

## STATE BOARD OF EDUCATION – TOPIC SUMMARY

**Topic:** Charter School Issues

**Date:** August 2014

**Staff/Office:** Kate Pattison/Office of Learning; Cindy Hunt/Deputy Superintendent's Office

**Action Requested:**  Informational Only  Adoption Later  Adoption  Adoption/Consent Agenda

**ISSUES BEFORE THE BOARD:** The State Board of Education sets policy and makes decisions regarding individual charter schools across the state. The following topics will be part of the State Board's retreat discussion:

- Weighted Lotteries
- State Sponsorship Evaluation Process
- State Board Charter School Subcommittee

For the purpose of this discussion, each topic is organized by background, policy questions, and resources.

### *Weighted Lotteries*

#### **BACKGROUND:**

In January 2014, the United States Department of Education updated the Charter Schools Program Nonregulatory Guidance and clarified the circumstances under which charter schools receiving federal Charter School Program grant funds may use weighted lotteries in admissions. The guidance specifically allows grantees to have weighted lotteries if they are allowed to do so in their state law. This change in guidance sparked discussion and many questions about whether or not public charter schools in Oregon should be able to have weighted lotteries.

Currently, Oregon law require public charter schools to enroll students from the district in which they are located first and then enroll students from outside the district. When a charter school has more applicants than space available, the charter school is required to conduct an equitable lottery. Once the charter school has been in operation for one or more years, ORS 338.125 allows charter schools to give priority to students who attended the prior year, who have siblings who attended the prior year and are enrolled in the current year, and students who reside in a district with which the charter school has a cooperative agreement. It is common for charter schools in Oregon to have self-imposed, contract-imposed, or facility-imposed limitations on class or school size. Many of these charter schools conduct lotteries and maintain a waiting list of students who have been through a lottery and who are waiting for a space to become available.

Some charter schools have been granted waivers of the requirements in ORS 338.125 to allow additional priority enrollment criteria for their school. ORS **338.025** (2) states,

Upon application by a public charter school, the State Board of Education may grant a waiver of any provision of this chapter if the waiver promotes the development of programs by providers, enhances the equitable access by underserved families to the public education of their choice, extends the equitable access to public support by all students or permits high quality programs of unusual cost.

On average, the State Board receives 10 waiver requests a year from public charter schools across the state. The most common waiver request is for charter schools to give enrollment priority to students of founders and employees. Twice, the State Board approved waivers to allow students who live within specific attendance boundaries to have priority enrollment. The State Board has also considered waivers related to virtual charter schools, location of a charter school outside the sponsoring district boundary, and teacher licensure requirements.

There are limitations to what the State Board of Education is able to waive, "the State Board of Education may not waive any appeal provision in this chapter or any provision under ORS 338.115 (1)(a) to (y), 338.120, 338.125 (4), 338.135 (2)(b) or 339.122" (ORS 338.025).

Oregon Department of Education staff, members of the State Board of Education, school district authorizers, and charter school operators have been discussing what it would look like for students if public charter schools in Oregon were allowed to conduct weighted lotteries. There have been many questions about equity, discrimination, and unintended consequences. At this time, Oregon law does not allow for weighted lotteries beyond those priorities listed in ORS 338.125(3)(b). However, the State Board may consider granting waivers that would allow weighted lotteries in charter schools. A number of charter schools and district sponsors have expressed interest in having additional priority (or weight) for students who meet specific criteria of the charter school's target population or mission-specific demographics.

There are many concerns and challenges regarding weighted lotteries in Oregon's public charter schools. Oregon law and Oregon public charter school law both have explicit non-discrimination statements.

***Public Charter Schools Non-Discrimination Statute ORS 338.125(2)(c):*** A public charter school may not limit student enrollment based on race, religion, sex, sexual orientation, ethnicity, national origin, disability, the terms of an individualized education program, income level, proficiency in the English language or athletic ability.

If the State Board of Education is interested in considering these types of waivers, the Department will likely seek an opinion from the Attorney General.

## **POLICY QUESTIONS:**

- Are these waivers the State Board of Education is interested in considering?
- Are there conflicts with current state law, charter school non-discrimination laws and these types of waivers?
- What criteria should be used when making decisions on waivers that give students priority enrollment in a public charter school?
- Should public charter schools seeking to recruit specific student populations be required to provide evidence of marketing, outreach, and lottery practices prior to seeking this type of waiver?
- Are there other practices that public charter schools may use to recruit targeted student populations?
- What are the legal consequences for charter schools and the State Board of Education these types of waivers are granted?

## **RESOURCES:**

Charter Schools Program Nonregulatory Guidance – January 2014  
<http://www2.ed.gov/programs/charter/nonregulatory-guidance.html>

Guidance on the Voluntary Use of Race to Achieve Diversity and Avoid Racial Isolation in Elementary and Secondary Schools  
<http://www2.ed.gov/about/offices/list/ocr/docs/guidance-ese-201111.pdf>

OCR Letter – May 14, 2014  
<http://www2.ed.gov/about/offices/list/ocr/letters/colleague-201405-charter.pdf>

## ***State Sponsorship Evaluation Process***

### **BACKGROUND:**

The State Board of Education is authorized to sponsor public charter schools that have appealed a school district denial. Leading up to a decision of the State Board whether or not to sponsor a charter school, the application that is the subject of the appeal must be evaluated based on the criteria in ORS 338.055. If an application is found to meet the criteria and the denying school district and applicant do not agree to have the charter school remanded back to the school district for sponsorship, the State Board may become the sponsor of the charter school.

In 2013, the process for a charter school to be established was revised to include additional points at which a district decision may be appealed to the State Board by the applicant. In addition to the revisions, OAR 581-026-0065, approved by the State Board of Education in January 2014, requires a “rigorous evaluation” to be conducted by the State Board of Education prior to sponsoring the charter school. This additional evaluation is to be defined in the guidance document or policy approved by the State Board and used by Department staff to coordinate the sponsorship process.

The National Association for Charter School Authorizers (NACSA) publishes standards for a rigorous evaluation in their Principles and Standards for Quality Charter School Authorization. While the State Board of Education’s procedures include many of NACSA’s recommended practices, the State Board of Education does not have a formal interview process or additional criteria.

The NACSA Standard for Rigorous Decision Making includes:

Rigorously evaluates each application through thorough review of the written proposal, a substantive in-person interview with the applicant group, and other due diligence to examine the applicant’s experience and capacity, conducted by knowledgeable and competent evaluators.

Engages, for both written application reviews and applicant interviews, highly competent teams of internal and external evaluators with relevant educational, organizational (governance and management), financial, and legal expertise, as well as thorough understanding of the essential principles of charter school autonomy and accountability.

The State Board of Education’s current process includes a review of the proposal and materials submitted to the district and subject of the appeal, an evaluation of the proposal using criteria in the charter school law, and presentations to the State Board of Education. Department staff would like to add the following evaluation components for sponsorship consideration once the proposal has been deemed to meet the minimum requirements and criteria:

- Evaluation of additional information requested by department staff
- Interviews with the developers and board of directors
- Equity evaluation

### **POLICY QUESTIONS:**

- Are there additional evaluation criteria the State Board of Education would like to include as part of the process that may lead to sponsoring a charter school?
- What specific information would the State Board of Education would like to request of all applicants prior to considering sponsorship?
- Would members of the State Board of Education want to be included on an interview panel if the process includes an interview of the charter school developers and governing board?

### **RESOURCES:**

Principles and Standards for Quality Charter School Authorization (NACSA)

[http://www.qualitycharters.org/assets/files/images/stories/publications/Principles.Standards.2012\\_pub.pdf](http://www.qualitycharters.org/assets/files/images/stories/publications/Principles.Standards.2012_pub.pdf)

## State Board Charter School Subcommittee

### BACKGROUND:

In May 2013, the State Board of Education approved the formation of the charter school subcommittee to be made of two board members and the superintendent advisor. The subcommittee has heard a number of charter school topics and made recommendations to the full board for decision. It is time for the State Board to evaluate the effectiveness of the charter school subcommittee and determine if the State Board would like to continue with the charter school subcommittee.

Below is the original recommendation for which topics would be heard by the charter school subcommittee:

Items of responsibility	ORS 338	SBE policy	4/25/13 SBE Retreat recommendation
Adopt rules;	.025		Subcommittee for recommendation to whole Board
Waiver of provision of the chapter;	.025	#302	Subcommittee for recommendation to whole Board
Receive copies of any local district proposals; Written notice of approval by local school district	.035		Full Board consideration
DELEGATED: Grant timeline extension of any timeline	.055		
DELEGATED: Receive and review an appeal of a local school board decision to not sponsor a charter school	.055; .075	#303	
Receive recommendation from Deputy Superintendent and any other information the SBE deems relevant and determine based on the requirements of ORS 338 to reject the proposal to have the SBE sponsor the public charter school or agree to sponsor the public charter school.	.065; .075	#303	Full Board consideration
DELEGATED: Hear an appeal of the process if a sponsor does not renew a charter school	.065		
Renewal process for any State Sponsored Charter School (SSCS)	.065		Subcommittee if "nonrenewal" is recommended from staff; Whole board if "renewal" is recommended by staff.
DELEGATED: Hear an appeal of a termination decision of a sponsor;	.105		
Disburse assets of charter schools terminated or dissolved	.105		Subcommittee for recommendation to whole Board
DELEGATED: Receive an appeal from parent/students for a school district not giving approval to attend a virtual charter school	.125		
SSCS Annual Report Presentations			Full Board
SSCS Updates			Full Board

### POLICY QUESTIONS:

- Did the charter school subcommittee contribute to the quality of the State Board of Education's decisions related to public charter schools?
- Should the State Board of Education continue to have a subcommittee for charter school topics?