



WEST VIRGINIA SECRETARY OF STATE

MAC WARNER

ADMINISTRATIVE LAW DIVISION

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Office of West Virginia
Secretary Of State

**NOTICE OF FINAL FILING AND ADOPTION OF A LEGISLATIVE EXEMPT, INTERPRETIVE OR PROCEDURAL
RULE**

AGENCY: Education

TITLE-SERIES: 126-079

RULE TYPE: Legislative
Exempt

Amendment to Existing Rule: Yes

Repeal of existing rule: No

RULE NAME: Charter Public Schools (3300)

CITE STATUTORY AUTHORITY: W. Va. Code §§29A-3B-1, et seq.; W. Va. Board of Education v. Hechler,
180 W. Va. 451, 376 S.E.2d 839 (1988); and, W. Va. Bd. of Educ. V. Bd. of
Educ., 239 W. Va. 705, 806 S.E. 2d 136 (2017)

This rule is filed with the Secretary of State. This rule becomes effective on the following date:

August 16, 2021

BY CHOOSING 'YES', I ATTEST THAT THE PREVIOUS STATEMENT IS TRUE AND CORRECT.

Yes

**Michele L Blatt -- By my signature, I certify that I am the person authorized to file
legislative rules, in accordance with West Virginia Code §29A-3-11 and §39A-3-2.**

126CSR79

**TITLE 126
LEGISLATIVE RULE
BOARD OF EDUCATION**

**SERIES 79
CHARTER PUBLIC SCHOOLS (3300)**

§126-79-1. General.

1.1. Scope. - This legislative rule establishes the regulations for the creation and operation of charter public schools.

1.2. Authority. -- W. Va. Constitution, Article XII, §2; W. Va. Code §18-2-5 and §18-5G-1 et seq.

1.3. Filing Date. -- July 14, 2021.

1.4. Effective Date. -- August 16, 2021.

1.5. Repeal of Former Rule. -- This legislative rule amends W. Va. 126CSR79, Policy 3300, Charter Public Schools, filed February 13, 2020, and effective March 16, 2020.

§126-79-2. Purpose.

2.1. Consistent with language of W. Va. Code §18-5G-1, et. seq., the purpose of this policy is to guide the establishment of charter schools in West Virginia in an effort to improve student outcomes by offering students more educational options than are currently available, including those that employ innovative methods and programs and/or utilize distinctive school curricula, specialized academic programs, or technical themes.

2.2. Consistent with the stated intent and objectives in W. Va. Code §18-5G-1, the purpose of this policy is to establish a clear and transparent process that allows for the creation and operation of charter schools described above. To this end, charter schools are afforded significantly greater autonomy than non-charter public schools in exchange for greater expectations and accountability than non-charter public schools.

2.3. When necessary, this policy builds on the statutory language to provide additional clarity to the process for establishing charter schools.

2.4. The West Virginia Department of Education ("WVDE") is statutorily charged with making certain materials available to assist charter applicants, authorizers, governing board members, etc. Those materials are available for use by charter applicants, authorizers, governing board members, and charter school administrators at the WVDE's website.

§126-79-3. Definitions.

3.1. Accountability Plan. The set of objectives against which the success of a charter school is evaluated. The accountability plan must be comprised of two parts. First, charter schools must participate

in the state accountability system, pursuant to W. Va. Code §18-5G-3(a)(1) and §18-5G-8(b)(10). Second, charter schools are accountable to a performance framework defined in the charter contract that includes a set of student outcome goals and specific measures aligned to the educational mission of the charter school, pursuant to W. Va. Code §§18-5G-4(a)(4), 18-5G-6(h), and 18-5G-9(c). Authorizers will use success in meeting the goals of the accountability plan in evaluating the status of charter contracts.

3.2. Authorizer. Pursuant to W. Va. Code §18-5G-2(2), the entity that reviews charter school applications, determines whether to approve or reject charter school applications, enters into charter contracts with approved charter school applicants, oversees the charter public school the entity has authorized, and determines whether to renew, not renew, or revoke a charter contract.

3.2.a. Authorizers include (1) a county board of education when the application includes a primary recruitment area, as defined in section 9, that is wholly within the county over which the county board has jurisdiction, (2) two or more county boards of education when the application includes a primary recruitment area that encompasses territory in the two or more counties over which the respective boards have jurisdiction; or (3) the West Virginia Professional Charter School Board. The West Virginia Board of Education (WVBE) may serve as an authorizer in a county where the WVBE is currently intervening pursuant to W. Va. Code §18-2E-5 or when a county board of education, or two or more county boards of education, has approved an application and then submits a request to the WVBE to perform all other authorizer duties and responsibilities demonstrating that the county board(s) lacks the capacity to fulfill the authorizing duties and responsibilities set forth in law and policy.

3.3. Charter Applicant or Applicant. Pursuant to W. Va. Code §18-5G-2(1), any one or more combination of parents/guardians, community members, teachers, school administrators, or institutions of higher education in this state who are interested in organizing a charter school, have obtained or applied to obtain 26 U.S.C. §501(c)(3) (501(c)(3)) tax-exempt status, and have developed and submitted a charter school application to an authorizer. Notwithstanding any other provision of this policy, an applicant must obtain 501(c)(3) status before operation of any charter school commences.

3.4. Charter Contract. Pursuant to W. Va. Code §18-5G-2(3), the fixed-term, renewable contract between a charter school's governing board and an authorizer. The required components of a charter contract are detailed in section 6.

3.5. Charter Public School or Charter School. Pursuant to W. Va. Code §18-5G-2(11), a public school that is authorized in accordance with W. Va. Code §18-5G-1, et seq. and this policy. References to the entity of a charter school encompass the governing board, administration, and staff of the charter school in question, except where specific reference is made to one group. In all cases, the governing board of a charter school is ultimately responsible for the actions and performance of the charter school. Pursuant to W. Va. Code §18-5G-5(c), charter schools are their own local education agency (LEA) for all purposes except as stated otherwise in this policy for purposes of the public school support plan (PSSP), and are not considered to be part of the county board of education LEA. Notwithstanding the mode or method of educational delivery, charter schools have the same roles, duties, and responsibilities to students as existing LEAs.

3.5.a. A Conversion Charter school is a charter school that existed as a non-charter public school prior to being authorized to operate as a charter school. Applicants seeking to establish a conversion charter school can only apply to the county board of education where the school is located. In accordance with W. Va. Code §18-5G-1(e), existing private, parochial, and nonpublic schools are not permitted to

apply as a conversion charter school.

3.5.b. A Start-up Charter School is a charter school that did not exist as a non-charter public school prior to becoming a charter school. In accordance with W. Va. Code §18-5G-1(e), existing private, parochial, and nonpublic schools are not permitted to apply as start-up charter schools.

3.5.c. A Virtual Charter School is a charter school that provides educational services predominantly through an online program.

3.6. Conditional Approval. Approval given by an authorizer after thoroughly reviewing a charter school application based upon the representations and commitments made by the applicant in the application and through the application process. Satisfaction of those representations and commitments will result in final approval of the charter school application by the authorizer.

3.7. Education Service Provider (ESP). An entity that manages the day-to-day delivery of education to students in a charter school and meets and adheres to the requirements set forth in W. Va. Code §18-5G-2(7) and section 11. Notwithstanding any contractual agreements with an ESP, the governing board remain accountable for the charter school's performance.

3.8. Governing Board. An entity that meets the requirements of W. Va. Code §18-5G-7 and is party to a charter contract with an authorizer. Specific references to the governing board in this policy indicate where the governing board has a specific duty to perform certain acts. The governing board is the entity responsible for the actions and performance of charter schools.

3.9. Non-charter Public School. Pursuant to W. Va. Code §18-5G-2(9), a public school or multicounty career technical education (CTE) center other than a charter school.

3.10. Student. Pursuant to W. Va. Code §18-5G-2(15), any person who is eligible to attend a public school in West Virginia.

3.11. Student with Special Needs. A student who has a documented need that may require additional focus, support, and resources to successfully educate the student. Such students include, but are not limited to, at-risk students, English learners, students with severe disciplinary problems at a non-charter public school, or students involved with the juvenile justice system, pursuant to W. Va. Code §18-5G-3(b)(4)(B). Students with exceptionalities, including students with an individualized education program (IEP), and/or a plan that meets the requirements of Section 504 of the Rehabilitation Act of 1973, Pub.L. 93-112, 87 Stat. 394 (1973) (Section 504) also qualify as a students with special needs. The explicit inclusion of specific needs does not limit the inclusion of other needs that meet the spirit and intent of this definition and W. Va. Code §18-5G-1 et seq.

3.12. West Virginia Professional Charter School Board. Pursuant to W. Va. Code §18-5G-2(17) and §18-5G-15, the statutorily created board with, in addition to county boards of education, the ability 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.

§126-79-4. Charter School Application.

4.1. Charter school applications require applicants to provide information and evidence about a charter applicant's ability to open and operate a charter school that expands educational options and improves student outcomes. Well-designed charter school applications ensure that such evidence is sufficient to enable authorizers to make well-informed decisions regarding the approval status of charter school applications.

4.2. To assist and support both charter applicants and authorizers, a standard charter application is available on the WVDE's website. Authorizers must use the standard, statewide application. In addition to the statewide application, authorizers may issue addenda to the application so long as, at a minimum, the resulting combined application materials contain the items and acknowledgments outlined in this section and do not contradict anything in this policy. Authorizers shall either make this application and any addenda available on their websites or direct charter applicants to the WVDE website to access the standard application.

4.3. Application Requirements. In accord with W. Va. Code §18-5G-3 and §18-5G-8, the following items must be addressed in a charter school application:

4.3.a. Pursuant to W. Va. Code §18-5G-8(b)(1), a mission statement and a vision statement for the charter school, inclusive of any specialized focus to be advanced through the establishment of the charter school.

4.3.b. Pursuant to W. Va. Code §18-5G-8(b)(2) and §18-5G-8(14), a description of the charter school's proposed educational program, including the grades and ages the charter school seeks to serve. While the charter school may include virtual learning opportunities as part of its proposed program, enrolled students shall not receive a majority of instruction through virtual, asynchronous instruction unless the applicant is seeking to establish a full-time virtual public charter school and includes in the application the additional requirements outlined in subsection 4.5.

4.3.c. Pursuant to W. Va. Code §18-5G-8(b)(5), an explanation of how the proposed program is likely to improve achievement of traditionally underperforming students in the county, meaning students or student subgroups with outcomes that are consistently lower than other students or subgroups.

4.3.d. Proposed accountability plan, including but not limited to:

4.3.d.1. Pursuant to W. Va. Code §18-5G-8(b)(3), student achievement goals for the proposed program and the method to evaluate whether students have attained the skills and knowledge specified for those goals;

4.3.d.2. Pursuant to W. Va. Code §18-5G-8(b)(4), the charter school's plan for using data derived from student evaluations and assessments to drive instruction and promote continued school improvement;

4.3.d.3. Pursuant to W. Va. Code §18-5G-8(b)(4), an acknowledgement that the charter school will participate in the state's accountability system and an explanation for how the charter school will consider the state accountability results in its specific accountability plan; and

4.3.d.4. For charter schools seeking to enroll high school students, the proposed requirements for graduation.

4.3.e. Pursuant to W. Va. Code §18-5G-8(b)(6), the proposed governance structure, inclusive of at least:

4.3.e.1. List of initial governing board members. For the initial governing board members, the applicant shall identify any education-related lawsuits in which such individuals have been involved, either directly or indirectly. Pursuant to W. Va. Code §18-5G-7(a), the initial governing board shall consist of no fewer than five members elected or selected in a manner specified in the charter school application, including at least the following:

4.3.e.1.A. Two parents/guardians of students attending the charter school. These members may be identified after enrollment has occurred; and

4.3.e.1.B. Two members who reside in the community served by the charter school.

4.3.e.1.C. No board member shall count as both a parent/guardian representative and community representative.

4.3.e.2. Bylaws, which shall include description of the qualifications, terms, and methods of appointment or election of governing board members, subject to W. Va. Code §18-5G-7(b), which requires members of governing boards:

4.3.e.2.A. Not be employees of the charter school administered by the governing board;

4.3.e.2.B. Not be employees of, or receive compensation from, an ESP that provides services to the charter school;

4.3.e.2.C. File a full disclosure report to the authorizer identifying potential conflicts of interest, relationships with ESPs, and relationships with family members who are employed by the school or have other business dealings with the school, the management organization of the school, or any other charter public school;

4.3.e.2.D. Participate in training for new governing board members provided by the WVDE;

4.3.e.2.E. Collectively possess documented expertise in leadership, curriculum and instruction, law, human resources, and finance;

4.3.e.2.F. Be considered an officer of a school district under the provisions of W. Va. Code §6-6-7 and removal from office shall be in accordance with the provisions of that section;

4.3.e.2.G. Not be a member of the authorizing county board of education; and

4.3.e.2.H. Provide documentation of and explanation for any education-related actions taken, legal or otherwise, against them for academic, financial, or ethical concerns. These actions may relate to education generally and/or the operation of charter schools specifically.

4.3.e.3. Organizational structure of the charter school, which shall include clear lines of authority and reporting between the governing board, school administrators, staff, any advisory bodies or

parent/guardians and teacher councils, and any external individuals or organizations that will play a role in managing the charter school, including, but not limited to education service providers (ESPs).

4.3.f. Pursuant to W. Va. Code §18-5G-8(b)(7), the plans and timelines for student enrollment application to and enrollment in the charter school, inclusive of the school's primary recruitment area and process for conducting a transparent and random admission lottery when necessary, subject to W. Va. Code §18-5G-11 and section 9. The primary recruitment area shall be based on the charter school's estimated facility and program capacity, pursuant to W. Va. Code §18-5G-11(a)(5). The applicant shall also identify any student enrollment preferences, as defined in section 9 and in ranked order, it plans to use should student enrollment applications exceed capacity. The use of agreed upon preferences in any lottery conducted for admission to the charter school shall conform to the requirements of W. Va. Code §18-5G-11 and section 9.

4.3.f.1. Pursuant to W. Va. Code §18-5G-14(a)(1), the student enrollment capacity for a virtual charter school authorized by the West Virginia Professional Charter School Board is limited to five percent of the corresponding statewide headcount enrollment per year of the grade levels actually being served by the virtual charter school. The enrollment capacity limits for the virtual charter school shall be applied against the corresponding statewide headcount enrollment for the preceding school year by grade bands: grades K-2, grades 3-5, grades 6-8, and grades 9-12. For example, if a virtual charter school serves grades 6-12, the enrollment limit for grades 6-8 will be calculated based on the corresponding statewide headcount enrollment for the preceding school year in those same grades and a separate limit shall be calculated for grades 9-12 using the same methodology.

4.3.f.2. Pursuant to W. Va. Code §18-5G-14(a)(2), the student enrollment capacity for a virtual charter school authorized by one or more county boards of education is limited to ten percent of the corresponding county's headcount enrollment per year of the grade levels actually being served by the virtual charter school. The enrollment capacity limits for the virtual charter school shall be applied against the corresponding county's headcount enrollment counts for the preceding school year by grade bands: grades K-2, grades 3-5, grades 6-8, and grades 9-12. For example, if a virtual charter school serves grades 6-12, the enrollment limit for grades 6-8 will be calculated based on the corresponding county headcount enrollment for the preceding school year in those same grades and a separate limit shall be calculated for grades 9-12 using the same methodology.

4.3.g. Pursuant to W. Va. Code §18-5G-8(b)(8), a proposed five-year budget, including the start-up year and projections for four additional years with clearly stated assumptions.

4.3.h. Pursuant to W. Va. Code §18-5G-8(b)(9), the proposed fiscal and internal control policies of the charter school.

4.3.i. A staffing plan that outlines a strategy for hiring the professional and service personnel necessary to reasonably achieve the charter school's education mission who meet the hiring criteria identified in the charter school application. The staffing plan must include, but is not limited to, an explanation of how the governing board plans to establish requisite qualifications and any associated certification and/or licensure necessary for administrators, teachers, and other instructional and support staff to be employed at the charter school and a method for verifying that these requirements are met, pursuant to W. Va. Code §18-5G-3(b)(8). At a minimum, the proposed criteria for hiring qualified teachers and other instructional staff shall demonstrate that individuals have relevant documented academic or occupational qualifications or experiences that reasonably indicate they will be competent to fill the

positions in which they would be employed. Documentation of such relevant qualifications or experiences may include a four-year undergraduate degree or higher in a subject related to those the individual will teach, a professional certification in a field related to the one the individual will teach, and/or other comparable documentation deemed acceptable by the authorizer.

4.3.j. Pursuant to W. Va. Code §18-5G-8(b)(11), a proposed handbook outlining the charter school's personnel policies, which, at a minimum, shall include:

4.3.j.1. A description of staff responsibilities;

4.3.j.2. Performance management processes and plans for administrators, teachers, other instructional personnel, and other staff at the charter school; and

4.3.j.3. Employment practices and policies including those covering disputes and due-process procedures for staff.

4.3.k. Pursuant to W. Va. Code §18-5G-8(b)(12) and consistent with section 9, an explanation of proposed student discipline procedures, allowing for appropriate due process for all students including students with exceptionalities. The discipline procedures shall provide for appropriate due process protections for students with exceptionalities and be consistent with state and federal laws and regulations governing the placement of students with exceptionalities.

4.3.l. Pursuant to W. Va. Code §18-5G-8(b)(13), a description of the facilities to be used by the charter school and how the facility supports the implementation of the school's program, and any services provided, and meets zoning, building, and safety requirements established for non-charter public schools, pursuant to W. Va. Code §18-5G-3(c)(12) and §18-5G-3(c)(13).

4.3.m. Pursuant to W. Va. Code §18-5G-8(b)(14), the projected minimum and maximum enrollment per grade per year throughout the duration of the contract.

4.3.n. Pursuant to W. Va. Code §18-5G-8(b)(15), the school calendar and school day schedule.

4.3.n.1. Pursuant to W. Va. Code §18-5G-14(a)(9), applicants seeking to establish a virtual charter school that utilizes a learn at your own pace program are not required to comply with the instructional term requirement set forth in W. Va. Code §18-5-45. Such applicants shall include in the application a description of how sufficient opportunities for learning and engagement will be provided to allow mastery of course content by students enrolled in the virtual charter school.

4.3.o. Pursuant to W. Va. Code §18-5G-8(b)(16), the types and amounts of insurance coverage the charter school will obtain, which shall include adequate insurance for liability, property loss, and ~~the~~ personal injury.

4.3.p. Pursuant to W. Va. Code §18-5G-8(b)(17), a description of food services to be provided to students attending the school and how those services shall meet federal nutrition standards or state nutritional standards when they are stricter, pursuant to W. Va. Code §18-5G-3(c)(1).

4.3.q. Pursuant to W. Va. Code §18-5G-8(b)(19), the ethics standards for the school as well as governing board, officers, and school employees.

4.3.r. Pursuant to W. Va. Code §18-5G-8(b)(20), the plan for serving students with special needs. At a minimum, this plan must comply with applicable state and federal laws and regulations. To the extent known, the application shall identify the specific areas and services where the charter school will seek to contract with other entities to provide services. At a minimum, the applicant's plan for serving students with exceptionalities shall include:

4.3.r.1. The applicant's plan to provide the full spectrum of placements for students with exceptionalities.

4.3.r.2. The applicant's plan to ensure that Child Find responsibilities are being met. This shall include a description of policies and practices to identify and assess the needs of students who may be eligible to receive special education and related services and to identify students who are at-risk for exceptionalities and seek appropriate evaluations.

4.3.r.3. The applicant's plan to ensure retention of students with exceptionalities.

4.3.r.4. A description of the specialized staff to be hired to administer programs and provide special education and related services.

4.3.r.5. The applicant's plan for providing the physical space to meet the needs of students with exceptionalities.

4.3.r.6. A reasonable funding plan that reflects an understanding of how special education and related services are funded.

4.3.s. Pursuant to W. Va. Code §18-5G-8(b)(21), a description of co-curricular and extracurricular programs to be offered and how such programs will be funded and delivered. All extracurricular programs offered by the charter school are subject to Secondary School Activities Commission (SSAC) rules.

4.3.t. Pursuant to W. Va. Code §18-5G-8(b)(22), a clear, articulated proposed process for resolving disputes with the authorizer.

4.3.u. Pursuant to W. Va. Code §18-5G-8(b)(23), a detailed start-up plan, including financing, tasks, timelines, and individuals responsible for carrying out the plan.

4.3.v. Pursuant to W. Va. Code §18-5G-8(b)(24), the charter school's plan to notify students, parents/guardians, and others in the school's primary recruitment area of the school as an option available for students and the process for applying for enrollment in the charter school.

4.3.w. Pursuant to W. Va. Code §18-5G-8(b)(25), the charter school's plan for parental and community involvement.

4.3.x. Pursuant to W. Va. Code §18-5G-8(c), if the charter school intends to contract with an ESP, the information included in section 11 must be included in the charter school application.

4.3.y. Pursuant to W. Va. Code §18-5G-3(c)(11), the process the charter school will use to obtain a criminal history check for charter school personnel, governing board members, and all other individuals

that have physical or virtual presence or interaction with students enrolled at the charter school. Charter applicants may rely on any criminal history check performed by the WVDE in conjunction with the issuance of a license or other credential to work in the public schools in this state as required in section 7.

4.3.z. Any additional information the authorizer includes as part of the charter school application.

4.3.aa. Pursuant to W. Va. Code §18-5G-8(b)(18), the proposed process and procedures to be followed in the case of closure or dissolution of the charter school for any reason. At a minimum, the proposed process shall:

4.3.aa.1. Explain the method for notifying students, parents/guardians, staff, and stakeholders of reasons and timeline for closure;

4.3.aa.2. Describe the process for the transfer of students, student records, staff/human resource records, and administrative and financial documents and information to the appropriate county board of education;

4.3.aa.3. Provide assurance and agreement to return net assets or equity to authorizer after payment of debts;

4.3.aa.4. Detail the process for reporting any outstanding data and completing necessary auditing;

4.3.aa.5. Establish a timeline for performing and completing all tasks related to the closure; and

4.3.aa.6. Comply with the provisions of section 8.

4.4. Additional Requirements for Conversion Charter Schools. In addition to the requirements set forth in subsection 4.3, the following items must also be addressed in a charter school application seeking to establish a conversion charter school:

4.4.a. The level of support from staff, students, and families of students enrolled in the non-charter public school for the filing of the application to convert the non-charter public school to a charter school.

4.4.b The charter school's plans for leasing and using the facilities and equipment of the existing non-charter public school, including but not limited to existing school buildings, information technology (IT) equipment, athletic facilities and equipment, etc., pursuant to W. Va. Code §18-5G-12.

4.5. Additional Requirements for Virtual Charter Schools. In addition to the requirements set forth in subsection 4.3, the following items must also be addressed in a charter school application seeking to establish a virtual public charter school:

4.5.a. Virtual public charter schools are required to provide appropriate hardware (computer, tablet, etc.) and software for students to complete all learning activities and must also ensure each student enrolled in the school has appropriate access to reliable internet connectivity. An application to establish a virtual charter school shall identify the hardware to be provided to students and the plan for verifying that all enrolled students have sufficient connectivity to complete instructional activities and ultimately be successful at the school. The applicant must also have a technical support plan to assist

students experiencing technical difficulties.

4.5.b. The process for administering the general summative assessment, including but not limited to, the physical facility to be used.

4.5.c. The proposed method for documenting consistent attendance to satisfy the attendance indicator on West Virginia's federal accountability plan. Such methods may include, but are not limited to, routine log-in requirements, daily completion tasks, face-to-face interaction, etc. The method ultimately included in a resulting charter contract must comply with West Virginia's approved federal accountability plan.

4.5.d. The plan for satisfying IDEA and ensuring enrolled students receive a free, appropriate public education (FAPE). Specifically included in the plan, at a minimum, must be a description of how the charter school will:

4.5.d.1. Ensure that each eligible child with an exceptionality has FAPE available to him or her in accordance with 34 CFR §§300.101 and 300.17;

4.5.d.2. Implement the evaluation and eligibility requirements in 34 CFR §§300.300-300.311;

4.5.d.3. Carry out the IEP requirements in 34 CFR §§300.320 through 300.324, including those governing IEP content, IEP Team participants, parent/guardian participation, when IEPs must be in effect, consideration of special factors, the development, review, and revision of IEPs, secondary transition services and participation in state assessment programs;

4.5.d.4. Implement the requirements in 34 CFR §§300.114 through 300.117, regarding education in the least restrictive environment, including ensuring the availability of a continuum of alternative placements to provide special education and related services; and

4.5.d.5. Serve children with exceptionalities in the same manner as children with exceptionalities are served by non-charter schools and provide IDEA Part B funds on the same basis as provided at other schools in the county (34 CFR §§300.209(b)).

4.5.e. Pursuant to W. Va. Code §18-5G-14(a)(12), the proposed method for using data to demonstrate 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 practices.

4.5.f. Pursuant to W. Va. Code §18-5G-14(a)(12), the requirements for student engagement in instructional activities. Pursuant to W. Va. Code §18-5G-14(a)(13), for the purpose of virtual charter schools, instructional activities means the following classroom-based or non-classroom-based activities that a students is expected to complete, participate in, or attend during any given school day:

4.5.f.1. Online logins to curriculum or programs;

4.5.f.2. Offline activities;

4.5.f.3. Completed assignments within a particular program, curriculum, or class;

4.5.f.4. Testing;

4.5.f.5. Face-to-face communications or meetings with school staff or service providers;

4.5.f.6. Telephone or video conferences with school staff or service providers; or

4.5.f.7. Other documented communication with school staff or service providers related to school curriculum, programs, or services.

4.5.g. Pursuant to W. Va. Code §18-5G-14(1)(12), the requirements for teacher responsiveness. Expectations and consequences for appropriate teacher responsiveness shall be included in the virtual charter school's personnel policy handbook required pursuant to W. Va. Code §18-5G-8(b)(11) and subsection 4.3.j.

4.5.h. Pursuant to W. Va. Code §18-5G-14(a)(13), a policy regarding the failure of students to participate in instructional activities. The policy must include a process and timeline for identifying students who are consistently not engaging in learning activities and providing the appropriate supports to promote consistent engagement. This plan shall also state that a student shall become subject to certain consequences, including disenrollment from the school, if both the following conditions are satisfied: (1) the student's parent/guardian receives a written report identifying the student's consistent lack of engagement and repeated attempted interventions by the school; and (2) the student continues to fail to comply with the student engagement requirements within a reasonable period of time following the report. If a virtual charter student is disenrolled from the virtual charter school pursuant to the policy outlined in this subsection, the student's county of residence shall be immediately notified and the student shall be transferred to that county and shall not be eligible to enroll in a virtual charter school for one school year from the date of the student's disenrollment.

4.6. Affirmative Acknowledgements. All charter applicants must agree to the following terms and include these terms with affirmative acknowledgements in the charter school application:

4.6.a. Pursuant to W. Va. Code §18-5G-2(1), the applicant is a 501(c)(3) organization or has applied for such status.

4.6.b. Pursuant to W. Va. Code §18-5G-3(a)(1) and §18-5G-3(c)(6), charter schools will administer the same required general summative assessments, including the National Assessment of Educational Progress (NAEP) if sampled, using the same protocols as non-charter public schools.

4.6.c. Pursuant to W. Va. Code §18-5G-3(a)(3), the charter school will not be home school-based, and will not be predominately virtual school-based unless the applicant is seeking to establish a virtual public charter school.

4.6.d. Pursuant to W. Va. Code §18-5G-3(a)(4) and §18-5G-3(a)(5), the charter school is not affiliated with any religious organization and will not espouse any religious preference or promote/engage in any religious practices in its educational program, admissions, employment policies, or operations.

4.6.e. Pursuant to W. Va. Code §18-5G-3(a)(7), the charter school will not charge tuition and will

only charge fees as may be imposed by non-charter local public schools.

4.6.f. Pursuant to W. Va. Code §18-5G-3(a)(8), the charter school will not, whether through the admission or enrollment process or general operation of the school, put in place requirements or practices that would exclude any child from admission or enrollment at the charter school who would not be excluded at a non-charter public school. Additionally, the charter school's admission and enrollment processes are in accordance with applicable law and void of discrimination, and admissions materials for students seeking enrollment include a non-discrimination statement indicating that all applicants, including those with exceptionalities, are eligible to attend.

4.6.g. Pursuant to W. Va. Code §18-5G-3(c)(1), the charter school will appropriately evaluate students and comply with all federal requirements, including but not limited to federal nutrition standards, the Civil Rights Act of 1964 (Pub.L. 88-352, 78 Stat. 241 (1964)); the McKinney Vento Homeless Assistance Act, U.S.C. 11431 et seq.; the Individuals with Disabilities Education Improvement Act of 2004 (IDEA), Pub.L. 108-446; the Americans with Disabilities Act of 1990 (ADA), Pub.L. 101-336, 104 Stat. 328 (1990); and Section 504.

4.6.g.1. In accordance with IDEA, charter schools shall comply with its provisions, including its mandate that students with exceptionalities covered by its protections receive FAPE with access to the general curriculum in the least restrictive environment (LRE) appropriate for their needs. Charter schools shall develop, implement, monitor, and evaluate an IEP for each such student eligible under the provisions of IDEA and W. Va. 126CSR16, Policy 2419, Regulations for the Education of Students with Exceptionalities. The charter school shall acknowledge it is prepared to enroll a comparable proportion of students with exceptionalities as are enrolled in local non-charter public schools.

4.6.g.2. In accordance with Section 504 and the ADA, no otherwise qualified student with an exceptionality seeking to engage in a major life activity shall, solely by reason of her or his exceptionality, be excluded from participation in, be denied the benefits of, or be subjected to discrimination by a charter school. Charter schools shall create, maintain, and implement a service plan and provide accommodations for each student determined to be eligible for such services.

4.6.h. Pursuant to W. Va. Code §18-5G-3(c)(2), the charter school and governing board will timely comply and respond to requests received pursuant to the Freedom of Information Act (W. Va. Code §29B-1-1, et seq.).

4.6.i. Pursuant to W. Va. Code §18-5G-3(c)(2), the governing board will conduct its business in compliance with The Open Governmental Meetings Act (W. Va. Code §6-9A-1, et seq.).

4.6.j. Pursuant to W. Va. Code §18-5G-3(c)(3), the charter school will adhere to the same immunization requirements that are applicable to non-charter public schools.

4.6.k. Pursuant to W. Va. Code §18-5G-3(c)(4), the charter school will adhere to the same compulsory school attendance requirements that are applicable to non-charter public schools.

4.6.l. Pursuant to W. Va. Code §18-5G-3(c)(5), students attending the charter school will receive the same minimum number of days or an equivalent amount of instructional time per year as required of students attending non-charter public schools under W. Va. Code §18-5-45. Applicants seeking authorization for a virtual charter school that utilizes a learn at your own pace program shall acknowledge

that sufficient opportunity for learning and engagement is provided to allow mastery of course content by students enrolled in the virtual charter school.

4.6.m. Pursuant to W. Va. Code §18-5G-3(c)(7), the charter school will comply with the West Virginia Student Data Accessibility, Transparency and Accountability Act as set forth in W. Va. Code §18-2-5h and W. Va. 126CSR94, Policy 4350, Procedures for the Collection, Maintenance and Disclosure of Student Data (Policy 4350), in addition to the Family Educational Rights Privacy Act (FERPA).

4.6.n. Pursuant to W. Va. Code §18-5G-3(c)(11), contractors and service providers, and employees of the same, are prohibited from making direct contact with students, virtually or in person, and will not be permitted unaccompanied access to school grounds when students are present until it can be verified that such individuals have not previously been convicted of a qualifying offense pursuant to W. Va. Code §18-5-5(c).

4.6.o. Pursuant to W. Va. Code §18-5G-1(f), no elected official is receiving, or will receive, monetary compensation or otherwise profit from the approval or operation of the proposed charter school. Provided, that this prohibition does not prohibit the employment of an elected official by a charter school once it has been authorized.

4.6.p. Pursuant to W. Va. Code §18-5G-3(c)(8), the charter school will use the West Virginia Education Information System (WVEIS) to timely and regularly report all data required by statute, policy, and the charter contract.

4.6.q. Pursuant to W. Va. Code §18-5G-3(c)(10), the charter school and governing board will meet the same accounting and financial reporting requirements required of non-charter public schools, including but not limited to participation in the State Auditor's financial transparency website.

4.6.r. Pursuant to W. Va. Code §18-5G-8(b)(13) and §18-5G-3(c)(13), the charter school will adhere to the same building codes, occupancy requirements, regulations, and facility fees that apply to non-charter public schools under Chapter 18 of the W. Va. Code, including but not limited to West Virginia State Fire Marshal inspections and certificate of occupancy certificate requirements. The charter school shall further acknowledge that it will obtain all required occupation and operation certificates and licenses prior to the first instructional day for students.

4.6.s. Pursuant to W. Va. Code §18-5G-11(a)(6), the charter school shall not discriminate against any person on any basis which would be unlawful, under state or federal law, for non-charter public schools in the school district. Provided, this prohibition shall not be construed to limit a charter school from establishing any of the limited set of enrollment preferences allowed in W. Va. Code §18-5G-1 et seq. and this policy.

§126-79-5. Charter School Application Process.

5.1. A transparent, clearly defined process for evaluating charter school applications will help build public confidence that approval or denial decisions are fairly rendered based on consistent criteria. Defining such a process will also help applicants submit substantive applications that provide authorizers with the evidence necessary to make decisions that best serve the interests of students.

5.2. Application forms.

5.2.a. Pursuant to W. Va. Code §18-5G-4(b)(1), the WVDE consulted with nationally recognized charter school organizations and West Virginia education stakeholders in the development of standard charter school application forms. Those forms are available on the WVDE's website.

5.2.b. Authorizers are permitted to issue addenda to the standard charter school application form for charter applicants to complete in accordance with section 4. Authorizers shall only add addenda in good faith that create criteria that are reasonably related to the purpose of this policy.

5.2.b.1. Prior to submitting application, charter school applicants should verify whether any of the potential authorizers to which the applicant intends to submit an application has issued an addendum to the standard charter school application.

5.2.b.2. If any addenda have been issued, the charter school applicant must complete and timely submit the addenda with the standard charter school application form.

5.2.c. Pursuant to W. Va. Code §18-5G-6(a)(3), authorizers have the responsibility to solicit high-quality applications for charter schools.

5.2.c.1. To fulfill this duty, authorizers must use the charter school application and accompanying materials developed by the WVDE and disseminated on the WVDE's website.

5.2.c.2. Authorizers have the option to go beyond the materials developed by the WVDE and release requests for applications (RFAs) or other forms of active solicitation for charter school applications to fulfill the legislative intent outlined in W. Va. Code §18-5G-1 to provide options that expand educational opportunities not currently available to students in their jurisdiction. These RFAs may specify additional application requirements, forms, and criteria, but authorizers are required to use the statewide application as the core of the application. Authorizers may also highlight specific unmet educational needs or demands in their RFAs. RFAs may include but are not limited to, the following preferences for schools that:

5.2.c.2.A. Serve students with a specific special need (e.g., students with a specific exceptionality, students not on track to graduate due to insufficient credit accumulation, etc.);

5.2.c.2.B. Serve a geographic area/community where students are poorly served by current educational options;

5.2.c.2.C. Serve students in a specific set of grades or programmatic level(s);

5.2.c.2.D. Serve students with particular academic or career interests, so long as the school does not exclude students based on prior achievement or performance in the focus area;

5.2.c.2.E. Serve students using a specific pedagogy or educational philosophy not otherwise available to students in the community; and

5.2.c.2.F. Meet educational needs or demands expressed by local students and/or community members.

5.3. Evaluation of Charter School Applications.

5.3.a. Pursuant to W. Va. Code §18-5G-6(a)(2), authorizers are to establish and maintain policies and practices consistent with professional standards for authorizers relating to the evaluation of charter school applications. To fulfill this requirement and so charter applicants are aware of the criteria to be used in evaluating applications, authorizers shall either:

5.3.a.1. Use the evaluation criteria in this policy, which were developed based on consultation with nationally recognized charter school organizations, in accordance with W. Va. Code §18-5G-4(a), and education stakeholders; or

5.3.a.2. Adopt a policy outlining evaluation criteria that is consistent with the intent of W. Va. Code §18-5G-1 and recognized standards for charter school authorizers.

5.3.b. If an applicant submits a single application to more than one county board of education seeking authorization, the members of each county board receiving such application shall function as a single entity in evaluating and, if the application is approved, performing the duties and responsibilities of an authorizer. If two or more school boards functioning together as a single authorizer reject the application, one or more of the individual county boards of education may subsequently approve the application so long as the physical location of the charter school is located in one of the counties where the application was approved.

5.3.b.1. If an applicant intends to submit a single application to more than one county board of education the applicant should request clarification from those county boards on the evaluation criteria that will be used by such boards when functioning as a single entity to evaluate the application prior to submission of the application. The affected county boards shall jointly provide the applicant with the evaluation criteria that will be used within 30 days of receiving the applicant's request.

5.3.c. As part of its review of a charter school application and prior to rendering a decision on the application, in accord with W. Va. Code §18-5G-6(b), a potential authorizer shall:

5.3.c.1. Thoroughly review the contents of the application;

5.3.c.2. Conduct an in-person interview with the applicant or applicants;

5.3.c.3. Provide an opportunity in a public forum for local residents and stakeholders to provide input and learn about the proposed charter school described in the charter school application; and

5.3.c.4. Following the timeline in subsection 8.2, identify any deficiencies in an application and allow an applicant to provide additional materials, clarifications, and amendments to its application to address the deficiencies. The authorizer need only identify deficiencies and is not required to suggest appropriate steps to address application deficiencies. This is the responsibility of the charter school applicant.

5.4. Evaluation Criteria.

5.4.a. The evaluation criteria included in this policy were developed after consultation with nationally recognized charter organizations and education stakeholders. The model materials published

by such organizations form the basis of the evaluation criteria in this policy. They are rooted in best practices, and aim to ensure charter schools meet the intent and requirements outlined in W. Va. Code §18-5G-1 et seq. The criteria below are summarized at a high level. As required by W. Va. Code §18-5G-4, the WVDE has made available on its website guidance, forms, detailed rubrics, and training on how to evaluate each application factor listed below.

5.4.b. Authorizers relying on this policy to evaluate charter school applications shall consider the following criteria at a minimum:

5.4.b.1. Educational Design Program and Capacity.

5.4.b.1.A. Education Program.

5.4.b.1.A.1. Program overview. A concise summary of the education program offered by the charter school and how it will achieve the charter school's educational mission and vision.

5.4.b.1.A.2. Curriculum and instructional design. An outline of the curricula and instructional philosophy and strategies that the charter public school plans to implement, including justification for their selection in relation to student population, educational mission, and mastery of the West Virginia College- and Career-Readiness Standards.

5.4.b.1.A.3. Pupil performance standards. An overview of the learning standards for students at the charter school and detailed explanation for how deviation from the West Virginia College- and Career-Readiness Standards exceed the rigor of those standards.

5.4.b.1.A.4. High school graduation requirements and postsecondary readiness (high schools only). A clear definition of the requirements to graduate from the charter school and how those requirements prepare a student for college, career, or other postsecondary opportunities.

5.4.b.1.A.5. School calendar and schedule. A description of the school calendar and how the charter school will meet minimum instructional time requirements, pursuant to W. Va. Code §18-5G-3(c)(5), as applicable.

5.4.b.1.A.6. School culture. An explanation of the routines that the charter school will employ to establish the envisioned school culture and create an environment that promotes academic, social, and emotional well-being.

5.4.b.1.A.7. Supplemental programming. A thoughtful proposal for providing extracurricular and co-curricular programming, enrichment activities, and student supports, including but not limited to, interscholastic athletics, student-led clubs, summer school, and afterschool, if the charter school elects to offer such programming.

5.4.b.1.A.8. Special populations and at-risk students. A comprehensive plan and capacity for serving students with special needs and for meeting related federal and state law, regulations, rules, and policies.

5.4.b.1.A.9. Student recruitment and enrollment. A context-specific outreach strategy that ensures the charter school expands educational options for students in the primary recruitment area and

is aligned with the status of the school as a start-up or conversion charter school.

5.4.b.1.A.10. Student discipline. A thorough discipline policy that promotes strong school culture, outlines disciplinary procedures and consequences, and protects the rights of students.

5.4.b.1.A.11. Parent and community involvement. A thoughtful set of strategies for engaging with parents/guardians and the community, including local elected officials, community leaders, and business partners, around the development, opening, and operation of the charter school.

5.4.b.1.A.12. Educational program capacity. A well-crafted plan for recruiting and retaining a school leader, with the documented background and experience necessary to be an instructional leader, as well as other key instructional staff, support staff, and operational managers with appropriate backgrounds and experience.

5.4.b.1.A.13. Conversion planning. A proposal for executing a successful conversion that offers students enrolled at the existing non-charter public school expanded educational options and is reasonably likely to result in improved student outcomes, as applicable.

5.4.b.1.B. Operations Plan and Capacity.

5.4.b.1.B.1. Governance.

5.4.b.1.B.1.(a). Legal Status and Governing Documents. A proposed legal status and structure that complies with state law and policy in accordance with W. Va. Code §18-5G-7.

5.4.b.1.B.1.(b). Governing Board. A detailed plan for ensuring that board members meet the ethics and expertise requirements established in W. Va. Code §18-5G-1 et seq. and this policy.

5.4.b.1.B.1.(c). Dispute Resolution Process. A clearly defined process for dispute resolution that is fair to parents/guardians, students, and staff.

5.4.b.1.B.2. Human Capital.

5.4.b.1.B.2.(a). School Staff Structure. A proposal for organizing school staff that establishes clear roles, responsibilities, and relationships among school administrators and staff.

5.4.b.1.B.2.(b). Staffing Plans, Hiring, Management, and Evaluation. A comprehensive strategy for recruiting, developing, and retaining the high-quality staff necessary to achieve the educational mission of the charter school.

5.4.b.1.B.2.(c). Professional Learning. A thoughtful approach for the induction and professional learning of school leaders, teachers, and staff to support strong and improving instruction.

5.4.b.1.B.3. Performance Management. An overview of a mission-aligned, individually-tailored performance management system that holds the charter school, its governing board, and all staff accountable and provides for continuous improvement.

5.4.b.1.B.4. Facilities (As Applicable).

5.4.b.1.B.4.(a). Public Facilities. A description of the facilities needed to achieve the charter school's educational mission and how available public facilities meet those needs.

5.4.b.1.B.4.(b). Independent Facilities. A description of the facilities needed to achieve the charter school's educational mission and how the charter school will obtain independent facilities that meet requirements.

5.4.b.1.B.5. Start-up and Ongoing Operations. A sound, detailed plan for executing start-up of the charter school and maintaining smooth school operations, including, but not limited to, areas such as school and student safety, transportation (if applicable), and insurance coverage.

5.4.b.1.B.6. Operations Capacity. A description of individual and team qualifications for executing a comprehensive operations plan that includes, but is not limited to, topics such as staffing, performance management, facilities management, professional learning, start-up plans, and general operations.

5.4.b.1.B.6.(a). ESP (If Applicable). A detailed explanation of how proposed ESPs meet the requirements of section 11.

5.4.b.1.C. Financial Plan and Capacity.

5.4.b.1.C.1. Financial Plan. A detailed proposal for start-up and multi-year operating budgets necessary to achieve the educational mission of the charter school as well as the standard operating procedures, roles and responsibilities, and contingency plans to realize sound financial management across the term of the contract.

5.4.b.1.C.2. Financial Capacity. A clear demonstration of the capacity of the governing board and school administration to execute the financial plan.

5.4.c. In evaluating charter school applications, authorizers shall consider the following criteria based on the intent outlined in W. Va. Code §18-5G-1:

5.4.c.1. Overall Purpose and Mission of School. A clear, thorough explanation for how the educational mission and plan of the charter school will promote unique, innovative, and/or flexible educational options not available in the non-charter public schools that are accessible to students in the primary recruitment area, pursuant to W. Va. Code §18-5G-1(b) by:

5.4.c.1.A. Creating more public-school options with high standards for student performance, pursuant to W. Va. Code §18-5G-1(b)(1);

5.4.c.1.B. Allowing innovative educational methods, practices, and programs that result in higher student achievement, pursuant to W. Va. Code §18-5G-1(b)(2);

5.4.c.1.C. Establishing a distinctive theme, curriculum, or mode of instruction, pursuant to W. Va. Code §18-5G-1(b)(3) and §18-5G-1(b)(4)(C);

5.4.c.1.D. Providing parents/guardians with options to best serve the interests or needs of

their children, pursuant to W. Va. Code §18-5G-1(b)(4);

5.4.c.1.E. Providing for expanded student, parent/guardian, and community involvement, pursuant to W. Va. Code §18-5G-1(b)(5);

5.4.c.1.F. Utilizing exceptional levels of self-direction and flexibility to meet the robust levels of accountability expectations, pursuant to W. Va. Code §18-5G-1(b)(6);

5.4.c.1.G. Encouraging the replication of research-based successful strategies for improving student learning pursuant to W. Va. Code §18-5G-1(b)(7); and/or

5.4.c.1.H. Offering targeted strategies that specifically focus on students with special needs, pursuant to W. Va. Code §18-5G-3(b)(4)(B).

5.4.c.2. Identified need.

5.4.c.2.A. A rationale for establishing the charter school that aims to better serve groups of students – characterized by geography, socio-economic state, other demographic attributes, special needs, etc. – in the local school district(s) who have been historically underserved and/or are traditionally underperforming.

5.4.c.2.B. A clear explanation of how the educational mission and plan of the school will address the needs of these students, pursuant to W. Va. Code §18-5G-8(b)(5).

5.4.c.3. Demonstrated Demand. An analysis of the sustainability of the charter school based on the current and future size of the population of school-aged children that the charter school aims to serve and the demand among this population for additional educational options beyond existing non-charter public schools. This analysis must provide reasonable evidence of sustainability, as in any business plan, and may, but is not required to, include:

5.4.c.3.A. Evidence of sufficient demand among parents/guardians and school-aged children in the local school district, primary recruitment area, and/or target underserved or underperforming student population, including surveys of school-aged children and parents/guardians and data on school-aged children currently pursuing educational options besides existing non-charter public schools; and

5.4.c.3.B. Projections of changes in demand based on factors including, but not limited to, population and demographic changes, local economic outlook, enrollment changes in surrounding non-charter public schools, interest in additional educational options, etc. that provide evidence of sufficient enrollment for the charter school to operate sustainably.

5.4.c.4. Additional criteria for conversion charter schools.

5.4.c.4.A. A survey of the interest of students, staff, and families in converting the school from a non-charter public school to a charter school; and

5.4.c.4.B. The capacity of the conversion charter school and authorizer to develop a plan and timeline for determining which students and staff will remain at the conversion charter school. The

authorizer and charter school must consider how students who do not remain at the conversion charter school, for reasons including but not limited to lack of transportation, etc., will enroll in other schools. Students who do not remain at the conversion charter school must have reasonable alternative educational options. The authorizer and charter school must also develop a plan for how staff who do not remain at the conversion charter school are to be reassigned in a manner that meets personnel law, policy, and deadlines.

5.4.c.5. Additional criteria for virtual charter schools.

5.4.c.5.A. Student Orientation. A plan for orienting and communicating to virtual school students and parents/guardians clear expectations on student participation, on student performance, and what it means for a student to be engaged in learning, in attendance, and truant in the virtual setting.

5.4.c.5.B. Attendance and Engagement. A plan for measuring, monitoring, and reporting student participation in the virtual setting. The plan should include detailed strategies such as monitoring how often students are logging on, how long students are staying logged on, and what amount of log-in time is spent actively engaging in curriculum and instruction.

5.4.c.5.C. Appropriate and Actionable Intervention. A plan for how students not meeting the school's expectations for engaging and participating in the virtual setting will be identified and evaluated by the virtual school on an on-going basis, the tools that will be used for this identification and evaluation, and the frequency of the identification and evaluation. The intervention plan involves teachers, students, and parents/guardians in increasing engagement and preventing truancy.

5.4.c.5.D. Infrastructure. A plan to ensure all enrolled students have access to the online learning environment within a reasonable amount of time once they are enrolled, and how the virtual school will provide timely support in the event of technical difficulties experienced by students and/or instructors that minimizes the loss of instructional time. The plan should also outline the nature, frequency, and location of all required and optional in-person meetings and interactions between parents/guardians and school staff, including but not limited to parent/teacher conferences, open houses, and school community meetings.

5.4.c.5.E. Federal Requirements. A plan for adhering to the duties and responsibilities under all applicable federal laws and regulations, including but not limited to, IDEA, ADA, Section 504, FERPA, the Civil Rights Act, and the McKinney Vento Homeless Assistance Act. The plan should include detailed information as to how the charter school will clearly advise parents/guardians and students of their rights under each of the federal laws and any available avenues to address perceived violations.

5.5. Application Timeline.

5.5.a. Submission of Charter Application. Deadline: August 31. Charter applicants must complete applications and submit materials to potential authorizer(s) no later than August 31 in the calendar year prior to opening. Materials must be submitted in a single submission with signed confirmation by the applicant that the submission is complete.

5.5.b. Identification of Application Deficiencies. Deadline: 60 days following the date of the signed confirmation signifying complete submission of the application. Authorizers must provide written feedback to the applicant that identify application deficiencies as described in subsection 5.3.c.4 and

pursuant to W. Va. Code §18-5G-6(b)(5).

5.5.c. Revision of Charter School Application. Deadline: 15 days following the identification of application deficiencies. Applicants must provide revisions, responses, additional materials, and amendments to their original application in response to deficiencies identified by authorizers.

5.5.d. Conditional Approval or Denial Decision by Authorizer. Deadline: 15 days following revisions submission or deadline for revision submission, whichever occurs first. Any potential authorizer receiving a charter school application shall issue a decision conditionally approving or denying all applications received.

5.5.d.1. Decisions on status of charter school applications shall be based on objective criteria, as defined in subsection 5.4. The WVBE established these criteria pursuant to W. Va. Code §18-5G-4 and §18-5G-6(b)(6).

5.5.d.2. Pursuant to W. Va. Code §18-5G-6(d), failure of a potential authorizer to render a decision on a charter school application by the statutory deadline is statutorily deemed a conditional approval of the application.

5.5.d.3. The decision shall be rendered in an open public meeting and shall include a detailed explanation stating the reasons for the approval or denial.

5.5.d.4. The decision on a charter school application shall be reduced to writing, inclusive of a detailed explanation for the decision. The written decision, as well as charter school applications conditionally approved by virtue of lack of action by an authorizer, shall promptly be provided to the charter applicant and the WVDE.

5.5.d.5. Upon satisfaction of any incomplete items (e.g., obtaining 501(c)3 status) in a conditionally approved charter school application or resulting charter contract, an authorizer shall issue final approval of the charter school application. It is the responsibility of the applicant and/or governing board to promptly provide the authorizer appropriate documents once items are complete.

5.5.e. Execution of Charter Contract. Deadline: 90 days following conditional approval of charter application. Authorizers and charter applicants receiving conditional approval, subject to any additional review required, are to work diligently to negotiate in good faith, agree, and execute a charter contract satisfying the requirements of W. Va. Code §18-5G-9 and section 6.

5.5.e.1. So long as both parties are negotiating in good faith, contract negotiations may continue beyond the contract execution deadline unless both parties agree to cease negotiations. However, if the charter contract is executed after March 15, the approved charter school cannot open until the following school year. For example, if the contract is executed in April 2022, the school cannot open until the 2023-2024 school year.

5.5.e.2. Prior to the start date for students for any charter school in this state, a charter contract must be executed by authorizer and the charter school's governing board. A copy of the executed charter contract shall be provided to the State Superintendent of Schools.

5.6. Statutory Limit on Authorized Charter Schools.

5.6.a. Pursuant to W. Va. Code §18-5G-1(g), the total number of charter schools authorized and in operation under an approved charter contract is limited to 10 until July 1, 2023.

5.6.a.1. Beginning July 1, 2023, and every three years thereafter, an additional 10 charter schools may be authorized and in operation under an approved charter contract.

5.6.b. Pursuant to W. Va. Code §18-5G-14(a)(1), two statewide virtual charter schools may be authorized by the Professional Charter School Board and shall not count against the statutory limit.

§126-79-6. Charter Contract.

6.1. Purpose.

6.1.a. The charter contract outlines the expectations of both the charter school and the authorizer. It delineates the working relationship between the charter school and its authorizer.

6.1.a.1. A charter contract should provide clear boundaries around the authority and influence that an authorizer has over the day-to-day operations of a charter school. By doing so, it affords the charter school the autonomy necessary to offer students new and diverse educational options.

6.1.a.2. At the same time, a charter contract must define the expectations that a charter school must meet to continue operating, including but not limited to consistently meeting acceptable financial and operational performance metrics. Contracts should define the immediate consequences for failing to meet these expectations. The contract should also define expectations for student outcomes that define a charter school's long-term success and help the authorizer determine whether the charter contract warrants renewal.

6.2. Pursuant to W. Va. Code §18-5G-9, the charter contract must be negotiated, agreed to, and executed by the authorizer and the charter applicant prior to the commencement of any charter school operations. The parties to a charter contract may incorporate all or part of the charter application into the charter contract. At a minimum, the following items must be addressed in the charter contract. A template charter contract will be available on the WVDE's website. The template contract may be modified as deemed appropriate by the parties to a charter contract, so long as the required items below are addressed;

6.2.a. The term of the initial contract which shall be no longer than five years. Pursuant to W.Va. Code §18-5G-14(a)(3), the term of the initial contract for a virtual charter school shall be five years.

6.2.b. The agreements relating to each specific item required in the charter school application identified in section 4.

6.2.c. The acknowledgments included in the charter school application identified in section 4.

6.2.d. A shared understanding of the charter school's plans for contracting with ESPs and descriptions of the specific services that any ESPs will provide.

6.2.e. The rights and duties of the parties to the charter contract, which shall not contradict section

7.

6.2.f. The administrative relationship between the authorizer and the charter school.

6.2.g. The process the authorizer will use to provide ongoing oversight, consistent with professional standards.

6.2.h. The specific plan or protocol the charter school will use to ensure students receive FAPE in the least restrictive environment (LRE), including but not limited to clear written communication to parents/guardians of students with IEPs about the charter school's responsibilities to such students and recourse options available when families do not agree with the decision of an IEP team or services provided. As its own local education agency (LEA), pursuant to W. Va. Code §18-5G-5(c), a charter school's responsibilities are generally the same as any other LEA and include implementing child find and conducting periodic evaluations and reevaluations, developing reviewing, and revising IEPs, and providing or arranging for the provision of required special education or related services in the child's LRE, affording eligible children and their parents/guardians procedural safeguards and due process rights, and complying with the confidentiality of information requirements. Ultimately, agreements shall ensure that children with an exceptionality and their parents/guardians are afforded all rights and protections specified in IDEA that they would have received if the child were enrolled in another public school program.

6.2.i. The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the charter school, including the process and timeline the authorizer will use to oversee the correction of any deficiencies found.

6.2.j. The recourse available should either of the parties fail to adhere to their contractual duties or responsibilities outlined in this policy or state code.

6.2.k. The process for considering a renewal application and the conditions that would justify the non-renewal of a charter contract, which both shall comply with section 8. At a minimum, the charter contract must include:

6.2.k.1. The right for parties to be represented by counsel at all meetings, hearings, and interactions between the governing board and the authorizer.

6.2.k.2. The amount of time, but not later than June 30 preceding the final school year of a charter school's contract, in which the authorizer shall notify the public charter school of the prospect that the charter contract may not be renewed and the reasons for the potential non-renewal.

6.2.k.3. A time period of at least 60 days, but prior to the submission of a renewal application, for the governing board to provide a response to the proposed non-renewal.

6.2.k.4. An opportunity during the renewal application process for the governing board to submit documentation and provide testimony as to why the charter contract should be renewed.

6.2.k.5. An opportunity during the renewal application process for the governing board to request a recorded public hearing.

6.2.k.6. The authorizer's responsibility to consider a governing board's response,

documentation, and testimony as to why the charter contract should be renewed, and the recorded public hearing, if requested, prior to rendering a final decision to renew or non-renew the charter contract.

6.2.k.7. The information that must be included in the authorizer's final decision if it determines not to renew the charter contract.

6.2.k.8. The statutory timeline for an authorizer to render a final decision on whether or not to renew a charter contract.

6.2.k.9. The authorizer's responsibility to adopt a resolution detailing whether the renewal application was approved or denied during an open meeting.

6.2.k.10. Pursuant to W. Va. Code §18-5G-9(d)(10), a provision that the failure for the authorizer to act on a renewal application within the contractual and statutory timeframes shall be deemed an approval of the renewal application.

6.2.l. The process the authorizer, governing board, and charter school will follow in the event of closure of the charter school, subject to section 8.

6.2.m. The process for any revisions or amendments to the terms of the charter contract agreed to by the authorizer and the governing board.

6.2.n. The process agreed to by the authorizer and the governing board, that identifies how disputes between the authorizer and the governing board will be handled.

6.2.o. The indicators, measures, and metrics that comprise the Accountability Plan defined in section 3. The authorizer will use the Accountability Plan to measure the performance of the charter school and inform renewal decisions. Pursuant to W. Va. Code §18-5G-9(c), the contractual performance measures may build upon those outlined in the charter school application and must include, at a minimum, the following:

6.2.o.1. The indicators included in state accountability for all public schools in West Virginia, including disaggregated indicators for student subgroups;

6.2.o.2. Student proficiency or overall achievement, if not included in state accountability;

6.2.o.3. Student growth or progress, if not included in state accountability;

6.2.o.4. The achievement gaps in both student proficiency or achievement and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality, if not included in state accountability;

6.2.o.5. Student attendance, if not included in state accountability. For virtual charter school contracts, the parties to the contract should contact the WVDE Office of Federal Programs to ensure that the indicator to be included in the contract for student attendance complies with the state's approved plan under the Every Student Succeeds Act;

6.2.o.6. Student suspensions, if not included in state accountability;

6.2.o.7. Student withdrawals;

6.2.o.8. Student retention/turnover within a year and from year to year;

6.2.o.9. Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and

6.2.o.10. Demographic makeup in comparison to the demographics of the community the charter school aims to serve as defined by non-charter public schools overlapping the primary recruitment area of the charter school, non-charter public schools under the jurisdiction of the county board(s) of education where the charter school is proposed to be located, and/or another reasonable and agreed upon definition.

6.2.p. The authorizer and governing board may also agree to include any other additional valid and reliable indicators as necessary or desired.

6.2.q. Any other terms and conditions agreed upon by the authorizer and the governing board, including preopening conditions for the charter school.

6.3. Amendments to a duly executed charter contract must be in writing and agreed upon by all parties to the charter contract.

§126-79-7. Responsibilities of Parties to a Charter Contract.

7.1. Authorizer Responsibilities.

7.1.a. Authorizers are responsible for ensuring the conditions necessary for charter schools to offer diverse educational options not available in non-charter public schools and to improve student outcomes in the community served. To fulfill its duty, an authorizer shall carry out its duties and responsibilities with an aim to achieve the following goals and objectives:

7.1.a.1. Tailor charter school flexibility outlined in W. Va. Code §18-5G-1 et seq. appropriately to the educational mission of the charter school and needs of the students and community it aims to serve;

7.1.a.2. Provide adequate accountability to require that charter schools it oversees are making reasonable progress towards achieving their educational mission;

7.1.a.3. Conduct necessary oversight to ensure students in charter schools it oversees receive legally required services in a safe and healthy learning environment, including, but not limited to, oversight of special education services, school nutrition, ADA compliance, etc.

7.1.a.4. Consider how charter schools enrich and otherwise impact the educational opportunities in its jurisdiction in present and future years.

7.1.b. In addition to any duties and responsibilities outlined in the charter contract, an authorizer is responsible, in part pursuant to W. Va. Code §18-5G-6, for adhering to the following duties and responsibilities. Unless specifically addressed in state law, this policy, or the charter contract, the

authorizer is responsible for determining the appropriate method for carrying out its duties and responsibilities.

7.1.b.1. Demonstration of public accountability and transparency. Authorizers must earn and maintain public trust around the operation of charter schools. Therefore, authorizers shall conduct meetings and business in an open and transparent manner consistent with the rules for conducting other business of county boards of education in West Virginia (or the WVBE in the case that the WVBE is acting as the authorizer).

7.1.b.2. Establishment of Authorizing Policies and Practices. Each authorizer shall affirmatively establish the written, nationally-benchmarked oversight policies and practices it will follow in its role. Policies and practices adopted by authorizers shall not contradict federal or state law or this policy. Authorizers that do not adopt a local policy relating to charter schools shall follow this policy. Authorizers may rely on processes (including deadlines) and systems (including electronic forms or other tools) established by the WVDE for the implementation of charter schools unless required by W. Va. Code §18-5G-1 et seq. or this policy to establish and publicize specific practices, processes, or systems.

7.1.b.3. Solicitation of High-Quality Charter School Applications. Authorizers have the responsibility to solicit high-quality charter school applications as outlined in section 5.

7.1.b.4. Approval of Satisfactory Charter School Applications. Authorizers shall evaluate applications in accordance with the state law and this policy to create charter schools likely to improve student outcomes in West Virginia by expanding the educational options available to students. To promote transparency, in deciding on charter school applications, authorizers shall use the evaluation criteria set forth in this policy or the evaluation criteria set forth in a properly adopted policy.

7.1.b.5. Denial of Unsatisfactory Charter School Applications. Authorizers shall deny applications for charter schools that do not meet specified criteria as outlined above. To promote transparency, in deciding on charter school applications, authorizers shall use the evaluation criteria set forth in this policy or the evaluation criteria set forth in a properly adopted policy.

7.1.b.6. Negotiation of Charter School Contracts. Authorizers shall negotiate and execute charter contracts with approved applications in good faith. In such negotiations, authorizers shall adhere to the requirements of W. Va. Code §18-5G-9 and section 6. In doing so, they shall aim to provide the charter school with the conditions necessary to succeed while safeguarding students under their jurisdictions.

7.1.b.7. Monitoring of Charter School Performance and Compliance. Authorizers shall ensure that charter schools comply with the terms of the charter contract and applicable federal law, state code, and WVBE policies. In performing its monitoring duties, the authorizer shall not unnecessarily inhibit the instructional and educational flexibility provided to charter schools by W. Va. Code §18-5G-1 et seq. and this policy.

7.1.b.7.A. In executing monitoring duties, authorizers will focus on whether the charter school is delivering on the spirit and intent of the educational plan and other components defined in the charter contract. These efforts will focus primarily on whether charter schools are meeting the goals set forth in the Accountability Plan. While authorizers must monitor the compliance of charter schools with federal and state law and policy, authorizers are not expected to undertake the same level of monitoring and compliance support they provide to non-charter public schools. Instead, authorizers are expected to

safeguard students through more limited monitoring that may occur less frequently and rely more heavily on data reporting and review, though relying solely on annual reporting to ensure compliance with legal requirements will likely be insufficient. Authorizer monitoring stands in contrast to management by the charter school governing board, which maintains responsibility for personnel, curriculum, calendar, finances, and other decisions as outlined below and throughout this policy.

7.1.b.7.B. When authorizers identify instances where a charter school is not complying with the terms of the charter contract or applicable federal law, state code, and/or this policy, authorizers shall notify the governing board of the identified issues and provide reasonable opportunity for remediation as set forth in the charter contract. To avoid unduly inhibiting charter school autonomy, authorizers shall not require charter schools to take specific remediation as the result of performance monitoring, unless outlined otherwise in the charter contract. Authorizers may provide specific remediation if necessary to fulfill the responsibilities of authorizers under federal law, state code, and/or this policy such as when failing to provide specific steps would violate the authorizers' obligations under IDEA. However, authorizers may require charter schools to develop and execute a corrective action plan (CAP), pursuant to W. Va. Code §18-5G-6(g).

7.1.b.7.C. The above notwithstanding, if charter schools fail to comply with legal requirements or fails to adhere to the CAP, authorizers may intervene directly and prescribe specific action and/or require representatives of the charter school and its governing board to appear before the WVBE.

7.1.b.7.D. Pursuant to W. Va. Code §18-5G-5(b), authorizers are responsible for continually monitoring adherence to the charter school's Accountability Plan. Authorizers must ensure that standards and goals included in the Accountability Plan are met by each charter school along with other performance measures agreed upon in the charter contract. If monitoring activities reveal performance deficiencies, the authorizer may require charter schools to develop and execute a CAP. If charter schools do not execute the agreed upon CAP or the CAP provides insufficient to address the deficiencies, authorizers may require representatives of the charter school and its governing board to appear before the WVBE.

7.1.b.7.E. If an authorizer fails to take appropriate action in response to a charter school that does not meet the standards, including but not limited to issuing CAPs, denying a renewal application, and/or suspending or revoking a charter contract, the authorizer shall appear before the WVBE to justify its actions. The WVBE may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize charter schools. When the WVBE revokes the authorizing authority of a county board, the WVBE shall serve as the authorizer for all charter schools previously authorized by that county board. The county board with revoked authorizing authority may only renew its authorizing authority by action of the WVBE, which shall review whether the efforts to address authorizing deficiencies are sufficient to warrant renewed authorizing authority at the request of the county board.

7.1.b.8. Determination of Charter Renewal or Revocation. As set forth in W. Va. Code §18-5G-1 et seq. and section 8, authorizers shall perform a comprehensive review of charter school performance against the expectations set out in the charter contract to determine whether to renew the contract, or whether the current situation is such that immediate suspension or revocation of the charter contract is warranted.

7.1.b.9. Authorizers are the primary liaison between the WVDE and charter schools they authorize. While governing boards are ultimately responsible for complying with state and federal reporting requirements, the authorizer shall facilitate reporting and other communication upon the

request of the charter school. In this spirit, authorizers shall provide support to start-up charter schools in using WVEIS and other state or countywide reporting systems that the charter schools are required to use upon request of the charter school. The authorizer shall also regularly update the WVDE with contact information for the governing board and key administrators of charter schools it authorizes. Help from its authorizer(s) notwithstanding, the charter school has an affirmative duty to become familiar with its duties and responsibilities under state and federal law.

7.1.b.10. Upon request of the charter school, authorizers shall provide additional support and oversight to help charter schools comply with state and federal laws in the first year of operation. Such help does not need to be explicitly negotiated as part of the charter contract. Authorizers are not required to complete compliance activities or reporting for charter schools. Help from its authorizer(s) notwithstanding, the charter school has an affirmative duty to become familiar with its duties and responsibilities under state and federal law.

7.1.b.11. Authorizers shall timely adhere to all reporting requirements in state code and this policy.

7.1.b.12. Upon request of the governing board, an authorizer shall allow facilities within its control, in whole or in part, to be used by the charter school either under long-term occupancy lease agreements or rental agreements for individual events, subject to the following:

7.1.b.12.A. The facility being requested for use is safe and habitable for the purpose in which the charter school seeks to use the facility.

7.1.b.12.B. The facility is not being used by the authorizer for any non-charter public school at the time the charter school seeks to use or lease the facility, pursuant to W. Va. Code §18-5G-12(a).

7.1.b.12.C. If a charter school seeks to lease the whole or part of a public facility, the cost of the lease must be at or under the current market value, pursuant to W. Va. Code §18-5G-12(a).

7.1.b.12.D. If a charter school seeks to rent the whole or part of a public facility for an individual event, including, but not limited to, athletic events, theater performances, etc., the cost of the rental must be at or below the cost to the authorizer of making the facility available to the charter school.

7.1.b.13. The authorizer may lease or rent equipment (including athletic or information technology equipment) to a charter school. The parties must agree to standard lease or rental terms prior to lease or rental. The rental or lease rate may include additional costs borne by the authorizer due to increase usage of said equipment.

7.1.b.14. Pursuant to W. Va. Code §18-5G-3(b)(7), authorizers shall not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any of its employees involved directly or indirectly with an application to establish a charter school.

7.1.b.15. Pursuant to W. Va. Code §18-5G-3(b)(7), authorizers shall ensure all personnel in a charter school located within the county who were previously employed by the county board of education shall continue to accrue seniority with the county board in the same manner that they would accrue seniority if employed in a non-charter public school in the county. County boards of education shall adapt their current processes and systems to allow for the proper maintenance of seniority for former county

board of education personnel who move to a charter school authorized in the county. Similar to non-charter public school employees accepting employment in another county, seniority accrued by charter personnel while employed by one county will not transfer to a charter school or non-charter public school located in another county.

7.1.c. Authorizers have an affirmative responsibility to develop their internal capacity to act as authorizers. The WVDE will provide training to help authorizers accomplish this end. Authorizers may also engage in additional capacity building as necessary. If an authorizer wants to forgo the WVDE training to use alternate organizations, trainings, or resources to build their authorizing capacity, they must demonstrate how their plan will adequately prepare them to act as authorizers.

7.1.d. In the case that a county board of education approves a charter school application but lacks the capacity to fulfill its ongoing authorizing duties and responsibilities, it may request that the WVBE act as authorizer, pursuant to W. Va. Code §18-5G-4(c). The WVBE shall only act as authorizer after the requesting county board of education has demonstrated its lack of capacity to fulfill the responsibilities of charter school authorizing to the satisfaction of the WVBE. In cases when the WVBE acts as authorizer, the county board of education that approved the application remains the LEA for the charter school and must make every effort possible to assist the WVBE with monitoring and oversight activities, especially those activities for which local knowledge or physical proximity are particularly advantageous.

7.1.e. Pursuant to W. Va. Code §18-5G-6(k), no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the charter public school. Neither the county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a charter public school or any person or entity that operates a charter public school.

7.2. Governing Board/Charter School Responsibilities.

7.2.a. Pursuant to W. Va. Code §18-5G-5, the governing board is ultimately accountable and responsible for the actions of the charter school, the safety and security of enrolled students, and its ability to deliver the educational options and outcomes specified in the charter contract.

7.2.b. In addition to any duties and responsibilities outlined in the charter contract, a charter school and its governing board are responsible for adhering to the following duties and responsibilities:

7.2.b.1. Ensuring all instructional personnel employed at the charter school hold a valid and appropriate certification, as specified in the charter school application and contract.

7.2.b.2. Providing the information on personnel employed by the charter school to enable the WVDE and authorizer to comply with the requirements of state code and this policy, specifically:

7.2.b.2.A. Adequate information for the WVDE to certify such individuals pursuant to the charter certification provided for in W. Va. 126CSR136, Policy 5202, Minimum Requirements for the Licensure of Professional/Paraprofessional Personnel and Advanced Salary Classifications, and the criteria agreed upon in the charter school application and/or contract as outlined in subsection 4.3.i; and

7.2.b.2.B. Sufficient information for county boards of education to track the seniority of former employees of the county board of education now employed by the charter school who continue to accrue seniority for the purpose of employment at non-charter public schools, pursuant to W. Va. Code

§18-5G-3(b)(7) and subsection 7.1.b.15.

7.2.b.3. The charter school is responsible for documenting its students' progress towards achieving the defined graduation requirements and certifying completion of requirements for the purpose of reporting graduation outcomes to the authorizer and the WVDE. Charter schools will have the ability to use the same electronic course scheduling and transcript platforms provided by the WVDE as non-charter schools.

7.2.b.4. Pursuant to W. Va. Code §18-5G-7(c), the governing board shall operate the charter school in accordance with the charter contract and under the oversight of the authorizer. To execute the educational mission and operational plans of the charter contract, the governing board holds powers as a public corporate body including, but not limited to those outlined in W. Va. Code §18-5G-7(c)(2):

7.2.b.4.A. Receive and disburse funds for school purposes;

7.2.b.4.B. Secure appropriate insurance and enter into contracts and leases;

7.2.b.4.C. Contract with an ESP, so long as the governing board retains final oversight and authority over the school;

7.2.b.4.D. Pledge, assign, or encumber its assets to be used as collateral for loans or extensions of credit.

7.2.b.4.E. Solicit and accept any gifts or grants for school purposes, subject to applicable laws and the terms of its charter.

7.2.b.4.F. Apply for federal funds that may be available for the implementation of charter school programs; and

7.2.b.4.G. Acquire real property for use as its facilities or facilities from public or private sources.

7.2.b.5. Pursuant to W. Va. Code §18-5G-7(c)(3), the governing board shall enroll students in the charter school pursuant to W. Va. Code §18-5G-11 and section 9.

7.2.b.6. Pursuant to W. Va. Code §18-5G-7(c)(4), the governing board shall require any ESP the governing board is contracting with to timely provide a monthly detailed budget to the governing board.

7.2.b.7. Pursuant to W. Va. Code §18-5G-4(b)(6)(ix), require any ESP the governing board is contracting with to provide an annual review of educational and operational practices that the ESP found particularly effective for delivering improved student outcomes. The governing board shall report these practices to its authorizer and the state as part of annual reporting on successful innovations as required by state code.

7.2.b.8. Pursuant to W. Va. Code §18-5G-7(c)(5), the governing board is required to comply with all federal and state laws, rules, and regulations, including Policy 2419. The charter school must satisfy all federal requirements that enable it to receive subgrants and implement IDEA Part B.

7.2.b.9. The governing board must timely provide information and data upon request by the authorizer or the WVDE so that those entities may fulfill federal and statutory reporting requirements. Such requests must give charter schools at least 14 days to fulfill such requests, except when such time period would cause non-compliance with legally required reporting or when standard reporting schedules allow charter schools to be aware of upcoming reporting requirements.

7.2.b.10. The governing board must timely respond and take appropriate action to correct any deficiencies identified by the authorizer.

7.2.b.11. The governing board must remit to the authorizer an oversight fee in accordance with W. Va. Code §18-5G-6(i) and section 12.

7.2.b.12. The governing board must ensure that the primary financial official, the principal, and the governing board president are appropriately bonded using the requirements for equivalent positions at the county board of education level, which are contained in W. Va. 126CSR200, Policy 8100, Public School Finance.

7.2.b.13. The governing board shall hold an open public meeting at least once quarterly.

7.2.c. The charter school is responsible for facilities it uses during periods it is the primary user.

7.2.c.1. Pursuant to W. Va. Code §18-5G-12(c), if the charter school enters into a lease of public facilities, in part or in whole, the charter school is solely responsible for the direct expenses related to the public facility lease, including utilities, insurance, maintenance, repairs, and remodeling. The county board is responsible for any debt incurred or liens that are attached to the school building before the charter school leases the public facility.

7.2.c.2. If the charter school uses public facilities for individual events, the rental agreement shall define the responsibilities of each party and the costs to be reimbursed by the charter school.

7.2.c.3. Each charter school must, consistent with the requirements of the ADA and Section 504, ensure that individuals with exceptionalities are not excluded from programs, activities, or services at the school, even if their facility is not fully accessible. Each charter school shall make its program accessible to students with exceptionalities, as well as to parents/guardians, to school personnel, and to members of the public in accordance with Section 504.

7.2.d. In addition to all other responsibilities set forth in this section, a virtual charter school and its governing board are also responsible for adhering to the following duties and responsibilities:

7.2.d.1. Pursuant to W. Va. Code §18-5G-14(a)(6), the governing board members shall undergo at least one training per year related to appropriate oversight of the virtual charter school.

7.2.d.2. Pursuant to W. Va. Code §18-5G-14(a)(11), the virtual public charter school shall annually offer a student orientation to all students enrolled in the virtual charter school and timely notify all students and their parents/guardians of the requirement to participate in the student orientation. Participation in the annual student orientation each year is required prior to the student being permitted to begin any coursework or other instructional activity at the virtual charter school.

7.2.d.3. Pursuant to W. Va. Code §18-5G-14(a)(2), students from outside the primary recruitment area will not be enrolled in the virtual charter school.

7.2.d.4. Pursuant to W. Va. Code §18-5G-14(a)(5), the virtual public charter school shall not delay or deny admission or enrollment on the basis of an exceptionality and the charter school shall convene an IEP meeting after admission to ensure that the school develops an appropriate IEP in accordance with federal law.

7.2.e. Governing boards and charter schools shall not harass, threaten, discipline, discharge, retaliate, or in any manner discriminate against any of its employees for participation or affiliation in a union or teacher organization.

§126-79-8. Process for Renewal and Revocation of Charter Contracts.

8.1. Purpose. The renewal process is pivotal to ensuring that authorized charter schools continue to promote the aims of improved student outcomes, innovative educational methods, and expanded educational opportunities set forth in W. Va. Code §18-5G-1(b). The renewal process provides the charter school authorizer with the opportunity to review the practices and outcomes of a charter school and determine whether its continued operation supports these aims in the area within which it operates.

8.2. Renewal Review and Application Process.

8.2.a. Pursuant to W. Va. Code §18-5G-10(a), no later than June 30 preceding the final school year of a charter school's final year of its charter contract, the authorizer shall issue a performance report on the charter school. The performance report shall summarize the charter school's performance record to date, based on agreed data collection in the charter contract, state law, and this policy, and shall provide notice of any weaknesses or concerns perceived by the authorizer concerning the school that may jeopardize its position in seeking renewal if not timely rectified. The school and the authorizer shall mutually agree to a reasonable time period for the charter school to respond to the performance report and submit any corrections for the report.

8.2.b. Pursuant to W. Va. Code §18-5G-10(b), no later than June 30 preceding the final school year of a charter school's final year of its charter contract, the authorizer shall provide contract renewal application guidance to the charter school. The renewal application guidance shall include or refer explicitly to the criteria and standards agreed upon in the charter contract and will guide the authorizer's renewal decisions. To assist authorizers, the WVDE will provide a standard renewal application template. Authorizers may use and/or modify the standard renewal application to the extent necessary to align the renewal process with the original contract, including addenda, and the educational mission of the charter school. The renewal application guidance that authorizers provide shall, at a minimum, require and provide an opportunity for charter school to:

8.2.b.1. Present evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

8.2.b.2. Describe improvements undertaken or planned for the school; and

8.2.b.3. Detail the school's plans for the next charter term.

8.2.c. Pursuant to W. Va. Code §18-5G-10(c), no later than September 30 of a charter school's final authorized year of operation under a term of a charter contract, the governing board of the charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal application guidance offered by the authorizer.

8.2.d. Pursuant to W. Va. Code §18-5G-10(c), no later than 45 days after receiving a properly completed renewal application, an authorizer shall adopt a resolution in an open public meeting regarding the renewal application. In reaching a decision on the renewal application, the authorizer shall:

8.2.d.1. Pursuant to W. Va. Code §18-5G-10(c)(1), ground its decisions on a thorough analysis of evidence of the school's performance over the term of the charter contract in accordance with the terms and measures established in the accountability plan set forth in the charter contract and public input collected through the same means as other public comments on county board of education actions, annual performance reports, and any required financial audits;

8.2.d.2. Pursuant to W. Va. Code §18-5G-10(c)(2), ensure that data used in making renewal decisions are available to the charter school and the public;

8.2.d.3. Pursuant to W. Va. Code §18-5G-10(c)(3), include, as part of the resolution, a report summarizing the evidence basis and specific reasons for its decision;

8.2.d.4. Pursuant to W. Va. Code §18-5G-9(d), comply with any additional provisions in the charter contract relating to the renewal application process that do not conflict with this section; and

8.2.d.5. Pursuant to W. Va. Code §18-5G-10(c)(4), specifically, include one of the following rulings:

8.2.d.5.A. Renew the charter contract for a specified term of years based on the school's performance data and demonstrated capacities of the charter school. Pursuant to W.Va. Code §18-5G-14(a)(3), the term of renewal contracts for virtual charter schools shall be five years; or

8.2.d.5.B. Decline to renew the charter contract. Pursuant to W. Va. Code §18-5G-10(f), the authorizer may rely on any of the following reasons for not renewing a charter contract:

8.2.d.5.B.1. The health and safety of students attending the charter school is threatened;

8.2.d.5.B.2. The governing board and/or charter school failed to substantially comply with the provisions of this policy, state code, or federal law;

8.2.d.5.B.3. The governing board and/or charter school committed a material violation of any of the terms, conditions, standards, or procedures required in the charter contract and/or provided false or fraudulent information, by omission or commission, on its charter school application;

8.2.d.5.B.4. The charter school failed to substantially meet the performance expectations set forth in the charter contract;

8.2.d.5.B.5. The governing board and/or charter school failed to substantially meet generally accepted standards of fiscal management;

8.2.d.5.B.6. The governing board and/or charter school violated any provision of law from which the charter school was not exempted; or

8.2.d.5.B.7. With supporting evidence and rationale, continued operation of the charter school would not be in the best interests of students.

8.2.e. Pursuant to W. Va. Code §18-5G-10(c)(4)(B), in the case of nonrenewal of a charter contract, the governing board of the charter school shall have 30 days to respond in writing to the authorizer's decision. If timely requested by the governing board, the authorizer shall arrange for a public hearing, which shall be recorded, and the governing board may be represented by counsel and call witnesses to testify.

8.2.f. Pursuant to W. Va. Code §18-5G-10(c)(4)(B), no later than 10 days after receiving a governing board's written response to a decision not to renew a charter contract, the authorizer shall render a final decision on the renewal application. The authorizer shall consider the governing board's response, testimony, and documentation, as well as the recorded public hearing, prior to rendering a final decision on the renewal application. Pursuant to W. Va. Code §18-5G-10(g), the authorizer's final decision, and the reasons supporting the final decision, must be clearly stated in a resolution adopted in an open public meeting. If a governing board does not submit a written response to an authorizer's decision to not renew a charter contract within the timeframe outlined in subsection 8.2.e., the authorizer's decision not to renew shall be final.

8.2.g. Pursuant to W. Va. Code §18-5G-10(e), within 10 days of taking final action on a renewal application, the authorizer shall report the action taken and reasons for the decision to the school's governing board, the WVBE, and affected authorizers(s), as applicable. A copy of the report shall be submitted at the same time to the State Superintendent of Schools.

8.2.h. Pursuant to W. Va. Code §18-5G-10(d), the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed an approval of the renewal application.

8.2.i. A nonrenewal of a charter contract may be appealed to the WVBE within 30 days of authorizer's final decision.

8.3. Revocation of a Charter Contract.

8.3.a. Revocation Process. Pursuant to W. Va. Code §18-5G-10(h), a charter contract may be revoked at any time if the authorizer determines that:

8.3.a.1. The health and safety of students attending the public charter school is threatened;

8.3.a.2. An administrator employed by or member of the governing board over the charter school is convicted of fraud or misappropriation of funds;

8.3.a.3. There is a failure to meet generally accepted standards of financial management;

8.3.a.4. There is a material breach of the charter contract;

8.3.a.5. There is a substantial violation of any provision of law from which the public charter

school is not exempt; or

8.3.a.6. There are dire and chronic academic deficiencies.

8.4. Closure of a Charter School.

8.4.a. Pursuant to W. Va. Code §18-5G-10(j), in the event a charter school is closed for any reason, the authorizer and governing board shall follow the process outlined in the charter contract for closing the school. To ensure a smooth and orderly closure and transition for students and parents/guardians, the WVDE will oversee and assist where needed and appropriate in the closure process to ensure the following items are accomplished:

8.4.a.1. Timely notification to parents/guardians of the reason(s) and timeline for closure;

8.4.a.2. Orderly transition of students and student records to new non-charter or charter schools.

8.4.a.3. Pursuant to W. Va. Code §18-5G-10(j)(2), proper disposition of school funds, property and assets in the following order: (1) to satisfy outstanding payroll obligations for employees of the charter school; (2) to satisfy creditors of the charter school, and (3) remaining funds, property, or assets shall transfer to the authorizer(s). If the assets of the charter school are insufficient to pay all the parties to whom the charter school owes compensation, the prioritization of assets may be altered by decree of a court of law.

8.4.b. Pursuant to W. Va. Code §18-5G-10(h), when the charter is revoked or not renewed for a school that began as a conversion charter school, the county board with authority over the district in which the school is located may return it to non-charter public school status.

8.4.c. Pursuant to W. Va. Code §18-5G-10(k), if a charter school is subject to closure or transition back to a non-charter public school, an authorizer may remove at will at any time any or all of the members of the charter school governing board if deemed necessary to ensure a smooth and orderly closure or transition. If the authorizer removes members of the governing board such that it can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the charter school in the name and interest of the charter school.

§126-79-9. Enrollment, Recruitment, and Retention.

9.1. Purpose.

9.1.a. To fulfill the legislative intent of W. Va. Code §18-5G-1 et seq., charter schools must remain an open and reasonable option to all students, except as identified in W. Va. Code §18-5G-11(a)(6) in the case of charter schools with an educational mission focused on serving students with special needs. Efforts to recruit, enroll, and retain students must align with this objective.

9.1.b. Students must have the ability to transfer between charter and non-charter public schools without impairing their ability to graduate high school on time. To this end, authorizers and governing boards are responsible for working collaboratively to translate student credits between the two schools and ensuring transferring students and parents/guardians understand what coursework will be required to graduate at the receiving school, be it a charter or non-charter public school. The determination of

grade levels for transferring students shall be based on what is age and educationally appropriate.

9.1.c. The authorizer and governing board must agree to and include in the charter contract provisions, consistent with the requirements of this section, relating to a charter school's primary recruitment area, preferences to be used in a lottery, enrollment processes and timelines, and student transfer processes.

9.2. Recruitment and Retention.

9.2.a. Primary Recruitment Area.

9.2.a.1. Charter school applications must include a defined primary recruitment area. The primary recruitment area shall be based, pursuant to W. Va. Code §18-5G-11, on the charter school's estimated facility and program capacity. The primary recruitment area for a charter school may include territory from more than one county. When the primary recruitment area includes territory from more than one county, pursuant to W. Va. Code §18-5G-2(2), the members of each county board receiving such application shall function as a single entity in evaluating and, if the application is approved, performing the duties and responsibilities of an authorizer.

9.2.a.2. Pursuant to W. Va. Code §18-5G-11, the primary recruitment area of a charter school is a geographic area within which students who reside in the primary recruitment area may receive preference for enrollment in the charter school as outlined in subsection 9.2.b. For virtual charter schools, enrollment is limited to the primary recruitment areas identified in the charter application.

9.2.a.3. Pursuant to W. Va. Code §18-5G-11(a)(4), the primary recruitment area is defined in the charter contract based on the initial proposed primary recruitment area outlined in the application as required by W. Va. Code §18-5G-8(b)(7).

9.2.a.4. For non-virtual charter schools, notwithstanding the defined primary recruitment area included in a charter contract, if more than one-third of the students enrolled at the charter school are from a single county outside the jurisdiction of an authorizing county board of education, the county board of education with jurisdiction over such county shall be given the option to join as an authorizer of the charter school. If a county board does decide to join as an authorizer, the charter contract shall be modified to include the county board of education as a party and to otherwise update as necessary to make clear each party's duties and responsibilities.

9.2.b. Establishment of Enrollment Preferences.

9.2.b.1. Pursuant to W. Va. Code §18-5G-11(a)(9), a conversion charter school shall guarantee enrollment to all students who previously enrolled in the non-charter public school and shall adopt and maintain a policy that gives enrollment preference to students who reside within the attendance zone as established prior to the conversion of the school. Enrollment beyond guaranteed enrollment shall follow the enrollment process for all charter schools outlined below, subject to the above attendance area preference and other preferences in the charter contract.

9.2.b.2. The governing board of a charter school and its authorizer(s) shall agree to the specific preferences and the order of preferences in the charter contract.

9.2.b.3. A preference for students enrolled in the charter school in the previous school year must be included in the charter contract to provide educational stability for these students.

9.2.b.4. A preference for children who reside within the primary recruitment area must be included in the charter contract in line with the intent of W. Va. Code §18-5G-1 et seq. to expand the educational options available to students and families under the jurisdiction of the authorizer(s).

9.2.b.5. Pursuant to W. Va. Code §18-5G-11(a)(7), charter schools must establish enrollment preferences for:

9.2.b.5.A. Students enrolled in the charter school the previous school year; and

9.2.b.5.B. Children who reside within the school's primary recruitment area.

9.2.b.6. Pursuant to W. Va. Code §18-5G-11(a)(7), charter schools may establish enrollment preferences for:

9.2.b.6.A. Children who are siblings of students already enrolled in the charter school;

9.2.b.6.B. Children with special needs; and

9.2.b.6.C. Children of governing board members and full-time employees of the charter school as long as the number of students enrolled under this preference constitutes no more than five percent of the school's total student enrollment.

9.2.b.7. Preferences for students with special needs must define the documentation required to qualify for this preference. Documentation requirements must be minimally intensive to afford access to students with special needs and their families independent of their access to the resources necessary to complete documentation.

9.2.b.8. This section does not preclude the formation of a charter school whose mission is focused on serving students with exceptionalities. Charter schools with a mission to serve students with exceptionalities may prioritize recruitment and enrollment of students with a specific exceptionality profile. In such cases, the agreement between authorizer and charter school on the provision of special education and related services, described in section 6, shall reflect the charter school's mission.

9.2.c. Recruitment Activities.

9.2.c.1. Pursuant to W. Va. Code §18-5G-11(a)(1), the charter school shall engage in comprehensive publicity about the school throughout its primary recruitment area. Publicity shall include easy-to-understand, accurate information about the school, its educational mission, its educational program, and any focus on students with special needs. The charter school shall make all reasonable efforts to reach students in or entering the grade levels it serves and their families. Publicity and other recruitment activities shall describe, in plain language, the processes and timelines for student enrollment application.

9.2.c.2. Charter schools must publicize their offerings and actively recruit students in their primary recruitment area annually. Publicity and recruitment activities must provide families in the

primary recruitment area with ample opportunity to complete the required student enrollment application prior to the deadline.

9.2.c.3. Charter schools must prioritize outreach to students with special needs that qualify them for an enrollment preference at the charter school as well as their families.

9.2.c.4. Such activities shall be designed to welcome all students and families regardless of socioeconomic status, race, ethnicity, religion, home language, sex, gender identity, sexual orientation, disability, religion, other exceptionality, and prior academic performance and disciplinary record.

9.2.c.5. Pursuant to W. Va. Code §18-5G-11(a)(2), authorizers shall provide or publicize to parents/guardians and the general public information about charter schools with primary recruitment areas wholly or partially contained in the county as an enrollment option to the same extent and through the same means that the county provides and publicizes information about non-charter public schools in the county.

9.2.d. Enrollment and Retention Review.

9.2.d.1. On an annual basis, the governing board of a charter school and its authorizer shall review student application/enrollment, turnover, and transfer at the charter school. The purpose of the review is to ensure the school is providing a welcoming and positive educational environment for all students and their families within the primary recruitment area and/or eligible for enrollment preference based on special needs.

9.2.d.2. The application/enrollment review will compare the demographics of students applying to and enrolling in a charter school to surrounding non-charter public schools under the authorizer's jurisdiction. There are no hard benchmarks that trigger action and differences in student demographics are not themselves a reason for concrete actions. However, significant and persistent differences demand further exploration by the charter school in collaboration with its authorizer. These collaborative efforts should aim to guard against charter school enrollment contributing to nearby schools having divergent demographics, which runs counter to the spirit of W. Va. Code §18-5G-11(a)(6). Application/enrollment reviews will consider application/enrollment of subgroups defined by characteristics including, but not limited, socioeconomic status, sex, race, ethnicity, disability, other exceptionality, and prior academic performance and disciplinary record.

9.2.d.3. The turnover review will explore overall turnover rates and the turnover rates for student subgroups. Student turnover, where a student transfers out of a charter school in between school years, is an inherent characteristic of charter schools in which students and parents/guardians have choice over enrollment. However, excessive turnover, either overall or among specific student subgroups, is a warning sign that the charter school is failing to provide a significant segment of students with a positive learning environment. The purpose of the review is to identify instances of excessive turnover among all students or specific subgroups and outline steps to remediate the situation. In instances of problematic turnover, the charter school must work with its authorizer to create a positive and welcoming learning environment for all students. The review shall consider turnover for all students and student subgroups. For virtual charter schools, the turnover review shall also include students and student subgroups that are disenrolled from the virtual charter school pursuant to school's policy for failure to engage in instructional activities, as further described in subsection 4.5.h.

9.2.d.4. The mid-year transfer review will explore overall rates of mid-year transfers from a charter school and this rate for different student subgroups. A mid-year transfer is any transfer into or out of a charter school that occurs during the instructional school year for that school or any sending or receiving school. A high rate of mid-year transfers is a sign that the charter school is failing to provide students with a positive, welcoming learning environment. Examining differential rates for various student subgroups helps ensure that average rates do not mask issues specific to certain subgroups at a charter school. The purpose of the review is to identify instances of excessive mid-year transfer among all students or specific subgroups and outline steps to remediate the situation. In instances of problematic mid-year transfer, the charter school must work with its authorizer to create a positive and welcoming learning environment for all students. The review shall consider mid-year transfers for all students and student subgroups defined characteristics including but not limited to socioeconomic status, race, ethnicity, home language, sex, gender identity, sexual orientation, disability, other exceptionality, or prior academic performance and disciplinary record, when applicable and subject to data availability.

9.2.d.5. As a result of the student application/enrollment, turnover, and mid-year transfer reviews, authorizers may request charter schools to prepare a CAP to remedy concerning trends for review and approval by the authorizer. Nothing precludes a charter school from providing information to its authorizer explaining the reason(s) for individual student departure from the charter school after enrollment. Upon approval, the authorizer shall monitor the implementation of the plan by the charter school. If the charter school does not remedy the concerning student enrollment, turnover, and/or transfer trends through its CAP, the authorizer has the authority to take such action it deems as necessary to address the concerns and may recommend that the charter school appear before the WVBE to discuss the situation and develop appropriate remedies.

9.2.d.6. Authorizers who fail to faithfully uphold their responsibility to administer annual application/enrollment, turnover, and mid-year transfer reviews or take appropriate action when necessary may be subject to adverse consequences from the WVBE, including suspension of their role as authorizer.

9.3. Charter School Enrollment.

9.3.a. Annual target size announced by January 1 of each year.

9.3.a.1. Pursuant to W. Va. Code §18-5G-11(a)(5), the capacity of a charter school will be determined annually by the governing board of the charter school in conjunction with its authorizer. The capacity determination shall include both the overall enrollment capacity for a charter school as well as enrollment capacities by grade level within the charter school. The sum of sub-school capacities may exceed the overall capacity to account for variation in grade level enrollment. To allow for planning for both the charter school and public schools, the enrollment capacity must be agreed upon by the governing board of the charter school and its authorizer no later than January 1 of the year for which it will go into effect. Notwithstanding this annual deadline, the governing board of a charter school and its authorizer(s) may engage in cooperative planning to set multi-year target enrollments to guide long-term strategy and decision-making.

9.3.b. The Enrollment Timeline and Process.

9.3.b.1. The governing board of the charter school and its authorizer(s) shall agree upon an initial and annual enrollment process in their charter contract, pursuant to W. Va. Code §18-5G-8(b)(7). This

agreement shall clearly define the responsibilities of the charter school when it comes to managing the enrollment process, verifying student enrollment preferences, and conducting the enrollment lottery, if necessary, as well as the role of the authorizer in overseeing these processes.

9.3.b.2. For the initial year a charter school is open, the primary round of charter school student enrollment applications, lottery, and enrollment shall conclude by April 15

9.3.b.3. For every subsequent year, the primary round of charter school student enrollment applications, lottery, and enrollment shall conclude by February 15 of each year to allow charter and non-charter public schools to plan appropriately for the upcoming year.

9.3.b.4. A charter school must make its student enrollment application available to the public at least 60 days prior to the application deadline.

9.3.b.4.A. The purpose of the student enrollment application is to allow students and parents/guardians to declare their desire to enroll in a charter school. The student enrollment application should promote an application process that is accessible to all students and families.

9.3.b.4.B. Except for virtual charter schools authorized by one or more county boards of education, the student enrollment application is open to all students of the appropriate age or grade level in West Virginia, though some students will have preferences that make it more likely they will be able to enroll.

9.3.b.4.C. For virtual charter schools authorized by the West Virginia Professional Charter School Board, the student enrollment application is open to all students of the appropriate age or grade level in West Virginia, not to exceed five percent of the headcount enrollment per year as outlined in subsection 4.3.f.1.

9.3.b.4.D. For virtual charter schools authorized by one or more county boards of education, the student enrollment application is open to students living within the jurisdiction of the authorizing county board(s) of education, not to exceed ten percent of the county or counties' headcount enrollment per year as outlined in subsection 4.3.f.2.

9.3.b.4.E. The student enrollment application must collect basic student information necessary for enrollment as well as to identify and document enrollment preferences.

9.3.b.4.F. The student enrollment application cannot include essay questions, admissions tests, or other barriers to enrollment that demand the demonstration of high achievement. Academic, discipline, or other education-related data may only be collected for schools with a preference for students with special needs that need to use such data to determine student eligibility for the preference.

9.3.b.4.G. The admissions process of a charter school shall be blind to disability status, except that the school may request that parents/guardians applying for enrollment disclose whether their child has an IEP if and only if the sole purpose of such disclosure is to apply an enrollment preference for such students, as permitted by W. Va. Code §18-5G-11(a)(7)(C). In this case, parents/guardians shall be provided information on the enrollment preference before being asked to disclose their child's disability status. Any such disclosure shall be voluntary; parents/guardians shall not be required to provide information as to special education status when applying for admission, but students will not be eligible

for an enrollment preference tied to disability if disability status information is not provided. Any school utilizing an enrollment preference benefiting students with exceptionalities shall include information about such a preference and the number of students utilizing it as part of its annual report to its authorizer.

9.3.b.4.H. Students and families must be able to complete the student enrollment application electronically or by using a paper hard-copy. Applications submitted electronically and by paper must be maintained for audit purposes.

9.3.b.4.I. The WVDE shall provide a student enrollment application template that meets the criteria above that charter schools in West Virginia may choose to use.

9.3.b.5. Student applicants shall be offered enrollment at the charter school if:

9.3.b.5.A. The number of qualified student applicants to a charter school for a particular grade level is less than the capacity for that grade level; and

9.3.b.5.B. The number of overall student applicants to a charter school is less than its overall enrollment capacity.

9.3.b.6. If these conditions are met, student enrollment at the charter school is open. All student applicants shall be offered enrollment. Additional students (i.e., those who did not apply prior to the application deadline) may enroll based on space availability and the order in which they apply.

9.3.b.7. If either of the above conditions is not met, an enrollment lottery shall determine the order in which additional students are offered enrollment.

9.3.b.8. Pursuant to W. Va. Code §18-5G-11(a)(8), enrollment lotteries shall be conducted in open public meetings and involve procedures and timelines that support equal and open access for all students.

9.3.b.8.A. Enrollment lotteries may be conducted using computer-based randomization software. If randomization software is used, it must produce audit records verifiable by the WVDE.

9.3.b.8.B. The outcome of the random lottery is a priority ordering for students for enrollment in a charter school.

9.3.b.8.B.1. The random lottery shall occur during the open public meeting with the results announced and displayed publicly.

9.3.b.8.B.2. Students apply for enrollment in particular grade levels within a charter school. As such, enrollment lotteries will be separate for each grade level but must be conducted at one time in an open public meeting.

9.3.b.8.B.3. To incorporate the enrollment preferences in the charter contract, the random lottery will be stratified by grade level and enrollment preferences, including those without preference.

9.3.b.8.B.4. Within a given grade level, students are placed in the enrollment preference group with the highest level of preference as defined in the charter contract. Within each group, they are

ordered by random lottery. Each preference group is then added to the enrollment order starting with the highest preference group to form the enrollment list.

9.3.b.8.B.5. Students who have a number on the list less than or equal to the capacity of the grade level are added to the preliminary enrollment pool.

9.3.b.8.B.6. If the number of students in the preliminary enrollment pool is less than or equal to the overall school capacity, all students in the preliminary enrollment pool will be offered enrollment.

9.3.b.8.B.7. If the number of students in the preliminary enrollment pool exceeds the overall school capacity, students in the preliminary pool enter a random lottery within students in their preference group but not combining students across grade levels.

9.3.b.8.B.8. Within preference groups, students are ordered by random lottery. Students are then added to the final enrollment list in this order starting with the students in the highest preference group.

9.3.b.8.B.9. Students with a number on the final enrollment list less than or equal to the capacity of the school are added to the final enrollment pool and will be offered enrollment.

9.3.b.8.B.10. Students not initially offered enrollment are added to the top of the waitlist in their random lottery order.

9.3.b.8.B.11. Each student offered enrollment has the ability to opt out of enrollment. As students opt out of enrollment, students on the waitlist are offered enrollment, beginning with the first student at the top of the waitlist.

9.3.c. Each charter school shall enroll students without regard to disability status.

9.3.c.1. When a child's IEP includes special education and related services that the charter school does not currently offer, the charter school has several options to address the child's needs. It does not, however, have the option of refusing to ensure that the child is provided all necessary special education and related services at no cost to the parents/guardians and in accordance with the child's IEP. The charter school must provide a program of FAPE for the child in the LRE in which the child's IEP can be implemented.

9.3.c.2. Pursuant to 34 CFR §300.209(a), children with exceptionalities attending a charter school retain all rights under Part B of IDEA as they would in non-charter public schools. Therefore, a charter school may not unilaterally limit the services it will provide a particular child with an exceptionality.

9.3.c.3. Following selection via the lottery, the IEP of any student with an exceptionality shall be immediately reviewed. The review may result in adjustments to the IEP and/or the charter school's program necessary to ensure the student receives FAPE in the LRE.

9.4. Student Discipline.

9.4.a. Charter schools shall define and publicize their own student behavior and discipline policies

as approved by their governing boards. These policies must avoid disparate and excessive discipline of vulnerable students, including those with exceptionalities. Provisions concerning student expulsion and out-of-school suspension must be incorporated into the charter contract.

9.4.b. Student expulsions from a charter school shall be approved by the governing board of the charter school. Charter schools must provide students facing expulsion with appropriate due process rights. In accordance with federal law, students with exceptionalities must be provided procedural safeguards and due process rights and procedures in accordance with IDEA and Policy 2419.

9.4.b.1. Students expelled from the charter schools remain the responsibility of the charter school. The charter school is responsible for providing the student with educational instruction and other legally required services to expelled students.

9.4.b.2. Charter schools may contract with county school boards to provide students expelled from charter schools with instruction and other legally required services at alternative education settings operated by the county school board. In such cases, the charter schools have the affirmative obligation to provide the receiving county school board and alternative education settings with reports on students' academic and disciplinary standing as well as potential instructional materials to reduce the academic disruption for the students before their return to the charter schools.

9.4.b.3. When a student returns from a period of expulsion from a charter school, the student has the right to return to the expelling charter school. The student may also choose to return to a non-charter public school at the end of their expulsion.

9.4.c. Students receiving out-of-school suspensions from charter schools must continue to receive educational instruction and other legally required services during the term of their suspension. The charter school remains responsible for these services.

9.4.c.1. Charter schools may contract with county school boards to provide their students with instruction and other legally required services at alternative education settings operated by the county school board. In such cases, the charter schools have the affirmative obligation to provide the receiving county school district and alternative education setting with a report on the student's academic program and standing and disciplinary circumstances as well as potential instructional materials to reduce the academic disruption for the student before their return to the charter school. Any services for which a charter school contracts with a school district shall be provided by the district at cost and may be negotiated as a separate agreement from the charter contract.

9.4.c.2. Charter schools must provide students receiving out-of-school suspensions lasting more than 10 days with procedural safeguards and appropriate due process rights. In accordance with federal law, students with exceptionalities must be provided procedural safeguards and due process rights pursuant to IDEA and Policy 2419.

9.5. Transfers to/from a charter school.

9.5.a. Transfers to charter schools.

9.5.a.1. Students who wish to transfer to charter schools between school years will follow the enrollment process defined in the above subsection 9.3.

9.5.a.2. Students who wish to transfer to charter schools mid-school year must complete the charter school application. If enrollment at the charter school is below capacity overall and in the grade level to which the student is applying, the charter school shall offer enrollment to the student. If the school or grade is at capacity, the student shall be added to the bottom of the waitlist.

9.5.b. Transfers from charter schools.

9.5.b.1. Students who wish to transfer from a charter school to a non-charter public school between school years shall be enrolled at a non-charter public school based on the standard enrollment process, considering both school attendance zones and open enrollment policies.

9.5.b.2. Students who wish to transfer from a charter school to a non-charter public school during the school year shall be enrolled at a non-charter public school based on the standard enrollment process, considering both school attendance zones and open enrollment policies.

9.5.c. Responsibilities of sending and receiving schools.

9.5.c.1. When students transfer between charter public and non-charter public schools, educators at both schools have an affirmative responsibility to collaborate to smooth the transition for students.

9.5.c.2. Electronic records in WVEIS shall automatically transfer to the receiving school. Sending schools shall compile other relevant educational records and transfer them to the receiving school in a manner compliant with the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. §1232g; 34 CFR Part 99, state law regarding student privacy and data protection, and Policy 4350.

9.5.c.3. Receiving schools shall make every effort to accept and recognize in progress grades and credits earned at sending schools based on the demonstrated achievement and education needs of transferring students.

9.5.c.3.A. Pursuant to W. Va. §18-5G-11(b), non-charter public schools shall accept grades and credits earned by the student in courses or instructional programs at the charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic grades and credits from other non-charter public schools or that consider content competency when appropriate due to differences in curriculum delivery, instructional methods and strategies, or course designations and sequence.

9.5.c.3.B. In the spirit of furthering the best interests of students, charter schools shall accept transfer credits from non-charter public schools or other charter schools using similarly uniform and consistent processes as those outlined above.

§126-79-10. Educational Reporting Requirements.

10.1. Flexibility, innovation, and accountability are the key underpinnings to fulfilling the charter schools' promise of increasing educational options in order to improve student outcomes. To hold a charter school accountable, its authorizer must have access to relevant evidence about the charter school's results. Straightforward reporting requirements and processes allow this access with minimum

burden on authorizers and charter schools. This access helps ensure that charter schools are held accountable to their educational mission, their ability to improve student outcomes, and their promise of developing successful strategies for diffusion across public schools.

10.1.a. In order to achieve the requirements above, charter schools shall comply with reporting requirements, specifications, processes, and timeline set annually by the WVDE.

10.2. Student data.

10.2.a. Pursuant to W. Va. Code §18-5G-3(c)(7) and §18-5G-11(c), charter schools must comply with The Student Data Accessibility, Transparency, and Accountability Act pursuant to W. Va. Code §18-2-5h and Policy 4350.

10.2.b. Pursuant to W. Va. Code §18-5G-3(c)(8) and §18-5G-11(c), charter schools will have access to and shall use WVEIS, and any successor electronic education information system, maintained by the WVDE for the purpose of reporting required information.

10.2.c. Pursuant to W. Va. Code §18-5G-11(d), charter schools shall timely certify the following data to the WVDE and to the authorizer: student enrollment; average daily attendance; student participation in the national school lunch program, special education, vocational education, CTE, gifted education, advanced placement and dual credit courses, and federal programs; and other education data in the same manner as county boards of education.

10.2.d. Pursuant to W. Va. Code §18-5G-3(c)(6), charter schools shall administer the same student assessments required of non-charter public schools. However, in accord with W. Va. Code §18-5G-3(c)(6) and W. Va. Code §18-5G-3(c)(9), nothing in this policy precludes charter schools from establishing additional student assessment measures or other student or school performance measures.

10.2.e. Pursuant to W. Va. Code §18-5G-3(c)(9) and §18-5G-11(c), charter schools shall report information on student and school performance to parents/guardians, policy-makers, and the general public in the same manner as non-charter public school utilizing the electronic format established by the WVDE. This includes reporting all data necessary to participate in the state's accountability system.

10.2.f. In order to execute the monitoring, oversight, and accountability responsibilities established in W. Va. Code §18-5G-6, authorizers will have electronic access to the same set of records in WVEIS and any subsequent replacements as county school districts would have for non-charter public schools in their jurisdiction. This access extends to authorizers even when a charter school is located outside the geographic boundaries of the authorizer, as in the case of co-authorized charter schools.

10.2.g. Any school utilizing an enrollment preference, including those benefiting students with exceptionalities, shall include information about such a preference and the number of students utilizing it as part of its annual reporting to its authorizer.

10.3. Educational Practices and Innovations Reporting.

10.3.a. Pursuant to W. Va. Code §18-5G-1(b), establishing charter schools in West Virginia is intended to both promote innovative educational methods, practices, and programs and encourage the replication of successful strategies from charter schools.

10.3.b. Pursuant to W. Va. Code §18-5G-4(b)(6), the WVBE is required to report on successful innovations applied in authorized charter schools which may be replicated in non-charter public schools as well as how non-charter public schools may implement these innovations.

10.3.c. In order to achieve these aims, the WVDE will develop and maintain a system for recording innovative educational practices. Charter schools must complete required reporting within this system annually in order to fulfill the legislative intent noted above.

10.4. Annual Reporting.

10.4.a. To allow for an authorizer to adhere to its oversight duties and responsibilities, no later than September 30 of each year the following information and documentation shall be submitted by a charter school's governing board to its authorizer:

10.4.a.1. Annual Accountability Plan results.

10.4.a.2. Application/enrollment, turnover, and transfer review performed pursuant to subsection 9.2.d.

10.4.a.3. For governing boards/charter schools that contract with an ESP, the monthly and yearly reporting submissions provided by the ESP to the governing board pursuant to subsection 11.3.

10.4.a.4. Unaudited financial statements prepared in accordance with General Accepted Accounting Principles.

10.4.b. An authorizer shall consider and make available the information and documentation submitted pursuant to subsection 10.4 at the authorizer's next scheduled open meeting. The governing board shall be permitted, if requested, to provide testimony during such open meeting.

§126-79-11. Education Service Providers.

11.1. Purpose. The role of an ESP is to manage the day-to-day education of students in charter schools. The specific functions performed by an individual ESP are defined by its contract with an authorized charter school's governing board. Notwithstanding any contrary provision in the ESP's contract, pursuant to W. Va. Code §18-5G-7(c)(2)(C), the governing board retains final authority and oversight over the charter school.

11.2. Pursuant to W. Va. Code §18-5G-8(c), if a charter applicant intends to contract with an ESP to be involved with the operations of its proposed charter school, the charter school application must include the following information relating to the ESP:

11.2.a. Evidence of success in serving student populations similar to the targeted population, including demonstrated academic achievement and growth as well as successful management of nonacademic school functions, if applicable;

11.2.b. Student performance data and financial audit reports for all current and past charter schools;

11.2.c. Documentation of and explanation for any actions taken, legal or otherwise, against any of its charter schools for academic, financial, or ethical concerns;

11.2.d. The proposed duration of the ESP's intended contract with the charter school's governing board;

11.2.e. The proposed annual fees and any other amounts to be paid to the ESP;

11.2.f. The roles and responsibilities of the governing board, the charter school staff, and the ESP. Any allocation of responsibilities for special education services must also be included;

11.2.g. The scope of services and resources to be provided by the ESP;

11.2.h. Performance evaluation measures and timelines;

11.2.i. Methods of contract oversight and enforcement by the governing board;

11.2.j. Investment disclosure, including, but not limited to:

11.2.j.1. Any interests or entanglements in the ESP, its parent companies, or subsidiaries held by members of the governing board;

11.2.j.2. Any investors, interest holders, subsidiaries, etc. in the ESP;

11.2.j.3. Conditions for renewal and termination of the ESP contract; and

11.2.j.4. Disclosure and explanation of any existing or potential conflicts of interest between the governing board and the proposed ESP or any affiliated business entities.

11.2.k. As part of the evaluation of charter school applications, authorizers shall consider the information provided in determining whether the ESP is reasonably likely to succeed in their context. In doing so, the authorizer may consider the following:

11.2.k.1. The ESP'S demonstrated success in improving student outcomes relative to other students with similar incoming achievement and demographics to those it serves in existing schools;

11.2.k.2. The ESP'S demonstrated ability to successfully manage school operations and finances;

11.2.k.3. The ESP's involvement in part of a charter school network or network of networks that has demonstrated success improving student outcomes relative to similar students;

11.2.k.4. The ESP's experience serving students and communities similar to the one it plans to serve;

11.2.k.5. The ESP's identification of key members of its school leadership team (e.g., instructional leader, operational leader, etc.) and whether those leaders possess the experience, qualifications, and past success that make them reasonably likely to succeed;

11.2.k.6. The ESP and governing board's adequate address of any past actions, legal or otherwise, against the ESP or any schools or other entities that it operates;

11.2.k.7. The ESP and governing board's tailoring of adequate educational and business plans to the local context in which it will operate to create a reasonable likelihood that the school will achieve its educational mission;

11.2.k.8. The governing board's plans to provide adequate educational, operational, and financial services not provided by the ESP;

11.2.k.9. If the ESP is or is a subsidiary of a for-profit entity, the terms of the contract that generate profits are not excessive;

11.2.k.10. The governing board's draft of reasonable oversight and accountability methods to address performance concerns prior to issues rising to the attention of the authorizer; and

11.2.k.11. The ESP and governing board's establishment of adequate additional oversight and monitoring plans if the proposed charter school relies heavily on virtual, asynchronous instruction.

11.3. Reporting Requirements for ESPs.

11.3.a. Pursuant to W. Va. Code §18-5G-7(c)(4), ESPs shall provide monthly detailed budgets to the charter school's governing board.

11.3.b. Pursuant to W. Va. Code §18-5G-4(b)(6)(ix), ESPs shall provide the charter school's governing board with an annual review of educational and operational practices that the ESP found particularly effective for delivering improved student outcomes. The governing board shall report these practices to its authorizer and the state as part of annual reporting on successful innovations as required by state code.

§126-79-12. Finances.

12.1. Purpose.

12.1.a. W. Va. Code §18-5G-5 outlines the funding of charter schools as well as tools to mitigate the fiscal impact on county school districts. Clearly articulating the financial rules and processes for charter schools will help applicants complete thorough applications and authorizers determine the financial viability of applications and plan for the fiscal effects on county school districts where charter schools operate.

12.2. Portion of Net Enrollment (W. Va. Code §18-5G-5(a)).

12.2.a. In accordance with W. Va. Code §18-5G-5(a), 90 percent of the per pupil total basic foundation allowance follows the student to the charter school. The per pupil total basic foundation allowance amount is calculated annually by the WVDE by dividing each county's total basic foundation allowance (Step 8 of the Public School Support Plan (PSSP)) by the county's adjusted net enrollment for state aid funding purposes. This amount differs by county board of education and changes annually.

12.2.b. State aid funding for county boards of education is based on the prior year enrollment. For example, funding for the 2020-2021 school year is based on student enrollment in the 2019-2020 school year.

12.2.c The state aid funding amount that WVDE calculates a county board of education owes to a charter school, inclusive of the local share amount per charter school pupil, shall be withheld from the county board of education's net state aid funding and paid by the WVDE directly to the charter school on behalf of the county board of education. Payments from the WVDE to the charter school shall be made in accordance with the expenditure schedule approved by the State Budget Office. If the total amount a county board of education owes to a charter school exceeds their total net state aid funding available and the WVDE shall be unable to withhold the full amount, any remaining balance due to the charter school shall be paid directly by the county board of education to the charter school. Payments from a county board of education to the charter school for state aid amounts owed shall be made in a manner that results in at least 25 percent of the annual amount due being paid by the end of each of the four quarters during the school year. Nothing precludes the county board of education from paying the amounts due to a charter school at an earlier date than the required quarterly payment.

12.2.d. In the initial year of existence for a charter school, the charter school will receive 90 percent of the per pupil total basic foundation allowance for each pupil based on a projected enrollment count for the initial year as determined by the primary round of charter school enrollment (see section 9).

12.2.d.1. The WVDE will distribute the initial funding withheld from the county board of education to the charter school based on projected enrollment counts starting on July 1. The payment schedule and amounts shall later be adjusted based on the charter school's certified October 1 (second month) student enrollment full-time equivalency count to provide the appropriate total funding for the school year.

12.2.d.2. The WVDE will determine the actual county of enrollment for each enrolled pupil for the prior school year and will calculate the amount each county board of education would owe to the charter school based on the student's full time enrollment (FTE) status at the charter school. If the student was not enrolled in a county school system the prior year, no county board of education received state aid funding for that pupil for the initial year of existence for the charter school. Although no state aid funds were received for the student, the county of residence for the student did receive property tax funding for the pupil and therefore would owe 90 percent of the local share amount per pupil to the charter school. In such a situation, the local share amount per pupil shall be recalculated to include the student that was not enrolled in the enrollment count utilized since the standard amount calculated by the WVDE annually is based on actual student enrollment and would result in a higher amount per pupil than what the county would have truly received per pupil after consideration of the additional student(s).

12.2.d.3. In the initial year a charter school is authorized to open, the county board of education will not receive a solid estimate of the projected enrollment until after April 15, when the initial enrollment process concludes. However, the county board of education will have information available from the charter school application including, but not limited to, enrollment capacity, grade levels, and primary recruitment area prior to receipt of the projected enrollment count in April. The county board of education shall consider that information for initial personnel and budgetary planning for the initial school year. Planning ahead will be critical given the condensed timeline of the initial year.

12.2.e. Once a student is enrolled in a charter school, that student will be included in the charter

school's certified October 1 (second month) student enrollment count moving forward. However, to facilitate accurate state aid funding calculations for charter schools, all charter school students shall also be tracked by their home attendance area school based on the student's physical address. If a student moves to West Virginia from another state and wishes to attend a charter school, the student shall first enroll with the appropriate county board of education based on their home address, and that county board of education shall then transfer the student to the charter school. If charter school students have a change in their physical address, the charter school shall contact the impacted county boards of education to ensure that the enrollment records are properly updated to reflect a new home attendance area school so that state aid funding appropriately follows the charter school student in accordance with W. Va. Code §18-5G-5(a).

12.2.e.1. Accordingly, after the initial year of operations of the charter school, the payment of the 90 percent of the per pupil total basic foundation allowance will be based on the charter school's student enrollment count included in the PSSP calculations for the particular school year. For example, if the charter school reports a student enrollment of 100 FTE in the initial year of operations, the state aid funding calculations for the second year of operations of the charter school are based on that enrollment count and the charter school will only receive funds from the state based on that 100 FTE count. The per pupil allocation paid to the charter school in the second year of operations will be based on 100 students, regardless of the charter school's actual student enrollment in the second year since that is all the funding that the county boards of education will have received on behalf of the charter school. County boards of education are not expected to provide funding to a charter school for students that were not previously enrolled with the county board of education.

12.2.e.2. After the initial year of operations of a charter school, initial enrollment activities for charter schools will conclude by February 15. This schedule will provide more time for county boards of education to make financial and personnel plans based on projected charter school enrollment. Even prior to the receipt of the projected enrollment, county boards of education will have key information available, including but not limited to, primary recruitment area, charter school capacity by grade, and enrollment preferences, to start planning as early as possible for the impact of the charter school enrollment on their budgets.

12.2.f Under the provisions of W. Va. Code §18-9A-15, county boards of education are eligible for increased enrollment funding if they experience an increase in net student enrollment over the previous year. Eligibility for the increased enrollment funding shall also be extended to charter schools. The calculations under W. Va. Code §18-9A-15 will be modified in a manner such that each county board of education's eligibility for the increased enrollment funding will be determined exclusive of any charter school student enrollment for their county. Each charter school shall be evaluated for eligibility based on the charter school's net student enrollment for the current year as compared to the prior year. Ninety percent of any increased enrollment funding allocation calculated for a charter school shall be paid by the WVDE directly to the charter school by no later than December 31st annually.

12.3. Transportation Allowances (W. Va. Code §18-5G-5(a)(1)).

12.3.a. The calculation of the allowance for student transportation under W. Va. Code §18-9A-7 is based largely on the actual student transportation expenditures incurred by the county board of education. By requiring county boards of education to provide 90 percent of the per pupil total basic foundation allowance to the charter school, which includes the allowance for student transportation, county boards of education are required to provide funds to the charter school without a corresponding

reduction in their actual transportation expenses. W. Va. Code §18-5G-5(a)(1) provides that the calculations under W. Va. Code §18-9A-7 may be modified to account for these situations to provide additional funding to the county boards of education.

12.3.b. The calculations under the PSSP in W. Va. Code §18-9A-7 will be modified by adding to the county board's total allowance for student transportation the equivalent of the county board's prior year transportation allowance per pupil multiplied by the charter school FTE student enrollment being utilized in the PSSP calculations for the current fiscal year, if either of the following conditions is met:

12.3.b.1. The charter school does not provide transportation to students but the county board of education must provide 90 percent of the transportation allowance to the charter school; or

12.3.b.2. The county boards of education provides the transportation on behalf of the charter school but must still provide 90 percent of the transportation allowance to the charter school.

12.3.c. In situations where the charter school provides transportation to students through means other than the county board, the calculations in W. Va. Code §18-9A-7 will be modified to add the charter school's actual transportation expenditures to those of the county board in which the charter school is physically located in the allowance for student transportation calculation. If a charter school's primary recruitment area serves multiple county boards of education, the actual transportation costs of the charter school shall be split proportionately among the county boards of education in the recruitment area based on the student enrollment from each county board in the recruitment area to allow the funding to follow the students to the extent possible.

12.4. Current Expenses Allowances (W. Va. Code §18-5G-5(a)(1)).

12.4.a. The calculation of the allowance for current expense under W. Va. Code §18-9A-9(1) is based largely on the actual current expenses (operations and maintenance expenditures) incurred by the county board of education. By requiring the county board of education to provide 90 percent of the per pupil total basic foundation allowance to the charter school, which includes the allowance for current expense, county boards of education are required to provide funds to the charter school without a corresponding reduction in their actual current expenses. W. Va. Code §18-5G-5(a)(1) provides that the calculations under W. Va. Code §18-9A-9(1) may be modified to account for these situations to provide additional funding to the county boards of education.

12.4.b. The calculation of the allowance for current expense under the PSSP contained in W. Va. Code §18-9A-9(1) will be modified to add the charter school's actual operations and maintenance expenditures to those of the county board of education in which the charter school is physically located and to add the square footage of the charter school to the square footage of the county board of education in which the charter school is physically located in the allowance for current expense calculation. Under the PSSP, the allowance for current expense applies a statewide average cost per square foot and statewide average square footage per pupil amount to the student enrollment count of each county board of education. The student enrollment counts for each county board of education include students enrolled in charter schools, so the additional current expense funding will follow the pupils to their home attendance area county board of education.

12.5. Public Employees Insurance Agency (PEIA) Funding.

12.5.a. W. Va. Code §18-5G-5(e) permits the WVBE to address unforeseen circumstances in the implementation of charter schools. While the provisions of W. Va. Code §5-16-2 were modified to allow charter schools to participate in the PEIA and the statutory language in W. Va. Code §18-5G-3(b)(7) allows the charter school to manage employee participation in insurance plans, the Legislature has not addressed funding for PEIA insurance for charter school employees. The funding for county board of education employees to participate in PEIA is outside of the total basic foundation allowance under the PSSP and is provided directly to PEIA by the WVDE pursuant to W. Va. Code §18-9A-24 on behalf of the county boards of education, so the state aid funds calculated in subsection 12.2 do not include funding for PEIA.

12.5.b. If a charter school elects to provide health insurance coverage to employees using PEIA, the WVDE will calculate the amount of PEIA funding which is attributable to the students enrolled in the charter school and provide an allocation on behalf of the charter school directly to PEIA in the same manner in which the allocations are provided to PEIA on behalf of the county boards of education.

12.5.c. In the initial year of operation of a charter school, the WVDE will calculate the amount of PEIA funding which is attributable to the students enrolled in the charter school in the following manner:

12.5.c.1. Estimate the number of charter school students who were enrolled in each county board of education in the previous year.

12.5.c.2. Calculate the total number of professional educator positions, service personnel positions, and professional student support personnel positions that were attributed to the charter school students based on each county's population density category.

12.5.c.3. Multiply the number of total positions attributable to the charter school students by the average employer PEIA premium for each county board of education.

12.5.c.4. Multiply the subtotal from subsection 12.5.c.3 by 90 percent.

12.5.c.5. Reduce each county board of education's calculated PEIA allowance by the amounts derived in subsection 12.5.c.4.

12.5.c.6. The charter school's PEIA allowance is the total of the amount derived in subsection 12.5.c.4 for all county boards of education that had charter school students enrolled in the previous year (since state aid funding is based on the previous year).

12.5.c.7. The PEIA allowance for the charter schools is subject to the same annual reallocation process based on updated employer premium rates as the county boards of education. In addition, in the initial year of operation of the charter school, the annual reallocation process will also include an adjustment to the actual enrollment count for the initial year of charter school operations.

12.5.d. In subsequent years, the WVDE will calculate the amount of PEIA funding which is attributable to the students enrolled in the charter school in the following manner:

12.5.d.1. Determine the number of charter school students who were enrolled in each county board of education in the previous year.

12.5.d.2. Calculate the total number of professional educator positions, service personnel

positions, and professional student personnel support positions that were attributed to the charter school students based on each county's population density category.

12.5.d.3. Multiply the number of total positions attributable to the charter school students by the average employer PEIA premium for each county board of education.

12.5.d.4. Multiply the subtotal from subsection 12.5.d.3 by 90 percent.

12.5.d.5. Reduce each county board of education's calculated PEIA allowance by the amount derived in subsection 12.5.d.4.

12.5.d.6. The charter school's PEIA allowance is the total amount derived in subsection 12.5.d.4 for all county boards of education that had charter school students enrolled in the previous year.

12.5.d.7. The PEIA allowance for the charter schools is subject to the same annual reallocation process based on updated employer premium rates as the county boards of education.

12.5.e. If a charter school does not elect to participate in PEIA, the unspent allocation for the charter school shall be treated by the WVDE the same as any unspent allocation for the county boards of education.

12.6. Retirement Funding.

12.6.a. W. Va. Code §18-5G-5(e) permits the WVBE to address unforeseen circumstances in the implementation of charter schools. While the provisions of W. Va. Code §18-7A-3 and §18-7B-2 were modified to allow charter schools to participate in the Teachers' Retirement System (TRS) and the Teachers' Defined Contribution Retirement System (TDC) and the statutory language in W. Va. Code §18-5G-3(b)(7) allows the charter school to manage employee participation in retirement, the Legislature has not addressed funding for retirement contributions for charter school employees. The funding for county board of education employees to participate in retirement is outside of the total basic foundation allowance under the PSSP and is provided directly to the West Virginia Consolidated Public Retirement Board (CPRB) by the WVDE pursuant to W. Va. Code §18-9A-6a(b) on behalf of the county boards of education, so the state aid funds calculated in subsection 12.2 do not include funding for retirement.

12.6.b. If a charter school elects to participate in the TRS and TDC retirement plans provided by the CPRB, the WVDE will calculate the amount of retirement funding which is attributable to the students enrolled in the charter school and provide an allocation on behalf of the charter school directly to the CPRB in the same manner in which the allocations are provided to the CPRB on behalf of the county boards of education.

12.6.c. In the initial year of operation of a charter school, the WVDE will calculate the amount of retirement funding which is attributable to the students enrolled in the charter school in the following manner:

12.6.c.1. Determine the number of charter school students who were enrolled in each county board of education in the previous year.

12.6.c.2. Calculate the total number of professional educator positions, service personnel

positions, and professional student support personnel positions that were attributed to the charter school students based on each county's population density category.

12.6.c.3. For each category of personnel, multiply the number of positions calculated in subsection 12.6.c.2 by the average state minimum salary of the county and county's average retirement contribution rate.

12.6.c.4. Add the total calculated in subsection 12.6.c.3 for each category of personnel to determine the total estimated retirement contribution attributable to charter school students for each county board of education.

12.6.c.5. Multiply the total from subsection 12.6.c.4 above by 90 percent.

12.6.c.6. Reduce each county board of education's calculated retirement allowance by the amount derived in subsection 12.6.c.5.

12.6.c.7. The charter school's retirement allowance is the total of the amounts derived in subsection 12.6.c.5 for all county boards of education that had charter school students enrolled in the previous year.

12.6.d. In subsequent years, the WVDE will calculate the amount of retirement funding which is attributable to the students enrolled in the charter school in the following manner:

12.6.d.1. Determine the number of charter school students that were enrolled in each county board of education in the previous year (since state aid funding is based on the previous year).

12.6.d.2. Calculate the total number of professional educator positions, service personnel positions, and professional student support personnel positions that were attributed to the charter school students based on each county's population density category.

12.6.d.3. For each category of personnel, multiply the number of positions calculated in subsection 12.6.d.2 by the average state minimum salary for each county board of education and each county's average retirement contribution rate.

12.6.d.4. Add the total calculated in subsection 12.6.d.3 for each category of personnel to determine the total estimated retirement contribution attributable to the charter school students for each county board of education.

12.6.d.5. Multiply the total from subsection 12.6.d.4 by 90 percent.

12.6.d.6. Reduce each county board of education's calculated retirement allowance by the amount derived in subsection 12.6.d.5.

12.6.d.7. The charter school's retirement allowance is the total amount of the amounts derived in subsection 12.6.d.5 for all county boards of education that had charter school students enrolled in the previous year.

12.6.e. If a charter school does not elect to participate in the TRS and TDC plans sponsored by the

CPRB, any unspent retirement allowance calculated for the charter school shall be transferred to the CPRB to apply to the TRS unfunded retirement liability.

12.7. Federal Funds (W. Va. Code §18-5G-5(a)(3)).

12.7.a. The WVDE will follow all federal regulations with regards to funding for charter schools. The WVDE issues grants and provides federal funds for various federal programs, and the treatment of charter schools under the federal regulations varies depending on the specific federal program. Federal regulations also change on a regular basis. Accordingly, the specific treatment of charter schools under each federal program will not be included in WVBE policy to allow the WVDE to comply promptly with any changes in federal regulations related to charter schools. As with all LEAs, the WVDE will work directly with authorized charter schools regarding the distribution of federal funds.

12.7.b. Pursuant to W. Va. Code §18-5G-4(b)(4), the WVDE will make a good faith effort to obtain Charter School Program grant funds from the United States Department of Education.

12.8. Authorizer Costs (W. Va. Code §18-5G-5(d)).

12.8.a. In accordance with W. Va. Code §18-5G-6(i), each charter public school shall remit to its respective authorizer an oversight fee.

12.8.a.1. Pursuant to W. Va. Code §18-5G-5(d), the oversight fee charged by the authorizer shall be equal to one percent of the total per pupil funding amount for all charter school students, as calculated in subsection 12.2.

12.8.a.2. The amount of the oversight fee shall be remitted by the charter school to the authorizer by no later than June 1 annually.

12.8.b. The WVDE will review the oversight fee structure annually to determine if the amount of the oversight fee is effective or if it needs adjusted by a sliding scale that considers the number of schools authorized, the number of students attending each school, etc. The annual review will continue input from authorizers and charter schools. Recommendations to change the oversight fee structure will be made to the WVBE.

12.9. Accounting and Financial Reports (W. Va. Code §18-5G-3(c)(10)).

12.9.a. Pursuant to W. Va. Code §18-5G-3(c)(10), each charter school will meet the same accounting and financial requirements required of non-charter public schools, including but not limited to participation in the State Auditor's financial transparency website.

12.9.b. Pursuant to W. Va. Code §18-5G-3(c)(10), each charter school shall annually engage an external auditor to perform an independent audit of the school's finances. The charter school shall submit the audit report to its authorizer and the State Superintendent of Schools no later than nine months following the end of the fiscal year for which the audit is performed.

12.9.c. Each charter school shall submit unaudited financial statements to its authorizer and the State Superintendent of Schools in accordance with the annual financial statement instructions and deadlines published annually by the WVDE.

§126-79-13. Appeal of Authorizer's Decision to West Virginia Board of Education.

13.1. Pursuant to W. Va. Code §18-5G-13, an applicant may file an appeal to an authorizer's a denial of that applicant's application to the WVBE no later than 30 calendar days after:

13.1.a. The authorizer adopts a resolution denying a charter application; or

13.1.b. The authorizer adopts a resolution denying a charter renewal application.

13.2. An applicant submitting an appeal to the WVBE pursuant to this section shall include the following information and documentation:

13.2.a. A summary of the application timeline specifically noting the following dates, as applicable: the date that the application was submitted to the authorizer, the date the identification of application deficiencies was issued, the date the revised application was submitted to the authorizer; the date of the applicant interview; the date of the public forum; and/or the date the authorizer adopted a resolution denying the application.

13.2.b. The initial application submitted to the authorizer;

13.2.c. The identification of application deficiencies issued by the authorizer;

13.2.d. Any subsequent revised applications submitted to the authorizer;

13.2.e. The resolution adopted by the authorizer denying the application and any accompanying supporting documentation to the resolution issued by the authorizer;

13.2.f. A concise statement articulating the applicant's basis for the appeal.

13.3. An applicant shall provide a copy of all materials submitted in conjunction with the appeal to the authorizer. Within 15 calendar days of receipt, the authorizer may submit a concise statement in response to the applicant's statement articulating the applicant's basis for the appeal.

13.4. Upon receipt of all submissions, the WVBE shall provide the parties with an anticipated timeline for review and decision. The WVBE shall review the materials submitted by the applicant and authorizer. The WVBE shall either deny the appeal or remand the authorizer's decision back to the authorizer for further proceedings if the substantive rights of the applicant have been prejudiced because the authorizer's findings, inferences, conclusions, or decisions are:

13.4.a. In violation of constitutional or statutory provisions or WVBE policy;

13.4.b. In excess of the statutory authority or jurisdiction of the authorizer;

13.4.c. Made upon unlawful procedures;

13.4.d. Affected by other error of law;

13.4.e. Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or

13.4.f. Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

§126-79-14. Severability.

14.1. If any provision of this policy or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this policy.