

COLORADO STATE BOARD OF EDUCATION

2019 REVISED ADMINISTRATIVE PROCEDURES

FOR CHARTER SCHOOL APPEALS

A. Applicability & Filing

These procedures shall govern the State Board’s jurisdiction to review the determination of a charter school authorizer under:

- § 22-30.5-107.5(3) to (6), C.R.S. (disputes under existing charter contracts);
- § 22-30.5-108, C.R.S. (denials, non-renewals/revocations, and unilateral conditions, for district charters);
- § 22-30.5-112(9) to (10), C.R.S. (disputes over financial withholdings);
- § 22-30.5-510(4) to (5), C.R.S. (CSI denials); and
- § 22-30.5-511(6), C.R.S. (CSI non-renewals/revocations).

These procedures do not apply to the State Board’s jurisdiction to grant waivers under § 22-30.5-104(6) or § 22-30.5-507(7), C.R.S., nor to the State Board’s jurisdiction to determine exclusive chartering authority under § 22-30.5-504, C.R.S.

All required documents shall be filed via state.board.efilings@cde.state.co.us, with a carbon copy to soc@cde.state.co.us. All filings shall be less than 20 MB and provided in PDF format. Should a required filing exceed 20 MB, the parties may arrange for cloud-based file transfer by jointly contacting the State Board Office. All filings shall include a certificate showing service on the opposing party or, if represented, its counsel.

B. Initiating a Case

Any person invoking the State Board’s jurisdiction to review the determination of a charter school authorizer shall do so by filing a notice of appeal (under § 22-30.5-107.5, § 22-30.5-108, § 22-30.5-510, or § 22-30.5-511, C.R.S.) or request for determination (under § 22-30.5-112, C.R.S.). A notice of appeal must include as an exhibit a copy of the resolution or report at issue; a request for determination must include a copy of any related notices of noncompliance from the authorizer. The notice or request shall also: (1) provide the names, addresses, and phone numbers of all parties and their counsel; and (2) briefly state the grounds for appeal and requested relief. The notice or request need not otherwise present argument and shall be limited to two pages (exclusive of signature blocks, certificate of service, and exhibits).

A notice of facilitation under § 22-30.5-108(3.5), C.R.S., shall be filed in the same manner as a notice of appeal and shall contain the same required elements. If the State Board moves to review a matter on its own motion under § 22-30.5-108 or § 22-30.5-511, C.R.S., the motion will occur as a voting item at an open meeting of the State Board, and the matter will then proceed in accordance with these procedures.

C. Scheduling Conference

As soon as practicable after the filing of a notice of appeal or request for determination, the State Board Office will initiate a telephonic scheduling conference to set a hearing and briefing schedule. The State Board Office will also review the case for jurisdiction and will endeavor to raise any defects with the parties during the scheduling conference.

During the scheduling conference, the State Board Office will set a time and date for any public hearing and will set filing deadlines as follows:

1. The record on appeal, due seven calendar days after the notice of appeal or request for determination;
2. Appellant's opening brief, due fourteen calendar days after the record on appeal;
3. Appellee's answer brief, due fourteen calendar days after the opening brief;
4. Appellant's reply brief, due seven calendar days after the answer brief; and
5. Designations of counsel presenting oral argument and up to three client representatives, due on the same day as the reply brief.

The foregoing schedule may be altered as necessary to accommodate the schedules of the parties and of the State Board. By mutual consent of both parties and of the State Board, the parties may extend the statutory deadlines for the State Board to issue its decision. Public notice of the hearing will be made in the same manner as public notice of the State Board's regularly scheduled meetings.

D. Briefs and Motions

Briefs shall comply with the formatting requirements of Colorado Appellate Rule 32(a)(1) through (3). Opening and answer briefs shall be no more than twenty pages (exclusive of signature pages and certificate of service), and reply briefs shall be no more than ten pages (exclusive of signature pages and certificate of service). Each party's initial brief must contain a recitation of facts divided into two sections: stipulated facts and disputed facts. The State Board will not consider arguments that do not relate to the issues raised on appeal, nor will it consider evidence outside the record on appeal as described below.

The State Board (or for procedural matters, the State Board Office) may entertain motions such as motions to dismiss, to enlarge page limits, to adjust deadlines, and so forth. Such motions shall substantially comply with C.R.C.P. 121, Section 1-15, including the duty to confer. All motions, whether granted or not, will be part of the formal administrative record.

E. Record on Appeal

The appellant shall request the record on appeal from appellee as soon as reasonably practicable and in any event no later than the date on which appellant files the notice of appeal or request for determination. The charter school authorizer shall bear any cost of preparing the

record on appeal from its own records, except that the costs of any transcripts shall be borne by the party requesting the transcript. To the extent possible, the record shall be compiled into a single bookmarked and sequentially Bates-numbered PDF document, aligned to the list of required documents below, with a table of contents.

The parties shall work in good faith to file the record on appeal as a joint stipulated record, consisting of all the documents and other materials submitted by the charter applicant or charter school or considered by the authorizer in rendering its decision. The record on appeal shall presumptively include:

1. The charter application (if applicable), including all proposed written amendments thereto;
2. The resolution or other written grounds for the authorizer's determination (the absence of which may be deemed a waiver of any such grounds);
3. Any report, findings, or other recommendations of the district accountability committee;
4. Any written record of the authorizer board meetings at which the application or other action concerning the charter school was considered;
5. All written correspondence between the authorizer and the charter applicants/charter school concerning the authorizer's determination; and
6. All other documents, reports, correspondence and other written or electronic materials considered by the authorizer relating to the matters at issue.
7. For a second appeal under § 22-30.5-108(3)(c) and (d), C.R.S., the record on appeal shall also include a supplemental record on appeal consisting of the written decision of the local board and any materials considered by the local board that are not already contained in the record on appeal.
8. For a request for determination under § 22-30.5-112(9) or (10), C.R.S., the record on appeal shall instead consist of the materials described in § 22-30.5-112(9)(b), C.R.S.
9. For an appeal from the written findings of a neutral third party under § 22-30.5-107.5, C.R.S., the record on appeal shall instead consist of the charter contract, any applicable dispute resolution agreement(s), the report of the neutral third party, and any other materials deemed relevant by the parties.

Because these proceedings are generally appellate in nature, the record shall not include materials that post-date the authorizer's decision unless otherwise required by statute. In any event, the State Board may take notice of the routine records of the Colorado Department of Education, regardless of the date of such records.

The parties shall attempt to limit the record on appeal to documents that are relevant to the grounds for appeal. To that end, the parties shall meet and confer as to whether any of the

documents presumptively required by these procedures can be omitted by agreement of the parties. The State Board Office may reject the record and direct the parties to refile the record after further conferral, if it appears the parties have not made a good faith effort to limit the scope of the record.

If a dispute arises over the record on appeal, the undisputed portions of the record shall be filed as a joint stipulated record by the deadline set at the scheduling conference. For disputed portions of the record, the proponent shall file a motion to add the materials to the record on appeal no more than five business days after the joint stipulated record is filed. Such motions shall be no more than ten pages in length. Objections (limited to ten pages) shall be due five business days after service of the motion, and any reply (limited to five pages) shall be due five business days after service of the objection. The Commissioner shall rule forthwith on such motions, and the Commissioner's ruling shall be final.

The parties shall use "pin cites" to refer to specific pages in the record. A party's failure to cite to specific pages may be deemed to waive any argument predicated upon that portion of the record.

F. Conduct of Hearing

The burden of proof shall be on the party invoking the State Board's jurisdiction. Parties shall appear in person for any public hearing, but upon proper motion and for good cause the Board Chair may grant leave to appear by telephone or videoconference.

For a hearing under § 22-30.5-108 or § 22-30.5-511, C.R.S., each party shall have a maximum of fifteen minutes to present oral arguments without interruption. The Board Chair may interrupt any argument that strays outside the record evidence or the grounds for appeal. The parties may present up to three client representatives, designated in advance, who shall not present oral arguments, but who shall be available at the hearing to answer questions from the State Board. At the beginning of the hearing, the appellant shall designate the amount of time it wishes to reserve for rebuttal. The hearing shall proceed as follows:

1. The appellant shall present its arguments;
2. The appellee shall present its arguments;
3. The appellant shall present any rebuttal for which it reserved time;
4. Each Board Member shall have six minutes to ask questions of the parties, but may reserve the balance of their time for later and may cede any amount of time to other Board Members; and
5. After the time allotted for oral arguments, the State Board shall deliberate and render its decision.

Additional time may be allowed in the sole discretion of the Board Chair. In the event of a remand, the State Board will ordinarily appoint a committee of two Board Members to draft a written Board Order.

A proceeding under § 22-30.5-112, C.R.S., shall be resolved without a public hearing. A proceeding under § 22-30.5-107.5, C.R.S., shall be resolved without a public hearing unless the State Board elects to conduct a de novo review, which review shall be conducted consistently with the procedures in this Section F. A proceeding under § 22-30.5-510 shall be resolved without a public hearing unless the State Board grants a hearing on motion, which hearing shall be conducted consistently with the procedures in this Section F.

G. Public Comment Prohibited

The State Board does not accept public comment when reviewing the determinations of a charter school authorizer under § 22-30.5-107.5, § 22-30.5-108, § 22-30.5-112, § 22-30.5-510, or § 22-30.5-511, C.R.S. The time for the community to be heard on such matters is during the school district's or charter school institute's decision-making process. Any public comment received by the charter school authorizer as part of its own process may be properly part of the record on appeal before the State Board.

The State Board may, on motion, grant leave for amicus briefs to be filed. The content, form, and time for filing of such motions and briefs shall substantially comply with Colorado Appellate Rule 29(b) through (f).

*Adopted September 12, 1994
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Revised January 16, 2003
Revised November 10, 2005
Revised December 11, 2008
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