

Bylaws of the West Virginia Professional Charter School Board

1. Mission.

The mission of the West Virginia Professional Charter School Board (“board”) is to authorize high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. §18-5G-15(a).

2. Powers and Duties—General.

(a) The board is an authorizer as defined in code §18-5G-2, which means the board is empowered under state law to review applications, decide whether to approve or reject applications, enter into charter contracts with public charter school applicants, oversee public charter schools, and decide whether to renew or not renew charter contracts. §18-5G-2.

(b) The board is subject to the general supervision of the state board of education solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of the West Virginia code. For these sole purposes, the board shall report directly to and be responsible to the state board, separate from the Department of Education, regarding its duties in accordance with Article 18-5G of the code. §18-5G-15(a).

(c) The board shall investigate official complaints submitted to it that allege serious impairments in the quality of education in a public charter school it has authorized pursuant to Article 18-5G of the code, or that allege such schools are in violation of the policies or laws applicable to them. Formal complaints should be emailed to the board’s executive director and must include the complainant’s full name, contact information, a statement of facts on which the allegation of noncompliance is based, and supporting evidence. The board also may at its own discretion conduct or cause to be conducted audits of the education and operation of public charter schools it has authorized that it determines necessary to achieve its mission of authorizing high-quality public charter schools. Upon a determination that serious impairments or violations exist, the board shall follow §18-5G-15(k), §§18-5G-6(f) and (g), and the board’s policies and regulations.

The board delegates authority to its Executive Director to determine if a full investigation and corresponding report is necessary and warranted based upon the official complaint’s allegations, evidence presented, and initial investigative findings. If the Executive Director finds, at any time, that a full investigation and corresponding report is not necessary, the complaint may be dismissed. The Executive Director shall inform the individual who filed the official complaint of the decision to dismiss and report this decision to the board.

The board will review official complaints, investigate, and provide a report (if deemed necessary) in a reasonable and timely manner. This turnaround will be subject to staff availability and resources. Once a full investigation is underway, it shall be completed within 90 days. The board will follow these steps when complaints are received:

- (1) WVPCSB staff will determine if the complaint:
 - (A) is in the purview of board oversight;
 - (B) includes necessary information; and
 - (C) warrants further investigation.

(2) WVPCSB staff may notify complainant, and charter school governing board chair, that a full investigation is underway.

(3) WVPCSB staff may collect evidence through the following means, which include but are not limited to:

- (A) Email questionnaires;
- (B) Phone calls or virtual meetings;
- (C) In-person interviews; and
- (D) Document requests.

(4) WVPCSB may produce a final report summarizing the complaint and describing results of the investigation—namely whether there appear to be serious impairments in the quality of education at the charter school, or if the charter school appears to have committed violations of applicable policies or laws.

- (A) If the report finds perceived impairments or violations, WVPCSB will promptly notify in writing the charter school governing board and provide reasonable opportunity for the school to remedy.
- (B) Additionally, if the report finds apparent serious impairments or violations, WVPCSB will take corrective actions or exercise sanctions, which may include requiring the school to develop and execute a corrective action plan within a specified time frame. Corrective actions or sanctions require formal board action.

3. Membership—Terms; Quorum; Removal.

(a) The board shall consist of five voting members, appointed by the Governor, with the advice and consent of the Senate, subject to all lawful requirements of code §§18-5G-15(d) and (e). The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting ex officio members of the board. §§18-5G-15(b) and (c).

(b) The terms of office of voting members are two years, except for two initial members whose terms are one year. The Governor determines the start dates of the terms. §18-5G-15(f).

(c) A quorum of the board shall consist of at least three voting members.

(d) Removal. The Governor may remove a voting member for official misconduct, incompetence, neglect of duty, or gross immorality. The board or the Governor may remove any member if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if a voting member is absent from a number of board meetings as specified by these bylaws. §18-5G-15(g).

(e) The board or the Governor may remove any voting member if the member is absent from three or more meetings in the same twelve-month period.

(f) Board members are subject to §6B-2-5. As required by §6B-2-5(j)(1)(A), board members "may not vote on a matter in which they, an immediate family member, or a business with which they or an immediate family member is associated have a financial interest."

4. Chairman—Election; Duties; Removal.

- (a) The board elects or removes its chairman with at least three votes in favor of the person being elected or removed.
- (b) The chairman shall call and run meetings of the board. §18-5G-15(f).
- (c) In the absence of an executive director, the chairman performs the duties of the executive director.

5. Executive Director—Selection; Duties; Removal.

- (a) The board may select and normally removes an executive director with at least three votes in favor of the person being selected or removed. In an emergency situation determined in the sole discretion of the chairman, the chairman may remove the executive director. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law. §18-5G-15(i).
- (b) The executive director assists the board in achieving its goals. The executive director shall periodically assess the performance of any additional staff employed by the board.
- (c) The chairman and the board shall periodically assess the performance of the executive director.

6. Additional Staff.

By majority vote of the board, or when selected by the chairman, the board may employ one or more additional staff as may be necessary, as determined by the board or the chairman. §18-5G-15(i).

7. Meetings; Budget.

- (a) Board meetings may be in-person or virtual.
- (b) The board shall meet as needed, but at least once every two years. §18-5G-15(j).
- (c) At least three positive votes are required for the board to agree to an action, unless the action is specified differently in these bylaws.
- (d) If the chairman will be absent for a meeting, the chairman should appoint another voting member to preside over that meeting. If the chairman is absent and has not appointed someone to preside, the voting member whose surname comes first alphabetically shall preside (among voting members with the same earliest surname, the one whose first name come first alphabetically shall preside).
- (e) The board may adopt ad hoc rules at any meeting to facilitate discussion and action. Being a small body, the board shall not strictly follow a published guide such as Robert's Rules of Order.
- (f) At least to the extent required by state law, the board shall provide the public with advance notice of meetings and their agendas and shall make meetings publicly accessible. The board may address agenda items in any order, may skip items, may enter executive session by majority vote of voting members, and may hold private meetings for any purposes allowed by state law.
- (g) (1) Periodically, the executive director or chairman shall present an estimated budget to the full board for consideration. The board may approve, modify, or reject the budget. If a budget is rejected,

the operations of the board and its staff shall continue under the status quo until a new budget is approved.

(2) The budget should include income pursuant to the state board's statewide formula for authorizer oversight funding, which applies uniformly to every authorizer in West Virginia. §18-5G-5(d).

Appendix: Policies and Regulations of the West Virginia Professional Charter School Board

A. General Provisions.

1. In these policies and regulations, the West Virginia Professional Charter School Board may be referred to as the "board." The board is subject to the general supervision of the state board of education ("state board") solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of the West Virginia code. For these sole purposes, the board shall report directly to and be responsible to the state board, separate from the Department of Education, regarding its duties in accordance with Article 18-5G of the code (the "statute"). §18-5G-15(a).

2. Terms in these policies and regulations shall have the same meanings as in code §18-5G-2.

3. Public charter schools are intended to empower new, innovative, and more flexible ways of educating all children within the public school system, among other purposes, to allow authorized public schools and programs within public schools exceptional levels of self-direction and flexibility in exchange for exceptional levels of results-driven accountability for student learning. §18-5G-1(b).

4. The board interprets provisions of West Virginia code §18-5G liberally to support the purpose and intent of code section §18-5G-1 and to advance a renewed commitment by the state to the mission, goals and diversity of public education. §18-5G-1(d).

5. Regulation of public charter schools by the state board is limited to the powers and duties of the board and to the state board's general supervision consistent with the spirit and intent of Article 18-5G. §18-5G-6(l); §18-5G-3(c).

6. The board should develop and consult, but is not bound by, a catalogue of best practices for applicants, authorizers, governing board members, and administrators, together with the state board. §18-5G-4(a).

7. The board has the powers and duties described mainly in §18-5G-6, described elsewhere in Article 18-5G, and clarified in these policies and regulations. Such powers and duties include establishing and maintaining policies and practices consistent with the principles and professional standards for authorizers of public charter schools and with state law. Many such policies and practices are presented here.

B. Powers and Duties of the Board.

Most of the board's powers and duties are described in §18-5G-6, including in large part the following, summarized and clarified here:

1. Demonstrate public accountability and transparency.

2. Establish and maintain policies and practices consistent with the principles and professional standards for authorizers of public charter schools, including standards relating to:

- (a) Organizational capacity and infrastructure;
- (b) Evaluating applications;
- (c) Ongoing public charter school oversight and evaluation; and
- (d) Charter approval, renewal, and revocation decision-making.

3. Solicit, guide the development of, and approve or deny applications primarily on the basis of the requirements of code §18-5G-8. The minimum standard is competence in all elements, as defined by reasonably objective criteria, and construing the law liberally. §18-5G-6(c)(1); §18-5G-1(d).

4. Negotiate, execute contracts with, and monitor contractual performance and compliance of its authorized schools.

5. Renew and revoke contracts and authorization in accordance with the board's policies and regulations and state law.

6. Respond to applications as follows, most of which may be delegated to the executive director and staff:

- (a) Complete a thorough review process;
- (b) Conduct an in-person interview with the applicant;
- (c) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;
- (d) Provide a detailed analysis of the application to the applicant or applicants;
- (e) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and
- (f) Approve or deny the application based on established objective criteria, documented evidence, and merit within 90 days (board only; may not be delegated), or request additional information.
- (g) Regardless of whether additional information was requested, and regardless of the August 31 application deadline, no later than 90 days following the filing of the charter application by the applicant, the board shall approve or deny the charter application at an open meeting. Following the meeting, the board shall provide its decision to the applicant in writing, including an explanation stating the reasons for approval or denial of its decision during the open meeting.
- (h) If the board fails to approve or deny an application within 90 days, the board shall deem the application approved and shall proceed to negotiate a contract with the applicant.
- (i) The board shall submit application approvals to the West Virginia Department of Education.

7. Oversight.

(a) The board shall conduct or require oversight activities that enable it to fulfill its responsibilities, including conducting appropriate inquiries and investigations, consistent with the law and these policies and regulations, not interfering with the autonomy granted to charter schools any more than necessary.

(b) The board shall require each authorized charter school to submit an annual report to assist the board in gathering all required information about each school.

(c) If a charter school's performance or compliance appears unsatisfactory, the board shall promptly notify in writing the school's governing board and provide reasonable opportunity for the school to remedy the problems.

(d) The board shall take appropriate corrective actions or exercise sanctions in response to apparent deficiencies in a charter school's performance or compliance. If warranted, the actions or sanctions may include requiring the school to develop and execute a corrective action plan within a specified time.

8. (a) The board may apply for, receive, and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of the charter school law, including federal funds, and may make start-up grants to public charter schools from funds appropriated or otherwise available to it from federal, state, or other sources, including the Charter Schools Stimulus Fund pursuant to §18-5G-17 and to appropriate rules implementing this fund promulgated by the state board. §18-5G-15(l).

(b) The board may administer the Charter Schools Stimulus Fund according to state code in the absence of state board rules. When necessary, the board will use an application form available on the board's website.

(c) Any eligible charter school that applies to the board for Charter Schools Stimulus funding during its eligibility period shall be eligible to receive funding once funds are made available.

C. Eligibility; Applications.

The board reports to the state board *solely* for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of the West Virginia code, and not for the purposes of accepting and approving applications. Accordingly, the board is authorized to promulgate its own interpretation of eligibility and most application requirements and contractual obligations, and does so here and in following sections. §18-5G-2(2); §18-5G-6(a)(2); state board Policy 3300 (standing for §126-79) 5.3.a.2, 7.1.b.2, and 7.1.b.5. Additionally, the board declines to rely on Policy 3300 to evaluate charter school applications and executive contracts not least because the board finds the many additional requirements of Policy 3300.5.4.b *et seq.*, including 3300.5.4.c *et seq.*, and Policy 3300.7 inconsistent with a liberal interpretation of the statute.

1. Applicants are defined in code §18-5G-2 and described further in code §18-5G-3.

2. An existing private school may not convert to a public charter school. Conversion is defined as becoming a public charter school while substantially keeping operations and policies the same. If an existing private school will substantially change its operations or policies should it become a public charter school, it may apply for authorization. Its application must show how its operations or policies

would change. If the board determines that the school is proposing a conversion, it shall reject the application. §18-5G-1(e).

3. A home school may not become a public charter school unless it ceases to be home school–based. If an existing home school will substantially change its operations should it become a public charter school, it may apply for authorization. Its application must show that it would no longer be home school–based. If the board determines that the school will remain home school–based, it shall reject the application. §18-5G-3(a)(3).

4. A public school may convert to a public charter school. §18-5G-2(5). The board disagrees with the state board, however, that the law requires this conversion to be approved only by the school’s county board. Accordingly, the board will accept and may approve applications from a public school that seeks to convert to a public charter school.

5. A program within a noncharter public school may be a charter school if it is authorized in accordance with the provisions of Article 18-5G of the code and meets the general criteria, governance structure and statutory compliance requirements described in §18-5G-3 of the code, and other relevant provisions of Article 18-5G. §18-5G-2(12). As a practical matter, however, the board agrees with the state board that a charter-seeking program within a noncharter school should be approved only by the school’s county board. Accordingly, the board will not accept applications from programs within noncharter public schools.

6. An applicant to operate a public charter school must be organized as an organization that has obtained federal 501(c)(3) tax-exempt status or has submitted an application for 501(c)(3) tax-exempt status, or be a state institution of higher education as defined in §18B-1-2. §18-5G-2(1)(A).

7. The board enforces the limitations at §18-5G-3(a)(4) and (5) only to the extent allowed by the First Amendment to the U.S. Constitution.

8. Applications must include at least the minimum information described at §18-5G-8(b). When considering whether to approve an application, the board will base decisions on the application and any documented evidence collected through the application review process. The board need not use an application evaluation rubric. The board’s charter-granting policy is to approve applications objectively based on the merits of the information provided. §18-5G-6(c).

(a) The minimum standard is competence in all elements, as defined by reasonably objective criteria, and construing the law liberally. §18-5G-6(c)(1); §18-5G-1(d).

(b) Regarding “successfully” serving students in special circumstances described at §18-5G-8(b)(20), the board agrees with the state board that the applicant’s plan must include a statement of how the school will at least competently identify students in these circumstances. The board disagrees with the state board that an application must reflect “an understanding of how special education and related services are funded” (Policy 3300.4.3.4.6). The board finds that the state board’s policy is too vague to enforce and does not provide the information that the applicant supposedly must understand. In contrast, the applicant must merely meet the law’s requirement.

(c) Regarding the process by which the school expects to resolve any disputes with the board as authorizer, the board recommends that the applicant merely state that it acknowledges the

investigation and resolution processes set out in Article 18-5G, saving further details for the contract stage. §18-5G-8(b)(22).

9. If an application is substantially incomplete (beyond mere deficiencies), the applicant may provide the board with additional material by August 31 of the relevant year, or after August 31 at the sole discretion of the board. The board finds that a punitive one-chance, all-or-nothing policy would be inconsistent with the purpose of the statute to encourage high-quality applications.

10. Since the authorizing statute does not authorize “conditional approval” or “conditional denial” of an application and the board may not meet in secret, the board declines to issue conditional approvals and denials apart from public meetings. Approvals and denials shall occur transparently at public meetings.

D. Contracts; Quantity Limits.

1. The total number of public charter schools authorized and in operation under an approved contract in West Virginia shall be limited to 10 until July 1, 2023. Beginning July 1, 2023, and every 3 years thereafter, an additional 10 public charter schools may be authorized and in operation under an approved contract in West Virginia.

(a) The Mountaineer Challenge Academy, if converted to a public charter school, shall not count towards these limitations. Virtual charter schools, limited to two, also shall not count against this limit. A statewide virtual public charter school shall enroll no more than five percent of the state’s headcount enrollment per year.

(b) If the board approves any application that would exceed these limits, the board shall not execute a contract until a place is available. The board shall execute contracts with approved applicants only up to and including the maximum numbers of schools, including virtual schools. §18-5G-1(g); §18-5G-14(a)(1).

2. Having an approved application does not constitute authorization to operate until an approved contract is in place and the first school year of operation has begun. §18-5G-9(g).

3. Each of the board’s contracts shall identify the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract. §18-5G-2(4).

4. Within 90 days of the approval of a charter application, the board and the school’s governing board shall negotiate and enter into a charter contract, which may incorporate or be consistent with the approved application.

(a) Alternatively, the parties may agree to also have part or all of the charter application be a part of the charter contract, provided that the contract contains all of the elements required in §18-5G-9(b).

(b) The contract also must contain the elements required in §§18-5G-9(c) and (d).

(c) The charter application and contract also must designate the school’s primary recruitment area, which may include territory in more than one county. §18-5G-11(a)(4).

(d) Since the board is responsible for collecting and reporting to the state board all state-required assessment and achievement data for the school, the contract shall include appropriate provision for the school to timely provide the required information to the board. §18-5G-9(e).

(e) As the school's capacity changes, the school may change its primary recruitment area, based on a required annual joint determination of the school's capacity between the board and school. The contract shall make provision for this annual assessment. While the board shall participate in this determination of the primary recruitment area it shall not, however, restrict the number of students the school may enroll. The board declines to set an annual deadline for enrollment. §18-5G-11(a)(5).

(f) If the parties do not execute the contract within 90 days, they are out of compliance with the statute. But if they are negotiating in good faith, a liberal reading of the statute suggests that the board may waive the deadline, as the state board does in Policy 3300.5.5.e.1, through March 15 of the following year.

8. The usual term of a contract is five years, which also is the maximum term. The contract term of a virtual school must be five years. §18-5G-9(b)(1); §18-5G-10(a); §18-5G-14(a)(3).

9. A copy of the executed charter contract shall be provided to the State Superintendent of Schools. §18-5G-9(f).

E. Autonomy; Privileges.

1. Except as specifically provided in Article 18-5G, each public charter school has autonomy over key decisions, including but not limited to decisions concerning the following: finance, personnel, scheduling, curriculum, and instruction. §18-5G-3(b)(1).

2. Each public charter school is exempt from all statutes, state board policies, and rules applicable to a noncharter public school or board of education except those listed at §18-5G-3(b)(5) and (c) and described below.

3. Although all public charter schools and their students are eligible to participate in state-sponsored or district-sponsored athletic and academic interscholastic leagues, competitions, awards, scholarships, and recognition programs for students, educators, administrators, and schools to the same extent as noncharter public schools and their students, the board does not enforce these privileges against other state entities. §18-5G-3(b)(6).

4. Although all personnel in a public charter school who were previously employed by a county board shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a noncharter public school in the county for purposes of employment in noncharter public schools, the West Virginia Professional Charter Schools Board does not enforce seniority against a county board. §18-5G-3(b)(7).

5. Any services for which a public charter school contracts with a school district shall be provided by the district at cost (which shall be negotiated as a separate agreement after final charter contract negotiations with the board), but the board does not enforce such agreements against a district. §18-5G-7(d)(1).

6. Although a county board must provide or publicize to parents and the general public information about public charter schools within the county as an enrollment option to the same extent and through the same means that the county provides and publicizes information about noncharter public schools in the county; the county board may not require any student residing in the county to enroll in a public charter school; the county board may not prohibit any public charter school student from returning to a

noncharter public school; and a county board or other public entity shall make facilities available to a charter school that are either not used, in whole or in part, for classroom instruction at the time the charter school seeks to use or lease the public facility, and may not initiate or execute the sale or otherwise transfer of the facility to another entity after the request for usage has been made by a public charter school, the board does not enforce such requirements against a county board or other public entity. §§18-5G-11(a)(2) and (3); §18-5G-12(a).

7. Although when a public charter school chooses to incorporate post-secondary embedded credit, dual credit, or industry and workforce credential programs into its educational program, institutions of higher education may not impose any requirements on the public charter school that are not required of noncharter public schools, the board does not enforce this provision against institutions of higher education. §18-5G-3(b)(4)(A).

8. A public charter school may include before school and/or after school programs as a part of its education program, and no part of the school's education program is subject to regulation as a childcare facility. §18-5G-3(b)(4)(D).

9. Although, if a public charter school does not sponsor an extracurricular athletic or academic interscholastic activity for the students enrolled in the school, its students may participate on the same basis as other public school students in those activities that are sponsored by the noncharter public school serving the attendance area in which the student resides, the board does not enforce such requirements against the noncharter public school. §18-5G-3(b)(6).

10. Virtual public charter schools and their students (and parents or guardians) enjoy the following additional regulatory relief pursuant to §18-5G-14:

(a) A virtual public charter school student, to the extent the charter contract allows or requires instruction to occur outside of a school building, is not required to be physically present in a school building or classroom.

(b) Neither the virtual public charter school governing board, virtual public charter school personnel, the virtual public charter school student nor the parents or guardian of the virtual public charter school student, to the extent the program as delineated in the charter contract allows or requires instruction to occur outside of a school building, may incur any penalty or be held accountable for the absence of the student from the school building.

(c) For a virtual public charter school student, neither the school district nor the student, to the extent the program as delineated in the charter contract is a learn-at-your-own-pace program, as defined in the contract, is required to comply with the instructional term requirement set forth in §18-5-48 or any other law or state board rule requiring a student to be receiving instruction for any set time.

(d) A virtual public charter school is exempt from any provision of law or state board rule that applies to the traditional delivery of instruction such as requirements relating to the physical presence of a student, student monitoring and security, a maximum teacher-pupil ratio, instructional time requirements, and physical education requirements to the extent any of the foregoing conflict with the delivery of the virtual instruction program.

(e) A virtual public charter school may administer any required state assessment in a virtual setting utilizing remote proctoring that best meets the educational needs of the student. The Department of Education should make all state assessments available for remote proctoring. §18-5G-3(c)(6).

F. Accountability; Restrictions.

1. Public charter schools are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under code §18-2E-5(d) and (e). Each public charter school shall have access to and shall use the electronic education information system established by the West Virginia Department of Education. Each public charter school is subject to the Student Data Accessibility, Transparency and Accountability Act pursuant to code §18-2-5h, and shall report information on student and school performance to parents, policy-makers and the general public in the same manner as noncharter public schools utilizing the electronic format established by the West Virginia Department of Education. §18-5G-15(a); §18-5G-3(a)(1); §18-5G-11(c).

2. Each public charter school shall certify annually to the West Virginia Department of Education and to the county board of the school district in which the public charter school is located its student enrollment, average daily attendance and student participation in the national school lunch program, special education, vocational education, gifted education, advanced placement and dual credit courses, and federal programs in the same manner as school districts. This information need not, however, be communicated to the board. §18-5G-11(d).

3. Each public charter school authorized by the board is subject to oversight by the board for operating in accordance with its approved charter contract and for meeting the terms and performance standards established in the contract. §18-5G-3(a)(2).

4. Public charter schools may not charge tuition and must only charge such fees as may be imposed by noncharter public schools in West Virginia. If a student who is not at a public charter school chooses to take individual courses or participate in individual activities at that school, the school may assess fees on the same basis as noncharter public schools for similar courses or activities. §18-5G-3(a)(7).

5. Each public charter school authorized by the board shall remit to the board an oversight fee described at §18-5G-5(d) and determined by the state board. §18-5G-5(d).

6. Public charter schools must have no requirements that would exclude any child from enrollment who would not be excluded at a noncharter public school. If a student has been suspended or expelled from a noncharter public school and may lawfully be excluded from other noncharter public schools, public charter schools may also exclude that student. Public charter schools also must have no admissions policy that would be impermissible at a noncharter public school, except that a public charter school may establish enrollment preferences described in §18-5G-11(a)(7). §18-5G-3(a)(8); §18-5G-11(a)(6); §18-5G-11(a)(7).

7. Additional admissions and overflow processes are governed by §§18-5G-11(a)(8) through (10).

8. Public charter schools must market and recruit in compliance with §18-5G-11(a)(1).

9. Public charter schools must be governed by a board that meets the requirements and fulfills the required duties described in code §18-5G-7. Each member of the governing board must file a full

disclosure report to the West Virginia Professional Charter School Board identifying potential conflicts of interest, relationships with management organizations, and relationships with family members who are employed by the public charter school or have other business dealings with the school, with the management organization of the school, or with any other public charter school. Members of the governing board are considered officers of a school district under the provisions of code §6-6-7, at least for the purposes of removal from office. §§18-5G-7(b)(C) and (E). When a state institution of higher education is a charter school applicant and after its application is approved by the board, the governing board of the public charter school may be an administrative unit of the state institution of higher education, and the charter school's governing board may enter into the charter contract on behalf of the state institution of higher education. §18-5G-7(g).

10. (a) Each public charter school must provide a program of public education that meets the requirements and options of §18-5G-3(b)(4) regarding grade levels, focuses, and themes; must comply with §18-5G-3(b)(5) regarding students with disabilities; must establish a staffing plan that complies with §18-5G-3(b)(8) regarding the qualifications of instructional staff and verification of such qualifications; and should follow Policy 3300.12.2.e to ensure proper state funding based on enrollment. Public charter schools should maintain procedures with regard to pro rata invoicing when a student in grades kindergarten through 12 transfers between schools on a full-time basis after the beginning of the school year. §18-5G-5(a)(3).

(b) Certification Verification Policy. A public charter school "Is responsible for establishing a staffing plan that includes the requisite qualifications and any associated certification and/or licensure that it determines necessary for teachers and other instructional staff to be employed at the public charter school and for verifying that these requirements are met" (§18-5G-3(b)(8)).

To ensure that a public charter school authorized by the PCSB has verified such requirements for teachers and other instructional staff, the PCSB, consistent with rule §126-136-25, requires that a public charter school certify to the PCSB that each of its teachers and instructional staff either holds a valid teaching certification issued by the State, or satisfies the following requirements:

- (1) Is either a citizen of the United States or otherwise holds a valid credential to be employed in the United States;
- (2) Is or will be 18 years old by the time the person begins his or her instructional duties;
- (3) Is physically, mentally, emotionally, and morally qualified to perform the duties of a teacher, as determined by the school;
- (4) Meets the charter school's requirements for employment, including relevant academic or occupational qualification or experience that reasonably indicates the applicant will perform his or her instructional duties competently; and
- (5) Has passed criminal history record checks and fingerprinting requirements applicable to noncharter public schools in the State. A Federal Bureau of Investigation (FBI) Fingerprint Background Check shall be initiated by being fingerprinted by the West Virginia State Police or its designee or a similarly qualified fingerprinter. The fingerprints should be analyzed by the State Police for a state criminal history record check through the central abuse registry record and then forwarded to the FBI for a national criminal

history record check. Information returned to the school that appears in either the central abuse registry record or the FBI record may form the basis for the denial of qualification for cause.

(c) West Virginia Residency Requirement.

(1) To ensure that charter school students are residents of West Virginia, a charter school must verify the address of each prospective student who is entering the public school system, prior to the student's enrollment at the charter school. This requirement includes each student who:

(A) Is entering Pre-Kindergarten or Kindergarten for the first time and was not previously enrolled in a West Virginia public school;

(B) Is entering the public school system from a home school, microschool, or private school; or

(C) Has just moved to West Virginia from another state.

This requirement does not include students who are leaving a noncharter public school for the charter school.

(2) Charter schools shall verify the student's home address on the basis of at least one official document showing the student's current address.

(3) A charter school may permit a prospective student in any of the situations in paragraph (1) of this section to apply for the charter school and to participate in an enrollment lottery, but the student may not be enrolled without verification of the student's home address as a West Virginia location.

(4) Each charter school must require all students' addresses to be up to date in the school's records.

11. If the school's governing board contracts with an education service provider,

(a) The contract must require the provider to give the governing board a monthly detailed budget. §18-5G-7(c)(4).

(b) The contract must not prevent the governing board from soliciting the school's teachers for jobs in the event that the contract with the provider ends or is about to end. The board finds that this provision would help maintain continuity of service to the students of the school.

12. Public charter schools are not exempt from the federal and state requirements for public schools described at §18-5G-3(c).

(a) The board recommends that applicants review state board Policy 3300 for federal requirements that might otherwise be overlooked, but the board does not require statements about every federal requirement in applications.

(b) Public charter schools must comply with federal requirements that pertain to eligibility for federal funding for the state as a whole, so as not to put state funding in jeopardy, but public charter schools need not comply with the requirements pertaining to optional federal programs unless they choose to accept such funds.

13. Nonattendance, disenrollment, and withdrawals to non-public schools.

(a) Nonattendance.

(1) Upon three and again upon five total unexcused absences of a student during a school year, the school must make meaningful contact with the student's parent or guardian, to understand the absences and how the school can help keep the student in school. §18-8-4(b)–(c).

(2) Upon five total unexcused absences of a student during any half of a school term, the school must contact any parent or guardian and meet with them as well as the student regarding the absences. §18-8-5.

(3) Upon 10 total unexcused absences of a student during a school year, the school:

(A) Must notify the county of residence's attendance director, or county board of education, the address of the student, so that the county board of education may organize a home visit and/or take other action determined by the attendance director;

(B) If the school is a virtual school, it must follow its policy regarding disenrollment for nonattendance, and upon disenrollment, it must coordinate directly with the student's county of residence regarding the appropriate educational placement. The virtual school's policy for disenrollment must be consistent with this section;

(C) If the school is a brick-and-mortar school, it must cooperate with the attendance director or county board of education to help keep the student in school. §18-8-4(d).

(4) At the opening of each school year, if a student does not return to the school and the school is unaware that the student is attending any other school, including home school, the school must report the student's name and address to the attendance director or county board of education. §18-8-5.

(b) Disenrollment. If a student is disenrolled from a school, the school shall formally disenroll the student in the state's electronic education information system.

(c) Withdrawals. A parent who intends to withdraw a charter school student in order to use the Hope Scholarship or to provide home schooling must file a Notice of Intent with the student's county of residence and notify the charter school when the student leaves the school. The county of residence is then responsible for further engagement regarding the non-public school student. §18-8-1.

14. (a) Each public charter school shall annually assess the safety and security of each school facility for which it is responsible; shall upgrade safety and security measures as necessary; and shall report annually to the Department of Education the safety and security measures it has put in place. §18-5-48.

(b) Public charter schools may request funding from the Safe Schools Fund for safety and security. Requests are made by public charter school governing boards to the Department of Education pursuant to rules promulgated by the board of education. §18-5-48(c)–(d).

15. Virtual public charter schools are subject to the following additional requirements pursuant to §18-5G-14:

(a) Its governing body shall undergo at least one training per year related to appropriate oversight of the virtual public charter school.

(b) It shall offer a student orientation, notify the parents and guardians and each student who enrolls in that school of the requirement to participate in the student orientation or a makeup session, and require all students enrolled to complete the student orientation or makeup session prior to completing any other instructional activity.

(c) It shall provide, in a manner agreed to in the charter contract, data demonstrating student progress toward graduation. Measurement of such progress shall account for specific characteristics of each enrolled student, including but not limited to age and course credit accrued prior to enrollment in educational instruction and course content that are delivered primarily over the internet pursuant to enrollment, and shall be consistent with evidence-based best practices.

(d) It shall maintain clear requirements relating to student engagement and teacher responsiveness. To this end, it shall adopt a policy regarding failure to participate in instructional activities, which are defined at §18-5G-14(a)(13)(A). School policy requirements and additional processes regarding failure to participate are given at §§18-5G-14(a)(13)(B) and (C).

(e) The board may establish additional requirements for virtual charter schools enrolling students in grades six and below to ensure they are developmentally appropriate for students.

(f) The board disagrees with state board Policy 3300.4.5.a, which adds requirements beyond the statute regarding hardware and connectivity. The board finds that these requirements would not be consistent with a liberal interpretation of the statute, and declines to include them.

G. Renewals.

1. No later than June 30 of a school's fourth year of operation under each five-year term of a charter contract, the board shall issue a performance report on the school. If the term is shorter than five years, the board shall endeavor to provide a report by June 30 of the school year before the school's final year of operation under the contract. The report is described at §18-5G-10(a).

2. No later than June 30 of the school year before a school's final year of operation under the contract, the board shall issue contract renewal application guidance to the school. The guidance is described at §18-5G-10(b). The board declines to include a preemptive investigation of student enrollment and turnover demographics such as by sex or race, which would not be consistent with a liberal construal of the statute.

3. No later than September 30 of the school's final authorized year of operation under its contract, the school's governing board, if seeking renewal, shall submit a renewal application to the board pursuant to guidance it received from the board. §18-5G-10(c).

4. In a public meeting no later than 45 days after the filing of the renewal application, the board shall rule by resolution on the renewal application, following the procedure and requirements at §18-5G-10(c), including a thorough analysis of the school's performance, public accessibility of data used in making the decision, and a public report summarizing the evidence basis for the decision. The allowable decisions are:

(a) Renew for another term up to five years (except that the term for a virtual charter must be five years, following §18-5G-14(a)(3)); or

(b) Decline to renew, followed within a reasonable time by a resolution stating the reasons for nonrenewal, and a process leading to a final decision either to renew or not to renew, as described at §18-5G-10(c). It may not be feasible to issue the resolution at the same meeting at which the board initially declines to renew the school's authorization.

5. Any nonrenewal of a charter contract may be appealed to the state board pursuant to code §18-5G-13.
6. The failure of the board to act on a renewal application within the designated timeframes of §18-5G-10 shall be deemed an approval of the renewal application. §18-5G-10(d).
7. Within 10 days of the board's final decision, the board shall report the action and reasons for any decision to the school's governing board, the state board, and the state superintendent.
8. The board may, but is not required, to determine not to renew for a variety of reasons described at §18-5G-10(f), based on student health and safety, noncompliance, substantial failure in fiscal management, or substantially low performance.
9. If the board revokes or determines not to renew a charter contract, the board will close the school. If the school had been a noncharter public school or program within a noncharter school, the county board may reconvert it to noncharter status. §18-5G-10(g).

H. Revocation.

The board may revoke a charter contract if the board determines, based on clear and convincing evidence, that closure is required to protect the health and safety of the school's students; if an administrator employed by the school or a member of the school's governing board is convicted of fraud or misappropriation of funds and the board determines that closure is necessary to protect public funds; if, based on clear and convincing evidence, the school has failed to meet generally accepted standards of financial management and closure is necessary to protect public funds; if there is a material breach of the charter contract, as determined by a competent court or arbitrator, and the board determines that closure better serves the public interest than curing the breach; if there is a substantial violation of any provision of law from which the public charter school is not exempted, as determined by a competent court or arbitrator, and the board determines that closure better serves the public interest than curing the breach; or the school has dire and chronic academic deficiencies, as determined by the board based on clear and convincing evidence. §18-5G-10(h).

I. Orderly Closing.

If the board determines to close a school either via nonrenewal or revocation of a contract and all appeals are exhausted or waived, the board shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol established by the state board, described at §18-5G-10(i), and by §18-5G-10(j).

J. Role of the State Board.

The state board has certain powers and duties with respect to the funding, oversight, and authorization of public charter schools, including the following which apply to these policies and regulations, most of which are described at §18-5G-4(b). The state board may have rules under Policy 3300 that pertain to public charter schools but are not enforced by the board, since the statute strictly limits the general oversight of the board by the state board. A public charter school authorized pursuant to §18-5G is exempt from all statutes, state board policies, and rules applicable to a noncharter public school or board of education except as specifically provided in §18-5G (particularly §18-5G-3(b)(5) and (c)). Powers and duties of the state board include:

1. Provide optional forms to facilitate and promote quality in soliciting and completing applications, and to establish charter contracts that include a framework for performance standards. If using such forms, the board may waive any information collection or provision that is not necessary to comply with state law, as construed liberally under §18-5G-1(d). For statewide consistency, the board agrees that the application deadline each year shall be August 31 of the year prior to the beginning of operations for the proposed school year, even if not using the state board's application form. No public charter school may begin operation prior to the beginning of the proposed school year following the previous year August application, defining "operation" as any curricular and extracurricular activity involving students, but not including preparation for the school year by a school's board and staff.
2. Provide optional training programs for public charter school applicants, administrators, and governing board members, including, for those audiences, authorizer responsibilities for contract oversight and performance evaluation.
3. Establish reporting requirements that enable the state board to monitor the performance and legal compliance of authorizers and public charter schools.
4. (a) Receive annual authorization status information from the West Virginia Professional Charter School Board or the board's hired staff regarding which of the past year's applications are pending, denied (with reasons for denial), and approved or renewed (either not operating or number of years operating), and regarding which previously authorized public charter schools have closed or have had their authorization or contracts terminated.
 - (b) The board should report to the state board on any successful innovations applied in authorized public charter schools which may be replicated in other schools, including noncharter public schools.
 - (c) The board does not require use of the West Virginia Department of Education's system for recording innovative educational practices.
5. The state board may promulgate a rule, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under code §§18-2E-5(d) and (e) and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it.
 - (a) If the West Virginia Professional Charter School Board fails to close a public charter school that does not meet the standards pursuant to state law on closing such a school, the board shall appear before the state board to justify its decision. The state board may uphold or overturn the board's decision not to close the school and, if the state board decides the board erred in not closing the school, the state board may revoke the authority of the board to authorize public charter schools. There is no other ground on which the statute permits the state board to revoke the board's status as authorizer. §18-5G-5(b).
 - (b) Such revocation should take the form of recommending that the Governor remove all of the board's voting members who had voted not to close the school, on the ground of neglect of duty. §18-5G-15(g).
6. Create, and annually review the effectiveness of, a state formula for authorizer funding, adjusting the formula if necessary to maximize public benefit and strengthen the implementation of the charter school law. §18-5G-5(d).

7. Adjudicate appeals from an applicant or existing public charter school regarding denial of an application or nonrenewal of a public charter contract, and to promulgate a rule establishing the process of appeals. §18-5G-13.
8. Promulgate a rule to clarify, if necessary, the requirements of Article 18-5G and address any unforeseen issues that might arise relating to the implementation of the requirements of that article, so long as nothing in that rule conflicts with the code, including the autonomy of public charter schools and the board. §18-5G-5(e).
9. Establish a framework and procedures for interactions between public charter schools, public noncharter schools and county boards of education to facilitate cooperation for shared services, training and information and to ensure the prompt transfer of student records, including IEPs, so as to minimize the interruption of a student's education when transferring between noncharter public schools and public charter schools. §18-5G-4(b)(6).
10. Promulgate rules to accurately fund public charter schools, including an objective method for calculating any increase in net enrollment for each public charter school based on the school's net enrollment for the current year compared to the prior year, pursuant to §18-9A-15.