

05 – 071

**DEPARTMENT OF EDUCATION****Chapter 140: PUBLIC CHARTER SCHOOLS**

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**SUMMARY:** This rule establishes standards and procedures for implementation of Title 20-A, chapter 112, governing the authorizing, oversight and operation of public charter schools in Maine. The rule requires public notice of activities of authorizers and charter schools, sets forth student enrollment procedures, establishes standards for the performance of authorizers, clarifies the funding of public charter schools, clarifies the process for petitioning for conversion of a noncharter public school, and provides criteria for determining when a charter school governing board is sufficiently independent of an education service provider with which the board may contract.

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**SECTION 1. PURPOSE**

This rule provides standards and procedures for implementation of Title 20-A, chapter 112, relating to the authorizing, oversight and operation of public charter schools in Maine. The rule must be read as an accompaniment to the statute, not in place of the statute because the rule does not restate all statutory provisions.

**SECTION 2. AUTHORIZERS AND AUTHORIZING OF CHARTER SCHOOLS****1. Practices and procedures**

An authorizer must develop and maintain policies and practices consistent with nationally-recognized principles and professional standards for authorizing public charter schools.

For purposes of determining whether an authorizer's policies and practices conform to nationally-recognized principles and professional standards, the Department of Education will evaluate the authorizer's policies and practices on the basis of the principles and standards set forth in the publication, Principles and Standards for Quality Charter School Authorizing, published by the National Association of Charter School Authorizers, copyrighted 2010. This publication is available on the Department's Website on the Internet.

**2. Maintaining list of interested parties**

An authorizer shall maintain a list of persons interested in the activities of the authorizer and any charter schools that it may authorize. The authorizer shall notify persons on that list when the authorizer issues a request for proposals (RFP) or accepts a charter school application, and when a charter school it authorizes begins accepting applications for enrollment. Notice may be provided by e-mail, except that it must be provided by regular mail for people who do not have e-mail at their homes.

**3. Solicitation of Charter School Applications**

- A. In order to invite, solicit, encourage and guide the development of high-quality public charter school applications, an authorizer shall develop a request for proposals (RFP) that meets the standards of Title 20-A section 2406.
- B. An RFP must be issued not fewer than 60 days from the deadline date for submission of applications.
- C. An RFP must be published as broadly as possible to ensure that all entities interested in applying for a charter have notice of the opportunity to submit an application. At a minimum, notice of the RFP must be published on two consecutive weekends in the State Paper designated in Title 1, section 551 and must be provided to interested parties as described in subsection 2. The RFP must also be submitted to the department, and the department shall include the RFP, on the Department of Education charter school Website on the Internet.

#### **4. Oversight of chartered schools**

An authorizer is responsible for monitoring the performance and legal compliance of each charter school it authorized.

#### **5. Reporting to the Department**

In addition to any other report required by law or rule, an authorizer must submit the following to the Department or the Commissioner.

- A. Annual report. An authorizer must submit a report to the Commissioner, annually, within 60 days after the end of each school fiscal year, summarizing the performance of all schools it has authorized, as well as the other specific information set forth in statute.
- B. Decision on charters. An authorizer must report to the Commissioner, within 10 days after taking any of the following actions:
  - (1) Approval or denial of an application to open a charter school;
  - (2) Renewal or refusal to renew a charter; or
  - (3) Revocation of a charter.
- C. Assessment results. An authorizer must report the results of state assessments to the Department in the same manner as other school administrative units report results.

#### **6. Department oversight and sanction of authorizers**

The Department is authorized to investigate and impose sanctions on authorizers in response to deficiencies in authorizer performance or legal compliance.

For purposes of determining whether an authorizer's performance conforms to nationally recognized principles and professional standards, the Department will compare the authorizer's performance to the principles and standards set forth in the publication, Principles and Standards for Quality Charter School Authorizing, published by the National Association of Charter School

Authorizers, copyrighted 2010. This publication is available on the department's charter school Website on the Internet.

**7. Collaborating authorizers.**

Collaborating entities that intend to authorize a charter school must form a legal structure that sets forth the rights and responsibilities of each party in the collaborative, including designation of responsibility for special education for students in the charter school.

A charter school must be located within the boundaries of one of the school administrative units that is a member of the collaborative. A charter school authorized by a collaborative is considered to have been authorized by a local school board, for purposes of determining when the limit of 10 charter schools has been reached under Title 20-A section 2405, subsection 9.

**8. Education service providers**

Except as provided in this subsection 8, a public charter school may contract with an education service provider for a limited scope of education or management services. An authorizer shall ensure that the scope of services delivered through such a contract does not remove responsibility and control of essential programmatic elements of the school from the charter school's governing board.

A virtual charter school may contract with an education service provider for education design, implementation or comprehensive management of the virtual public charter school program.

A charter school's governing board, leaders and managers must be legally and operationally independent from any education service provider. In determining whether boards, leaders and managers are independent of the service provider, the authorizer must consider all factors, including but not limited to:

- A. Whether the charter school's governing board is selected by, or includes members who are employees of, the education service provider;
- B. Whether the charter school has an independent attorney, accountant and audit firm that works for the charter school and not the education service provider;
- C. Whether the contract between the charter school and the education service provider was negotiated at "arms length," clearly describes each party's rights and responsibilities and specifies reasonable and feasible terms under which either party may terminate the contract;
- D. Whether the fee to be paid by the charter school to the education service provider is reasonable for the type of services provided; and
- E. Whether any other agreements, e.g., loans or leases between the charter school and the education service provider are fair and reasonable, documented appropriately, align with market rates, and include terms that will not change if the contract is terminated.

**SECTION 3. CHARTER SCHOOL OPERATIONS**

## 1. Notice of charter school openings

A charter school must give reasonable public notice that it has openings for student enrollment, at least 30 days before the enrollment application deadline. Notice must be provided in a manner designed to give notice to all eligible students and must include, at a minimum, publication on two consecutive weekends in the State Paper designated in Title 1, section 551 and notice to interested parties as provided in Section 2, subsection 2. Notice must also be submitted to the department, and the department shall include the notice on the Department's charter school Website on the Internet. Notice must also be provided to any person who has asked the authorizer of the school for notice of school openings.

## 2. Enrollment

- A. Declaration of student intent. A charter school shall require a written declaration of intent to enroll in the charter school in the upcoming school year from each student who wishes to enroll in the charter school, including students who have an enrollment ~~priority~~ ~~or~~ preference. The written declaration must be signed by the student's parent, guardian or legal guardian, and submitted to the charter school within the deadline established by the charter school. The charter school must set the deadline so that sufficient time is allowed to conduct a lottery within the time frame set forth in this rule if the number of declarations of intent to enroll exceeds the number of seats available in a grade, level or division of the charter school. The declaration of student intent may request only such information as is needed to determine which grade, level or division of the school the student wishes to enter, whether the student is eligible for a preference, and the identity of the student's resident SAU.
- B. Enrollment commitments when declarations do not exceed openings. If the number of students submitting declarations of intent by the submission deadline is smaller than the number of openings in any grade, level or division of the school, the charter school shall notify each ~~the~~ student and his or her parent, guardian or legal guardian of the right to enroll in the upcoming school year, and shall seek a written commitment to enroll signed by the student and the parent, guardian or legal guardian. The charter school may enroll students to fill remaining openings, on a rolling basis or by other means specified in the charter application or contract, once all students who filed a declaration of intent prior to the deadline have been offered the opportunity to enroll or commit to enroll.
- C. Random selection process. If the number of students submitting a declaration of intent to enroll exceeds the number of openings in a school, grade, level or division, the charter school must notify students with preferences of their right to enroll and then shall conduct a random selection process to fill remaining openings.
- (1) The selection process must be conducted not later than April 1<sup>st</sup>, unless the authorizer, for compelling reasons, sets a different date. For purposes of this section, the term "compelling reasons" includes, but is not limited to, the need for a date later than April 1<sup>st</sup> in the first year of implementation of the charter school law and the need for flexibility for at-risk students and their families. Any date set by an authorizer under this subparagraph (1) must be designed to ensure that students will have an equal opportunity to seek enrollment in the school and that information is provided to each student's resident SAU in as timely a manner as possible.

- (2) The selection must be conducted in public and must be designed to ensure that each student has an equal chance of being selected for enrollment. If the process is a lottery involving drawing of names or other objects to make a selection, a disinterested party must perform the drawing of names or objects.
  - (3) Reasonable public notice must be given at least one week prior to the lottery or other selection process.
  - (4) The names of students and the order in which they were selected must be recorded. All names must be placed in the order of selection, and any names that exceed the enrollment limit for a grade, level or division of the charter school must be placed on a waiting list for that grade, level or division. The charter school shall use eligible students on the waiting list to fill any openings that occur in the grade, level or division during the school year for which names were selected. If all students on the waiting list have been offered enrollment, the charter school may enroll students on a rolling basis, or such other basis as may be set forth in the charter application or charter contract.
  - (5) If the number of students selected for enrollment from any school administrative unit exceeds the applicable 5% or 10% limit set forth in Title 20-A, section 2404, subsection 2, paragraphs D and E, the excess names must be moved from the enrollment list to the top of the waiting list, in the order selected. If an opening occurs after the initial selection process, a student placed on a waiting list under this subparagraph may be selected for enrollment from the waiting list only if the student's enrollment is within the 5% or 10% limit; otherwise, the student's name remains on the waiting list. For purposes of the 5% and 10% limits, the charter school shall use enrollment figures for a school administrative unit (SAU) as determined by the most recent October subsidizable pupil count.
- D. Commitment to enroll. Within 14 days of being notified of the right to enroll in a charter school, each student must submit to the charter school a written form committing to enroll in the charter school in the upcoming school year, signed by the student's parent, guardian or legal guardian. The commitment to enroll form must authorize the resident SAU to release to the charter school the student's unique identifier number in the state's student information system.
- E. Application form. After a student files a commitment to enroll form, a charter school may require the student to complete an application form to gather information about a student's interests, abilities and experiences. Information on the application may be used in discussions with a student or parent regarding enrollment in the charter school, but may not be used to prevent or discourage a student from enrolling. A charter school may encourage applicants or their parents to attend informational meetings or interviews, but may not require such attendance as a condition of enrollment or continued enrollment. A charter school may not condition enrollment on the results of any test of ability or achievement.
- F. Notice to resident SAU. Within 5 school days of receiving a commitment to enroll form, a charter school must notify the resident SAU of the student who has submitted the form. The resident SAU, within 5 school days of receiving notice from the charter school,

provide the charter school with the student's unique identifier number so that the charter school may access the student information needed to determine the amount that will be due from the resident SAU.

- G. Date of enrollment. Notwithstanding the commitment to enroll made under paragraph D, a student is not considered to have enrolled in a charter school until the date after July 1<sup>st</sup> of each school year that the charter school enters the student as an attending student in the state's student information system.

### 3. State and local funding

The resident SAU of a student enrolled in a public charter school must transfer the following funds to the public charter school in which the student is enrolled:

- A. The following operating funds:
  - (1) The per-pupil operating allocation amount, defined as the EPS per-pupil rate set by the department pursuant to Title 20-A, section 15676, based on the student's grade level and adjusted, as appropriate, for economic disadvantage and limited English proficiency pursuant to Title 20-A, section 15675, subsections 1 and 2.
  - (2) The average per-pupil transportation expense in the resident SAU, calculated by dividing the resident SAU's (Transportation – EPS allocation) by the resident SAU's (Average Attending Pupils, Calendar Year xxx), as reported on the resident SAU's ED-279 for the year of allocation.
- B. If the charter school is eligible, the resident SAU's targeted funds allocation for that student for technology, standards-based education and PreK-2 programs. To be eligible to receive targeted funds, the charter school must file plans and receive approval from the department pursuant to DOE Rule Chapter 7.
- C. If the charter school has an approved gifted and talented program, a portion of the resident SAU's Gifted and Talented program funds, in proportion to the number of its resident students who are in a gifted and talented program in the charter school, payable in the year in which the charter school's expenditures are reflected in the resident SAU's gifted and talented allocation. The charter school shall report its authorized gifted and talented program expenditures to the department, along with the name of the resident SAU of each student served in an approved gifted and talented program.

A charter school does not pay for its students to attend career and technical education programs, and therefore is not entitled to career and technical education funding. The school administrative unit in which the charter school student resides must pay the cost of attendance for the student at a CTE program.

### 4. Federal funds

- A. A charter school that is a school within an SAU must receive an equitable portion of federal entitlement and grant funds from the SAU as determined by federal laws and regulations applicable to each federal funding program.

- B. A charter school that is a local educational agency receives federal entitlement and grant funds directly from the department. The amounts, timing and corresponding charter school obligations are determined by the department in accordance with the federal laws and regulations governing the program.

#### **5. Notice of payments due; dispute resolution; adjustments**

- A. A charter school shall submit a detailed invoice to the resident SAU of each of the charter school's attending students, indicating the amount payable for each student and the basis on which the amount was determined. The invoice must be submitted to the resident SAU at least 30 days before the quarterly payment due date.
  - (1). If the resident SAU disagrees with the invoice, the SAU shall provide written notice to the charter school and the Department of the amount in dispute and the basis of the dispute.
  - (2). If the notice by the resident SAU is provided at least 15 days before the payment due date, the Department shall make a determination, by the due date, of the amount to be paid. If the notice is not provided at least 15 days before the due date, the SAU shall pay the full invoice amount to the charter school by the payment due date.
- B. If the Department determines, after payment is made, that the resident SAU paid more than the required amount to the charter school, the Department shall order the charter school to refund the overpayment. If the charter school fails to make the refund within 30 days of being ordered to do so, the Department shall authorize the resident SAU to subtract the overpayment from the next payment due to the charter school.
- C. If the resident SAU fails to pay the amount payable to the charter school by the due date, the department shall determine the amount to be withheld from the resident SAU's General Purpose Aid under Title 20-A chapter 606-B, and shall adjust the amount to be paid by the Treasurer to the resident SAU. The Department shall notify the Treasurer to pay the withheld amount to the appropriate charter school.

#### **6. Data and reporting**

A charter school shall provide the department with staff, student and financial information that the department requests, including but not limited to information needed to carry out the purposes of the Essential Programs and Services Funding Act, Title 20-A, chapter 606-B. The information must be provided according to the time schedule, and in the form required by the department.

#### **7. Fees**

A charter school is subject to the same limitation on fees as other public schools, including the requirement of Title 20-A, section 4002. A charter school may not charge students or their parents an application fee.

### **SECTION 4. SCHOOL ADMINISTRATIVE UNITS**

**1. SAU as authorizer.**

A school administrative unit board that intends to develop and issue an RFP for a charter school within the boundaries of the SAU must notify the department of its intent as soon as the board begins developing an RFP. The department will post notice of the SAU's intent on the department's charter school Website on the Internet.

**2. Transfer of records to charter school**

A school administrative unit shall comply with Title 20-A section 6001-B, subsections 1 and 2, for the purpose of providing timely transfer of education records regarding a resident student who is enrolling in a charter school.

**3. Transfer of Funds to Charter School.**

If a resident student of the SAU enrolls in a public charter school, the SAU must transfer funding as provided in Title 20-A section 2413 and SECTION 3, subsection 3 and 4 of this rule. A local school board may ask for assistance from the department in determining the amounts to be transferred.

**SECTION 5. OTHER; GENERAL****1. Petition for conversion of a noncharter public school**

A person or entity that intends to seek conversion of a noncharter public school to a public charter school must collect the required number of signatures on petitions to support the conversion, as provided in Title 20-A section 2406, subsection 2, paragraph G. A school administrative unit must provide a reasonable opportunity for the person or entity to communicate with each teacher and parent about the petition, and to seek signatures, without disclosing confidential information about teachers, students or their families. For example, an SAU may allow a person seeking petition signatures to send notice home to parents in the same manner that the school sends information home to parents about other school matters.

A school administrative unit shall determine whether sufficient signatures have been collected on the petition as follows.

- A. The number of signatures required to meet the standard for a majority of teachers in the existing noncharter school is determined by the number of teachers employed full-time on the date 45 days before the petition is submitted to the authorizer.
  - B. To meet the standard for obtaining signatures from a majority of parents of students in the existing noncharter school, the petition must contain signatures from all parents and legal guardians of record of a majority of the students in the school. The number of students in the school is determined as of the date 45 days before the petition is submitted to the authorizer. If a student has more than one parent or legal guardian of record, the petition must be signed by each parent and legal guardian to be considered valid; signatures from more than one parent or guardian of a single student are counted as one signature.
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STATUTORY AUTHORITY: 20-A MRSA Section 2403(6)

EFFECTIVE DATE: \_\_\_\_\_