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Questions to consider when creating or modifying charter school laws

Stephanie Aragon

The first charter school law surfaced in Minnesota in 1991, and since then, 42 additional states, the District of Columbia and Puerto Rico have passed laws governing charter schools. Yet still today, the details within those state laws vary significantly, and seven states do not have a law at all. Legislation permitting charter schools was recently passed in **Alabama**¹ but failed to progress in **West Virginia**.² In the states where charter school legislation already exists, modifications to existing policy are consistently being made.

Through its review of commonalities in state policies highlighted in the ECS charter school database, as well as recommendations on the critical components of charter school laws from the National Association of Charter School Authorizers (NACSA) and the National Alliance for Public Charter Schools, the Education Commission of the States has compiled key questions that are worthy of consideration during the creation of a new charter school law or the revision of existing law. National comparisons and state examples are provided if covered in the [ECS charter school database](#).

“Twenty-four years after the first charter school law passed, states continue to seek out answers on how to create or improve policies.”

KEY TAKEAWAYS

Thirty-three states and Puerto Rico have a statewide authorizing body in place.

Eleven states and the District of Columbia have established academic performance thresholds below which charters must be revoked or non-renewed.

29 states and the District of Columbia provide facilities funding or other facilities assistance to charter schools.



General

Can existing public schools convert to charter schools?

- ◆ 39 states, the District of Columbia and Puerto Rico allow for public-to-charter conversions.
- ◆ While these conversions are permitted in **New Jersey**, state law requires 51 percent of the teaching staff to sign a petition in support. A high-performing nonpublic school in a failing district may also apply to convert.
- ◆ In **Ohio**, a vote of the majority of the board or governing authority is required.

Are there caps on the total number of charter schools that can operate?

- ◆ 20 states and the District of Columbia have charter school caps.

Are multiple charter school types allowed (including new startups, public school conversions and virtual schools)?

Are multi-school charter contracts and multi-charter contract boards permitted?

Are cyber/virtual charter schools permitted? If so, how are they defined and funded, and how much oversight is provided for these schools?

- ◆ 24 states define or permit cyber/virtual charter schools.
- ◆ 20 states include additional oversight for these schools.

Is there a process in place for replicating high-quality charter schools?

- ◆ The Replicating Quality Schools (RQS) Program in New York City promotes quality charter school replication and provides mentorship and training for replicating charter schools. The program is now offered nationwide.³
- ◆ Chicago has offered grant competitions for quality charter schools seeking to replicate.⁴

Are educational service providers (management organizations that contract with schools to help implement reform initiatives) permitted to operate in charter schools?

Who can apply to open a charter, to whom should they apply and are there charter schools that will be given preference?

- ◆ Authorizers in **Arkansas** must give preference to applicants that are located in school districts where the percentage of students who qualify for free or reduced price lunches is above the average for the state, where the district has been classified by the state as being in academic distress and where the district has been classified by the state Department of Education as being in some phase of school improvement status or some phase of fiscal distress.
- ◆ In **Illinois**, the local school board is required to give preference to proposals that demonstrate a high level of local pupil, parental, community, business and school personnel support; set rigorous levels of expected pupil achievement and demonstrate feasible plans for attaining those levels of achievement; and/or are designed to enroll and serve a substantial proportion of at-risk children.

Is technical assistance provided to applying and/or approved charter schools?

- ◆ 26 states and Puerto Rico offer technical assistance to applying and/or approved charter schools.
- ◆ In **Utah**, the state charter school board must provide technical support to charter schools and people seeking to establish charter schools by identifying and promoting successful charter school models, facilitating the application and approval process for charter school authorization, directing charter schools and people seeking to establish charter schools to sources of private funding and support, reviewing and evaluating proposals in order to support and strengthen proposals prior to submission and assisting charter schools to understand and carry out their charter obligations.
- ◆ Charter schools in **Arizona** receive the same technical assistance that the state provides to all school districts in the following areas: use of student data, staff development, curriculum, technology to improve student performance, and grants compliance and management.

Have adequate timeline requirements been established for the application review process? Do they allow for sufficient time for reviewing applications by reviewers, providing a decision and opening a school and that coincide with public notice provisions, time frames for hiring, school choice windows and school start dates?

- ◆ **Colorado** has established a detailed application review process.⁵ Charter applications in Colorado must be filed between August 15 and Oct. 1, rulings can take up to 75 days and there are two possible appeals processes – first with a 60-day limit, and second a 30-day limit.

How are application appeals handled for charter schools that are not approved?

- ◆ 32 states and the District of Columbia have a formal appeals process in place.
- ◆ Rejected applicants in **Ohio** are permitted to appeal to other chartering authorities.
- ◆ Applicants in **Oregon** can appeal the decision of the local school board to the state Department of Education. An applicant can seek judicial review of an order of the Department of Education. Denial by an institution of higher education is not appealable.
- ◆ If an application to a local school board is rejected in **Michigan**, the applicant may petition to have it placed on a local ballot.

How clear is the application, review and decision-making process?

Authorizing Bodies

Is there a statewide authorizing body in place?

- ◆ 33 states and Puerto Rico have a state authorizing body in place.
- ◆ The state Department of Education is the authorizer for all new charter schools in **Connecticut**.
- ◆ The Board of Regents for Elementary and Secondary Education is the sole authorizer in **Rhode Island**.
- ◆ There is no statewide authorizing body in place in **Minnesota**. However, the commissioner of education must review all charter applications prior to final approval by the authorizer.

Are multiple authorizers available?

- ◆ **Colorado** has an independent chartering board called the Colorado Charter Schools Institute.
- ◆ Central Michigan University and Hamline University in **Michigan** authorize charter schools.
- ◆ The mayor's office in Indianapolis and the city council in Milwaukee have authorizing authority.

Has a procedure been established for authorizer accountability?

- ◆ 15 states and the District of Columbia require authorizing bodies to report annually on their portfolio of schools.

Are authorizers held to state-endorsed professional standards?

- ◆ Authorizers in 15 states and the District of Columbia must meet state-established standards for quality school authorizing.

What, if any, sanctions have been provided for authorizers failing to meet professional standards or overseeing schools persistently failing to meet standards?

- ◆ 13 states provide sanctions for authorizers.
- ◆ Examples of sanctions include revoking authorizing authority and transferring an authorizer's schools to another authority.

Are adequate funding mechanisms in place for authorizers?

Accountability

Should authorizers be required to create performance-based contracts with their portfolio of charter schools, and should the schools be held to a threshold of minimally acceptable performance standards?

- ◆ 11 states and the District of Columbia have established performance thresholds below which charter schools must be revoked or non-renewed.
- ◆ If a charter school in **Mississippi** is designated an “F” school during the final contract year, the authorizer is not allowed to renew the school’s contract.
- ◆ If a charter school in **Nevada** receives three consecutive annual ratings established as the lowest possible performance, it must be closed.

What data collection and monitoring processes exist in order to ensure charter school compliance with state law and performance-based contracts?

Should charter schools be required to submit annual reports, including academic and financial data?

- ◆ 32 states, the District of Columbia and Puerto Rico require charter schools to submit annual reports.
- ◆ Charter schools in **Connecticut** must submit an annual school profile and an annual report on the condition of the school. The report must include the educational progress of students in the school; the financial condition of the school, including a certified audit statement of all revenues from public and private sources and expenditures, accomplishment of the mission, purpose and any specialized focus of the charter school; the racial and ethnic composition of the student body and efforts taken to increase the racial and ethnic diversity of the student body; and best practices employed by the school that contribute significantly to the academic success of students.
- ◆ Charter schools in **Hawaii** must provide program audits and annual financial audits. Charter schools must also conduct annual self-evaluations.

What is the process for renewing, not renewing and revoking a charter?

Autonomy

How much fiscal and legal autonomy do charter schools have, and do they have their own independent boards?

Are charter schools granted automatic exemptions from many of the state laws governing traditional public schools?

- ◆ In **California**, charter schools are given an automatic waiver from most state laws, regulations and policies governing school districts. However, they are not exempt from laws establishing minimum age for public school attendance or the **California** building standards code.
- ◆ In **Hawaii**, charter schools are exempt from all applicable state laws except those regarding collective bargaining, nondiscrimination, and health and safety requirements.
- ◆ In **Maryland**, charter schools must comply with all laws governing public schools. They may seek waivers on a case-by-case basis from the state Department of Education, but waivers cannot be granted for laws pertaining to audit requirements, measurement of student academic achievement, health and safety of students or employees, and civil rights of students or employees.

Are the state’s standards and assessments applied to charter schools?

- ◆ State standards and assessments are applied to charter schools in all states where charter laws exist.
- ◆ In **Oklahoma**, state assessments are applied to charters but there is no explicit mention of state standards.

Funding

How are charter schools funded (for example, per-pupil allocation, total full-time employees, program grants, unique charter funding formula, etc.) and how do they receive their funding?

- ◆ Charter schools receive their funding from school districts in 14 states, from their state in six states and funding comes from either the district or the state, depending on the charter type, in another 15 states.
- ◆ Other funding variations exist. For instance, charter schools in **Colorado** that are authorized by the state charter institute receive their funding from the state charter institute, and charter schools that are authorized by a local school board receive their funding from the school district. Charter schools in **Michigan** receive their funding from the charter authorizing body.

How much access do charter schools have to state and federal operational and categorical funding mechanisms?

How much access do charter schools have to traditional capital funding mechanisms?

- ◆ 29 states and the District of Columbia provide facilities funding or other facilities assistance to charter schools.
- ◆ Traditional capital funding mechanisms include per-pupil facility allowance, facility grant and revolving loan programs, charter school bonding authority or access to state tax-exempt bonding authorities and the right of first refusal to purchase a closed facility at or below fair market value.

What, if any, financial assistance, startup and/or planning grants are provided for new charter schools?

- ◆ Startup and/or planning grants are provided in 17 states.
- ◆ In **California**, the charter schools revolving loan fund allows charter schools to receive loans for as much as \$250,000, allowing up to five years for repayment.
- ◆ In **Illinois**, the state Board of Education is required to make grants to charter schools to pay their startup costs of acquiring educational materials and supplies, textbooks, furniture and other equipment needed during their initial term. The state board must annually establish the time and manner of application for these grants, which must not exceed \$250 per student enrolled in the charter school.

Is there an entity charged with direct control and legal liability of the charter for state and federal purposes?

- ◆ Generally, an entity with this control and legal liability is a school district, but in some states it may be the independent charter school. The decision impacts funding for special education and other student support services, among others.
- ◆ In nine states and Puerto Rico, charter schools are only part of a local education agency, while in 13 states charter schools are their own independent local education agency. In 20 other states charter schools can either be their own local education agency or part of another, depending on the circumstance or charter type. For example:
 - In **Arkansas**, a conversion charter school is part of a local education agency, but an open enrollment charter school is its own local education agency.
 - In **Oklahoma**, a charter school sponsored by a school district is part of the local education agency. A charter school sponsored by a board of a technology school district, a higher education institution, the state Department of Education or a federally recognized Indian tribe is its own local education agency.

What entity is responsible for providing special education services, and how are the services funded?

- ◆ Sometimes charter schools form special education cooperatives or partner with districts to ensure these services are provided. Other times charter schools themselves are responsible for meeting the needs of students with disabilities.

Teachers

Will districts be required to grant teachers a leave of absence so that they can teach in a charter school?

- ◆ 18 states and the District of Columbia require a leave of absence to teach in a charter while 24 states and Puerto Rico do not.

What requirements and benefits have been established for charter school teachers?

- ◆ 28 states and Puerto Rico require charter school teachers to be certified. Three states and the District of Columbia do not. Ten states allow for some uncertified teachers to teach in charter schools but require a minimum percentage of teaching staff to hold certificates.
- ◆ In 25 states and the District of Columbia, teacher salaries are set by the charter school. In nine states, the salary is determined by a collective bargaining agreement. In seven other states and Puerto Rico, variation exists, with salary determination coming from one or more of the following: the charter school, the collective bargaining agreement, the governing body and/or the statewide salary schedule.
- ◆ Teachers in 39 states, the District of Columbia and Puerto Rico have equal access to the public school teachers' retirement system.

Should charter schools be exempt from the school district collective bargaining agreement?

- ◆ With some variation, charter schools in 32 states, the District of Columbia and Puerto Rico are not bound by a school district collective bargaining agreement.

Students

What procedures for student recruitment, enrollment and lottery admissions are in place for students applying to charter schools?

Are there students who will be given enrollment preference?

- ◆ 30 states and the District of Columbia provide enrollment preference to siblings of students already enrolled in a conversion and/or charter school.
- ◆ In **South Carolina**, the racial composition of a charter school's enrollment must reflect that of the school district or of the targeted student population that the charter school proposes to serve, differing by no more than 20 percent from that population.
- ◆ Charter schools in **Utah** can weight their lotteries to give slightly better chances of admission to educationally disadvantaged students, including low-income students, students with disabilities, English language learners, migrant students, neglected or delinquent students, and homeless students.

What transportation options, if any, will be provided to charter school students?

- ◆ 15 states specify who must provide transportation to charter students. Many states, such as **Nevada**, **New York** and **Tennessee**, require charter school applications to include a plan for transporting charter school students.

What options for extracurricular and interscholastic activities exist for students in charter schools?

ENDNOTES

- 1 Alabama S.B. 45, 2015 Reg. Session, (March 10, 2015) <http://alisondb.legislature.state.al.us/alison/searchableinstruments/2015rs/bills/SB45.htm> (accessed March 17, 2015).
- 2 West Virginia S.B. 14, 2015 Reg. Session, (February 18, 2015), http://www.legis.state.wv.us/Bill_Text_HTML/2015_SESSIONS/RS/bills/SB14%20SUB1%20ENG.pdf (accessed March 6, 2015).
- 3 New York City Charter School Center, "Replicating Quality Schools – RFP," <http://www.nyccharterschools.org/resources/rqs-rfp> (accessed March 6, 2015).
- 4 Illinois State Board of Education, "Charter Schools: Grants and RFPs", <http://www.isbe.net/charter/> (accessed March 6, 2015).
- 5 Colo. Rev. Stat. Ann. § 22-30.5-107-108

Related Materials

For a review of national charter school policy trends, take a look at this ECS charter schools [database](#).

Also helpful is this ECS [charter school issue site](#), including sections on [what states are doing](#) and [selected research and readings](#).

Trends in state charter school laws: Authorizers, caps, performance-based closures and virtual schools: This ECS report highlights six evolving policy areas in charter school laws, <http://www.ecs.org/clearinghouse/01/13/13/11313.pdf>.

NACSA's *On the Road to Better Accountability: An Analysis of State Charter School Policies*, http://www.qualitycharters.org/assets/files/Documents/Policy/NACSA_014_SLR_FINAL_1-15-15.pdf

National Alliance for Public Charter Schools's *A New Model Law for Supporting the Growth of High-Quality Public Charter Schools*, <http://www.publiccharters.org/publications/model-law-supporting-growth-high-quality-public-charter-schools/>

Author

Stephanie Aragon is a researcher with the Education Commission of the States. As a new mother, she spends much of her free time on the floor with her son, making silly noises and reading classic children's stories. Contact Stephanie at saragon@ecs.org or (303) 299.3614.

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