Illinois State Charter School Commission

ANSWERS FOR APPLICANTS AND SCHOOL DISTRICTS TO FREQUENTLY ASKED QUESTIONS RE: FILING AN APPEAL WITH THE COMMISSION

January 2015
Illinois
State Charter School Commission
Frequently Asked Questions Re:
Filing an Appeal
January, 2015

Responses to these Frequently Asked Questions are non-regulatory and advisory only. Charter schools and charter authorizers are encouraged to examine the laws and regulations that are the foundation for these responses and seek independent legal counsel regarding the application of any of these items to a specific situation.

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Filing an Appeal

1. What laws and rules govern the filing of an appeal?

An appeal to the Illinois State Charter Commission is a legal proceeding. Accordingly, it is recommended that applicants seek legal counsel in connection with filing an appeal. The appeal process is governed by the Illinois Charter Schools Law, 105 ILCS 5/27A, and the Illinois Administrative Code, Part 650. See 23 Ill. Admin. Code Part 650. In addition, the Commission has established non-regulatory guidance for charter school applicants and Illinois school districts who may be considering filing an appeal or who are a party to an appeal. Anyone considering filing an appeal with the Commission or who is a party to an appeal should always consult and abide by the law and the rules governing an appeal. Persons with questions may contact the Commission by telephone (312.814.1258 or 312.824.1259) or email at state.charter.commission@illinois.gov.

2. Who can file an appeal?

There are three categories of charter school applicants that can file an appeal:
- New charter school applicants whose proposal has been denied by the district school board
- Existing charter schools that have had their charter revoked
- Existing charter schools whose charter has not been renewed

Applicants may also submit their proposal to the Commission if the following required deadlines set out in Illinois Charter School Law for the review of new charter proposals have not been met:
- The local school board has not held a public meeting within 45 days of the submission of a charter school proposal, or
- The local school board has not voted to approve or deny the proposal within 30 days of the public meeting.

Please note that the Illinois Charter Schools Law permits local school boards in certain circumstances to establish their own process for soliciting and receiving new charter proposals annually so long as the process follows the timeline set forth in statute. In those situations, new charter school applicants must follow that process before an appeal can be taken. See 105 ILCS 55/27A-8(c).

3. To whom, when and how should notice of an appeal be given?

Pursuant to the Administrative Code, Part 650.100(b), any applicant who files an appeal must give notice of the appeal to the school district from whose action or inaction the appeal is being taken. Notice to the district of the appeal by certified mail, return receipt requested, is recommended. Email notice is also permitted. Proof of such notice should be provided to the Commission when the appeal is filed with the Commission.

4. What is the timeline for filing an appeal to the Commission?

Pursuant to Section 650.100(a) of the Administrative Code, appeals or requests for consideration shall be submitted to the Commission not later than 30 days after:

1) the date that the school board voted to deny the application; or
2) the date by which the school board was to, but did not, hold a public meeting; or
3) the date by which the school board was to, but did not, vote on the charter request.

5. What are the duties of the local school board for submission of an appeal?

Based on the Administrative Rules, Part 650.30, a local school board must give notice to the Commission and to the State Board of Education that it has made a final decision to deny a charter proposal, reject an application for renewal or revoke a charter agreement within 7 days of the vote taking such action. The Administrative Rules set forth what should be contained in such notice and how it should be submitted. If Districts are late or fail to give proper notice, district personnel will be advised of such by the Commission as appropriate.

Once an applicant files an appeal, and provides simultaneous notice to the local school board, the Commission recommends that the school board contact the Commission to confirm receipt of the notice.

6. What should be in an appeal?

The Commission recommends that applicants include in their appeal the following items, which are either required under Section 650.100(c) of the Commission’s Administrative Rules or recommended by the Commission’s non-regulatory guidance:

- A cover memorandum stating the reasons, to the extent possible, why the application was denied and why the applicant believes the decision of the school board should be reversed, (memorandum not to exceed 25 pages);
- THE EXACT PROPOSAL AS SUBMITTED to the district;
- proof of service of the original proposal on the district;
- any response or other documents received by the applicant from the district;
- a table of contents listing the documents submitted on appeal
- to the extent parties seek to attach new information, a separate request to submit said new information, with a table of contents listing such proposed new information, must be submitted along with the proposed new documents, and the Commission will extend its best efforts to seek a response from the other parties, and answer any such requests within 21 days of receipt;
- proof of service of the appeal on the district; and
- a contact information sheet, giving the applicant’s email and telephone contacts for at least two persons on the applicant’s team, as well as the contact information of two district representatives with whom the applicant has been in contact regarding the application’s consideration by the district.

7. May an applicant submit new materials as part of its appeal?

The Charter Law and Administrative Rules permit the Commission to accept new materials from a new charter school applicant submitting a proposal on appeal at the Commission’s discretion (see section 650.100(e)). Parties desiring to submit new materials beyond the original application and other materials submitted to the local school board for its consideration must request permission from the Commission at the time of filing an appeal, (see above), or thereafter as needed. If submitted, each such "new" document should clearly be designated as "new" with an explanation as to why each "new" item is being added. Any new material must be submitted to the other
party (district or applicant) as well. The Commission in its judgment and discretion will decide whether to accept the "new" submitted materials. The Commission may also, of its own accord, request new or additional information or documents during the course of the appeal in order to gain a better understanding of the appeal from either party.

8. What are the differences between being authorized as a Commission charter school and a district charter school?

Persons and groups who are considering filing an appeal with the Commission should be aware that there are some differences between charter schools authorized by the Commission as compared to charter schools authorized at the district level. A few of the most important differences, but not all such differences, are:

a. Commission-authorized charter schools must serve as their own Local Education Authority, ("LEA"). District-authorized charter schools are a part of the district’s LEA. Serving as an LEA requires additional responsibilities, especially related to special education services, and transportation, among other matters. Groups considering filing an appeal should consult with their attorney regarding the precise duties of serving as an LEA.

b. Commission-authorized charter schools usually must provide all of their own special education services for the full range of special education students. District-authorized charters may provide their own services, or they may enter into agreements to purchase services from the district to serve special education students.

c. Commission-authorized charter schools must be in compliance with the provisions of the Illinois charter schools law concerning transportation services. District-authorized charter schools sometimes purchase transportation services from the district. The Commission does not offer or provide transportation services to its charter schools.

d. Commission-authorized charter schools must provide their own facilities, in compliance with the requirements of the charter law. The law does not require that an applicant own or rent the proposed facility at the time of application, but it does specify that two facility options must be presented. Applicants are advised to study the law’s requirements for charter school facilities. Some districts offer to rent or sell district buildings to district-authorized charter schools. The Commission does not own or control any facilities, and therefore, the requirement of identifying a facility compliant with the charter law rests with the applicant.

e. Because of the differences between being authorized as a Commission charter school, applicants filing an appeal should consider requesting authorization from the Commission to amend their proposal to address these differences. Amendments should address how and in what ways the applicant would plan to comply with the requirements of being a Commission charter school, such as fulfilling LEA, special education, transportation and facilities duties.

9. How do you file an appeal?

Under Section 650.100(b) of the Administrative Rules, appeals based on denials or inaction must be submitted in writing and SENT BY ELECTRONIC SUBMISSION ONLY to state.charter.commission@illinois.gov. The applicant must also serve an additional copy on the school district by electronic submission or certified mail or both. The Commission will extend its best efforts to confirm receipt of email submissions within 72 hours of receipt. Careful parties will communicate with the Commission to confirm that their submissions have been timely and completely received by the Commission. If there are extenuating circumstances, a party filing an appeal may make a request to the Commission for acceptance of the appeal by certified mail, and the Commission will
extend its best efforts to respond promptly to such requests.

10. What are the stages in the appeal process?

As required under Illinois law, and in conjunction with best practices adopted by the Commission, the appeals process must adhere to the following timeline:

- A joint interview with both parties to be held no later than 45 days following the Commission’s receipt of the appeal,
- A public hearing to be held not later than 45 days following the Commission’s receipt of an appeal, in which the Commission will gather more information about the appeal from all parties;
- A public meeting, to be held by the Commission not later than 30 days following the public hearing, to announce the Commission’s decision regarding the appeal.

An applicant is not required to pursue an appeal to a final vote. An applicant may withdraw its appeal at any time in the appeal process, without giving up any right to file a new proposal at a later time with the same or a different local school board. Notice of an intent to withdraw must be submitted to the Commission, with a copy to the local school board, by electronic communication.

11. What happens at a Commission appeal interview?

The interview includes both parties and serves to help the Commission obtain a better understanding of the charter school applicant’s proposal and the nature of the district’s response and reasoning. Interviews generally last two to four hours. Typically, the interview will give approximately one hour to each party with an opportunity for a brief opening statement and a lengthier period of questioning by the Interview Team. The Commission has created a sample interview agenda based on past interviews.

The Interview Team consists of Commission staff and 3-5 independent experts in charter school finance, curriculum, governance, operations and charter law, who all study the parties’ materials and then participate in the interview. The questions from the Interview Team cover all aspects of the charter school proposal and the District’s specific response to and decision regarding the proposal on appeal. All parties will be interviewed in the presence of the other parties. In multi-district appeals, these general guidelines will be modified as needed. The interview is not open to the public.

12. What happens at a Commission appeal public hearing?

The public hearing held for an appeal takes place on or before 45 days after the appeal has been submitted, in order to gather more information from all parties and to enable a representative number of Commissioners who attend the public meeting to listen to comments on the appeal. The public hearing is usually set in the evening for the benefit of the public and typically lasts 2 hours. Each party is guaranteed time, usually 15 to 20 minutes, to address the Commissioners who are present and to answer any questions they may have. Time is also reserved for public comment. Typically, each speaker in the public comment section is limited to 2 minutes, at the discretion of the presiding Commissioners. The meeting is open to the public and a public notice is posted 5 to 10 days beforehand in local newspapers to inform the community where and when the hearing will take place.

The date of the public hearing is set by the Commission, in collaboration with the parties where possible, and parties to the appeal may bring as many people to the public
meeting as they wish, although time limits may impact how many representatives from each party may speak. In general, the most important aspect of the public hearing is that all parties should try to ensure they have representatives available to address the Commission and to answer any questions Commissioners may pose.

**13. How does the Commission decide appeals?**

The entire Commission votes on appeals in an open, public meeting. Only Commissioners vote and decide appeals. Because of the short timeline imposed by Illinois Charter Law, the Commission has delegated to staff the duty to review each appeal and to make a recommendation to the Commission as to whether it should be approved. The Commission’s staff uses a multi-stage process incorporating best practice assessments when investigating appeals, following the criteria outlined in the Illinois Charter Schools Law. Both staff’s recommendation and the Commission’s vote on appeals are guided by specific language in the Charter Schools Law. See 105 ILCS 5/27A-7.

The Commission staff usually retains a panel of independent experts to help conduct its assessment of the appeal. The independent evaluation team, as well as staff, uses a rubric during the appeal analysis and interview to assess whether the proposal, along with information conveyed at the interview, meets the standard set in Illinois Charter Schools Law. The use of this rubric is one part of the larger deliberative process engaged in by the Commission as mentioned above.

**14. What are the applicant’s and the local school board’s rights following the Commission’s decision?**

Pursuant to Illinois law, both applicants and local school boards have a right to appeal a Commission decision to the state courts of Illinois. Under Section 27A-8 of the Illinois School Code, final decisions of the Commission are subject to judicial review under the Administrative Review Law, the governing statute for judicial review of an administrative agency decision in Illinois. After a decision has been reached, the applicant or local school board has 35 days to file a complaint with the Circuit Clerk’s Office.

The Commission has, since its inception, issued written decisions in three appeals, Concept, Pathways and Elgin. These written decisions provide a helpful reference guide to the process used by the Commission to handle appeals, and should be reviewed by any potential applicant, and any school districts involved in a charter school appeal.

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