

Oregon State Board of Education

June 23, 2016

<p>SUBJECT: Operations, Public Charter School Facility Location / OAR 581-026-0600</p> <p>STAFF NAME & OFFICE: Kate Pattison, Cindy Hunt/Office of the Deputy Superintendent</p> <p>SUMMARY: Creates procedure for a school district to file a complaint against a public charter school that has opened a school or facility within school district without providing the school district written notice prior to the first day students attend classes at the school or receive instruction at the facility.</p> <p><input checked="" type="checkbox"/> New Rule <input type="checkbox"/> Amend Existing Rule <input type="checkbox"/> Repeal Rule</p>	<p><input type="checkbox"/> Consent Agenda</p> <p><input type="checkbox"/> First Reading</p> <p><input checked="" type="checkbox"/> Action (Adoption)</p> <p><input type="checkbox"/> Information</p>
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BACKGROUND

Previously under ORS 332.158, if a school district wishes to own, lease and/or operate a facility inside the boundaries of another school district, then that district must seek and gain permission from the school district in which that facility would be located. This requirement did not extend to charter schools.

The 2015 Legislature adopted House Bill 3044 and the Governor signed the Bill into law. The new law maintains that a school district must receive permission and now requires a public charter school to notify the school board of any other school district, and the school board of the charter's sponsor district, if the charter school uses real property in a school district that is not the district of the sponsor school. The public charter school does not need permission, but State School funds may be withheld if they do not provide appropriate notice.

332.158 Creation of school in another school district; written permission or written notice. (1) A district school board may lease, purchase, construct, reconstruct, improve, repair, equip or furnish a school in another school district and may expend bond proceeds or other funds available to the board for such purposes if the board has the written permission of the district school board of the school district in which the school will be located. The written permission required by this subsection must be obtained prior to the first day on which students will attend classes in the school.

(2) A public charter school may lease, purchase, construct, reconstruct, improve, repair, equip or furnish a school, or any other facility where students receive instruction, in another school district and may expend funds available to the public charter school for such purposes if the public charter school provides written notice to the sponsor of the public charter school and to the district school board of the school district in which the school or facility will be located. The written notice required by this subsection must be provided prior to the first day on which students will attend classes in the school or receive instruction at the facility.

(3) If a district school board or public charter school opens or operates a school or facility in another school district and does not obtain the written permission required by subsection (1) of this section or provide the written notice required by subsection (2) of this section, the board of the school district in which the school or facility has been opened or operated may file a

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complaint with the Superintendent of Public Instruction. Upon receipt of a complaint, the superintendent shall schedule a contested case hearing pursuant to ORS 183.413 to 183.470.

(4) Upon a determination that the written permission required by subsection (1) of this section was not obtained or the written notice required by subsection (2) of this section was not provided, the superintendent shall withhold State School Fund moneys otherwise allocated to the school district or due to the public charter school under ORS 338.155. The superintendent shall withhold moneys until the written permission is obtained or the written notice is provided, or until some other date determined by the superintendent. [2001 c.169 §2; 2015 c.75 §1]

These proposed rules clarify the process for a public charter school to give written notice and for a school district board to file a complaint if written notice is not provided.

A hearing was conducted on October 21, 2015. There were no comments submitted during the hearing. Therefore, the hearing report is not included with the docket. The Department solicited additional comments in preparation for the May 2016 Board meeting. Comments received have been included in the attached report.

SUMMARY OF PREVIOUS BOARD ACTION

The Board originally heard this draft rule at the September 17, 2015 meeting. The Board raised a few concerns about the timelines required for charter school notice. The Department thought it was possible a bill would be introduced in the 2016 legislative session to reverse the change in the statute that allows this to happen. No legislative changes were made to this provision in the statute, so the Department is bringing this back to the Board for discussion and approval. Revisions have been made to the draft based on the discussion at the 2015 meeting. The Department was unable to add the 30-day requirement to the notice because it was beyond the requirement in statute. The Board considered this draft at the May 2016 meeting, it is now before the board for action.

POLICY ISSUE OR CONCERNS (IF APPLICABLE)

Will public charter schools open other campuses or new schools in districts that do not sponsor the charter school? If public charter schools do open new campuses or schools, it is unclear how this will affect special education, funding, and other requirements related to “the district in which the charter school is located.”

CHANGED SINCE LAST BOARD MEETING? (IF APPLICABLE)

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

EFFECT OF A “YES” OR “NO” VOTE (AS APPROPRIATE)

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If “YES” – Public charter schools will be required to provide notice to districts in which they intend to open a new facility, campus, or school. The notice must include supporting information from the sponsoring school district regarding the legal responsibility as the sponsor to provide oversight and manage any responsibilities of “the district in which the public charter school is located.” Districts will be allowed to file a complaint with the Department of Education if a public charter school does not meet the requirements for proper notice. State School Funds may be restricted if the public charter school is found to have not complied with the notice requirements.

If “NO” – The statute would provide the only direction on this and charter schools could provide any type of “written notice” prior to the first day on which students will attend classes. Additionally, the sponsoring district will not be required to acknowledge the charter school’s facility and potential implications for the responsibility of the sponsor.

STAFF RECOMMENDATION

Approve Approve next month No recommendation at this time

Hearing Date: October 21, 2015 – No comment was provided.

Prompted by:

State law changes Federal law changes other

ATTACHMENTS (e.g., OAR with “track changes” ...)

Attachment 1: Notice provided to Districts and Charter Schools of Rule Making

Attachment 2: Comments Provided between and June 10, 2016

Attachment 3: Draft OAR 581-026-0600

ATTACHMENT 1:

From: PATTISON Kate - ODE
Sent: Thursday, May 12, 2016 2:35 PM
To: PATTISON Kate - ODE
Cc: NGUYEN-VENTURA Jessica - ODE
Subject: NOTICE: New OAR related to public charter school facility locations

Dear School Districts, Charter Schools, and Education Partners:

The State Board of Education will be considering a new rule related to charter school facility locations. Please review the attached draft rule and State Board of Education docket which will be presented on [May 19, 2016](#).

The Department welcomes your comments and testimony on this rule. Please feel free to present in person during the [public comment portion](#) of the meeting on May 19th or submit written testimony before the adoption at the June 2016 meeting. You can submit written testimony to Jessica Nguyen-Ventura at jessica.nguyen-ventura@ode.state.or.us.

We would appreciate your comments before June 3rd for consideration in the final draft of the rule.

Thank you,

Kate Pattison, M.Ed.

Charter School Specialist & Strategic Planning

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Messages to and from this e-mail may be available to the general public under Oregon law.

ATTACHMENT 2:

5/24/16 Email – Dan Huld, Baker Charters: I read over the proposed language and everything looked great!

To: Oregon State Board of Education
From: Kristen Miles, Director, Charter Schools Program, Portland Public Schools
Re: Testimony on OAR 581-026-0600
Date: June 10, 2016

Members of the State Board of Education:

Thank you for the opportunity to submit testimony on OAR 581-026-0600.

We originally submitted testimony on the draft rule in October, 2015; in reviewing the new draft rule, we are resubmitting this testimony with the same concerns.

The original intent of HB 3044 was to ensure that no charter school could locate a facility where students receive instruction without permission from its sponsor and the district in which it sought to locate. After amendments, however, the resulting bill allows charter schools to locate in any other district provided that they give prior notice to the district in which they locate and to their sponsor. No permission to locate outside district boundaries is required, despite the fact that the charter school's sponsor will still be responsible for monitoring all sites where students receive instruction – even if these sites are hundreds of miles away.

As charter school-sponsoring districts in Oregon, our hope is that the rules written to support the new law will support districts and close some of the loops in the final bill. To that end, we have the following concerns:

1. Nothing in the draft rule addresses charter schools that are currently operating sites where students receive instruction in districts other than their sponsoring districts. We recommend that a provision be included to require charter schools that already operate sites outside their sponsoring districts to notify both the sponsoring district and the district in which the site is located.
2. Section 8(a) and (b) require the Superintendent of Public Instruction to withhold funds from charter schools that have not provided the appropriate notice, if the district in which the site is located has followed the outlined complaint procedure. We have the following concerns about and recommendations for this section:
 - a. Only the district in which the site is located can issue a complaint under this rule. If a sponsor learns that one of its sponsored charter schools has located an educational facility in another district, there is no mechanism for filing a complaint. We recommend including a provision for the sponsoring district to file a complaint.
 - b. Funds are to be withheld from charter schools “until the written notice is provided by the public charter school to the district school board.”
 - i. Funds will only be withheld from a noncompliant charter school until the notice is provided. Simultaneously, ODE is required to schedule a contested case hearing. It is not likely that any charter school that had failed to give notice would go through the complaint and hearing process without giving notice at some point before the determination that funds were to be withheld. Therefore, a charter school could

theoretically operate an educational facility in another district for months or years without giving notice, and incur no penalty for this as long as notice was provided after the complaint was filed. This provides no disincentive for a charter school to fail to provide notice about operating an educational facility in another district.

- ii. We recommend that funds be withheld retroactively from any charter school that fails to provide notice to both its sponsor and the district in which it seeks to locate an educational facility from the initial date of operation of the additional facility to the date the notice was provided. In creating a mechanism to withhold funds from noncompliant charter schools retroactively, ODE should also consider how to mitigate the impact on the sponsoring district, which would already have paid the charter school for the time period for which the funds are withheld.
3. ODE should consider the implications for sponsoring districts when charter schools may locate educational facilities anywhere in Oregon outside the sponsoring district's boundaries. We recommend, for example, including a provision that requires the charter school to pay for their sponsor's mandatory annual site visit travel expenses for any facility located outside district boundaries.
4. ODE should consider the implications for sponsoring districts in their ability to provide special education services to students when a charter school locates an educational facility outside the district's boundaries.

Thank you for your consideration.

ATTACHMENT 3:

Number: 581-026-0600

Title: Public Charter School Facility Location

- (2) As used in this rule:
- (a) "Written notice" means written notice that is mailed, faxed, e-mailed or personally delivered by the party required to provide the written notice.
 - (b) "Primary physical address of the public charter school" means the physical location of the public charter school campus located within the boundaries of the sponsoring district or the district in which the public charter school originally applied under ORS 338.045.
 - (c) "School or facility" means a physical location that is owned, leased, or otherwise used by the public charter school where students receive instruction or educational services. As used in this rule, "school or facility" does not include the student's home.
- (3) (a) For public charter schools sponsored by a school district that establish schools and facilities that are not located at the primary physical address of the charter school, the district shall retain all responsibility assigned to a sponsor by ORS Chapter 338 and OAR 581-026-0005 to 0515.
- (b) Except as provided in subsection (2)(a) of this rule, if a public charter school is sponsored by the State Board of Education or an Institution of Higher Education, the district in which the primary physical address of the public charter school is located shall retain the responsibilities assigned to a district by ORS 338.155 to 338.165 and described in a contract between the district and the public charter school.
- (4) The public charter school must maintain student records, board records, employment records, and other school records at the primary physical address of the public charter school.
- (5) The board of a school district that is not the sponsoring school district of the public charter school may file a complaint with the Superintendent of Public Instruction pursuant to ORS 332.158(3) against the public charter school if:
- (a) The public charter school opens or operates a school or facility within the boundaries of that district; and
 - (b) The public charter school did not provide written notice to the district school board of use of the school or facility prior to the first day on which students will attend classes in the school or receive instruction at the facility; and
 - (c) The public charter school or facility was not already in operation on January 1, 2016.
- (6) The complaint must be in writing and may delivered by mail, fax or e-mail or by personally delivering a copy to the Superintendent of Public Instruction and must contain:
- (a) The name of the school district making the complaint;
 - (b) The name and contact information of a member of the board or district staff person who will act as primary contact for the complaint;
 - (c) The name of the public charter school operating the facility;
 - (d) The primary physical address of the public charter school operating the facility;
 - (e) The physical address of the school or facility being operated by the public charter school in the offended district; and
 - (f) A brief statement explaining the facts underlying the complaint.

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- (7) The school district board must provide written notice of the complaint by mail, fax, e-mail or personal delivery to the public charter school and the sponsoring district on the same date the complaint is provided to the superintendent.
 - (8) Upon receipt of the complaint the superintendent shall schedule a contested case hearing pursuant to ORS 183.413 to 183.470.
 - (9) Upon a finding that the public charter school has operated a school or facility in the school district without providing the board of the school district written notice:
 - (a) The superintendent shall withhold State School Fund moneys due to the public charter school under ORS 338.155.
 - (b) The superintendent shall withhold moneys until the written notice is provided by the public charter school to the district school board, and a copy of the written notice is provided to the public charter school's sponsoring district and the superintendent.