



NORTH CAROLINA
COALITION FOR
CHARTER SCHOOLS

September 6, 2023

North Carolina State Board of Education
301 N. Wilmington Street
Raleigh, NC 27601-2825

Re: State Board of Education's Consideration of CHTR-022 (Funding and Accountability for Charter Schools)

Dear Chairman Davis, Vice Chairman Duncan, and Members of the State Board of Education:

I write to you regarding a new policy proposed by certain members of the State Board of Education, CHTR-022, which is scheduled for action tomorrow. This policy is problematic for numerous reasons. Indeed, it directly violates State law. For this and many other reasons, a vote tomorrow on *first reading*—which is highly unusual for such an important policy—would be premature and ill-advised.

As you know, the North Carolina General Assembly last month enacted [Session Law 2023-110](#), which converted the Charter Schools Advisory Board into the Charter Schools Review Board. The new law gives the Review Board authority to take final actions regarding charter schools, while giving the State Board of Education the power to decide appeals from those decisions.

The new law also requires that, before the State Board adopts any new rules regarding the operation or approval of charter schools, the rule must first be recommended by the Review Board. *See* N.C. Gen. Stat. 115C-218(a1).

Despite this, the State Board's proposed policy would allow it to withhold funds to charter schools unless or until the State Board, in its unlimited discretion, decides the school meets an otherwise unidentified set of conditions. North Carolina law does not allow the State Board to enact such a policy. Worse, the circumstances surrounding the policy's drafting and distribution raise real concerns that the State Board is putting schoolchildren in the middle of a political fight.

First, the State Board does not have authority to enact this policy on its own. The State Board has not submitted the policy to the Review Board for approval, as the law requires. It also has not followed the procedures necessary for rulemaking under the State's Administrative Procedure Act. While the State Board has attempted to characterize its proposal as a "policy" that relates only to the internal operations of the agency, it affects the substantive rights of third parties—*i.e.*, charter schools that are legally entitled to receive per-pupil funding under the Charter Act. Accordingly, North Carolina law requires the State Board to follow the procedures required for rulemaking—including publishing the proposed rule, allowing time for public comment, and then submitting

North Carolina Coalition for Charter Schools
420 Midland Drive, Pinehurst, NC 28379
nc.chartercoalition.org

the rule to the North Carolina Rules Review Commission. The State Board, however, has done none of this. This is all the more surprising since the Supreme Court confirmed that the State Board must follow the rulemaking procedures just a few short years ago. *See State Bd. of Educ. v. State*, 371 N.C. 149, 150, 814 S.E.2d 54, 56 (2018).

Second, the Charter School Act does not give the State Board the power to withhold funding for public charter schools that have been approved by the Review Board. Indeed, the Charter School Act expressly provides that the State Board of Education “*shall* allocate” a per-pupil share of funding “to each charter school.” *See* N.C. Gen. Stat. 115C-218.105(a) (emphasis added). The Court of Appeals has previously held that this same language (when applied to local school districts) leaves no room for discretion, but is instead “unambiguous, direct, imperative, and mandatory.” *Sugar Creek Charter Sch., Inc. v. Charlotte-Mecklenburg Bd. of Educ.*, 195 N.C. App. 348, 356, 673 S.E.2d 667, 673 (2009).

Unfortunately, the language in CHTR-022 is so general and vague, it would allow the State Board to do just what the law prohibits—to withhold funding from a legally approved charter school—without citing any reason for doing so. Notably, the policy also fails to provide any guidelines regarding the State Board’s new role as an appellate body for Review Board decisions—which is the one function that Session Law 2023-110 requires the State Board to perform.

Finally, even if the policy were not illegal, the circumstances under which it has been drafted and distributed are atypical and problematic. As today’s discussion made clear, the policy was not provided to certain State Board members—including the State Superintendent—until late last week. Moreover, the Board has scheduled the policy for action on first reading tomorrow. This timeline is highly unusual for a policy which has such far-reaching implications. It also circumvents necessary discussion and debate—and with no discernible need to act quickly. In fact, there is no pressing reason to set such a policy now. New charter schools approved by the Review Board will not be eligible to receive funding until they open, which will be next year at the earliest.

As a result, I urge you *not* to give final approval to CHTR-022 tomorrow. Clearly, this policy needs more work, time, and discussion from the State Board’s various stakeholders to ensure it is both legal and in the best interests of the state’s public schoolchildren.

Thank you for your attention to this matter. Please do not hesitate to contact me at 704.231.9767 or lkakadelis@nc.chartercoalition.org if I can be of assistance. I look forward to our continued collaboration, as we work to support North Carolina’s diverse public school family.

Regards,



Lindalyn Kakadelis
Executive Director
North Carolina Coalition for Charter Schools

North Carolina Coalition for Charter Schools
420 Midland Drive, Pinehurst, NC 28379
nc.chartercoalition.org

CC: State Superintendent Catherine Truitt
Alan Duncan, Vice Chairman, NC State Board of Education
NC Lieutenant Governor Mark Robinson
NC State Treasurer Dale Folwell
Dr. Olivia Holmes Oxendine, NC State Board of Education
Reginald Kenan, NC State Board of Education
John Blackburn, NC State Board of Education
James Ford, NC State Board of Education
Jill Camnitz, NC State Board of Education
Dr. Donna Tipton-Rogers, NC State Board of Education
J. Wendell Hall, NC State Board of Education
Ashley Baquero, Office of Charter Schools, NC Dept. of Public Instruction
Bruce Friend, Chair, NC Charter Schools Review Board
John Eldridge, Vice Chair, NC Charter Schools Review Board
Dave Machado, NC Charter Schools Review Board
Eric Sanchez, NC Charter Schools Review Board
Hilda Parlér, NC Charter Schools Review Board
Rita Haire, NC Charter Schools Review Board
Shelly Shope, NC Charter Schools Review Board
Todd Godbey, NC Charter Schools Review Board
Bartley Danielsen, NC Charter Schools Review Board
Stephen Gay, NC Charter Schools Review Board
Alex Quigley, NC Charter Schools Review Board
Jamey Falkenbury, NC Charter Schools Review Board and NC Dept. of Public Instruction