CHARTER SCHOOL AND AUTHORIZER OVERSIGHT AND RESOLUTION PROCESS: LEGAL AUTHORITY FOR OVERSIGHT AND CORRECTIVE ACTION FOR CHARTER SCHOOLS AND AUTHORIZERS

Charter Schools. Charter schools are required to comply with all laws included in the Minnesota Charter School Law, Minnesota Statutes, section 124D.10, including the federal, state, and local requirements listed in Minnesota Statutes, section 124D.10, Subdivision 8, as well as all statutes and rules specifically applicable to a charter school. Minnesota Statutes, section 124D.10, Subdivision 7. The Minnesota Department of Education ("MDE") has broad oversight of charter schools and authorizers, and is authorized to conduct financial, program, or compliance audits pursuant to Minnesota Statutes, section 124D.10, Subdivision 8(j). In appropriate circumstances, MDE has the authority to withhold funds from a charter school pursuant to Minnesota Statutes, sections 124D.10, Subdivisions 8a and 8b, 127A.42, and 127A.43. The commissioner may also terminate an existing contract between the charter school and its authorizer if the charter school has a history of: "(1) failure to meet pupil performance requirements consistent with state law; (2) financial mismanagement or failure to meet generally accepted standards of fiscal management; or (3) repeated or major violations of the law." Minnesota Statutes, section 124D.10, Subdivision 23(d).

Authorizers. Minnesota Statutes, section 124D.10, Subdivision 3(i) provides that the commissioner must review a charter school authorizer's performance every five years, and may review an authorizer's performance more frequently at the commissioner's own initiative or at the request of any interested party. The statute provides that, upon review of an authorizer's performance, if the commissioner finds that an authorizer has not fulfilled the requirements of the law, the commissioner may subject the authorizer to corrective action. Corrective action may include terminating an existing contract between an authorizer and a charter school board of directors and/or terminating an authorizer's ability to charter a school. Even without a performance review, the commissioner may subject an authorizer to corrective action at any time for:

- Failing to demonstrate the criteria under which the authorizer was originally approved;
- Violating a term of the charter contract between an authorizer and a school;
- Exhibiting unsatisfactory performance as an authorizer; or
- Any good cause shown that provides the commissioner a legally sufficient reason.

Minnesota Statutes, section 124D.10, Subdivision 3(j).



OVERSIGHT AND RESOLUTION PROCESS

Receipt of Complaints

Any interested individual or entity may submit a complaint to MDE. MDE may also, of its own volition, open a complaint based on internal reviews, as necessary. There is no format or form required to submit a complaint. Complainants are advised that complaints submitted to MDE may be public information.

If a complaint alleges violations of law or regulations over which an MDE division other than the Charter Center has specific enforcement authority (for example, Food and Nutrition; Monitoring and Compliance with respect to Special Education; or Maltreatment of Minors), the complaint will be referred to that division for processing in accordance with that division's authority. Results of the division's processing will be copied to the Charter Center, for distribution to the authorizer and the charter school, as appropriate.

Investigative Process

To the degree deemed appropriate in each particular situation, MDE will seek to observe the following steps in response to its receipt of external or internal inquiries, complaints, or specific allegations of wrongdoing directed at charter schools and/or their authorizers.

NOTE: In necessary and in appropriate circumstances, MDE reserves the right to disregard any or all of the following described steps and move to immediate reasonable inquiry without notice, or to immediate corrective action to protect the health, safety and welfare of students, staff or the public, for financial malfeasance, or in cases of emergency and/or declared or history of inadequate response, or noncooperation, or pending legal action. For example, MDE may conduct an on-site visit of the charter school without advance notice to the authorizer or the charter school depending upon the nature of the complaint and as necessary for the integrity of the review, audit or investigation.

Step One – IDENTIFICATION OF LEGAL BASIS

Within 15 business days of its receipt of a complaint, MDE will determine if the complaint alleges violations that are within the authority of MDE. In the event that the complaint does not allege any violations that MDE has the jurisdiction to address, the complainant shall be so advised, noting that the complaint is outside the scope of MDE's authority and, when applicable, where the complainant may wish to redirect the complaint (such as the Legislative Auditor). MDE will also determine whether the complaint provides sufficient information of a potential violation of law or regulation. If it does not, MDE will notify the complainant that the complaint does not allege sufficient information to review the charges. If MDE determines that the complaint is within MDE's jurisdiction and does provide sufficient information of a potential violation of law or regulation, MDE will proceed to Step Two or Step Three, as it deems appropriate.



Step Two – TECHNICAL ASSISTANCE WHEN APPROPRIATE

If MDE determines that the complaint provides sufficient information of a potential violation of authority in cases within the authority of MDE, in appropriate cases MDE may choose to request specific clarifying information, request certain responsive action, require that the authorizer provide additional training or information to the school, or offer specific technical assistance to the authorizer for its use with the school in an attempt to bring the charter school into legal compliance promptly and within an immediate identified timeframe. If the communication to the authorizer is in writing or by email, a copy of the communication is sent to the charter school and the complainant. If the authorizer fails to adequately respond to MDE's requests or offers of technical assistance, MDE will proceed to the next step.

Step Three – FORMAL NOTIFICATION TO THE AUTHORIZER

If not resolved within 15 business days of its receipt of a complaint, MDE will formally and in writing contact the authorizer to request specific information and/or action relative to the complaint within an identified timeframe. A copy of the correspondence will be sent to the charter school and the complainant. Although the identified timeframe will be determined with respect to the complexity of the required actions relative to each specific complaint, generally MDE will seek to obtain an authorizer's response within 15 business days of the formal notification. Should the authorizer fail to adequately respond to MDE's request, MDE will proceed to the next step.

Step Four – REASONABLE INQUIRY

MDE will conduct a reasonable inquiry for the purpose of verifying whether the allegations in a complaint, or any other concern, provide sufficient evidence to establish the alleged violation(s) of law or regulation. Although the length of the reasonable inquiry will vary with the scope, complexity and specificity of the complaint at issue, MDE will generally seek to complete the necessary inquiry within 30 business days of the date of the formal notification provided to the authorizer.

MDE's reasonable inquiry may include one or more of the following steps, which may be conducted by MDE personnel, or an outside provider, at MDE's discretion. *NOTE: MDE is not obligated to take any or all of these steps, or in any specific order, before assessing corrective or enforcement action or taking other action as necessary and appropriate.*

A. Review of Policies, Practices and Curriculum

In the event MDE determines that a review of the charter school or authorizer's policies, practices, education records, or curriculum is necessary, or that it is necessary to review an authorizer's policies or practices for compliance with the policies and practices identified in an authorizer's commissioner-approved authorizer application, MDE will conduct a thorough review of these necessary records or documents. The scope of the review may encompass all or selected portions of the affected entity's policies, practices, education records or curriculum.



B. Site Visit

In a site visit, MDE conducts an on-site visit and may meet with the school's director, administration, teachers, and other officers, directors or personnel as necessary.

C. Contact with Relevant Individuals

If the specifics of the complaint warrant such, MDE may seek to contact individuals from the charter school or authorizer who might reasonably be expected to have information relevant to the allegations of the complaint.

D. Desk Audit

In a program or compliance audit, MDE will require submission or complete access to materials or data from the charter school or authorizer that MDE determines will assist it in resolving the complaint. The authorizer and charter school shall cooperate and provide all requested data necessary for the audit.

E. Technical Assistance

As appropriate throughout this complaint proceeding, MDE may provide technical assistance as needed to attempt to bring the charter school and/or authorizer into legal compliance.

Step Five - NOTIFICATION OF CORRECTIVE ACTION

Upon completion of a reasonable inquiry which determines legal noncompliance, MDE will issue a formal order stating that the authorizer is subject to corrective action pursuant to Minnesota Statutes, section 124D.10, Subdivision 3(i). MDE will transmit to the charter school, or authorizer, or both as appropriate, a determination containing all formal findings of noncompliance specific to the laws or rules that have been violated. The formal finding(s) of noncompliance will be accompanied by a corrective action plan specifying the following:

- The legal violations required to be cured;
- The timeframe within which the violations must be cured;
- The technical assistance available to the authorizer, if applicable; and
- The consequences, if any, that will be imposed by MDE should the authorizer fail to address the violations.

Step Six - RIGHT TO INFORMAL HEARING

The authorizer may request an informal hearing with the commissioner for a corrective action order under Minnesota Statutes, section 124D.10, Subdivisions 3(i) or (j) within 15 business days of MDE's issuance of a corrective action order. The informal hearing will provide the authorizer with an opportunity to present argument and evidence regarding how it has adequately addressed the concerns of MDE as expressed in its findings. This informal hearing does not constitute the right to a contested case hearing under the Administrative Procedures Act, Minnesota Statutes Chapter 14. After the



hearing is provided, the commissioner or his/her designee will issue a final decision that is binding on the parties.

If there is no hearing, MDE's determination is final and binding on the parties.

Step Seven – IMPOSITION OF CORRECTIVE ACTION

If, following the informal hearing, there still has been no resolution of the relevant issues, the commissioner may take corrective action pursuant to Minnesota Statutes, section 124D.10, Subdivisions (i)-(j). Corrective action may include, but is not limited to, terminating a contract between a charter school and an authorizer, or terminating an authorizer's ability to charter schools. The commissioner's decision to terminate a charter school contract, or an authorizer's ability to charter schools, constitutes a final decision of the agency.

Step Eight - RIGHT TO APPEAL

If the authorizing statute does not provide for judicial review, quasi-judicial agency decisions are appealable by writ of certiorari to the Minnesota Court of Appeals. A final agency decision is quasi-judicial when it is an: (1) investigation into a disputed claim and weighing of evidentiary facts; (2) application of those facts to prescribed standards; and (3) issuance of a binding decision regarding the disputed claim.

