

**STATE BOARD OF EDUCATION – ADMINISTRATIVE RULE SUMMARY**

**Title/OAR #:** Judicial Review of State Board Orders on Charter School Appeals / OAR 581-026-0065, 581-026-0130, 581-026-0210, and 581-026-0505

**Date:** December 11, 2014

**Staff/Office:** Emily Nazarov and Kate Pattison, ODE

**New Rule**     **Amend Existing Rule**     **Repeal Rule**  
**Hearing Date:** November 21, 2014     **Hearings Officer Report Attached**  
**Prompted by:**     **State law changes**     **Federal law changes**     **Other**

**Action Requested:**  
 **First Reading/Second Reading**     **Adoption**     **Adoption/Consent Agenda**

**PROPOSED/AMENDED RULE SUMMARY:** Amends rule to provide for correct standard of judicial review for charter school orders issued by the State Board of Education.

**BACKGROUND:**

In January, 2014, the State Board adopted a new division of administrative rules governing charter schools. The adopted rules contain errors that need to be corrected.

The proposed revisions involve substantive change in two places:

- ORS 338.075 provides that a public charter school governing body may seek judicial review of an order of the State Board of Education pursuant to ORS 183.484. OAR 581-026-0065, which implements ORS 338.075, incorrectly states that a charter sponsorship applicant may seek judicial review of an order of the State Board of Education pursuant to ORS 183.482. The proposed amendment makes the rule consistent with ORS 338.075.
- ORS 338.105 provides that a public charter school governing body may seek judicial review of an order of the State Board of Education pursuant to ORS 183.484. OAR 581-026-0505, which implements ORS 338.105, incorrectly states that a charter sponsorship applicant may seek judicial review of an order of the State Board of Education pursuant to ORS 183.482. The proposed amendment makes the rule consistent with ORS 338.105.

The remaining amendments clean up small numbering mistakes and do not affect the substance of the rules.

**CHANGED SINCE LAST BOARD MEETING?**

- N/A; first read—hasn't been before board  
 No; same as last month  
 Yes – As follows:

**FISCAL IMPACT:** None

**STAFF RECOMMENDATION:**

- Adopt administrative rule as prepared this month
- Adopt administrative rule next month
- No recommendation at this time (rarely used)

Comments:

Created by EN 10-13-14

**581-026-0065**

### **Appeal Process**

(1) An applicant whose resubmitted proposal to start a public charter school is disapproved following reconsideration may request the State Board of Education review the decision of the school district board within 30 days of the disapproval.

(2) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct review. This delegation to the Superintendent includes, but is not limited to:

(a) Determining the form, contents and timelines of the petition for review;

(b) Determining the records required for review and ordering the production of those records from either the applicant or school district board and establishing timelines for the production of those records;

(c) Requiring the applicant or school district board to respond to written or oral inquiries related to board review; and

(d) Determining at any time during the review process to reject a review request if in the judgment of the Superintendent, the applicant fails to reasonably comply with the administrative review processes of the Superintendent.

(3) The Superintendent may review the decision only to determine whether:

(a) The school district board used the process required OAR 581-026-0060; and

(b) The proposal meets the criteria described in OAR 581-026-0060 (1); and

(c) The reasons stated by the school district board for the denial are valid and align with the criteria described in OAR 581-026-0060 (1).

(~~104~~) Following a review described in (9), the State Board of Education may:

(a) Uphold the decision of the school district board to disapprove the resubmitted proposal;

(b) Remand the resubmitted proposal to the school district board for reconsideration if the school district board and the applicant agree to the remand; or

(c) Consider becoming the sponsor of the public charter school if the applicant agrees to the sponsorship.

(45) At the conclusion of the administrative review process the Superintendent shall recommend in writing to the State Board to:

(a) Uphold the decision of the school district board to disapproved the resubmitted proposal; or

(b) Remand the resubmitted proposal to the school district board for reconsideration if the school district board and the applicant agree to the remand; or

(c) Sponsor the public charter school upon the terms in the proposal or upon such other terms specified.

(56) The State Board will consider the recommendation of the Superintendent and any other information it deems relevant and determine based on the requirements of ORS 338 to have the State Board sponsor the public charter school.

(a) If the State Board decides to consider the recommendation of the Superintendent to sponsor the public charter school, the State Board will complete a rigorous evaluation of the proposal as defined in State Board policy.

(67) The decision of the State Board to uphold the school district board decision to disapproved the resubmitted proposal will be based on substantial evidence in the record and will be made within 75 days of receipt by the State Board of the Superintendent's recommendation, unless extended for good cause.

(78) An applicant may seek judicial review of an order of the State Board of Education pursuant to ORS 183.482484.

Stat. Auth.: ORS 326.051 & 338.025

Stats. Implemented: ORS 338.075

Hist.: ODE 13-2000, f. & cert. ef. 5-3-00; ODE 10-2002, f. & cert. ef. 4-12-02; ODE 5-2004(Temp), f. & cert. ef. 3-15-04 thru 9-1-04; Administrative Correction 9-28-04; ODE 21-2012, f. & cert. ef. 8-1-12; Renumbered from 581-020-0331, ODE 10-2014, f. & cert. ef. 2-19-14

**581-026-0130**

### **Procedure to Waive Certain Provisions of the Charter School Law**

(1) A public charter school may petition the State Board of Education for a waiver of any provision of ORS 388. The written petition must specify the reason(s) the charter school is seeking the waiver and any other relevant information.

(2) The public charter school must notify the sponsor if a waiver under this section is being considered. Waivers granted by the State Board to a charter school may require amending the charter under the provisions of OAR 581-026-0100 (7).

(3) The State Board of Education, upon receipt of a waiver petition, will review the petition and may grant the waiver upon a showing that approving the waiver would:

(a) Promote the development of programs by providers;

(b) Enhance the equitable access by underserved families to the public education of their choice;

(c) Extend the equitable access to public support by all students; or

(d) Permit the development of high quality programs of unusual cost.

(4) The State Board of Education may not waive any review provision under the Act or any provision under ORS 338.115(1).

Stat. Auth.: ORS 326~~3~~.051

Stats. Implemented: Ch. 200, OL 1999(SB 100)

Hist.: ODE 10-2014, f. & cert. ef. 2-19-14

## **581-026-0210**

### **Annual Financial Reporting**

(1)(a) A public charter school required to comply with ORS 338.035(2)(a)(B) and (C) shall have an annual audit of the accounts of the public charter school prepared in accordance with the Municipal Audit Law, ORS 297.405 to 297.555 and 297.990.

(b) A public charter school that is not required to comply with ORS 338.035(2)(a)(B) and (C) as provided by ORS 338.035(2)(b), must comply with OAR 581-026-0200 and must be included in the audit of the sponsoring district. The district audit for the public charter school must minimally include:

(A) An audit of all accounts and funds associated with the public charter school;

(B) A summary of significant accounting policies, cash and investments, and internal controls; and

(~~BC~~) A statement of activities and a balance sheet containing a summary of the assets and liabilities of the public charter school as of the closing date of the preceding annual audit period for the school.

(2) After an audit, the public charter school shall forward a copy of the annual audit to the Department of Education.

(3) After an audit, the public charter school shall forward the following to the sponsor:

(a) A copy of the annual audit;

(b) Any statements from the public charter school that show the results of all operations and transactions affecting the financial status of the public charter school during the preceding annual audit period for the school; and

(c) A balance sheet containing a summary of the assets and liabilities of the public charter school as of the closing date of the preceding annual audit period for the school.

Stat. Auth.: ORS 338.025

Stat. Implemented: ORS 338.095

Hist.: ODE 11-2010, f. & cert. ef. 6-30-10; ODE 17-2011, f. 12-15-11, cert. ef. 1-1-12;

Renumbered from 581-020-0336, ODE 10-2014, f. & cert. ef. 2-19-14

## **581-026-0505**

### **Process to Appeal Decision by Sponsor to Terminate Charter**

(1) A public charter school governing body may request the State Board of Education review the decision to terminate a charter. The State Board of Education's review shall be limited to the grounds for termination as stated by the school district board or sponsor or a plan to correct deficiencies. Any notice of a request for State Board review must be made in writing and be delivered to the State Board of Education and the business address of the sponsor.

(2) The State Board of Education delegates to the Superintendent of Public Instruction or designee all administrative functions necessary or reasonable in order to conduct a timely review. This delegation to the Superintendent includes, but is not limited to:

(a) Determining the form, contents, and timelines of the petition for review;

(b) Determining the records required for review and ordering the production of those records from either the public charter school governing body or school district board and establishing timelines for the production of those records;

(c) Requiring the public charter school governing body or school district board to respond to written or oral inquiries related to board review;

(d) Delegating the review function to a hearings officer to hold a contested case hearing under ORS 183.411 through 183.470 and issue a proposed order; and

(e) Issuing a final order that may be appealed under the provisions of ORS 183.~~482~~484.

(3) The State Board, or its designee, will where possible, issue its final order within 60 days from the sponsor's notification of intent to terminate as required in ORS 338.105(2). If it is not possible to issue the final order within 60 days, the charter school shall remain open pending issuance of the final order.

(4) The governing body of a public charter school that is closed under the provisions of ORS 338.105(4) may request the State Board of Education, or its designee, to review the decision of the sponsor to terminate the charter and close the public charter school. The State Board of Education, or its designee, will hold a hearing within 10 days of receiving the request for review. The review under this section will be accomplished under the provisions of subsection (2) of this rule and under the timelines set out in ORS 338.105(4) and, to the extent practicable, subsection (3) of this rule.

Stat. Auth: ORS 326.051

Stats. Implemented: ORS 338.105

Hist.: ODE 19-2002, f. & cert. ef. 8-2-02; Renumbered from 581-020-0385, ODE 10-2014, f. & cert. ef. 2-19-14