

## Stakeholder input on ODE's proposed community school sponsor rules

April 2010

Chapter 3301-102 Community Schools

Definitions 3301-102-02:

**(E) "Chief Administrative Officer" means the individual designated by the Governing Authority as the person in charge of the community school's daily operations and assigned the role of superintendent in Ohio Educational Director System – Redesign (OEDS-R) or its successor system.**

*Comment: In many community schools, the Principal/Chief Administrative Officer and the Superintendent are two separate positions. Stakeholders requested that the separate roles be provided for in OEDS-R to help facilitate more effective communication, particularly at the building level. Stakeholders believe that creating a rule that forces charter schools to change their HR structure with respect to these two positions exceeds ODE's authority.*

**(K) "Eligible entity" means any of the following:**

**(6)(b) The entity has net assets of at least five hundred thousand dollars that are owned by the entity and verifiable by an audited financial statement provided by a certified public accountant and ~~has~~ must demonstrated a record of financial responsibility.**

*Comment: The requirement of a CPA-audited financial statement to achieve the legitimate goal of verifying the financial wherewithal of a sponsor or potential sponsor is an unnecessarily expensive approach. A CPA can review (rather than audit) the financial statements and issue a review report (which generally states that the CPA has reviewed the financial statements, asked questions, and found no materials issues of concern) – at a much lower cost than an audit. The language currently in place in ORC 3314.02 C(1)(f)(ii) requires verification of the sponsor's financial responsibility and is sufficient. Stakeholders believe that modifying the rule to specifically define how sponsors must meet the law with respect to demonstrating financial responsibility exceeds ODE's authority.*

**(6)(d) The department has determined that the entity has a demonstrated record of successfully implementeding educational programs**

*Comment: The change seems to make the criteria weaker. Who will determine—and how -- what constitutes “a demonstrated record of successfully implementing educational programs”? Stakeholders believe that this proposed rule would allow ODE to exceed its authority.*

**(P) “Learning Opportunity” means classroom-based or non-classroom-based supervised instructional and educational activities which are defined in the community school’s contract and are: (1) provided by or supervised by a licensed teacher; (2) goal oriented; (3) certified a licensed teacher as meeting the criteria established for completing the learning opportunity.**

*Comment: “Learning Opportunities” are defined within each community school contract. ODE’s attempt to define learning opportunities limits the innovation that serves as the very foundation for community schools and exceeds the agency’s authority.*

**(W) “Sponsor capacity” means an organization’s capability of providing sufficient technical assistance, oversight, and monitoring, which includes taking steps to intervene in a school’s operations to ensure that the community schools it sponsors will meet all legally mandated fiscal, academic, and operational requirements.**

*Comment: ODE staff responded favorability to stakeholder concern that the word “ensure” overstates the responsibility of sponsors and agreed to change the word to “assure.” However, the State Board of Education disagreed and instructed staff to change “assure” back to “ensure” before voting to approve. Stakeholders believe that the proposed rule is inconsistent with state law which clearly provides for charter school autonomy and recognizes that the role of the sponsor is to provide strong broad oversight (rather than running day-to-day school operations).*

**(X) “Sponsor oversight” means actions taken by the sponsor to fulfill its legal obligations to monitor all aspects of a school’s fiscal, academic and operational performance, including, but not limited to, compliance with applicable rules and laws and all terms of the community school’s contract.**

*Comment: ODE staff responded favorability to stakeholder concern that the phrase “all aspects of” overstates the responsibility of sponsors and agreed to eliminate it. However, the State Board of Education disagreed and instructed staff to add the phrase back before voting to approve. Stakeholders believe that the proposed rule is inconsistent with state law which clearly provides for charter school autonomy and recognizes that the role of the sponsor is to provide strong broad oversight (rather than running day-to-day school operations).*

**(AA) “Technical assistance” means providing relevant knowledge and/or expertise and/or assuring the provisions of ~~the following~~ resources to assist the community school or sponsor in fulfilling its ~~mission~~ obligations under rule and law, including, but not limited to: training guidance, information, written materials and manuals.**

*Comment: Stakeholders requested that the word “training” remain in the definition to comply with ORC 3314.015(a)(1) as training is part of a sponsor’s obligation in providing technical assistance. Stakeholders believe that ODE’s decision to eliminate a word that is included in state law exceeds its authority and would create a rule that is inconsistent with the Ohio Revised Code.*

Approval of Sponsors 3301-102-03:

**(E) An eligible entity shall provide as part of its initial written application, as well as during the application review process, evidence requested and deemed necessary by the department, including, but not limited to, evidence of its capacity as a sponsor ability ~~(e.g., possessing, or assuring the provision of, the relevant knowledge and/or experience and the human and financial capacity)~~ and willingness to do all of the following:**

**(6) Assure that~~Any additional administrative services provided by a sponsor for financial reimbursement and the associated fees, which a sponsor may offer to a community school it sponsors will be awarded through a competitive bidding process and pose no conflicts of interest. shall be defined in the community school contract and a~~Acceptance of such additional services may not be a precondition for sponsoring the community school;**

*Comment: Stakeholders strongly object to the proposed new requirement with respect to competitive bidding. Community schools are exempt from competitive bidding except in relation to federal funds (which was reaffirmed in a 2/11/09 letter from the Office of Community Schools regarding EDGAR/Federal Title funding). Further, the issue was debated during the recent H.B. 1 deliberations; a provision requiring a competitive bidding process for community school contracts with education management companies was removed from the final legislation enacted into law. Last, current law already prohibits a sponsor from requiring a school to purchase any back-office services. Stakeholders believe that this proposed rule exceeds ODE’s authority and is inconsistent with state law.*

Sponsorship Agreement 3301-102-04:

**(A) The duties and responsibilities of a sponsor of a new start-up community school in a challenged school district shall be specified in a sponsor agreement with the department and in each community school contract to which the sponsor is a party. These duties and responsibilities include, but are not limited to, the following:**

**(3) Indicate fees, if any, which may not exceed three percent of the total amount of payments for operating expenses that the community school receives from the state that will be charges each community school for technical assistance, oversight and monitoring pursuant to section 3314.03 of the Revised Code. Assure that ~~Any additional administrative services provided for additional financial reimbursement by a sponsor and the associated fees, which a sponsor may offer to~~ a community school ~~it sponsors will be awarded through a competitive bidding process and pose no conflicts of interest. shall be defined in the community school contract and a~~ Acceptance of such additional services may not be a precondition for sponsoring the community school; ~~Any additional services and the associated fees, which a sponsor may offer a community school it sponsors, shall be defined in the community school contract and acceptance of such additional services may not be a precondition for sponsoring the community school;~~**

*Comment: Again, stakeholders strongly object to any competitive bidding requirement and reinforce that current law clearly exempts community schools from the competitive bidding process except in relation to federal funds.*

**(12) Submit a copy of each preliminary agreement and community school contract executed, and any amendments thereto, in the format required by the department, within ten business days of such execution to the department.**

*Comment: Stakeholders strongly object to this change as it would require sponsors to abandon the use of fully vetted legal documents that have been effective for the past five years in guiding the requirements for sponsors and schools. Attachments provided as part of the legal document are necessary to ensure adequate oversight by the sponsor (Stakeholders suggested that if the Office of Community Schools chooses not to review each attachment, it could clearly state that it is only looking at the prescribed essential pieces for legal sufficiency but accepting all the other pieces of the contract to ensure that a complete contract is on file.). Although the department has indicated that the intent of this proposed change is not to dictate content of the*

*contract – but rather to make the review process easier – the current suggested addition to the rule is not clear enough and could result in the department overstepping its authority. Consistent with the spirit of Ohio’s public records law, stakeholders believe that ODE should maintain a complete copy of contracts between sponsors and schools and that failure to do so would be inconsistent with state law.*

**(C) Sponsors shall not enter into a new community school contract while any community school they sponsor is declared to be unauditible per section 265.80.20 of Am. Sub. H.B. 1 of the 128<sup>th</sup> General Assembly or its successor legislation and may enter into a new community school contract again sponsor upon notification from the Auditor of State that the audit reports for the previously unauditible community schools have been released.**

*Comment: This is clearly addressed through temporary law and need not be addressed through an administrative rule. H.B. 1 included language that would have made this a permanent provision in state law, but the language was removed prior to enactment of the legislation making this rule inconsistent with the legislation.*

Reporting Requirements for all Sponsors 3301-102-05:

**(C) A sponsor shall submit a copy of each preliminary agreement and community school contract, and any amendments thereto, in the format required by the department to the department within ten business days of executing any such agreement, contract or amendments.**

*Comment: Again, stakeholders strongly object to this change as it would require sponsors to abandon the use of fully vetted legal documents that have been effective for the past five years in guiding the requirements for sponsors in rule and law. The rule is inconsistent with the spirit of state public records law in that the state would not maintain a complete copy of contracts between sponsors and schools, denying the public access to vital information.*