

**ARIZONA COURT OF APPEALS**

**DIVISION ONE**

LEGACY EDUCATION GROUP DBA EAST VALLEY HIGH SCHOOL, an Arizona non-profit corporation; and TUCSON PREPARATORY SCHOOL, an Arizona non-profit corporation,

Plaintiffs/ Appellants,

v.

ARIZONA STATE BOARD FOR CHARTER SCHOOLS,

Defendant/ Appellee.

Court of Appeals  
Division One  
No. 1 CA-CV 17-0023

Maricopa County  
Superior Court  
No. CV2016-051845

**PLAINTIFFS/APPELLANTS' COMBINED  
REPLY BRIEF AND SUPPLEMENTAL APPENDIX**

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## ADDITIONAL BACKGROUND

The Schools provide this additional background because after the Schools filed their opening brief, two relevant actions occurred.

**First**, the Board promulgated rules to codify the Frameworks in the Arizona Administrative Code. *See* 23 Ariz. Admin. Reg. 693 (Mar. 31, 2017) [Copy at [SAPP036-SAPP064](#).]\* This final rulemaking completed the 2016 proposed rulemaking discussed in the opening brief. (*See* Opening Brief at 16 (citing 22 Ariz. Admin. Reg. 3057 (Oct. 28, 2016)).)<sup>1</sup>

**Second**, the legislature passed legislation that would have amended the APA to exempt the Board from most of the APA, including the core rulemaking obligations. *See* S.B. 1036 (53d Leg., 1st Reg. Sess., 2017) [Copy at [SAPP065-SAPP070](#).] In its place, the legislation required notice and two opportunities for public comment, and it established a mechanism for the public to file a petition challenging any policy or rule that the Board enacted. *See* S.B. 1036, § 2 (amending A.R.S. § 41-1005(G)-(H)). [[SAPP070](#).]

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\* Citations to “SAPP” refer to the Supplemental Appendix attached to this brief. Citations to “APP” refer to the Appendix attached to the opening brief.

<sup>1</sup> The Schools take no position on whether the final rules satisfy the Board’s statutory obligations.

This legislation may have mooted this appeal had it become law. But the governor vetoed the legislation, and it never took effect.

The court may take judicial notice of these materials.<sup>2</sup> This brief discusses their impact on this appeal.

### ARGUMENT SUMMARY

As demonstrated in the Opening Brief, (1) *all* agency rulemaking must follow the APA unless expressly exempted, and (2) the Board promulgated a rule (the Frameworks) without following the APA. The Board disputes none of that, and those implicit concessions are sufficient to reverse the judgment.

Instead, the Board searches for an implicit exemption to the APA when no such exemption exists. Its arguments for inferring an exception fly in the face of settled Arizona law and are easily refuted.

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<sup>2</sup> The Schools agree with the Board's explanation of judicial notice (at 33). The Court may also take judicial notice of S.B. 1036. *Cf. Hayes v. Cont'l Ins. Co.*, [178 Ariz. 264, 269 n.5](#) (1994) (judicial notice of legislative materials).

## ARGUMENT

**I. The Board does not dispute the prima facie elements of an APA violation.**

**A. The judgment should be reversed because the Board does not dispute the controlling law or its application.**

The Opening Brief summarized the settled law, as set forth in the plain text of the APA and confirmed by multiple decisions from this Court.

In summary, “rule” is defined by statute ([A.R.S. § 41-1001\(19\)](#)). This Court has interpreted that statute as having two requirements: agency action is a rule “if it, first, is generally applicable, and, second, implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency.” *Ariz. State Univ. v. Ariz. State Ret. Sys.*, [237 Ariz. 246, 250, ¶ 16](#) (App. 2015) (“*ASU*”).

The Schools demonstrated that the Frameworks satisfy both requirements. (Opening Brief at 21-27.) The Board disputes none of this. It does not dispute the overall framework for defining a “rule,” and it does not dispute that the Frameworks satisfy both statutory requirements.

In addition, the Schools demonstrated that the APA applies to the Board. (Opening Brief at 26-27.) This, too, comes from statute: the APA requirements “apply to all agencies and all proceedings not expressly



exempted.” [A.R.S. § 41-1002\(A\)](#). This Court has confirmed again and again that the legislature does not have to expressly invoke the rulemaking requirement every time it requires agency action, and that courts cannot infer exemption from legislative silence. *See Carondelet Health Servs., Inc. v. AHCCCS*, [182 Ariz. 221, 228](#) (App. 1994). (“AHCCCS reasons, it can be inferred from its silence that the legislature never envisioned the need for an explanatory rule. Again, we disagree.”); *accord* ASU, [237 Ariz. at 252, ¶¶ 23-25](#). The Board disputes none of these principles and gives the Court no reason to depart from them.

The Court can stop there. These implicit concessions establish an APA violation and show that the superior court should not have dismissed the complaint.

**B. Most of the justifications given below by the superior court and the Board remain undefended.**

In addition, the Board does not defend most of the superior court’s bases for dismissal. The Board does not defend the superior court’s comment that rulemaking would be “impracticable” (Opening Brief at 31-32), that the Board would have to promulgate rules covering every aspect of a school’s operations (*id.* at 33), that writing rules would be too difficult

(*id.* at 34-35), that the APA does not apply to rules that apply to another governmental entity (*id.* at 35-36), that rules would have been required since 1994 (*id.* at 36-37), and that the Board's dual role as sponsor and agency means it does not have to follow the APA (*id.* at 38-39). The Board also abandoned many of the arguments it made below, including that the Frameworks merely collect information (*id.* at 43-47). In sum, the Board does not discuss, let alone defend, the core of the superior court's bases for the judgment below, or the Board's other arguments made below.

**II. The Board's sole argument on appeal seeks an implicit exemption, which contradicts settled law.**

Instead of disputing the *prima facie* elements of an APA violation, the Board instead makes only one argument on appeal – that the legislature *implicitly* exempted the Board from rulemaking in connection with promulgating the Frameworks. But the legislature plainly did not *expressly* exempt the Board, as required under the APA. To the contrary, the recent vetoed legislation demonstrates that the Board was not exempt from rulemaking.

Without the benefit of an express exemption, the Board searches for an exemption in the shadows of the statute: (1) by looking at the label used

for the rule, (2) by making a faulty surplusage argument, and (3) by pointing to the agencies that (unlike the Board) have an express rulemaking exemption. All of those arguments fail.

**A. The legislature’s attempt to exempt the Board from rulemaking shows that the Board has to write rules.**

The bill the legislature passed while this was appeal was pending (S.B. 1036) would have expressly created the exemption the Board now wants this Court to infer. For several reasons, this vetoed legislation shows why the Court should reject the Board’s argument that it is already exempt from the requirement to promulgate the Frameworks through rulemaking.

First, this bill came in response to this lawsuit. The president of the Board testified before the Senate Education Committee, explaining that the bill was in response to “lawsuits [that] basically required us to do a rulemaking process and put all those things through an official process.” Hearing Before the S. Educ. Comm., S.B. 1036 (53d Leg., 1st Reg. Sess.) (Jan. 19, 2017), [http://azleg.granicus.com/MediaPlayer.php?view\\_id=13&clip\\_id=18373&meta\\_id=380465](http://azleg.granicus.com/MediaPlayer.php?view_id=13&clip_id=18373&meta_id=380465), at 2:09:15. The fact that the legislature passed the bill shows that the legislature (as well as the Board) thought new

legislation was necessary to create a rulemaking exemption. That is, the legislature thought that the Board was not already exempt.

The Supreme Court recently faced a similar situation, where new legislation passed in response to litigation or potential litigation added an exemption not previously present in the statute. *See City of Phoenix v. Glenayre Elecs., Inc.*, -- Ariz. --, 393 P.3d 919, 925, ¶¶ 20-21 (Ariz. 2017). In that case, the Court explained that “the legislature (albeit . . . not the 1989 legislature that passed [the original statute]) would not have needed to add subsection (G)” if the claimed exemption already existed. *Id.*, ¶ 21. Likewise here, the legislature’s addition of an explicit statutory APA exemption for the Board (in subsection (G)) shows that it did not consider the Board to be exempt from rulemaking without the amendment. *See* S.B. 1036, § 2 (amending A.R.S. § 41-1005(G)). [SAPP070.]

Second, the vetoed legislation did not give the Board free reign. Although it granted a rulemaking exemption, it also established important procedural safeguards for schools, parents, and the public. In particular, it required “at least two opportunities for public comment,” and then created an additional process for the public to petition the Board with a built-in check by the Governor’s Regulatory Review Council. *See* S.B. 1036, § 2

(amending A.R.S. § 41-1005(G)-(H)). [SAPP070.] Thus, the legislature was not willing to give the Board a blank check to regulate without restrictions. By contrast, the rulemaking exemption the Board asks the Court to infer would have none of those procedural protections.

Thus, the vetoed legislation further confirms that under current law, the Board is not exempt from rulemaking. Moreover, because the governor vetoed the bill that would have created an exemption, it would be particularly egregious to infer an exemption in this context. Doing so would violate the separation of powers and would effectively nullify the governor's veto as to the Board.<sup>3</sup>

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<sup>3</sup> The governor stated that he favored the exemption and that “the additional requirements of the bill are onerous.” S.B. 1036 veto letter (May 22, 2017) [copy at SAPP071]. That statement does not justify inferring an exception without any procedural requirements (as the Board wants). The bill the legislature presented to the governor had additional procedural safeguards, reflecting the legislature's choice to protect the public from arbitrary agency action. Because the governor disagreed, the bill failed to become law.

**B. Contrary to the Board’s suggestion, the statutes do not support an implicit rulemaking exemption.**

**1. The legislature’s use of the word “frameworks” does not exempt the Board from the APA.**

In hunting for an exemption from rulemaking, the Board focuses on the legislature’s use of the word “frameworks” instead of “rules” in A.R.S. § 15-183(R). (E.g., Answering Brief at 16 (“Because the Legislature specifically required charter school sponsors to adopt performance *frameworks* rather than performance rules in A.R.S. § 15-183(R), the Schools’ argument fails.”).) But contrary to the Board’s suggestion, the legislature need not use the word “rule” or any other magic words to invoke the APA.

**(a) The APA focuses on substance, not labels.**

The legislature has already said how to determine whether something qualifies as a rule. The statutory definition of “rule” looks to the *substance* of the agency’s action, not the *label*. If the legislature intended to capture in the rulemaking requirement only agency action labeled a “rule,” it would have had no need to define the term “rule.” But in saying that “[r]ule’ means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency,” [A.R.S. § 41-1001\(19\)](#), the

legislature put the focus on what an agency does, not on what it calls that action.

Furthermore, the legislature need not use any magic words to invoke the rulemaking requirement because the legislature already determined that the APA should apply “to all agencies and all proceedings” prospectively. [A.R.S. § 41-1002\(A\)](#). It applies by default, without the legislature needing to invoke the APA every time. In sum, the broad prospective application (“all agencies and all proceedings”) coupled with the express statutory definition (the two-part substantive framework) freed the legislature from having to invoke the rulemaking requirement every time it gave an agency a new substantive power or obligation.

**(b) This Court’s opinions confirm that the APA focuses on substance, not labels.**

For these reasons, this Court has repeatedly and correctly focused on the substance of the agency action to determine whether an agency needed to follow the APA. Accordingly, it has applied the APA’s rulemaking requirements to agency action with a wide variety of labels. For example, it held that an agency’s “Policy” qualified as a rule, despite the fact that the statute ([A.R.S. § 38-749](#)) did not mention anything about rulemaking. *See*

*ASU*, 237 Ariz. at 252, ¶ 24 (“[R]ulemaking is required before the Policy can be given effect.”). Likewise, this Court also held that a “methodology for computing” hospital charges “was a ‘rule’” under the APA, although the statute (1989 Ariz. Sess. Laws, Ch. 293, § 22) said nothing about rulemaking. *Carondelet*, 182 Ariz. at 225. And “a schedule of rates and charges” for ambulance services qualified as a rule, again without an express statutory rulemaking requirement. *Sw. Ambulance, Inc. v. Ariz. Dep’t of Health Servs.*, 183 Ariz. 258, 260 (App. 1995).

Tellingly, of those three cases, the Board cites only *ASU*; it makes no effort to distinguish either *Southwest Ambulance* or *Carondelet*. In light of those three cases, however, § 15-183(R)’s use of the word “frameworks” does not exempt the Board from rulemaking. “Frameworks” can be rules in the same way that a “Policy” or “methodology” or “schedule” can be a rule. What matters is the substance, not the label.

The Board relies on *Duke Energy Arlington Valley, LLC v. Ariz. Dep’t. of Revenue*, 219 Ariz. 76 (App. 2008).<sup>4</sup> The Board advances the proposition (at

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<sup>4</sup> The Board does not cite and thus has abandoned its reliance on *Shelby Sch. v. Ariz. State Bd. of Educ.*, 192 Ariz. 156 (App. 1998). (Cf. Opening Brief at 44 n.8 (discussing *Shelby*)).



18) that “us[ing] a word or phrase other than ‘rule’” suggests that the legislature did not intend for the agency to promulgate a rule. *Duke* does not support that broad proposition.

*Duke* held that a particular statutory reference to “guidelines” did not qualify as a rule after carefully analyzing the statutes at issue and how the “guidelines” would be used. The Court emphasized that the agency could apply the guidelines, but then was “required to consider [an] additional adjustment upon submission by the taxpayer . . . .” *Id.* at 79, ¶ 15. That is, the guidelines could not be determinative “[b]ecause the statute mandates that the Department consider an obsolescence adjustment *in addition to* the value prescribed by the tables [i.e., the guidelines] . . . .” *Id.* at 79-80, ¶ 15 (emphasis in original).

By contrast, the Frameworks alone can justify adverse agency action without any requirement that the Board consider other factors. The Schools explained in detail how the Frameworks are used, including the decision to renew or revoke a charter and whether and how a school may expand. (See Opening Brief at 45-47.) The Board does not dispute any of those consequences. Nor could it. The statutes themselves confirm that the Board may take those adverse actions based on the Frameworks without

any statutory requirement for the Board to accept any additional information from a school. See [A.R.S. § 15-183\(I\)\(1\)\(a\)-\(b\)](#) (renewal decision based on Frameworks); *id.* [§ 15-183\(I\)\(3\)\(a\)-\(b\)](#) (charter revocation decision based on Frameworks).

*Duke* also contains other analysis not relevant to this case. First, the Court engaged in statutory interpretation to determine whether the “guidelines” in the statute referred to the “tables” in another subsection—an issue unique to that statute and not relevant here. [219 Ariz. at 78, ¶¶ 8-10](#). Second, the Court relied on evidence of the legislature’s careful use of terms: requiring “rules” but not “guidelines” in three instances; “guidelines” but not “rules” in three other instances; and—perhaps decisively—in another instance expressly requiring “a guideline to be adopted by rule.” *Id.* [at 78-79, ¶ 11](#). By contrast, the Board cannot point to such careful distinctions in this case. The Board points to only one example calling for a rule—in a different section of the charter school statutes ([A.R.S. § 15-182\(E\)\(5\)](#), which requires “rules for [the Board’s] own government”). And that lone reference to a rule addresses only *internal* processes, not how the Board would supervise the regulated schools. Nothing in that unrelated statute suggests a careful demarcation and

delineation between rules and frameworks. And without that, the Court should apply the statutory definition of “rule” found in [A.R.S. § 41-1001\(19\)](#).

Moreover, to the extent *Duke* relies on the label used to describe agency action, it is an outlier whose holding should not be extended. As shown in the table below, placing undue emphasis on the label used for the agency action not only ignores the substance-based statutory definition in [A.R.S. § 41-1001\(19\)](#), but also places *Duke* in sharp contrast to the other cases addressing this issue, including *ASU*, *Southwest Ambulance*, and *Carondelet*. All of those cases held that agency action qualified as a “rule” despite not being labeled a “rule.”

Label applied to agency action	Rule?	Case
“Policy”	Rule	<i>Ariz. State Univ. v. Ariz. State Ret. Sys.</i> , <a href="#">237 Ariz. 246</a> (App. 2015)
“schedule of rates and charges”	Rule	<i>Sw. Ambulance, Inc. v. Ariz. Dep’t. of Health Servs.</i> , <a href="#">183 Ariz. 258</a> (App. 1995)
“methodology for computing”	Rule	<i>Carondelet Health Servs., Inc. v. AHCCCS</i> , <a href="#">182 Ariz. 221</a> (App. 1994)
“guidelines”	No	<i>Duke Energy Arlington Valley, LLC v. Ariz. Dep’t. of Revenue</i> , <a href="#">219 Ariz. 76</a> (App. 2008)

For all of these reasons, the Court should reject the Board's argument that the "frameworks" label somehow overrides the fact that the Frameworks meet the substantive statutory definition of "rule."

- 2. Requiring the Frameworks to be "publicly available" does not imply a rulemaking exemption because that requirement applies to exempt sponsors and goes beyond what the APA requires.**

The Board also contends (at 19-20) that the legislature's decision to require that "[t]he performance framework shall be publicly available, [and] shall be placed on the sponsoring entity's website," [A.R.S. § 15-183\(R\)](#), suggests that the legislature did not intend for the Board to follow the APA because that portion of the statute would be superfluous. That argument fails for two independent reasons.

First, the requirement is not superfluous because it applies to all sponsors, including those exempt from the APA. That means that a university or community college must make available to the public the frameworks applicable to its captive schools, even though those frameworks need not be published in the Arizona Administrative Code. A statutory requirement need not apply to all agencies in all situations to avoid being superfluous, and here the statute applies at a minimum to

agencies exempt from the APA. This example conclusively shows that the “publicly available” requirement is not superfluous, and could be legislative choice to achieve some of the APA’s goals even for APA-exempt sponsors.

Second, the same enactment requires sponsors to post the frameworks “on the sponsoring entity’s website.” [A.R.S. § 15-183\(R\)](#). Thus, the legislature chose to require a specific form of public availability that goes beyond the APA’s publication requirements. The Arizona Administrative Code and Administrative Register are accessible to sophisticated and informed members of the public, but the sponsoring entity’s website is even more accessible to interested students and parents.

Simply put, the Board must publish the Frameworks in two places: in the Arizona Administrative Register and on its own website. Publishing administrative materials in multiple places is not unusual or superfluous. As just one example, the very first rule from the Department of Revenue covers the due date for income tax returns ([Ariz. Admin. Code R15-2A-103](#)), but the agency also publishes that date in other places, including on Form 140 and an FAQ section of its website.

Thus, the publication requirements in [A.R.S. § 15-183\(R\)](#) are not superfluous and do not imply that the Board is exempt from the APA.

**3. Other sponsors' rulemaking exemptions do not exempt the Board from rulemaking.**

The Schools explained (Opening Brief at 40-42) why rulemaking exemptions for other potential charter school sponsors do not exempt the Board from its rulemaking requirements. The Board nevertheless contends (at 21-32) that the other rulemaking exemptions suggest the Board is exempt from promulgating the Frameworks as rules.

This argument carries particularly little weight now that the legislature tried and failed to give the Board a rulemaking exemption similar to the exemption the other sponsors already enjoy. As explained above ([Argument § II.A](#)), the vetoed legislation shows that the legislature had not previously intended to exempt the Board from its rulemaking obligations but instead (correctly) thought that an express exemption would be necessary. At bottom, the Court should not infer from the legislature's exemptions for *other* sponsors that the legislature also intended to exempt the Board.

Moreover, the other sponsors have *general*, agency-level exemptions, which the Board plainly does not have. The Board invites the Court to use the other sponsors' general exemptions to infer a specific, *subject-matter* exemption for the Frameworks in particular. That makes no sense.

The Board appears to suggest that it would be unfair or odd for the Board to write rules when the other sponsors do not have to do so. But as the Schools explained, several rules already exist that apply only to Board-sponsored charter schools, and not to charter schools with other sponsors. (See Opening Brief at 41 (citing [Ariz. Admin. Code R7-5-101 to R7-5-504](#))). The Board did not respond to that point at all. And that point applies even more strongly now that the Board has finalized rules codifying the Frameworks. Right now, the Arizona Administrative Code contains rules implementing the Frameworks only as to the Board, but not as to the other sponsors. That is not an absurd result that justifies inferring a rulemaking exemption that does not exist.

Furthermore, in the Opening Brief the Schools also explained why exempting the other sponsors from promulgating the Frameworks as rules can make sense. All or almost all of the charter schools sponsored by the other sponsors are "captive" schools that are essentially run by the

sponsor, such as university-run charter schools. By contrast, the Board sponsors essentially all of the other charter schools. As the Schools explained, the captive schools do not need the same kinds of procedural protections as independent schools sponsored and regulated by the Board. (Opening Brief at 41.) Again, the Board does not respond at all to that argument.

Finally, the Schools explained that the superior court should not have relied on other sponsors' situations to grant a motion to dismiss. (Opening Brief at 42.) There are no facts in the record concerning a single charter school sponsored by an entity other than the Board, so the superior court should not have speculated about other sponsors and other schools. Because the standard for granting a Rule 12(b)(6) motion is so high—“not [ ] entitled to relief under any interpretation of the facts susceptible of proof,” *Coleman v. City of Mesa*, 230 Ariz. 352, 356, ¶ 8 (2012) (quotation marks omitted)—the court should not have relied on this issue in granting dismissal.

The Board contends (at 27) that the Legislature knows how to impose rulemaking requirements on the other sponsors. True, but the legislature had to specifically invoke the rulemaking procedures for those agencies



that are otherwise generally exempt from the APA. By contrast, because the Board has no similar general exemption, and the APA applies unless “expressly exempted,” the legislature did not need to specifically invoke the rulemaking requirement in [A.R.S. § 15-183\(R\)](#). Thus, the Board’s reliance (at 27) on *City of Flagstaff v. Magnum*, [164 Ariz. 395, 398](#) (1990), and *Hart v. Hart*, [220 Ariz. 183, 187, ¶ 17](#) (App. 2009), makes no sense. Those cases address the Court inferring a requirement not in the text of the statute, which would contravene legislative intent. By contrast, here the legislature has codified the APA obligations in statute ([A.R.S. § 41-1002\(A\)](#)) and made them generally applicable. The Board, not the Schools, invites the Court to go beyond the statute.

Likewise, the Board cites (at 29) *State ex rel. Morrison v. Amway*, [87 Ariz. 206, 209](#) (1960), for the proposition that “courts cannot read into a statute something that is not within the Legislature’s manifest intent as gathered from the statute itself.” In so arguing, however, the Board apparently limits its focus to § 15-183(R). But the inquiry is not so narrow. The legislature demonstrated its “manifest intent” (to use the Board’s parlance) in [A.R.S. § 41-1002\(A\)](#), which states that the APA’s rulemaking requirements “apply to all agencies and all proceedings not expressly

exempted.” This Court has repeatedly confirmed that principle. *See Carondelet*, 182 Ariz. at 228 (“AHCCCS reasons, it can be inferred from its silence that the legislature never envisioned the need for an explanatory rule. Again, we disagree.”); *ASU*, 237 Ariz. at 252, ¶¶ 23-24 (“[T]he statute’s silence does not exempt the System from the APA’s rulemaking procedure.”). The Board interprets legislative silence in § 15-183(R) as indicating that it need not comply with the APA, when in fact silence means just the opposite.

**III. The Schools do not contend that the Board must promulgate the existing Frameworks verbatim as rules.**

Finally, the Board raises (at 32-35) an argument that the Schools are not advancing. The Schools do not contend that the Board must take the existing Frameworks verbatim and publish them as rules, as the Board suggests. There appears to be no actual dispute between the parties on this point.

The Board relies on a passage from the Schools’ opening brief stating that the case presents the question “whether the Board had to promulgate *those documents* as rules.” (Opening Brief at 33.) The context of that passage indicates that the Schools meant that statement to explain that the

courts need not order the Board to promulgate “a rule for every aspect of overseeing a charter school,” as the superior court suggested. [APP231.] Instead, this Court should look at what the Board actually adopted (i.e., the Frameworks) and evaluate whether the Board had to comply with the APA in promulgating those specific documents in order for them to be effective and carry the force of law. That is, the Court should compare the Board’s actions to the statutory definition in [A.R.S. § 41-1001\(19\)](#).

The Court should hold that the Board violated the APA in adopting the Frameworks and therefore the Frameworks are not effective. The specific disposition should be to vacate the judgment, reverse the dismissal, and remand for further proceedings.

### CONCLUSION

The Court should vacate the judgment, reverse the dismissal, and remand for further proceedings.

RESPECTFULLY SUBMITTED this 23rd day of August, 2017.

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<b>LEGISLATIVE MATERIALS</b>		
	Senate Bill 1036 (53d Leg., 1st Reg. Sess.)	SAPP065- SAPP070
	S.B. 1036 veto letter (May 22, 2017)	SAPP071

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\* The appendix page number matches the electronic PDF page number. This appendix complies with the bookmarking requirements of ARCAP 13.1(d)(3).



**NOTICES OF FINAL RULEMAKING**

This section of the *Arizona Administrative Register* contains Notices of Final Rulemaking. Final rules have been through the regular rulemaking process as defined in the Administrative Procedures Act. These rules were either approved by the Governor’s Regulatory Review Council or the Attorney General’s Office. Certificates of Approval are on file with the Office.

The final published notice includes a preamble and

text of the rules as filed by the agency. Economic Impact Statements are not published.

The Office of the Secretary of State is the filing office and publisher of these rules. Questions about the interpretation of the final rules should be addressed to the agency that promulgated them. Refer to Item #5 to contact the person charged with the rulemaking. The codified version of these rules will be published in the Arizona Administrative Code.

**NOTICE OF FINAL RULEMAKING  
TITLE 7. EDUCATION  
CHAPTER 5. STATE BOARD FOR CHARTER SCHOOLS**

[R17-37]

**PREAMBLE**

<b><u>1. Article, Part, or Section Affected (as applicable)</u></b>	<b><u>Rulemaking Action</u></b>
R7-5-101	Amend
Article 2	Amend
R7-5-201	Amend
R7-5-202	Amend
R7-5-203	Amend
R7-5-204	Amend
R7-5-205	Amend
R7-5-206	Amend
R7-5-207	Amend
R7-5-208	New Section
Article 3	ReNUMBER
Article 3	New Article
R7-5-301	ReNUMBER
R7-5-301	New Section
R7-5-302	ReNUMBER
R7-5-302	New Section
R7-5-303	ReNUMBER
R7-5-303	New Section
R7-5-304	ReNUMBER
Article 4	Repeal
Article 4	New Article
R7-5-401	ReNUMBER
R7-5-401	New Section
R7-5-402	New Section
R7-5-403	New Section
R7-5-404	New Section
Article 5	Repeal
Article 5	New Article
R7-5-501	Repeal
R7-5-501	ReNUMBER
R7-5-501	Amend
R7-5-502	Repeal
R7-5-502	ReNUMBER
R7-5-502	Amend
R7-5-503	Repeal
R7-5-503	New Section
R7-5-504	Repeal
R7-5-504	New Section
R7-5-505	New Section
R7-5-506	New Section
R7-5-507	New Section
R7-5-508	New Section
R7-5-509	New Section
R7-5-510	ReNUMBER
R7-5-510	Amend



Article 6	Renumber
Article 6	New Article
R7-5-601	Renumber
R7-5-601	Amend
R7-5-602	New Section
R7-5-603	New Section
R7-5-604	New Section
R7-5-605	New Section
R7-5-606	New Section
R7-5-607	New Section

**2. Citations to the agency's statutory rulemaking authority to include both the authorizing statute (general) and the implementing statute (specific):**

Authorizing statute: A.R.S. § 15-182(E)(5)  
Implementing statute: A.R.S. §§ 15-182(E)(1), 15-183(I)(1) through (4), and 15-183(R)

**3. The effective date for the rules:**

May 6, 2017

**a. If the agency selected a date earlier than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the earlier date and state the reason or reasons the agency selected the earlier effective date as provided in A.R.S. § 41-1032(A)(1) through (5):**  
Not applicable

**b. If the agency selected a date later than the 60-day effective date as specified in A.R.S. § 41-1032(A), include the later date and state the reason or reasons the agency selected the later effective date as provided in A.R.S. § 41-1032(B):**  
Not applicable

**4. Citation to all related notices published in the Register as specified in R1-1-409(A) that pertain to the record of the final rulemaking package:**

Notice of Rulemaking Docket Opening: 22 A.A.R. 823, April 15, 2016  
Notice of Proposed Rulemaking: 22 A.A.R. 3057, October 28, 2016

**5. The agency's contact person who can answer questions about the rulemaking:**

Name: Ashley Berg  
Address: Arizona State Board for Charter Schools  
1616 W. Adams St., Suite 170  
Phoenix, AZ 85007  
or  
P.O. Box 18328  
Phoenix, AZ 85009  
Telephone: (602) 364-3106  
Fax: (602) 364-3089  
E-mail: Ashley.berg@asbcs.az.gov  
Web site: https://asbcs.az.gov

**6. An agency's justification and reason why a rule should be made, amended, repealed, or renumbered, to include an explanation about the rulemaking:**

The Board is amending its rules to make them consistent with statutory changes made in 2012 and 2013, to make the changes identified in a five-year-review report approved by Council on October 4, 2016, and to place in rule the Board's application of its academic, financial, and operational performance frameworks for charter holders.

On January 21, 2016, Osborn Maledon, PA and Buchalter Nemer, PLC, filed a petition under A.R.S. § 41-1033(C) with the Governor's Regulatory Review Council. The petitioners argued the Board's Academic, Financial, and Operational Performance Frameworks should have been adopted as rules under the Arizona Administrative Procedures Act (APA). The Council chose not to hear the petition because the Board informed the Council a rulemaking had been started to address the issue raised in the petition.

On March 22, 2016, two charter school operators filed a complaint in superior court seeking a judicial determination and declaratory judgment that the Board's academic and financial performance frameworks were rules under the APA that the Board failed to make in accordance with the APA, which made the frameworks void and unenforceable. The complaint sought to void any and all past or future actions taken by the Board in reliance on the frameworks and to enjoin the Board from using the frameworks as the basis for any actions regarding charter schools the Board sponsors. On October 14, 2016, the court granted the Board's Motion to Dismiss. On December 13, 2016, the two charter school operators appealed the court's dismissal of the complaint to the Court of Appeals.

An exemption from Executive Order 2015-01 was provided for this rulemaking by Dawn Wallace, Education Policy Advisor in the Governor's office, in an e-mail dated January 6, 2016.

**7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did 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:**

The Board did not review or rely on a study in its evaluation of or justification for any rule in this rulemaking.



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

Not applicable

**9. A summary of the economic, small business, and consumer impact:**

The Board believes the rulemaking has minimal economic impact on current charter holders and applicants for a charter. The rulemaking involves no substantive change to the Board's current rules and policies. Rather, it clarifies existing rules and places policies into rule so the policies are more readily available to applicants and charter holders.

**10. A description of any changes between the proposed rulemaking, including supplemental notices, and the final rulemaking:**

In addition to the changes indicated in item 11, the following minor, non-substantive changes were made between the proposed and final rules.

R7-5-101: The definition of "annual application cycle" was amended to clarify it is application packages rather than applications that are submitted to the Board.

R7-5-101: The definition of "application" was amended to clarify there are two kinds of transfers possible.

R7-5-101: The definition of "education service provider" was amended to include a charter holder to clarify that an existing charter holder, as well as an applicant, may use an education service provider.

R7-5-101: The definition of "oversight" was deleted because it was redundant. The activities comprising oversight are clearly identified in Article 6.

R7-5-101: The definition of "supervision" was deleted because it was redundant. The activities comprising supervision are clearly identified in Article 5.

R7-5-101: The definition of "technical review panel" was amended to clarify who the panel is assisting.

R7-5-203(A) and R7-5-601(C)(5): The word "time-frame" was changed to "time frame" to align with the other rules and the preference of the Office of the Secretary of State.

R7-5-203(G): The word "application" was changed to "application package" to clarify that the provision regarding a deficiency notice applies to the application package.

R7-5-205(A)(2), (D)(1), (D)(3) and (D)(4) and R7-5-303(A)(2) (Now R7-5-302(A)(2)): The word "site" was deleted to align with the Board's use of "charter school" throughout the rules.

R7-5-205(E): The subsection was amended to clarify it is the Department that has statutory authority to initiate state aid funding and the Board's role is to advise the Department when a charter holder has submitted an Occupancy Compliance Assurance and Understanding form under R7-5-205(A)(2)(c).

R7-5-207(F): The subsection was deleted because it duplicated information provided under R7-5-207(C).

R7-5-208(C): The subsection was amended to clarify that a replication application will be made available to a charter holder only if it is determined the charter holder is eligible to apply for a replication charter.

R7-5-301: This Section was deleted because it included provisions that did not pertain to all post-charter actions and the remaining Sections in Article 3 were renumbered accordingly. The provisions in the deleted Section were incorporated into the renumbered Sections as applicable.

R7-5-302(F) and (I) (Now R7-5-301(I) and (O)): The provision regarding a charter holder's academic performance or operational performance was modified to align with A.R.S. § 15-183(I).

R7-5-302(H) (Now R7-5-301(K)): The subsection was amended to identify the written notice provided by Board staff regarding whether a charter holder is eligible to apply for early renewal.

R7-5-302(I) (Now R7-5-301(O)): Corrected statutory reference to A.R.S. § 15-183(I)(2).

R7-5-302 (Now R7-5-301(L) and (M)): These subsections were added because they were inadvertently left out of the notice of proposed rulemaking even though part of existing policy.

R7-5-302 (Now R7-5-301(N)): This subsection was added to specify the time frame for the Board to consider a charter holder's early renewal application package and for Board staff to conduct an academic-systems-review site visit.

R7-5-303(A)(1) (Now R7-5-302(A)(1)): The provision was amended to clarify it is the charter rather than sponsorship of the charter that is being transferred to the Board.



R7-5-303 (Now R7-5-302(D)): This subsection was added to specify the time frame for Board staff to provide written notice to a charter holder of whether the charter holder may apply for transfer.

R7-5-303(C) (Now R7-5-302(E)): This subsection was amended to require submission of a paper transfer application package until electronic submission through ASBCS Online is available and to clarify that only a charter holder determined to be eligible to apply for transfer may do so.

R7-5-303(D)(13): The phrase “charter holder’s representative” was changed to “charter representative” to align with the defined term.

R7-5-304 (Now R7-5-303(D)(8)): Added “of” to reflect the name of the amendment request accurately.

R7-5-304 (Now R7-5-303(D)(21)): Added “with the same educational program and financial and operational processes” to reflect accurately the conditions that must exist to use this amendment request.

R7-5-304 (Now R7-5-303(E)): This subsection was added to clarify that the Board shall not accept a paper submission of an amendment request unless agreed to by both Board staff and the charter holder before submission of the amendment request.

R7-5-304 (Now R7-5-303(H)): This subsection was added to clarify that, as applicable, only administratively and substantively complete amendment requests will be considered by the Board.

R7-5-401(A)(2)(c): This subsection was added to specify more completely the times when the Board will assess a charter holder’s achievement of minimum academic performance expectations.

R7-5-402(A): A “the” was added before “minimum financial performance expectations” to improve clarity.

R7-5-402(C), (D)(2), (E)(1) and (E)(2): The word(s) “based” or “based on” was added for accuracy and to align with the other provisions of R7-5-402.

R7-5-403(A)(2)(a): Subsection (iv) was added to more completely specify the times when a charter holder’s achievement of the Board’s minimum operational performance expectations will be assessed.

R7-5-403(A)(2)(a)(iv) (Now R7-5-403(A)(2)(a)(v)): Added “of” to accurately reflect the name of the request.

R7-5-404(B): Changed “modifications” to “considerations” to align with the current academic performance framework.

R7-5-502(H) (Now R7-5-502(G)), R7-5-510(D), and R7-5-601(C)(4): Changed to use the term “issue” consistently throughout the rules and as a result of public comment regarding R7-5-510(B)(2).

R7-5-504(G): Changed “corrective action plan” to “CAP,” which is the term defined.

R7-5-505: Subsection (D) was divided into subsections (D), regarding site visits, and (E), regarding compliance checks, because of changes made to R7-5-510(A) as a result of public comment.

R7-5-505(E)(2) (Now R7-5-505(G)(2)): The word “request” was changed to “requests” to align with R7-5-505(E)(1) (Now R7-5-505(G)(1)).

R7-5-506(F): For increased clarity, this subsection was amended to cross reference R7-5-502.

R7-5-506(B)(3): A provision in this subsection was moved to R7-5-506(F) to reflect the timing for the notice being provided.

R7-5-509(A): This subsection was reformatted.

R7-5-509(H): The phrase “or fails to timely submit” was added to clarify the requirement and align with the Board’s operational performance framework.

R7-5-510(C)(1): This subsection was amended to clarify the notice is of a complete CAP having been received and not that the CAP has been completed.

R7-5-601: Corrected a typographical error in the Section number.

R7-5-601(A): Clarified notice is provided before the Board makes a determination and decides whether to impose charter oversight.

R7-5-602(C)(1): The word “academic” was removed to align with A.R.S. § 15-241.



R7-5-602(C)(4), (D) and (E)(3): Changes made to align with the current academic performance framework and as a result of public comment received regarding R7-5-508.

R7-5-603(A)(1): Language was removed to align with A.R.S. § 15-241.

R7-5-604: To more accurately reflect the order of events and what occurs at each stage, R7-5-604(B) was deleted, a new R7-5-604(A) was added, and the original R7-5-604(A) became R7-5-604(B).

R7-5-604(A) (Now R7-5-604(B)): “15-183 and 15-512” replaced with “15-183 or 15-512” to align with A.R.S. § 15-185.

R7-5-607(A): Deleted language to align with A.R.S. § 15-183(I)(3).

**11. An agency's summary of the public or stakeholder comments made about the rulemaking and the agency response to comments:**

Four stakeholders submitted written comments. Eleven stakeholders attended the oral proceeding held on November 29, 2016. The following issues were discussed:

Comment	Analysis	Board Response
<p>General comment: Struck by the use of “shall” in two or three dozen instances where the use takes away discretion from the Board and Board staff. Specific circumstances identified were the Board’s involvement in the employee-employer relationship (R7-5-501(B)(1)(c)), the Board’s access to students (R7-5-501(B)(1)(c)), the Board directing complainants to file complaints with other agencies (viewed “direct” like “shall” in R7-5-507(B)(1)), and the five references to shall in R7-5-505.</p>	<p>As noted below, public comment resulted in changes being made to R7-5-501(B)(1)(c), R7-5-505 and R7-5-507(B)(1). However, following the oral proceeding, it was determined only one “shall” reference should be changed to a “may” to ensure the Board retains its discretion.</p>	<p>The “shall” in R7-5-501(B) was changed to “may”.</p>
<p>R7-5-101: The definitions for “academic performance dashboard”, “financial performance dashboard” and “operational performance dashboard” limit the dashboards to “color-coded graphics” and do not provide flexibility.</p>	<p>The Board’s current dashboards are “color-coded graphics.” If the Board decides to change the format of any or all of the dashboards in the future, the rule definitions will be updated to be consistent with the change.</p>	<p>No change</p>
<p>R7-5-101: The Board defines “day” as a business day. Schools are often closed when other businesses are open. The Board should consider the school’s calendar when providing notice or identifying deadlines under the Board’s rules.</p>	<p>The Board’s portfolio of more than 535 schools makes it difficult to review school calendars when setting deadlines and before sending notices. However, several of the Board’s processes allow for extensions of time that were not included in the rules.</p>	<p>A provision was added to R7-5-501 allowing Board staff to grant an extension in certain circumstances and identifying factors Board staff shall consider in determining whether to grant an extension.</p>
<p>R7-5-301(F): The rule requires advance notice when a charter holder’s post-charter action request will be considered by the Board. However, the rule does not specify the amount of advanced notice. Suggestions for the amount of advanced notice ranged from at least two business days to seven business days. The latter is the same notice provided to a new charter applicant.</p>	<p>The Board concurs that the amount of advanced notice should be specified in rule. Agendas are typically posted a week in advance of Board meetings. For amendment requests and renewal, early renewal and transfer application packages, a 72-hour notice requirement allows for revisions to be made to the Board agenda for time-sensitive amendment requests and application packages while still providing advance notice of the meeting to the charter holder.</p>	<p>Subsections providing at least 72-hours’ notice were added to R7-5-301(C), R7-5-302(H) (Now R7-5-302(G)) and R7-5-303(H).</p>





<p>R7-5-303(B): A shorter overall time frame was proposed for charter amendment requests that update the charter holder’s address, involve changing the charter representative or school governing body, or involve changing the officers, directors, members or partners of the charter holder entity on file with the Board. For the personnel change amendment requests specifically, the current time frame could limit how quickly individuals are able to assume their responsibilities and, in limited cases, could affect the ability to have a quorum. An option presented was reducing the overall time frame to 10 business days.</p>	<p>Following the oral proceeding, the Board analyzed the time it took to process the four amendment requests specifically identified by the participants (“Amendment Subset”). The review period covered amendment requests submitted between July 1, 2015 and December 1, 2016 or acted upon between July 1, 2015 and December 13, 2016. During this period, 1,663 amendment requests were processed, which equates to approximately 98 amendment requests per month. Of the 1,663 amendment requests, 1,211 (72.8%) were Amendment Subset requests. Nearly half of the Amendment Subset requests (583) were either approved or, if applicable, deemed administratively incomplete in 10 or fewer business days. Approximately 82% of the Amendment Subset requests (988) were either approved or, if applicable, deemed administratively incomplete in 20 or fewer business days. Overall, the time to act on the 1,211 Amendment Subset requests ranged from 1 business day to 54 business days. While most of the Amendment Subset requests are acted on in 20 or fewer business days, additional time is necessary to accommodate staff taking vacation/leave, the volume of amendment requests, Board staff’s other workload, or staffing changes. Further, based on the data, establishing different processing time frames for different amendment requests is unnecessary.</p>	<p>No change to the time frames now at R7-5-303(F). The Board expects the processing time identified in the “Analysis” column to continue for Amendment Subset requests.</p>
<p>R7-5-401(D): There is a typo in this rule – “yea” should be “year”.</p>	<p>The comment is correct.</p>	<p>The typo was corrected.</p>
<p>R7-5-404(B): It is reassuring to read that the Board shall ensure the academic performance framework includes modifications for non-traditional charters including small charters with very low enrollment and alternative schools. It is hoped that the Board will continue to recognize there are other types of non-traditional charter schools that may also need modifications to the academic performance framework as seen in the Academic Performance Framework and Guidance as revised June 13, 2016.</p>	<p>The Board appreciates the support.</p>	<p>No change</p>
<p>R7-5-501(A)(3): The phrase “adverse condition” is not defined and, therefore, is vague and overbroad. Concern was raised that this provision would allow the Board to increase its monitoring whenever it desired by simply asserting there is an “adverse condition” the charter holder failed to report.</p>	<p>It was determined this provision was an unnecessary source of possible confusion.</p>	<p>The provision was deleted.</p>



<p>R7-5-501(B)(1)(c): Allowing unfettered communication by Board staff with students and school employees is problematic. Parents should be given advance notice of any proposed communication between their children and Board staff. Interviews by Board staff of certain student populations, such as those in state custody, may raise other issues and require certain approvals be in place before the interview occurs. Because “misconduct” is not defined, disputes between charter employees and their employer could take on greater significance and require additional obligations on the part of the Board and charter holder. Communications with a school’s current employees about a matter that may result in litigation should be undertaken with caution. Clarification is needed for whether the phrase “by any member of the charter school’s staff” modifies “allegations” or “misconduct”.</p>	<p>In the Board’s existing rules, this provision addressed information received through the Board’s complaint process. The current rulemaking includes a section on complaints (R7-5-507), making R7-5-501(B)(1)(c) unnecessary.</p>	<p>The subsection was deleted and R7-5-501(B) was amended to include complaints as one of the means used by the Board to supervise a charter holder.</p>
<p>R7-5-502(D): Unannounced site visits, especially to small charter schools, can be very disruptive to the educational process. Unannounced site visits would be necessary in cases of concerns about the health and safety of students or for the sole purpose of counting students. Otherwise, it seems reasonable to give a school advance notice of a site visit, both in consideration of the school’s instructional process and the visiting Board designee’s time. Every day occurrences, especially for smaller schools like a teacher calling in sick and an administrator filling in, require effort to keep the instructional process moving. Announcing a site visit extends professional courtesy and reduces anxiety for the school’s leaders.</p>	<p>The rules identify four types of site visits: 1) those conducted to review or evaluate a charter holder’s compliance with R7-5-501(A); 2) those conducted to corroborate information and to gather information that permits the Board to evaluate a charter holder’s compliance with R7-5-501(A); 3) first-year site visits (R7-5-505); and 4) academic-systems-review site visits (R7-5-506). Generally, site visits resulting from concerns about the health and safety of students or to count students would fall under one of the first two types. First-year and academic-systems-review site visits are used to see how a school operates day-to-day. Scheduling specific dates for first-year and academic-systems-review site visits may limit Board staff’s ability to see the school operate as it would on a “typical” day. With that said, the Board understands that conducting a site visit on an early release day or when parent-teacher conferences are occurring, for example, would also limit Board staff’s ability to see the school operate as it would on a “typical” day. The Board’s processes require Board staff to provide the charter holder with the opportunity to identify dates within a specified time period that would not be conducive for a first-year site visit or an academic-systems-review site visit. For academic-systems-review site visits, R7-5-506 currently requires Board staff to provide written notice to the charter holder of the two-week interval during which the site visit will be conducted.</p> <p>In conducting any site visit, R7-5-502(F)(2) requires the Board’s designee to make every effort not to disrupt the classroom environment.</p>	<p>No change was made to the provision found in R7-5-502(D), but provisions were added to R7-5-505 and R7-5-506 indicating that for first-year and academic-systems-review site visits Board staff will provide the charter holder an opportunity to identify dates within a specified time period that would not be conducive for the site visit.</p>



<p>R7-5-505(B)(2): “Business relationship” is not defined leaving the meaning open to interpretation. A rule that would allow any entity with a business relationship with the charter holder to mandate that the Board conduct a compliance check would abdicate the Board’s discretion regarding compliance checks to a third-party that has no regulatory authority or any authority over charter schools. Under the other portions of the rule, a charter school can always request that Board staff provide compliance check information to an entity with which it has or may have a business relationship.</p>	<p>The rule’s provision that “Board staff may conduct a compliance check of a charter holder’s operational performance at any time” provides for Board staff to consider a request from a charter holder for a compliance check to be conducted and the results to be shared with a third-party. In addition to R7-5-505(B)(1) (Now R7-5-505(C)(1)), the Board conducts a compliance check when a lending institution, bond rating agency, or similar entity that has a loan or bond arrangement with a charter holder contacts Board staff to discuss a charter holder’s current standing with the Board. While this would fall under R7-5-505(B)(2), the Board believes clearly identifying this use would provide additional transparency.</p>	<p>The general provision was replaced with a provision that addresses the Board’s use of compliance checks when Board staff is contacted by certain entities to discuss a charter holder’s current standing with the Board.</p>
<p>R7-5-507(B)(1): It is inappropriate for Board staff to “direct” a complainant to file the complaint with another agency if the complaint is not within the Board’s jurisdiction. Board staff should only provide a complainant with information about the potentially appropriate agency with which to file a complaint.</p>	<p>The rule, as written, does not fully align with Board processes. When a complaint falls outside of the Board’s jurisdiction, Board staff does not direct the complainant to file the complaint with other agencies, but does provide the complainant with information about the agency that may be able to assist.</p>	<p>The word “direct” was removed and the provision modified to reflect that Board staff shall inform the complainant that the complainant may file the complaint with the appropriate agency.</p>
<p>R7-5-507(C): Although 10 days may be enough time to prepare a complaint response in many instances, there may be circumstances in which additional time for a response is warranted. For example, a complaint may be received when a school is closed for a break, or a complaint may be so lengthy and detailed that 10 days will simply not provide enough time for a school to adequately respond to the complaint. The rule should provide Board staff with discretion to grant additional time to respond.</p>	<p>The rule, as written, does not fully align with Board processes, which allow for the granting of extensions.</p>	<p>A provision was added to clarify that Board staff may grant the charter holder an extension to submit the written response.</p>
<p>R7-5-507(C): This provision requires the charter holder’s response to address each allegation. For allegations that involve possible statutory or contractual noncompliance, the response should address each allegation. However, complaints typically involve matters that do not pertain to statutory or contractual requirements. In those cases, charter holders would appreciate it if the Board identified those areas that require a response like the Office for Civil Rights and the Arizona Department of Education’s Exceptional Student Services do.</p>	<p>The rule addresses only those complaints that fall within the Board’s jurisdiction or that may fall within the jurisdiction of another agency. It does not address instances where the Board facilitates communication between the charter holder and complainant.</p>	<p>No change</p>
<p>R7-5-507(E): The notice of final action to be taken should be sent not only to the complainant but also to the charter holder.</p>	<p>The comment is correct.</p>	<p>A provision was added requiring Board staff to send the notice of the final action to be taken to the charter holder.</p>
<p>R7-5-508(A)(1): The reference to R7-5-503(D) needs to be updated as the proposed rules do not contain such a rule.</p>	<p>The comment is correct.</p>	<p>The reference to R7-5-503(D) was changed to R7-5-401(D).</p>



<p>R7-5-508: Arizona law allows a charter school authorizer to make decisions about a charter based on whether the charter holder is meeting the authorizer’s academic performance expectations or making “sufficient progress” towards those expectations. R7-5-508 recognizes this and allows the Board to require a charter holder to demonstrate sufficient progress. However, the rule does not address the contents or format of what charter holders will be required to submit.</p>	<p>Under previous versions of the Board’s academic performance framework, a charter holder that operated a school that didn’t meet the Board’s academic performance expectations was required to submit a detailed document to demonstrate progress toward meeting the expectations. The current academic framework states, “A Charter Holder that has one or more schools that receive an Overall Rating of ‘Does Not Meet Standard’ or ‘Falls Far Below Standard’ for three consecutive years has failed to demonstrate sufficient progress.” Now, instead of requiring a submission from a charter holder to demonstrate sufficient progress, the determination of sufficient progress is based on the charter holder’s year-to-year academic performance.</p>	<p>To reflect accurately the requirements of the current academic performance framework and to eliminate confusion, revisions were made to R7-5-508 clarifying the demonstration of sufficient progress process.</p>
<p>R7-5-508(B)(3): There are no guidelines for the Board’s determination of the deadline, including that it must be reasonable in light of the factors identified by the Board in subsection (B)(2). A reasonable deadline should take into account why a school is not meeting the academic performance expectations, and it will necessarily depend on a host of facts that are specific to each school. Moreover, requiring the Board to set a deadline before it receives a school’s demonstration of sufficient progress necessarily eliminates the Board’s consideration of information that is likely relevant to setting that deadline.</p>	<p>Analysis provided for the public comment on R7-5-508 (see row above) is applicable to this comment as well.</p>	<p>As part of the changes made as a result of public comment received for R7-5-508 (see previous row), subsections (B)(1) through (B)(3) were deleted.</p>
<p>R7-5-510: Appreciation expressed for the specific timelines set for compliance within the correction action plan section before further Board action is to be taken.</p>	<p>The Board appreciates the support.</p>	<p>No change</p>
<p>R7-5-510(A): The CAP requirement is triggered when the Board receives information that a charter holder is not in compliance with its charter or laws, which is a lower threshold than a determination that the charter holder is not in compliance with contractual or legal requirements. In addition, overlap may exist between this rule and other rules. For example, a charter holder required to respond to a complaint could also be required to submit a CAP. The rule should be revised to delineate the specific circumstances under which a CAP will be required.</p>	<p>The rule, as written, does not fully align with Board processes. The Board requires a charter holder to submit a CAP only for issues identified during site visits, audits, or as a result of actions taken by the Board to withhold up to 10% of the charter holder’s monthly state aid (R7-5-601(D)(2) and R7-5-605).</p>	<p>Specific references to CAPs were added to R7-5-502(G) and R7-5-505(D), which pertain to site visits.</p> <p>R7-5-510(A) was revised to focus the CAP requirement to site visits, audits, and withholding of a charter holder’s monthly state aid.</p>
<p>R7-5-510(B)(2): Suggested adding “deficiency” since some problems will not be offenses, which technically must be a violation of law, not merely a violation of a contract provision.</p>	<p>The comment is correct.</p>	<p>The provision was changed to “A description of the issue” to align with the changes identified in item 10 and to use the same term consistently throughout the rules.</p>



<p>R7-5-607(B)(1)(c): The charter holder should be allowed to provide additional context and its views on the Board's decision in the notice provided to parents and staff and not be limited to only providing the Board's side of the story. The date and time of the hearing on the notice of intent to revoke may not be known within 48 hours of the issuance of the notice.</p>	<p>The rule, as written, does not fully align with Board processes. Under current processes, the written notice provided by the charter holder must include the items specified in this rule, but is not limited to only these items.</p> <p>The 48 hours is from when the charter holder receives the notice of intent to revoke and not from when the Board votes to issue a notice of intent to revoke. The notice of intent to revoke provided to the charter holder includes the date, time and location of the hearing set with the Office of Administrative Hearings.</p>	<p>The provision was changed to indicate that the written notice provided by the charter holder shall include the three items identified in the rule.</p> <p>R7-5-607(B) and R7-5-607(B)(1) were revised to clarify that the hearing information is included with the notice of intent to revoke provided to the charter holder.</p>
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**12. All agencies shall list any other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:**

None

**a. Whether the rule requires a permit, whether a general permit is used and if not, the reasons why a general permit is not used:**

Charters issued under Article 2 and post-charter actions made under Article 3 are general permits consistent with A.R.S. § 41-1037 because they are issued to qualified individuals or entities to conduct activities that are substantially similar in nature.

**b. Whether a federal law is applicable to the subject of the rule, whether the rule is more stringent than federal law and if so, citation to the statutory authority to exceed the requirements of federal law:**

There are numerous federal laws that apply to public schools. However, no federal law is directly applicable to the subject of these rules. The rules are no more stringent than federal law.

**c. Whether a person submitted an analysis to the agency that compares the rule's impact of the competitiveness of business in this state to the impact on business in other states:**

No analysis was submitted.

**13. A list of any incorporated by reference material as specified in A.R.S. § 41-1028 and its location in the rule:**

None

**14. Whether the rule was previously made, amended, or repealed as an emergency rule. If so, cite the notice published in the Register as specified in R1-1-409(A). Also, the agency shall state where the text was changed between the emergency and the final rulemaking packages:**

None of the rules in this rulemaking was made, amended, or repealed as an emergency rule.

**15. 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. ~~APPLICATION FOR A NEW CHARTERS CHARTER; APPLICATION FOR CHARTER REPLICATION~~**

Section

R7-5-201. Application for a New Charter

R7-5-202. New Charter Application Processing Fee

R7-5-203. ~~Time frames~~ Time Frames for Granting or Denying a New Charter

R7-5-204. Review of Administratively Complete Application Package for a New Charter, Technical Assistance, and ~~In-Person~~ In-person Interview

R7-5-205. Execution of a New Charter

R7-5-206. ~~Good-Cause~~ Good-cause Extension to Execute a New Charter

R7-5-207. ~~Good-Cause~~ Good-cause Suspension of a New Charter

R7-5-208. Application for Replication Charter

**ARTICLE 3. ~~CHARTER OVERSIGHT~~ POST-CHARTER ACTIONS**

Section

R7-5-301. Application for Charter Renewal; Early Renewal of Charter



- R7-5-302. Charter Transfer Application
- R7-5-303. Charter Amendment Requests

**ARTICLE 4. ~~AMENDMENT TO A CHARTER~~ MINIMUM PERFORMANCE EXPECTATIONS**

Section

- R7-5-401. Amendment to a Charter Minimum Academic Performance Expectations
- R7-5-402. Minimum Financial Performance Expectations
- R7-5-403. Minimum Operational Performance Expectations
- R7-5-404. Development and Use of Performance Frameworks

**ARTICLE 5. ~~AUDITS AND AUDIT CONTRACTS~~ CHARTER SUPERVISION**

Section

- ~~R7-5-301~~ R7-5-501. Audit Guidelines General Supervision, Oversight, and Administrative Responsibility
- ~~R7-5-303~~ R7-5-502. Approval of Audit Contracts Site Visits, Records, Notice of Violation
- R7-5-503. Audit Completeness Determinations Annual Academic Performance Review
- R7-5-504. Review of Complete Audit Annual Audit and Financial Performance Review
- R7-5-505. Annual Operational Performance Review
- R7-5-506. Five-year-interval Review
- R7-5-507. Complaints
- R7-5-508. Demonstration of Sufficient Progress towards Minimum Academic Performance Expectations
- R7-5-509. Financial Performance Response
- ~~R7-5-302~~ R7-5-510. Corrective Action Plan

**ARTICLE 3. ~~ARTICLE 6.~~ CHARTER OVERSIGHT**

Section

- ~~R7-5-304~~ R7-5-601. Disciplinary Action Charter Oversight: General Provisions
- R7-5-602. Oversight of Charter Schools Assigned a Letter Grade of "F" by the Department
- R7-5-603. Oversight of Charter Schools Assigned a Letter Grade of "D" by the Department
- R7-5-604. Civil Penalty for Fingerprinting Violations
- R7-5-605. Withholding State Funds
- R7-5-606. Consent Agreement
- R7-5-607. Revocation

**ARTICLE 1. GENERAL PROVISIONS**

**R7-5-101. Definitions**

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

"Academic performance dashboard" means color-coded graphics that represent a charter school's academic performance by measure for the three most recent fiscal years and identifies whether the schools operated by the charter holder meet the minimum academic performance expectations.

"Academic Performance Framework" means a document publicly available and posted on the Board's web site that sets forth the minimum academic performance expectations for charter schools, measures of progress towards meeting the expectations, and consequences of failing to meet the expectations.

"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~~ time frame" means the number of days from the Board's receipt of a submission for Board consideration until the Board staff determines whether the submission contains all components and is formatted as 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 submission.~~

"Annual application cycle" means a ~~new charter application~~ the process which is conducted the Board conducts each year to receive and review new charter application packages and grant or deny charters for the operation of new a charter schools and is based on the earliest fiscal year in which a new charter school may begin operation.

"Applicant" means a person that applies to the Board for a new charter, ~~a person who applies to transfer a charter from another charter school sponsor, a charter holder who applies to renew or replicate a charter sponsored by the Board, or a charter holder who applies to transfer an existing charter school site operated under a charter sponsored by the Board to a separate Board-sponsored charter held by the same charter holder.~~

"Application" means the Board-approved forms and instructions used by an applicant or charter holder to apply for a new charter, transfer a charter as provided under R7-5-302(A)(1), transfer a charter school as provided under R7-5-302(A)(2), or renew or replicate a charter sponsored by the Board.

"Application package" means an application form, narratives, and documents, including exhibits and attachments, ~~as~~ submitted by an applicant or charter holder.

"ASBCS Online" means the Board's web-based interface, which is accessible through the web site of the Arizona State Board for Charter Schools' website Schools.



- “Audit” means a charter holder’s annual audit, ~~as required by~~ under 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 online.~~
- “Authorized representative” means an individual with the power to bind an applicant contractually according to the applicant's Articles of Incorporation, operating agreement, or by-laws.
- “Board” means the Arizona State Board for Charter Schools.
- “CAP” means corrective action plan.
- “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 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 and is the point of contact ~~for~~ with the Board for the purposes of communication and accountability to ~~contract~~ charter terms and conditions.
- ~~“Charter school” means a public school operated under a charter granted under A.R.S. § 15-181 et seq~~ has the meaning specified at A.R.S. § 15-101.
- “Date of notice” means the date on which an electronic notification is sent by the Board to an applicant or charter holder through the authorized representative or charter representative.
- “Day” means a business day.
- “Demonstration of sufficient progress” means the process for a charter holder to show the charter holder is making progress towards achieving the minimum academic performance expectations specified in the Academic Performance Framework.
- “Department” means the Arizona Department of Education.
- “Education Service Provider” means an organization that contracts with or has a governance relationship with an applicant or charter holder to provide comprehensive services.
- “Financial performance dashboard” means a color-coded graphic that represents a charter holder’s financial performance by measure for the two most recent audited fiscal years and identifies whether the charter holder’s financial performance meets the minimum financial performance expectations.
- “Financial Performance Framework” means a document publicly available and posted on the Board’s web site that sets forth the minimum financial performance expectations for charter holders, measures of performance, and consequences of failing to meet the expectations.
- “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.~~
- “Operational performance dashboard” means a color-coded graphic that represents a charter holder’s operational performance by measure for up to the five most recent fiscal years and identifies whether the charter holder’s operational performance meets the minimum operational performance expectations.
- “Operational Performance Framework” means a document publicly available and posted on the Board’s web site that sets forth the minimum operational performance expectations for charter holders, measures of performance, and consequences of failing to meet the expectations.
- ~~“Overall time frame time frame” means the number of days after receipt of a submission for Board consideration until the Board decides whether to grant or deny the request contained within in the submission. The overall time frame time frame consists of both the administrative completeness review time frame time frame and the substantive review time frame time frame.~~
- ~~“Peer review” means an external quality control quality-control review, as required by generally accepted government auditing standards, that which determines whether an audit firm’s internal quality control quality-control system is in place and exists, is operating effectively, and provides assurance that established policies and procedures and applicable auditing standards are being followed.~~
- “Performance expectations” means the minimum academic, financial, and operational performance expectations established by the Board.
- “Person” means an individual, partnership, corporation, association, or public or private organization of any kind.
- ~~“Preliminary application package” means an administratively complete application package that is forwarded to the Technical Review Panel for scoring.~~
- “Principals” means the officers, directors, members, partners, or board of an applicant or charter holder.



“Revised application package” means an application package including revisions submitted by an applicant after receiving written notification that the applicant's preliminary application package failed to meet the scoring requirements of R7-5-204.

“Serious impact finding” means an issue identified by the Board that ~~in the opinion of the Board~~ believes has or potentially has a significant detrimental impact on the operation of the charter school or students, such as 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, or ~~repeat repeated~~ issues of ~~non-compliance~~ noncompliance.

“Submission deadline” means a date and time established each year by the Board and identified in the application for a new charter by which a new charter application package shall be submitted to the Board to be considered in a specified annual application cycle.

“Substantive review ~~time frame~~ time frame” means the number of days after a submission for Board consideration is determined to be administratively complete until the Board decides whether to grant or deny the request contained ~~within~~ in the submission.

“Sufficiently qualified” means the Board's determination that an applicant's ~~application package~~, knowledge and understanding of the application package, experience, qualifications, current and prior charter compliance, capacity, personal and professional background, and creditworthiness indicate an ability to implement a charter or operate a charter school in accordance with federal and state law and the performance frameworks adopted expectations established by the Board and requirements of statute and rule.

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

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

## ARTICLE 2. APPLICATION FOR A NEW CHARTERS CHARTER; APPLICATION FOR CHARTER REPLICATION

### R7-5-201. Application for a New Charter

- A. By March 31 of each year, the Board shall approve and make available online at its web site on ASBCS Online an application for a new charter for a specified annual application cycle.
- B. A person desiring that wants to establish a charter school shall submit ~~an~~ a complete application package online through the web-based application wizard on ASBCS Online by the submission deadline identified in the application.
- C. A person may utilize an alternate submission process ~~submit a complete application package by using:~~
  1. The web-based application wizard on ASBCS Online; or
  2. An alternative submission process. Before using an alternative submission process, the person shall
    1. ~~A person utilizing the alternate submission process shall submit by hand delivery deliver~~ or mail a signed, notarized waiver request to the Board, in the form and by the waiver deadline ~~set out~~ identified in the application, and shall waive the right to have the Board consider an application package submitted through ASBCS Online during the same annual application cycle.
    2. ~~The Board shall send an acknowledgment of timely receipt of a waiver request within 10 days of receipt of a waiver request.~~
    3. ~~Any person who submits a timely waiver request waives the right to have the Board consider any application package submitted through ASBCS Online in the same annual application cycle. Instead, such a person shall only submit an application package according to the alternate submission process instructions and by the alternate submission process submission deadline identified in the application.~~
    4. ~~An~~ The Board shall not accept an application package ~~shall not be accepted~~ through the alternative submission process unless a waiver request has been ~~received~~ submitted by the waiver deadline and acknowledged as timely by the Board.
- ~~C-D.~~ An applicant for a new charter shall ensure ~~that~~ the submitted application package contains all the information, materials, documents, and attachments identified in the application for a new charter for the current annual application cycle and A.R.S. § 15-183(A), including the new charter application processing fee specified under R7-5-202, and is in the format specified in ~~that~~ the application, which shall together constitute:
  1. A detailed educational plan;
  2. A detailed business plan;
  3. A detailed operational plan; and
  4. Any other materials the Board requires.

### R7-5-202. New Charter Application Processing Fee

- Each applicant shall pay ~~As specifically authorized under A.R.S. § 15-183(CC), the Board establishes and shall collect~~ a new charter application processing fee, in accordance with A.R.S. § 15-183(CC) of \$6,500 for each application package submitted to the Board.
1. ~~The new charter application processing fee is \$6,500 for each application package an applicant submits to the Board.~~
  - 2.1. Each An applicant shall pay the new charter application processing fee in the form of a single personal check or cashier's check with the applicant's name clearly identified on the front of the check ~~that:~~
    - a. Is made payable to Arizona State Board for Charter Schools;
    - b. Has the applicant's name imprinted on the front of the check, and
    - c. The check shall be ~~is~~ delivered by mail or hand delivery to the Board office during regular business hours by the submission deadline.
  - 3.2. ~~Failure to timely submit the new charter application processing fee shall result in the Board staff shall deem an application package being deemed~~ administratively incomplete under R7-5-203(B) if the new charter application processing fee is not received by the submission deadline.





- 4-3. All Board staff shall deposit all checks ~~shall be deposited~~ within five days of submission. If an applicant's new charter application processing fee payment to the Board ~~check~~ is dishonored for any reason ~~including an insufficient funds check~~, Board staff shall:
  - a. ~~The application package shall be deemed~~ Deem the application package administratively incomplete under R7-5-203(B), and
  - b. ~~The applicant shall use a cashier's check to pay the new charter application processing fee for any application package submitted to the Board by the applicant at any later date~~ Require the applicant to pay any future fees to the Board by cashier's check.
- 5-4. If an application package is found to be administratively incomplete, under R7-5-203(B); and the applicant paid the new charter application processing fee, the Board shall refund the fee shall be refunded to the applicant. ~~The fee refund shall be mailed by U.S. Postal Service regular mail by mailing a refund check~~ to the authorized representative at the address provided in the application package.
- 6-5. If an application package is found to be administratively complete under R7-5-203(B), the new charter application processing fee ~~shall become~~ becomes non-refundable except as required under A.R.S. § 41-1077(A).

**R7-5-203. Time frames ~~Time Frames~~ for Granting or Denying a New Charter**

- A. For granting or denying a new charter, the ~~time frames required~~ time frames are:
  - 1. Administrative completeness review ~~time frame~~ time frame: 25 days;
  - 2. Substantive review ~~time frame~~ time frame: 175 days; and
  - 3. Overall ~~time frame~~ time frame: 200 days.
- B. An ~~application package for a charter school applicant for a new charter shall be submit to the Board an~~ administratively complete if application package by the submission deadline. An application package is complete if:
  - 1. The application package is from the current application cycle;
  - ~~2.~~ 2-2. The application package contains all the information, materials, documents, attachments, signatures, and notarizations identified in the application for a new charter for the current annual application cycle;
  - ~~3-4.~~ 2-3. All the application package's components are formatted as required by that application;
  - ~~4-5.~~ 3-4. All curriculum samples address the required standard;
  - ~~5-6.~~ 4-5. All templates are unmodified, completely filled out and completed, and from the current annual application cycle; and
  - ~~5-6.~~ 5-6. The application processing fee has been paid according to required under R7-5-202(1), (2), and (4) is paid.
- C. The administrative completeness review ~~time frame, as~~ time frame listed in subsection (A)(1); begins the day after the Board receives an application package.
- D. If an application package is administratively complete, Board staff shall send the applicant a written notice of administrative completeness.
- E. If an application package is administratively incomplete, Board staff shall:
  - 1. ~~If the application package is administratively incomplete when received, the Board staff shall provide to~~ Send the applicant a written notice of deficiency that states the reasons the application package was found to be is administratively incomplete;
  - 2. ~~Upon written notice to the applicant that the application package is administratively incomplete, the Board staff shall~~ Administratively close the applicant's file; and
  - 3. Refund the new charter application processing fee paid under R7-5-202.
- ~~a-F.~~ a-F. If an applicant receives a written notice of deficiency under subsection (E) and if the submission deadline has not yet passed, an the applicant may correct the deficiencies in ~~an~~ the administratively incomplete application package and submit a new application package in the same annual application cycle, ~~under by complying with R7-5-201; the applicant shall pay a new application processing fee, under R7-5-202.~~
- ~~b-G.~~ b-G. An If an applicant receives a written notice of deficiency under subsection (E) and ~~who~~ believes their the application package was erroneously designated as administratively incomplete, the applicant may submit a written request for reconsideration to the Board within 10 days ~~of~~ after the date of the notice of deficiency.
- ~~i-H.~~ i-H. The An applicant that submits a written request for reconsideration under subsection (G) shall ensure the request; ~~for reconsideration shall contain~~
  - 1. Contains a clear statement indicating how the previously submitted application package fulfilled each of the requirements ~~that were identified as having been deficient; and~~
  - 2. ~~The request for reconsideration shall not provide any~~ Has no new or additional information, documents, or materials included or attached.
- ~~ii-I.~~ ii-I. A Within 10 days after receiving a request for reconsideration, Board staff shall review the request and:
  - 1. Determine whether the request complies with the requirements in subsection (H) and if not, that does not address each deficiency identified in the notice or that contains new or additional information, documents, or materials shall not be considered and send the applicant written notice shall be notified that the request was not submitted according to subsection (i) and the applicant's properly and the applicant's file is remains closed;
    - iii. ~~The Board staff shall review a request for reconsideration that is submitted according to subsection (i) and provide a decision on the request for reconsideration within 10 days of receipt.~~
  - ~~iv-2.~~ iv-2. If the Board staff determines the application package was erroneously designated as administratively incomplete, the Board staff shall reopen the applicant's file and send the applicant a written notice of administrative completeness to the applicant; or
    - 3. If the Board staff determines the application package was correctly designated as administratively incomplete, send the applicant written notice the applicant's file shall remain remains closed.
    - 3. ~~If the application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.~~
- 4-J. ~~If the Board staff does not provide a notice of deficiency or administrative completeness to the applicant within the administrative completeness review~~ time frame time frame, the application package is deemed administratively complete.



- ~~D-K.A~~ The substantive review ~~time frame, as time frame~~ listed in subsection (A)(2); begins when an application package is determined to be administratively complete. ~~The Board staff shall ensure the~~ substantive review is conducted according to R7-5-204.
- ~~E-L~~ Within the time provided in subsection (A)(3), ~~the Board staff~~ shall provide the applicant with written notice of ~~it's~~ the Board's decision to grant or deny a charter.
1. The Board shall deny a charter if ~~it the Board~~ determines ~~that~~ the application package does not meet the requirements of statute or rule or the applicant is not sufficiently qualified to operate a charter school. ~~The Board staff shall include in the~~ written notice ~~shall include~~ the basis for the denial and other information required under A.R.S. § 41-1092.03. ~~The An~~ applicant that receives a notice of denial may:
    - a. Submit a new application package under R7-5-201 ~~for consideration by the Board in any a~~ later annual application cycle; or
    - b. Appeal the Board's decision under A.R.S. Title 41, Chapter 6, Article 10.
  2. The Board shall grant a charter if it determines that the application package meets the requirements of statute and rule and the applicant is sufficiently qualified to operate a charter school.

**R7-5-204. Review of Administratively Complete Application Package for a New Charter, Technical Assistance, and ~~In-Person~~ In-person Interview**

- ~~A~~ The Board shall ensure ~~review of~~ an administratively complete application package for a new charter is reviewed as follows:
1. The Technical Review ~~panel~~ Panel shall score ~~the preliminary an~~ application package using the evaluation criteria identified in the application to determine whether ~~an the~~ application package meets the Board's ~~scoring~~ requirements.
  - ~~a-2~~ ~~An~~ The Technical Review Panel shall assign an application package ~~shall be assigned~~ a score of "Meets the Criteria," "Approaches the Criteria," or "Falls ~~Below~~ below the Criteria" for each evaluation criterion.
    - ~~i-a~~ ~~An~~ The Technical Review Panel shall score an evaluation criterion ~~shall be scored~~ "Meets the Criteria" when the application section within which that evaluation criterion is identified ~~by the application~~:
    - (1) i. Addresses the evaluation criterion fully with specific and accurate information;
    - (2) ii. Reflects a thorough understanding of the evaluation criterion; and
    - (3) iii. Is clear and coherent.
    - ~~ii-b~~ ~~An~~ The Technical Review Panel shall score an evaluation criterion ~~shall be assigned a score of~~ "Approaches the Criteria" when the application section within which that evaluation criterion is identified ~~by the application~~:
      - (1) i. Addresses the evaluation criterion partially and or lacks specific and accurate information for some aspect of the evaluation criterion;
      - (2) ii. Presents a partial understanding of the evaluation criterion; or
      - (3) iii. Is not clear and coherent.
    - ~~iii-c~~ ~~An~~ The Technical Review Panel shall score an evaluation criterion ~~shall be assigned a score of~~ "Falls ~~Below~~ below the Criteria" when the application section within which that evaluation criterion is identified ~~by the application does not~~ fails to address the evaluation criterion.
  - ~~b-3~~ An application package meets the Board's ~~scoring~~ requirements if:
    - ~~i-a~~ No evaluation criterion ~~receives a score of is scored~~ "Falls ~~Below~~ below the Criteria;"
    - ~~ii-b~~ No more than one evaluation criterion in each application section is scored as Approaching "Approaches the Criteria;" and
    - ~~iii-c~~ The application package receives a score of Meets the Criteria for at At least 95% percent of the evaluation criteria in each plan (the educational plan, operational plan, and business plan) is scored "Meets the Criteria."
- ~~2-E~~ The Board staff shall conduct a background and credit check of each principal and authorized representative of the applicant and ~~con-~~ firm determine whether each principal and authorized representative possesses a valid fingerprint clearance card issued by the State of Arizona.
- a. If ~~issues arise from the information obtained an issue arises~~ during the background and credit ~~checks~~ check of any principal or authorized representative, ~~the Board staff shall provide the pertinent principal or authorized representative written notice of the issues issue and the principal will have the an opportunity to provide a written response clarifying addressing the information issue. The Board shall consider information obtained from the background and credit check when making the decision to grant or deny a new charter.~~
  - b. ~~Information obtained and communications conducted during this process shall be considered by the Board in making its decision on whether to grant or deny a charter.~~
- ~~3-C~~ The Board staff shall notify the applicant if the preliminary If an application package fails to meet the scoring Board's requirements as evaluated by the Technical Review Panel specified under subsection (A)(3), Board staff shall provide written notice to the applicant. The Board staff shall provide include in the notice:
1. The reasons the application package fails failed to meet the scoring Board's requirements; and include the
  2. comments Comments of the Technical Review Panel, which will serve as technical assistance and suggestions for improving the application package; and
  3. The options specified under subsection (D).
- ~~4-D~~ ~~An~~ If an applicant who receives notification that a preliminary application package fails to meet the scoring requirements as evaluated by the Technical Review Panel notice under subsection (C), the applicant may, within 20 days of the date of notice, submit to the Board:
1. a A revised application package, or a
  2. A written request that the preliminary previously submitted and scored application package be forwarded to the Board.
- ~~5-E~~ If a revised application package or written request is not submitted to the Board within 20 days of the date of notice that a preliminary application package fails to meet the scoring requirements an applicant that receives notice under subsection (C) fails to act under subsection (D), the Board staff shall close the applicant's file. An applicant whose file is closed and who wants to obtain a new charter shall apply again under R7-5-201 in any a later annual application cycle.
- ~~6-E~~ If ~~a an applicant submits~~ a revised application package is submitted under subsection (D), the Technical Review Panel shall score the revised application package using the scores and scoring requirements described in subsection (1) as specified under subsection (A).



- 7. If ~~a the~~ revised application package fails to meet the ~~scoring Board's~~ requirements as ~~evaluated by the Technical Review Panel specified under subsection (A)(3),~~ the Board staff shall ~~notify~~ provide written notice to the applicant of the intent to close the file. ~~The Board staff shall include with the notice the comments of the Technical Review Panel.~~
- 8-G. An applicant ~~who that~~ receives ~~notification of the Board staff's intent to close the file~~ notice under subsection (F) may, within 20 days ~~of after~~ the date of notice, submit a written request that the revised application package be forwarded to the Board.
- 9. If a written request is not submitted ~~to the Board within 20 days of the date of notice that a revised application package fails to meet the scoring requirements,~~ the Board staff shall close the applicant's file. An applicant whose file is closed and ~~who~~ wants to obtain a new charter shall apply again under R7-5-201 in ~~any~~ a later annual application cycle.
- 10-H. ~~At least 30 days prior to before~~ the last Board meeting before the substantive review ~~time frame~~ time frame expires, and within 90 days ~~of the determination that a preliminary or revised after determining~~ an application package meets the ~~scoring Board's~~ requirements as ~~evaluated by the Technical Review Panel, under subsection (A)(3) or the receipt of receiving~~ an applicant's request under subsection (4) ~~(D)(2) or (8) (G), that the Board consider an application package that fails to meet the scoring requirements as evaluated by the Technical Review Panel,~~ the principals and authorized representative of the applicant shall make themselves available for an in-person interview with two or more members of the Technical Review Panel. In the interview, the members of the Technical Review Panel shall assess:
  - a-1. The applicant's understanding of the components presented in the written application package;
  - b-2. The applicant's capacity to implement a plan to operate a charter school in accordance with the performance ~~frameworks~~ adopted expectations established by the Board;
  - e-3. The applicant's clarification of any ~~issues that arise~~ issue revealed in the course of the due diligence process for ~~any~~ the applicant; any principal, authorized representative, or Education Service Provider; and
  - d-4. Any other ~~factors~~ factor relevant to determining whether the applicant is sufficiently qualified to operate a charter school.
- 11-I. ~~Board staff shall provide an applicant with at least seven days written notice of the date, time, and place of the meeting at which the Board will consider the applicant's application package and~~ The Board shall consider an application package to determine whether to approve or deny the application package and whether to grant or deny the a new charter if the Technical Review Panel determines that the application package meets or exceeds the scoring requirements or if to the applicant requests under subsection (4) or (8) that the Board consider an application package that fails to meet the scoring requirements as evaluated by the Technical Review Panel.
  - a. ~~For the purpose of deciding whether to approve or deny the application package, the Board shall consider:~~
    - i. ~~The application package; and~~
    - ii. ~~A copy of the scoring rubric completed by the Technical Review Panel.~~
  - b. ~~For the purpose of deciding whether to grant or deny a new charter, the~~ The Board shall use the following information to determine whether the applicant is sufficiently qualified by considering the following to operate a charter school:
    - i-1. ~~The application package;~~
    - ii-2. ~~A copy of the~~ The scoring rubric completed by the Technical Review Panel;
    - iii-3. ~~The results of the in-person interview of the applicant's principals and authorized representative;~~
    - iv-4. ~~Information obtained through verification and investigation and verification of the employment, experience, and education backgrounds including employment, experience, education, fingerprint clearance card, and assessment of creditworthiness for each of the principals each principal and authorized representative of the applicant;~~
    - v-5. ~~Information concerning any current or former charter operations for any principal, authorized representative, or Education Service Provider or principal of the applicant;~~
    - vi-6. ~~A Board staff report; and~~
    - vii-7. ~~Testimony presented at the Board meeting.~~
- 12. ~~The Board shall provide an applicant, with at least seven days written notice of the date, time, and place of the meeting at which the Board will consider the applicant's application package.~~
- J. After the Board meeting held under subsection (I), Board staff shall provide written notice to the applicant regarding the Board's decision to grant or deny a new charter to the applicant. If the Board denies a new charter to the applicant, the Board shall include the information required under A.R.S. § 41-1092.03 in the written notice.

**R7-5-205. Execution of a New Charter**

- A. After the ~~Board's decision~~ Board decides to grant a new charter, ~~and but~~ before the charter is signed, the applicant shall submit to the Board the following:
  - 1. ~~No change~~ A completed I.R.S. Form W-9, Request for Taxpayer Identification Number and Certification, obtained from the Department or online at https://www.irs.gov/pub/irs-pdf/fw9.pdf.
  - 2. Charter school site location ~~The following information including for each charter school approved for educational use:~~
    - a. ~~Certificate of occupancy for each charter school site approved for educational use;~~ and
    - b. ~~Fire marshal report for each charter school site approved for educational use;~~ or
    - c. ~~If either the certificate of occupancy and or fire marshal report are is not available, a completed Occupancy Compliance Assurance and Understanding form obtained from the Board;~~
  - 3. A completed General Statement of Assurances form obtained from the Department;
  - 4. A statement indicating where all public notices of meetings will be posted as required ~~by the Secretary of State~~ under A.R.S. § 38-431.02; and
  - 5. Copy ~~A copy~~ of the lease agreement or other documentation of a secured charter school facility for each charter school ~~site~~.
- B. ~~A charter shall be signed by the~~ The Board President or designee and authorized representative of the applicant shall sign the charter within 12 months after the Board's decision to grant the charter.
  - 1. If ~~a the~~ charter is not timely signed, the Board's decision to grant the new charter expires; unless the applicant applies for and is granted a good cause ~~good-cause~~ extension to execute the charter under R7-5-206.



2. If an applicant ~~who that~~ is granted a new charter but does not timely sign the charter and does not obtain a ~~good-cause good-cause~~ extension wants to obtain a new charter, the applicant shall apply again under R7-5-201 in ~~any a~~ later annual application cycle.
- C. A charter holder shall begin providing educational instruction no later than the second fiscal year after the Board's decision to grant the charter; unless the charter holder is granted a ~~good-cause good-cause~~ extension to execute a charter under R7-5-206 or ~~good-cause good-cause~~ suspension of a charter under R7-5-207.
1. A charter holder ~~who that~~ is granted a ~~good-cause good-cause~~ extension to execute a charter under R7-5-206 or ~~good-cause good-cause~~ suspension of a charter under R7-5-207 shall begin providing educational instruction no later than the third fiscal year after the Board's decision to grant the charter.
  2. If a charter holder does not begin providing educational instruction as required ~~by subsections under subsection (C) and or (C)(1)~~, the Board shall issue the charter holder a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I).
- D. ~~A At least 10 days before beginning to provide educational instruction, a~~ charter holder shall submit to the Board ~~the following~~ written proof that the charter school is in compliance with federal, state, and local ~~rules, regulations, and statutes laws~~ relating to health, safety, civil rights, and insurance ~~at least 10 days before the first day it will begin providing educational instruction by submitting:~~
1. Charter school ~~site~~ contact information;
  2. Insurance policy binder issued by an insurance company licensed to do business in Arizona;
  3. County health certificate for each ~~site charter school~~ at which students will be taught;
  4. Evidence of a public meeting, required by A.R.S. § 15-183(C)(7), at least 30 days before the charter holder opens a ~~site for the charter school~~;
  5. Certificate of attendance of the charter representative or principal at the special education training for new charters offered by the ~~Department's Exceptional Student Services Division Department~~; and
  6. Any other documents required to demonstrate compliance with federal, state, and local ~~rules, regulations, and statutes laws~~ relating to health, safety, civil rights, and insurance.
- E. If a charter holder ~~has completed submitted~~ an Occupancy Compliance Assurance ~~and Understanding~~ form ~~under subsection (A)(2)~~, the Board shall ~~not advise the Department to initiate state aid funding shall not initiate until the Board staff has determined that determines~~ the required certificate of occupancy and fire marshal report submissions are complete and sufficient.
- F. A new charter is effective upon ~~the signing of by~~ both parties for a ~~term of 15 years commencing beginning~~ on the date stated in the charter, unless revoked under A.R.S. § 15-183(I).

#### **R7-5-206. Good-Cause ~~Good-cause~~ Extension to Execute a New Charter**

- ~~A.~~ Before the Board's decision to grant a new charter expires ~~under R7-5-205(B)~~, an applicant ~~who that~~ has not yet executed the charter may submit to the Board a written request for a ~~good-cause good-cause~~ extension to execute a charter.
- ~~1.~~ The applicant shall ensure the written request for a ~~good-cause good-cause~~ extension to execute a charter ~~shall:~~
    - ~~a.1.~~ Explain ~~Explains~~ and provide ~~provides~~ evidence of why the applicant is unable to implement the plans contained in the application package and execute the charter within the allotted 12 months;
    - ~~b.2.~~ Explain ~~Explains~~ the applicant's new timeline for implementing the plans contained in the application package; and why the ~~new~~ timeline is viable and adequate ~~for achieving the proposed to enable the applicant to execute the charter by the new timeline start up date of the school and appropriate for operating a charter school in accordance with the performance frameworks adopted by the Board and requirements of statute and rule; and~~
    - ~~e.3.~~ Provide ~~Provides~~ clear and specific action steps with target completion dates that will enable the applicant to implement the plans contained in the application package in accordance with the ~~new~~ timeline ~~provided~~ and the requirements of R7-5-205(C)(1).
  - ~~2.B.~~ The Board ~~may shall~~ grant a ~~good-cause good-cause~~ extension to execute a charter if an applicant demonstrates good cause. When ~~considering a request for a deciding whether the applicant demonstrates good cause extension to execute a charter~~, the Board shall consider:
    - ~~a.1.~~ The timeliness of the ~~submission of the request for a good-cause extension~~ and the proposed extension date;
    - ~~b.2.~~ The viability of the applicant's new timeline for implementing the plans contained in the application package;
    - ~~e.3.~~ Whether the new timeline ~~provided by the applicant~~ is adequate to begin providing educational instruction as required under R7-5-205(C)(1) and complies with the plans contained in the application package;
    - ~~d.4.~~ ~~Unforeseen~~ The circumstances ~~affecting the applicant indicates affected~~ the applicant's ability to execute the charter within the allotted 12 months;
    - ~~e.5.~~ Whether there have been changes in the principals of the applicant; and
    - ~~f.6.~~ The ~~status of extent to which the applicant is in~~ compliance with all applicable federal, ~~State state~~, and local laws, ~~and with all of the terms of a charter.~~
  - ~~3.C.~~ The Board shall not grant more than one ~~good-cause good-cause~~ extension to execute a ~~particular~~ charter ~~to any applicant for the same charter.~~
  - ~~4.D.~~ If the Board grants a ~~good-cause good-cause~~ extension to execute a charter, the Board shall specify the date by which the applicant shall execute the charter and begin providing educational instruction based on the timeline provided by the applicant and the requirements of R7-5-205(C)(1). If the applicant does not execute the charter by the specified date, the Board's decision to grant the charter ~~shall expire expires.~~

#### **R7-5-207. Good-Cause ~~Good-cause~~ Suspension of a New Charter**

- ~~A.~~ ~~Prior to Before~~ the first day of the fiscal year ~~that in which~~ a charter holder must begin providing educational instruction, the charter holder, ~~if eligible under subsection (B)~~, of a ~~not yet operational charter~~ may submit to the Board a written request for a ~~good-cause good-cause~~ suspension of ~~a the~~ charter.
- ~~1.B.~~ A charter holder is eligible to apply for a ~~good-cause good-cause~~ suspension of ~~a the~~ charter if:
    - ~~a.1.~~ The charter holder has not been granted a ~~good-cause good-cause~~ extension to execute ~~a the~~ charter,



- b-2. The charter holder has not begun providing educational instruction under the charter, and
  - e-3. The charter holder has not received or has returned state equalization or other state or federal funding for which provision of instruction is a requirement of receipt.
- 2-C. The charter holder shall ensure the written request for a ~~good cause~~ good-cause suspension of a charter shall:
- a-1. ~~Explain~~ Explains and ~~provide~~ provides evidence for why the charter holder is unable to implement the plans contained in the application package and begin providing educational instruction as required under R7-5-205(C);
  - b-2. ~~Explain~~ Explains the charter holder's new timeline for implementing the plans contained in the application package; and why the new timeline is viable and adequate ~~for achieving the proposed start up date of the school and appropriate for operating to enable the charter holder to operate~~ a charter school in accordance with the charter and performance frameworks adopted expectations established by the Board and requirements of statute and rule; and
  - e-3. ~~Provide~~ Provides clear and specific action steps with target completion dates that will enable the charter holder to implement the plans contained in the application package in accordance with the new timeline ~~provided~~ and the requirements of R7-5-205(C)(1).
- 3-D. The Board ~~may shall~~ grant a ~~good cause~~ good-cause suspension of a charter if the charter holder demonstrates good cause. When ~~considering a request for a~~ deciding whether the charter holder demonstrates good cause suspension of a charter, the Board shall consider:
- 1. Whether the charter holder is eligible under subsection (B) for a good-cause suspension of a charter;
  - a-2. The timeliness of the ~~submission of the request for a good-cause suspension of a charter~~ and the proposed extension date;
  - b-3. The viability of the charter holder's new timeline for implementing the plans contained in the application package;
  - e-4. Whether the new timeline ~~provided by the charter holder~~ is adequate to begin providing educational instruction as required under R7-5-205(C)(1) and complies with the plans contained in the application package;
  - d-5. ~~Unforeseen~~ The circumstances affecting the charter holder indicates affected the charter holder's ability to begin providing educational instruction as required under R7-5-205(C);
  - e-6. Whether there have been changes in the principals of the charter holder; and
  - f-7. The ~~status of~~ extent to which the charter holder is in compliance with all applicable federal, ~~State~~ state, and local laws; and ~~with all of the terms of the charter~~.
- 4-E. The Board shall not grant more than one ~~good cause~~ good-cause suspension of a particular charter to any charter holder ~~for the same charter and shall not grant a good cause suspension of a charter to any charter holder who previously received a good cause extension to execute a charter for the same charter~~.
5. ~~A charter holder who is granted a good cause suspension may execute and submit an amendment to the charter indicating a new effective date which shall conform to the date on which the charter holder shall begin providing educational instruction.~~
- 6-F. A charter holder ~~who is granted a good cause~~ good-cause suspension of a ~~the~~ charter shall not apply to receive any state equalization or other state or federal funding for which provision of instruction is a requirement of receipt until the fiscal year in which the charter holder plans to begin providing educational instruction, ~~and~~ The holder of a suspended charter shall promptly return any such funding it receives prior to before the fiscal year in which it begins providing educational instruction.
- 7-G. A charter holder granted a ~~good cause~~ good-cause suspension of a charter shall begin providing educational instruction as required by R7-5-205(C). If a charter holder does not begin providing educational instruction as required, the Board shall issue the charter holder a notice of intent to revoke the charter in accordance with A.R.S. § 15-183(I).

**R7-5-208. Application for Replication Charter**

- A. The charter holder of an existing high quality charter school may be eligible to apply for a replication charter rather than a new charter. A replication charter allows the charter holder to implement the existing educational program, corporate and governance structure, and financial and operational processes at a new charter school.
- B. A charter holder that wishes to apply for a replication charter shall submit to the Board a Replication Eligibility form. Board staff shall review the form and determine whether the charter holder is eligible to apply for a replication charter. A charter holder is eligible to apply for a replication charter if the charter holder is in compliance with provisions of its charter, contractual agreements with the Board, federal and state law and this Chapter, and meets the academic eligibility requirements specified in the replication application instructions, which are publicly available and posted on the Board's web site.
- C. Within 15 days after receiving a Replication Eligibility form, Board staff shall provide written notice to the charter holder of whether the charter holder may apply for a replication charter and, if eligible, shall make the replication application available to the charter holder.
- D. If a charter holder submits an application package for a replication charter by the last business day of September, Board staff shall process the application package in an expedited manner and ensure the application package is considered at the Board's meeting in November.
- E. As required under A.R.S. § 41-1073, the Board establishes the following time frames for approving or disapproving a replication charter:
  - 1. Administrative review time frame: 15 days;
  - 2. Substantive review time frame: 50 days; and
  - 3. Overall time frame: 65 days.
- F. The provisions at R7-5-205(A), regarding execution of a new charter, apply to a replication charter.
- G. R7-5-206, regarding a good-cause extension to execute a new charter, and R7-5-207, regarding good-cause suspension of a new charter, do not apply to a replication charter.

**ARTICLE 3. CHARTER OVERSIGHT/POST-CHARTER ACTIONS****R7-5-301. Application for Charter Renewal; Early Renewal of Charter**

- A.** The Board shall make available on its web site instructions regarding eligibility and submission requirements for renewal and early renewal of a charter.
- B.** A charter holder shall submit to the Board electronically through ASBCS Online the renewal application package identified in subsection (E) or the early renewal application package identified in subsection (L). The Board shall not accept a paper submission.
- C.** The Board shall provide the charter holder at least 72-hours' written notice of the date, time, and location of the Board meeting at which the Board will consider the charter holder's renewal or early renewal application package. The charter holder shall attend the Board meeting.
- D.** At least 18 months before a charter is scheduled to expire, the Board shall provide the charter holder with a renewal application that is customized based on the charter holder's performance history. The Board shall require a charter holder that does not meet the performance expectations specified in Article 4 to submit more information than a charter holder that does meet the performance expectations.
- E.** As required under A.R.S. § 15-183(I), a charter holder that intends to seek renewal of the charter shall submit to the Board a renewal application package at least 15 months before the charter is scheduled to expire.
- F.** The Board shall not consider a renewal application package that is not submitted by the date specified in subsection (E).
- G.** As part of the charter renewal process, Board staff shall conduct an academic-systems-review site visit, as described in R7-5-506, of the charter holder.
- H.** The Board shall notify a charter holder of the Board's decision to renew or deny renewal of the charter at least 12 months before the charter is scheduled to expire.
- I.** As specified under A.R.S. § 15-183(I), the Board may deny renewal of a charter if the Board determines the charter holder failed to meet or make sufficient progress toward the academic performance expectations or failed to meet the operational performance expectations specified in Article 4, complete the obligations of the charter, or comply with federal or state law or this Chapter. If the Board denies renewal of a charter, Board staff shall provide written notice to the charter holder that includes the information required under A.R.S. § 41-1092.03(A).
- J.** A charter holder is eligible to apply for early renewal of the charter if the charter holder:
1. Submits to the Board a letter of intent to apply for early renewal at least 24 months before the charter is scheduled to expire;
  2. Has operated a school under the charter for at least five years;
  3. Meets the performance expectations specified in Article 4; and
  4. Had no compliance matters within the last three years that required action by the Board or other governmental entity.
- K.** Within 15 days after receiving a letter of intent to apply for early renewal under subsection (J)(1), Board staff shall provide written notice to the charter holder of whether the charter holder is eligible to apply for early renewal and, if eligible, shall provide the charter holder with the renewal application referenced in subsection (D).
- L.** A charter holder that receives notification under subsection (K) of eligibility to apply for early renewal shall submit to the Board the early renewal application package no later than one month after the charter holder receives notification under subsection (K).
- M.** A charter holder applying for early renewal shall continue to meet the eligibility requirements specified in subsection (J) until the Board considers the early renewal application package at the Board meeting referenced under subsection (C). The Board shall not consider an early renewal application package submitted by a charter holder that has a change in eligibility status.
- N.** Within three months after a charter holder timely submits an early renewal application package, Board staff shall conduct an academic-systems-review site visit, as described in R7-5-506, of the charter holder and shall place the charter holder's early renewal application package on an agenda for Board consideration.
- O.** As specified under A.R.S. § 15-183(I)(2), the Board may deny early renewal of a charter if the Board determines the charter holder failed to meet or make sufficient progress toward the academic performance expectations or failed to meet the operational performance expectations specified in Article 4, complete the obligations of the charter, or comply with federal or state law or this Chapter. If the Board denies early renewal of a charter, Board staff shall provide written notice to the charter holder that includes the information required under A.R.S. § 41-1092.03(A).

**R7-5-302. Charter Transfer Application**

- A.** A charter transfer application may be used to do either of the following:
1. Transfer a charter to the Board; or
  2. Transfer a charter school that has operated under an existing charter for at least three years to its own charter with the same educational program and financial and operational processes.
- B.** The Board shall make available on its web site instructions regarding eligibility and submission requirements for transfers specified under subsection (A).
- C.** A charter holder that intends to transfer as specified under subsection (A) shall submit to the Board a letter of intent to transfer.
- D.** Within 15 days after receiving a letter of intent to transfer, Board staff shall provide written notice to the charter holder of whether the charter holder may apply for transfer.
- E.** A charter holder eligible to transfer under subsection (D) shall submit to the Board a paper charter transfer application package until electronic submission through ASBCS Online is available. After electronic submission through ASBCS Online is available, the Board shall not accept a paper submission.
- F.** For a transfer to occur on July 1, a charter holder shall submit the letter of intent to transfer by the last business day of November of the prior fiscal year and the transfer application package by the last business day of February of the prior fiscal year.
- G.** The Board shall provide the charter holder at least 72-hours' written notice of the date, time, and location of the Board meeting at which the Board will consider the charter holder's transfer application package. The charter holder shall attend the Board meeting.
- H.** As required under A.R.S. § 41-1073, the Board establishes the following time frames for approving or disapproving a charter transfer:
1. Administrative review time frame: 15 days;



- 2. Substantive review time frame: 60 days; and
- 3. Overall time frame: 75 days.

**R7-5-303. Charter Amendment Requests**

- A.** A change to a charter requires the consent of both the Board and charter holder. To obtain the Board’s consent to a change to a charter, the charter holder shall submit a charter amendment request to the Board.
- B.** A charter holder shall not act in a manner contrary to the terms of the charter without obtaining the Board’s prior consent to the change.
- C.** The Board shall make available on its web site instructions regarding eligibility and submissions requirements for each amendment request listed under subsection (D).
- D.** The Board shall accept requests for the following charter amendments:
  - 1. Add or remove a grade level to a charter;
  - 2. Addition of or change to an Arizona Online Instruction Program of Instruction; as expressly authorized under A.R.S. § 15-183(X), the Board shall charge a non-refundable processing fee of \$3,000 for each grade category involved in the charter amendment request;
  - 3. Change in charter holder entity name;
  - 4. Change in legal status of the charter holder;
  - 5. Change of entity that holds the charter;
  - 6. Change in charter mission;
  - 7. Increase or decrease the number of annual instructional days;
  - 8. Change in program of instruction including methods of instruction, criteria for promotion, and graduation requirements;
  - 9. Exception from state procurement requirements;
  - 10. Exception from the Uniform System of Financial Records for Charter Schools;
  - 11. Change charter holder governance;
  - 12. Change the mailing or physical address of the charter holder;
  - 13. Change charter representative;
  - 14. Increase or decrease the number of students the charter holder may serve;
  - 15. Add a charter school to an existing charter;
  - 16. Close a charter school under an existing charter;
  - 17. Change membership of a charter school governing body;
  - 18. Change the name of a charter school;
  - 19. Change the mailing or physical address of a charter school;
  - 20. Increase or decrease the grades served at a particular charter school; and
  - 21. Transfer of a charter school from the current charter to another existing charter with the same educational program and financial and operational processes.
- E.** A charter holder shall submit an amendment request listed under subsection (D) to the Board electronically through ASBCS Online. The Board shall not accept a paper amendment request unless agreed to by Board staff and the charter holder before the amendment request is submitted.
- F.** As required under A.R.S. § 41-1073, the Board establishes the following time frames for approving or disapproving a charter amendment request:
  - 1. Administrative review time frame: 20 days;
  - 2. Substantive review time frame: 40 days; and
  - 3. Overall time frame: 60 days.
- G.** To determine the date on which the Board will approve or disapprove an amendment request listed under subsection (D), the charter holder shall consult the Board’s meeting and submission-deadline schedule, which is posted on the Board’s web site and ASBCS Online.
- H.** The Board shall provide the charter holder at least 72-hours’ written notice of the date, time, and location of the Board meeting at which the Board will consider the charter holder’s administratively and substantively complete amendment request. The charter holder shall attend the Board meeting.
- I.** The Board has delegated to staff authority to approve charter amendment requests listed under subsection (D) for which the standards for approval can be applied without the exercise of discretion.

**ARTICLE 4. AMENDMENT TO A CHARTER MINIMUM PERFORMANCE EXPECTATIONS**

**R7-5-401. Amendment to a Charter Minimum Academic Performance Expectations**

- A.** The Board shall assess a charter holder’s achievement of the minimum academic performance expectations using student achievement measures, specified in the Academic Performance Framework, that are indicators of academic performance.
  - 1. The Board may assess a charter holder’s achievement of the minimum academic performance expectations at any time.
  - 2. The Board shall assess a charter holder’s achievement of the minimum academic performance expectations:
    - a. Annually when state assessment data are released for the previous year;
    - b. During the five-year-interval review required under A.R.S. § 15-183(I);
    - c. When considering the following submitted by the charter holder:
      - i. An application for a new charter;
      - ii. An application to transfer a charter school from an existing charter contract to a separate charter contract;
      - iii. A request to change the legal status of the charter holder; or
      - iv. A request to change the entity that holds the charter;
    - d. When considering an expansion request submitted by the charter holder to:
      - i. Add a new charter school to an existing charter;



- ii. Add one or more grade levels to a charter.
  - iii. Increase the number of students the charter holder may serve.
  - iv. Add an Arizona Online Instruction program, or
  - v. Replicate an existing charter;
  - e. When considering a charter contract renewal request submitted by the charter holder;
  - f. Upon receipt of information that a charter school operated by the charter holder failed to meet the minimum academic performance expectations for three consecutive years;
  - g. Upon receipt of information that a charter school operated by the charter holder has been assigned a letter grade of "F" by the Department; and
  - h. When making a decision related to the charter holder's achievement of the minimum academic performance expectations or compliance with its charter, other contractual agreements with the Board, federal and state law, and this Chapter.
- B.** The Board shall annually assign a charter holder an overall academic performance rating that reflects the degree to which the charter holder achieved the minimum academic performance expectations.
- C.** The Board shall determine a charter holder meets the minimum academic performance expectations if all charter schools operated by the charter holder receive an annual overall academic performance rating of "meets standard," "above standard," or "exceeds standard" in the most recent year for which data are available. A charter holder that meets the minimum academic performance expectations may be:
- 1. Waived from some of the academic performance supervision requirements described in Article 5; and
  - 2. Entitled to reduced submission requirements:
    - a. Regarding requests made to the Board; and
    - b. During the five-year-interval review required under A.R.S. § 15-183(I).
- D.** The Board shall determine a charter holder does not meet the minimum academic performance expectations if one or more of the charter schools operated by the charter holder did not receive an overall academic performance rating of "meets standard," "above standard," or "exceeds standard" in the most recent year for which data are available. A charter holder that does not meet the minimum academic performance expectations:
- 1. Shall be required to demonstrate sufficient progress towards achieving the minimum academic performance expectations;
  - 2. May be subject to heightened submission requirements:
    - a. Regarding requests made to the Board, and
    - b. During the five-year-interval review required under A.R.S. § 15-183(I); and
  - 3. May be subject to charter oversight as specified in Article 6.

#### **R7-5-402. Minimum Financial Performance Expectations**

- A.** The Board shall assess a charter holder's achievement of the minimum financial performance expectations using data contained in the annual audit required under A.R.S. § 15-914 and conducted according to the standards specified in R7-5-504.
- 1. The Board may assess a charter holder's achievement of the minimum financial performance expectations at any time.
  - 2. The Board shall assess a charter holder's achievement of the minimum financial performance expectations:
    - a. When considering an expansion request submitted by the charter holder to:
      - i. Add a new charter school to an existing charter.
      - ii. Add an Arizona Online Instruction program, or
      - iii. Replicate an existing charter;
    - b. During the five-year-interval review required under A.R.S. § 15-183(I);
    - c. When considering a charter contract renewal request submitted by the charter holder;
    - d. Upon receipt of information that a charter school operated by the charter holder failed to meet the minimum academic performance expectations for three consecutive years;
    - e. Upon receipt of information that a charter school operated by the charter holder has been assigned a letter grade of "F" by the Department; and
    - f. When making a decision related to the charter holder's achievement of the minimum academic performance expectations or compliance with its charter, other contractual agreements with the Board, federal and state law, and this Chapter.
- B.** The Board shall annually assign a charter holder a financial performance rating, based on measures specified in the Financial Performance Framework, which reflects both the charter holder's near-term financial health and longer-term financial stability.
- C.** The Board shall determine a charter holder meets the annual financial performance standard if the charter holder receives no measure rated "falls far below standard" and no more than one measure rated "does not meet standard" based on the most recent audit conducted under R7-5-504.
- D.** The Board shall determine a charter holder meets the minimum financial performance expectations if the charter holder:
- 1. Receives an overall rating of "meets the annual financial performance standard" based on the most recent audit conducted under R7-5-504; or
  - 2. Receives an overall rating of "meets the annual financial performance standard" based on the previous audit and receives an overall rating of "does not meet the annual financial performance standard" based on the most recent audit with no measure rated "falls far below standard."
- E.** The Board shall determine a charter holder does not meet the minimum financial performance expectations if the charter holder:
- 1. Receives an overall rating of "does not meet the annual financial performance standard" and one or more measures rated "falls far below standard" based on the most recent audit conducted under R7-5-504; or
  - 2. Receives an overall rating of "does not meet the annual financial performance standard" based on both of the last two audits conducted under R7-5-504.
- F.** A charter holder that meets the minimum financial performance expectations may be entitled to reduced submission requirements at the times specified under subsection (A). The Board shall require a charter holder that does not meet the minimum financial performance expectations to submit a financial performance response as specified under R7-5-509 at the times specified in subsections





(A)(2)(a)-(e) and may require a charter holder that does not meet the minimum financial performance expectations to submit a financial performance response as specified under R7-5-509 at the times specified in subsection (A)(2)(f).

**R7-5-403. Minimum Operational Performance Expectations**

- A.** The Board shall assess a charter holder’s achievement of the minimum operational performance expectations. To avoid duplicative reporting burdens, the Board shall use data collected from a variety of sources that reflect on the charter holder’s compliance with the charter contract, other contractual agreements with the Board, federal and state law, and this Chapter.
  - 1. The Board may assess a charter holder’s achievement of the minimum operational performance expectations at any time.
  - 2. The Board shall assess a charter holder’s achievement of the minimum operational performance expectations:
    - a. When considering the following submitted by the charter holder:
      - i. An application for a new charter;
      - ii. An application to transfer a charter school from an existing charter contract to a separate charter contract;
      - iii. A request to change the legal status of the charter holder;
      - iv. A request to change the entity that holds the charter; or
      - v. A request to change program of instruction including methods of instruction, criteria for promotion, or graduation requirements;
    - b. When considering an expansion request submitted by the charter holder to:
      - i. Add a new charter school to an existing charter;
      - ii. Add one or more grade levels to a charter;
      - iii. Increase the number of students the charter holder may serve;
      - iv. Add an Arizona Online Instruction program, or
      - v. Replicate an existing charter;
    - c. During the five-year-interval review required under A.R.S. § 15-183(I);
    - d. When considering an application for charter renewal submitted by the charter holder;
    - e. Upon receipt of information that a charter school operated by the charter holder failed to meet the minimum academic performance expectations for three consecutive years; and
    - f. Upon receipt of information that a charter school operated by the charter holder has been assigned a letter grade of “F” by the Department.
- B.** The Board shall annually assign a charter holder an overall operational performance rating based on the measures specified in the Operational Performance Framework, which reflect the degree to which the charter holder achieved the minimum operational performance expectations. The Board shall make each charter holder’s operational performance dashboard publicly available and post it on ASBCS Online.
- C.** The Board shall determine a charter holder meets the minimum operational performance standard if the charter holder receives no measure rated “falls far below standard” and no more than five measures rated “does not meet standard” for the evaluated year.
- D.** The Board shall determine a charter holder meets the minimum operational performance expectations if the charter holder receives an overall rating of “meets the Board’s operational performance standard” in both of the two most recent years for which an overall rating was calculated and has no measure rated “falls far below standard” in the current year.
- E.** The Board shall determine a charter holder does not meet the minimum operational performance expectations if the charter holder receives an overall rating of “does not meet the Board’s operational performance standard” in at least one of the two most recent years for which an overall rating was calculated or has at least one measure rated “falls far below standard” in the current year.
- F.** If the Board determines a charter holder does not meet the minimum operational performance expectations, the Board shall consider charter oversight under Article 6.

**R7-5-404. Development and Use of Performance Frameworks**

- A.** The Board shall revise the Academic, Financial, and Operational Performance Frameworks as needed. During the process of revision, the Board shall provide the public with notice and an opportunity to comment on proposed revisions. The Board shall adopt revisions at a public meeting.
- B.** The Board shall ensure the Academic Performance Framework includes considerations for non-traditional charter schools, including small charter schools with very low enrollment and those designated by the Department as alternative schools.
- C.** Use of the Academic Performance Framework is contingent on a charter school’s receipt of an annual achievement profile under A.R.S. § 15-241. The Board shall assign a rating of “no rating” to a charter school that does not provide enough data to make a calculation.
- D.** If the Department does not timely release annual achievement profiles under A.R.S. § 15-241, rather than assigning a rating of “no rating” to all charter schools, the Board may use the most recent available data for each measure.

**ARTICLE 5. AUDITS AND AUDIT CONTRACTS CHARTER SUPERVISION**

**~~R7-5-301, R7-5-501.~~ Audit Guidelines General Supervision, Oversight, and Administrative Responsibility**

~~By July 1 of each year, the Board shall make available to the public at its office and online 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.~~

- A.** ~~A charter holder shall:~~
  - ~~1. Comply with the provisions of its charter, contractual agreements with the Board, and with federal and state laws, at all times, and this Chapter; and~~
  - ~~2. Meet the minimum performance expectations specified in Article 4.~~
- B.** ~~The Board may use may supervise a charter holder’s compliance with subsection (A) using 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 or written communication with;~~



- a. ~~the The authorized charter~~ representative or authorized charter school personnel; and
- ~~2-b.~~ Oral, written, and electronic communication with representatives 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;~~
- ~~4-2.~~ 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;
- 3. A site visit as described in R7-5-502;
- 4. Annual academic performance review as described in R7-5-503;
- 5. Annual audit and financial performance review as described in R7-5-504 and, if necessary, a financial performance response as described in R7-5-509;
- ~~5-6.~~ A corrective action plan as described in R7-5-302 Operational performance review as described in R7-5-505; and
- ~~6-7.~~ A site visit as described in R7-5-303 Five-year-interval review of academic, financial, and operational performance, as described in R7-5-506; and
- 8. Complaints as described in R7-5-507.
- C. If the specified deadline has not passed, Board staff may grant a charter holder an extension to submit a CAP or other response required under R7-5-502(G), R7-5-504(G), R7-5-505(D), R7-5-505(E), R7-5-506(B)(2), R7-5-507(C), or R7-5-509(B).
  - 1. In determining whether to grant an extension, Board staff shall consider the following, as applicable:
    - a. Whether the charter school at issue was in session when the Board provided notice to the charter holder,
    - b. Whether the charter school at issue was in session during the period provided in the notice for the charter holder to respond to the Board, and
    - c. Whether additional time is required by the charter holder because of the number or complexity of matters to be addressed.
  - 2. Even if the specified deadline has not passed, Board staff shall not grant an extension for a financial performance response required as part of the charter holder's renewal application.

#### ~~R7-5-303-R7-5-502. Approval of Audit Contracts Site Visits, Records, Notice of Violation~~

- ~~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. ~~Board knowledge that a person employed by the audit firm has been convicted under a 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 of the audit firm 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.
- 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 the provisions of its charter and federal and state laws holder's compliance with R7-5-501(A).
- B. A designee of the Board or Department may conduct a site visit to corroborate information submitted to the Board or Department and to gather information, documentation, and testimony that permit the Board to fulfill its oversight function under the law and ensure evaluate the charter school is in holder's compliance with the provisions of its charter and federal and state laws R7-5-501(A).
- C. A designee of the Board or Department ~~shall conduct~~ who conducts a site visit shall do so during regular operational hours of a the charter school or at any other reasonable time.
- D. A designee of the Board or Department may conduct either an announced or unannounced site visit.
- ~~E.~~ 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.
- ~~F-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 conducted by or for the charter school or the charter holder relating to the charter school.
- ~~G-E.~~ Upon request by a designee of the Board or Department, a charter holder shall provide access to all school facilities.
  - 1. 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.
  - 2. In conducting a site visit, the designee of the Board or the Department shall make every effort not to disrupt the classroom environment.
- ~~H-G.~~ The Board or Department shall inform a charter holder in writing of any offense issue identified during a site visit and shall specify any further action that must be taken required by the charter holder. To assist with this requirement, Board staff shall direct the charter



holder to submit a CAP, as described in R7-5-510, which addresses the issue. ~~In determining the appropriate action to take, the Board shall consider the items in R7-5-304(A).~~

- ~~F. 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.~~

**R7-5-503. ~~Audit Completeness Determinations~~ Annual Academic Performance Review**

- ~~A. In accordance with A.R.S. § 15-914 and Laws 1999, 1st S.S., Ch. 4, § 15, a charter holder shall submit an audit to the Board for a determination regarding the audit's 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 require that a charter holder whose audit does not include the items stated in the audit guidelines appear before the Board for possible disciplinary action under R7-5-304.~~
- A. When the Department releases the annual achievement profile under A.R.S. § 15-241, the Board shall:
  1. Calculate an overall academic rating for each charter school sponsored by the Board using the Academic Performance Framework, and
  2. Make the annual overall academic performance dashboard publicly available and post it on ASBCS Online.
- B. If the Board determines a charter holder does not meet the Board's minimum academic performance expectations, as defined under R7-5-401(D), the Board shall require the charter holder to demonstrate sufficient progress towards achieving the minimum academic performance expectations.

**R7-5-504. ~~Review of Complete Audits~~ Annual Audit and Financial Performance Review**

- ~~A. The Board staff shall review each audit deemed complete.~~
- ~~B. The Board shall send a letter to a charter holder after the 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 require that a charter holder with a serious impact finding appear before the Board for possible disciplinary action under R7-5-304.~~
- A. By July 1 of each year, the Board shall make available on its web site written requirements regarding the audit each charter school is required to submit annually under A.R.S. §§ 15-183(E)(6) and 15-914.
- B. Before beginning the audit, a charter holder or the audit firm shall submit for the Board's approval a copy of the audit contract the charter holder intends to execute with an audit firm.
  1. Board staff shall approve the audit contract unless the Board has knowledge that one of the following is applicable:
    - a. A person employed by the audit firm has been convicted under federal or state law of a crime indicating lack of business integrity or honesty;
    - b. The audit firm or supervising certified public accountant is subject to a current or pending disciplinary action or a regulatory action requiring the audit firm or supervising certified public accountant to complete conditions specified by an accounting industry regulatory body;
    - c. The audit firm violates or fails to meet generally accepted auditing standards or generally accepted government auditing standards as identified by an accounting industry regulatory body;
    - d. The audit firm receives an opinion of "fail" during the audit firm's most recent peer review;
    - e. An auditor scheduled to work on the audit fails to meet the continuing professional education requirements prescribed by generally accepted government auditing standards; or
    - f. The audit firm fails to agree to adhere to the audit requirements specified in subsection (A).
  2. Within 10 days after receiving a copy of an audit contract under subsection (B), the Board shall provide the charter holder and audit firm written notice whether the audit contract is approved.
  3. If the Board disapproves an audit contract submitted under subsection (B), the Board shall include the reason for the disapproval in the written notice provided under subsection (B)(2). If the charter holder or audit firm provides documentation to the Board demonstrating the cause for the disapproval no longer exists, Board staff shall approve the audit contract and provide written notice to the charter holder and audit firm.
- C. A charter holder or the audit firm that conducts an audit for the charter holder shall submit the annual audit to the Board for a determination whether the audit is complete. Within five days after receiving the annual audit, Board staff shall provide the charter holder and audit firm written notice whether the audit is complete.
- D. Board staff shall find an audit is incomplete if it does not comply with all requirements specified under subsection (A) or if the audit is prepared by an audit firm that fails to meet the requirements under subsection (B)(1)(a)-(e). If Board staff finds an audit is incomplete, Board staff shall include the reason for the finding in the notice provided under subsection (C). If the charter holder or audit firm provides documentation to the Board demonstrating the reason for the finding no longer exists, Board staff shall find the annual audit is complete and provide written notice to the charter holder and audit firm.
- E. A charter holder that fails to submit timely a complete audit may be subject to charter oversight as specified in Article 6.
- F. Board staff shall review each audit deemed complete.
- G. Board staff shall send notice to a charter holder after the audit is reviewed unless the Board has been notified the charter holder will not be operating during the next fiscal year. If the Board identifies an issue in the audit, Board staff shall direct the charter holder to address the issue and may require the charter holder to submit a CAP, as described in R7-5-510.



- H. If Board staff identifies a serious impact finding in the audit, the charter holder shall be subject to charter oversight as specified in Article 6 unless the charter holder provides credible evidence to the Board that the charter holder's next audit will find the charter holder in compliance.
- I. The Board shall annually calculate a financial performance rating for each charter holder using the Financial Performance Framework and the annual audit submitted to the Board by the charter holder. The Board shall make each charter holder's financial performance dashboard publicly available and post it on ASBCS Online.

**R7-5-505. Operational Performance Review**

- A. Board staff shall conduct a site visit to a charter school during the charter school's first year of operation, and thereafter as specified in R7-5-502, to evaluate the charter holder's compliance with its charter, other contractual agreements with the Board, federal and state law, and this Chapter.
- B. Before conducting the first-year site visit specified under subsection (A), Board staff shall ask the charter holder to identify dates within a specified time frame not conducive to an unscheduled first-year site visit. This includes dates of an early release, parent conferences, or school not being in session.
- C. Board staff may conduct a compliance check of a charter holder's operational performance at any time. The Board shall conduct a compliance check when:
  - 1. The charter holder seeks to amend the charter or makes another request of the Board; or
  - 2. A lending institution, bond rating agency, or similar entity that has a loan or bond arrangement with the charter holder contacts Board staff to discuss the charter holder's current standing with the Board.
- D. Within 10 days after completing the site visit under subsection (A), Board staff shall provide the charter holder with written notice of any compliance issues identified and, if applicable, require the charter holder to submit a CAP as described in R7-5-510.
- E. Within 10 days after completing a compliance check under subsection (C), Board staff shall provide the charter holder with written notice of any compliance issues identified and specify a deadline for addressing the issues.
- F. After receiving the notice provided under subsection (E), the charter holder shall provide the Board with written notice demonstrating that all identified compliance issues have been addressed by the specified deadline.
- G. The Board shall require a charter holder that fails to provide the notice required under subsection (F) or fails to demonstrate that all identified compliance issues have been addressed to appear before the Board and:
  - 1. May subject the charter holder's requests to heightened review.
  - 2. Shall not place the charter holder's requests on a Board agenda, and
  - 3. May subject the charter holder to charter oversight as described in Article 6.

**R7-5-506. Five-year-interval Review**

- A. As required under A.R.S. § 15-183(I)(3), the Board shall review a charter holder at five-year intervals for:
  - 1. Compliance with its charter, other contractual agreements with the Board, federal and state law, and this Chapter; and
  - 2. Achievement of the minimum performance expectations specified in Article 4.
- B. Board staff shall provide a charter holder with notice of a five-year-interval review. Board staff shall include in the notice:
  - 1. The information the charter holder is required to submit to the Board,
  - 2. The deadline by which the charter holder shall submit the required information, and
  - 3. A request for the charter holder to identify dates within a specified time frame not conducive to an unscheduled academic-systems-review site visit. This includes dates of an early release, parent conferences, or school not being in session.
- C. The Board shall require a financial performance response, as described under R7-5-509, from a charter holder that does not meet the Board's minimum financial performance expectations.
- D. The Board shall require a charter holder to review and confirm information concerning the charter's mission statement, program of instruction, instructional days, school calendar, charter representative, grade levels served, enrollment cap, principals, school site, and charter holder locations and, as applicable submit requests for appropriate post-charter actions as described in Article 3.
- E. A charter holder that fails to submit the information required by the deadline specified in subsection (B) shall appear before the Board and may be subject to charter oversight as described in Article 6.
- F. As part of a five-year-interval review, Board staff shall conduct an unscheduled academic-systems-review site visit, in accordance with R7-5-502, to gather evidence regarding the charter holder's implementation of a comprehensive program of instruction and a method to measure pupil progress toward outcomes required in the charter. Using the information provided by the charter holder under subsection (B)(3), Board staff shall provide written notice to the charter holder of the two-week interval during which Board staff will conduct the unscheduled academic-systems-review site visit.

**R7-5-507. Complaints**

- A. To make a complaint regarding a charter holder, a person shall submit to the Board a document through ASBCS Online that:
  - 1. Alleges with particularity the charter holder is not in compliance with its charter, other contractual agreements with the Board, federal or state law, or this Chapter;
  - 2. Includes a statement of the facts on which the allegation of violation is based; and
  - 3. Includes supporting evidence, if available.
- B. Board staff shall review the complaint to determine whether the complaint is within the Board's jurisdiction.
  - 1. If Board staff determines the complaint is not within the Board's jurisdiction but may be within the jurisdiction of another agency, Board staff shall inform the complainant of the agency that has jurisdiction and that the complainant may file the complaint with the appropriate agency; or
  - 2. If Board staff determines the complaint is within the Board's jurisdiction, Board staff shall, within five days after receiving the complaint, send a copy to the charter holder complained against.
- C. A charter holder complained against shall, within 10 days after receiving a copy of the complaint provided under subsection (B)(2), provide a written response to the Board that addresses each allegation, the statement of facts, and supporting evidence in the com-



plaint. The charter holder may include evidence of compliance with the response. Board staff may grant the charter holder an extension to submit the written response.

- D. Board staff shall review the complaint and the charter holder’s response to determine whether a violation of the charter, other contractual agreements with the Board, federal or state law, or this Chapter can be substantiated. Board staff shall conduct further investigation if additional information is needed. Board staff may place the charter holder on an agenda for the Board to determine whether the charter holder is in compliance with the charter, other contractual agreements with the Board, federal and state law, and this Chapter.
- E. Within 10 days after receiving the charter holder’s response under subsection (C), Board staff shall send:
  1. The complainant a copy of the response, and
  2. The complainant and charter holder notice of the final action to be taken.

**R7-5-508. Demonstration of Sufficient Progress towards Minimum Academic Performance Expectations**

- A. The Board shall require a charter holder to demonstrate the charter holder is making sufficient progress towards achieving the minimum academic performance expectations if:
  1. The Board determines under R7-5-401(D) the charter holder does not meet the minimum academic performance expectations; or
  2. A charter school operated by the charter holder is assigned a letter grade of “F” by the Department.
- B. Within 30 days after issuing overall ratings, the Board shall provide the charter holder with a written notification of the charter holder’s progress toward meeting the minimum academic performance expectations.
- C. If a charter school operated by a charter holder receives an overall rating of “does not meet” or “falls far below” for three consecutive years, the Board shall conclude the charter holder has failed to demonstrate sufficient progress.
- D. If the Board concludes a charter holder has failed to demonstrate sufficient progress, the charter holder may be subject to charter oversight as specified in Article 6.

**R7-5-509. Financial Performance Response**

- A. The Board shall require a charter holder to prepare a financial performance response if the Board determines under R7-5-402(E) the charter holder does not meet the minimum financial performance expectations at one of the times specified in R7-5-402(A)(2)(a)-(e).
- B. Board staff shall provide written notice to a charter holder that is required to submit a financial performance response. Board staff shall ensure the notice includes the following:
  1. Information on how to access the charter holder’s financial performance dashboard, and
  2. The deadline for submitting the financial performance response to the Board.
- C. For each measure for which a charter holder received a “does not meet standard” or “falls far below standard” during the most recent audited fiscal year presented in the financial performance dashboard and by the deadline specified in subsection (B)(2), the charter holder shall:
  1. Explain why the charter holder failed to meet the measure’s target in the audited fiscal year.
  2. Explain the charter holder’s effort to improve its performance so it is possible to meet the measure’s target in the next fiscal year or a subsequent fiscal year, and
  3. Provide evidence that supports the charter holder’s explanation and analysis under subsections (C)(1) and (2).
- D. Within 60 days after receiving a financial performance response or when the five-year interval review is closed out for a financial performance response submitted as part of a five-year interval review, Board staff shall provide the charter holder with written notice that the response is acceptable or not acceptable. Board staff shall find a financial performance response acceptable if it includes the explanations and evidence required under subsection (C).
- E. If Board staff finds a financial performance response is not acceptable, the Board shall allow the charter holder to supplement the financial performance response if the charter holder is in a process that requires the financial performance response to be considered at a Board meeting.
- F. If the Board allows a charter holder to supplement a financial performance response under subsection (E), Board staff shall:
  1. Include the deadline for submitting the supplemented financial performance response in the notice provided under subsection (D); and
  2. Find the supplemented financial performance response acceptable if it includes the explanations and evidence required under subsection (C).
- G. Board staff shall include the supplemented financial performance response and the determination made under subsection (F)(2) in the meeting materials provided to the Board. The supplemented financial performance response and the Board’s final determination shall be posted on ASBCS Online.
- H. If a charter holder fails to submit or fails to submit timely a required financial performance response, the failure shall be noted in the charter holder’s operational performance dashboard posted on ASBCS Online.

**~~R7-5-302~~, R7-5-510, Corrective Action Plan**

- A. Upon receipt of information under R7-5-301(B) that a charter holder is not in compliance with the provisions of its charter or federal or state laws, the Board shall consider the following factors in determining whether a corrective action plan (CAP) is required: Board staff shall require a charter holder to prepare a CAP for:
  1. The seriousness of the offense; Any issue identified during a site visit described in R7-5-502 or R7-5-505,
  2. The charter holder’s history of compliance with the provisions of its charter and federal and state laws; An issue identified through the audit described in R7-5-504, or
  3. The length of time the offense has been occurring; and Actions taken by the Board to withhold up to 10 percent of the charter holder’s monthly state aid as described in R7-5-601 and R7-5-605.
  4. Any other factors relating to the charter holder’s compliance with the provisions of its charter and federal or state laws
- 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: Board staff shall provide written notice to a charter holder required to prepare a CAP. Board staff shall ensure the written notice includes the following:



1. ~~An explanation of why the charter holder is required to submit a CAP.~~
  - 1-2. ~~A description of the offense issue.~~
  - 2-3. ~~A list of the specific criteria to be included in the CAP.~~
  - 3-4. ~~The deadline for the submission of submitting the CAP to the Board.~~
  - 4-5. ~~A timeline for the implementation of The time during which the charter holder is required to implement the CAP, and~~
  - 5-6. ~~The consequences for failure if the charter holder fails to submit or implement the CAP.~~
- C. ~~The Board shall decide to accept the CAP based on whether the specified criteria stated in the request are included in the CAP. Within 10 days after receiving the CAP, Board staff shall provide written notice to the charter holder that:~~
1. ~~The Board shall provide written notification to the authorized representative regarding the acceptance or rejection of the CAP. A complete CAP was received and implementation is required; or~~
  2. ~~Written notification that the Board rejected the CAP shall include the reason for the rejection, the deadline for submission of the revised CAP, and the consequences for failure to submit a CAP that meets the specified criteria. Additional information is required and the deadline for submitting the additional information to the Board.~~
- D. ~~The Board staff shall monitor, through site visits and review of documentary evidence, the charter holder's implementation of the approved CAP to ensure until the Board determines the offense is rectified issue has been corrected.~~
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 fails to implement the CAP and rectify the offense.~~
- E. ~~If a charter holder fails to submit a required CAP, fails to submit additional information required under subsection (C)(2), or fails to implement the CAP timely, the charter holder may be subject to charter oversight as specified in Article 6.~~

### ~~ARTICLE 3-ARTICLE 6. CHARTER OVERSIGHT~~

#### ~~R7-5-304-R7-5-601. Disciplinary Action Charter Oversight: General Provisions~~

- A. ~~The Board may discipline a charter holder for violation of is not in compliance with its charter, other contractual agreements with the Board, or federal or state laws, or this Chapter and decides whether to impose charter oversight, the Board shall provide notice to the charter holder.~~
- B. ~~The Board shall provide the charter holder with at least 72-hours' notice of the date, time, and location of the meeting at which the Board will decide whether to impose charter oversight. The Board shall include in the notice the purpose of the meeting and why the Board is considering imposing charter oversight.~~
- C. ~~In determining the appropriate disciplinary charter oversight action to take, the Board shall consider the following, as applicable:~~
1. ~~Threat to the health or safety of children;~~
  2. ~~Whether the charter holder's historical compliance record indicates repeated or multiple breaches of the provisions of its charter, other contractual agreements with the Board, or federal or state laws, or this Chapter;~~
  3. ~~Whether the charter holder has failed to meet the minimum academic needs of the children performance expectations specified under R7-5-401;~~
  4. ~~Length of time the offense issue has been occurring;~~
  5. ~~The charter holder's compliance with and response to staff Board investigation in by providing necessary information and documentation within requested time frames time frames;~~
  6. ~~Whether there has been a misuse of funds; and~~
  7. ~~Any other factor that has a bearing bears on the charter holder's ability and willingness to operate in compliance with the provisions comply with its charter, other contractual agreements with the Board, and federal and state laws, and this Chapter.~~
- ~~B.D.~~ ~~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 Charter oversight actions available to the Board include, but are not limited to any of the following:~~
1. ~~Requiring a corrective action plan as described in R7-5-302 Imposing a civil penalty, as authorized under A.R.S. § 15-185 and described under R7-5-604;~~
  2. ~~Requesting the Department to withhold up to 10 percent of the a charter school's holder's monthly state aid in accordance with as authorized under A.R.S. § 15-185(H) and described under R7-5-605 and requiring the charter holder to submit a CAP as described under R7-5-510. Upon proof of corrected deficiencies and that the charter holder is in compliance, the Board shall request the Department to restore the full amount of state aid payments to the charter school;~~
  3. ~~Entering into a consent agreement with the a charter holder as described under R7-5-606; for the resolution of the non-compliance. The Board shall ensure that 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, after giving 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. ~~Issuing a notice of intent to revoke the a charter in accordance with as authorized under A.R.S. § 15-183(H) and described under R7-5-607, 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. Revoking the a charter in accordance with as authorized under A.R.S. § 15-183(4) and described under R7-5-607.

**R7-5-602. Oversight of Charter Schools Assigned a Letter Grade of “F” by the Department**

- A.** If the Department notifies the Board, as required under A.R.S. § 15-241, that a charter school has been assigned a letter grade of “F,” the Board shall require the charter holder to appear before the Board for consideration of whether the Board will issue a notice of intent to revoke the charter under R7-5-607 or restore the charter to acceptable performance through a consent agreement under R7-5-606.
- B.** Upon receipt of the Department’s notice under subsection (A), the Board shall provide written notice to the charter holder that the school has been designated a failing school.
- C.** Within 30 days after receipt of the notice provided under subsection (B), the charter holder shall:
  - 1. As required under A.R.S. § 15-241, provide written notice to the parents or guardians of all students attending the school that the Department has assigned the school a letter grade of “F” because the school is demonstrating a failing level of performance. The charter holder shall provide to the Board a copy of the notice required under this subsection;
  - 2. Provide the Board with a list of the names and mailing addresses of the parents or guardians of all students attending the school;
  - 3. Ensure the charter school’s public communications that make a statement concerning the charter school’s academic performance, including the charter school’s web site and promotional materials, accurately describe the charter school’s most current annual achievement profile assigned by the Department; and
  - 4. If notified the charter holder does not meet the minimum financial performance expectations, submit a financial performance response as described under R7-5-509.
- D.** If required, Board staff shall evaluate the financial performance response specified under R7-5-509.
- E.** The Board shall provide the charter holder with at least 72 hours’ written notice of the date, time, and location of the public meeting at which the Board will consider whether to restore the charter to acceptable performance or revoke the charter. In making this decision, the Board shall consider all relevant factors including:
  - 1. Whether the charter holder complied fully with the provisions of subsection (C);
  - 2. Whether the charter holder failed to meet the minimum academic performance expectations based on student achievement measures specified in the Academic Performance Framework;
  - 3. Whether the charter holder has demonstrated, under R7-5-508, sufficient progress toward achieving the minimum academic performance expectations;
  - 4. Whether the charter holder meets the minimum financial performance expectations;
  - 5. Whether the charter holder timely complied with Board requests for information and documents;
  - 6. Whether the charter holder’s historical compliance record indicates repeated or multiple breaches of its charter, other contractual agreements with the Board, federal or state law, or this Chapter; and
  - 7. Any other factor the Board determines has a bearing on the charter holder’s ability or willingness to comply with the provisions of its charter, other contractual agreements with the Board, federal and state law, and this Chapter.
- F.** If the Board decides to restore the charter to acceptable performance, the Board shall enter into a consent agreement with the charter holder as provided under R7-5-606. If the Board decides to revoke the charter, the Board shall issue a notice of intent to revoke the charter as provided under R7-5-607.

**R7-5-603. Oversight of Charter Schools Assigned a Letter Grade of “D” by the Department**

- A.** Within 30 days after the Department notifies a charter holder under A.R.S. § 15-241 that a charter school operated by the charter holder has been assigned a letter grade of “D,” the charter holder shall:
  - 1. Comply fully with A.R.S. § 15-241 by providing written notice to the parents or guardians of all students attending the school. The charter holder shall include the following in the notice:
    - a. The Department has assigned the charter school a letter grade of “D;”
    - b. The charter holder is required under A.R.S. § 15-241.02 to prepare an improvement plan within 90 days after the charter school was assigned a letter grade of “D;” and
    - c. The charter holder is required to present the improvement plan to the Board at a public meeting;
  - 2. Provide the Board a copy of the notice required under subsection (A)(1);
  - 3. Provide the Board with a list of the names and mailing addresses of the parents or guardians of all students attending the school; and
  - 4. Ensure the charter school’s public communications that make a statement concerning the charter school’s academic performance, including the charter school’s web site and promotional materials, accurately describe the charter school’s most current academic performance rating assigned by the Department.
- B.** The Board shall require a charter holder that fails to comply fully with subsection (A) to appear before the Board for consideration of the charter holder’s noncompliance and may subject the charter holder to additional charter oversight.
- C.** Under A.R.S. § 15-241.02, the Board is required to revoke the charter of a charter school if the Board determines the improvement plan required under subsection (A)(1)(b) was not properly implemented.

**R7-5-604. Civil Penalty for Fingerprinting Violation**

- A.** After identifying a violation of A.R.S. §§ 15-183, 15-512 or both, Board staff shall provide the charter holder with written notice of noncompliance with statutory fingerprinting requirements and the date, time, and location of the Board meeting at which the Board will consider whether to impose a civil penalty under A.R.S. § 15-185.
- B.** If the Board determines a charter holder has failed to comply with the statutory fingerprinting requirements in A.R.S. §§ 15-183 or 15-512, the Board may impose a civil penalty of \$1,000 per occurrence as provided under A.R.S. § 15-185.
- C.** Within 30 days after a civil penalty is imposed under subsection (B), the charter holder may submit to the Board a written appeal of the civil penalty. The charter holder shall include the following information in the written appeal:
  - 1. Name and address of the appellant;



2. Concise statement of the reason for the appeal;
  3. Relief sought; and
  4. If the appellant will be represented by an attorney, the attorney's name, address, and telephone number.
- D.** The Board shall hold a hearing to consider the appeal within 60 days after receiving the appeal.

**R7-5-605. Withholding State Funds**

- A.** Under A.R.S. § 15-185, if the Board determines at a public meeting that a charter holder is not in compliance with its charter or federal or state law, the Board may request the Department to withhold up to 10 percent of the charter holder's monthly apportionment of state aid.
- B.** If the Board decides to request that the Department withhold part of the charter holder's monthly apportionment of state aid, the Board shall provide written notice to the charter holder. The Board shall include the following in the notice:
1. The reason the withholding is being imposed;
  2. The percentage of the charter holder's monthly apportionment of state aid to be withheld;
  3. The date on which the withholding will begin; and
  4. Actions required by the charter holder before the full amount of state aid is restored.
- C.** If a percentage of the charter holder's monthly apportionment of state aid is withheld for six months and the charter holder has not completed the actions required under subsection (B)(4), the Board shall consider the charter holder's noncompliance and may subject the charter holder to additional charter oversight including issuing a notice of intent to revoke under R7-5-607.
- D.** If a percentage of the charter holder's monthly apportionment of state aid is withheld for failure to submit an audit for two months, the Board shall consider the charter holder's noncompliance and may subject the charter holder to additional charter oversight including issuing a notice of intent to revoke under R7-5-607.
- E.** When the Board determines the charter holder is in compliance with its charter and federal and state law, the Board shall request that the Department restore the full amount of state aid to the charter holder.

**R7-5-606. Consent Agreement**

- A.** If the Board determines that a charter holder is not in compliance with its charter, other contractual agreements with the Board, federal or state law, or this Chapter, the Board may enter into a consent agreement with the charter holder to resolve the noncompliance.
- B.** The Board shall include the following in a consent agreement:
1. The reason for the consent agreement;
  2. The facts and conditions to which the Board and charter holder agreed;
  3. The actions the charter holder must take to demonstrate compliance and avoid further charter oversight;
  4. The time within which the charter holder is to complete the actions specified under subsection (B)(3); and
  5. After approval by both the Board and charter holder, the signatures of both the Board president and charter representative.

**R7-5-607. Revocation**

- A.** If the Board determines that a charter holder is not in compliance with its charter, federal or state law, or this Chapter, the Board may issue a written notice of intent to revoke the charter as authorized under A.R.S. § 15-183.
- B.** When a charter holder receives a notice of intent to revoke and notice of hearing, the charter holder shall:
1. Within 48 hours after receiving the notice of intent to revoke and notice of hearing, provide written notice that includes the following to all staff and the parents or guardians of all students attending the school:
    - a. A notice of intent to revoke has been received;
    - b. The notice of intent to revoke may be inspected at the charter school location; and
    - c. The date, time, and location of the hearing set with the Office of Administrative Hearings; and
  2. Within 20 days after receiving the notice of intent to revoke, provide the Board with:
    - a. A copy of the notice required under subsection (B)(1), and
    - b. A list of the names and mailing addresses of the parents or guardians of all students attending the school.
- C.** Both the Board and charter holder shall appear for an administrative hearing before an administrative law judge at the Office of Administrative Hearings on the date provided in the notice of intent to revoke.
- D.** After the administrative hearing under subsection (C) and receipt of the decision of the administrative law judge, the Board shall hold a public meeting at which the Board shall:
1. Decide whether to accept, reject, or modify the decision of the administrative law judge; and
  2. Take action on the charter.



Conference Engrossed

State of Arizona  
Senate  
Fifty-third Legislature  
First Regular Session  
2017

# SENATE BILL 1036

AN ACT

AMENDING SECTIONS 15-182 AND 41-1005, ARIZONA REVISED STATUTES; RELATING  
TO THE STATE BOARD FOR CHARTER SCHOOLS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 15-182, Arizona Revised Statutes, is amended to  
3 read:

4 15-182. State board for charter schools: membership; terms;  
5 compensation; duties

6 A. The state board for charter schools is established consisting of  
7 the following members:

8 1. The superintendent of public instruction or the superintendent's  
9 designee.

10 2. Six members of the general public, at least two of whom shall  
11 reside in a school district where at least sixty ~~per cent~~ PERCENT of the  
12 children who attend school in the district meet the eligibility  
13 requirements established under the national school lunch and child  
14 nutrition acts (42 United States Code sections 1751 through 1785) for free  
15 lunches, and at least one of whom shall reside on an Indian reservation,  
16 who are appointed by the governor pursuant to section 38-211.

17 3. Two members of the business community who are appointed by the  
18 governor pursuant to section 38-211.

19 4. A teacher who provides classroom instruction at a charter school  
20 and who is appointed by the governor pursuant to section 38-211.

21 5. An operator of a charter school who is appointed by the governor  
22 pursuant to section 38-211.

23 6. Three members of the legislature who shall serve as advisory  
24 members and who are appointed jointly by the president of the senate and  
25 the speaker of the house of representatives.

26 B. The superintendent of public instruction shall serve a term on  
27 the state board for charter schools that runs concurrently with the  
28 superintendent's term of office. The members appointed pursuant to  
29 subsection A, paragraph 6 of this section shall serve ~~two-year~~ TWO-YEAR  
30 terms on the state board for charter schools that begin and end on the  
31 third Monday in January and that run concurrently with their respective  
32 terms of office. Members appointed pursuant to subsection A, paragraphs  
33 2, 3, 4 and 5 of this section shall serve staggered ~~four-year~~ FOUR-YEAR  
34 terms that begin and end on the third Monday in January.

35 C. The state board for charter schools shall annually elect a  
36 president and such other officers as it deems necessary from among its  
37 membership.

38 D. Members of the state board for charter schools are not eligible  
39 to receive compensation but are eligible for reimbursement of expenses  
40 pursuant to title 38, chapter 4, article 2.

41 E. The state board for charter schools shall:

42 1. Exercise general supervision over charter schools THAT ARE  
43 sponsored by the board, ~~and~~ recommend legislation pertaining to charter  
44 schools to the legislature AND ADOPT RULES AND POLICIES THAT THE BOARD  
45 DEEMS NECESSARY TO ACCOMPLISH THE PURPOSES PRESCRIBED IN THIS SECTION.

- 1           2. Grant charter status to qualifying applicants for charter
- 2 schools pursuant to section 15-183.
- 3           3. Adopt and use an official seal in the authentication of its
- 4 acts.
- 5           4. Keep a record of its proceedings.
- 6           5. Adopt rules for its own government.
- 7           6. Determine the policy of the board and the work undertaken by it.
- 8           7. Delegate to the superintendent of public instruction the
- 9 execution of board policies.
- 10          8. Prepare a budget for expenditures necessary for the proper
- 11 maintenance of the board and the accomplishment of its purpose.
- 12          F. The state board for charter schools may:
- 13           1. Contract.
- 14           2. Sue and be sued.
- 15           3. Use the services of the auditor general.
- 16           4. Subject to title 41, chapter 4, article 4 and legislative
- 17 appropriation, employ staff.
- 18          G. The state board for charter schools may accept gifts or grants
- 19 of monies or real or personal property from public and private
- 20 organizations, if the purpose of the gift or grant specified by the donor
- 21 is approved by the board and is within the scope of the board's powers and
- 22 duties. The board shall establish and administer a gift and grant fund
- 23 for the deposit of monies received pursuant to this subsection.
- 24          Sec. 2. Section 41-1005, Arizona Revised Statutes, is amended to
- 25 read:
- 26           41-1005. Exemptions
- 27           A. This chapter does not apply to any:
- 28           1. Rule that relates to the use of public works, including streets
- 29 and highways, under the jurisdiction of an agency if the effect of the
- 30 order is indicated to the public by means of signs or signals.
- 31           2. Order or rule of the Arizona game and fish commission that does
- 32 the following:
- 33           (a) Opens, closes or alters seasons or establishes bag or
- 34 possession limits for wildlife.
- 35           (b) Establishes a fee pursuant to section 5-321, 5-322 or 5-327.
- 36           (c) Establishes a license classification, fee or application fee
- 37 pursuant to title 17, chapter 3, article 2.
- 38           3. Rule relating to section 28-641 or to any rule regulating motor
- 39 vehicle operation that relates to speed, parking, standing, stopping or
- 40 passing enacted pursuant to title 28, chapter 3.
- 41           4. Rule concerning only the internal management of an agency that
- 42 does not directly and substantially affect the procedural or substantive
- 43 rights or duties of any segment of the public.
- 44           5. Rule that only establishes specific prices to be charged for
- 45 particular goods or services sold by an agency.

- 1           6. Rule concerning only the physical servicing, maintenance or care
- 2 of agency owned or operated facilities or property.
- 3           7. Rule or substantive policy statement concerning inmates or
- 4 committed youths of a correctional or detention facility in secure custody
- 5 or patients admitted to a hospital, if made by the state department of
- 6 corrections, the department of juvenile corrections, the board of
- 7 executive clemency or the department of health services or a facility or
- 8 hospital under the jurisdiction of the state department of corrections,
- 9 the department of juvenile corrections or the department of health
- 10 services.
- 11           8. Form whose contents or substantive requirements are prescribed
- 12 by rule or statute, and instructions for the execution or use of the form.
- 13           9. Capped fee-for-service schedule adopted by the Arizona health
- 14 care cost containment system administration pursuant to title 36,
- 15 chapter 29.
- 16           10. Fees prescribed by section 6-125.
- 17           11. Order of the director of water resources adopting or modifying
- 18 a management plan pursuant to title 45, chapter 2, article 9.
- 19           12. Fees established under section 3-1086.
- 20           13. Fees established under sections 41-4010 and 41-4042.
- 21           14. Rule or other matter relating to agency contracts.
- 22           15. Fees established under section 32-2067 or 32-2132.
- 23           16. Rules made pursuant to section 5-111, subsection A.
- 24           17. Rules made by the Arizona state parks board concerning the
- 25 operation of the Tonto natural bridge state park, the facilities located
- 26 in the Tonto natural bridge state park and the entrance fees to the Tonto
- 27 natural bridge state park.
- 28           18. Fees or charges established under section 41-511.05.
- 29           19. Emergency medical services protocols except as provided in
- 30 section 36-2205, subsection B.
- 31           20. Fee schedules established pursuant to section 36-3409.
- 32           21. Procedures of the state transportation board as prescribed in
- 33 section 28-7048.
- 34           22. Rules made by the state department of corrections.
- 35           23. Fees prescribed pursuant to section 32-1527.
- 36           24. Rules made by the department of economic security pursuant to
- 37 section 46-805.
- 38           25. Schedule of fees prescribed by section 23-908.
- 39           26. Procedure that is established pursuant to title 23, chapter 6,
- 40 article 6.
- 41           27. Rules, administrative policies, procedures and guidelines
- 42 adopted for any purpose by the Arizona commerce authority pursuant to
- 43 chapter 10 of this title if the authority provides, as appropriate under
- 44 the circumstances, for notice of an opportunity for comment on the
- 45 proposed rules, administrative policies, procedures and guidelines.

1           28. Rules made by a marketing commission or marketing committee  
2 pursuant to section 3-414.

3           29. Administration of public assistance program monies authorized  
4 for liabilities that are incurred for disasters declared pursuant to  
5 sections 26-303 and 35-192.

6           30. User charges, tolls, fares, rents, advertising and sponsorship  
7 charges, services charges or similar charges established pursuant to  
8 section 28-7705.

9           31. Administration and implementation of the hospital assessment  
10 pursuant to section 36-2901.08, except that the Arizona health care cost  
11 containment system administration must provide notice and an opportunity  
12 for public comment at least thirty days before establishing or  
13 implementing the administration of the assessment.

14           32. Rules made by the Arizona department of agriculture to adopt  
15 and implement the provisions of the federal milk ordinance as prescribed  
16 by section 3-605.

17           B. Notwithstanding subsection A, paragraph 21 of this section, at  
18 such time as the federal highway administration authorizes the  
19 privatization of rest areas, the state transportation board shall make  
20 rules governing the lease or license by the department of transportation  
21 to a private entity for the purposes of privatization of a rest area.

22           C. Coincident with the making of a final rule pursuant to an  
23 exemption from the applicability of this chapter under this section,  
24 another statute or session law, the agency shall file a copy of the rule  
25 with the secretary of state for publication pursuant to section 41-1012  
26 and provide a copy to the council.

27           D. Unless otherwise required by law, articles 2, 3, 4 and 5 of this  
28 chapter do not apply to the Arizona board of regents and the institutions  
29 under its jurisdiction, except that the Arizona board of regents shall  
30 make policies or rules for the board and the institutions under its  
31 jurisdiction that provide, as appropriate under the circumstances, for  
32 notice of and opportunity for comment on the policies or rules proposed.

33           E. Unless otherwise required by law, articles 2, 3, 4 and 5 of this  
34 chapter do not apply to the Arizona state schools for the deaf and the  
35 blind, except that the board of directors of all the state schools for the  
36 deaf and the blind shall adopt policies for the board and the schools  
37 under its jurisdiction that provide, as appropriate under the  
38 circumstances, for notice of and opportunity for comment on the policies  
39 proposed for adoption.

40           F. Unless otherwise required by law, articles 2, 3, 4 and 5 of this  
41 chapter do not apply to the state board of education, except that the  
42 state board of education shall adopt policies or rules for the board and  
43 the institutions under its jurisdiction that provide, as appropriate under  
44 the circumstances, for notice of and opportunity for comment on the  
45 policies or rules proposed for adoption. In order to implement or change

1 any rule, the state board of education shall provide at least two  
2 opportunities for public comment.

3 G. UNLESS OTHERWISE REQUIRED BY LAW, ARTICLES 2, 3, 4 AND 5 OF THIS  
4 CHAPTER DO NOT APPLY TO THE STATE BOARD FOR CHARTER SCHOOLS, EXCEPT THAT  
5 THE STATE BOARD FOR CHARTER SCHOOLS SHALL ADOPT POLICIES OR RULES FOR THE  
6 BOARD AND THE CHARTER SCHOOLS SPONSORED BY THE BOARD THAT PROVIDE, AS  
7 APPROPRIATE UNDER THE CIRCUMSTANCES, FOR NOTICE OF AND OPPORTUNITY FOR  
8 COMMENT ON THE POLICIES OR RULES PROPOSED FOR ADOPTION. IN ORDER TO  
9 IMPLEMENT OR CHANGE ANY RULE, THE STATE BOARD FOR CHARTER SCHOOLS SHALL  
10 PROVIDE AT LEAST TWO OPPORTUNITIES FOR PUBLIC COMMENT.

11 H. NOTWITHSTANDING SUBSECTIONS F AND G OF THIS SECTION ANY PERSON,  
12 IN A MANNER AND FORM PRESCRIBED BY THE AGENCY, WITHIN ONE YEAR AFTER A  
13 POLICY OR A RULE HAS BEEN ADOPTED MAY PETITION THE AGENCY BY OBJECTING TO  
14 ALL OR PART OF A POLICY OR A RULE BASED ON THE RULE OR POLICY NOT BEING IN  
15 COMPLIANCE WITH STATE LAW, BEING OUTSIDE THE INTENT OF STATE LAW OR HAVING  
16 UNINTENDED POLICY IMPLICATIONS NEGATIVELY IMPACTING ENTITIES UNDER THE  
17 JURISDICTION OF THE AGENCY. THE AGENCY SHALL CONSIDER THE PETITION AND  
18 RESPOND TO THE PETITIONER WITHIN SIXTY DAYS AFTER RECEIVING THE FORMAL  
19 REQUEST TO REVIEW A POLICY OR A RULE. AN AGENCY THAT DETERMINES NOT TO  
20 TAKE ACTION BASED ON A PETITION SHALL FORWARD THE RESPONSE OF THE AGENCY  
21 TO BOTH THE PETITIONER AND THE GOVERNOR'S REGULATORY REVIEW COUNCIL FOR  
22 ADDITIONAL REVIEW. IF THE COUNCIL RECEIVES A PETITION PURSUANT TO THIS  
23 SECTION AND AT LEAST TWO COUNCIL MEMBERS MAKE A REQUEST TO THE CHAIRPERSON  
24 THAT THE MATTER BE HEARD IN A PUBLIC MEETING, THE COUNCIL SHALL REVIEW THE  
25 PETITIONER'S REQUEST AND THE AGENCY'S RESPONSE WITHIN THIRTY DAYS. THE  
26 COUNCIL MAY CHOOSE TO INVALIDATE A POLICY OR A RULE AND REQUIRE THE AGENCY  
27 TO REAUTHORIZE A POLICY OR A RULE OR MAKE RECOMMENDATIONS FOR THE AGENCY  
28 TO CONSIDER. FOR THE PURPOSES OF THIS SUBSECTION, "AGENCY" MEANS THE  
29 STATE BOARD OF EDUCATION AND THE STATE BOARD FOR CHARTER SCHOOLS.



STATE OF ARIZONA  
OFFICE OF THE GOVERNOR

DOUGLAS A. DUCEY  
GOVERNOR

EXECUTIVE OFFICE

May 22, 2017

The Honorable Michele Reagan  
Secretary of State  
1700 W. Washington, 7<sup>th</sup> Floor  
Phoenix, AZ 85007

Re: Senate Bill 1036 (charter schools; rulemaking exemption)

Dear Secretary Reagan:

Today I vetoed Senate Bill 1036. While I support providing the State Board for Charter Schools exemption from rulemaking, the additional requirements of the bill are onerous.

Sincerely,

Douglas A. Ducey  
Governor  
State of Arizona

Cc: The Honorable Steve Yarbrough  
The Honorable J.D. Mesnard  
The Honorable Sylvia Allen

ATTACHMENT COVER PAGE		<p>(ENDORSED)  <b>ELECTRONICALLY  FILED</b></p> <p><b>Court of Appeals Division 1  on Aug 23, 2017 9:21 AM MST</b></p> <p><i>CLERK OF THE COURT  Amy M. Wood, Clerk</i></p> <p><i>By Deputy Clerk: CC</i></p>
<p><b>COURT OF APPEALS DIVISION 1</b></p> <p>STREET ADDRESS: 1501 West Washington</p> <p>MAILING ADDRESS:</p> <p>CITY AND ZIP CODE: <b>Phoenix, AZ 85007</b></p> <p>BRANCH NAME: <b>Court of Appeals Division 1</b></p> <p>WEBSITE: <b>www.azcourts.gov/coal</b></p>		
<p>ATTACHMENT NAME: <b>BRIEF - Reply: Plaintiffs/Appellants'/ Combined Reply  Brief and Supplemental Appendix</b></p>		
<p>CASE NAME: <b>LEGACY EDUCATION, et al. v. ASBCS</b></p>	<p>CASE NUMBER:  <b>CV-17-0023</b></p>	
<p>Please log on to <a href="http://www.TurboCourt.com">www.TurboCourt.com</a> regularly for updates</p>		

Please staple this to your original attachment