

WEST virginia legislature

2021 regular session

ENROLLED

Committee Substitute

for

House Bill 2012

BY DELEGATES SMITH, CLARK, KIMBLE, HIGGINBOTHAM, WAMSLEY AND ESPINOSA

[Passed March 3, 2021; in effect ninety days from passage.]

AN ACT to amend and reenact §18-5G-1, §18-5G-2, §18-5G-4, §18-5G-5, §18-5G-6, §18-5G-9, §18-5G-10, and §18-5G-11 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §18-5G-13, §18-5G-14, and §18-5G-15, all relating to public charter schools; amending provisions pertaining to the number of public charter schools that may be authorized; requiring the Legislative Auditor to conduct an audit of the public charter school program two years after the first public charter school commences operations; amending process applicable when an applicant applies to two or more county boards to authorize a public charter school; allowing the West Virginia Professional Charter School Board to authorize public charter schools; clarifying that an education service provider can be public or private and nonprofit or for-profit; defining “full-time virtual public charter school” and “West Virginia Professional Charter School Board”; amending provisions pertaining to revocation of a charter contract; amending timeline for charter school application and beginning operations; requiring public charter schools to be treated and act as their own local education agency for all purposes; specifying exception; prohibiting anything in certain State Board of Education rule from conflicting with code; setting deadline for certain State Board of Education rules; amending provisions pertaining to the charter contract; amending provisions pertaining to the renewal of a charter contract; creating a process by which to appeal certain authorizer decisions to the West Virginia Board of Education; setting forth parameters under which the Professional Charter School board and county boards may authorize a limited number of virtual public charter schools; addressing virtual public charter school enrollment limits, charter term, funding, enrollment of students who may require special education services, governing body training, student absence, instructional time requirements, requirements that are applicable to the traditional deliver of instruction, student orientation, data demonstrating progress toward graduation, requirements relating to student engagement and teacher responsiveness, a policy regarding failure to participate in instructional activities, educational placement upon student transfer, virtual charter schools enrolling students in grades six and below, and application of requirements to certain other virtual instructional program; establishing the West Virginia Professional Charter School Board; providing for members, appointments, removal, immunity from civil liability in certain instances, appointment of executive director, employment of staff, and reimbursement of certain expenses; limiting how official actions of nonvoting ex officio members may be construed; requiring the Professional Charter School Board to investigate certain complaints and allowing it to conduct or cause to be conducted certain audits; and making technical improvements and corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5G. PUBLIC CHARTER SCHOOLS.

§18-5G-1. Legislative purpose and intent; liberal interpretation; prohibiting conversion of private schools; prohibiting profit or monetary consideration by elected officials; limiting authorization of public charter schools; legislative auditor report.

(a) The purpose of this article is to establish a process for the creation, governance and oversight accountability of public charter schools with a renewed commitment to the mission, goals, and diversity of public education that benefits students, parents, teachers, and community members.

(b) Public charter schools are intended to empower new, innovative, and more flexible ways of educating all children within the public school system to:

(1) Improve student learning by creating more diverse public schools with high standards for student performance;

(2) Allow innovative educational methods, practices and programs that engage students in the learning process, thus resulting in higher student achievement;

(3) Enable schools to establish a distinctive school curriculum, a specialized academic or technical theme, or method of instruction;

(4) Provide expanded opportunities within the public schools for parents to choose among the school curricula, specialized academic or technical themes, and methods of instruction that best serve the interests or needs of their child;

(5) Provide students, parents, community members, and local entities with expanded opportunities for involvement in the public school system;

(6) Allow authorized public schools and programs within public schools exceptional levels of self-direction and flexibility in exchange for exceptional levels of results-driven accountability for student learning; and

(7) Encourage the replication of successful strategies for improving student learning.

(c) All public charter schools established under this article are public schools and are part of the state's public education system.

(d) The provisions of this article shall be interpreted liberally to support the purpose and intent of this section and to advance a renewed commitment by the state to the mission, goals and diversity of public education.

(e) No provision of this article may be interpreted to allow the conversion of private schools into public charter schools.

(f) An elected official may not profit or receive any monetary consideration from a charter school: *Provided*, That this prohibition does not apply with respect to the continued employment of an elected official who was employed by a public school prior to its conversion to a public charter school.

(g) The total number of public charter schools authorized and in operation under an approved contract in this state shall be limited to 10 pilot public charter schools until July 1, 2023. The State Board shall report to the Legislative Oversight Commission on Education Accountability by November 1, 2022, and every 3 years thereafter, on the status of the state's public charter schools. LOCEA shall report its findings and recommendations, if any, to the Legislature during its next Regular Session. Beginning July 1, 2023, and every 3 years thereafter, an additional 10 public charter schools may be authorized and in operation under an approved contract in this state. The Mountaineer Challenge Academy, if converted to a public charter school, shall not count towards the limitation established by this subsection.

(h) Two years after the first public charter school commences operations under the provisions of this article, the Legislative Auditor shall conduct an audit of the public charter school program and report the findings to the Legislative Oversight Commission on Education Accountability.

§18-5G-2. Definitions.

The following words used in this article and any proceedings pursuant thereto have the following meanings unless the context clearly indicates a different meaning:

(1) “Applicant” means any one or more in combination of parents, community members, teachers, school administrators, or institutions of higher education in this state who are interested in organizing a public charter school and:

(A) Have obtained 501(c)(3) tax-exempt status or have submitted an application for 501(c)(3) tax-exempt status; and

(B) Have developed and submitted an application to an authorizer to establish a public charter school;

(2) “Authorizer” means the entity empowered under this article to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee public charter schools, and decide whether to renew or not renew charter contracts. Authorizers include:

(A) A county school board when the charter school or application to form a charter school includes a primary recruitment area that is wholly within the county over which the board has jurisdiction;

(B) Two or more county school boards who must act together and function as a single authorizer in all respects under the law when the public charter school or application to form a public charter school includes a primary recruitment area that encompasses territory in the two or more counties over which the respective boards have jurisdiction: *Provided*, That if such two or more school boards functioning together as authorizer reject the application, then one or more of the individual county boards may approve the application, but in such instance the charter school site must be located in one of the counties where the application was approved.

(C) The West Virginia Professional Charter School Board created pursuant to §18-5G-15 of this code; or

(D) The West Virginia Board of Education in the following instances:

(i) The charter school or application to form a charter school or to renew a charter contract is in a county where the state board has intervened in the operation of the school system and limited the authority of the county board to act pursuant to §18-2E-5 of this code; and

(ii) The application to form a public charter school or to renew a charter contract is approved by the affected county board or boards and is forwarded it to the West Virginia Board of Education with a request that it perform to the authorizer function.

(3) “Charter application” means a proposal from an applicant to an authorizer to enter into a charter contract whereby the proposed school obtains public charter school status;

(4) “Charter contract” or “contract” means a fixed-term, renewable contract between a public charter school’s governing board and an authorizer that identifies the roles, powers, responsibilities, operational duties, accountability, and performance expectations for each party to the contract, consistent with the requirements of this article;

(5) “Conversion public charter school” means a public charter school that existed as a noncharter public school before becoming a public charter school;

(6) “County board” means a board exercising management and control of a school district. A county board’s management and control of a public charter school is limited to only that granted under this article. In the case of a school district in which the state board has intervened and limited the authority of the county board to act pursuant to §18-2E-5 of this code, “county board” means the state board. In the case of a multicounty vocational or technical center, “county board” means the administrative council of the multicounty center;

(7) “Education service provider” means a public or private nonprofit or for-profit education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management;

(8) A “full-time virtual public charter school” means a public charter school that offers educational services predominantly through an online program.

(9) “Governing board” means a public charter school governing board that meets the requirements §18-5G-3 and §18-5G-7 of this code and is party to the charter contract with the authorizer;

(10) “Noncharter public school” means a public school or multicounty vocational center other than a public charter school established pursuant to this article;

(11) “Parent” means a parent, guardian, or other person or entity having legal custody over a child;

(12) “Public charter school” means a public school or program within a public school that is authorized in accordance with the provisions of this article and meets the general criteria, governance structure and statutory compliance requirements described in §18-5G-3 of this code, and other provisions of this article;

(13) “Program conversion public charter school” means a program within an existing noncharter public school that is either preexisting and converted or newly created to become a separate and discreet program governed and operated in accordance with this article within the noncharter public school;

(14) “Start-up public charter school” means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

(15) “State board” means the West Virginia Board of Education;

(16) “Student” means any person that is eligible for attendance in a public school in West Virginia; and

(17) “West Virginia Professional Charter School Board” means the board created pursuant to §18-5G-15 of this code.

§18-5G-4. West Virginia Board of Education; powers and duties for implementation, general supervision and support of public charter schools.

(a) The state board shall consult with nationally recognized charter school organizations and establish and maintain a catalogue of best practices for public charter schools applicable for all applicants, authorizers, governing board members, and administrators that are consistent with this article and nationally recognized principles and professional standards for quality public charter school authorizing and governance in all major areas of authorizing and governance responsibility in the following areas:

- (1) Organizational capacity and infrastructure;
- (2) Solicitation and evaluation of charter applications;
- (3) A framework to guide the development of charter contracts;
- (4) Performance contracting including a performance framework;
- (5) Providing transparency and avoiding all conflicts of interest;

(6) Ongoing public charter school oversight and evaluation; and

(7) Charter approval and renewal decision-making;

(b) The state board is responsible for exercising, in accordance with this article, the following powers and duties with respect to the oversight and authorization of public charter schools:

(1) Provide forms to promote the quality and ease of use for authorizers to solicit applications for public charter schools, for applicants to complete applications, and for establishing quality charter contracts that include a framework for performance standards. The forms shall be available for use and solicitations made not later than the beginning of February, 2020. The forms shall include an application deadline of August 31st of the year prior to the beginning of operations for the proposed school year. No public charter school may begin operation prior to the beginning of the proposed school year following the previous year August application;

(2) Provide training programs for public charter school applicants, administrators and governing board members, as applicable, that include, but are not limited to:

(i) Pre-application training programs and forms to assist in the development of high quality public charter school applications;

(ii) The required components and the necessary information of the public charter school application and the charter contract as set forth in this article;

(iii) The public charter school board's statutory role and responsibilities;

(iv) Public charter school employment policies and practices; and

(v) Authorizer responsibilities for public charter school contract oversight and performance evaluation;

(3) Receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given;

(4) Apply for any federal funds that may be available for the implementation of public charter school programs;

(5) Establish reporting requirements that enable the state board to monitor the performance and legal compliance of authorizers and public charter schools; and

(6) Submit to the Governor and the Legislature an annual report within 60 days of the end of each school year summarizing:

(A) The student performance of all operating public charter schools; and

(B) The authorization status of all public charter schools within the last school year, identifying all public charter schools as:

(i) Application pending;

(ii) Application denied and reasons for denial;

(iii) Application approved, but not yet operating;

(iv) Operating and years of operation;

(v) Renewed and years of operation;

(vi) Terminated;

(vii) Closed;

(viii) Never opened; and

(ix) Any successful innovations applied in authorized public charter schools which may be replicated in other schools. The report shall provide information about how noncharter public schools may implement these innovations.

(c) The state board shall be the authorizer of a public charter school when a county board or boards approve the application for a public charter school and requests the state board to perform the authorizer duties and responsibilities or when an application to form a public charter school or to renew a charter contract is submitted from an applicant within a county in which the state board has intervened and limited the power of the county board to act pursuant to §18-2E-5 of this code.

§18-5G-5. State board rule relating to funding for public charter school enrollment and other necessary provisions; local education agency status; authorizer oversight fee.

(a) The state board shall promulgate a rule pursuant to the provisions of §29A-3B-1 *et seq.* of this code setting forth requirements for public charter school funding. The rule shall include a requirement that 90 percent of the per pupil total basic foundation allowance follow the student to the public charter school, subject to the following:

(1) Notwithstanding §18-9A-1 *et seq.* of this code, the rule may provide for modifications to the calculations set forth in §18-9A-7 of this code regarding the allowance for student transportation and in §18-9A-9(1) of this code regarding the allowance for current expense for the purpose of making appropriate adjustments to those allowances to account for student transportation and current expense related funding a school district loses in situations where it pays money to a public charter school pursuant to this subsection without a corresponding decrease in the county's transportation and current expense related expenditures;

(2) The rule shall designate which county school district is required to pay for a student attending a public charter school, and notwithstanding the terms in the definition of "net enrollment" in §18-9A-2 of this code, shall provide that the county school district paying for the student attending a public charter school have that student included in its net enrollment for the purposes of §18-9A-1 *et seq.* of this code; and

(3) The rule shall require the Department of Education to follow federal requirements in ensuring that federal funding follows the student to a public charter school.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code, if necessary, for ensuring the accountability of public charter schools for meeting the standards for student performance required of other public school students under §18-2E-5 of this code and the accountability of authorizers for ensuring that those standards are met in the schools authorized by it. If an authorizer fails to close a public charter school that does not meet the standards, the authorizer shall appear before the state board to justify its decision. The state board may uphold or overturn the authorizer's decision and may revoke the authority of the authorizer to authorize public charter schools.

(c) Any public charter school authorized pursuant to this article shall be treated and act as its own local education agency for all purposes except as needed under the provisions of the Public School Support Plan for funding purposes.

(d) To cover authorizer costs for overseeing public charter schools, the state board shall establish a statewide formula for authorizer oversight funding, which shall apply uniformly to every authorizer in the state. Each public charter school shall remit to its respective authorizer an oversight fee. The oversight fee shall be drawn from and calculated as a uniform percentage of the per pupil basic foundation allowance as provided pursuant to state board rule promulgated in accordance with this section, not to exceed one percent of each public charter school's per-student funding in a single school year. The state board may establish a sliding scale for authorizing funding, with the funding percentage decreasing after the authorizer has

achieved a certain threshold, such as after a certain number of schools have been authorized or after a certain number of students are enrolled in the authorizer's public charter schools. The state board shall establish a cap on the total amount of funding that an authorizer may withhold from a full-time public charter school. The state board shall annually review the effectiveness of the state formula for authorizer funding and shall adjust the formula if necessary to maximize public benefit and strengthen the implementation of this act.

(e) The state board shall promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to clarify, if necessary, the requirements of this article and address any unforeseen issues that might arise relating to the implementation of the requirements of this article: *Provided*, That nothing in this rule may conflict with this code. The rule also shall include a provision prohibiting a county board from discrimination against any district employee involved directly or indirectly with an application to establish a public charter school under this article.

(f) All state board rules required to be promulgated by this article shall be promulgated on or before July 1, 2021. The state board may file emergency rules if necessary to meet the July 1, 2021 deadline.

§18-5G-6. Authorizer powers and duties.

(a) Each authorizing authority is responsible for exercising in accordance with this article the following powers and duties with respect to the oversight and authorization of public charter schools:

(1) Demonstrate public accountability and transparency in all matters concerning its charter-authorizing practices, decisions, and expenditures;

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

(A) Organizational capacity and infrastructure;

(B) Evaluating applications;

(C) Ongoing public charter school oversight and evaluation; and

(D) Charter approval, renewal, and revocation decision-making.

(3) Solicit applications and guide the development of high-quality public charter school applications;

(4) Approve new charter applications that meet the requirements of this article and on the basis of their application satisfying all requirements of §18-5G-8 of this code, that demonstrate the ability to operate the school in an educationally and fiscally sound manner, and that are likely to improve student achievement through the program detailed in the charter application;

(5) Decline to approve charter applications that fail to meet the requirements of §18-5G-8 of this code;

(6) Negotiate and execute in good faith a charter contract with each public charter school it authorizes;

(7) Monitor the performance and compliance of public charter schools according to the terms of the charter contract; and

(8) Determine whether each charter contract it authorizes merits renewal or revocation.

(b) After an applicant submits a written application to establish a public charter school, the authorizer shall:

(1) Complete a thorough review process;

(2) Conduct an in-person interview with the applicant;

- (3) Provide an opportunity in a public forum for local residents to provide input and learn about the charter application;
 - (4) Provide a detailed analysis of the application to the applicant or applicants;
 - (5) Allow an applicant a reasonable time to provide additional materials and amendments to its application to address any identified deficiencies; and
 - (6) Approve or deny a charter application based on established objective criteria or request additional information.
- (c) In deciding to approve a charter application, the authorizer shall:
- (1) Approve charter applications only to applicants that possess competence in all elements of the application requirements identified in this section and §18-5G-8 of this code;
 - (2) Base decisions on documented evidence collected through the application review process; and
 - (3) Follow charter-granting policies and practices that are transparent, based on merit, and avoid conflicts of interest.
- (d) No later than 90 days following the filing of the charter application, the authorizer shall approve or deny the charter application. The authorizer shall provide its decision in writing, including an explanation stating the reasons for approval or denial of its decision during an open meeting. Any failure to act on a charter application within the time specified shall be deemed an approval by the authorizer.
- (e) An authorizer's charter application approval shall be submitted to the West Virginia Department of Education.
- (f) An authorizer shall conduct or require oversight activities that enable it to fulfill its responsibilities under this article, including conducting appropriate inquiries and investigations, so long as those activities are consistent with the intent of this article, adhere to the terms of the charter contract and do not unduly inhibit the autonomy granted to charter schools. In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify in writing the public charter school governing board of perceived problems and provide reasonable opportunity for the school to remedy the problems.
- (g) An authorizer shall take appropriate corrective actions or exercise sanctions in response to apparent deficiencies in a charter school's performance or legal compliance. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame;
- (h) An authorizer shall require each charter school it oversees to submit an annual report to assist the authorizer in gathering complete information about each school, consistent with the statutory requirements of this act and the charter contract.
- (i) To cover authorizer costs for overseeing public charter schools, each public charter school shall remit to its respective authorizer an oversight fee drawn from and calculated as a uniform percentage of the per student operational funding allocated to each public charter school as established by the state board by rule pursuant to §18-5G-5 of this code.
- (j) An authorizer may receive and expend appropriate gifts, grants and donations of any kind from any public or private entity to carry out the purposes of this act, subject to all lawful terms and conditions under which the gifts, grants or donations are given, and may apply for any federal funds that may be available for the implementation of public charter school programs;
- (k) Notwithstanding any provision of this code to the contrary, no civil liability shall attach to an authorizer or to any of its members or employees for any acts or omissions of the public charter school. Neither the

county board of education nor the State of West Virginia shall be liable for the debts or financial obligations of a public charter school or any person or entity that operates a public charter school.

(1) Regulation of public charter schools by the state board and a county board shall be limited to those powers and duties of authorizers prescribed in this article and general supervision consistent with the spirit and intent of this article.

§18-5G-9. Charter contract requirements; term of contract.

(a) Within 90 days of the approval of a charter application, the governing board and the authorizer shall negotiate and enter into a charter contract, which may incorporate and be consistent with the approved application. Alternatively, the parties may agree to also have part or all of the charter application be a part of the charter contract as long as it contains all of the requirements below.

(b) The charter contract shall address, in detail, the following items:

(1) The term of the contract: *Provided*, That the contract term shall be no longer than five years;

(2) The agreements relating to each item required in the charter application and, if applicable, the agreement with an education service provider that the governing boards intends to contract with for educational program implementation or comprehensive management;

(3) The rights and duties of the authorizer and the public charter school;

(4) The administrative relationship between the authorizer and the public charter school;

(5) The process the authorizer will use to provide ongoing oversight;

(6) The process and criteria the authorizer will use to annually monitor and evaluate the overall academic, operating, and fiscal conditions of the public charter school, including the process the authorizer will use to oversee the correction of any deficiencies found;

(7) The process for revision or amendment to the terms of the charter contract agreed to by the authorizer and the governing board;

(8) The process agreed to by the authorizer and the governing board that identifies how disputes between the authorizer and the board will be handled; and

(9) Any other terms and conditions agreed to by the authorizer and the governing board, including preopening conditions.

(c) The charter contract shall include provisions relating to the performance of the public charter school which will include the academic, and operational performance indicators, measures, and metrics to be used by the authorizer to evaluate the public charter school. At a minimum, the performance provisions shall include indicators, measures, and metrics for:

(1) Student academic proficiency;

(2) Student academic growth;

(3) Achievement gaps in both student proficiency and student growth between student subgroups, including race, sex, socioeconomic status, and areas of exceptionality;

(4) Student attendance;

(5) Student suspensions;

- (6) Student withdrawals;
 - (7) Recurrent enrollment from year to year;
 - (8) Governing board's performance and stewardship, including compliance with all applicable statutes and terms of charter contract; and
 - (9) Additional valid and reliable indicators requested by the public charter school.
- (d) A charter contract shall include provisions consistent with this Act and setting forth under what conditions a charter contract may be non-renewed and the process by which a non-renewal may occur. At a minimum, these provisions shall include:
- (1) The amount of time before non-renewal in which the authorizer shall notify the public charter school of the prospect that the charter contract may be non-renewed and the reasons for the potential non-renewal;
 - (2) The right to be represented by counsel at all meetings, hearings, and interactions between the governing board and the authorizer;
 - (3) A reasonable opportunity and timeframe of not less than 60 days for the governing board to provide a response to the proposed non-renewal;
 - (4) An opportunity for the governing board to submit documentation and provide testimony as to setting forth why the charter contract should be renewed;
 - (5) An opportunity for a recorded public hearing, at the request of the governing board;
 - (6) That 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 nonrenewal of the charter contract;
 - (7) The information that must be included in the authorizer's final decision if it determines not to renew the charter contract;
 - (8) A timeline for an authorizer to render a final decision on whether or not to renew a charter contract;
 - (9) Rendering of the authorizer's decision shall be adopted as a resolution during an open meeting; and
 - (10) A provision that the failure of the authorizer to act on a renewal application within the designated timeframes shall be deemed approval of the application.
- (e) The authorizer shall be responsible for collecting and reporting to the state board all state-required assessment and achievement data for the public charter school.
- (f) The charter contract shall be signed by the chair of the governing board and the president of the county board, presidents of the county boards, the president of the state board or the chairman of the West Virginia Professional Charter School Board, as applicable. A copy of the executed charter contract shall be provided to the State Superintendent of Schools.
- (g) No public charter school may commence operations without a charter contract that meets the requirements of this section, has been properly executed, and has been approved by, as applicable, a county board, county boards, or the state board, or the West Virginia Professional Charter School Board.

§18-5G-10. Charter contract renewal; performance report by authorizer and renewal guidance; renewal application; renewal term; nonrenewal; closure and dissolution.

- (a) No later than June 30 of a public charter school's fourth year of operation under each five-year term of a charter contract, the authorizer shall issue a performance report on the public charter school. The

performance report shall summarize the public charter school's performance record to date, based on the data collected under the statutory requirements of this act and the charter contract, 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 public charter school to respond to the performance report and submit any corrections for the report.

(b) No later than June 30 of the school year before a public charter school's final year of operation under terms of a charter contract, the authorizer shall issue contract renewal application guidance to the school. The renewal application guidance required by this subsection shall include or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions as it pertains to the named public charter school. These criteria and standards shall be based on the statutory requirements of this act and the charter contract. The renewal application guidance shall, at a minimum, require and provide an opportunity for the public charter school to:

- (1) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;
- (2) Describe improvements undertaken or planned for the school; and
- (3) Detail the school's plans for the next charter term.

(c) No later than September 30 of a public charter school's final authorized year of operation under a term of a charter contract, the governing board of the public charter school seeking renewal shall submit a renewal application to the authorizer pursuant to the renewal application guidance offered by the authorizer under subsection (b) of this section. The authorizer shall rule in a public meeting and by resolution on the renewal application no later than 45 days after the filing of the renewal application. In making charter renewal decisions, the authorizer shall:

- (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 set forth in the charter contract, annual performance reports and any required financial audits;
- (2) Ensure that data used in making renewal decisions are available to the public charter school and the public;
- (3) Provide a public report summarizing the evidence basis for each decision; and
- (4) Include one of the following rulings:
 - (A) Renew the charter contract for another term of up to five years based on the school's performance data and demonstrated capacities of the public charter school; or

(B) Decline to renew the charter contract. The authorizer shall clearly state in a resolution the reasons for the nonrenewal. The governing board of the school shall be granted 30 days to respond in writing to the decision and public report before that decision becomes final. The governing board shall be allowed to provide the authorizer with such arguments and supporting information as it sees fit and also shall be granted an opportunity for a recorded public hearing, at the request of the governing board. The governing board may be represented by counsel at the hearing and may call witnesses to testify. 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 of the charter contract. The authorizer shall render its final determination within 10 days of the close of the 30-day period. Any nonrenewal of a charter contract may be appealed to the state board pursuant to §18-5G-13 of this code.

(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.

(e) Within 10 days of taking final action to renew or not renew a charter under this section, the authorizer shall report the action taken and reasons for the decision to the school's governing board and the state board

or affected county board, as applicable. A copy of the report shall be submitted at the same time to the state superintendent.

(f) A charter contract may be not renewed if the authorizer determines that the health and safety of students attending the public charter school is threatened or at such time following the process set forth in this section if the public charter school has:

(A) Failed to substantially comply with the provisions of this article:

(B) Committed a material violation of any of the terms, conditions, standards or procedures required under this chapter or the charter contract;

(C) Failed to substantially meet the performance expectations set forth in the charter contract;

(D) Failed to substantially meet generally accepted standards of fiscal management; or

(E) Violated any provision of law from which the school was not exempted.

(g) If an authorizer revokes or does not renew a charter contract, the authorizer shall close the school: *Provided*, That when the charter is revoked or not renewed for a school that began as a conversion public charter school or program conversion public charter school, the county board of the district in which the school is located may return it to noncharter public school status.

(h) A charter contract may be revoked at any time if the authorizer determines that the health and safety of students attending the public charter school is threatened, an administrator employed by or member of the governing board over the charter school is convicted of fraud or misappropriation of funds, there is a failure to meet generally accepted standards of financial management, there is a material breach of the charter contract, there is a substantial violation of any provision of law from which the public charter school is not exempted, or there are dire and chronic academic deficiencies.

(i) In the event of a public charter school closure for any reason, the authorizer shall oversee and work with the closing school to ensure a smooth and orderly closure and transition for students and parents, as guided by the closure protocol established by the state board including, but not limited to, the following:

(1) Overseeing and working with the closing public charter school to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the requirements of this chapter; and

(2) Distributing the assets of the public charter school first to satisfy outstanding payroll obligations for employees of the public charter school and then to creditors of the public charter school. Any remaining funds shall be paid to the county board. If the assets of the public charter school are insufficient to pay all parties to whom the public charter school owes compensation, the prioritization of distribution of assets may be determined by decree of a court of law.

(j) If a public charter school is subject to closure or transition, following exhaustion of any appeal allowed under §18-5G-13 of this code, an authorizer may remove at will at any time any or all of the members of the board of directors of the public charter school in connection with ensuring a smooth and orderly closure or transition. If the authorizer removes members of the board of directors such that the board of directors can no longer function, the authorizer shall be empowered to take any further necessary and proper acts connected with closure or transition of the public charter school in the name and interest of the public charter school.

§18-5G-11. Public charter school students; enrollment and eligibility; enrollment preferences; random selection lottery; enrollment discrimination prohibited; credit transfers; participation in interscholastic sports.

(a) Public charter schools are open for enrollment to all students of appropriate grade level age and all students shall be enrolled in accordance with the following:

- (1) A public charter school shall provide or publicize to parents and the general public information about the public charter school as an enrollment option for students and the process for application and enrollment, including dates and timelines. If the public charter school includes in its mission a specific focus on students with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school or students involved with the juvenile justice system, it shall include the information in such publication. A public charter school's recruitment effort shall include all segments of the student populations served by noncharter public schools of comparable grade levels;
- (2) A county board shall provide or publicize to parents and the general public information about public charter schools within the county as an enrollment option to the same extent and through the same means that the county provides and publicizes information about noncharter public schools in the county;
- (3) A county board may not require any student residing in the county to enroll in a public charter school, nor may it prohibit any public charter school student from returning to a noncharter public school;
- (4) A public charter school shall designate its primary recruitment area in its charter application and charter contract. The establishment of a primary recruitment area by a public charter school does not negate any overlapping attendance area or areas established by a county board or boards for noncharter public schools. A primary recruitment area may include territory in more than one county;
- (5) The primary recruitment area shall be based on the public charter school's estimated facility and program capacity. The capacity of the public charter school shall be determined annually by the governing board of the public charter school in conjunction with its authorizer and in consideration of the public charter school's ability to facilitate the academic success of its students, to achieve the other objectives specified in the charter contract, and to ensure that the student enrollment does not exceed the capacity of its facility, site and programs. An authorizer may not restrict the number of students a public charter school may enroll;
- (6) Public charter schools may not discriminate against any person on any basis which would be unlawful for noncharter public schools in the school district. A public charter school may not establish admission policies or limit student admissions in any manner in which a public school is not permitted to establish admission policies or limit student admissions: *Provided*, That this subdivision may not be construed to limit the formation of a public charter school that is dedicated to focusing its education program and services on students with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system;
- (7) A public charter school may establish any one or more of the following enrollment preferences for:
 - (A) Children who reside within the school's primary recruitment area;
 - (B) Students enrolled in the public charter school the previous school year and siblings of students already enrolled in the public charter school;
 - (C) Children with special needs, including, but not limited to, at-risk students, English language learners, students with severe disciplinary problems at a noncharter public school, or students involved with the juvenile justice system; and
 - (D) Children of governing board members and full-time employees of the school as long as the number of students enrolled under this preference constitute no more than five percent of the school's total student enrollment;
- (8) A start-up public charter school shall enroll all students who apply and to whom an enrollment preference has been established. If the school has excess capacity after enrolling these students, the school shall enroll all other students who apply: *Provided*, That if the remaining applicants exceed the enrollment capacity of the program, class, grade level or building of the public charter school, the public charter school shall select students for enrollment from among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines support equal and open access for all students and take place in an open meeting;

(9) A conversion public charter school shall guarantee enrollment to all students who were previously enrolled in the noncharter public school and shall adopt and maintain a policy that gives enrollment preference to students who reside within the attendance area as established prior to the conversion of the school. If the school has excess capacity after enrolling these students and all others to whom an enrollment preference has been given, the school shall enroll all other students who apply: *Provided*, That if the remaining applicants exceed the enrollment capacity of the program, class, grade level or building of a public charter school, the public charter school shall select students for enrollment from among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines support equal and open access for all students and take place in an open meeting; and

(10) A program conversion public charter school shall enroll all students who apply for enrollment in the program who, at the time of authorization, are enrolled in the noncharter public school at which the program is operated. A program conversion public charter school shall adopt and maintain a policy that gives enrollment preference to students who are enrolled in the noncharter public school at which the program is operated. If the school has excess capacity after enrolling these students, the school shall enroll all other students who apply: *Provided*, That if the remaining applicants exceed the enrollment capacity of the program, class, grade level or building of a public charter school, the public charter school shall select students for enrollment from among all remaining applicants by a random selection lottery. The school's lottery procedures and timelines support equal and open access for all students and take place in an open meeting.

(b) If a student who was previously enrolled in a public charter school transfers enrollment to a noncharter public school in this state, the school to which the student transfers shall accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools or that consider content competency when appropriate due to differences in curriculum delivery, instructional methods and strategies, or course designations and sequence.

(c) Each public charter school shall be given access to and shall utilize the electronic education information system established by the West Virginia Department of Education, is subject to the Student Data Accessibility, Transparency and Accountability Act pursuant to section §18-2-5h of this code, and shall report information on student and school performance to parents, policy-makers and the general public in the same manner as noncharter public schools utilizing the electronic format established by the West Virginia Department of Education.

(d) Each public charter school shall certify annually to the State Department of Education and to the county board of the school district in which the public charter school is located its student enrollment, average daily attendance and student participation in the national school lunch program, special education, vocational education, gifted education, advanced placement and dual credit courses, and federal programs in the same manner as school districts.

§18-5G-13. Appeal of authorizer's decision to West Virginia Board of Education.

(a) A charter applicant or governing board of an existing public charter school may appeal a decision of an authorizer concerning the denial of a charter application or the nonrenewal of a charter contract to the state board within 30 days of the authorizer's decision: *Provided*, That the authority to appeal an authorizer's decision pursuant to this subsection does not apply to instances where the state board is the authorizer that denies the charter application or fails to renew a charter contract.

(b) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* establishing the process and timeline for appeals filed pursuant to this section.

(c) The state board shall 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:

- (1) In violation of constitutional or statutory provisions or state board policy;
- (2) In excess of the statutory authority or jurisdiction of the authorizer;
- (3) Made upon unlawful procedures;
- (4) Affected by other error of law;
- (5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. §18-5G-14. Virtual public charter schools.

(a) Virtual public charter schools may be authorized pursuant to this article. To the extent they do not conflict with the following provisions, virtual public charter schools are subject to the same requirements as non-virtual public charter schools:

- (1) The Professional Charter School Board may authorize two statewide virtual public charter school which shall not count against the limit in §18-5G-1 of this code. A statewide virtual public charter school shall enroll no more than five percent of the headcount enrollment per year;
- (2) County boards may authorize virtual public charter schools for students in an identified primary recruitment area within the state that is set forth in the charter application. Each county board may authorize no more than one virtual public charter school. Attendance to a virtual public charter school authorized by a county board is limited to students within the primary recruitment area identified in the application. Applications to establish a virtual public charter school shall not include within its primary recruitment area a location that is included in the primary recruitment area of another virtual public schools that has already been authorized. A county virtual public charter school shall enroll no more than 10 percent of a county's headcount enrollment;
- (3) The charter for a virtual public charter school is for a term of five years; and virtual public charter school renewals are also for a term of five years;
- (4) Virtual public charter school funding shall be consistent with other public charter school funding as set forth in §18-5G-5 of this code;
- (5) When enrolling a student who may require special education services, the same obligations apply to a virtual public charter school as applies to all other public charter schools. Enrollment shall not be denied or delayed on the basis of a disability and the charter school shall convene an Individualized Education Program (IEP) meeting after admission to ensure that the school develops an appropriate IEP in accordance with all of the requirements set forth in the Individuals with Disabilities Education Act (IDEA);
- (6) The governing body of a virtual public charter school shall undergo at least one training per year related to appropriate oversight of the virtual public charter school;
- (7) A virtual public charter school student, to the extent the charter contract allows or requires instruction to occur outside of a school building, is not required to be physically present in a school building or classroom;
- (8) Neither the virtual public charter school governing board, virtual public charter school personnel, the virtual public charter school student nor the parents or guardian of the virtual public charter school student, to the extent the program as delineated in the charter contract allows or requires instruction to occur outside of a school building, may incur any penalty or be held accountable for the absence of the student from the school building;
- (9) For a virtual public charter school student, neither the school district nor the student, to the extent the program as delineated in the charter contract is a learn at your own pace program, as defined in the contract,

is required to comply with the instructional term requirement set forth in section forty-five, article five of this chapter or any other law or state board rule requiring a student to be receiving instruction for any set time;

(10) A virtual public charter school is exempt from any provision of law or state board rule that applies to the traditional delivery of instruction such as requirements relating to the physical presence of a student, student monitoring and security, the maximum teacher-pupil ratio set forth in section eighteen-a, article five of this chapter, instructional time requirements and physical education requirements to the extent any of the foregoing conflict with the delivery of the virtual instruction program;

(11) Each virtual charter school in the state shall offer a student orientation, notify the parents and guardians and each student who enrolls in that school of the requirement to participate in the student orientation, and require all students enrolled to complete the student orientation prior to completing any other instructional activity;

(12) Virtual charter schools must provide, in a manner agreed to in the charter contract, data demonstrating student progress toward graduation. Measurement of such progress shall account for specific characteristics of each enrolled student, including but not limited to age and course credit accrued prior to enrollment in educational instruction and course content that are delivered primarily over the internet pursuant to enrollment, and shall be consistent with evidence-based best practices. Virtual charter schools shall also maintain clear requirements relating to student engagement and teacher responsiveness for virtual charter school students and teachers;

(13) (A) For the purposes of this section, “instructional activities” means the following classroom-based or nonclassroom-based activities that a student is expected to complete, participate in, or attend during any given school day:

(i) Online logins to curriculum or programs;

(ii) Offline activities;

(iii) Completed assignments within a particular program, curriculum, or class;

(iv) Testing;

(v) Face-to-face communications or meetings with school staff or service providers;

(vi) Telephone or video conferences with school staff or service providers; or

(vii) Other documented communication with school staff or service providers related to school curriculum or programs.

(B) Each virtual charter school shall develop and adopt a policy regarding failure to participate in instructional activities. The policy shall state that a student shall become subject to certain consequences, including disenrollment from the school, if both the following conditions are satisfied: (i) After the student’s parent, guardian, or custodian receives a written report, the student fails to comply with the policy adopted under the paragraph within a reasonable period of time specified by the school; and (ii) Other intervention strategies contained in the policy adopted under this paragraph fail to cause a student to consistently participate in instructional activities. If a virtual charter school disenrolls a student pursuant to a policy adopted under this paragraph, the student shall be transferred to the district of residence and shall not be eligible to enroll in that virtual charter school or another virtual charter school for one school year from the date of the student’s disenrollment.

(C) If a student is transferred under this section, the virtual charter school shall coordinate directly with the school district of residence on the appropriate educational placement for the student in the district. The appropriate educational placement shall be based on assessments of the student’s abilities; and

(14) The authorizer may establish additional requirements for virtual charter schools enrolling students in grades six and below to ensure they are developmentally appropriate for students. Virtual charter schools enrolling any student in grades six and below shall meet any requirements established and agreed upon by

the authorizer and applicant in the contract, and shall develop a mechanism to ensure that these requirements, if any, are met.

(b) None of the requirements of this section applies to virtual instruction programs created pursuant to §18-5F-1 *et seq.* of this code.

§18-5G-15. West Virginia Professional Charter School Board; members; appointments; meetings.

(a) There is hereby created the West Virginia Professional Charter School Board which shall report directly to and be responsible to the state board, separate from the Department of Education, for carrying out its duties in accordance with this article. The mission of the board is to authorize high-quality public charter schools throughout the state that provide more options for students to attain a thorough and efficient education, particularly through schools designed to expand the opportunities for at-risk students. The Professional Charter School Board and public charter schools authorized in accordance with this article are subject to the general supervision of the state board solely for the purposes of accountability for meeting the standards for student performance required of other public school students under §18-2E-5 of this code.

(b) The Professional Charter School Board shall consist of five voting members, appointed by the Governor, with the advice and consent of the Senate.

(c) The chair of the House Committee on Education and the chair of the Senate Committee on Education shall serve as nonvoting *ex officio* members of the Professional Charter School Board.

(d) Each appointed member shall represent the public interest and must satisfy the following requirements:

(1) Be a citizen of the state;

(2) Possess experience and expertise in public or nonprofit governance, management and finance, public school leadership, assessment, curriculum or instruction, or public education law; and

(3) Have demonstrated an understanding of, and commitment to, charter schooling as a strategy for strengthening public education.

(e) No more than three of the appointed members of the Professional Charter School Board may be of the same political party. The members shall reside in geographically diverse areas of the state, with no more than two members residing in the same county. No person may be appointed who holds any other public office or public employment under the government of this state or any of its political subdivisions, or who is an appointee or employee of any charter school governing board or an immediate family member of an employee under the jurisdiction of the Professional Charter School Board or any charter school governing board. No person may be appointed who is engaged in or employed by a person or company whose primary function involves, the sale of services and activities to public charter schools or charter school governing boards.

(f) The initial appointments made pursuant to this section shall be for staggered one- and two-year terms. Three of the initial members appointed by the Governor shall serve two-year terms; and two of the initial members appointed by the Governor shall serve one-year terms. Thereafter, all appointments shall be for a term of two years. The initial appointments shall be made before August 1, 2021. The Professional Charter School Board shall meet as soon as practical after August 1, 2021, upon the call of the Governor, and shall organize for business by selecting a chairman and adopting bylaws. Subsequent meetings shall be called by the chairman.

(g) An appointed member of the Professional Charter School Board may be removed from office by the Governor for official misconduct, incompetence, neglect of duty, or gross immorality. A member may also be removed if the member's personal incapacity renders the member incapable or unfit to discharge the duties of the office or if the member is absent from a number of meetings of the Professional Charter School Board as determined and specified by the commission in its bylaws. Whenever an appointed member

vacancy on the Professional Charter School Board exists, the Governor shall appoint a qualified person for the remainder of the vacated term.

(h) Except in the case of gross negligence or reckless disregard of the safety and well-being of another person, the Professional Charter School Board and members of that board in their official capacity are immune from civil liability with respect to all activities related to a public charter school approved by the Public Charter School Board. The official actions of the members of the Professional Charter School Board who are serving in a nonvoting ex officio capacity by virtue of their designation as chair of the House Committee on Education or chair of the Senate Committee on Education are Professional Charter School Board member actions only, and may not be construed as official actions or positions of such member's committee or legislative body.

(i) The Professional Charter School Board may appoint an executive director and may employ such additional staff as may be necessary. The executive director shall serve at the will and pleasure of the Professional Charter School Board. The executive director must demonstrate an understanding of and commitment to charter schooling as a strategy for strengthening public education and must possess an understanding of state and federal education law.

(j) The Professional Charter School Board shall meet as needed, but at least bi-annually. From funds appropriated or otherwise made available for such purpose, its members shall be reimbursed for reasonable and necessary expenses actually incurred in the performance of official duties upon submission of an itemized statement in a manner consistent with guidelines of the Travel Management Office of the Department of Administration.

(k) The Professional Charter School Board shall investigate official complaints submitted to it that allege serious impairments in the quality of education in a public charter school or virtual public charter school it has authorized pursuant to this article, or that allege such schools are in violation of the policies or laws applicable to them. The Professional Charter School Board also may at its own discretion conduct or cause to be conducted audits of the education and operation of public charter schools or virtual public charter schools it has authorized pursuant to this article that it determines necessary to achieve its mission of authorizing high-quality public charter schools. Upon a determination that serious impairments or violations exist, the Professional Charter School Board shall promptly notify in writing the public charter school governing board of the perceived serious impairments or violations and provide reasonable opportunity for the school to remedy the serious impairments or violations. The Professional Charter School Board shall take corrective actions or exercise sanctions in response to apparent serious impairments or violations. If warranted, the actions or sanctions may include requiring a charter school to develop and execute a corrective action plan within a specified time frame.