

§ 511 Approval procedure [For application of this section to the City of Wilmington, see 80 Del. Laws, c. 17, § 2]

(a) An approved charter school application, together with such conditions imposed pursuant to subsection (l) of this section, shall be the basis for a charter granted to the charter school by the approving authority pursuant to this chapter and shall be governed by the terms of this chapter. Upon approval of a charter school application, the Department of Education shall present applicants seeking a charter from the state with a charter contract ("Charter Contract") that clearly defines the respective roles, powers, and responsibilities of the school and the approving authority and incorporates the provisions of the performance agreement entered into between the charter school and its approving authority pursuant to CDR 14-200-275. Other approving authorities may choose to present applications they approve with such a Charter Contract. Where a Charter Contract is utilized, both the school and the approving authority shall execute the Charter Contract. Notwithstanding anything in this chapter to the contrary, the initial term of a newly approved charter shall expire at the end of the fifth fiscal year following the fiscal year in which the charter was initially approved, and any subsequent charter renewal term shall expire at the end of each successive fifth fiscal year thereafter unless extended pursuant to § 514A(b) of this title. If an approved charter is modified to delay the initial opening of the school, then the expiration date of the initial term of the charter shall be adjusted accordingly, to ensure that the charter has 4 years of instructional operation prior to its charter expiration.

(b)(1) Charters shall be modified by the same procedure and based on the same criteria as they are approved. When the approving authority is the Department of Education, minor modifications to a charter that are requested by the charter school only may be approved by the Secretary, subject to rules and regulations established by the Department with the approval of the State Board. Modifications associated with the provision of student transportation services as a result of changes to the Annual Appropriations Act to § 508 of this title shall be considered a minor modification.

(2) A request for modification to increase a charter school's total authorized enrollment by more than 15% shall be considered a major modification, regardless of whether the additional students will attend school at the current location or at a separate location.

(3) In addition to meeting the approval criteria established in § 512 of this title, an authorizer considering an application for a new charter school or for a modification as described in paragraph (b)(2) of this section in which the increased enrollment will occur less than 18 months from the date of application (an "expansion"), shall also consider the potential positive and negative impact of the proposed new school or expansion on the schools and the community from which the charter school's new students will likely be drawn. In reviewing the impact, the authorizer shall consider all information furnished to it during the application process and may exercise its reasonable discretion in determining whether the proposed new school or expansion is contrary to the best interests of the community to be served, including both those students likely to attend the charter school and those students likely to attend traditional public schools in the community.

(4) Information regarding impact, as defined by regulations established by the Department with the approval of the State Board no later than October 31, 2014, shall be considered in conjunction with the factors in § 512 of this title but shall not alone provide the basis for disapproval of an application for a new charter application or an expansion. The information regarding impact may, however, be among the bases for disapproval of an application or expansion if at least 1 criteria in § 512 of this title is also deemed not satisfied by the authorizer. The information regarding impact may, by itself or in combination with other factors, form the basis for conditions being placed on the approval. Those conditions may include but shall not be limited to restrictions or prohibitions on geographic location, programmatic offerings, academic focus or emphasis, and grade levels served. In no event shall the placement of conditions on approval, based solely or in part on considerations of impact, be considered disapproval of an application.

(c) Charter school applications shall be submitted to a local school board or the Department for approval as an approving authority. Whenever a charter school seeks a charter from the Department as approving authority, such approval shall require the assent of both the Secretary and the State Board, as shall any action pursuant to §§ 515 and 516 of this title. The approving authority shall be responsible for approval of the charter school pursuant to this section and for continuing oversight of each charter school it approves. In addition, for a charter school applicant seeking to locate in the City of Wilmington, prior to the approving authority authorizing the school to open, the Mayor and the City Council of the City of Wilmington may review and provide comment regarding the likely impact of the proposed

charter school on students in the City of Wilmington as outlined in this chapter and further defined in regulations.

(d) The Department shall make an initial review of all new charter school and charter school modification applications it receives in order to assess the completeness and quality of each such application based on the application submission criteria established in this title. Upon a finding that an application does not warrant a full review, the Department shall notify the applicant in writing of the deficiency or deficiencies and the application shall receive no further consideration. Each district that is asked by an applicant to serve as an approving authority may, in its discretion, undertake such an initial sufficiency review and make such an initial sufficiency determination.

(e) Applicants seeking a charter from the Department that have submitted an application deemed by the Department sufficient to receive a full review shall be offered an opportunity for an interview in support of the application. Such interviews will allow the Department to assess applicant capacity, allow it to clarify information provided in the application, and gather additional information. The information gained in the interview process may be among the factors considered by the approving authority in approving or denying an application.

(f) Potential charter school applicants may engage in discussions with a potential approving authority before submitting an application for approval to establish a charter school.

(g)(1) Except as noted in paragraph (g)(2) of this section, new charter school applications shall be submitted to an approving authority between November 1 and December 31 for schools to be established and prepared to admit students on or after the second August 1 thereafter.

(2) Applications by a highly successful charter school operator as described in subsection (p) of this section shall be submitted to an approving authority between November 1 and December 31 for schools to be established and prepared to admit students on or after the August 1 thereafter. The application submission dates in this subsection may be amended by agreement of the authorizer and the applicant if necessary to allow the applicant to serve students who would otherwise be displaced due to the closure of an existing charter school.

(3) Applications to renew a charter shall be submitted to the approving authority on or before September 30 of the year immediately preceding the calendar year in which the school's current charter term will expire.

(4) Charter school applications which propose the conversion of an existing public school, or a part thereof to charter school status must be submitted to an approving authority on or before October 30 if the application proposes that the newly converted charter school is to be established and prepared to admit students for the next ensuing school year.

(5) If the date for submitting an application or commencing the school's instructional program shall fall on a weekend or state holiday, the time for such shall be continued to the first working day thereafter.

(h) Any local school board may limit the number of new charter school applications it will consider in any year or the number of charters it will grant, but within 20 working days after December 31 must hold a public meeting to decide whether or not to consider it. A local school board shall not be required to accept any new charter school applications for a charter school unless, by September 1 of each year the school board shall affirmatively vote to accept such applications.

(i) If an approving authority decides to consider a charter application, the approving authority must rule on whether to approve the application at a public meeting within 90 working days after December 31.

(j) Within 5 days of deciding to consider an application, the approving authority shall form an accountability committee to review the charter school application. The accountability committee's report to the local school board shall address the approval criteria set forth in § 512 of this title. The committee shall meet with the applicant in the course of its investigation and provide the applicant the opportunity to review and comment on the committee's report 15 days before it is issued to the approving authority. The committee's final report shall be provided to the applicant and be made available to the public.

(k) After giving 15 days' public notice, the approving authority shall hold public hearings to assist in its decision whether to approve a charter application. At least 1 such hearing shall be held prior to the issuance of the accountability committee's final report on each new

application. The approving authority shall, in advance of the 15-day public notice period, post any and all charter applications under consideration on a public website maintained by the approving authority, and during this public notice period shall accept electronically submitted and written comments from the public.

(l) Subject to any limitations imposed by the approving authority pursuant to subsection (h) of this section, if the application is found by the approving authority to meet the criteria set forth in § 512 of this title and complying with the approval process in this section, it may approve the application subject to such conditions as the approving authority, in its sole discretion, may deem appropriate to ensure the applicant's continuing compliance with the approval criteria. Whenever approval of a charter school requires the assent of the State Board, as set forth in subsection (c) of this section, the State Board may, in addition to approving or disapproving the decision of the Secretary, place or modify conditions on the approval to address considerations of impact, consistent with the requirements of paragraph (b)(4) of this section.

(m) If an application is made to the Department or a local board as an approving authority and the charter application is not approved, such decision shall be final and not subject to judicial review.

(n) All applications for a charter shall contain an affirmative representation by the applicant that no later than June 15 immediately preceding the authorized opening date of the school, the applicant shall secure a certificate of occupancy, either temporary or final, for the premises in which the school is to be located, provided that any temporary certificate of occupancy must permit occupancy at the premises by school staff and students for school purposes. If the charter is approved and the charter holder shall subsequently fail to obtain the necessary certificate of occupancy as required by this section, the opening of the school shall be delayed by 1 year from the date previously authorized by the approving authority and the charter shall be placed on probation subject to the terms and conditions imposed by the Department of Education with the consent of the State Board of Education. No waivers are available for this requirement.

(o) A local school board that approves an application for a charter school may do so only on the condition that the charter school is located in and provides all educational and related services, with the exception of transportation services and other K-12 noninstructional

services and activities, within the boundaries of the approving local school board's district lines. Once approved, the charter school may not subsequently change its location from the school district specified in its originally approved charter.

(p) "Highly successful charter school operator" means an entity that currently operates or whose principals currently operate 1 or more highly successful charter schools showing sustained high levels of student growth and achievement and sustained fiscal stewardship, as further defined by Department regulation. Notwithstanding the provisions of this chapter, for purposes of this definition the phrase "charter school" shall include public schools operated under a charter regardless of whether the schools are located or organized in Delaware. A highly successful charter school operator may be authorized to operate a charter school in the timeframe provided by paragraph (g)(2) of this section including when an application is submitted for the purpose of operating a charter school at the site of and serving students currently attending a charter school whose charter has been revoked, has not been renewed, or whose charter is on formal review and whose board has agreed to abandon their charter.

(q) The charter school application shall include a disclosure of any ownership or financial interest in the charter school, including but not limited to the building and real property to be used in the operation of the charter school, by the charter school founders and the board of directors of the proposed charter school. If the building and real property to be used in operation of the charter school are not known at the time of application, disclosures pertaining to those interests shall be made once the building and real property to be used in operation of the charter school become known. In addition, the board of directors of the charter school shall have a continuing duty to disclose such interests to the approving authority pursuant to this chapter during the terms of any charter. The charter school and the Department shall promptly disclose the information required by this subsection to any member of the public upon request.

(r) Charter school board members and founders shall be required to complete the criminal background checks in the same manner as persons seeking employment with a public school pursuant to § 8571(a) of Title 11 [repealed]. In addition, the authorizer shall complete a check of the Child Protection Registry established by § 921 of Title 16 for charter school founders and board members. The results of said background and Child Protection Registry

checks shall be provided to the authorizer for review as part of the application process and on an ongoing basis if new board members are seated or current board members are convicted of a crime or placed on the Child Protection Registry. Any person convicted of a felony offense or of any crime against a child in this State or any other jurisdiction shall not be permitted to serve as a founder or member of a charter school board of directors. No individual shall be permitted to serve as a charter school founder or board member if the individual would not be permitted to be employed in a public school pursuant to § 8563 of Title 11 [sic] regarding the Child Protection Registry. Other crimes may be considered disqualifying, in the discretion of the authorizer. The State Bureau of Identification may release any subsequent criminal history to the authorizer. Individuals currently serving as board members of a charter school must complete a criminal background check and the Department shall complete a Child Protection Registry check for such members on or before February 1, 2012.

(s) The founder or board member shall be provided with a copy of all information forwarded to the authorizer pursuant to subsection (r) of this section. Information obtained under subsection (r) of this section is confidential and may only be disclosed to the chief officer and 1 additional person in each authorizing body.

(t) Costs associated with obtaining criminal history information and child protection registry checks shall be paid by the applicant.

70 Del. Laws, c. 179, § 2; 70 Del. Laws, c. 425, § 346; 71 Del. Laws, c. 132, §§ 357-359, 371, 372; 71 Del. Laws, c. 180, § 28; 72 Del. Laws, c. 118, § 3; 72 Del. Laws, c. 473, § 1; 73 Del. Laws, c. 164, §§ 11-14; 73 Del. Laws, c. 313, §§ 1, 8; 74 Del. Laws, c. 360, §§ 2, 3, 6; 75 Del. Laws, c. 112, § 1; 76 Del. Laws, c. 79, § 140; 76 Del. Laws, c. 280, § 395; 78 Del. Laws, c. 187, §§ 4-7; 79 Del. Laws, c. 51, § 5; 79 Del. Laws, c. 268, § 1; 79 Del. Laws, c. 321, § 1; 80 Del. Laws, c. 17, § 1; 80 Del. Laws, c. 154, § 2;

§ 512 Approval criteria.

Subject to the process prescribed in § 511 of this title, charter school applications shall be in the form established by the approving authority and shall be approved if, after the exercise of

due diligence and good faith, the approving authority finds that the proposed charter demonstrates that:

(1) The individuals and entities submitting the application are experienced and qualified to start and operate a charter school, and to implement the school's proposed educational program. Certified teachers, parents and members of the community in which the school is to be located must be involved in the development of the proposed charter school. At the time at which the school commences its instructional program and at all times thereafter, the board of directors must include a teacher from at least 1 of the charter schools operated by the board and at least 1 parent of a student enrolled in a charter school operated by the board;

(2) The chosen form of organization, identified in the articles of incorporation and by-laws, or the membership agreement, conforms with the Delaware General Corporation Law;

(3) The mission statement, goals and educational objectives are consistent with the description of legislative intent set forth in § 501 of this title and the restrictions on charter school operations set forth in § 506 in this title;

(4) The school has set goals for student performance and will utilize satisfactory indicators to determine whether its students meet or exceed such goals and the academic standards set by the State. The indicators shall include the assessments required for students in other public schools, although the charter school may adopt additional performance standards or assessment requirements, and shall include timelines for the achievement of student performance goals and the assessment of such performance;

(5) The school proposes a satisfactory plan for evaluating student performance and procedures for taking corrective action in the event that student performance at the charter school falls below such standards which are reasonably likely to succeed;

(6) The school's educational program, including curriculum and instructional strategies, has the potential to improve student performance; and must be aligned to meet the Delaware Content Standards and state program requirements, and in the case of a charter high school, state graduation requirements. High school programs must provide driver education. The educational program at all charter schools must include the

provision by the school of extra instructional time for at-risk students, summer school and other services required to be provided by school districts pursuant to the provisions of § 153 of this title. A previously approved charter school may continue to operate in compliance with the terms of its current approval, but its charter shall not be renewed unless the school shall submit an application for renewal in full compliance with the requirements of this subsection;

(7) The school's educational program sets forth appropriate strategies to be employed to accommodate the needs of at-risk students and those needing special education services;

(8) The plan for the school is economically viable, based on a review of the school's proposed budget of projected revenues and expenditures for the first 3 years, the plan for starting the school, and the major contracts planned for equipment and services, leases, improvements, purchases of real property and insurance, and enrollment of no less than 200 students at full enrollment and no less than 100 students during the first 2 years of operation or for a school with an enrollment preference to primarily serve special needs students;

(9) The school's financial and administrative operations meet or exceed the same standards, procedures and requirements as a school district. If a charter school proposes to operate outside the State's pension and/or benefits systems, a specific memorandum of understanding shall be developed and executed by the charter school, the approving authority, the Director of the Office of Management and Budget, the Controller General and the Secretary of Finance to assure that the State's fiduciary duties and interests in the proper use of appropriated funds and as a benefits and pension trustee are fulfilled and protected, the State's financial reporting requirements are satisfied, and the interests of charter school employees are protected. All charter schools shall operate within the State's official financial management system and be subject to all of the same policies and procedures which govern other agencies operating within such system;

(10) The assessment of the school's potential legal liability, and the types and limits of insurance coverage the school plans to obtain, are adequate;

(11) The procedures the school plans to follow to discipline students and ensure its students' adherence to school attendance requirements comply with state and federal law;

(12) The procedures the school plans to follow to assure the health and safety of students, employees and guests of the school while they are on school property are adequate and that the charter school will comply with applicable provisions of local, state and federal law, including the provisions of Chapter 85 of Title 11;

(13) The school shall have a satisfactory plan for timely transferring student data and records to the Department of Education;

(14) The school's board of directors shall annually certify to the Department, on a form to be provided by the Department, that prior to the payment of any fees or other sums to any management company employed by the board, the board will insure that sufficient revenues of the school are devoted to adequately support the school's proposed educational program. Such form of certification may require documentation of all actual or proposed expenditures by the school. Failure to provide sufficient funds to adequately support the school's proposed education program shall be grounds for revocation of the school's charter;

(15) The school shall have a satisfactory plan to ensure the effectiveness of its board of trustees, including governance trainings conducted for any new board members and at a minimum of once every 3 years; and

(16) The school shall have a satisfactory plan for procedures it will follow in the case of the closure or dissolution of the school, including a plan to set aside sufficient funds to cover the salaries owed to those employees who are paid over a 12-month period. For a new applicant granted under this chapter, the application shall include a reasonable plan to establish sufficient available balances pursuant to § 516(1) of this title.

70 Del. Laws, c. 179, § 2; 71 Del. Laws, c. 180, § 29; 71 Del. Laws, c. 354, § 386; 73 Del. Laws, c. 164, §§ 15-21; 73 Del. Laws, c. 313, §§ 9, 10; 75 Del. Laws, c. 88, § 21(7); 78 Del. Laws, c. 187, § 8; 79 Del. Laws, c. 51, § 6; 79 Del. Laws, c. 321, § 1;