

R277-552 received final approval by the Utah State Board of Education on December 3, 2020. R277-552 will be published in the January 1, 2021 Utah State Bulletin, subject to a 30-day comment period, with a first possible effective date of February 8, 2021.

R277. Education, Administration.

R277-552. Charter School Timelines and Approval Processes.

R277-552-1. Authority and Purpose.

(1) This rule is authorized by:

(a) Utah Constitution Article X, Section 3, which vests general control and supervision over public education in the Board;

(b) Subsection 53E-3-401(4), which allows the Board to adopt rules in accordance with its responsibilities;

(c) Subsection 53G-6-504(5), which requires the Board to make rules regarding a charter school expansion or satellite campus;

(d) Sections 53G-5-304 through 53G-5-306, which require the Board to make a rule providing a timeline for the opening of a charter school;

(e) Section 53F-2-702, which directs the Board to distribute funds for charter school students directly to the charter school;

(f) the Charter School Expansion Act of 1998, 20 U.S.C. Sec. 8063, which directs the Board to submit specific information prior to a charter school's receipt of federal funds; and

(g) Subsection 53G-5-205(5), which requires the Board to make rules establishing minimum standards that an authorizer is required to apply in authorizing and monitoring charter schools.

(2) The purpose of this rule is to:

(a) establish procedures for timelines and approval processes for new charter schools; and

(b) provide criteria and standards for consideration of high performing charter schools to expand and request new schools that are satellite schools.

R277-552-2. Definitions.

“Market analysis” means a qualitative and quantitative analysis of the educational market near a proposed charter school, including:

(1) the school’s target demographics;

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- (2) population and development trends in the area;
- (3) nearby competing public schools;
- (4) the proposed school's own forecasts, along with supporting data; and
- (5) any risks, barriers, or regulations that may impact a proposed school's success.

R277-552-3. Charter School Authorization Process.

(1) An individual or non-profit organization as described in Subsection 53G-5-302(2)(b) may apply to open a charter school from any statutorily approved authorizer.

(2) An authorizer shall submit a process to the Board for approval of:

- (a) a new charter school;
- (b) a request from a school to change authorizers;
- (c) a charter school expansion; or
- (d) a satellite school.

(3) A new authorizer shall submit a new charter school application process to the Board for approval at least six months prior to accepting applications for a new charter school.

(4) An existing authorizer may not authorize a new charter school for the 2021-22 school year and beyond until the Board approves the authorizer's application process.

(5)(a) The Board shall approve or deny an authorizer's proposed application process, including expansion and satellite approval processes, within 90 days of receipt of the proposed process from an authorizer.

(b) If the Board denies an application process, the Superintendent shall provide a written explanation of the reasons for the denial to the applicant within 45 days.

(c) If an authorizer's application process is denied, the authorizer may submit a revised application process for approval at any time.

(6) An authorizer shall have an application and charter agreement, which shall include all elements required by Title 53G, Chapter 5, Part 3, Charter School Authorization.

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(7) An authorizer shall maintain the official signed charter agreement, which shall presumptively be the final, and complete agreement between a school and the school's authorizer.

(8) An authorizer's review process for a new charter school shall include:

(a) a plan for mandatory pre-operational and other trainings;

(b) an evaluation of the school's governing board, including:

(i) a review of the resumes of and background information of proposed governing board members; and

(ii) a capacity interview of the proposed governing board;

(c) an evaluation of the school's financial viability, including:

(i) a market analysis;

(ii) anticipated enrollment; and

(iii) anticipated and break even budgets;

(d) an evaluation of the school's academic program and academic standards by which the authorizer will hold the school accountable; and

(e) an evaluation of the school's proposed pre-operational plan, including implementation of:

(i) applicable legal requirements for public schools;

(ii) required policies;

(iii) student data systems, including student data privacy requirements;

(iv) reporting; and

(v) financial management.

(9) An authorizer's review process shall include contacting the school district in which a proposed charter school will be located and consideration of any feedback provided by the district.

(10) An authorizer shall design its approval process so that the authorizer notifies the Superintendent of an authorizer approval of a request identified in Subsection (2) no later than October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

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R277-552-4. Timelines - Charter School Starting Date and Facilities.

(1) A charter school may receive state start-up funds if the charter school is approved as a new charter school by October 1, one fiscal year prior to the state fiscal year the charter school intends to serve students.

(2) Prior to receiving state start-up funds an authorizer, other than the State Charter School Board, shall certify in writing to the State Charter School Board that a charter school has:

- (a) completed all required financial documents;
- (b) completed background checks for each governing board member; and
- (c) executed a signed charter agreement, which includes academic goals.

(3) Prior to an LEA receiving state start-up funds, the State Charter School Board shall require the LEA to submit documentation supporting the information required in Subsections (2)(a) and (c) to the Superintendent.

(4) A charter school may receive state funds, including minimum school program funds, if the charter school authorizer certifies in writing to the Superintendent by June 30 prior to the school's first operational year that:

- (a) the charter school meets the requirements of Subsection (2);
- (b) the charter school's governing board has adopted all policies required by statute or Board rule, including a draft special education policies and procedures manual;
- (c) the charter school's governing board has adopted an annual calendar in an open meeting and has submitted the calendar to the Superintendent;

(d) the authorizer has received the charter school's facility contract as required by Subsection 53G-5-404(9);

(e) the charter school has met the requirements of Subsections (5) and (6) and that the school's building is scheduled for completion, including all required inspections, prior to occupancy;

(f)(i) the charter school has hired an executive director and a business administrator;
or

(ii)(A) the charter school governing board has designated an executive director or business administrator employed by a third party; and

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(B) the charter school governing board has established policies regarding the charter school's supervision of the charter school's third-party contractors;

(g) the charter school's enrollment is on track to be sufficient to meet the school's financial obligations and implement the charter school agreement;

(h) the charter school has an approved student data system that has successfully communicated with UTREx, including meeting the compatibility requirements of Subsection R277-484-5(3);

(i) the charter school has a functional accounting system; and

(j) the charter school has a budgeted net lease adjusted debt burden ratio of under 30% based on the school's executed facility agreement; and

(k) the charter school has complied with all legal requirements for new charter schools in a school's pre-operational year.

(5) An authorizer shall:

(a) create a process to verify the requirements in Subsection (4);

(b) maintain documentation of Subsection (5)(a); and

(c) provide the documentation described in Subsection (5)(b) to the Superintendent upon request; and

(d) submit a copy of the process required in Subsection (5)(a) to the Board for approval along with the authorizer's process for approving new charters under Subsection R277-552-3(2).

(6) A charter school shall begin construction on a new or existing facility requiring major renovation, such as requiring a project number consistent with Rule R277-471, no later than January 1 of the year the charter school is scheduled to open.

(7) A charter school that intends to occupy a facility requiring only minimal renovation, such as renovation not requiring a project number according to Rule R277-471, shall enter into a written agreement no later than May 1 of the calendar year the charter school is scheduled to open.

(8) If a charter school fails to meet the requirements of this section within 36 months of approval, the approval of the charter school shall expire.

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R277-552-5. Charter Amendment Requests.

(1) An authorizer shall have a policy establishing a process for consideration of proposed amendments to a school's charter agreement.

(2) An authorizer's timeline for consideration of an amendment to a charter agreement may not conflict with any funding deadline established in Board rule.

R277-552-6. Charter School Expansion Requests.

(1) An authorization process developed by an authorizer in accordance with Subsection R277-552-2(2) shall comply with this Section R277-552-5 for a charter school expansion.

(2) An authorizer may only consider an application from a charter school for an expansion if:

(a) the charter school is in compliance with the requirements of federal and state law, regulations, and Board rule, including:

- (i) Title 53E, Chapter 9, Student Privacy and Data Protection;
- (ii) Title 53G, Chapter 7, Part 5, Student Fees;
- (iii) Title 53G, Chapter 9, Part 7, Suicide Prevention;
- (iv) Title 53G, Chapter 8, Discipline and Safety;
- (v) Title 52, Chapter 4, Open and Public Meetings Act;
- (vi) Title 63G, Chapter 6a, Utah Procurement Code; and
- (vii) the IDEA and Rule R277-750, with no unresolved audit exceptions;
- (viii) Rule R277-113, Local Education Agency (LEA) Fiscal and Auditing Policies;
- (ix) Section 53G-9-207, Child sexual abuse prevention; and
- (x) Subsection 63G-7-301(3) and Rule R277-322;

(b) the request is consistent with the charter school's charter agreement;

(c) the expanding school or LEA is performing:

(i) consistent with or above the charter school's stated academic goals; and

(ii) at or above the average student performance of other nearby schools on statewide assessments, unless serving a specialized population consistent with the school's charter agreement;

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(d) if the proposed expansion will require additional physical facilities, the charter school has maintained a net lease adjusted debt burden ratio of under 25% for each of the last three years;

(e) the charter school's financial statements report revenues in excess of expenditures for at least three of the last four fiscal years; and

(f) the charter school provides any additional information or documentation requested by the charter school authorizer.

(3) An authorizer shall provide documentation of an applicant school's eligibility to apply under Subsection (2) to the Superintendent upon request.

(4) An authorizer may only approve an application from a charter school for an expansion if:

(a) the charter school is meeting the terms of its charter agreement;

(b) the charter school is academically and operationally successful, taking into consideration at least two years of academic performance data of students at the charter school;

(c) the charter school:

(i) provides educational services consistent with state law and Board rule;

(ii) administers and has capacity to carry out statewide assessments including proctoring statewide assessments, consistent with Section 53E-4-303 and Rule R277-404; and

(iii) provides evidence-based instruction for special populations as required by federal law;

(d) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the school;

(e) the school is in compliance with all applicable school legal obligations;

(f) the charter school has maintained for each of the last three years:

(i) a re-enrollment rate of at least 80%;

(ii) a wait list of at least 40% of its annual enrollment; or

(iii) other evidence of market demand satisfactory to the authorizer;

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(g) the charter school is financially viable, as evidenced by the charter school's financial records, including the charter school's:

- (i) most recent annual financial report (AFR);
- (ii) annual program report (APR); and
- (iii) audited financial statements;

(g) the charter school's proposal provides an adequate facility for the school; and

(h) the charter school has appropriately dealt with student safety issues, if any.

(5) An authorizer shall:

(a) approve a proposed expansion before October 1 of the state fiscal year prior to the school year that the intends to expand; and

(b) provide the total number of students by grade that the charter school expansion is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the school year that the school intends to expand.

R277-552-7. Requests for a New Satellite School for an Approved Charter School.

(1) An authorization process developed by an authorizer in accordance with Subsection R277-552-3(2) shall comply with this Section R277-552-7 for a satellite school.

(2) An authorizer may only consider an application from a charter school for a satellite school if:

(a) the charter school is in compliance with the requirements of federal and state law, regulations, and Board rule, including:

- (i) Title 53E, Chapter 9, Student Privacy and Data Protection;
- (ii) Title 53G, Chapter 7, Part 5, Student Fees;
- (iii) Title 53G, Chapter 9, Part 7, Suicide Prevention;
- (iv) Title 53G, Chapter 8, Discipline and Safety;
- (v) Title 52, Chapter 4, Open and Public Meetings Act;
- (vi) Title 63G, Chapter 6a, Utah Procurement Code; and
- (vii) the IDEA and Rule R277-750, with no unresolved audit exceptions;
- (viii) Rule R277-113, Local Education Agency (LEA) Fiscal and Auditing Policies;
- (ix) Section 53G-9-207, Child sexual abuse prevention; and

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- (x) Subsection 63G-7-301(3) and Rule R277-322;
 - (b) the request is consistent with the charter school's charter agreement;
 - (c) all schools operating under the governance of the existing charter school are performing:
 - (i) consistent with or above the charter school's stated academic goals; or
 - (ii) if no student performance goals have been established, above the standardized student assessment measures of other comparable nearby schools;
 - (d) the charter school has maintained a net lease adjusted debt burden ratio of under 25% for each of the last three years;
 - (e) the charter school's financial statements report revenues in excess of expenditures for at least three of the last four years;
 - (f) the charter school provides a market analysis, including documentation of the school's potential for enrollment stability, covering all public schools within a ten mile radius, including analysis of whether nearby schools are at enrollment capacity; and
 - (g) the charter school provides any additional information or documentation requested by the charter school authorizer.
- (3) An authorizer may not consider an application for a satellite school from a charter school governed by a different authorizer.
- (4) An authorizer shall provide documentation of an applicant school's eligibility to apply under Subsection (2) to the Superintendent upon request.
- (5) An authorizer may only approve an application from a charter school for a satellite school if:
- (a) the charter school is meeting the terms of its charter agreement;
 - (b) the charter school has maintained for each of the last three years:
 - (i) a re-enrollment rate of at least 80%;
 - (ii) a wait list of at least 40% of its annual enrollment; or
 - (iii) there is a demonstrated demand for the proposed satellite, taking into consideration the market analysis required under Subsection (2)(f);

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(c) the charter school is academically and operationally successful, taking into consideration at least two years of academic performance data of students at the charter school, including whether the charter school is performing at or above:

(i) the academic goals established in the charter school's agreement; and

(ii) the average academic performance of other district and charter schools in the area or schools targeting similar populations or demographics;

(d) the charter school has plans for the new school to:

(i) provide educational services consistent with state law and Board rule;

(ii) administer and have capacity to carry out statewide assessments including proctoring statewide assessments, consistent with Section 53E-4-303 and Rule R277-404; and

(iii) provide evidence-based instruction for special populations as required by federal law;

(e) the charter school has adequate qualified administrators and staff to meet the needs of the proposed student population at the new school;

(f) the school is in compliance with all public school legal obligations;

(g) the charter school is in good standing with its authorizer; and

(h) the charter school is financially viable, as evidenced by the charter school's financial records, including the charter school's:

(i) most recent annual financial report (AFR);

(ii) annual program report (APR); and

(iii) audited financial statements.

(6) An authorizer shall:

(a) approve a proposed satellite school before October 1 of the state fiscal year prior to the school year that the proposed school intends to first serve students;

(b) provide the total number of students by grade that the satellite school is authorized to enroll to the Superintendent on or before October 1 of the state fiscal year prior to the school year that the proposed school intends to first serve students; and

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(c) ensure that a proposed school that will receive School LAND Trust funds has a charter trust land council and satisfies all requirements of Rule R277-477, including transparency of information for parents.

(7) A charter school and all of the charter school's satellite schools are a single LEA for purposes of public school funding and reporting.

(8) If a satellite charter school does not open within 36 months of approval, the approval shall expire.

(9) If an authorizer denies an application for a satellite school, the school may immediately apply for a new charter in accordance with an authorizer's approved processes.

R277-552-8. Procedures and Timelines to Change Charter School Authorizers.

(1) A charter school may transfer to another charter school authorizer.

(2) A charter school shall submit an application to the new charter school authorizer at least 90 days prior to the proposed transfer.

(3) The charter school authorizer transfer application shall include:

(a) the name and contact information of all current governing board members;

(b) financial records that demonstrate the charter school's financial position, including the following:

(i) most recent annual financial report (AFR);

(ii) annual program report (APR); and

(iii) audited financial statements;

(c) test scores, including all state required assessments;

(d) current employees and assignments;

(e) board minutes for the most recent 12 months; and

(f) affidavits, signed by all board members certifying:

(i) the charter school's compliance with all state and federal laws and regulations, including documentation if requested;

(ii) all information on the transfer application is complete and accurate;

(iii) the charter school is current with all required charter school governing board policies;

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(iv) the charter school is operating consistent with the charter school's charter agreement; and

(v) there are no outstanding lawsuits, judgments, or liens against the charter school.

(4) The current authorizer of a charter school seeking to transfer charter school authorizers shall submit a position statement to the new charter school authorizer about:

(a) the charter school's status;

(b) compliance with the charter school authorizer requirements; and

(c) unresolved concerns.

(5) If a school applies to change authorizer's, the existing authorizer shall advise the proposed authorizer if there is any outstanding debt to the existing authorizer or the state.

(6) If a school applies to change authorizers, the request shall extend to all satellite schools.

(7) A new charter school authorizer shall review an application for transferring to another charter school authorizer within 60 days of submission of a complete application, including all required documentation.

(8) Prior to accepting a charter school's transfer from another authorizer, the new authorizer shall request and consider information from the Board and current authorizer concerning the charter school's financial and academic performance.

(9) The Superintendent and current authorizer shall provide the information described in Subsection (7) to a new charter authorizer within 30 days of request described in Subsection (7).

(10) If an authorizer accepts the transfer of a charter school, the new authorizer shall notify the Superintendent within 30 days.

KEY: training, timelines, expansion, satellite

Date of Enactment or Last Substantive Amendment: October 23, 2020

Authorizing, and Implemented or Interpreted Law: Art X Sec 3; 53E-3-401; 53G-5-205; 53F-2-702; 53G-6-503