District Court, La Plata County, Colorado 1060 E. 2nd Avenue, Room 106 Durango, CO 81301	
DURANGO SCHOOL DISTRICT 9-R, Plaintiff, v. **ASCENT CLASSICAL ACADEMY,** Defendant. and **COLORADO STATE BOARD OF EDUCATION,** Proposed Intervenor-Defendant.	**COURT USE ONLY**
PHILIP J. WEISER, Attorney General JOSEPH PETERS, Senior Assistant Attorney General, Reg. No. 42328* 1300 Broadway, 6th Floor Denver, CO 80203 (720) 508-6179 Joe.Peters@coag.gov *Counsel of Record	Case No. 2022CV030020 Division: 5
COLORADO STATE BOARD OF EDUCATION'S **<u>UNOPPOSED</u> MOTION TO INTERVENE**	

The Colorado State Board of Education moves under C.R.C.P. 24(a) and (b) to intervene as a defendant in Durango School District 9-R's complaint against Ascent Classical Academy. Counsel have conferred. This motion is unopposed. As required by C.R.C.P. 24(c), Exhibit A is the State Board's proposed pleading.

Background

Under the Charter Schools Act, parents and teachers can form a nonprofit entity and apply to create a "charter school." §§ 22-30.5-101, et seq., C.R.S. These schools operate autonomously, subject to the oversight but not the direct control of their school district. §§ 22-30.5-104(7)(a) & -110. Those wishing to create such a school must submit an application to the district—explaining the proposed school's educational merits, governance capacity, and the like—which the district then subjects to rigorous review. §§ 22-30.5-106 & -107. The result of a successful application is a charter contract. § 22-30.5-105.

Charter contracts are not like normal contracts. To begin with, a school district can be effectively compelled to sign one. *See Bd. of Educ. of Sch. Dist. No. 1 in City & Cnty. of Denver v. Booth*, 984 P.2d 639, 652-54 (Colo. 1999). Further, because these contracts turn on questions of education policy, the General Assembly created a special statutory enforcement scheme. *Academy of Charter Schs. v. Adams Cnty. Sch. Dist. No. 12*, 32 P.3d 456, 461-64 (Colo. 2001). The entire system, from application to contracting to implementation, is subject to the State Board's oversight. *Booth*, 984 P.2d at 650-55; *Academy*, 32 P.3d at 461-63. With one narrow exception, all disputes between districts and their charter schools or applicants come to the State Board for adjudication. *See* §§ 22-30.5-104(7)(b), -107.5 & -108; *Academy*, 32 P.3d at 467-69.

This case is such a dispute. Ascent applied to Durango. Compl. ¶ 14. Durango has said either that it will not consider the application until August 1st or perhaps that it will not do so unless Ascent refiles on that date. *Id.* ¶ 16. Ascent has now filed a notice of appeal under § 22-30.5-108, invoking the State Board's jurisdiction. *See* Exhibit B (notice of appeal). The State Board will take up Ascent's appeal in due course, as well as any motion to dismiss filed by Durango.

Legal Standards

Intervention is available as of right when "the disposition of the action may as a practical matter impair or impede [intervenor's] ability to protect" its interests. C.R.C.P. 24(a). Intervention is also available as a discretionary matter to a government agency responsible for administering the statutes on which the parties' claims and defenses rely. C.R.C.P. 24(b).

Argument

The State Board has a right to intervene under C.R.C.P. 24(a) to defend its exclusive jurisdiction over charter disputes. Even if that weren't so, the dispute would still warrant permissive intervention, since this case has implications for the State Board's jurisdiction.

I. Mandatory intervention is proper because the State Board has exclusive jurisdiction to hear this class of disputes.

Under C.R.C.P. 24(a), "an applicant may intervene as a matter of right if he has an interest relating to the transaction that is the subject of the action, his

ability to protect that interest is impaired or impeded, and his interest is not adequately represented by the parties to the action." *Feigin v. Alexa Group, Ltd.*, 19 P.3d 23, 28 (Colo. 2001). Each element of the test is flexible and pragmatic. *See id.* at 29 (rejecting "formalistic" test in favor of "flexible approach"); *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 406 (Colo. 2011) (holding that impairment prong "allows intervention of right where a party's interest may be impaired as a practical matter"); *O'Hara Grp. Denver, Ltd. v. Marcor Hous. Sys., Inc.*, 595 P.2d 679, 687 (Colo. 1979) (holding that interest prong "is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process").

As explained in Exhibit A, the General Assembly has imposed administrative remedies. *See* §§ 22-30.5-107.5 & -108; *Booth*, 984 P.2d at 650-55; *Academy*, 32 P.3d at 461-63. Disputes like the one between Durango and Ascent come to the State Board for resolution, and the State Board's orders are generally final. §§ 22-30.5-108(3)(d); *Academy*, 32 P.3d at 461-63.[1] Durango must exhaust its administrative remedies before seeking any available judicial review. *See Colo. Health Facilities Review Council v. Dist. Ct.*, 689 P.2d 617, 621-22 (Colo. 1984).

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[1] A petition for certiorari pending before the Colorado Supreme Court asks whether judicial review is available after the State Board's initial review. *Colo. State Bd. of Educ. v. Brannberg*, Case No. 2021SC885 (Colo. Supreme Ct.) (seeking review of *Brannberg v. Colo. State Bd. of Educ.*, 2021 COA 132).

The doctrines of finality and of exhaustion serve our constitutional commitments to the separation of powers, preventing "judicial interference with a function properly delegated to the executive branch of state government." *T&S Leasing, Inc. v. Dist. Ct.*, 728 P.2d 729, 731 (Colo. 1986); *Envirotest Sys., Corp. v. Colo. Dep't of Revenue*, 109 P.3d 142, 143-44 (Colo. 2005). The State Board has a constitutional interest in its jurisdictional prerogatives and in its statutory duty to determine whether a district's actions are consistent with the best interests of the district, community, and pupils. *See* § 22-30.5-108(3). There is no reason to believe the parties here can adequately represent the State Board's authority. *Cf. Sec. & Exch. Comm'n v. U.S. Realty & Imp. Co.*, 310 U.S. 434, 460 (1940) (finding it "plain that the Commission has a sufficient interest in the maintenance of its statutory authority and the performance of its public duties to entitle it" to intervention). The State Board has a right to intervene to assert its exclusive jurisdiction over this dispute.

II. In the alternative, permissive intervention is warranted because the State Board's jurisdiction turns on Durango's claim.

Even absent mandatory intervention, state agencies may permissively intervene when "a party to an action relies for ground of claim or defense upon any statute" or "regulation, order, requirement, or agreement" administered by the agency. C.R.C.P. 24(b). As explained in Exhibit A, when a school board declines to consider a charter application, the State Board has jurisdiction to review the

district's grounds for doing so. §§ 22-30.5-107(1)(b) & -108(2). In conducting this review, the State Board routinely considers procedural questions (like the one presented here) alongside substantive questions—as required by the statutory standard of review. *See* § 22-30.5-108(3). Because Durango asks this Court to construe the very statute that the State Board reviews and enforces, intervention is warranted.

In fact, Durango filed this case to preempt the State Board's jurisdiction. *See* Compl., p.5 (Prayer D, seeking to enjoin Ascent from invoking the State Board's jurisdiction). If the Court adopts Durango's interpretation of the statute, it follows that Ascent's early application was a legal nullity and that there was no action under § 22-30.5-107(4) to trigger the State Board's jurisdiction. If the Court adopts Ascent's interpretation of the statute, the opposite is true. The question Durango has asked this Court is, in effect, whether the State Board has jurisdiction to hear Ascent's notice of appeal.

That very same question will be posed to the State Board shortly, when Durango moves to dismiss Ascent's notice of appeal.[2] Like any tribunal, the State Board has the "authority to hear and decide the question of its own jurisdiction." *In re Water Rts. of Elk Dance Colorado, LLC*, 139 P.3d 660, 670 (Colo. 2006); *Colo. Dep't of Soc. Servs. v. Bethesda Care Ctr., Inc.*, 867 P.2d 4, 5-6 (Colo. App. 1993)

[2] Counsel for Durango has confirmed that the motion is coming.

(recognizing that administrative courts have inherent powers much like judicial courts). It routinely resolves motions to dismiss in charter appeals. *See, e.g.*, https://tinyurl.com/SwallowPSD (granting motion); https://tinyurl.com/CLA-CSI (granting motion); https://tinyurl.com/LibertyPSD (denying motion). The State Board takes no position on whether Ascent has properly invoked the State Board's jurisdiction, because that question will soon be pending before the State Board in its quasi-judicial capacity and will be resolved only after full briefing by the parties. In the meantime, the risk of conflicting orders between tribunals is more than enough to warrant the State Board's permissive intervention.

Conclusion

The State Board moves for intervention under C.R.C.P. 24, to file the responsive pleading attached as Exhibit A.

Dated March 15, 2022.

FOR THE ATTORNEY GENERAL

/s/ Joseph A. Peters
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Senior Assistant Attorney General
K-12 Education Unit
State Services Section
Counsel for the Colorado State Board of Education

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **COLORADO STATE BOARD OF EDUCATION'S UNOPPOSED MOTION TO INTERVENE** upon all parties herein by e-filing on March 15, 2022, as follows:

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COLORADO STATE BOARD OF EDUCATION'S MOTION TO DISMISS	

The Colorado State Board of Education moves under C.R.C.P. 12(b)(1) to dismiss Durango School District 9-R's complaint against Ascent Classical Academy. Counsel have conferred. Durango opposes this motion. Ascent does not oppose it.

Introduction

Every charter school created under part 1 of the Charter Schools Act, §§ 22-30.5-101, et seq., exists in a negotiated relationship with a school district. That relationship is not always voluntary; school districts can be compelled to sign a

charter contract. *Bd. of Educ. of Sch. Dist. No. 1 in City & Cnty. of Denver v. Booth*, 984 P.2d 639, 652-54 (Colo. 1999). Because this statutory exception to the common law of contracts turns on questions of education policy, the General Assembly created a special statutory enforcement system, assigning courts a limited role. *Academy of Charter Schs. v. Adams Cnty. Sch. Dist. No. 12*, 32 P.3d 456, 461-64 (Colo. 2001).

Ascent filed a charter application with Durango. It is not clear whether Durango has declined to consider the application unless Ascent refiles in August (as was its original position, Compl. ¶ 16) or merely deferred consideration of the already-filed application until August (as otherwise implied, Compl. ¶¶ 23-24). Either way, Ascent disagrees. And rather than follow the statutory process for resolving such disputes, Durango brought the matter to this Court. Meanwhile, Ascent filed a notice of appeal with the State Board—so the exact same dispute is now pending before two tribunals. Because the General Assembly has created a complex administrative scheme, in which this dispute must be resolved in light of the surrounding educational policy interests, the Court should dismiss its case for lack of jurisdiction.

Background

Under the Charter Schools Act, parents and teachers can form a nonprofit entity and apply for a school charter. *See* §§ 22-30.5-104(4) & -105(1). If approved, the new school and its governing board operate autonomously, subject to school-

district oversight. §§ 22-30.5-104(7)(a) & -110. The goal is innovation. As the legislature said, the Act's purpose is to "increase learning opportunities for all pupils," "encourage diverse approaches to learning," and "provide parents and pupils with expanded choices in the types of education opportunities" available in public schools. § 22-30.5-102(2).

Before approving a charter application, a school district must review it rigorously. § 22-30.5-107. This review includes holding public hearings in the community, *id.* at (2), and examining the applicant's educational merits, governance capacity, and commitment to serving all students, § 22-30.5-106. If the local board approves the application, it negotiates a charter contract. § 22-30.5-105. Once opened, charter schools reapply every few years. § 22-30.5-110.

Charter schools compete for students, not only with each other but also with school districts. *See* § 22-30.5-104(3)(a) (enrollment "must be open to any child who resides within the school district"). As a result, not every school board embraces them. The linchpin holding this system together, despite its sometimes-conflicting interests, is the "charter appeal." § 22-30.5-108.

Under section 108, unsuccessful charter applicants can appeal to the State Board. § 22-30.5-108(1). There, the State Board reviews the local board's stated grounds to determine whether denial "was contrary to the best interests of the pupils, school district, or community." *Id.* at (2)-(3). The statute creates a two-stage process, in which local boards can reconsider after the State Board's initial review,

before facing a final hearing. *Id.* After a final hearing, the State Board can remand the application with instructions to approve. *Id.* The State Board's final decision is unappealable. *Id.*

The Act thus creates a class of contracts with unique legal status—contracts the State Board can compel a local board to negotiate. *Booth*, 984 P.2 at 652-54. The Act also creates a specialized enforcement system. *Academy*, 32 P.3d at 461-63. Certain portions of the charter contract, colloquially known as "purchased services," function like normal contracts and can be judicially enforced. *Id.* at 461 (explaining § 22-30.5-104(7)(b)). Other portions involve "governing policy" of the school district, like "curriculum" and "pupil performance standards." *Id.* at 462. Through the charter-appeal process, these contract terms "are formed subject to the State Board's final authority." *Id.* (explaining §§ 22-30.5-105 to -108). The "State Board has complete statutory authority" over this process, from application through contracting and implementation, and it is thus "not subject to judicial review." *Id.* (citing § 22-30.5-108(3)(d)).[1]

The Act's rules for considering charter applications are subject to this complex enforcement scheme. A local school board may always decline to review an

[1] A petition for certiorari pending before the Colorado Supreme Court asks whether judicial review is available after the State Board's initial review. *Colo. State Bd. of Educ. v. Brannberg*, Case No. 2021SC885 (Colo. Supreme Ct.) (seeking review of *Brannberg v. Colo. State Bd. of Educ.*, 2021 COA 132).

application. § 22-30.5-107(4). If it does so, the decision is deemed a "denial" and is subject to review by the State Board. *Id.* at (1)(b). The State Board, in turn, reviews the matter under the same "best interests" standard it would apply to any other appeal. *See* § 22-30.5-108(3).

Legal Standards

A court must dismiss a case if it lacks subject-matter jurisdiction. *See* C.R.C.P. 12(b)(1). Under Rule 12(b)(1), the Court need not assume the allegations to be true, need not draw all inferences in the plaintiff's favor, and may make factual findings. *Medina v. State*, 35 P.3d 443, 452 (Colo. 2001).

Argument

The Court lacks subject-matter jurisdiction because the General Assembly gave jurisdiction over this dispute to the State Board. And no exception applies that might otherwise allow the Court to hear this case.

I. The State Board has exclusive jurisdiction to resolve disputes over charter applications.

Courts generally lack jurisdiction over agency actions until they are final. *Envirotest Sys., Corp. v. Colo. Dep't of Revenue*, 109 P.3d 142, 143-44 (Colo. 2005). The finality rule "prevent[s] judicial interference with a function properly delegated to the executive branch of state government." *T&S Leasing, Inc. v. Dist. Ct.*, 728 P.2d 729, 731 (Colo. 1986). The same "solicitude for separation of powers" requires that parties "exhaust their administrative remedies before seeking judicial review."

T&S Leasing, 728 P.2d at 731. The exhaustion rule has a particularly long history in education law, protecting the State Board's power to settle disputes over school affairs. *E.g.*, *People ex rel. v. Buckland*, 269 P. 15, 16-17 (Colo. 1928); *Sch. Dist. No. 13 v. Cnty. Superintendent of Pub. Sch.*, 85 P. 696, 696 (Colo. 1906); *cf. Lujan v. Colo. State Bd. of Educ.*, 649 P.2d 1005, 1018 (Colo. 1982) ("Judicial intrusion" must "be avoided" in disputes over "the best public policy . . . to attain quality schooling and equal educational opportunity."). Charter appeals are no different. *See Booth*, 984 P.2d at 653 & n.6; *Academy*, 32 P.3d at 468-69.

When it's not clear whether the legislature intended to require exhaustion, courts apply a three-part test. *Grant Bros. Ranch, LLC v. Antero Res. Piceance Corp.*, 2016 COA 178, ¶ 21. The first element is whether "the claim was filed pursuant to the relevant statute." *Id.* The second is whether the "statute provides a remedy for the claim asserted." *Id.* And the third is whether the legislature created a "comprehensive scheme addressing the issues underlying the claim." *Id.*

All three elements are satisfied here. As to the first, the district's claim clearly arises under the Charter Schools Act. The petition asks the Court to construe § 22-30.5-107, after all—and there's no such thing as a common-law charter-school application. *Cf. Brooke v. Rest. Servs., Inc.*, 906 P.2d 66, 68-70 (Colo. 1995) (exhaustion not required where agency jurisdiction did not supplant common-law claims). Durango's complaint arises under the Act because it could not exist without the Act.

The second element is just as clear. The Charter Schools Act provides an express remedy for Durango's claim: the district can determine for itself whether to review a charter application. § 22-30.5-107(4). It may decline to do so for any reason it wishes, procedural or substantive. *See id.* To be sure, doing so triggers the State Board's review of whether the district's action was in the best interests of the pupils, community, and district. *Id.* at (1)(b); § 22-30.5-108(3). But that's the point: it's a further administrative remedy. That the district enjoys the right to make the initial determination—and is thus always the appellee rather than the appellant—does not change the fact that administrative review is available. Further, if the district prefers not to hazard an appeal, it can always come to the State Board for declaratory relief. *See* 1 CCR 301-71; *cf.* § 24-4-105(11) (requiring every agency to allow petitions for declaratory relief). The local board may not *want* the State Board to review the question at hand. Yet the State Board can do so—and that's the relevant test.

Finally, the third element is the easiest of the set. As the Colorado Supreme Court has explained, "the governing policy provisions of a charter contract are formed subject to the State Board's final authority." *Academy*, 32 P.3d at 462. As a result, the "State Board has complete statutory authority" over the creation of charter schools. *Id.* The Charter Schools Act goes so far as to create two different hearing procedures—one for contract application and formation, § 22-30.5-108, and another for contract implementation, § 22-30.5-107.5—while carving out one narrow

type of dispute for judicial resolution, § 22-30.5-104(7)(b). *Cf. Crow v. Penrose-St. Francis Healthcare Sys.*, 169 P.3d 158, 166 (Colo. 2007) ("Although the statute does not expressly state that a physician must exhaust administrative remedies before pursuing common law claims in court," the provisions are "comprehensive, covering all possible claims[.]"). By expressly providing for litigation of only one piece of the puzzle, the legislature clearly intended to provide comprehensive *administrative* review of the rest. *Academy*, 32 P.3d at 461-63.

The Charter Schools Act therefore requires exhaustion of administrative remedies. And just as parties may not defeat the broader finality rule by resort to declaratory relief, *Envirotest*, 109 P.3d at 145, so too are they barred from using the Declaratory Judgments Act to evade the exhaustion rule, *City & Cnty. of Denver v. United Air Lines, Inc.*, 8 P.3d 1206, 1213 (Colo. 2000) ("The requirement that a party exhaust administrative remedies applies with equal force when the party seeks declaratory relief."). If Ascent and Durango cannot agree on how to proceed with Ascent's charter application, they must bring their dispute to the State Board to resolve.

II. No exception excuses Durango from pursuing State Board review.

There are exceptions to the exhaustion rule. But those exceptions are no help to Durango, because (1) they do not apply to already-pending agency actions, and (2) they do not apply here anyway.

First, the exceptions to exhaustion are *not* exceptions to the broader finality rule. *Compare Collopy v. Wildlife Comm'n*, 625 P.2d 994, 1006 (Colo. 1981) (exhaustion can be excused for pure questions of statutory interpretation), *with Envirotest*, 109 P.3d 142 (finality not excused for such questions). This must be the case, because the APA allows courts to enjoin pending agency actions *only* when those actions (1) will cause an irreparable injury and (2) are clearly outside the agency's authority. § 24-4-106(8); *T&S Leasing*, 728 P.2d 729. As a result, when the same dispute is pending in both a court and an agency forum, the only way to avoid conflicting rulings is for courts to await final agency action.

That Durango filed in court before Ascent filed with the State Board makes no difference. In regular litigation, the first court to gain jurisdiction over a dispute has "priority," and the second court stays its proceedings. *Town of Minturn v. Sensible Hous. Co.*, 2012 CO 23, ¶ 19. But applying that principle to a competing *agency* action, rather than a competing court, would eviscerate the finality rule. *See id.* ¶¶ 21-26 (reversing court of appeals for applying priority to agency action). The *Minturn* Court rejected the priority principle in the context of an agency's quasi-legislative proceedings, but the reasoning applies with the same force here. *See id.* ¶ 23 (citing the limited exceptions to finality as basis for rejecting priority). To let Durango defeat the State Board's jurisdiction by winning a race to the courthouse would be to overrule the doctrines of exhaustion and finality.

Second, even if the exceptions to exhaustion could be relevant, they are inapt here anyway. The main exception relaxes the rule "when the matter in controversy raises questions of law rather than issues committed to administrative discretion and expertise." *Collopy*, 625 P.2d at 1006. But here, the General Assembly has required the State Board to apply a standard bound up in educational policy judgments—*whenever* a local board declines to consider an application. §§ 22-30.5-107(1)(b) & -108(3); *see also Booth*, 984 P.2d at 650-51 (construing the scope of "best interests" review). The result is akin to a harmless-error or substantial-compliance standard. School districts may determine for themselves how best to process charter applications, as long as the best-interests standard is met.

The State Board reviews procedural questions in precisely this manner. *See Brannberg v. Colo. State Bd. of Educ.*, 2021 COA 132, ¶ 33. In a previous case with Ascent, for example, the State Board remanded because the local board's process denied all review and was thus contrary to the best-interests standard. *See* https://tinyurl.com/AscentBVSD.[2] In a different case (not involving Ascent), the State Board affirmed the local school board despite alleged procedural errors, because denying the application served everyone's best interests. *See* https://tinyurl.com/DeweyDCSD. These matters of statutory interpretation and

[2] The State Board's dockets are a matter of public record, readily susceptible of judicial notice. *See Walker v. Van Laningham*, 148 P.3d 391, 397 (Colo. App. 2006) (gathering authorities for judicial notice on motions to dismiss).

compliance are committed to the local board's discretion in the first instance, to be reviewed by the State Board in light of the surrounding educational policy interests. *See Booth*, 984 P.2d at 651 (Colo. 1999) ("The phrase 'pupils, school district, [and] community' aptly identifies" the "constituents to whom a local board answers when making educational policy decisions."). Indeed, the exact issue in dispute here—the timing of charter applications—routinely comes before the State Board under another statute, as a matter of policy. *E.g.*, https://tinyurl.com/RoaringForkWaiver; https://tinyurl.com/DPSWaiver; https://tinyurl.com/JeffCoWaiver; *cf.* § 22-2-117 (allowing State Board to waive statutes to enhance educational opportunity). Under the Charter Schools Act, Durango may decline to consider any application, whether timely or not. But whether Durango *should* so decline is bound up with questions of education policy, committed to the expertise of Durango in the first instance and then to the expertise of the State Board.

The legal-question exception is inapplicable for one more reason, as well: it's not clear that Durango has raised a pure question of law. The complaint alleges that district policy allows applications on one day only, Compl. ¶¶ 8 & 22, but the board's policy arguably says otherwise, *see* https://tinyurl.com/DurangoLBD-R; *cf.* *Medina*, 35 P.3d at 452 (on jurisdictional motions, court need not treat factual allegations as true). The State Board takes no position on the proper interpretation of Durango's policy, because that question is pending before the State Board in its quasi-judicial capacity and will be resolved only after full briefing by the parties.

But for purpose of this Court's jurisdiction, there's a dispute over whether the policy calls for Durango to exercise discretion and thus a fact-bound dispute over whether it properly did so. *Cf.* § 22-30.5-109(3) (encouraging local boards to give "greater consideration" to "applications designed to increase the educational opportunities of at-risk pupils"). This dispute is not as simple as Durango alleges.

None of the other exceptions is any more apt. And since these exceptions still could not reach already-pending agency actions, they can offer Durango no aid. The district must take up this dispute with the State Board.

Conclusion

The Charter Schools Act vests jurisdiction over this dispute in the State Board, through a comprehensive administrative scheme. The remedy the district seeks is available from the State Board. This case should be dismissed for lack of jurisdiction under C.R.C.P. 12(b)(1).

Dated March 15, 2022.

FOR THE ATTORNEY GENERAL

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State Services Section
Counsel for the Colorado State Board of Education

CERTIFICATE OF SERVICE

This is to certify that I have duly served the within **COLORADO STATE BOARD OF EDUCATION'S MOTION TO DISMISS** upon all parties herein by e-filing on March 15, 2022, as follows:

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STATE OF COLORADO BOARD OF EDUCATION 201 East Colfax Avenue, Suite 506 Denver, Colorado 80203	
In re: Appellant: Ascent Classical Academy of Durango Appellee: Durango 9-R School District	^ BOARD USE ONLY ^
Attorney for Appellant: Scott E. Gessler (28944) Gessler Blue LLC 7350 E. Progress Place, Suite 100 Greenwood Village, CO 80111 Tel.: (720) 647-5320 sgessler@gesslerblue.com	Case Number: 22-CS-_____
NOTICE OF APPEAL	

Ascent Classical Academy of Durango ("Ascent") submits this Notice of Appeal under C.R.S. §§ 22-30.5-107(3) and 22-30.5-108(1). By refusing to review Ascent's charter school application, Durango School District 9-R (the "District") has denied the application.[1]

I. Parties

Appellant: Ascent Classical Academy of Durango 4690 Table Mountain Drive, Suite 100 Golden, Colorado 80403	**Appellee**: Durango School District 9-R Board of Education 201 East 12th St Durango, CO 81301

[1] C.R.S. §§ 22-30.5-107(3) and 22-30.5-108(1).

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II. Grounds for Appeal

A charter school applicant "must file its application with the local board of education by a date determined by the local board of education,"[2] and in turn "the date determined by the local board of education for the filing of applications shall not be any earlier than August 1 or any later than October 1."[3] As required by statute, the District implemented Policy LBD-R, which directs charter school applicants to submit applications "[o]n *or before* August 1 of the year preceding the proposed opening of the district charter school . . . "[4]

In accordance with this policy, the District has in the past accepted and reviewed a charter application received in February. This year, on February 7, 2022, Ascent submitted its application for a proposed opening in the fall of 2023.[5] Two days later, on February 9, 2022, the five board members sent a letter in which they acknowledged receipt of Ascent's application but stated that the District's policy and Colorado law prohibited the District

[2] C.R.S. § 22-30.5-107(1)(b).

[3] *Id.*

[4] District 9-R Policy LBD-R, p. 4 (emphasis supplied); *see also, id.*, at 1 ("applicant shall submit an application to the district by August 1 of the year preceding the proposed opening of the district charter school") (**Exhibit 1**).

[5] Email transmitting Ascent's charter application (dated February 7, 2022) (**Exhibit 2**).

from reviewing the application prior to August 1, 2022.[6] Although the individual board members took this position without a formal vote or board action at a public meeting, the District has treated this as a refusal to review Ascent's charter application.

On March 1, 2022, the District filed a declaratory judgment action against Ascent in LaPlata County District Court, asking the court to approve of its refusal to review Ascent's application.[7] The District served Ascent on March 4, 2022. On March 2, 2022, Ascent requested that the District transmit the record for this appeal.[8]

The question presented on appeal is whether the District must review the charter school application submitted by Ascent on February 7, 2022.

Respectfully submitted March 8, 2022.

Gessler Blue, LLC

Scott E. Gessler

[6] Email from District 9-R (dated February 9, 2022) (**Exhibit 3**).

[7] Complaint, *Durango School District 9-R v. Ascent Classical Academy*, Case No. 2022CV30020, District Court, La Plata County, Colorado, filed March 1, 2022 (**Exhibit 4**).

[8] Letter from Stacey Bowman to District Board (dated March 2, 2022) (**Exhibit 5**).

Certificate of Service

I certify that on March 8, 2022, the foregoing was electronically served via e-mail on the following:

Colorado State Board of Education
state.board.efilings@cde.state.co.us
soc@cde.state.co.us

Durango School District 9-R
schoolboard@durangoschools.org

By: *s/ Joanna Bila*
Joanna Bila, Paralegal