DEPARTMENT OF EDUCATION

OFFICE OF THE SECRETARY

Statutory Authority: 14 Delaware Code, Section 122(d) (14 **Del.C.** §122(d))
14 **DE Admin. Code** 275

FINAL

REGULATORY IMPLEMENTING ORDER

275 Charter Schools

I. SUMMARY OF THE EVIDENCE AND INFORMATION SUBMITTED

The Secretary of Education seeks the consent of the State Board of Education to amend 14 **DE Admin. Code** 275 Charter Schools. The amendments reflect revisions in the process for Performance Reviews, renewal and new application process, annual reports as well as other amendments to align with specific Delaware Code revised during the 147th General Assembly.

Notice of the proposed regulation was published in the *News Journal* and the *Delaware State News* on September 3, 2013, in the form hereto attached as Exhibit "A". Comments were received from Governor's Advisory Council for Exceptional Citizens (GACEC) and the State Council for Persons with Disabilities (SCPD). Amendments were made in response to the comments provided by the GACEC and SCPD, and by comments made by the State Board of Education during the discussion in September's board meeting. In addition, clarifications were made after subsequent review by the Department. The following is a summary of the comments and corresponding amendments:

1. Comments from the GACEC and SCPD suggested a revision to 3.6 since this section no longer aligns with current Code. This change was made.
2. Comments from the GACEC and SCPD found a grammar issue in 7.0. This change was made.
3. Clarifications were made to 4.2.1.4 as a request from the State Board of Education.
4. Clarifications were made in 9.9.7 to align with 9.9.5.

Two additional comments were received from the GACEC and SCPD. The first was related to the definition of "audit" and then its subsequent use in section 7.0. The Department considered the comment, but is not making the change during this update. Another comment was related to the definition of the "Annual Report." After review, the Department believes the definition is adequate as it contemplates meeting the statutory definition now and if subsequent changes to statute are made.

II. FINDINGS OF FACTS

The Secretary finds that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools in order to reflect revisions in the process for Performance Reviews, renewal and new application process, annual reports as well as other amendments to align with specific Delaware Code revised during the 147th General Assembly.

III. DECISION TO AMEND THE REGULATION

For the foregoing reasons, the Secretary concludes that it is appropriate to amend 14 **DE Admin. Code** 275 Charter Schools. Therefore, pursuant to 14 **Del.C.** §122, 14 **DE Admin. Code** 275 Charter Schools attached hereto as Exhibit "B" is hereby amended. Pursuant to the provision of 14 **Del.C.** §122(e), 14 **DE Admin. Code** 275 Charter Schools hereby amended shall be in effect for a period of five years from the effective date of this order as set forth in Section V. below.

IV. TEXT AND CITATION

The text of 14 **DE Admin. Code** 275 Charter Schools amended hereby shall be in the form attached hereto as Exhibit "B", and said regulation shall be cited as 14 **DE Admin. Code** 275 Charter Schools in the *Administrative Code of Regulations* for the Department of Education.

V. EFFECTIVE DATE OF ORDER

The actions hereinabove referred to were taken by the Secretary pursuant to 14 **Del.C.** §122 on October 17, 2013. The effective date of this Order shall be ten (10) days from the date this Order is published in the *Delaware Register of Regulations*.

IT IS SO ORDERED the 17th day of October 2013.

Department of Education
Mark T. Murphy., Secretary of Education

Approved this 17th day of October 2013

State Board of Education

Teri Quinn Gray, Ph.D., President
Jorge L. Melendez, Vice President
G. Patrick Heffernan
Barbara B. Rutt
Gregory B. Coverdale, Jr.
Terry M. Whittaker, Ed.D.
Randall L. Hughes II

275 Charter Schools

1.0 Purpose and Effect

1.1 The purpose of these regulations is to provide rules to govern the implementation of 14 **Del.C.** Ch. 5 (hereafter, the "Charter School Law") develop and maintain chartering policies and practices consistent with nationally recognized principles and standards for quality charter authorizing in all major areas of authorizing, including:

1.1.1 Agency commitment and capacity;

1.1.2 Application process and decision-making;

1.1.3 Performance-based accountability;

1.1.4 Ongoing oversight and evaluation; and

1.1.5 Renewal and revocation decision-making.

1.2 These regulations establish the requirements for applying for a charter to operate a public school, renewal of the charter, modification of the charter, oversight of the charter's performance, and for opening, ~~and~~ operating, and closing the school, when a charter is granted by the Department of Education with the approval of the State Board of Education.

1.3 These regulations affect students who attend Charter Schools, the parents and other caregivers of these students, the directors, staff administrators and boards of the Charter Schools, and the community, students, staff, administrators and boards of the reorganized school districts of the State.

1.4 These regulations shall bind all Charter Schools and are incorporated into all charters approved by, or transferred to the Department with the consent of the State Board.

6 DE Reg. 274 (9/1/02)
12 DE Reg. 211 (08/01/08)
16 DE Reg. 197 (08/01/12)

2.0 Definitions

2.1 The following definitions apply for purposes of interpreting the Charter School Law and these regulations:

"Accountability Committee": Any Charter School Accountability Committee established by the Department to review and report to the Department as provided in Sections 511 and 515 of the Charter School Law.

"Annual Report": A report submitted by the charter school to the approving authority, DDOE, and State Board of Education and posted publicly on the school's website. The report shall contain the information and follow the prescribed format required by statute.

"Applicant": A legal entity organized under the Delaware General Corporation Law that has applied to the Department for, but not yet received, a charter to operate a charter school, or the Renewal or modification of such a charter, as the context indicates.

"Audit": An informal financial, programmatic, or compliance audit of a charter school.

"Charter Contract": An agreement between the Authorizer and the Charter School. A school enters into a Charter Contract with the authorizer that clearly defines the respective roles, powers, and responsibilities for the school and approving authority and incorporates the provisions of the Performance Agreement.

"Charter Holder": The legal entity organized under the Delaware General Corporation Law to which a charter is issued by the Department with the approval of the State Board.

"Charter School": A non home based full time public school that is operated in an approved physical plant under a charter granted by, or transferred to the Department with the approval of the State Board for the personal physical attendance of all students.

"**Delaware Comprehensive Assessment System (DCAS)**" means the statewide assessment used to measure student achievement of the Delaware academic content standards, including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities.

"Department": The Delaware Department of Education.

"Department's Annual Charter Report": A report prepared by the Department of Education for the Governor, General Assembly, and State Board of Education in accordance with statute that analyzes the performance, as measured by the Performance Framework, of all charter schools in the state. It also analyzes expenses as compared with traditional public schools, recommends changes in policy and innovative practices which can be replicated in other public schools. The report shall be presented on or before February 1st of each year and is posted on the Department's public website.

"Financial Audit": The audit required to be conducted pursuant to 14 **Del.C.** 513(a).

"First Instructional Day": The first day a Charter School is open with students in attendance.

"Formal Review": The lawful investigation of a Charter School to determine whether the school is violating the terms of its charter. Formal reviews may include, but are not limited to, on site visits, inspection of educational records and other documents, and interviews of parents, Charter School employees and others with knowledge of the school's operations and educational programs.

"Founding Board of Directors": The Board of Directors of an Applicant at the time the original application for a charter is filed with the Department.

"**Highly successful charter school operator":** A charter school with sustained high levels of student achievement and sustained financial stewardship. A highly successful charter school is one which has been in operation for at least three years and which, during the three years prior to filing a charter application in Delaware, has a combined student performance which exceeds the statewide average student performance in the state in which the highly successful charter school is located based upon that state's performance score or measure on its statewide assessment for purposes of the Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof. In addition, during the same three year period the school must have had no adverse financial findings and successfully completed any required financial audits in the state in which it is located, and be able to demonstrate that it will be economically viable.

"Parent": The natural or adoptive parent, or the legal guardian, of a student enrolled in the charter school. "Parent" also includes individuals authorized to act as Relative Caregivers under the provisions of 14 **Del.C.** §202(e)(2).

"Performance Agreement": The document which describes the academic performance expectations, identifies economic viability requirements, defines organizational responsibilities, and outlines accountability of the Charter School. An approved ~~charter school application serves as the basis for the p~~Performance ~~a~~Agreement, ~~which~~ is for a specified term and uses a uniform format as prescribed by the Department with the assent of the State Board of Education. The Performance Agreement is enforceable as part of the school's ~~c~~Charter Contract.

"Performance Framework": A rubric based tool established by the Department with the assent of the State Board of Education, as amended from time to time, which contains the details, ~~utilizing~~ includes multiple measures, and is used by the Department to assess compliance with the Performance Agreement in the areas of academic performance, economic viability, organizational responsibilities and accountability of the Charter School. The completed frameworks will be provided to the Charter School Accountability Committee, Secretary and State Board of Education to inform their decision making ~~for Renewals, modifications and formal reviews~~.

"Performance Review": The process by which the Charter School's compliance with its Performance Agreement is evaluated annually to inform ~~R~~renewal, major modification and formal review decisions. Compliance with the charter and the Performance Agreement, as assessed through the Performance Framework, is the basis for the Performance Review. ~~Review~~ Analysis and results will be reported in the Department's ~~a~~Annual Charter ~~r~~Report.

"Renewal": The approval of an application to continue operating an existing Charter School ~~for an additional five year period, available after the school has been in operation for four years~~. Renewal ~~decisions are based on the criteria set forth in 14 **Del.C.** §512, and informed by a Charter School's compliance with its Performance Agreement as evaluated by the Performance Framework~~ occurs in accordance with 14 **Del.C.** §514A.

"Secretary": The Secretary of the Delaware Department of Education.

"**State Assessment System**" means the statewide assessment used to measure student achievement of the Delaware academic content standards including an alternate assessment based on alternate achievement standards for students with the most significant cognitive disabilities, and other assessments such as, but not limited to, the National Assessment for Educational Progress (NAEP), a college readiness assessment, an assessment for English Language Learners (ELL), a norm-referenced assessment that may be administered or required as determined by the Department of Education.

"State Board": The Delaware State Board of Education.

6 DE Reg. 274 (9/1/02)
7 DE Reg. 928 (1/1/04)
12 DE Reg. 211 (08/01/08)
16 DE Reg. 197 (08/01/12)

3.0 Application Process

3.1 Application Deadlines: Applications to establish new Charter Schools must be submitted to the Department between November 1st and December 31st for schools preparing to admit students ~~the first day of school of the second school year thereafter, unless otherwise agreed upon by the authorizer and the applicant to allow the applicant to serve students who would otherwise be displaced because of the closure of an existing charter school~~ in accordance with 14 **Del.C.** §511 (g) (1),(2).

3.2 All applications, whether for an original charter, a modification of a charter or the renewal of a charter, shall be made on forms approved by the Department.

3.3 An original and ~~ten (10)~~ five (5) copies of a completed application must be received by the Department by the application deadline in order for the application to be considered; an electronic copy shall also be submitted at the same time either as an attachment to an e-mail message or by electronic portable storage. The electronic copy shall be identical in all respects to the original application. Incomplete applications, or applications received after the deadline, will not be considered.

3.4 All written communications from the Department or the Accountability Committee to an Applicant shall be sent to the contact person identified in the application, at the address provided in the application. An Applicant is responsible for notifying the Department in writing of any change in the contact person or contact address after its application is submitted.

3.5 An application is not complete unless all of the following requirements are met:

3.5.1 All ~~questions on~~ applicable sections in the application form are ~~answered~~ appropriately completed.

3.5.2 All documentation required by the application form or subsequently requested by the Department or the Accountability Committee is received by the deadline provided by the Charter School Office.

[~~3.6 No application for a new Charter School will be accepted by the Department in any year in which the Department with the approval of the State Board has decided not to accept applications; except for an application submitted by a Highly successful charter operator for the purpose of operating a charter school at a 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 of Directors has agreed to abandon their charter.~~]

3.**[~~7~~6]** Applications will not remain pending from year to year. Applications that do not result in the issuance of a charter must be resubmitted in full in subsequent years to be considered in subsequent years.

3.[~~8~~7] The State Board of Education may designate one or more of its members to sit as nonvoting members of the Accountability Committee.

3.**[~~9~~8]** In deciding whether to approve or disapprove any application for an original charter, a major modification of a charter, the renewal of a charter, or the formal review of a charter, the Secretary and State Board shall base the decision on the record. The record shall consist of the application and any documents filed therewith in support of the application, the Charter Contract, the Performance ~~Framework~~ Review (not applicable for new applications), ~~the preliminary and final~~ reports of the Accountability Committee, any response or other evidence, oral or otherwise, provided by the Applicant to the Accountability Committee prior to the issuance of its final report, any comments received at any public hearing conducted pursuant to the provisions of the Charter School Law, including comments made at any such hearing by the applicant in response to the Accountability Committee's final report and any written or electronic comments received at or before any such public hearing. In the case of the renewal, major modification, or formal review of a charter, the record shall also include performance documentation generated during the term of the charter or related to the subject of the formal review, including but not limited to, compliance with the school's Charter Contract and Performance Agreement, renewal report, audits and performance reviews, student testing data, and parent complaint documentation. No other evidence shall be considered. Written and electronic comments must be received by

the Education Associate for Charter Schools no later than the beginning of the public hearing to be included in the record.

3.**[~~10~~9]** Applicants and Charter Holders shall make the financial disclosures relating to ownership and financial interest as required by 14 **Del.C.** §511(~~e~~g). A charter school founder or member of a charter school board has a "financial interest" in the charter school if that person receives compensation in excess of $5,000.00 from the charter school in any calendar year. Compensation means money, thing of value, or any other economic benefit of any kind or nature whatsoever conferred on or received by a charter school founder or member of a charter school board. "Ownership" shall have the meaning commonly ascribed to it as appropriate in context.

6 DE Reg. 274 (9/1/02)
12 DE Reg. 211 (08/01/08)
16 DE Reg. 197 (08/01/12)

4.0 Standards and Criteria for Granting Charter

4.1 Applicant Qualifications

4.1.1 The Applicant must demonstrate that its board of directors has and will maintain collective experience, or contractual access to such experience, in the following areas:

4.1.1.1 Research based curriculum and instructional strategies, aligned to Delaware content standards, to particularly include the curriculum and instructional strategies of the proposed educational program.

4.1.1.2 Business management, including but not limited to accounting and school finance.

4.1.1.3 Personnel management.

4.1.1.4 Diversity issues, including but not limited to outreach, student recruitment, and instruction.

4.1.1.5 At risk populations and children with disabilities, including but not limited to students eligible for special education and related services.

4.1.1.6 School operations, including but not limited to facilities management.

4.1.2 The application must identify the certified teachers, the parents and the community members who have been involved in the preparation of the application and the development of the proposed Charter School.

4.1.3 The Applicant's bylaws must be submitted with the application and must demonstrate that:

4.1.3.1 At the time at which the school commences its instructional program and all times thereafter, the board of directors of the charter holder must include a Delaware certified teacher employed as a teacher at a charter school operated by the Applicant in Delaware and also include at least one parent of a student enrolled in a charter school operated in Delaware by the charter holder; further provided a single individual shall not represent both the certified teacher and parent role on the board;

4.1.3.2 The Applicant's business is restricted to the opening and operation of: Charter Schools, before school programs, after school programs and educationally related programs offered outside the traditional school year.

4.1.3.3 The board of directors will meet regularly and comply with the Freedom of Information Act, 29 **Del.C.** Ch. 100 in conducting the Charter School's business.

4.2 Performance Requirements

4.2.1 Minimum Requirements

4.2.1.1 The Applicant must agree and certify that it will comply with the requirements of the State Public Education Assessment and Accountability System pursuant to 14 **Del.C.** §§151, 152, 153, 154, and 157 and the Department's implementing rules and regulations including without limitation those relating to the State Assessment System.

4.2.1.2 The Applicant must demonstrate that it has established and will apply measurable student performance goals on the applicable assessments administered pursuant to the State Assessment System, and a timetable for accomplishment of those goals, as established in the Performance Agreement.

4.2.1.3 If the Applicant plans to adopt or use performance standards or assessments in addition to the standards set by the Department or the assessments administered pursuant to the State Assessment System, the application and performance agreement must specifically identify those additional standards or assessments and include a planned baseline acceptable level of performance, measurable goals for improving performance and a timetable for accomplishing improvement goals for each additional indicator or assessment. The use of additional performance standards or assessments shall not replace, diminish or otherwise supplant the Charter School's

obligation to meet the performance standards set by the Department or to use the assessments administered pursuant to the State Assessment System and must be incorporated into the Performance Agreement.

4.2.1.4 Following charter approval, but not later than a date established by the Department, the Applicant must enter into a Charter Contract **[with the approving authority]** and **[into]** a Performance Agreement approved by the Department with the assent of the State Board, which shall address the organizational, academic and financial performance expectations of the Applicant during the term of the charter. The Department, with the assent of the Board, shall establish and publish a Performance Framework which shall be used to assess the school's compliance with its Performance Agreement. Nothing contained herein shall be interpreted to relieve an applicant of its obligation to comply with any approval criteria or requirement set forth in 14 **Del.C.** Ch. 5. The Department shall conduct an annual ~~audits~~ Performance Review using the Performance Framework to ensure ongoing compliance with the school's Performance Agreement.

4.2.1.5 For an Applicant proposing to serve students at risk of academic failure, the school's Performance Agreement shall specify what, if any, portion of the Performance Framework shall or shall not apply to the school, or whether the Performance Framework shall be modified to more appropriately measure the performance of the school.

4.3 Educational Program

4.3.1 The application must demonstrate that the school's proposed program, curriculum and instructional strategies are aligned to State content standards, meet all grade appropriate State program requirements, and in the case of any proposed Charter High School, includes driver education. The educational program shall include the provision 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 14 **Del.C.** §153. Nothing in this subsection shall prevent an Applicant from proposing high school graduation requirements in addition to the state graduation requirements.

4.3.2 The application must demonstrate that the Charter School's educational program has the potential to improve student performance. The program's potential may be evidenced by:

4.3.2.1 Academically independent, peer reviewed studies of the program conducted by persons or entities without a financial interest in the educational program or in the proposed Charter School;

4.3.2.2 Prior successful implementation of the program; and

4.3.2.3 The Charter School's adherence to professionally accepted models of student development.

4.3.3 The application must demonstrate that the Charter School's educational program and procedures will comply with applicable state and federal laws regarding children with disabilities, unlawful discrimination and at risk populations, including but not limited to the following showings.

4.3.3.1 The school's plan for providing a free appropriate public education to students with disabilities in accordance with the Individuals with Disabilities Education Act, with 14 **Del.C.** Ch. 31 and with 14 **DE Admin. Code** 922 through 929, specifically including a plan for having a continuum of educational placements available for children with disabilities.

4.3.3.2 The school's plan for complying with Section 504 of the Rehabilitation Act of 1973 and with the Americans with Disabilities Act of 1990.

4.3.3.3 The school's plan for complying with Titles VI and VII of the Civil Rights Act of 1964.

4.3.3.4 The school's plan for complying with Title IX of the Education Amendments of 1972.

4.4 Economic Viability.

4.4.1 The application must demonstrate that the school is economically viable and shall include satisfactory documentation of the sources and amounts of all proposed revenues and expenditures during the school's first three years of school operation after opening for instructional purposes. There must be a budgetary reserve for contingencies of not less than 2.0% of the total annual amount of proposed revenues. In addition, the application shall document the sources and amounts of all proposed revenues and expenditures during the start up period prior to the opening of the school.

4.4.2 The Department may require that the Applicant submit data demonstrating sufficient demand for Charter School enrollment if another Charter School is in the same geographic area as the Applicant's proposed school. Such data may include, but is not limited to, enrollment waiting lists maintained by other Charter Schools in the same geographic area and demonstrated parent interest in the Applicant's proposed school.

4.4.3 The application shall identify with specificity the proposed source(s) of any loan(s) to the Applicant including, without limitation, loans necessary to implement the provisions of any major contract as set forth below, and the date by which firm commitments for such loan(s) will be obtained.

4.4.4 The application shall contain a timetable with specific dates by which the school will have in place the major contracts necessary for the school to open on schedule. “Major contracts” shall include, without limitation, the school’s contracts for equipment, services (including bus and food services, and related services for special education), leases of real and personal property, the purchase of real property, the construction or renovation of improvements to real property, and insurance. Contracts for bus and food services must be in place no later than August 1st of the year in which the school proposes to open and August 1st of each year thereafter. Contracts for the lease or purchase of real property, or the construction or renovation of improvements to real property must be in place sufficiently far in advance so that the Applicant might obtain any necessary certificate of occupancy for the school premises no later than June 15th of the year in which the school proposes to open.

4.5 Attendance, Discipline, Student Rights and Safety

4.5.1 The application must include a draft “Student Rights and Responsibilities Manual” that meets applicable constitutional standards regarding student rights and conduct, including but not limited to discipline, speech and assembly, procedural due process and applicable Department regulations regarding discipline.

4.5.1.1 The “Student Rights and Responsibilities Manual” must comply with the Gun Free Schools Act of 1994 (20 U.S.C.A. §7151) and Department Regulation 605.

4.5.1.2 The application must include a plan to distribute the “Student Rights and Responsibilities Manual” to each Charter School student and parent/guardian at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the “Student Rights and Responsibilities Manual” at the time of enrollment.

4.5.2 The application must include the process and procedures the Charter School will follow to comply with applicable laws, including the following laws:

4.5.2.1 14 **Del.C.** Ch. 27 and applicable Department regulations regarding school attendance, including a plan to distribute attendance policies to each Charter School student at the beginning of each school year. Students who enroll after the beginning of the school year shall be provided with a copy of the attendance policy at the time of enrollment.

4.5.2.2 11 **Del.C.** Ch. 85 and 14 **Del.C.** §511(p), and Department regulations regarding criminal background checks for public school related employment.

4.5.2.3 14 **Del.C.** §4112 and applicable Department regulations regarding the reporting of school crimes.

4.5.2.4 The Family Educational Rights and Privacy Act (FERPA) and implementing federal and Department regulations regarding disclosure of student records.

4.5.2.5 The provision of free and reduced breakfast and lunch to eligible students pursuant to any applicable state or federal statute or regulation.

4.5.2.6 Freedom of Information Act

4.5.3 The requirement that the Applicant provide for the health and safety of students, employees and guests will be judged against the needs of the student body or population served. Except as otherwise required in this regulation, the Applicant must either agree and certify that the services of at least one (1) full time registered nurse (R.N.) will be provided for each facility in which students regularly attend classes, or demonstrate that it has an adequate and comparable plan for providing for the health and safety of its students. Any such plan must include the Charter School’s policies and procedures for routine student health screenings, for administering medications to students (including any proposed self administration), for monitoring chronic student medical conditions and for responding to student health emergencies. Any applicant which receives funding equivalent to the funding provided to school districts for one or more school nurses shall provide its students the full time services of a corresponding number of registered nurses.

6 DE Reg. 274 (9/1/02)
7 DE Reg. 928 (1/1/04)
9 DE Reg. 1752 (5/1/06)
12 DE Reg. 211 (08/01/08)
16 DE Reg. 197 (08/01/12)

5.0 Nature of Charter

5.1 When granted, a charter is an authorization for the Charter Holder to open and operate a Charter School in accordance with the terms of the charter, including the terms of any conditions placed on the charter by the Department with the approval of the State Board.

5.1.1 It is the responsibility of the Charter Holder to notify the Department in writing of its compliance with any time frames or other terms or conditions contained in or imposed on the charter. The Department ~~may~~ requires the Charter Holder to produce satisfactory evidence, including written documentation, of compliance in their Annual Report.

5.2 Compliance with the charter, including compliance with the terms of any conditions placed on the charter, is a condition precedent to the authority to open and operate the Charter School. Failure to comply with the terms of the charter and any conditions placed on the charter, including deadlines, operates as a forfeiture of the authority to open the Charter School regardless of previous approval. These regulations are incorporated into and made a part of each charter approved by the Department with the consent of the State Board. A Charter School's failure to comply with these regulations ~~may~~ shall be treated as a failure on the part of the school to comply with its charter.

6 DE Reg. 274 (9/1/02)
16 DE Reg. 197 (08/01/12)

6.0 Funding

6.1 The Department may withhold State and local funding from a Charter Holder not in compliance with the terms of the charter being funded, including compliance with any conditions placed on such charter.

6.2 The Department may withhold State and local funding from a Charter Holder while one or more of its charters is under formal review.

6.3 State and local funding of any charter on probationary status will be released in accordance with the terms of the probation.

6.4 Federal funding for a Charter Holder and under the control of the Department will be disbursed according to the laws, regulations and policies of the federal program providing the funding and the terms of any applicable federal grant approval including state requirements.

6 DE Reg. 274 (9/1/02)
16 DE Reg. 197 (08/01/12)

7.0 Financial Audit

After July 1st of each year, pursuant to 14 **Del.C.** §513(a) each Charter Holder shall contract to have an audit of the business and financial transactions, records, and accounts of the school, in a form and manner satisfactory to the Department, and shall provide the audit results to the Department by October 1. Each Charter School shall display the audit on **[~~their~~ its]** public website.

6 DE Reg. 274 (9/1/02)
16 DE Reg. 197 (08/01/12)

8.0 Enrollment Preferences, Solicitations and Debts

8.1 Enrollment Preferences

8.1.1 An Applicant to establish a new Charter School shall indicate in its application whether children of the Charter School's founders will be given an enrollment preference. If a founders' preference will be given, the application shall include the standard adopted by the Founding Board of Directors to determine the founders. The standard used to determine the founders shall be consistent with the requirements of Section 506(b)(4) of the Charter School Law. If the application is approved, the Charter Holder shall provide the Department with the identity of its founders no later than March 1 immediately preceding the First Instructional Day.

8.2 Solicitations.

8.2.1 Any person or entity soliciting contributions, gifts or other funding on behalf of or for the benefit of an existing or potential Charter School shall notify the person or entity solicited that enrollment of an individual student in the Charter School is not contingent on, or assured by, any such contribution, gift or other funding.

8.2.2 Written notices of fund raising activities for the benefit of a Charter School must contain the following statement: "The [name of school] is a public school. Contributions and gifts are not required for admission to the school and will in no way affect or improve a student's opportunity for admission."

8.3 Debts. Any person or entity offering a loan to a Charter School must be advised by the school that debts of the school are not debts of the State of Delaware and that neither the State nor any other agency or instrumentality of the State is liable for the repayment of any indebtedness.

6 DE Reg. 274 (9/1/02)
7 DE Reg. 928 (1/1/04)

9.0 Modifications of Charters

9.1 A charter holder may apply to the Department for a modification of the charter following the granting of the charter.

9.2 The application shall be submitted on a form approved by the Department and posted on the Department website. The applicant shall specify the exact modification requested and describe the need for the modification.

9.3 The applicable standards for deciding a modification application shall be as provided in Section 4.0 of these regulations for the original grant of the charter.

9.4 The following are considered applications for a new charter and shall not be processed or considered as a modification application:

9.4.1 An application to collectively change the mission, goals for student performance and educational program of the charter school; or

9.4.2 An application, at any time before the First Instructional Day, to offer educational services at a site other than the site approved as part of the school's charter, when the charter has previously been amended to change the school's site; or

9.4.3 An application to replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter holder at any time before the First Instructional Day.

9.5 An application for a major or minor charter modification may not be filed while a school's charter is on formal review, except where the Secretary determines that the requested modification is unrelated to the reason the school's charter has been placed on formal review or where the modification addresses the reason the school was placed on formal review provided the modification is filed before the preliminary report is approved by the Accountability Committee.

9.6 A charter shall not be modified to permit a charter school's first instructional day to occur later than the third September 15th after the date the charter is originally granted. In the event that the first instructional day does not occur by that date, the charter shall be deemed forfeited and the authority to open and operate a charter school expired. Further, no charter shall be modified to permit a charter school to obtain a certificate of occupancy, either temporary or final, for all or any part of the premises to be occupied by the school, later than June 15 immediately preceding the authorized opening date of the school.

9.7 An increase or decrease of up to 5% in a charter school's current authorized enrollment shall not be considered a modification of the school's charter. ~~Any modification application to increase or decrease a charter school's current authorized enrollment by more than 5% must be filed between November 1st and December 31st and, if approved, shall be effective the following school year.~~

9.8 Major modifications.

9.8.1 A major modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which would:

9.8.1.1 Replace, remove or permit the school to operate without an educational management organization providing administrative, managerial or instructional staff or services to the charter school at anytime on or after the First Instructional Day; or

9.8.1.2 Alter enrollment preferences; or

9.8.1.3 Result in an increase or decrease in the school's total authorized enrollment of more than 15%, provided further the major modification request must be filed between November 1st and December 31st and, if approved, shall be effective the following school year; or

9.8.1.4 Alter grade configurations; or

9.8.1.5 At any time after the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, except where such change is the unavoidable result of a loss by fire or other "casualty" as that term is defined in Black's Law Dictionary; or

9.8.1.6 At any time before the First Instructional Day, offer educational services at a site other than the site approved as part of the school's charter, provided that the charter has not previously been amended to change the school's site; or

9.8.1.7 Alter any of the following: the school's mission, goals for student performance, or educational program; or

9.8.1.8 Alter the charter school's performance agreement with the Department; or

9.8.1.9 Alter the charter school's charter to satisfy the provisions of ~~"restructuring" as prescribed in~~ the federal Elementary and Secondary Education Act of 1965 (ESEA) or any reauthorization thereof.

9.8.1.10 Transfer of the charter, and of oversight of that charter school, from another authorizer to the Department, before the expiration of the charter term, shall be made by filing a written petition with the Department, on a form approved by the Department, by the public charter school or its original authorizer. The Department will approve a transfer only where the Charter School is fully in compliance with the current terms of its charter and any applicable rules, regulations and statutes. The Department may impose conditions upon the transfer in order to ensure continuing compliance with the approval criteria and the regulations of the Department.

9.9 Minor modifications.

9.9.1 A minor modification is any proposed change to a charter, including proposed changes to any condition placed on the charter, which is not a major modification. Minor modifications include, but are not limited to:

9.9.1.1 Changes to the name of either the charter school or charter holder; or

9.9.1.2 The first extension of any deadline imposed on the charter school or charter holder by thirty (30) working days or less (or by 15 calendar days in the case of the First Instructional Day); or

9.9.1.3 In the case of a charter school which is open with students in attendance, offering educational services at a site other than, or in addition to, the site approved as part of the school's charter, when use of the approved site has unavoidably been lost by reason of fire or other casualty as that term is defined in Black's Law Dictionary; or

9.9.1.4 An increase or decrease in the school's total authorized enrollment of more than 5%, but not more than 15%, provided further the minor modification request must be filed between November 1st and December 31st and, if approved, shall be effective the following school year; or

9.9.1.5 Alter, expand or enhance existing or planned school facilities or structures, including any plan to use temporary or modular structures, provided that the applicant demonstrates that the school will maintain the health and safety of the students and staff and remain economically viable as provided in 4.4 above; or

9.9.1.6 Any change in the school's agreement with an educational management organization other than as set forth in 9.4.3 and 9.8.1.1 above; or

9.9.1.7 A change to the current authorized number of hours, either daily or annually, devoted to actual school sessions. Regardless of any proposed change, the school shall maintain the minimum instructional hours required by 14 **Delaware Code**; or

9.9.1.8 A change in the terms of the current site facilities arrangements including, but not limited to, a lease to a purchase or a purchase to a lease arrangement; or

9.9.2 The Secretary may decide the minor modification application based on the supporting documents supplied with the application unless the Secretary finds that additional information is needed from the applicant.

9.9.3 The Secretary may refer a minor modification request to the Accountability Committee for review if the Secretary determines, in her/his sole discretion, that such review would be helpful in her/his consideration of the application. If the Secretary refers a minor modification application to the Accountability Committee, she/he may decide the application based on any report from the Committee and the supporting documents related to the application. The applicant for a minor modification shall be notified if the minor modification request has been forwarded to the Accountability Committee. The applicant may be asked to provide additional supporting documentation.

9.9.4 The Secretary may deny a minor modification request if the supporting documentation is incomplete or insufficient provided the applicant has been advised additional information was needed

9.9.5 Upon receiving an application for a minor modification, the Secretary shall notify the State Board of the application and her/his decision on whether to refer the application to the Accountability Committee.

9.9.6 The meeting and hearing process provided for in Section 511(h), (i) and (j) of the Charter School Law shall not apply to a minor modification application even where the Secretary refers the application to the Accountability Committee.

9.9.7 Decisions for minor modifications to a charter may be decided by the Secretary**[~~, with the concurrence of the State Board of Education,~~]** within 30 working days from the date the application was filed, unless the timeline is waived by mutual agreement of the Secretary and the applicant, or in any case where the Secretary, in the sole discretion of the Secretary, deems that it would be beneficial to either refer the matter to the Accountability Committee or to seek advice from the State Board prior to deciding the matter.

6 DE Reg. 274 (9/1/02)
9 DE Reg. 387 (09/01/05)

12 DE Reg. 211 (08/01/08)
16 DE Reg. 197 (08/01/12)

10.0 Renewals

10.1 Charters are granted for an initial period of 4 years of operation and are renewable every 5 years thereafter.

10.2 Renewals are only available to the current Charter Holder and may not be used to transfer a charter to a different legal entity.

10.3 Charters shall be renewed only if the school receives a satisfactory performance review. Performance reviews shall be conducted by the Department using the Performance Framework approved by the Department with the assent of the State Board.

10.4 The Department shall conduct annual performance reviews based on the Performance Framework. The Department shall provide the results of the Performance Review to the school.

6 DE Reg. 274 (9/1/02)
7 DE Reg. 928 (1/1/04)
9 DE Reg. 387 (9/1/05)
16 DE Reg. 197 (08/01/12)

11.0 Public Hearings

Any public hearing conducted by the Department pursuant to the provisions of the Charter School Law shall be conducted as a joint public hearing with the State Board of Education.

6 DE Reg. 274 (9/1/02)
9 DE Reg. 1752 (5/1/06)

12.0 Background Checks

In addition to the criminal background check and Child Protection Registry check required by law to be provided during the application process, whenever a new member shall be elected to the board of directors of a charter school, the school shall promptly provide the name and mailing address of such new member to the Department of Education, Charter School Office; the newly elected member of the board shall, within 45 days of election to the board, provide the Department of Education with any authorization necessary to conduct the Child Protection Registry check and with a copy of that member's criminal background check.

16 DE Reg. 197 (08/01/12)

13.0 Charter Closure Protocol

The Department will publish on their website an outline of responsibilities and actions that shall be taken by both the authorizer and the charter holder after a decision is rendered to revoke or nonrenew a charter.

14.0 Performance Fund - RESERVED

17 DE Reg. 497 (11/01/13) (Final)