

# An Introduction to Kentucky's Charter School Laws



KSBA



@ksbanews

Presented By: Whitney A. Crowe, Esq.  
KSBA Staff Attorney

## Road to Charter Schools in Kentucky

- ▶ During the 2017 Legislative Session, the General Assembly enacted House Bill 520, which created the “public charter school project” to:
  - ▶ Create additional high-performing schools with high standards for student performance,
  - ▶ Encourage the use of different, high-quality methods of teaching, governing, scheduling, etc. to meet a variety of needs,
  - ▶ Close achievement gaps, and
  - ▶ Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public education system.
- ▶ House Bill 520 went into effect on June 29, 2017; however, the Kentucky Board of Education (KBE) is still in the process of finalizing 4 necessary administrative regulations.
  - ▶ These regulations address:
    - ▶ Charter School student application, lottery, and enrollment;
    - ▶ Evaluation of charter school authorizers;
    - ▶ Charter school appeals process; and,
    - ▶ Conversion charter school petition, conversion, and operation.

## Road to Charter Schools in Kentucky

- ▶ 701 KAR 8:010, 8:020, 8:030, and 8:040
  - ▶ The public comment period for the proposed regulations closed on November 30<sup>th</sup>.
  - ▶ The KBE is expected to issue a Statement of Consideration addressing ALL comments received at its meeting next week.
  - ▶ Thereafter, the regulations will be reviewed by the Administrative Regulation Review Subcommittee and by the House and Senate Education Committees.
  - ▶ The regulations are expected to be enacted in late January-early February 2018.
- ▶ Once the regulations are completed, there is on FINAL step...
- ▶ THE BUDGET!
  - ▶ There was funding language enacted during the 2017 Legislative Session; however, that expires on June 30, 2018, which is before any charter school will be up and running in Kentucky.
  - ▶ New funding language will be enacted during the upcoming budget session of the General Assembly.
  - ▶ KSBA will be advocating for policymaking that benefits public education in Kentucky!
  - ▶ KSBA will monitor developments during Session and will keep members up-to-date on important happenings. Check your email for briefings as well as "Action Alerts!"

What is a charter school? And, how do they differ from traditional public schools?

## Definition of “Charter School”

- ▶ Under KRS 160.1590, “public charter school” means a PUBLIC school that:
  - ▶ Offers a comprehensive instructional program WITHIN a public school district.
  - ▶ To which parents CHOOSE to send their children.
  - ▶ That admits students on the basis of a random and open lottery if more students apply than can be accommodated.
  - ▶ Is governed by an independent board of directors.
  - ▶ Is a public body politic with the power to:
    - ▶ Contract and be contracted with,
    - ▶ Sue and be sued, and
    - ▶ Adopt bylaws.
  - ▶ Has autonomy over decisions regarding:
    - ▶ Finance,
    - ▶ Personnel,
    - ▶ Scheduling,
    - ▶ Curriculum, and
    - ▶ Instruction.

## Definition of Charter School

- ▶ Operates under the terms of the “contract” between the charter’s “board of directors” and the “authorizer.”
- ▶ Operates under the oversight of its authorizer in accordance with the contract.
- ▶ Operates in pursuit of a specific set of educational objectives as defined in the contract.
- ▶ In furtherance of the contract, the charter school has the power to:
  - ▶ Receive and disperse funds for school purposes;
  - ▶ Secure appropriate insurance;
  - ▶ Enter into contracts and leases;
  - ▶ Contract with an “education service provider;”
    - ▶ Employ or contract with other entities for the provision of teaching, professional, and support staff as needed.
  - ▶ Incur debt with the reasonable anticipation of receiving funding;
  - ▶ Pledge or encumber assets to be used as collateral for loans and credit;
  - ▶ Solicit and accept gift and grants for school purposes; and,
  - ▶ Acquire real property for use as its facilities.

## Definition of Charter School

- ▶ KRS 160.1590 defines 3 specific types of charter schools:
  - ▶ “Conversion Public Charter School” v. “Start-up Public Charter School”
    - ▶ A “conversion” existed as a noncharter public school prior to becoming a charter school.
    - ▶ A “start-up” did not exist prior to becoming a charter school.
  - ▶ “Regional achievement academy” means a public charter school that has been established to serve students across multiple school districts.
    - ▶ Under KRS 160.1591, a public charter school established within a “regional achievement zone” shall be a “regional achievement academy.”
- ▶ “Virtual charters” offer educational services primarily or completely through an online program. NOTE: These are not permitted under KRS 160.1591(4).

## How Do Charters Differ?

- ▶ Although part of the state’s system of public education, charter schools are exempt from all laws applicable to the KBE, local school districts, and/or schools EXCEPT for statutes and regulations that address:
  - ▶ Health,
  - ▶ Safety,
  - ▶ Civil rights, and
  - ▶ Disability rights.
- ▶ Charter schools do have the OPTION to adhere to any or all related statutes and regulations.

## How are Charter Schools Similar?

- ▶ Under KRS 160.1592, public charter schools shall:
  - ▶ Ensure students meet compulsory attendance,
  - ▶ Hire only qualified teachers to provide student instruction,
    - ▶ “Qualified teacher” means a person certified by the Education Professional Standards Board.
  - ▶ Ensure high school course offerings meet the minimum required for graduation,
  - ▶ Design education programs that meet student performance standards adopted by the KBE,
  - ▶ Ensure student participation in required state assessments,
  - ▶ Adhere to all generally accepted accounting procedures and adhere to the same financial audits and audit requirements as other public schools,
  - ▶ Utilize same system for reporting student data and financial data (i.e. MUNIS) as other public schools,
  - ▶ Require criminal background checks for staff and volunteers as well as for members of the board of directors,
  - ▶ Comply with Open Records and Open Meetings Laws under KRS Chapter 61.

## How are Charter Schools Similar?

- ▶ Comply with purchasing requirements and limitations or provide the board of directors a detailed monthly report of school purchases over \$10,000,
- ▶ Provide instructional time that is at least equivalent to the student instructional year specified in KRS 158. 070, and
- ▶ Provide data to KDE and the authorizer as required to generate a school report card.
- ▶ Charter schools cannot discriminate against students, employees, or others based on grounds that would be unlawful if done in a traditional public school.
- ▶ Charter schools must provide programs and services to students with disabilities in accordance with the student’s Individualized Education Program (IEP) and all federal and state laws.
  - ▶ The charter school must establish an admissions and release committee (ARC).
- ▶ Public charter school also must be nonsectarian in its programs, admissions, policies, employment practices, partnerships, and all other operations.

## Who are authorizers? And, what do they do?

### Definition of “Authorizer”

- ▶ Pursuant to KRS 160.1590, “public charter school authorizer” means an entity or body that:
  - ▶ Reviews, approves, or denies charter applications,
  - ▶ Enters into charter contracts with applicants,
  - ▶ Oversees public charter schools, and
  - ▶ Renews, does not renew, or revokes charter contracts.
- ▶ In Kentucky, the following are authorizers:
  - ▶ Local school boards,
  - ▶ A collaborative of local school boards, and
  - ▶ The mayors of Lexington and/or Louisville upon official notice to the KBE.

## Authorizer Duties

- ▶ Under KRS 160.1594, a public charter school authorizer shall:
  - ▶ Solicit, invite, and evaluate applications,
  - ▶ Approve new and renewal applications that meet statutory requirements,
  - ▶ Decline applications that:
    - ▶ Fail to meet statutory requirements or
    - ▶ Are for a school that would be under the direction of any religious denomination.
  - ▶ Negotiate and execute in good faith contracts with each authorized charter school,
  - ▶ Monitor the performance and compliance of charter schools in accordance with contract terms,
  - ▶ Determine whether each charter merits renewal or revocation,
  - ▶ Establish and maintain practices consistent with professional standards for authorizers, including:
    - ▶ Organizational capacity and infrastructure,
    - ▶ Soliciting and evaluating applications,
    - ▶ Performance contracting,
    - ▶ Ongoing public charter school oversight and evaluation, and
    - ▶ Charter approval, renewal, and revocation decision making.

## Authorizer Duties

- ▶ Pursuant to KRS 160.1592(20), an authorizer shall semiannually consider for approval a charter school's proposed amendments to the contract.
  - ▶ Authorizers may consider requests more frequently upon mutual agreement with the charter.
  - ▶ Denials of amendment requests are appealable under KRS 160.1595.
- ▶ KRS 160.1596 requires authorizers to collect, analyze, and report to the KBE all state required assessment and achievement data for each charter it oversees.
- ▶ By August 31, 2019 and annually thereafter, each authorizer must submit to the (1) Commissioner, (2) Education and Workforce Development Secretary, and (3) Interim Joint Committee on Education a report that includes:
  - ▶ Number of applications received, reviewed, and approved.
  - ▶ Authorizing duties performed by the authorizer.
  - ▶ Summary of the academic and financial performance of each charter school.
  - ▶ Names of each charter school that have not yet begun to operate.
  - ▶ Names of each charter school during the prior academic year that:
    - ▶ Closed during or after the year.
    - ▶ Had their contract nonrenewed or revoked.

## Authorizer Duties

- ▶ 701 KAR 8:020 also requires authorizers to publicly report on oversight and services provided to charter schools under its authority and authorizing functions provided by the authorizer, including operating costs and expenses as detailed in an annual audited financial statement.
- ▶ The regulation also currently requires authorizers to complete 6 hours of initial training and 9 hours of annual training or complete competency based training on topics such as:
  - ▶ Financial governance and transparency,
  - ▶ Conflicts of interest,
  - ▶ Charter application,
  - ▶ Charter contracting and monitoring,
  - ▶ Charter renewal, nonrenewal, and revocation,
  - ▶ Charter school closure, and
  - ▶ Ethics.
- ▶ There is also a requirement that an authorizer or its designee must attend any expulsion or suspension hearing the charter school conducts.
  - ▶ The contract must include a provision that no student will be prevented from enrolling or will be expelled without complying with KRS 158.150.

## Required Authorizer Policies

- ▶ 701 KAR 8:020 requires authorizers to create policies, including:
  - ▶ Authorizer's strategic vision for chartering.
    - ▶ Identification of any charter application preferences towards applicants that demonstrate intent, capacity, and capability to provide comprehensive learning experiences to:
      - ▶ Students identified as "at risk of academic failure" or
      - ▶ Students with special needs as identified in an IEP.
  - ▶ Guidelines on the format and content essential for an applicant to demonstrate capacity to operate a charter school.
    - ▶ Authorizers must adopt the Kentucky Charter School Application as well as rigorous criteria.
  - ▶ Timeline for submission, review, decision, and appeal for a charter application and/or request for contract renewal.
    - ▶ An authorizer is required to consult with the local school superintendent on this timeline.
  - ▶ Evidence required in the application, including:
    - ▶ Proof of charter board's ability to meet financial solvency and sustainability demands of its proposed budget,
    - ▶ A plan for a competent and timely charter start-up and operation,
    - ▶ Anticipation of foreseen and unforeseen closure, and
    - ▶ All expected debts and obligations during each fiscal year of the contract and during the whole term.



## Required Authorizer Policies

- ▶ Requirements for reporting to the public.
  - ▶ Financial transparency requirements, including specific requirements for publication on the authorizer's website and that of the charter school.
- ▶ Information on the authorizer's performance contracting requirements, including:
  - ▶ Academic, financial, and operational measures as well as performance frameworks the authorizer has developed for charter school oversight and evaluation.
  - ▶ Requirements for executing a charter contract.
- ▶ Template of assurances an authorizer shall require in a charter contract.
- ▶ Evidence the authorizer shall require regarding:
  - ▶ Ensuring a charter school's autonomy,
  - ▶ Protecting student rights,
  - ▶ Informed intervention, revocation, and renewal decisions, and
  - ▶ Providing required annual reports.
- ▶ Authorizer's capacity, including the commitment of financial and human resources, to conduct authorizer's duties effectively.
- ▶ Authorizer's authority to intervene, when necessary, in charter schools.

## Required Authorizer Policies

- ▶ Authorizer's renewal and revocation processes and rigorous criteria, including the use of comprehensive academic, financial, and operational performance data to make merit-based decisions.
  - ▶ The authorizer shall require enrollment at a charter of at least 80% minimum enrollment.
- ▶ Charter school closure protocols.
- ▶ All other requirements related to an applicant, a board of directors, an education service provider, a charter school, and its employees.
- ▶ 701 KAR 8:030 requires authorizers to publish policies, including:
  - ▶ A rubric for evaluating a charter school application.
  - ▶ A rubric for evaluating a charter school's performance for renewal purposes.
  - ▶ Circumstances that shall result in automatic revocation or nonrenewal of a charter contract as well as:
    - ▶ Requirements and timeline for timely notification of the prospect of revocation or nonrenewal and
    - ▶ A reasonable deadline and requirements for a charter school to respond to such notice.
  - ▶ Process for appealing an authorizer's decision denying an application or charter contract amendment, nonrenewing or revoking a contract, or the unilateral imposition of conditions.

## Additional Considerations

- ▶ KRS 160.1592 requires public school districts to:
  - ▶ Publicize general information about charter schools authorized by the local school board as an enrollment option within the district TO THE SAME EXTENT the district publicizes noncharter public schools in the district.
  - ▶ NOT assign or require any student to enroll in and attend a public charter school.
- ▶ A teacher employed by a local board under a continuing service contract and offered employment with a charter school shall be granted a 2 year leave of absence to teach in a public charter school.
  - ▶ During the first or second year, the teacher may notify the district of the intent to return to teach in the district.
  - ▶ The teacher shall be allowed to return at an appropriate salary for the teacher's experience and education.
  - ▶ After 2 years of leave, the board shall determine the status of the relationship with the teacher and shall notify the teacher accordingly.
- ▶ KRS 160.1597(7) states:
 

"Notwithstanding any other statute to the contrary, no civil liability shall attach to any...authorizer or to any of its members or employees, individually or collectively, for any acts or omissions of the public charter school. Neither the local school district nor the Commonwealth shall be liable for the debts or financial obligations of a public charter school or any person or corporate entity who operates a public charter school."

## Investigation of an Authorizer

- ▶ The Commissioner, as designated by the KBE, is required to investigate authorizers when:
  - ▶ There is persistent unsatisfactory performance of its portfolio of charter schools.
  - ▶ There is a pattern of well-founded complaints about the authorizer or its schools.
  - ▶ The KBE finds other objective circumstances warranting investigation.
- ▶ The KBE applies nationally recognized standards in evaluating quality charter authorizing. If it determines an authorizer is not following such or is noncompliant with a charter contract, the KBE shall:
  - ▶ Notify the authorizer of the problem and give a reasonable opportunity to address.
  - ▶ Take action, including:
    - ▶ Additional training for the authorizer.
    - ▶ Require authorizers to provide status reports and solicit feedback from the Commissioner.
    - ▶ Require written and in-person status reports on authorizer activity to the KBE.
    - ▶ Approval by the Commissioner on the authorizer's monitoring activities, imposition of unilateral conditions, and revocation decisions.
    - ▶ Other consequences and probationary terms as determined by the KBE.
- ▶ Starting at the end of 2018-19, KDE must report on authorizers and schools.

## What is the process for opening a start-up charter school?

### Application Process

- ▶ Under KRS 160.1593, the following can apply to establish a charter:
  - ▶ Teachers,
  - ▶ Parents,
  - ▶ School Administrators,
  - ▶ Community residents,
  - ▶ Public organizations,
  - ▶ Nonprofit organizations, or
  - ▶ A combination thereof.
- ▶ The application must include:
  - ▶ Mission and vision statements,
    - ▶ This must include the target population of the school and the community to be served.
  - ▶ Descriptions of the school's proposed academic program and instructional methods,
  - ▶ Student achievement goals, evaluation methods, and an explanation of how the proposed program should improve achievement of underperforming students,
  - ▶ Plan for using external, internal, and state-required assessments to measure student progress as well as how data will be used to drive improvement,

## Application Process

- ▶ Proposed governance structure of the school, including:
  - ▶ An initial list of the board of directors,
  - ▶ A draft bylaws, and
  - ▶ The organizational structure of the school.
- ▶ Plans for student recruitment and enrollment,
  - ▶ Under KRS 160.1593(f)(2), applications must include plans to recruit at least 100 students unless the school plans to focus on serving special needs or at-risk students.
  - ▶ 701 KAR 8:020 requires the applicant to show targeted students/community outreach.
- ▶ Proposed 5 year budget and draft fiscal control policies,
- ▶ Procedures for annual audits,
- ▶ Draft handbook outlining personnel policies, including hiring criteria for teachers, administrators, and other employees as well as for annual evaluations,
- ▶ Student discipline policies,
- ▶ Description of the facilities to be used, including the location,
  - ▶ If the location is not known at the time of the application, the applicant must notify the authorizer within 10 days of facilities being acquired.
- ▶ Proposed ages and grade levels to be served as well as the minimum and maximum enrollment per grade per year,
- ▶ Proposed school calendar and daily schedule,

## Application Process

- ▶ Types and amounts of insurance coverage to be obtained, which shall include adequate coverage for property loss, liability, and personal injury,
- ▶ Description of health and food services to be provided to students,
- ▶ Procedures to be followed in the case of closure or dissolution of the school,
- ▶ Code of ethics for the school, including standards of conduct for board members, officers, and employees,
- ▶ Plans for recruiting and developing staff as well as a staffing chart,
- ▶ Plans for parental and community involvement,
- ▶ Plan for identifying and successfully serving students with disabilities, English Language Learners, bilingual students, gifted students, and students who are academically behind,
- ▶ Description of cocurricular and extracurricular programs,
- ▶ Process for resolving disputes with the authorizer, and
- ▶ Start-up plan, including financing, timelines, and responsible parties.
- ▶ There are also additional application requirements that must be met when an applicant intends to contract with an education service provider.

## Application Process

- ▶ 701 KAR 8:020 requires the authorizer to ask the applicant to disclose:
  - ▶ Performance information, financial information, and closure information for any charter school under the applicant or proposed board of directors.
  - ▶ Details of whether the charter application substantially replicates:
    - ▶ A charter application the applicant, proposed board, or another entity previously withdrew,
    - ▶ A charter application that was rejected by an authorizer and the reasons for rejection, or
    - ▶ A charter school that was previously closed.

## Authorizer Review

- ▶ Upon receipt of an application, the authorizer shall:
  - ▶ Complete a thorough review,
    - ▶ KRS 160.1594(2) encourages authorizers to give preference to applicants with the intent and capacity to serve students at risk of academic failure and/or with special needs as identified in an IEP.
    - ▶ 701 KAR 8:020, Section 4(9) requires authorizers to secure a certificate of existence from the Sec. of State for any business or foreign entity applying or in the charter's board.
  - ▶ Conduct in-person interviews with the applicant,
  - ▶ Provide an opportunity in a public forum for local residents to provide input and learn about the application,
  - ▶ Provide a detailed analysis of the application to the applicant,
  - ▶ Allow an applicant a reasonable amount of time to address identified deficiencies in its application, and
  - ▶ Approve or deny a charter application based on established objective criteria.
- ▶ No later than 60 days following the filing of the application, the authorizer shall approve or deny the application.
  - ▶ The approval or denial must be adopted by resolution in an open meeting of the authorizer's board of directors.
  - ▶ A written explanation must follow within 5 days for the public record.

## Approval of an Application

- ▶ An application shall be approved if the authorizer finds that:
  - ▶ The charter school described meets all statutory requirements,
  - ▶ The applicant demonstrates the ability to operate the school in an educationally and fiscally sound manner, and
  - ▶ Approving the application is likely to improve student learning and achievement and further the purposes of the public charter school project as set forth in KRS 160.1591.
- ▶ In approving an application, the authorizer shall:
  - ▶ Grant charters to applicants that possess competence in all elements of the application requirements,
  - ▶ Base decisions on documented evidence collected through the application review process, and
  - ▶ Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.
- ▶ Prior to approving an application or renewing a charter contract, the authorizer must:
  - ▶ Hold a public hearing to allow public comment,
  - ▶ Allow public comment be submitted in writing prior to the hearing, and

## Approval of an Application

- ▶ Allow comments at the public hearing from the superintendent who has filed objections to the charter application.
- ▶ An authorizer's decision shall be submitted within 5 days of approval for final approval by the Commissioner of Education.
- ▶ A failure to act on an application shall be deemed a denial.

## Appeals

- ▶ The KBE, upon receipt of notice of appeal or upon its own motion, shall review decisions of any authorizer regarding:
  - ▶ Approval or denial of an application,
  - ▶ Nonrenewal or revocation of a charter contract,
  - ▶ Denial of a charter school's request to consider a contract amendment, or
  - ▶ Unilateral imposition of conditions.
- ▶ Under KRS 160.1595, appellants must supply authorizers and the KBE with a notice of appeal within 30 days of the authorizer's decision.
  - ▶ As currently proposed, though, 701 KAR 8:030 says the KBE "may affirm the decision of the authorizer" based on an untimely filing.
- ▶ 701 KAR 8:030 requires the appeal to include the name, phone number, mailing address, and email address of the appellant and any legal counsel.
- ▶ The Commissioner must acknowledge the appeal to the appellant and authorizer within 5 days of receiving notice.
- ▶ If a hearing is requested, the Commissioner designates a hearing officer, sets a prehearing schedule, and determines the location of the hearing.
- ▶ If a hearing is not requested or is later waived, the hearing officer sets the schedule for written pleadings.

## Appeals

- ▶ Appeals follow the following timeline:
  - ▶ Within 45 days of the notice of appeal or the motion to review by the KBE, the KBE shall conduct a public hearing to review the decision of the authorizer and make findings.
    - ▶ The KBE must issue findings within 7 days of the hearing's conclusion or of the meeting to consider written pleadings.
  - ▶ If the KBE finds the authorizer's decision was contrary to the best interest of the students or the community, it shall remand the decision to the authorizer with instructions for reconsideration.
  - ▶ Within 30 days of the remand, the authorizer shall reconsider its decision and make a final decision at a public hearing.
    - ▶ Notice of the final decision after reconsideration shall be provided to the KBE within 10 days.
  - ▶ If the decision is still to deny, nonrenew, revoke, or unilaterally impose conditions unacceptable to the charter applicant, a second notice of appeal may be filed with the KBE within 30 days.
  - ▶ Within 30 days of the second notice of appeal or the making of a second motion to review by the KBE, the KBE shall conduct a second public hearing to review the final decision of the authorizer and make findings.

## Appeals

- ▶ If the KBE finds the authorizer's final decision was contrary to the best interest of the students or the community, it shall remand the final decision to the authorizer with instructions to:
  - ▶ Approve the charter application or amendment,
  - ▶ Renew or reinstate the charter, or
  - ▶ Approve or disapprove conditions imposed.
- ▶ The decision of the KBE shall be a final action appealable to the Circuit Court.
- ▶ Charters granted after successful appeal to the KBE shall be provided joint oversight by the authorizer and the KBE for a minimum of 5 years and until all parties agree that charter oversight may be provided solely by the authorizer.
- ▶ The KBE must affirm revocations and nonrenewals where it is determined a charter board member knowingly violated or directed an employee or education service provider to knowingly violate Kentucky's Assessment Program.
  - ▶ Per 701 KAR 8:020, Section 7(7), an authorizer must revoke or nonrenew a charter where it is determined a charter board member knowingly violated or directed an employee or education service provider to knowingly violate Kentucky's Assessment Program.

## The Charter Contract

- ▶ 701 KAR 8:020 requires the authorizer to verify the charter board's registration as a non-profit business entity with the Sec. of State PRIOR TO negotiating the contract.
- ▶ Within 75 days of the final approval of an application, the charter board of directors and the authorizer shall enter into a binding contract that addresses:
  - ▶ Term of the contract;
  - ▶ Rights and duties of each party;
  - ▶ Administrative relationship between the authorizer and the charter school;
  - ▶ Allocation of state, local, and federal funds, and the schedule for the authorizer to disperse those funds to the charter school;
  - ▶ Pre-opening conditions that:
    - ▶ Monitor the progress of a newly approved charter school,
    - ▶ Ensure the school is prepared to timely open, and
    - ▶ Ensure the school meets all benchmarks related to facilities, health, safety, insurance, personnel, enrollment, curriculum, and other legal requirements;
  - ▶ Process the authorizer will use to provide ongoing oversight, including a process to conduct annual site visits;
  - ▶ Approval of the authorizer prior to the charter board contracting with an education service provider,



## The Charter Contract

- ▶ Process and criteria the authorizer will use to annually evaluate the academic, operating, and fiscal conditions of the charter school, including the process the authorizer will use to oversee the correction of any identified deficiencies,
  - ▶ Authorizer must review monthly financial statements and take appropriate action when operating revenues fall below 2% of the total projected annual revenues.
  - ▶ Provisions that no charter board member/employee shall knowingly recommend and/or vote for an expenditure in excess of the charter's revenue.
  - ▶ Charter must notify the authorizer and KDE if it knows the school will be unable to pay its expenses in full.
- ▶ Process for amending the terms of the charter contract,
- ▶ Process agreed to by the authorizer and the charter board regarding resolving disputes,
- ▶ Closure protocols,
- ▶ All other statutorily required elements, and
- ▶ Any other mutually agreed upon terms.
  - ▶ The authorizer may include in the charter contract a requirement for a school to conduct a practice lottery.
- ▶ Other required terms include provisions that assure authorizer access to IDEA records; physical restraint and seclusion documentation; investigations of health, safety, civil rights, and disability rights violations; and, waiver of fees for students eligible for free and reduced lunch.

## The Charter Contract

- ▶ KRS 160.1596(1)(c)(11) states that reasonable conditions shall NOT include:
  - ▶ Enrollment caps,
  - ▶ Operational requirements that place undue constraints on a charter school, and/or
  - ▶ Those that are contrary to other statutory provisions.
- ▶ Conditions that are not reasonable in nature shall be considered “unilaterally imposed conditions,” which are subject to appeal under KRS 160.1595.
  - ▶ 701 KAR 8:020 and 8:030 define “unilaterally imposed conditions” in a more broad fashion so as to include any condition that is “not required by KRS 160.1590 to 160.1599.”
- ▶ A charter school CANNOT commence operations without a properly executed contract.
  - ▶ The contract must be signed by the chair of authorizer's board and by the chair of the charter's board.
  - ▶ The approved application SHALL NOT serve as the charter contract.
- ▶ Upon approval of a contract, an applicant shall be permitted to operate a charter school for a term of 5 years.
- ▶ Within 5 days of entering to the contract (or amending a contract), a copy of the executed contract must be submitted to the Commissioner.
  - ▶ The Commissioner must issue approval/denial within 15 days.

## Renewal or Nonrenewal of a Contract

- ▶ At least 1 year prior the contract's expiration, the authorizer shall issue a performance report and charter renewal application guidance to the charter school.
  - ▶ The charter school must respond to the performance report within 20 days.
  - ▶ Within 10 days of receiving the school's response, the authorizer shall issue a final performance report.
- ▶ At least 6 months prior to expiration, the board of a charter seeking renewal shall submit the renewal application to the authorizer.
  - ▶ The authorizer shall issue a decision on the renewal application within 30 days.
  - ▶ Failure to timely act on the application will be viewed as a denial.
- ▶ A charter contract can be renewed by the authorizer for a 3-5 year term depending on the charter school's:
  - ▶ Performance,
  - ▶ Demonstrated capabilities, and
  - ▶ Particular circumstances.
- ▶ If needed, authorizers may attach conditions to a renewal in order to seek improvements; however, the conditions must be consistent with statute.

## Renewal or Nonrenewal of a Contract

- ▶ An authorizer must investigate if it believes the charter school is not in compliance with the contract and/or with charter school laws.
  - ▶ If an issue is confirmed, the Commissioner must be notified and will assist in addressing and remedying the issue.
  - ▶ The authorizer shall also notify the charter and take necessary action to remedy, which may include revocation of the charter.
- ▶ A contract shall NOT be renewed if an authorizer determines the charter school has:
  - ▶ Committed a material violation of any requirements under KRS 160.1590 to KRS 160.1599 or under the charter contract AND has persistently failed to correct the violation.
  - ▶ Failed to meet or make significant progress towards performance expectations identified in the charter contract.
  - ▶ Failed to meet generally accepted standards of fiscal management and failed to correct the error.
  - ▶ Substantially violated any material provision of law from which the charter school was not exempted and failed to correct the violation.

## Revocation of a Contract

- ▶ Authorizers must revoke contracts when the school is financially insolvent, is financially unstable for the remainder of the school year or contract term, or has violated or threatens the health and safety of students.
- ▶ For issues not requiring immediate action, the authorizer may utilize a progressive system of monitoring consequences. Action taken must be made public and provided to the Commissioner and the KBE.
- ▶ If a contract is nonrenewed, the authorizer shall clearly state the basis for the decision.
- ▶ Within 10 days of taking action to renew or nonrenew, the authorizer shall report the action taken to the KBE and shall provide a report that includes:
  - ▶ The authorizer's decision and reasoning and
  - ▶ Assurances as to compliance with all of the procedural requirements.

## Closure of a Charter School

- ▶ If a charter school closes for any reason, the authorizer oversees and works with the closing school to ensure a smooth and orderly transition for students and parents.
- ▶ 701 KAR 8:020 requires closure protocols include:
  - ▶ Transfer of contact information for all parents, persons with custody, etc. of enrolled students.
  - ▶ Notification to all parents, persons with custody, etc. of enrolled students regarding:
    - ▶ Closure decision.
    - ▶ Closure process, including the last day of attendance.
    - ▶ Information on student reassignment.
    - ▶ Information on courses, credits, etc. completed by the student.
    - ▶ Information on the process for obtaining the student's records as well as other transition terms.
    - ▶ Contact information for additional questions/requests.
  - ▶ Notification to the resident local school district and KDE of the closure as well as a copy of the notification that went to parents as required.
  - ▶ Meeting between the authorizer and the charter board/employees to share closure information as well as to discuss employment related matters (pay, benefits, etc.).
  - ▶ Maintenance of the charter's facilities as well as necessary records.
  - ▶ Final audit to be completed within 6 months of closure.
- ▶ If a charter school is subject to closure and has exhausted its appeals, the authorizer may remove at will any or all of the charter's board of directors and, if the charter's board can no longer function, may take any necessary acts connected with closure in the interest of the charter school.
  - ▶ Authorizers must remove charter board members that are convicted of a crime under KRS 61.040.

## How is this process different for a conversion charter?

### The Conversion Process

- ▶ KRS 160.1599(2) says that an existing public school may be converted into a charter school if:
  - (a) The school has been identified by KDE as performing in the lowest 5% of its level and 60% of the parents of students attending the school has signed a petition requesting conversion, which shall be completed and submitted to a valid authorizer at least 90 days after the date of the first signature.
  - (b) The school has NOT been identified by KDE as performing in the lowest 5% of its level and 60% of the parents of students attending the school has signed a petition requesting conversion, which is approved by a majority vote of the school board. If approved, the completed petition shall be submitted to a valid authorizer at least 90 days after the date of the first signature.
  - (c) The school board votes to convert an existing school over which it has authority.
- ▶ Prior to circulating a petition for conversion, the petitioner must file notice of intent with the local board of education.
- ▶ The following must be included in the conversion petition:
  - ▶ Written statement that the petition seeks to convert the existing public school to a charter school;
  - ▶ Written statement of the reasons the petitioner believes the existing school should be converted; and,
  - ▶ Information for filing a complaint with the Commissioner regarding the petition.
    - ▶ Any person believing the process was not properly conducted or that signatures were procured through fraud, bribery, or harassment may file a complaint with the Commissioner, who shall investigate the validity of the petition and issue a decision within 30 days.

## The Conversion Process

- ▶ For petition signatures to count, they must be from parents, persons with custody, adult students, or emancipated youth students and the petition must include the following:
  - ▶ Printed name;
  - ▶ Mailing and street address, phone number, and email address, if available; and,
  - ▶ Signature in ink or indelible pencil.
- ▶ The regulation requires the petition as well as the charter application to be submitted to the authorizer on or before October 30 of any year.
- ▶ Within 30 days of receipt, the school board designee shall investigate the signatures and ensure the petition meets the requirements of KRS 160.1599(2)(a) or (b).
  - ▶ Inclusion of invalid signatures does not invalidate the entire petition.
- ▶ Within 3 days after making a determination, the designee shall provide notice as to whether the petition met the requirements to the petitioner, the school principal, the school's SBDM Council, and the school board as well as by posting on the district website.
- ▶ If the petition does not meet requirements or if the Commissioner determines the petition to be invalid, the school shall not be eligible for conversion unless:
  - ▶ The local board acts pursuant to KRS 160.1599(2)(c) or
  - ▶ Another petition is circulated and determined to be valid.

## The Conversion Process

- ▶ For petitions requiring the board's majority vote, a vote shall be conducted at the next regular meeting or at an earlier special meeting.
- ▶ Subsequent to the petition and/or after any required vote by the school board, the board, as authorizer, shall commence the charter application review and approval process.
- ▶ Upon approval of an application to establish a conversion charter school, the local superintendent shall:
  - ▶ Notify resident students and provide information for student application;
  - ▶ Create, with the conversion charter school board, a plan for conversion, including:
    - ▶ Timelines,
    - ▶ Roles,
    - ▶ Responsibilities, and
    - ▶ Notification requirements for the student application, lottery, and enrollment processes as well as for the transfer of management and operation of the school.
  - ▶ Meeting with the charter board to coordinate the student application, lottery, and enrollment processes as well as the transfer of students; and,
  - ▶ Meeting with the charter board regarding use of the facility.

## Additional Conversion Provisions

- ▶ Under 701 KAR 8:040, KDE must annually publish a list noncharter schools that are eligible for conversion under KRS 160.1599(2)(a).
- ▶ A conversion charter shall not begin operation after the beginning of a school year.
- ▶ A conversion charter shall continue to be housed in the same facility and shall have the option of using the existing assets of the school.
  - ▶ 701 KAR 8:040, Section 3(3) requires a lease of the facility be executed prior to operation.
- ▶ Like a start-up charter, a conversion charter is governed by a board of directors and must comply with all laws concerning the treatment of children with special needs.
- ▶ A conversion charter must accept all students who attended the school prior to its conversion and who wish to attend the conversion charter.
- ▶ Employees in the school prior to conversion who are not hired by the conversion charter board retain employment rights with the district under KRS Chapter 161.
- ▶ Students choosing not to attend the conversion charter must be given information on how the district will address their educational needs.

## Additional Conversion Provisions

- ▶ Authorizers may renew, nonrenew, revoke, or take other action regarding a conversion charter.
- ▶ If a closed conversion charter is reverting back to noncharter status, the local board shall solicit feedback on the future of the school from parents, persons with custody, adult students, and emancipated youth students prior to reversion.

## Questions?

**Whitney A. Crowe, Esq.**  
Staff Attorney  
Kentucky School Boards Association  
260 Democrat Drive  
Frankfort, KY 40601  
Toll Free Phone: 800-372-2962, ext. 1239  
Fax: 502-783-1453  
Email: [whitney.crowe@ksba.org](mailto:whitney.crowe@ksba.org)