

## NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

### NOTICE OF PROPOSED RULEMAKING

#### TITLE 7. EDUCATION

#### CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS

[R05-402]

#### PREAMBLE

**1. Sections Affected**

R7-5-101  
R7-5-204  
Article 3  
R7-5-301  
R7-5-302  
R7-5-303  
R7-5-304  
Article 5  
R7-5-501  
R7-5-502  
R7-5-503  
R7-5-504

**Rulemaking Action**

Amend  
Amend  
New Article  
New Section  
New Section  
New Section  
New Section  
New Article  
New Section  
New Section  
New Section  
New Section

**2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing statute: A.R.S. § 15-182

Implementing statutes: A.R.S. §§ 15-181, 15-182, 15-183, 15-185(H), 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15

**3. A list of all previous notices appearing in the Register addressing the proposed rule:**

Notice of Rulemaking Docket Opening: 10 A.A.R. 979, March 12, 2004

Notice of Rulemaking Docket Opening: 10 A.A.R. 4271, October 22, 2004

Notice of Rulemaking Docket Opening: 11 A.A.R. 3128, August 12, 2005

**4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Kristen Jordison, Executive Director  
Arizona State Board for Charter Schools

Address: 1700 W. Washington #164  
Phoenix, AZ 85007

Telephone: (602) 364-3080

Fax: (602) 364-3089

E-mail: [charterschoolboard@pop.state.az.us](mailto:charterschoolboard@pop.state.az.us)

**5. An explanation of the rule, including the agency's reasons for initiating the rule:**

The agency is complying with A.R.S. § 15-182, which requires the agency to adopt rules for its own governance.

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**6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on or not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**

Not applicable

**7. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable

**8. The preliminary summary of the economic, small business, and consumer impact:**

The rules impose an administrative burden on the agency. The charter oversight and audit rules will have a minimal economic impact on the agency as the agency already performs these functions with the associated costs absorbed by the agency's general fund appropriation. The economic impact on other state agencies, such as the Arizona Department of Education, is expected to be minimal. The costs associated with charter oversight and the audits and audit contracts arise from statutory requirements rather than from the proposed rules. The economic impact on charter holders is expected to be minimal. While the charter holder must front the audit costs, the Arizona Department of Education reimburses the charter holder for the audit through the statutorily defined state aid formula.

**9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**

Name: Kristen Jordison, Executive Director  
Arizona State Board for Charter Schools

Address: 1700 W. Washington, #164  
Phoenix, AZ 85007

Telephone: (602) 364-3080

Fax: (602) 364-3089

E-mail: charterschoolboard@pop.state.az.us

**10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**

An oral proceeding on the proposed rulemaking is scheduled as follows:

Date: December 12, 2005

Time: 3:00 p.m.

Location: Executive Tower  
1700 W. Washington, Basement B-56  
Phoenix, AZ 85007

Please call (602) 364-3080 for special accommodations pursuant to the Americans with Disabilities Act.

Written comments may be submitted until 5:00 p.m. on December 12, 2005, to the contact person listed in item #9.

**11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**

None

**12. Incorporations by reference and their location in the rules:**

None

**13. The full text of the rules follows:**

**TITLE 7. EDUCATION**

**CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS**

**ARTICLE 1. GENERAL PROVISIONS**

Section  
R7-5-101. Definitions

**ARTICLE 2. NEW CHARTERS**

Section  
R7-5-204. Execution of a Charter

**ARTICLE 3. ~~RESERVED~~ CHARTER OVERSIGHT**

Section  
R7-5-301. General Supervision, Oversight, and Administrative Responsibility  
R7-5-302. Corrective Action Plan  
R7-5-303. Site Visits  
R7-5-304. Disciplinary Action

**ARTICLE 5. AUDITS AND AUDIT CONTRACTS**

Section  
R7-5-501. Audit Guidelines  
R7-5-502. Approval of Audit Contracts  
R7-5-503. Audit Completeness Determinations  
R7-5-504. Review of Complete Audits

**ARTICLE 1. GENERAL PROVISIONS**

**R7-5-101. Definitions**

For the purpose of this Chapter, the following definitions apply:

“Accounting industry regulatory body” means any state or federal regulatory body that has the authority to discipline a certified public accountant or audit firm.

“Administrative completeness review time-frame” means the number of days from the Board’s receipt of an application package to obtain a charter until the Board determines whether the application package contains all components required by statute and rule. The administrative completeness review time-frame does not include the period during which the Board performs a substantive review of the application.

“Applicant” means a person that applies to the Board for a new charter or to transfer a charter under A.R.S. § 15-181 et seq.

“Application” means the Board-approved forms and instructions for a stated fiscal year, which are available on-line and in writing.

“Application package” means an application, narrative, and documents described in the application.

“Audit” means a charter holder’s annual audit, as required by A.R.S. § 15-914.

“Audit contract” means an engagement letter provided by an audit firm that describes the terms of a contract between a charter holder and the audit firm.

“Audit firm” means a business that conducts an independent audit for a charter school.

“Audit guidelines” means the Board-approved general guidance on charter school audit requirements, which is available on-line and in writing.

“Authorized representative” means an individual with the power to bind a charter holder contractually according to the charter holder’s Articles of Incorporation, operating agreement, or by-laws.

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“Board” means the Arizona State Board for Charter Schools.

“Charter” means a contract between a person and the Board to operate a charter school under A.R.S. § 15-181 et seq.

“Charter holder” means a person that enters into a charter with the Board.

“Charter school” means a school operated under a charter granted under A.R.S. § 15-181 et seq.

“Day” means a business day.

“Department” means the Arizona Department of Education.

“Fiscal year” means the 12-month period beginning July 1 and ending June 30.

“Good standing” means that a supervising certified public accountant or audit firm has no current or pending disciplinary action or any regulatory action that requires the supervising certified public accountant or audit firm to complete conditions specified by an accounting industry regulatory body.

“Overall time-frame” means the number of days after receipt of an application package until the Board determines whether to grant or deny a charter. The overall time-frame consists of both the administrative completeness review time-frame and the substantive review time-frame.

“Peer review” means an external quality control review as required by generally accepted government auditing standards that determines whether an audit firm’s internal quality control system is in place and operating effectively, and provides assurance that established policies and procedures and applicable auditing standards are being followed.

“Person” means an individual, partnership, corporation, association, or public or private organization of any kind.

“Preliminary application package” means a complete application package that is forwarded to the Technical Review Panel for scoring.

“Principals” means the officers, members, partners, or board of an applicant.

“Revised application package” means a complete application package submitted by an applicant after receiving written notification that the applicant’s preliminary application package failed to meet the expectations.

“Serious impact finding” means an issue identified by the Board that in the opinion of the Board has or potentially has a significant impact on the operation of the school or students, including threat to the health and safety of children, failure to meet the academic needs of the children, gross violation of generally accepted accounting principles that increases the opportunity for fraud or theft, and repeat issues of non-compliance.

“Substantive review time-frame” means the number of days after an application package is determined to be administratively complete until the Board decides whether to grant or deny a charter.

“Sufficiently qualified” means the Board’s determination that an applicant’s or charter holder’s experience, qualifications, current and prior charter compliance, and creditworthiness indicate an ability to implement a charter or operate a charter school, respectively.

“Supervising certified public accountant” means the certified public accountant responsible for leading the audit work or signing a final audit.

“Technical Review Panel” means individuals ~~approved and acting on behalf~~ appointed by the Executive Director of the Board who use their expertise in charter school development, curriculum, and finance to ~~evaluate~~ assist in the evaluation of a preliminary or revised application package.

ARTICLE 2. NEW CHARTERS

**R7-5-204. Execution of a Charter**

- A. After the Board grants a charter, and before the contract is signed, the charter holder shall submit to the Board the following:
1. Completed I.R.S. Form W-9, Request for Taxpayer Identification Number and Certification, obtained from the Board;
  2. School site location information;
  3. General Statement of Assurances form obtained from the Board;
  4. Copy of the statement filed with the Secretary of State under A.R.S. § 38-431.02; and
  5. Copy of lease agreement, if any, for each school site.
- B. A new charter shall be signed by the Board President or designee and the charter holder or authorized representative within 12 months after the Board grants the charter.
- C. A charter that is not timely signed expires. If the holder of an expired charter wants to obtain a new charter, the holder shall apply again under R7-5-201.
- D. A charter holder shall begin providing educational instruction within ~~six~~ 12 months after signing the charter or within ~~18~~ 24 months after the Board grants the charter, whichever occurs later.

- E. A charter holder shall submit to the Board written proof that the charter school is in compliance with federal, state, and local rules, regulations, and statutes relating to health, safety, and insurance at least 10 days before the first day of operation of the charter school by submitting:
  - 1. School site contact information;
  - 2. Certificate of occupancy for each school site;
  - 3. Fire marshal report for each school site;
  - 4. Insurance policy binder issued by an insurance company licensed to do business in Arizona;
  - 5. County health certificate for each site at which students will be taught;
  - 6. Evidence of a public meeting, required by A.R.S. § 15-183(C)(5), at least 30 days before the charter holder opens a site for the charter school; and
  - 7. Certificate of attendance of the authorized representative or principal at the special education training for new charters offered by the Arizona Department of Education, Exceptional Student Services Division.
- F. A charter is effective for 15 years from the first day of operation of the charter school unless revoked under A.R.S. § 15-183(I).

**ARTICLE 3. ~~RESERVED~~ CHARTER OVERSIGHT**

**R7-5-301. General Supervision, Oversight, and Administrative Responsibility**

- A.** A charter holder shall comply with the provisions of its charter and with federal, state, and local rules, regulations, and statutes at all times.
- B.** The Board shall use any of the following means in performing its administrative responsibilities to and general supervision and oversight of a charter holder:
  - 1. Oral, written, and electronic communication with the authorized representative or charter school personnel;
  - 2. Oral, written, and electronic communication with representatives of federal, state, and local agencies having jurisdiction over the operation of the charter school or having the authority to investigate or adjudicate allegations of misconduct by any member of the charter school's staff;
  - 3. Oral, written, and electronic communication with students, parents, or outside parties regarding any activity or program conducted by or for the charter school or regarding allegations of misconduct by any member of the charter school's staff;
  - 4. Collection and review of reports, audits, data, records, documents, files, and communication from any source relating to any activity or program conducted by or for the charter school;
  - 5. Corrective action plan as described in R7-5-302; and
  - 6. Site visits as described in R7-5-303.

**R7-5-302. Corrective Action Plan**

- A.** Upon receipt of information under Section R7-5-301(B) that a charter holder is not in compliance with its charter or federal, state, or local rules, regulations, or statutes, the Board shall consider the following factors in determining whether a corrective action plan (CAP) is required:
  - 1. The seriousness of the offense;
  - 2. The charter holder's history of compliance with its charter and federal, state and local rules, regulations, and statutes;
  - 3. The length of time the offense has been occurring; and
  - 4. Any other factors relating to the charter holder's compliance with its charter and federal, state, or local rules, regulations, or statutes.
- B.** If the Board requires a CAP, it shall make a written request to the charter holder for the submission of a CAP to be implemented to remedy the offense. The request shall include:
  - 1. A description of the offense,
  - 2. A list of the specific criteria to be included in the CAP,
  - 3. A deadline for the submission of the CAP,
  - 4. A timeline for the execution of the CAP, and
  - 5. The consequences for failure to submit or execute the CAP.
- C.** The Board shall decide whether to accept the CAP based on the inclusion of specified criteria stated in the request.
  - 1. The Board shall provide written notification to the authorized representative regarding the acceptance or rejection of the CAP.
  - 2. Written notification that the Board rejected the CAP shall include the reason for the rejection and the consequences for failure to submit a CAP that meets the specified criteria.
- D.** The Board shall monitor the charter holder's implementation of the approved CAP to ensure the offense is rectified.
  - 1. The charter holder shall demonstrate to the Board through documentation or a site visit that steps have been taken to correct the offense or, in the case of a serious impact finding, that the charter holder is currently in compliance.
  - 2. The Board shall consider possible disciplinary action under R7-5-304 against the charter holder if the charter holder

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fails to implement the CAP and rectify the offense.

**R7-5-303. Site Visits**

- A.** A designee of the Board or Department may conduct a site visit of a charter school to a review or evaluate the charter school's financial operations, academic program, or compliance with federal, state, and local rules, regulations, and statutes and the terms and conditions of its charter.
- B.** A site visit shall occur during regular operational hours of a charter school or at any reasonable time.
- C.** A site visit may be announced or unannounced.
- D.** A designee of the Board or Department may conduct an investigation of a charter school in response to concerns raised by students, parents, employees, members of the community or other individuals or groups regarding any activity or program conducted by or for the charter school or regarding allegations of misconduct by any member of the charter school's staff.
- E.** Upon request by a designee of the Board or Department, a charter holder shall open for inspection all records, documents, and files relating to any activity or program provided by the charter school or provided by the charter holder relating to the charter school.
- F.** Upon request by a designee of the Board or Department, a charter holder shall provide access to all school facilities.
- G.** During a site visit, a charter holder shall provide access to classrooms for the purpose of counting students, observing a program of instruction, or documenting individuals providing instruction. The designee of the Board or the Department shall make every effort not to disrupt the classroom environment.
- H.** A site visit may be conducted to corroborate information submitted to the Board and to gather information, documentation, and testimony that permit the Board to fulfill its oversight function under the law and ensure the charter school is in compliance with federal, state, and local rules, regulations, and statutes and the terms and conditions of its charter.
- I.** The Board or Department shall communicate in writing to the charter holder any offense identified during a site visit and shall specify what further action must be taken by the charter holder. In determining the appropriate action to take the Board shall consider the items outlined in R7-5-304(A).
- J.** The Board shall require a charter holder with a serious impact finding to appear before the Board for possible disciplinary action under R7-5-304.

**R7-5-304. Disciplinary Action**

- A.** In determining the appropriate disciplinary action to take, the Board shall consider the following:
  - 1. Threat to the health or safety of children;
  - 2. The charter holder's historical compliance record indicating repeated or multiple breaches of its charter or federal, state, or local rules, regulations, or statutes;
  - 3. Failure to meet the academic needs of the children;
  - 4. Length of time the offense has been occurring;
  - 5. The charter holder's compliance with and response to staff investigation in providing necessary information and documentation within requested time-frames;
  - 6. Misuse of funds; and
  - 7. Any other factor that has a bearing on the charter holder's ability and willingness to operate in compliance with its charter and federal, state, or local rules, regulations, and statute.
- B.** The Board shall take disciplinary action against a charter holder based on the Board's assessment of the factors listed in subsection (A). Disciplinary action may include any of the following:
  - 1. Require a corrective action plan as described in R7-5-302;
  - 2. Request the Department to withhold up to 10 percent of the charter school's monthly state aid in accordance with A.R.S. § 15-185(H). Upon proof of corrected deficiencies and the return of the charter holder to compliance, the Board shall request the Department to restore the full amount of state aid payments to the charter school;
  - 3. Enter into a consent agreement with the charter holder for the resolution of the non-compliance. The Board shall ensure the consent agreement:
    - a. Describes each offense;
    - b. Stipulates the facts agreed to by the Board and the charter holder;
    - c. Specifies the actions the charter holder must take to demonstrate compliance and avoid further disciplinary action;
    - d. Provides a timeline for the charter holder to complete the actions specified in the consent agreement;
    - e. Stipulates that if the charter holder fails to comply with the terms and conditions of the consent agreement, the Board may, upon reaching the number of days notice specified in the consent agreement, hold a hearing at which the Board receives information to determine whether evidence exists that the charter holder has failed to comply with the consent agreement. If the Board determines that the charter holder has breached the consent agreement, the Board may revoke the charter holder's charter; and
    - f. Is approved by the Board and the charter holder and signed by the Board president or designee and the authorized representative;

4. Issue a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I) if the Board determines there is cause to believe that the charter holder may have breached one or more provisions of its charter; and
5. Revoke the charter in accordance with A.R.S. § 15-183(I).

#### **ARTICLE 5. AUDITS AND AUDIT CONTRACTS**

##### **R7-5-501. Audit Guidelines**

By July 1 of each year, the Board shall make available to the public at its office and on-line at its web site, written audit guidelines that provide general guidance on charter school audit requirements, including the deadline for submitting the completed audit to the Board and information that must be included for the audit to be deemed complete.

##### **R7-5-502. Approval of Audit Contracts**

- A.** In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit to the Board for approval an audit contract for each audit before the audit begins.
- B.** The Board shall disapprove an audit contract only for the following reasons:
  1. Knowledge that any person employed by the audit firm has been convicted under any federal or state statute for embezzlement, theft, fraudulent schemes and artifices, fraudulent schemes and practices, bid rigging, perjury, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
  2. Failure of the audit firm or supervising certified public accountant to maintain good standing with an accounting industry regulatory body;
  3. Violation of or failure of the audit firm to meet generally accepted auditing standards or generally accepted government auditing standards as identified by an accounting industry regulatory body;
  4. Failure to receive an unmodified opinion during the audit firm's most recent peer review or failure of any auditor working on the audit to meet the continuing professional education requirements prescribed by generally accepted government auditing standards; or
  5. Failure to acknowledge that the audit firm shall adhere to the audit requirements listed in the Board's audit guidelines.
- C.** The Board shall provide written notification of approval or disapproval of an audit contract to the charter holder and the audit firm within 10 days of receipt of the audit contract.
- D.** The Board shall include the cause for disapproval in a notice of disapproval.
- E.** If the charter holder or audit firm provides documentation that demonstrates the cause for disapproval no longer exists, the Board shall approve the audit contract and notify all parties of the approval.

##### **R7-5-503. Audit Completeness Determinations**

- A.** In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit all audits to the Board for a determination regarding their completeness.
- B.** The Board shall find that an audit is incomplete if it does not include all of the items listed in the Board's audit guidelines.
- C.** The Board shall provide written notification of a complete audit to the charter holder within five days of the receipt of the audit. The Board shall provide written notification of an incomplete audit to the charter holder and the audit firm within five days of receipt of the audit.
- D.** The Board shall include the cause for the determination in a notice of an incomplete audit.
- E.** If the charter holder or audit firm provides documentation that demonstrates the cause for an incomplete audit no longer exists, the Board shall deem the audit complete and notify the charter holder.
- F.** The Board shall bring a charter holder whose audit does not include the items stated in the audit guidelines before the Board for possible disciplinary action under R7-5-304.

##### **R7-5-504. Review of Complete Audits**

- A.** The Board staff shall review each audit deemed complete.
- B.** The Board shall send a letter to a charter holder after its audit is reviewed. If the Board identifies an issue in the audit, the Board shall direct the charter holder to address the issue and, based on an assessment of the factors in R7-5-302(A), may require the charter holder to submit a corrective action plan.
- C.** The Board shall bring a charter holder with a serious impact finding before the Board for possible disciplinary action under R7-5-304.