimed it did not have the authority to audit a charter school or a CMO. Another State auditing entity in Pennsylvania indicated that the CMOs did not want to provide their information because they stated that they were a private entity and were not the auditee. As an alternative, the auditing entity used the Internal Revenue Service form 990 to obtain information.

Risks in Charter School Relationships With CMOs

Given the internal control weaknesses, substantiated cases of fraud, and limited State and local audit work discussed above, we determined that the unique attributes of the relationships between charter schools and CMOs can result in a significant risk to Federal and public funds. Oversight entities at the Federal, State, and local level have a shared responsibility of protecting funds that are awarded to charter schools; however, as discussed below, there are numerous barriers to effective oversight that compound the risk internal control weaknesses pose to the Department.

....

Insufficient SEA Monitoring of Charter School Relationships With CMOs

We found that all six of the SEAs performed insufficient monitoring of charter school relationships with CMOs for the Title I, SIG, IDEA, and CSP grantees. As the grantees, SEAs were responsible for the compliance and fiscal monitoring of these Federal grants that charter schools with CMOs received as subgrants. According to all six of the SEA officials, charter schools were monitored the same as traditional public schools for the Title I, SIG, and IDEA grants. Therefore, the SEAs did not include specific steps geared to examine CMO relationships at charter schools. The Student Achievement and School Accountability Programs is a component of OESE that oversees and monitors the Title I, SIG, and other grant programs that were not within the scope of our audit. All of the SEAs that received CSP SEA grants had a division within their education departments specifically dedicated to administering the grants and monitoring their charter schools that received CSP grants. Five of the six SEAs that received the CSP SEA

grant performed limited steps to examine the relationship between charter schools and CMOs. Although the five SEAs had steps to examine the relationship between charter schools and CMOs, the steps did not include procedures sufficient to identify specific internal control weaknesses such as conflicts of interest, related-party transactions, and insufficient segregation of duties.

Authorizer Monitoring of Charter Schools With CMOs

All 16 authorizers in the 6 States we reviewed had varying degrees of oversight and monitoring of charter schools. To receive Federal funds, charter schools must have an approved charter from an authorizer. Authorizers have a role under State charter school laws to oversee the quality of charter schools. The various State charter school laws describe the roles and responsibilities of authorizers regarding approval, renewal, and revocation of a charter. Because we did not audit the authorizers, we did not fully evaluate the quality of their oversight efforts. However, we reviewed documentation that the authorizers provided to determine whether the authorizers identified the same instances of internal control weaknesses that we identified and whether the authorizers determined the acceptability of fiscal risks to carry out the charter school's program objectives. We found examples of charter schools approved by 11 of the 16 authorizers with internal control weaknesses and determined that 5 of the 11 authorizers were aware of some of the weaknesses we identified in our audit. The authorizers sometimes reviewed the risks to determine whether the risks were acceptable to charter school program's objectives and we found only one authorizer that had steps included in their protocols to address the risks. State charter school laws governing authorizer oversight varied significantly from State to State regarding conflicts of interest, related-party transactions, and segregation of duties. The State charter school laws in the six States we reviewed mandated that the authorizers perform some type of review of charter school relationships with CMOs. However, we determined that these reviews did not generally address the areas of internal control weaknesses that we identified in our work because the charter school laws did not consistently require the authorizers to:

- review the contract between the charter school and the CMO,
- require the charter school governing board to be separate from the CMO, and
- require the charter school governing board to disclose conflicts of interest in the charter application and renewal application.

.... The authorizers in California, Pennsylvania, and Texas were not aware of the potential conflicts of interest, related-party transactions, and insufficient segregation of duties that we found. The authorizers selected in New York and Michigan were aware of some of the conflicts of interest and related-party transactions examples that we identified, and determined whether the internal control weaknesses posed a detrimental fiscal risk to carrying out the charter school's program objectives. The authorizer in Florida was aware of most of the instances of conflicts of interest and related-party transactions (through a charter

school audit report issued by an LEA audit group), as well as the instances of insufficient segregation of duties that we found.

Sharing of Information Regarding Charter Schools With CMOs Between SEAs and Authorizers

State charter school laws in the six States did not require SEAs to ensure that authorizers monitored charter school compliance with applicable regulations. As grantees, SEAs have a responsibility to oversee Federal funds that flow through the State and ensure that the funds are properly administered by the SEAs' subgrantees, including charter schools with CMOs. For one of the six States, the SEA program offices responsible for oversight of Federal and State funds had communications with the authorizers. The Michigan SEA took steps to monitor authorizer reviews of charter school compliance with the State charter school law; however, it had only limited authority to monitor the activities of the 37 authorizers operating in the state. The Michigan SEA "Authorizer Assurance and Verification Visits" policy established voluntary procedures to ensure that authorizers complied with all requirements of the Michigan charter school law, provided technical assistance, and promoted communication between authorizers and the SEA. The Michigan SEA provided a report with feedback to the authorizers, but did not make the results public. Because it was voluntary for authorizers to comply with the policy, the Michigan SEA was limited in its ability to ensure authorizers complied with State charter school law. We found that authorizers in five of our selected States were required to share charter school performance and fiscal information with States. While authorizers played a role in establishing charter school eligibility for Federal funds, we determined that they were not required to share information regarding risky charter school relationships with CMOs with the SEAs. Sharing such key relationship risk information with SEAs would better enable the SEAs to identify and mitigate potential risks to Federal programs.

Federal Requirements Regarding Oversight and Monitoring of Federal Programs

Current Federal requirements do not describe the role of authorizers in oversight and monitoring of Federal programs. Further, none of the State charter school laws for the six States we reviewed address authorizer's responsibility regarding Federal programs and vary in what is required to be reported to the SEA. For additional detail, see Appendix 1. OMB Circular A-123 describes management's responsibility for internal controls. In addition, Federal requirements applicable to the Department's and the SEAs' oversight and monitoring are as follows:

- According to the GAO Green Book, internal controls should generally be designed to assure that ongoing monitoring occurs in the course of normal operations of the organization. Monitoring of internal controls should include policies and procedures for ensuring that the findings of audits and other reviews are promptly resolved.

- According to 34 C.F.R. § 76.702, a State and a subgrantee must use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for Federal funds.
- According to 34 C.F.R. §§ 80.20, 76.730 and 76.731, States and subgrantees must maintain records that adequately identify the source and application of funds and compliance with program requirements. They must also maintain records to facilitate an effective audit.
- According to 34 C.F.R. § 80.40(a), grantees must monitor grant and subgrant supported activities to ensure compliance with applicable Federal requirements and performance goals are met.

The Department Should Provide Guidance to Help SEAs Identify and Mitigate Potential Risks of Charter School Relationships with CMOs

According to Department officials, for programs where the SEAs were the grantees, it was the SEAs' responsibility to oversee subgrantees and ensure that they complied with grant requirements. However, the Department did not provide guidance to the SEAs to identify and address risks resulting from the relationships between charter schools and CMOs. Even though Department officials stated that issues regarding the direct governance or administration of charter schools were primarily the responsibility of the appropriate State or local governments, we found that these entities were not taking actions to assess the risk that the relationships between charter schools and CMOs pose to Department program objectives. The Department should provide guidance that would help SEAs assess risks related to charter schools with CMO relationships and share information regarding the risks identified with other SEAs and with the Department. The Department did not provide guidance to SEAs regarding consistent monitoring of charter school authorizers. Although the authorizers do not directly oversee Federal funds, they approve charter applications, which enable charter schools to be recipients of direct and flow-through Federal grants. An SEA official stated that the State law did not grant the SEA authority to conduct monitoring of authorizers in the respective State. We found no specific provision in State legislation in the six States requiring or precluding the monitoring of authorizers by SEAs. In addition, no entities oversaw authorizers in five of the six States; in the sixth State, the SEA performed a review of authorizers that was voluntary for authorizers to participate in. Given the lack of Department guidance to address the risks that charter school relationships with CMOs pose to the Department's programs, SEA oversight and monitoring may not have been mitigating these risks.

Recent Department Program Guidance

While the Department has not developed guidance to mitigate risks specific to CMOs, it has issued guidance for its programs that broadly addresses areas of risk management, oversight, and monitoring. This guidance suggests procedures related to monitoring, such as risk-based monitoring and sharing monitoring

results. The Department also issued Dear Colleague letters that discussed the need to minimize conflicts of interest between grantees, subgrantees, and contractors, as well as the role of SEAs in oversight and monitoring of charter schools to ensure that they use Federal funds properly. The guidance described below does not directly address the risks that charter school relationships with CMOs posed to Department programs; however, they provide examples of the Department's efforts to improve oversight that could be modified or adapted to more directly address the issues raised in this report. U.S. Department of Education Grant Bulletin 14-06, April 28, 2014, establishes guidance that helps program offices within the U.S. Department of Education develop monitoring plans for formula grant programs consistent with their Principal Office Monitoring Frameworks. Specifically, the guidance encourages program offices to consider proactively assisting grantees to meet performance standards and grant requirements by sharing information. The guidance also suggests that program offices could conduct risk-based monitoring of grantees that includes a risk rubric to identify and assess a grantee's potential risk in the areas of meeting performance standards and complying with program, financial, and administrative requirements.

In a Dear Colleague letter dated March 10, 2014, OESE provided suggested measures to help prevent fraud and abuse in the use of Federal education funds. This guidance was in response to OIG management information report, "Fraud in Title I-Funded Tutoring Programs," October 2013 (ED-OIG/ X42N0001). In this report, the OIG presented the findings and results of investigations and audits conducted on Supplemental Educational Services providers in multiple States over the past decade, which included findings concerning conflicts of interest and a lack of monitoring similar to those presented in this report. In the Dear Colleague letter, OESE states that SEAs and LEAs should consider taking steps to strengthen protections against fraud and corruption. Specifically, OESE suggested steps to minimize conflicts of interest that, if effectively implemented, may help prevent the types of risks from occurring and would greatly facilitate identification, prosecution, and recovery of funds where fraud is committed. Like Supplemental Education Services providers, CMOs provide services to charter schools; however, CMOs are not required to seek SEA approval to provide services and, with the exception of those CMOs that receive CSP Replication and Expansion grants, are generally not subject to monitoring from oversight entities.

The U.S. Department of Education issued a Dear Colleague letter on September 28, 2015, to remind SEAs of their role in helping to ensure that Federal funds received by public charter schools are used for intended and appropriate purposes. The guidance advised that States could play a helpful role in areas such as charter school operational oversight, CMO relationship transparency, and strong authorizing practices. The Department plans to work with OMB and the OIG to revise the government-wide guidance provided to auditors in the OMB Circular A-133 Compliance Supplement to ensure that single audits provide a deeper review of State and local oversight of charter schools and their management practices, as they relate to Federal program funds. The letter reminds SEAs that

the Department is available to help SEAs as they oversee and monitor the use of Federal funds by charter schools.

The agency appreciates the comment and the reference to this excellent resource and agrees with the commenter that the financial internal controls in the charter school are vital to prevent “fraud, embezzlement, or misuse of charter school funds and to ensure proper management and expenditure in compliance with Kentucky law and the goals of the charter school.” For that reason, the charter school application, in Section V., has this language (quoted above) and a requirement for information from the charter school applicant on the internal controls that will be utilized by the charter school in its management of the charter school funding management and expenditure.

The agency also has included in this administrative regulation requirements for an authorizer to approve a charter school’s contract with an education service provider and requirements for the authorizer to include in the charter contract prohibitions on the charter school delegating essential internal controls of the academic leadership, finances, and operation of the charter school to an education service provider.

The agency has made a change to Section 11 of this administrative regulation to add an annual reporting requirement for the commissioner of education on contracts and the relationships between charter schools and education service providers addressing any financial risk, lack of accountability, and program performance risk that resulted from those relationships and contracts.

Additionally, the performance framework, by which an authorizer shall adjudge the charter school’s academic, operational, and financial performance, shall be the standard by which a charter school shall be evaluated by the authorizer. The agency will be developing a model performance framework that Kentucky authorizers may choose to utilize in their charter contract with a charter school and the performance framework will include provisions reflecting and addressing the concerns expressed by USED’s Office of Inspector General in the 2016 report.

The authorizer and charter school board member training required by this administrative regulation shall include information on the subjects of the USED OIG 2016 report to bolster the importance of internal controls at both levels.

And, finally, as to the commenter’s question regarding the cost to the agency and authorizers for monitoring charter schools adequately, there is not a definitive answer available at this time but the responsibility on the agency and the authorizers is not contingent on this answer and will not subside based on this answer. Charter school students are public students of the Commonwealth of Kentucky and their education shall be monitored, evaluated, and protected, regardless of the school each student attends.

26. Subject Matter: Regional achievement zone academies, different authorizers, authorizer authority, and charter contract template

(a) Comment: Ms. Schaber commented that she was concerned that the administrative regulations did not adequately provide for the authorizers other than a single local board of education. Ms. Schaber also commented that she was concerned with the authority granted an authorizer in this administrative regulation, specifically in “Section 2(b) ‘application preferences of the authorizer’; Section 2 (g) ‘Other Material terms’ and; Section 5 (a) 3 ‘other legal requirements’”. In all of these examples, in our opinion, the language is a bit vague and leaves it open for the authorizer to add a long list of additional requests and requirements.” Additionally,

Ms. Schaber commented that she did not want a mandated charter contract but did want a “suggested format” for the charter contract.

(b) The agency has reviewed the administrative regulation in light of the first concern for regional achievement zone charter schools and different authorizers than a single local board of education but did not find any provisions requiring revision in this administrative regulation. Next, the agency has reviewed the language of this administrative regulation cited by the commenter in her concern for the authority of the authorizer and responds as follows: The “application preferences of the authorizer” of the authorizer in the referenced language is from the exact language and authority granted an authorizer in the cited governing statute. The “other material terms” for inclusion in the authorizer’s policies and procedures on the contents of a charter contract’s performance contracting requirements sources from Washington, WAC 180-19-040, and is a catch-all phrase to ensure that the charter contract’s performance contracting terms include “other material terms” as the administrative regulation cannot contemplate the breadth of these. This borrowing of language from another jurisdiction’s charter school law comports with the Kentucky General Assembly and this agency’s stated intention that Kentucky charter school law build off the experience of the other jurisdictions with charter school laws. As well, the “other legal requirements for the charter school opening” is a reference to the responsible authorizing responsibility that an authorizer has to ensure a charter school has met all, those specifically listed in this portion of the administrative language and those not specifically listed, legal requirements for operation of a charter school in Kentucky prior to educating students.

Finally, the agency appreciates the commenter’s request for a charter contract template. The agency’s response to KSBA regarding this issue is responsive to this portion of this comment as well. As a result, the agency is not making a change to this administrative regulation in response to this comment.

27. Subject Matter: Sign language as a second language

(a) Comment: KYPA commented that it wanted American Sign Language (ASL) added to the definition of “bilingual student”. KYPA commented that this may not be a universally held understanding of bilingual, but that:

“ASL is a sophisticated language with its own grammar, syntax, and signs. The distinct nature of ASL as a separate language becomes apparent when observing the impact of the use of varying language (i.e., ASL, pigeon sign, FM systems) on the language acquisition and communication skills of students.”

(b) Response: The agency appreciates the comment. Though there is a long, unresolved debate on whether sign language qualifies as a foreign language, the outcome of that debate is not needed to provide the possibility for ASL to qualify as a second language for identification of bilingual students and their opportunities in charter schools in Kentucky. For this reason, the agency is amending the definition of “bilingual student” in this administrative regulation in response to this comment.

28. Subject Matter: Emancipated youth

(a) Comment: KYPA commented that they were concerned with the definition of

“emancipated youth” including mention of the possibility of this legal autonomy for a minor student through a court order and commented that it was KYPA’s understanding that this was not possible through a Kentucky court under Kentucky law.

(b) Response: The agency has reviewed the Kentucky law on this comment and understands emancipation of a youth to be available to a minor in Kentucky through a Kentucky court order as stated in a few Kentucky statutes, notably KRS 402.020. The agency understands emancipation of a minor to be the result of either a court order, marriage or pregnancy of the minor, or other circumstances in which the parent or legal guardian has either expressly or by implication given up authority and rights regarding the minor. See *Carricato v. Carricato*, 384 S.W.2d 85, 88 (Ky. 1964) for a description of the law generally on emancipation of a minor in Kentucky. For this reason, the agency believes no change to the administrative regulation in response to this comment is required.

29. Subject Matter: Student’s rights

(a) Comment: KYPA commented that Section 2(1)(d)2. should specify the rights of students protected in the governing legislation.

(b) Response: The agency agrees with the commenter and has made a change to this administrative regulation specifying the type of students’ rights protected by the legislation in charter schools.

30. Subject Matter: Notification of potential closure

(a) Comment: KYPA commented that the notification, to students and school districts, in the event of a charter school’s default on a financial obligation or the authorizer’s suspicion that the charter school may close prior to the end of the school year or charter contract term, required by the administrative regulation should be required immediately, not “as necessary.” KYPA commented that students, especially students with disabilities, and school districts “may need more time than typical peers to successfully transition to another school. Additional time may be needed to prepare the student for transition or to ensure that appropriate supports, services, and staff are in place. Providing the maximum notice possible of a potential transition would help ensure these vulnerable students are able to transition successfully to their new academic environment.”

(b) Response: The agency agrees with the commenter that notice to students and school districts, of a charter school’s possible closure in disruption of the students’ education at the charter school should be provided as soon as practicable. The agency also does not want to create a requirement that is interpreted to create panic unnecessarily prior to the authorizer’s further confirmation of the possibility and probability of the charter school’s closure in disruption of the students’ education. For this reason, the agency believes a balance should be struck in this language and that “as soon as necessary to ensure all students and resident local school districts are provided adequate time to prepare for the student transitions and to provide free and appropriate public education to the returning students” should be the language added to this portion of the administrative regulation in response to this comment.

31. Subject Matter: Physical restraint and seclusion rates included in performance framework

(a) Comment: KYPA commented suggesting that “School safety data, including restraint and seclusion rates” be added to the authorizer’s charter contract performance framework and targets. KYPA commented that “charter schools will be held to the same regulatory constraints regarding the use of restraint and seclusion in schools. Data regarding school safety data, is vital to any assessment of a charter school’s performance and should be included as part of the charter’s contract performance framework.”

(b) Response: The agency appreciates the comment but believes this addition to the administrative regulation’s charter contract performance framework targets is not necessary. The commenter is correct that charter schools shall be held to the same requirements regarding physical restraint and seclusion of students in Kentucky law, as this is a matter of safety, civil rights, and disability rights. And, data on physical restraint and seclusion of charter school students shall be included as part of the data reporting requirements under Kentucky law, outside this administrative regulation. However, that is already in place without addition to this administrative regulation. As well, the administrative regulation already includes a reporting requirement for each use of physical restraint or seclusion of a charter school student to ensure effective monitoring by the authorizer of the charter school’s adherence to the physical restraint and seclusion requirements and restrictions in Kentucky law. Finally, there is no prohibition on an authorizer choosing to include safety as a target subject in the performance contract and the Kentucky Department of Education (KDE) shall consider the inclusion of this in the charter contract performance framework guidance document that KDE will be creating in the future, outside the administrative regulation. For these reasons, no change to the administrative regulation is being made in response to this comment.

32. Subject Matter: Disaggregation of student data in annual report

(a) Comment: KYPA commented that the annual report in Section 11 should be “disaggregated by age, race, and status as special education student.” KYPA commented that this would increase transparency.

(b) Response: The agency agrees with the commenter, and, for this reason, the agency is adding disaggregation language to Section 11’s annual reporting requirement. This will be limited to the extent necessary due to the protections of confidentiality laws, like FERPA.

33. Subject Matter: Charter School Application and Addendum additional language

(a) Comment: KYPA commented that the Kentucky Charter School Application and Addendum should be amended to add the language in quotations below:
Section II.C. “behavioral, and mental health needs”;
Section II.G. “8. Identify or describe strategies for recruiting and retaining special needs students equal to or in excess of the proportion to that of special needs students in the district.”

KYPA commented in support of this suggested addition:

“As charter schools will have the same obligations under federal and state education laws to educate students with disabilities, it should be expected that they will serve special education students at least equal to the proportion of those students in the [district] population. Requiring charter school applicants to identify or describe these strategies will also ensure special education students are contemplated as part of the charter school

population and that the charter school will not screen out students based on their disability status.”

Section III.G. Provide description of the health services, “including mental health and psychological services and other health services such as occupational therapy, physical therapy, speech therapy, and music therapy,”....

Section III.J. amended to include “behavioral interventions and supports.”

Section III.O. “6. Provide a detailed description of how the charter school will accommodate students with food allergies or special dietary needs.”

Section IV.H. Professional development: “6. Describe how the charter school will meet the state training requirements regarding the use of restraint and seclusion.”

KYPA commented:

“Today’s public schools are required to address a broad array of student needs, including behavioral and mental health needs. Charter schools, particularly those that target at-risk students, must fully understand the complex array of student needs that impact educational performance and academic progress. The application should require the applicant to demonstrate a full understanding of the needs of the prospective student population.”

KYPA also commented, regarding the Food Services section additional language:

“The Centers for Disease Control and Prevention report that food allergies in children increased by 50% between 1997 and 2011 and that the prevalence of nut allergies (both peanut and tree nuts) more than tripled.

<https://foodallergy.org/sites/default/files/migrated-files/file/facts-stats.pdf>, visited November 27, 2017. Charter schools should be fully prepared to safely provide dietary services to students with food allergies as well as other special dietary needs.”

(b) Response: The agency agrees with the commenter that these provisions should be added to the charter school application to ensure safety, and the civil and disability rights of charter school students. For this reason, the agency is adding language to the charter school application in response to this comment.

34. Subject Matter: Charter school demand

(a) Comment: Ms. Mofield-Boswell commented:

I believe that we need a regulation to substantiate stakeholder, both parents/guardians and educator demand of a charter school intending to apply, through the form of a petition. This show that there is true demand and not simply a charter school company creating a market where there is none:

A charter school application to be submitted to the authorizer must include the following:

(A) A petition signed by a number of parents or legal guardians of pupils, with established residency within the geographic boundary of the authorizer’s school district, that is equivalent to at least one-half of the number of pupils that the charter school estimates will enroll in the school for its first year of operation.

(B) A petition signed by a number of teachers that is equivalent to at least one-half of the number of teachers that the charter school estimates will be employed at the school during its first year of operation.

(C) A petition shall include a prominent statement that a signature on the petition means that the parent or legal guardian is meaningfully interested in having his or her child or ward attend the charter school, or in the case of a teacher's signature, means that the teacher is meaningfully interested in teaching at the charter school.

(b) Response: The agency believes the inclusion, of charter school student demand in the optional portion of the charter school application and the administrative regulation's requirement for the authorizer to evaluate whether the charter school is anticipated to close during the school year, possibly due to low enrollment or low staffing availability, to sufficiently address the concern expressed in this comment. Therefore, the agency is making no change to the administrative regulation or its documents incorporated by reference in response to this comment.

35. Subject Matter: Transportation and equitable and adequate and stable funding

(a) Comment: Ms. Mofield-Boswell commented that local school districts should retain discretion in the areas within their authority for provision of transportation to students and not be forced to provide transportation to charter school students. Ms. Mofield-Boswell also commented that transportation funding has been inadequate historically for local school districts already. Ms. Mofield-Boswell commented that she was concerned about the

“stable and equitable funding for existing schools both at the time of establishment of a charter school and the years that the loss of that student would impact the building that they have left behind. Additionally, Charter Schools should NEVER receive more per pupil funding than an existing public school student:

We should have limits such that per pupil charter school funding shall not exceed the SEEK funding allocated for that child that would have been received by the public school the child previously attended. For children entering the charter school from private schools or homeschooling, the SEEK funding allocation shall not exceed the SEEK funding established per pupil for the school that the child would be assigned within district boundaries.

Most importantly, I believe we need a regulation to address financial instability created in existing school buildings due to SEEK funding mechanism being used to fund charter schools:

Existing schools and the tax payers that fund them have an expectation of school funding predictability and stability as fixed costs are very real in our existing buildings. They scale up much easier than they scale down. As such, an equal amount of the per pupil charter school SEEK funding that is lost from an existing building, due to a child leaving public school and entering a charter school, shall be paid to the school left behind, for a period of time equaling the years the child would have remained in the school until transitioning to the next level of schooling (i.e. for a 3rd grader who leaves an existing building to complete 4th and 5th grade, a funding amount equal to two years of SEEK funding shall be paid to the school who would have received the funding for those two years, if the child had not left for a charter school). For children that were previously enrolled in private schools or homeschools, this regulation would not apply. The intention is to provide stability to the traditional schools and the children that are left behind with less resources. It is very difficult for schools to scale down to account for

the loss of revenue.” Chiefs for Change commented that it supports the equitable distribution of funding and resources among charter schools and local school district schools.

Ms. Sabharwal commented that she hoped the resources available to students in the district would also be provided to students who attend the charter schools:

“As you are aware, uneven academic performance exists in all schools but especially in schools with a high number of students who lack financial support and/or social and emotional support systems. I hope that academic support, Special Pupil Services and Family Resource Centers will be available to students in Charter Schools. Traditional schools and Charter Schools must work together and coordinate resources to assure that all students have an equal opportunity to succeed.”

(b) Response: The agency agrees with the commenters on these comments but states that these issues are outside this administrative regulation. A local school district is not required, by the legislation codified by the Kentucky General Assembly in 2017, to provide transportation or other services to charter school students. That language, regarding transportation, was included in HB 471 (2017) which is an amendment to the current budget bill that expires on June 30, 2018, prior to the opening of any charter school in Kentucky. A local school district choosing to contract with the charter school, pursuant to KRS 160.1592(12)(a), to provide student transportation or any other goods or services does so by contract, separately and voluntarily, at cost as opposed to gratuitously, and is not required by the legislation to do so.

The agency agrees with the commenter that the financial integrity of the local school district should not be impacted negatively by the creation of charter schools. The agency also already has provisions in the administrative regulation providing the district superintendent the opportunity to provide the authorizer information regarding any anticipated substantial hardship to the provision of educational services to students of the school district that would result from the approval of the charter school application. Ultimately, though, the decision on funding of charter schools and public school district schools is a decision left to the authority and discretion of the Kentucky General Assembly and is outside the scope of these administrative regulations. While the agency shares the concerns expressed by the commenters, the agency understands the administrative regulation to address these concerns to the extent allowable and does not understand a change to the administrative regulation to be necessary in response to this comment.

36. Subject Matter: Charter school facility location

(a) Comment: Ms. Mofield-Boswell commented:

“Based on concerns that I have heard among parents of disadvantaged populations, it is important that their children not be bused great distances as they are unable to come to get their children in the case of illness, nor to attend school functions. In order to prevent charter schools from locating outside of the community that it is intended to serve, thereby creating unreasonable bus transit times for children and creating a burden of transit to school for parents, I believe the regulations should address some limits and waiver considerations:

Based on the student's resident address of district record, and corroborated by the signed petition submitted for intention to attend a new charter school, A charter school must secure a location no farther than 2 walkable miles from the outer district boundary line from which at least 50% of the students reside. If at least 50% of the children intending to attend a new charter school, live outside of 1 particular elementary, middle or high school district boundary (whichever applies), a waiver process shall be put in place to address this concern to ensure that the location selected is not creating a transportation and parental engagement burden on students, guardians/parents, or the school district."

(b) Response: The agency agrees with the commenter that the location of the charter school facility is vital to the provision of charter school opportunities to all students, especially those whose families do not have transportation and who would otherwise be prohibited from engagement in the charter school's activities and student's education. For this reason, the agency has in the charter school application, see Section IV.K., multiple inclusions of requirements for information on the proposed location of the charter school facility and how the proposed facility supports "the needs of the entire student population, including the effect that the location shall have on student recruitment, transportation, family involvement, and student participation in extra-curricular or co-curricular activities occurring outside the student attendance day ... [and] provide evidence of any involvement of the targeted community in the design or selection of the facility for the charter school." As an example, a charter school in Memphis, Tennessee, recently moved the location of its existing charter school facility sixteen (16) miles from the original location, resulting in disenfranchisement of the students and their families who did not have private transportation. See article at: <http://www.commercialappeal.com/story/news/local/2017/05/23/me/340880001/>. As well, as a result of this history of the effect of the location and any change in the location of the charter school facility on the involvement and availability of the charter school to these families, the administrative regulation requires an amendment of the charter contract before a charter school can change the location of its charter school facility. As a result, the agency does not understand there to be a need for a change to the administrative regulation and its documents incorporated by reference in response to this comment.

37. Subject Matter: Public transparency and access to information

(a) Comment: Ms. Mofield-Boswell commented:
It appears we need a regulation to address the public disclosure of contact information, as we have for existing school districts for public transparency and knowledge of whom to contact for assistance or concerns:
Charters schools must maintain a website and must include the following information on their websites:
Charter school board meeting times, dates, and locations must be posted with advance notice to match current SBDM policy and open meeting regulations. Additionally, a list of all board members, school personnel and staff must be included with their email addresses and phone numbers. For example, on all school district websites today, there is a staff directory with all personnel with their position and contact information. The same should be true for charter schools for stakeholder communication.

Similarly, The Kentucky Department of Education shall include all contact information for all charter school personnel in the Kentucky Schools Directory.

- (b) Response: The agency agrees with the commenter that transparency and access to information about the charter school, its leadership, its operations, and its staffing contacts should be provided.

First, charter schools shall have websites as a result of the multiple requirements in these administrative regulations for the charter schools to publish particular information on the charter school website.

Second, charter school board of directors' are required by abide by the Open Meetings Act, pursuant to KRS 160.1592, and so notice of their meetings will be provided publicly as a result of the requirements of the Open Meetings Act.

Third, the listing of all charter school board of directors' members is accomplished already through the administrative regulation's requirement for the charter school to register with the Kentucky Secretary of State to be in good standing to do business in Kentucky. The other staff and contact information for charter schools will be provided from charter schools to KDE and KDE will publish this information, as provided, in the Kentucky Schools Directory, pursuant to KRS 156.230(1). Just like all other schools in the state, though, the inclusion of information for the charter school shall be at the discretion of the school leadership. For this reason, the agency appreciates these comments but does not believe a change to the administrative regulation is necessary in response to this comment.

38. Subject Matter: Extracurricular activities and special needs students

- (a) Comment: Jack Be Nimble commented that the administrative regulation should: "Require charter operators who choose not to provide extracurricular activities to specify how they will meet the obligation of IDEA 300.320((4)(ii) which requires a statement on the IEP of how a student with disabilities will participate in extracurricular and nonacademic services."

(b) Response: The agency appreciates the thoughtful comment but has to respond that the IDEA requirement appears to be a requirement for the extracurricular activities that are offered at the public school. A charter school, like any public school, that chooses not to offer extracurricular activities does not violate IDEA to the extent that these kinds of opportunities are equally available, or not available, to all students, regardless of disability. For that reason, the agency does not believe a change to the administrative regulation is necessary in response to this comment.

39. Subject Matter: Transparency and comparable indicators of quality

- (a) Comment: Chiefs for Change commented that they believe transparency and comparable indicators of quality of different public schools, including charter schools, is key to ensuring the quality and success of school choice programs. While Chiefs for Change did positively comment on several aspects of the administrative regulations in furthering this goal, Chiefs for Change believe that the requirements of the charter school application and charter contract are too onerous, too prescriptive, and discourage innovation.

(b) Response: The agency agrees with the commenter that transparency and comparable indicators of quality of different public schools is key to ensuring the quality of school choice programs. The agency also points out that the charter contract is not at this time a required document and is not included in the administrative regulation as a document incorporated by reference. As to the comments regarding the charter school application, the agency has carefully, even painstakingly, worked to ensure that the right balance, of rigor and allowance for innovation and creativity in imagining new ways to educate students, is struck. For these reasons, the agency does not believe a change to the administrative regulation or its documents incorporated by reference is necessary in response to this comment.

40. Subject Matter: Stifling innovation

(a) Comment: Public School Options commented that the administrative regulation should not allow a district superintendent to provide the authorizer an objection and evidence of any substantial hardship that is anticipated to result from the authorizer's approval of the charter application; that the administrative regulation should not allow authorizers to impose unilateral conditions on the charter school in an unrestrained manner; that the administrative regulation should not require the authorizer to create its strategic vision for chartering and should not require authorizer training and should not require the training be approved by the commissioner of education; and, that the administrative regulation should not require a uniform charter school application.

(b) Response: The agency appreciates this comment and but believes the provisions of the administrative regulation, and its documents incorporated by reference, have struck the right line between the requirements and the freedoms afforded by the Kentucky General Assembly in HB 520 (2017), codified as KRS 160.1590-160.1599 and 161.141. The requirements of this and the other administrative regulations have been crafted, carefully and thoughtfully, to ensure the purposes of KRS 160.1591 are fulfilled and respected by the agency in its administrative regulations. For this reason, the agency is not amending the administrative regulation or its documents incorporated by reference in response to this comment.

41. Subject Matter: Definition of "at risk of academic failure"

(a) Comment: Kentucky Education Association (KEA) commented that it disagreed with the definition in the administrative regulation for "at risk of academic failure" and believe the categories included in the definition "are too broad and will encompass individual students who are performing well academically."

(b) Response: The agency appreciates this comment but responds that this definition was borrowed largely from the list of circumstances identifying students at high risk of dropping out in 704 KAR 7:070. The agency is attempting to weave the requirements and provisions of these administrative regulations into existing Kentucky law, especially existing administrative regulations previously promulgated by this agency, and for that reason relied upon the existing definition of an extremely similar categorical description of indicators of threat to student success. The agency is not making a change to the administrative regulation in response.

42. Subject Matter: Authorizer responsibility and funding

(a) Comment: KEA commented that this administrative regulation places many monitoring responsibilities on the authorizers; that an authorizer could be forced by this agency to approve and then monitor a charter school that the authorizer did not want to support; and that the “oversight obligations will require specialized staff and resources that don’t currently exist in any local school district in the Commonwealth. So, every charter that is authorized will create additional costs for the authorizer” which is already facing budget cuts and potential reductions in funding from loss of students. KEA requested this administrative regulation “explicitly allow an authorizer to include in the negotiated contract with each charter school reasonable fees to cover the cost of monitoring and compliance with the applicable statutes, regulations and contract provisions.”

(b) Response: The agency agrees with the commenter that monitoring charter schools will require specialized staff, skill sets, and resources not currently possessed by any of the entities included in the statutory definition of “authorizer.” However, issues of funding were not included in the codified charter school statutes by the Kentucky General Assembly in 2017, though they were included in the budget bill amendment in HB 471 (2017) which amends the current budget bill until June 30, 2018. The language of the amended budget bill indicates that the funding requirements for authorizers are not provided in the codified statutes, under which these administrative regulations are promulgated, and are to be provided by the Kentucky General Assembly in a future legislative session. For this reason, the agency is not making a change to this administrative regulation in response to this comment.

43. Subject Matter: Expelled charter school students

(a) Comment: KEA commented that it did not believe that expelled charter school students should be allowed to return to the local school district.

(b) Response: The agency responds that the provisions of this administrative regulation do not require a local school district to accept a student who has been expelled from a public charter school and that KRS Chapter 158 provides the statutory requirements and allowances for a public school district to consider expulsion of a new student based on records from a period prior to the student’s enrollment in the current school district. The agency is not making a change to the administrative regulation in response to this comment.

44. Subject Matter: Closure and return of tenured teachers on leave from the school district

(a) Comment: KEA commented that the charter school closure provisions of this administrative regulation do not provide information or rights regarding “the status of tenured certified employees on staff at the charter who may be on administrative leave from the local board of education at the time the closure occurs.”

(b) Response: The agency appreciates this comment but responds that the rights of a tenured teacher, on leave from the district under KRS 160.1592(22), upon closure of the charter school are set by KRS 161.770 which provides the tenured teacher the same rights upon return to the district that the teacher had when the teacher was granted this leave. This administrative regulation cannot alter those rights but the agency does suggest that the local school district employer and the charter school enter an agreement as to the terms of the professional leave of the tenured teachers who accept employment with a charter school under KRS 160.1592(22) to

provide certainty to the teachers as to their employment under these statutes in the case of charter school closure. The agency is not making a change to the administrative regulation in response to this comment as a result.

45. Subject Matter: Authorizer responsibilities and appeal of unilateral imposition of conditions

(a) Comment: KEA commented that it believed there is contradiction in the administrative regulation's requirement for the authorizer to take actions when the authorizer "verifies an issue with any aspect of the performance of the charter contract" and the appealability of unilaterally imposed conditions on a charter school.

(b) Response: The agency responds that the two statutory and regulatory requirements can and do exist in harmony. Though the authorizer is required to take action, as described above, whether that unilaterally imposed condition is "contrary to the best interest of the students or community" is the standard of review for on appeal to this agency under the statutes. The agency is not making a change to the administrative regulation in response to this comment.

46. Subject Matter: Authorizer responsibility boundaries

(a) Comment: NACSA commented that it believed some areas of the administrative regulation needed "clarification about the proper, such as where there is confusion about the proper boundaries between school and authorizer responsibilities."

(b) Response: The agency appreciates this comment but responds that the provisions of the administrative regulations have been carefully crafted to strike the balance the agency believes appropriate for the boundary of authorizer and charter school responsibility. The agency is not making a change to the administrative regulation in response to this comment.

47. Subject Matter: Charter School Application and Addendum

(a) Comment: NACSA commented that the charter school application based on its template "presents all the elements needed to realize the intent of the Kentucky charter statute, and to create a sound foundation for the application process. Our experience in numerous states has shown that strong authorizing requires striking a balance in the application process. Authorizers should ask probing questions that allow the applicant to demonstrate deep understanding of the challenges in creating a new school, but must not be so specific that an applicant can score well simply by parroting the question and providing the expected answer. This approach is embodied in NACSA's application guidance. In the draft regulation we see a few places where this balance might be improved."

NACSA commented on specific, individual provisions of particular sections of the charter school application (at pages 7, 8, 9, 16, 18-19, and 31-32) and NACSA's perception of the utility of those individual, specific provisions for Kentucky charter schools. NACSA also stated that the agency is free to remove the NACSA copyright attribution notice from the agency's charter school application.

(b) Response: The agency appreciates this comment but responds that the agency itself has

painstakingly reviewed the contents of the charter school application for statutory authority, for duplication and redundancy, and for utility in Kentucky, which is a new charter school jurisdiction that has new authorizers and new charter school applicants. Based on this place in time and based on the statutory authority and Kentucky-specific considerations under the state law's statutory provisions, the agency found value in each of the charter application provisions in the current draft. The agency is only making a change to the document incorporated by reference into this administrative regulation to remove the copyright notice in response to this comment.

48. Subject Matter: Provision of a copy of a received charter school application

(a) Comment: NACSA commented on the administrative regulation's provision requiring an authorizer to provide a copy of a received charter school application to any other authorizer for that jurisdiction and to all district superintendents for the proposed charter school boundaries:

"We assume that this would apply only to mayor-authorized charters and to regional achievement academies that would operate within several school district boundaries. However, because input from local superintendents is invited adequately under Section 7 (9)(b) on page 28, this section is unnecessary. Another option could be to include an additional bullet explicitly allowing submission of written views by superintendents in the section regarding hearing requirements."

(b) Response: The agency appreciates this comment and responds that this provision is indeed aimed at ensuring effective communication among authorizers for the same jurisdictions. The agency believes this provision of the administrative regulation is necessary to ensure that communication, and the agency included this provision in the administrative regulation at the request of just such an authorizer. The agency is not making a change to the administrative regulation in response to this comment.

49. Subject Matter: Renewal additional conditions

(a) Comment: NACSA commented that it believed the administrative regulation should provide more fully on the additional conditions for renewal that an authorizer may place on a charter school, pursuant to the statutory authority to do so:

"Statute does carve out explicit permission for authorizers to impose conditions at the time of charter renewal. We suggest that this provision be recapped in the regulatory language."

(b) Response: The agency appreciates this comment but responds that the language of the administrative regulation, in combination with the authority provided to an authorizer in the statute for imposing conditions for renewal on a charter school, appear to fully cover the concern expressed in this comment. The agency is not making a change to the administrative regulation in response to this comment as a result.

50. Subject Matter: Business entities

(a) Comment: NACSA commented that it did not believe a business entity should be represented on a charter school board of directors:

“It is not clear why there should be business designees on a charter board. Charter trustees are appointed as individuals and bear fiduciary responsibility to the schools.”

(b) Response: While the agency appreciates this comment, the agency believes inclusion of this language is necessary to cover this or any instance in which a charter school board member is placed on the charter school board as the designee of a business entity. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

51. Subject Matter: Authorizer use of funds received for authorization duties

(a) Comment: NACSA commented, regarding the administrative regulation’s restriction on the authorizer’s use of funds received as a result of authorization responsibilities:

We would like to emphasize here that this should not preclude a school and authorizer from negotiating additional items beyond the mentioned obligations if mutually agreed upon.

(b) Response: The agency is not entirely clear as to the purpose and message of this comment but responds that it is imperative that funds an authorizer receives as a result of authorization responsibilities be spent on the competent and adequate performance of those duties. As has been stated previously, quality, competent, and diligent authorizers are the key to successful educational outcomes for students who attend charter schools. As well, though no funding appropriation or mechanism has been codified for charter schools or their authorizers, use of public funds for a purpose other than which they were provided would result in other violations of Kentucky law. The agency is not making a change to the administrative regulation in response to this comment.

52. Subject Matter: Commissioner approval of charter school contract amendments

(a) Comment: NACSA commented that it did not believe the commissioner of education’s approval of charter school contract amendments was necessary in each case, depending on the level of magnitude of the change being implemented in the charter school contract amendment.

(b) Response: While the agency appreciates this comment, the agency believes, especially now at the beginning of charter school authorization and charter school operation in Kentucky, the commissioner of education’s review and approval of charter school contracts and their amendments is essential for ensuring that the requirements of Kentucky law are not violated by charter school contracts or their amendments. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

53. Subject Matter: Monthly review of the charter school’s finances

(a) Comment: NACSA commented that it did not believe monthly review of the charter school’s finances was necessary:

“Statute requires annual monitoring which should be regarded as a floor, but sets no timetable for financial metrics specifically.

In general, we see effective authorizers keeping a tighter rein on new charters and doing less-frequent monitoring once operators prove their financial competence.

We would recommend beginning with a schedule of quarterly monitoring. We also recommend that this timetable be reviewed after the first year to see if it provides sufficient transparency and assurance of integrity.”

(b) Response: While the agency appreciates this comment, the agency believes inclusion of this requirement is necessary and appropriate in light of the often slender difference, if any, in the availability of resources to a charter school and its budgetary demands. For this reason, in combination with the fact that most charter schools that close do so for financial insolvency reasons and some of those closures are sudden, unanticipated closures during the school year providing massive disruption to the education of the students attending the charter school, the agency believes monthly monitoring of the charter school’s finances is a good safeguard tool for monitoring the charter school’s financial solvency and for providing the authorizer an opportunity to request and provide assistance to the charter school in real time, especially if there is the possibility of avoiding a closure through better financial management and planning. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

54. Subject Matter: Charter School Application and Addendum additional suggestions

(a) Comment: The Fellowship of Reconciliation commented that it believed the following should be added or amended in the charter school application:

“II School Overview--

"Illustrate what success shall look like". This should include comparable metrics and accountability measures that would show if/where the charter school is intended to exceed the performance of the existing school district for similar student demographics. No reason to set up a school/dedicate the public operating funds if it isn't going to be better than the ones the district already provides.

III Educational Design and Capacity

C Student Performance Standards. See School Overview, above.

H Special Populations and at Risk Students. Require detail on how the curriculum, social studies in particular, will be made more authentic and complete, particularly to engage students of color through a broader appreciation of their own culture and history.

If applicant operates other charters, provide three years of documentation on student attrition data and on specific ranking of reasons for withdrawal and expulsion, disaggregated by demographic groups

I Student Recruitment, Enrollment and Retention. Describe the selection and enrollment process details that prevent selective enrollment/" cherry picking".

IV Operations Plan and Capacity Governance

C Charter School board of Directors. Clarify in Conflict of Interest sections that ownership includes "indirect investments" includes holdings in related stocks, bonds, mutual funds, trusts, and other such instruments.

Require disclosure by board members, current or identified, of whether they are parents or students of the school. Does the school have a target for student and parent membership beyond the state minimum?

E Grievance Process. More detail needed in request, i.e., describe if there is a plan for an ombudsperson to help parents and students who want to appeal an

enrollment, classification or withdrawal.

G. Staffing Plans, Hiring, Management and Evaluation. Need an explicit language from the applicant to remain neutral and not interfere with right of employees to unionize and bargain collectively.

I. Performance Management. See School Overview, above.

VI. Closure and Dissolution

Require full financial disclosure if school building/real property was originally owned/sold to charter school by a third party other than the local school district or government. If the property is not provided by the district or other public entity, require description of whether the property was sold, leased or rented to the charter school at below market rate. If it was, require description of the commitment at later sale for price that would not represent a windfall profit (at taxpayer expense).

VII Optional Information section--

This section's items should be made mandatory. They are necessary for full consideration of the relevant demographics and community needs, particularly around leveraging any of the charter's demonstrated superior strategies for eliminating achievement gaps at district schools that are Persistently Low-Achieving. The enabling charter legislation specifically highlighted the pivotal importance of group-to-group achievement gap reduction to future Kentucky workforce readiness. ”

(b) Response: While the agency appreciates this comment and agrees with many of the sentiments expressed by the commenter, the agency believes the responses to earlier comments adequately address the comments expressed by this commenter and that the charter school application's requirements are the right balance for ensuring rigor and quality while allowing flexibility and innovation in the plans for a charter school in Kentucky. For this reason, the agency is not making a change to the administrative regulation in response to this comment.

55. Subject Matter: Charter School Application and Addendum

(a) Comment: The NAPCS commented that this administrative regulation and the charter school application should not require the charter school board of directors to organize and file with the Kentucky Secretary of State because NAPCS believes that the Kentucky legislation makes the charter school a public entity. NAPCS also commented that the charter school application shouldn't require this level of information on the proposed charter school facility. The Kentucky Public Charter Schools Association (KPCSA) commented similarly.

(b) Response: The agency appreciates this comment but responds that the Kentucky legislation provides the charter school, not its governing board, with the public entity status and that there is not even a charter school in existence when an authorizer negotiates a contract with the body that is representing itself to be the future charter school board of directors to govern the future charter school. Kentucky agency law and contract law require the authorizer to ensure actual agency of any person asserting authority to bind an entity, like a charter school board of directors, and formal filing with the Kentucky Secretary of State provides confirmation and evidence of the authority of any person acting on behalf of the charter school board of directors as well as definition as to this entity and its conformance with the legal requirements for a

charter school board of directors, in Kentucky charter school statutes. Finally, the agency appreciates the comments about the charter school application's facility provisions, however the agency believes a competent charter school applicant should be able to provide the information requested and that a lack of ability to do so, at the application phase, should be noted by the authorizer when adjudging the competencies exhibited in the charter school application, as is required under KRS 160.1594(4). The agency is not making a change to the administrative regulation in response to this comment.

56. Subject Matter: Charter school application requirements

(a) Comment: The KPCSA commented that it disagreed with the agency's decision to retain the background information requirements in Section I.J. of the charter school application and the non-profit restriction on charter school applicants. KPCSA commented that it feared disclosure of the background information for applicants would result in retaliation against the applicants "within the education community". KPCSA commented that it believed "for some applicants, it unnecessarily makes public a good deal of private information with no apparent reason for doing so." KPCSA commented that it disagreed with Section II.E.3 and 4's community feedback requirements; Section III A.4's educational program and design and capacity requirement; Section III.I.(1)(c) language, disagreeing with the applicant's requirement for demonstration of need for the charter school and stating that this portion of the application required a charter school applicant "to criticize or confront in any way the district that would be its authorizer."; Section III.K.7's language, suggesting the addition of "any" in front of "existing evidence" because "some or all of the requested items may or may not be applicable."; the charter application's "public adoption of its budget" in Section V.A.15 and 16; and with the inclusion of Attachment 14's Statement of Assurances from charter school board members. The remainder of KPCSA's comments are already reflected and responded to in response to earlier comments.

(b) Response: The agency appreciates this comment but responds that the agency has carefully crafted the charter school application to strike the right balance of rigor and competence evaluation with flexibility for innovation. The agency states that the charter school statutes themselves do not allow any member of an applicant to be for-profit. The agency believes the remainder of the comments can best be responded to with reference to the similar requirements in other jurisdictions' charter school applications and the need for transparency, accountability, and competence in charter school application, authorization, and operation. Finally, the agency responds that the charter school statutes, specifically, KRS 161.141, already prohibit retaliation against school district employees or students for involvement in charter schools. The agency is not making a change to the administrative regulation in response to this comment.

57. Subject Matter: Comment on comments

(a) Comment: The Charter School Advisory Council (CSAC) commented that it reviewed the comments received by the agency during the public comment period and: supported the agency's decision to exclude the charter school contract from the administrative regulation and further hone its terms as a guidance document that charter schools and authorizers are not required to utilize in forming charter contracts; encouraged the agency to revisit the training requirements of the administrative regulation in response to the comments received from other

commenters; suggested the agency and its counsel carefully consider the comments raised by OEA as to the statutory authority for these administrative regulations; and wished “to affirm the overall regulatory framework for charter schools created by all four proposed regulations. While most states continually update their charter school statutes and regulations, the Council feels confident that the overall regulatory framework that the regulations provide should lead to the establishment of high quality public charter schools in Kentucky.”

(b) Response: The agency appreciates this comment and responds that specific responses to the original comments themselves are already included in the statements of considerations for each administrative regulation. The agency is making changes to the administrative regulations in response to those comments, as reflected above and in the other statements of consideration for the other administrative regulations. As well, the CSAC comments of support for the agency’s administrative regulations, though appreciated, require no amendment to the administrative regulation.

**Summary of Statement of Consideration
Action Taken by Promulgating Administrative Body**

**THIS SECTION TO BE COMPLETED UPON APPROVAL OF ABOVE CHANGES BY
KBE**