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REGULATIONS PURSUANT TO SENATE BILL 441 (2019)

TO: Jhone Ebert, Superintendent of Public Instruction
FROM: Rebecca Feiden, Executive Director, State Public Charter School Authority
SUBJECT: Input Regarding Regulations Pursuant to Senate Bill 441 (2019)
DATE: July 6, 2020

I. Senate Bill 441: Background

Senate Bill 441, proposed by the Nevada Legislature’s Senate Committee on Finance, was enacted into law following the 2019 Legislative Session. SB 441 has since been codified in NRS Chapter 388A.

SB 441 contains several provisions that either allows the Department to adopt regulations related to public charter schools that provide full-time distance education or requires that the Department adopt regulations related to public charter schools that provide full-time distance education.

For background, SB 441 defines a charter school that provides full-time distance education as a charter school that provides a program consisting of courses of instruction that are delivered by means of video, computer, television, or the Internet or other electronic means of communication, or any combination thereof, in such a manner that the person supervising or providing the instruction and the pupil receiving the instruction are separated geographically for a majority of the time during which the instruction is delivered.¹

¹ See NRS 388A.705 (defining a “charter school for distance education”), NRS 388A.710 (defining a “course” of distance education), NRS 388A.720 (defining a “program” of distance education), and NRS 388.826 (defining “distance education”). Notably, SB 441 only applies to charter schools that provides “full-time distance education” – meaning that “[i]f a program of

II. SB 441: Optional and Mandatory Regulations

As stated above, SB 441 *allows* the Department to adopt regulations related to public charter schools that provide full-time distance education (permissive regulations) and *requires* that the Department adopt certain regulations related to charter schools that provide full-time distance education (mandatory regulations).

Permissive Regulations

In regard to permissive regulations, NRS 388A.735 deems the SPCSA as the “default” Local Education Agency (“LEA”) for charter schools that offer full-time distance education. However, NRS 388A.735 allows the Department to adopt regulations that allow a charter school offering a program of full-time distance education to act as its own LEA. See NRS 388A.735(2).

Mandatory Regulations

In addition to the foregoing permissive regulations relating to a charter school that offers a full-time program for distance education, SB 441 requires the Department to adopt certain regulations related to charter schools that offers a full-time program for distance education. These mandatory regulations can be categorized as follows:

1) Regulations Related to the Delegation of Oversight Responsibilities to Any Subcommittee of the SPCSA

NRS 388A.740(1) reads as follows: The Department *shall* adopt any regulations necessary to carry out the provisions of [NRS 388A.462](#) and [388A.700 to 388A.790](#), inclusive, including, without limitation, regulations for ...[t]he delegation of oversight responsibilities to any subcommittee of the State Public Charter School Authority.

Notably, NRS 388A.740(1) does not seem to mandate that the SPCSA create subcommittee to oversee charter schools that offer full-time programs of distance education. However, NRS 388A.790(1) does require that the Department adopt regulations related to any such subcommittee if the SPCSA does create such a subcommittee.

Additionally, note that the definition of any such subcommittee is unclear. While any reference contained in NRS Chapter 388A to the “State Public Charter School Authority” generally refers to the SPCSA Board, recent revisions to NRS Chapter 241, Nevada’s Open Meeting Law, defines a subcommittee of a public body such as the SPCSA (or the Department) as any group of two or more persons that include “[a] majority of the membership of the subcommittee or working group are members or staff members of the

distance education is provided for pupils on a full-time basis, the program must include at least as many hours or minutes of instruction as would be provided under a program consisting of 180 days.” See NRS 388.842(2). In other words, SB 441 does not apply to charter schools that offer supplemental or part-time distance education programs.

public body that appointed the subcommittee; or [t]he subcommittee or working group is authorized by the public body to make a recommendation to the public body for the public body to take any action.” See NRS 241.015(4)(d). As is evident, and in the context of SB 441, this definition of subcommittee may include persons other than SPCSA Board Members.

2) **Suspension and Expulsion of Pupils Enrolled at a Charter School for Full-Time Distance Education for Failing to “Actively Participate” in the Charter School for Distance Education**

NRS 388A.740(3) states that “[t]he Department *shall* adopt any regulations necessary to carry out the provisions of [NRS 388A.462](#) and [388A.700 to 388A.790](#), inclusive, including, without limitation, regulations for ... [d]etermining when a pupil enrolled at a charter school for distance education may be suspended or expelled from such charter school pursuant to [NRS 388A.495](#) for failing to actively participate in the charter school for distance education.”

Currently, a student enrolled in a full-time program of distance education – at a charter school or traditional district school that offers full-time distance education – is marked “in full attendance” with a single contact with the full-time distance education school. See NAC 387.193(2) (“Each pupil enrolled in a course of distance education offered through a program of distance education must be recorded in full attendance for each week that a teacher meets or otherwise communicates with the pupil during the course to discuss the pupil’s progress.”). However, SB 441 seeks to allow suspension or expulsion of a student that is not “actively participating” in the charter school’s full-time program of distance education.

3) **SB 441’s “Catch-All” Provision**

[NRS 388A.740\(2\)](#) reads as follows: “The Department *shall* adopt any regulations ... [e]stablishing different requirements for the operation or regulation of or any other matter that requires the different treatment of charter schools for distance education sponsored by the State Public Charter School Authority and traditional charter schools sponsored by the State Public Charter School Authority.” As is evident, this provision of SB 441 is the broadest of all of its provisions.

III. Stakeholder Input

Following the Department’s SB 441 regulatory workshop held on January 3, 2020, the Department requested that the SPCSA convene a group of stakeholders in order to provide input to the Department regarding the regulations contemplated by SB 441. While the SPCSA’s efforts in this regard were complicated by the COVID-19 crisis and the accompanying closure of public schools, the SPCSA convened a group of stakeholders consisting of representatives of the Department; Washoe, Humboldt and Clark County Schools Districts; the four SPCSA-sponsored full-time distance education charter schools (Beacon Academy of Nevada, Leadership Academy

of Nevada, Nevada Connections Academy, and Nevada Virtual Academy); the National Alliance for Public Charter Schools, the Charter School Association of Nevada, and Opportunity 180. A full list of stakeholders, as well as contact information for each stakeholder, is attached to this memorandum.

Note that in addition to the meetings held with the above-referenced stakeholders, the SPCSA also requested written submissions following these meetings related to the regulations contemplated by SB 441, and provided all of the above-referenced stakeholders with a draft of this memorandum prior to the SPCSA providing this information to the Department. All of the above-referenced stakeholders were also informed that they would have an opportunity to comment on the Department's proposed regulations at the upcoming regulatory hearing scheduled in connection with these regulations.

Below is a summary of the input that the SPCSA received regarding the regulations contemplated by SB 441.

LEA Status (Permissive)

NRS 388A.735 deems the SPCSA as the "default" Local Education Agency ("LEA") for charter schools that offer full-time distance education. However, NRS 388A.735 allows the Department to adopt regulations that allow a charter school offering a program of full-time distance education to act as its own LEA. See NRS 388A.735(2).

In the event that the Department were to adopt such regulations, two likely areas to address include (1) the process by which a charter school that offers a full-time program for distance education could apply to become its own LEA, and (2) the criteria that would be utilized to determine whether a charter school that offers a full-time program for distance education could become its own LEA.

Input from stakeholders included the following:

- Several charter school leaders conveyed that it would be helpful to have an avenue to become an LEA. Two specific advantages were identified: 1) It can be advantageous in the event that a charter schools seeks to receive bond funding, and 2) it can help to reduce the layers that a school must go through with regard to grants. However, one Department representative expressed hesitation with schools becoming their own LEA.
- There were no specific recommendations regarding the process to apply to be an LEA or the criteria to be used to evaluate whether a school could become its own LEA.

Subcommittee (mandatory)

NRS 388A.740(1) reads as follows: The Department *shall* adopt any regulations necessary to carry out the provisions of NRS 388A.462 and 388A.700 to 388A.790, inclusive, including, without limitation, regulations for ...[t]he delegation of oversight responsibilities to any subcommittee of the State Public Charter School Authority.

As discussed in the background section, given that NRS 388A.740(1) does not appear to mandate that the SPCSA create a subcommittee to oversee charter schools that offer full-time programs of

distance education, the Department's required regulations related to any subcommittee of the SPCSA related to oversight of charter schools offering full-time distance education should clarify that the SPCSA is not required to create such a committee. In addition, as the definition of such as subcommittee is not clearly defined in statute, the regulations should likely address the composition of any such subcommittee.

Input from stakeholders included the following:

- Though there was robust discussion about a potential committee, there was no strong consensus as to whether a subcommittee was necessary or would be beneficial.
- With regard to the composition of any subcommittee, a charter school leader identified expertise in distance learning as an important characteristic.
- A district representative expressed hesitation that any subcommittee of the SPCSA may have some oversight role with district schools or district-sponsored charter schools.
- A charter school leader expressed that the purpose of such a subcommittee could be to gather information and feedback regarding charter schools for distance education.
- A representative of the Department described current monitoring practices for distance education schools that are not charters. He expressed that he didn't know if the SPCSA monitoring aligned with his monitoring practices and saw monitoring, including on-site monitoring, as a potential role of the subcommittee.²

Suspension and Expulsion (mandatory)

NRS 388A.740(3) states that “[t]he Department *shall* adopt any regulations necessary to carry out the provisions of NRS 388A.462 and 388A.700 to 388A.790, inclusive, including, without limitation, regulations for ... [d]etermining when a pupil enrolled at a charter school for distance education may be suspended or expelled from such charter school pursuant to NRS 388A.495 for failing to actively participate in the charter school for distance education.”

During the stakeholder meetings, there was substantial conversation about this topic. Input from stakeholders included the following:

- Several stakeholders expressed the need for charter schools for distance education to be able to require students and families who seek to enroll to participate in a comprehensive orientation in order to ensure they understand the attendance and participation expectations. This was seen as an avenue to reduce non-participation. Any such regulations may include topics to be included in the orientation, differentiation in topics based on grade level, and approval of the orientation by the sponsor.
- Similarly, one charter school leader raised the idea of charter schools for distance education being able to establish a master agreement that parents and families would need to sign upon enrollment that would cover attendance and participation requirements.

² The SPCSA has already reached out to this Department representative to review the monitoring protocol and intends to incorporate applicable components into the SPCSA's existing site evaluation protocol, if they are not already covered through existing SPCSA oversight and monitoring activities.

- Though no consensus was reached for the threshold for suspension or expulsion, several stakeholders expressed the need for clear guardrails, that any such suspension/expulsion be permissive and not required, and that any such suspension or expulsion policies align with existing requirements for a progressive approach to discipline.
- A representative from the National Alliance for Public Charter Schools pointed to recent legislation in Oklahoma as a possible model: HB 2905. (see Appendix A)
- A representative of Opportunity 180 questioned the rationale for standards related to the removal of a student being different for a distance learning school versus a brick and mortar school and encouraged that any regulations related to suspension or expulsion be student-centered rather than school centered.
- Several school leaders spoke about their tiered truancy plans that are already in place. This concept was reinforced by a Department representative who suggested that any regulations be focused on the supports to be provided to students and the due process protections for a student that may be eligible for removal from the school.
- Several stakeholders spoke about the reality that distance learning is not the best fit for all students and the intent on making sure the student is educated in the environment that meets their needs.
- One school leader shared that under existing regulations, if a student does not participate in an online program for 10 school days, they are withdrawn on the 11th day for whereabouts unknown. During the 10 days this school reaches out to the student and their family to support and engage their participation and attendance on campus. This school leader believes that attendance and academic progress in a distance education program should be tied closely together. For example, this school had students make attendance in their classes by submitting one assignment per class each week to avoid withdrawal, but the overall effect is that the student does not engage with the teacher or the social workers when they reach out to communicate.

SB 441's "Catch-All" Provision (mandatory)

“The Department shall adopt any regulations ... [e]stablishing different requirements for the operation or regulation of or any other matter that requires the different treatment of charter schools for distance education sponsored by the State Public Charter School Authority and traditional charter schools sponsored by the State Public Charter School Authority.”

During the stakeholder meetings, there were a variety of concepts discussed. Input from stakeholders included the following:

- One school leader proposed that charter schools of distance education be allowed to close enrollment at certain parts of the year or semester because onboarding new students can take substantial time and put those students at a disadvantage depending on upcoming assessments, closing grading periods or other major milestones. One district representative raised the concern that this type of provision is something that could benefit all schools.

- Two school leaders raised the proposal that charter schools of distance education have a different framework that accounts for the high mobility of virtual students. The proposal included a weighting for students who have been enrolled longer. In particular, a model out of Arizona was pointed to as a possible model. (See Appendix B)
- One school leader suggested that charter schools of distance education could have enrollment guidelines, similar to magnet schools. These may include attendance and GPA, which were pointed to as indicators of students being highly motivated and self-directed. A representative of the National Alliance for Public Charter schools agreed with the intent to ensure that distance learning was a good fit for students and suggested considering attendance and supports available to the student at home. At the same time, other stakeholders disagreed with this approach. A school leader spoke about her school's philosophy to serve all students. In addition, a representative of Opportunity 180 spoke about the importance of equity.
- A representative of the National Alliance for Public Charter Schools pointed to the fact that the original language of SB 441 included differentiated funding for charter schools of distance education that was based on student participation. He urged the consideration of the funding model that has been adapted by Ohio. (See Appendix C)
- One school leader suggested a possible grace period for students that enroll in charter schools for distance education. This would serve as a test period to ensure it was a good fit and students who withdrew would be count against any dropout rates.
- One representative of a school district identified that the bifurcated language in NRS/NAC can, at times, be confusing for university and district sponsors. This representative believes there is a need for additional language that acknowledges the relation and impact of the regulations on all sponsors. This may include language that excludes the district or university sponsors or articulates the autonomy of district sponsors.

APPENDIX A: Oklahoma House Bill 2905

An Act

ENROLLED HOUSE
BILL NO. 2905

By: Dills, Fincher, Pae,
Randleman and Manger of the
House

and

Pemberton and Sharp of the
Senate

An Act relating to schools; creating the Virtual Charter School Reform and Transparency Act of 2020; amending Section 5, Chapter 367, O.S.L. 2012, as last amended by Section 1, Chapter 272, O.S.L. 2019 and Section 1, Chapter 247, O.S.L. 2017 (70 O.S. Supp. 2019, Sections 3-145.3 and 3-145.8), which relate to the Oklahoma Charter Schools Act; considering certain students transfers; requiring certain notice; providing transfer process; limiting certain transfers; defining term; prohibiting certain transfers; determining first date of attendance and membership; modifying attendance calculation; modifying term; requiring student orientation; requiring promulgation of rules; requiring withdrawal for truancy under certain conditions; prohibiting re-enrollment under certain circumstances; requiring adoption of certain attendance policy; requiring notice upon disenrollment; providing effective time for certain provisions; amending 70 O.S. 2011, Section 18-107, which relates to State Aid; modifying definition; providing for noncodification; providing an effective date; and declaring an emergency.

SUBJECT: Virtual charter schools

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

This act shall be known and may be cited as the "Virtual Charter School Reform and Transparency Act of 2020".

SECTION 2. AMENDATORY Section 5, Chapter 367, O.S.L. 2012, as last amended by Section 1, Chapter 272, O.S.L. 2019 (70 O.S. Supp. 2019, Section 3-145.3), is amended to read as follows:

Section 3-145.3 A. Subject to the requirements of the Oklahoma Charter Schools Act, the Statewide Virtual Charter School Board shall:

1. Provide oversight of the operations of statewide virtual charter schools in this state;

2. Establish a procedure for accepting, approving and disapproving statewide virtual charter school applications and a process for renewal or revocation of approved charter school contracts which minimally meet the procedures set forth in the Oklahoma Charter Schools Act;

3. Make publicly available a list of supplemental online courses which have been reviewed and certified by the Statewide Virtual Charter School Board to ensure that the courses are high quality options and are aligned with the subject matter standards adopted by the State Board of Education pursuant to Section 11-103.6 of this title. The Statewide Virtual Charter School Board shall give special emphasis on listing supplemental online courses in science, technology, engineering and math (STEM), foreign language and advanced placement courses. School districts shall not be limited to selecting supplemental online courses that have been reviewed and certified by the Statewide Virtual Charter School Board and listed as provided for in this paragraph; and

4. In conjunction with the Office of Management and Enterprise Services, negotiate and enter into contracts with supplemental online course providers to offer a state rate price to school districts for supplemental online courses that have been reviewed and certified by the Statewide Virtual Charter School Board and listed as provided for in paragraph 3 of this subsection.

B. Each statewide virtual charter school which has been approved and sponsored by the Board or any virtual charter school for which the Board has assumed sponsorship of as provided for in Section 3-145.5 of this title shall be considered a statewide virtual charter school and, except as provided in subsection H of

this section, the geographic boundaries of each statewide virtual charter school shall be the borders of the state.

C. Each statewide virtual charter school approved by the Statewide Virtual Charter School Board shall be eligible to receive federal funds generated by students enrolled in the charter school for the applicable year. Each statewide virtual charter school shall be considered a separate local education agency for purposes of reporting and accountability.

D. As calculated as provided for in Section 3-142 of this title, a statewide virtual charter school shall receive the State Aid allocation and any other state-appropriated revenue generated by students enrolled in the virtual charter school for the applicable year, less up to five percent (5%) of the State Aid allocation, which may be retained by the Statewide Virtual Charter School Board for administrative expenses and to support the mission of the Board. A statewide virtual charter school shall be eligible for any other funding any other charter school is eligible for as provided for in Section 3-142 of this title. Each statewide virtual charter school shall be considered a separate local education agency for purposes of reporting and accountability.

E. A virtual charter school shall be subject to the same reporting requirements, financial audits, audit procedures and audit requirements as a school district. The State Department of Education or State Auditor and Inspector may conduct financial, program or compliance audits. A virtual charter school shall use the Oklahoma Cost Accounting System (OCAS) to report financial transactions to the State Department of Education.

F. A virtual charter school governing body shall be responsible for the policies that govern the operational decisions of the virtual charter school. The governing body of a virtual charter school shall be subject to the same conflict of interest requirements as a member of a local school board including, but not limited to, Sections 5-113 and 5-124 of this title. Members appointed to the governing body of a virtual charter school after July 1, 2019, shall be subject to the same instruction and continuing education requirements as a member of a local school board and pursuant to Section 5-110 of this title, complete twelve (12) hours of instruction within fifteen (15) months of appointment to the governing body, and pursuant to Section 5-110.1 of this title, attend continuing education.

G. Students enrolled full-time in a statewide virtual charter school sponsored by the Statewide Virtual Charter School Board shall not be authorized to participate in any activities administered by the Oklahoma Secondary Schools Activities Association. However, the students may participate in intramural activities sponsored by a statewide virtual charter school, an online provider for the charter school or any other outside organization.

H. 1. Beginning with the 2021-2022 school year, public school students who wish to enroll in a virtual charter school shall be considered a transfer student from their resident school district. A virtual charter school shall pre-enroll any public school student whose parent expresses intent to enroll in the district. Upon pre-enrollment, the State Department of Education shall initiate a transfer on a form to be completed by the receiving virtual charter school. Upon approval of the receiving virtual charter school, the student may begin instructional activities. Upon notice that a public school student has transferred to a virtual charter school, the resident school district shall transmit the student's records within three (3) school days.

2. The State Department of Education shall notify the Legislature and Governor if it determines that the information technology infrastructure necessary to process the transfer of students to a virtual charter school is inadequate and one (1) additional school year is needed for implementation.

3. A public school student may transfer to one statewide virtual charter school at any time during a school year. For purposes of this subsection, "school year" shall mean July 1 through the following June 30. After one statewide virtual charter school transfer during a school year, no public school student shall be permitted to transfer to any other statewide virtual charter school without the concurrence of both the resident school district and the receiving virtual charter school. A student shall have a grace period of fifteen (15) school days from the first day of enrollment in a statewide virtual charter school to withdraw without academic penalty and shall continue to have the option of one virtual charter school transfer without the concurrence of both districts during that same school year. A statewide virtual charter school student that has utilized the allowable one transfer pursuant to this subsection shall not be permitted to transfer to another district or other statewide virtual charter school without first notifying his or her resident district and initiating a new transfer. Upon cancellation of a transfer the virtual charter school shall transmit

the student's records to the student's new school district within three (3) school days. Students enrolled in a statewide virtual charter school shall not be required to submit a virtual charter transfer for consecutive years of enrollment. Any student enrolled in a statewide virtual charter school the year prior to the implementation of this section shall not be required to submit a transfer in order to remain enrolled.

4. For purposes of this subsection, "parent" shall mean the parent of the student or person having custody of the student as provided for in paragraph 1 of subsection A of Section 1-113 of this title.

I. A virtual charter school shall not accept or deny a transfer based on ethnicity, national origin, gender, income level, disabling condition, proficiency in the English language, measure of achievement, aptitude or athletic ability.

J. The decision of the Statewide Virtual Charter School Board to deny, nonrenew or terminate the charter contract of a statewide virtual charter school may be appealed to the State Board of Education within thirty (30) days of the decision by the Statewide Virtual Charter School Board. The State Board of Education shall act on the appeal within sixty (60) days of receipt of the request from the statewide virtual charter school applicant. The State Board of Education may reverse the decision of the Statewide Virtual Charter School Board or may remand the matter back to the Statewide Virtual Charter School Board for further proceeding as directed.

SECTION 3. AMENDATORY Section 1, Chapter 247, O.S.L. 2017 (70 O.S. Supp. 2019, Section 3-145.8), is amended to read as follows:

Section 3-145.8 A. It shall be the duty of each virtual charter school approved and sponsored by the Statewide Virtual School Board pursuant to the provisions of Section 3-145.3 of Title 70 of the Oklahoma Statutes to keep a full and complete record of the attendance of all students enrolled in the virtual charter school in one of the student information systems approved by the State Department of Education and locally selected by the virtual school from the approved list.

B. By July 1, ~~2018~~ 2020, the governing body of each virtual charter school shall adopt an attendance policy. The policy may allow attendance to be a proportional amount of the required

attendance policy provisions based upon the date of enrollment of the student. The attendance policy shall include the following provisions:

1. The first date of attendance and membership shall be the first date the student completes an instructional activity.

2. A student who attends a virtual charter school shall be considered in attendance for a quarter if the student:

- a. completes instructional activities on no less than ninety percent (90%) of the days within the quarter,
- b. is on pace for on-time completion of the course as defined by the governing board of the virtual charter school, or
- c. completes no less than ~~forty~~ seventy-two instructional activities within the quarter of the academic year.

~~2.~~ 3. For a student who does not meet any of the criteria set forth in paragraph 1 or 2 of this subsection, the amount of attendance recorded shall be the greater of:

- a. the number of school days during which the student completed the instructional activities during the quarter,
- b. the number of school days proportional to the percentage of the course that has been completed, or
- c. the number of school days proportional to the percentage of the required minimum number of completed instructional activities during the quarter.

C. For the purposes of this section, "instructional activities" shall include ~~but not be limited to online logins to curriculum or programs offered by the virtual charter school, offline activities, instructional meetings with a teacher, completed assignments that are used to record a grade for a student that is factored into the student's grade for the semester during which the assignment is completed, testing, face-to-face communications with virtual charter school staff or service providers or meetings with virtual charter school staff or service providers via teleconference,~~

videoconference, email, text or phone and school-sanctioned field trips, and orientation.

D. Each statewide virtual charter school approved and sponsored by the Statewide Virtual Charter School Board pursuant to the provisions of Section 3-145.3 of this title shall offer a student orientation, notify the parent or legal guardian 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. The Statewide Virtual Charter School Board shall promulgate rules to develop materials for orientation.

E. Any student that is behind pace and does not complete an instructional activity for a fifteen-school-day-period shall be withdrawn for truancy. The virtual charter school shall submit a notification to the parent or legal guardian of a student who has been withdrawn for truancy or is approaching truancy.

~~E.~~ F. A student who is reported for truancy two times in the same school year shall be withdrawn and prohibited from enrolling in the same virtual charter school for the remainder of the school year.

G. The governing body of each statewide virtual charter school shall develop, adopt and post on the school's website a policy regarding consequences for a student's failure to attend school and complete instructional activities. The policy shall state, at a minimum, that if a student fails to consistently attend school and complete instructional activities after receiving a notification pursuant to subsection E of this section and reasonable intervention strategies have been implemented, a student shall be subject to certain consequences including withdrawal from the school for truancy.

H. If a statewide virtual charter school withdraws a student pursuant to subsections F and G of this section, the virtual charter school shall immediately notify the student's resident district in writing of the student's disenrollment.

I. The provisions of subsections F, G and H of this section shall not be in effect until the implementation of subsection H of Section 3-145.3 of this title.

J. The Statewide Virtual Charter School Board may promulgate rules to implement the provisions of this section.

SECTION 4. AMENDATORY 70 O.S. 2011, Section 18-107, is amended to read as follows:

Section 18-107. As used in this title:

1. "Average Daily Attendance" (ADA) means the legal average number of pupils, early childhood education programs through grade twelve, in a school district during a school year as determined pursuant to the provisions of Section 18-111 of this title. A day of school for early childhood education programs and kindergarten shall be at least two and one-half (2 1/2) hours and, for early childhood education, may be six (6) hours.

2. "Average Daily Membership" (ADM) means the average number of pupils present and absent in a school district during a school year. Average Daily Membership shall be calculated by dividing the sum of the pupil's total days present and total days absent by the number of days taught.

~~Provided, a~~

- a. A pupil who has been absent without excuse ten (10) consecutive days shall be taken off the roll beginning the eleventh day and thereafter shall not be considered in a district's average daily membership calculation until the pupil is placed on the roll in the district. For the purpose of this paragraph, consecutive days means days for which enrollment is recorded.
- b. A pupil enrolled in a statewide virtual charter school who is behind pace and has not completed instructional activity as defined by Section 3-145.8 of this title for a fifteen-school-day-period, without excuse as authorized by Section 10-105 of this title, shall be taken off the roll beginning the sixteenth day and thereafter shall not be considered in the virtual charter school's average daily membership calculation until the pupil is placed on the roll in the virtual charter school.

3. "Total Adjusted Assessed Valuation" means the sum of public service property assessed valuation, personal property assessed valuation and real property assessed valuation as adjusted pursuant to the provisions of Section 18-109.1 of this title.

4. "Eighty-five percent (85%) of maximum allowable", for the purpose of assessing class size penalty pursuant to Sections 18-113.1 and 18-113.2 of this title, means eighty-five percent (85%) of ten percent (10%) of the preceding year's net assessed valuation of a school district. The calculation of indebtedness as provided for in paragraph a of subsection G of Section 18-113.1 and subparagraph a of paragraph 4 of subsection A of Section 18-113.2 of this title shall include the outstanding principal amount of bonds issued by the school district plus the principal amount of any bonds authorized by a vote of the people for issuance but not yet issued by the school district.

SECTION 5. This act shall become effective July 1, 2020.

SECTION 6. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

Passed the House of Representatives the 9th day of March, 2020.

Presiding Officer of the House
of Representatives

Passed the Senate the 11th day of May, 2020.

Presiding Officer of the Senate

OFFICE OF THE GOVERNOR

Received by the Office of the Governor this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

Approved by the Governor of the State of Oklahoma this _____

day of _____, 20_____, at _____ o'clock _____ M.

Governor of the State of Oklahoma

OFFICE OF THE SECRETARY OF STATE

Received by the Office of the Secretary of State this _____

day of _____, 20_____, at _____ o'clock _____ M.

By: _____

**APPENDIX B: 2015 Memo to Arizona
State Board of Education regarding
Accountability Determinations**

MEMORANDUM

TO: MEMBERS, STATE BOARD OF EDUCATION

FROM: ACCOUNTABILITY & ASSESSMENTS DIVISION

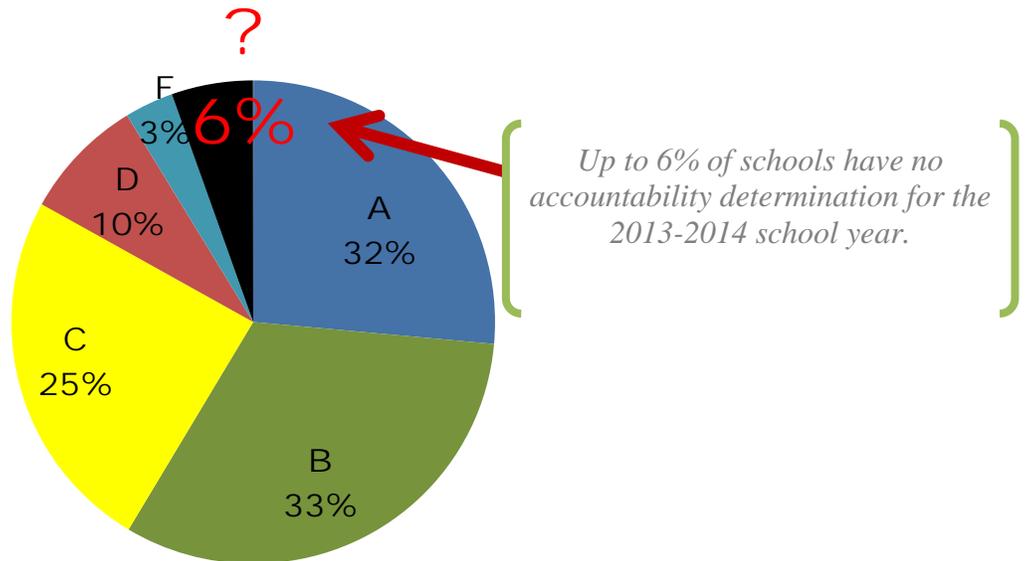
SUBJECT: PRESENTATION, DISCUSSION, AND CONSIDERATION REGARDING 2013-2014
ACCOUNTABILITY DETERMINATIONS FOR SCHOOLS WITH PENDING LABELS

DATE: MARCH 9, 2015

This memorandum provides information underlying the recommendation to adopt new criteria for 2013-2014 accountability determinations for all schools with pending achievement profiles. Under authority described in ARS 15-241, the Department of Education has developed methodologies designed to ensure all school types can be included in the state's accountability system in a fair and efficient manner. Adoption of these recommendations satisfies the conditional flexibility from No Child Left Behind by allowing Arizona to use its own system of differentiation, recognition, and support for all schools. Upon final adoption by the State Board of Education, schools with pending labels will be assigned accountability determinations for the 2013-2014 school year based on 2013-2014 student achievement data.



2013-2014 A-F Grades



Arizona Online Instruction Schools (AOI)

In the Spring of 2013, the State Board of Education took the first step toward recognizing the unique nature of the K-12 distance learning option by amending the “full academic year” (FAY) definition to address extent of instructional exposure rather than calendar days enrolled. In the 2012-2013 school year, less than a quarter of these schools authorized to provide online instruction were included in the A-F Letter Grade Accountability System, which primarily utilizes data from FAY students only. By evaluating student FAY status based on number of minutes of instruction, the AOI FAY definition aligned with the statutory requirements under ARS 15-808 and addressed the student mobility issues unique to online education.

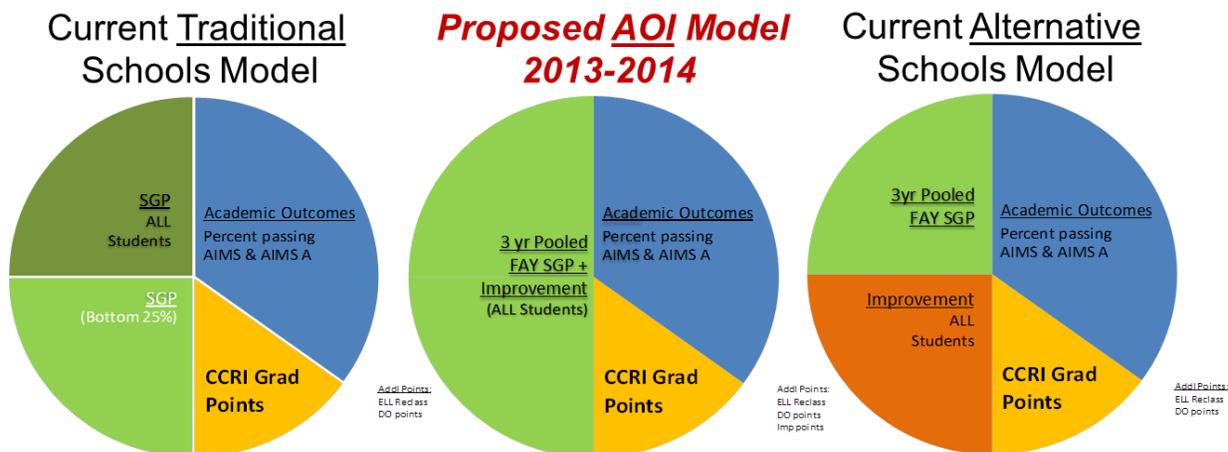
While most brick and mortar schools evaluated in the A-F Letter Grade Accountability System serve mainly FAY students, only 25% of students enrolled at an AOI qualified as FAY. Based on national research as well as input from AOI operators statewide, students choose online instruction for a variety of reasons:

- Credit recovery (e.g., remedial mathematics, remedial English, etc.)
- Credit acceleration (e.g., Physical education, health, etc.)
- Local-level requirements for graduation
- Temporary or permanent preference for online instruction
- Other reasons such as health, environment, etc.



Unlike extremely small schools or schools with very few test records, most online schools provide instruction to students on an “as needed” basis and may have student achievement results which can be aggregated to produce an accountability determination. In prior years, the nature of this data produced letter grade determinations based on a small portion of the students who received instruction and/or were tested at the online school.

Since December of 2013, ADE has documented almost two dozen meetings specific to AOI accountability with external stakeholders in order to vet various methodologies which could fairly capture and reflect their unique data. ADE worked with schools which received A-F letter grades in prior years as well as those which were not rated in prior years. In the end, AOI operators advocated an accountability determination which addressed their dual enrolled students, high student mobility, and emphasis on growth. In order to ensure the accountability system was fairly applied to AOI schools for the 2013-2014 school year, only measures which were available to all schools are utilized in this recommendation. Importantly, this new model reinforces Arizona’s position as a pioneer in not only school choice but also accountability systems specific to the unique educational options available to students. The proposed model establishes the basis for comparability and accountability for K-12 online education and holds AOI schools to the same expectations for student achievement and growth as all other brick and mortar schools in Arizona.



The final recommendation addressed the following measurement and policy concerns posed by AOI schools and national leaders in K-12 distance learning:

- **Low test participation rates** – AOI providers expend vast resources in order to proctor tests in-person for students across the state; however, students may not re-test for multiple schools for school accountability purposes only.



- **Graduation rate accountability** – The mandatory increase of graduation rate within the 2014 A-F system advantaged the majority of high schools; however, this same measurement change had an extremely negative impact on this particular group of schools even when all other performance measures such as student growth remained constant.
- **Letter grade based on marginal amount of data** – “Full academic year” students have been the foundation for accountability in order to give schools reasonable opportunity to instruct students on what is traditionally a full course load; an AOI letter grade based on FAY students only minimizes the amount of student achievement data which can be included and ignores the nature of the instruction AOIs provide to the majority of students who access online classes on an “as needed” or part-time basis.
- **Distinction between AOI “program” and AOI “school”** – A clear distinction exists between a “program” used to administer online instruction to students enrolled in district schools where the students are included in the accountability system for the brick and mortar school and the LEA versus an operating AOI “school” which openly recruits and enrolls students in order to generate tuition from the state and/or other LEAs.
- **Accountability for non-FAY student achievement** – The nature of online instruction and the different educational opportunities online schools can offer today’s students requires some accountability for academic outcomes regardless of the intention of enrolling for a full course load or just a particular set of courses.
- **Greater percentage of students who scored non-proficient in the prior year** – Many students may favor the self-paced nature and relatively isolated environment in order to receive remedial instruction in core content such as Reading and/or Mathematics. Consequently, AOI schools enroll a higher percentage of students who have not passed their last grade level assessment.
- **More recognition for academic growth and substantive gains** – Based on individual student needs, students gain the remediation and/or instruction they need in order to grow toward proficiency; the choice to re-enroll in a traditional campus environment upon completion contributes to the high student mobility rates at AOI schools.

If adopted, the methodology specific to AOI schools would be applied to all distance learning schools using the Department’s School Finance designation of a distance learning program. Schools which qualify for the “alternative school” label would maintain the alternative label in order to identify its unique purpose, but the AOI methodology would determine the A through F label for all AOI schools. The AOI methodology mimics the alternative schools model in multiple ways that advantage the AOI schools due to the emphasis on growth and academic re-enrollment (persistence); therefore, the recommendation includes the application of the 2013-2014 alternative schools letter grading scale which is based on school performance in prior years.



Table 1. *Proposed letter grading scale for 2013-2014 AOI school accountability*

Letter Grades	Scale (ALT)
A-DL	167+
B-DL	132-166
C-DL	97-131
D-DL	0-96

**Note: DL = Distance Learning*

All schools – alternative, traditional, and AOI – must have valid student enrollment, student achievement scores, and student growth data in order to receive an A-F letter grade. Regardless of instructional modality, ADE only uses data based on student enrollment which generates funding for a school. Almost two years of research and collaboration with AOI schools has justified the need to apply a statistical model representative of their unique data. The proposed methodology adjusts existing measures and calculations within the state’s 2013-2014 accountability system in order to control for the unique nature of online instruction and other external factors which unduly impact this subgroup of schools.

Recommendation

Assign 2013-2014 A-F Letter Grades, as proposed by the Department of Education’s Accountability Unit, for all AOI schools with pending labels using methodology and measures specific to online learning and instruction and within the parameters set by ARS 15-241 and Arizona’s 2015 ESEA flexibility request.

Measure of Academic Progress (MAP)

For schools that do not meet the criteria for an accountability determination under the state’s standard A-F Letter Grade Accountability System, ADE must use substitute criteria to ensure accountability for student outcomes in the 2013-2014 school year. The Department began researching different methods of accountability for schools with extremely insufficient student achievement data by creating of a cross-divisional committee tasked with piloting various methodologies and surveying the field for input on the development of a new system that would not increase schools’ administrative burden. The Department created the MAP system to apply to:

1. Schools with less than 30 test records in the last three years OR
2. Brick and mortar schools that did not receive an A-F Letter Grade OR
3. Schools where at least 95% of students are enrolled no more than half-time



In compliance with the conditions of Arizona’s 2015 ESEA Waiver, Arizona has been developing and piloting the MAP system. If adopted, schools which do not meet criteria for accountability determinations under the A-F Letter Grade system – or for which the A-F substantive appeals committee deems necessary – will demonstrate the quality of their academic program in a qualitative manner. The proposed recommendation for Measure of Academic Progress mirrors a component of the Arizona State Board for Charter Schools Academic Performance Dashboard (Demonstration of Sufficient Progress [DSP]). In order to reduce administrative burden for charter schools, the achievement profile determined by the Arizona State Board for Charter Schools (ASBCS) will be utilized by the Department.

Academic Program Introduction

- Provide a brief description of the school’s history and mission.

Professional Development

- Demonstrate your school’s professional development plan is appropriate and robust.
- Demonstrate your school’s teachers are appropriately evaluated and qualified to teach and meet state and federal guidelines for teaching in their content areas.

Curriculum

- Describe the process used to create and implement a school curriculum aligned to Arizona’s College and Career Ready Standards.
- Describe any systematic processes used and evidence that is collected for monitoring and evaluating implementation of the curriculum in the classroom.

Instruction

- Describe the system used to monitor the integration of Arizona’s College and Career Ready Standards into instruction, including what evidence is collected to ensure alignment to Arizona’s College and Career Ready Standards and support for students not at grade level standard.

Assessment

- How does the school use student performance data to monitor the progress of its students, especially underperforming students, during the year and to plan for teaching and learning?

The increased collaboration and communication among the ASBCS and the Department allows schools to focus more attention and resources on student achievement. To streamline accountability systems and reduce the administrative burden on schools, the Department developed MAP as a truncated version of the DSP that adequately covers content universal to all schools. For all schools that did not receive a 2014 A-F letter grade or ASBCS Dashboard, the following process will be applied:



1. ADE will notify schools with no A-F grade of the use of MAP or the ASBCS Dashboard – ADE will coordinate Dashboard/DSP label with ASBCS.
2. ADE will verify and provide all data within the Department related to student achievement and student outcomes for a MAP label.
3. Schools submit narrative on their school’s history and mission, professional development, instruction, curriculum, and assessment areas.
4. ADE Accountability will identify qualified education practitioners to review and evaluate schools’ submissions to ADE. MAP reviewers must have applied experience in K-12 school administration or other leadership roles.
5. Each of the four areas will be independently evaluated then aggregated for a final MAP Label (see below). Reviewers’ ratings will be confirmed and assigned by ADE Accountability.

Table 2. *Proposed MAP accountability ratings for schools with insufficient data*

A-F equivalent	ASBCS label	ADE MAP label
A	Exceeds Standard	Exceeds Standard
B	Meets Standard	Meets Standard
C	Approaches Standard	Approaches Standard
D	Falls Far Below	Falls Far Below

ADE worked with district and charter schools as well as the ASBCS in finalizing the MAP data collection tool. School and district personnel offered comments on multiple drafts to ensure that MAP was a fair and successful accountability method for schools which lacked the quantitative data required in any A-F accountability formula. Despite a low response rate, ADE also collected survey data from schools for a two month period which resulted in an overall agreement for MAP’s purpose, methodology, and expectation. Because the MAP system, as it relates to charter schools, depends on a cooperative and communicative relationship with the ASBCS, the ADE will closely monitor the alignment between MAP and ASBCS standards used for charter school accountability.

Recommendation



Adopt and implement the MAP system for 2013-2014 accountability determinations in order to evaluate schools with insufficient data and currently pending labels as recommended by ADE.



APPENDIX C: Memo from the National Alliance for Public Charter Schools Regarding Ohio's Virtual School Funding Model

How Ohio Funds Its Full-Time Virtual Charter Schools

Provided by Representatives of the National Alliance for Public Charter Schools

Unlike many states that simply fund full-time virtual charter schools based on enrollment, Ohio has created certain controls to align how much a school is paid with how much each student actually engages with the school.

First, when a student enrolls in a full-time virtual charter school, no funding flows to the school until the student receives a computer and online access is verified during the enrollment process. Typically, schools will use a UPS confirmation as proof they sent the computer. Therefore, the school has an upfront financial stake in making sure each student has the tools to engage and has actually logged into the school's online program.

The state calculates the annual per-pupil amount for each school and makes a monthly payment equal to one-twelfth of that amount. Each month, the Ohio Department of Education pulls data regarding student participation at each school and the monthly payment is adjusted up or down accordingly based on each student's participation. After the school year, a reconciliation process is conducted by the Ohio Department of Education. If the end-of-school-year reconciliation process finds that a student engaged in learning at a lower level than was reported over the course of the year, that student's school will owe funding to the state. Some schools avoid large end-of-school-year overpayments by adjusting participation time down in each monthly report.

To demonstrate the time a student participates, the state audit gathers the following information for each student:

- The calendar reported by the school;
- The enrollment start date;
- The enrollment end date; and,
- The percent of time the student engaged in learning.

To demonstrate time the student is engaged in learning, the minimum information provided is:

- Student ID;
- Brief description of learning opportunities, such as class or course information;
- Dates and times of actual learning opportunities;
- Total of verified learning opportunities time; and,
- Teacher certification of the reported learning opportunities.

For instance, if a school year is 920 hours and a student is enrolled the entire school year but only accumulates 500 hours of documented learning opportunities, the student's school would get credit for 54% of that student, with funding adjusted accordingly. It is important to note that schools cannot use estimated time for calculating student learning opportunities. If a school estimates a project will take 10 hours but the student completes it in six hours, the school may only report six hours.

As a general schoolwide example, let's assume a school with an enrollment of 4,000 students and an annual per-pupil amount of \$6,000. On a funding model that funds only for enrollment, the school would receive \$24,000,000. Let's now assume that by the end of the year 20% of the students engaged

10% of the time, 50% engaged 50% of the time, and 30% engaged 100% of the time. With the same enrollment and per-pupil funding level, this school would receive \$13,680,000 under the Ohio system.

For detailed information on Ohio's virtual charter school funding method, see pp. 14-15 of the *FY19 Community School FTE Review Manual*: <http://education.ohio.gov/getattachment/Topics/Finance-and-Funding/School-Payment-Reports/State-Funding-For-Schools/Community-School-Funding/Community-School-Funding-Information/FY19-FTE-Review-Manual-Combined-2.pdf.aspx?lang=en-US>