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## A Fifty State Legislative Review of Charter School Funding, Governance and Accountability

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A FIFTY STATE LEGISLATIVE REVIEW OF CHARTER SCHOOL FUNDING,  
GOVERNANCE AND ACCOUNTABILITY

by

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B.S. Florida State University, 1998  
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A dissertation submitted in partial fulfillment of the requirements  
for the degree of Doctor of Education  
in the School of Teaching, Learning, and Leadership  
in the College of Education and Human Performance  
at the University of Central Florida  
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## ABSTRACT

As waves of educational reform spread across the United States, charter schools continue to emerge as an alternative to the traditional public school. This study examined funding, governance, and accountability provisions of nationwide charter school legislation to ascertain similarities, differences, litigated challenges and funding issues throughout the United States of America. These legislative and case law findings can inform legislators, policy makers and school districts as they review and develop current legislative policies.

This work serves as a culmination of years of dedication and sacrifice, which could not have been possible without the love, and support of my family. To my husband, Brian, I can only hope that everyone has the opportunity to be blessed with a life partner who is as dedicated and supportive as you have been on this journey. To my children, Taylor, Brianna, and Trinity I am thankful that you endured this journey with me. Of all the titles that I have possessed, the most dear to me is that of “Wife” and “Mom”. Thank you for your unwavering love and support.

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## CHAPTER 1: INTRODUCTION

### Background of the Study

The first charter school legislation was enacted by Minnesota in 1991 (Laws of Minnesota 1991, chapter 265, article 9, section 3). As of 2013, all but eight states have enacted some form of charter school legislation (National Alliance for Public Charter Schools, 2013). States that did not have charter school legislation, as of 2013, included Montana, North Dakota, South Dakota, Nebraska, Vermont, West Virginia, Kentucky and Alabama (National Alliance for Public Charter Schools, 2013). Following the first charter school legislation in 1991, the Clinton administration included charter school legislation in its reauthorization of the Elementary and Secondary Education Act (U.S. Department of Education, 2000). The Clinton administration established the Charter Schools Program, which provided funding to assist in starting charter schools. The Bush administration went even further in its No Child Left Behind Act of 2001. The No Child Left Behind Act has an entire subpart dedicated to "...increasing the national understanding of the charter school model..." (The No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. §5201 (2002)). This legislation provided charter school funding, provisions for evaluating charter school effects, assistance for increasing the presence of higher performing charter schools, and encouragement for states to be supportive of charter schools to the same extent of traditional public schools" (The No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. §5201 (2002)). The Obama administration instituted Race to the Top as part of its American Recovery and Reinvestment Act of 2009 (American Recovery and Reinvestment Act of 2009, Pub. L.

111-5, § 14001-12, Title XIV (2009)). Race to the Top was a competitive grant program that had extensive requirements regarding charter schools. States had to have favorable charter school legislation and were prohibited from implementing negative policies such as restricting the number of charter schools (American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, § 14001-12, Title XIV (2009)). As the Bush Administration's reauthorization of the Elementary and Secondary Education Act draws to a conclusion, the Obama administration is preparing to reauthorize its own version of the legislation. In the Blueprint for Reform, charter schools are identified as a necessary avenue of reform that will be advanced by the Obama administration (United States Department of Education, 2010).

While the mandates of the No Child Left Behind Act are expiring (The No Child Left Behind Act of 2001 Pub. L. No. 107-110, 115 Stat. 1425 (2002)), the movement to increase educational uniformity is rising through educational initiatives like Common Core (Achieve, 2013, p.3). The Common Core State Standards are "...K-12 academic content standards in English language arts/literacy and mathematics..." (Achieve, 2013, p.3) that have been adopted by 46 states and the District of Columbia (Achieve, 2013, p.3). As parents, students, educators and communities seek alternatives to traditional education, charter schools are increasingly tapped as a solution (Layton, 2014). Charter schools are proving to be a viable alternative to the traditional public school (Layton, 2014). Since the inception of the first charter school in 1992, the number of charter schools nationwide has increased to more than 6,000 (National Alliance for Public Charter Schools, 2013). In the last 20 years since Minnesota implemented the first charter school legislation, more than 40 states have followed suit with their own charter

school legislation (National Alliance for Public Charter Schools, 2013). The federal government has also used charter schools as part of its reform efforts (U.S. Department of Education, 2000; The No Child Left Behind Act of 2001 Pub. L. No. 107-110, 115 Stat. 1425 (2002); American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, § 14001-12, Title XIV (2009)). Both the Clinton and Bush administrations provided for charter school implementation in their respective reauthorization of the Elementary and Secondary Education Act (U.S. Department of Education, 2000; The No Child Left Behind Act of 2001 Pub. L. No. 107-110, 115 Stat. 1425 (2002)). The Obama administration contributed to the proliferation of charter schools in its American Recovery and Reinvestment Act (American Reinvestment & Recovery Act, 2009, Pub. L. 111-5, § 14001-12, Title XIV (2009)) and has indicated that charter schools will be provided for in the administration's reauthorization of the Elementary and Secondary Education Act (United States Department of Education, 2010). With 42 different states, the District of Columbia and three different presidential administrations contributing to the body of charter school legislation (Center for Education Reform, 2014; U.S. Department of Education, 2000; The No Child Left Behind Act of 2001 Pub. L. No. 107-110, 115 Stat. 1425 (2002); American Reinvestment & Recovery Act, 2009), distinctions are bound to exist.

According to the Center for Education Reform, all legislation is not created equally (Center for Education Reform, 2014). The Center for Education Reform has released findings regarding the strength of charter school legislation across the United States and District of Columbia (Center for Education Reform, 2014). The Charter School Law Rankings and Score Card evaluates and ranks charter school legislation

based on (i) types of authorizers; (ii) number of charter schools permissible; (iii) level of autonomy afforded and (iv) manner of funding allotted (Center for Education Reform, March, 2014). The quality of legislation varies from state to state (Center for Education Reform, 2014). While the Center for Education Reform is among organizations evaluating charter school legislation, others are evaluating the effectiveness of America's educational system.

Some research finds that American students are failing to be educationally competitive. (Organisation for Economic Co-operation and Development, 2013). America continues to falter internationally as measured by the Programme for International Student Assessment ("PISA") (Organisation for Economic Co-operation and Development, 2013). Secretary of Education, Arne Duncan, is reported to have referred to America's performance on the PISA as mediocre (Bidwell, 2013). Bidwell further quotes Secretary Duncan as having said, "[t]he big picture of U.S. performance on the 2012 PISA is straightforward and stark. It is the picture of educational stagnation... The brutal truth, that urgent reality, must serve as a wakeup call against educational complacency and low expectations" (Bidwell, 2013, p.1). Sentiments such as those expressed by Secretary Duncan fuel the demand for educational reform efforts such as those embodied in charter school legislation.

Literature regarding charter school effectiveness varies. There is literature that suggests that charter schools have positive, negative, and no distinguishable effectiveness (Barghaus & Boe, 2011, p.79; Gronberg, Jansen & Taylor, 2012, p. 303; Poole, 2011, p.267). Charter schools have been hailed as an educational reform that implements



alternative governance, funding and accountability to yield increased student performance (Finnigan, 2007, p. 504). The foundation of charter school theory is the exchange of increased autonomy for increased accountability (Gallagher et al., 2012, p.37). Charter schools have a history of failing to perform as well as the traditional public school (Center for Research on Education Outcomes, 2011, p.6); however, recent studies indicate that charter schools are beginning to show marked improvement (Center for Research on Education Outcomes, 2013). As charter schools continue to proliferate and garner the reputation of being more effective and efficient than traditional public schools (Center for Research on Education Outcomes, 2013), it becomes even more prudent to study charter school legislation. Charter schools and traditional public schools are interrelated as they are both publicly funded and tuition-free institutions that compete for similar populations of students (Davis, 2013, p.3).

Racial and socioeconomic achievement gaps exist in America's educational system (Gallagher, et al., 2012, p. 32). Evidence suggests that the federal government has been attempting to reduce these gaps for decades (Improving America's Schools Act of 1994, Pub .L. No. 103-382 (1994); The No Child Left Behind Act of 2001, Pub. L. No. 107-110, 115 Stat. §5101 (2002)); American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, § 14001-12, Title XIV (2009)), yet the gaps still exist (National Center for Education Statistics, 2013). Charter schools appear to be making substantial gains in improving academic achievement of minorities and students of low socioeconomic status (CREDO, 2013). CREDO reported that charter schools more positively impacted impoverished African American and Hispanic students than traditional public schools

(CREDO, 2013). Florida's Department of Education reported similar findings (Florida Department of Education, 2013). The achievement gap between minority students (African American and Hispanic) and White students in reading, math, and science was found to be lower in charter schools than in traditional public schools (Florida Department of Education, 2013). After achieving considerable academic improvement in its post-Hurricane Katrina charter schools, an entire school district in New Orleans, Louisiana has closed all of its traditional public schools (Layton, 2014). In lieu of traditional public schools, the school district converted the entire district solely into charter schools (Layton, 2014).

Charter schools are premised on alternative funding, governance and accountability (Finnigan, 2007, p. 504)). If charter schools are indeed changing the game of education (Barghaus & Boe, 2011, CREDO, 2013, Florida Department of Education, 2013, Fountain, 2014)), the field of education can benefit from better exploration of the laws that dictate how charter schools are governed and financed. Principles applied to charter schools can be implemented to enhance the performance of traditional public schools and the entire system of education. (Winters, 2012, p. 301; Davis 2013, p.2)).

#### Statement of the Problem

To date, there is insufficient research that has examined nationwide charter school legislation to determine how charter schools are funded, governed, and held accountable. Charter schools are taxpayer-funded public schools that are distinguished from traditional public school by their governance structures, funding matrix and accountability methods (Finnigan, 2007; Frankenberg, 2011, p. 101). Increasingly, charter schools are used as an

avenue of choice in educational reform efforts (Zimmer, Gill, Booker, Lavertu & Witte, 2012, p. 213). Since the initial legislation in 1991, charter school legislation has extended to encompass much of the United States (Center for Education Reform, 2014). The proliferation of charter schools, as a form of educational reform, shows no sign of waning as the Obama administration has indicated that charter schools will be included in its reauthorization of the Elementary and Secondary Education Act (United States Department of Education, 2010, p. 6).

#### Purpose of the Study

The study will provide state and local policy makers, information and add to the body of knowledge on how charter schools are funded, governed and held accountable. A listing of charter school legislation among all 50 states and the District of Columbia were provided along with consequent litigation. Charter school legislation was categorized by similarities and differences; then, evaluated based on legal decisions. Legal decisions related to charter schools and charter school legislation were reviewed to determine constitutional validity and consequent success or failure of legislation. Analysis of charter school legislation and related legal decisions are used as a basis for recommendations to assist legislatures in drafting legislation and school systems in implementing policies that will most effectively promote academic achievement.

#### Significance of the Study

The study will provide state legislators, state policy makers and district policy makers with a compilation of legislation on the funding, governance and accountability of charter schools among the fifty states. This study will show similarities and

differences in legislation that can be used by state legislators, state policy makers and school district policy makers as they review their current legislation and policy.

Implementation of charter schools, as a form of educational reform, is increasing across the United States (Zimmer, Gill, Booker, Lavertu & Witte, 2012, p. 213). Presently, charter school legislation exists in 42 states (Bathgate, 2014) and the District of Columbia. As charter schools are classified beneath the umbrella of state action, there is no federal authority delineating consistent statutory requirements (U.S. Const.). Charter school legislative provisions vary from state to state and there is no guarantee of statutory consistency throughout the United States (Knaak & Knaak, 2013, p.45; Levin, 2012; Stillings, 2006, 52). This study sought to examine the similarities and differences of charter school legislation across the United States. Legal decisions were examined to ascertain constitutional validity of charter school legislation.

Evaluation of nationwide charter school legislation provided insight as to the funding, governance and accountability of charter school legislation throughout the United States (Center for Education Reform, March 2014). This study will provide state legislators, state policy makers and district policy makers with a compilation of legislation on the funding, governance and accountability of charter schools among the fifty states. This study will show similarities and differences in legislation that can be used by state legislators, state policy makers and school district policy makers as they review their current legislation and policy.

As education is considered a state function not subject to direct federal authority (US Const.), there is no requirement that states create a consistent law that outlines

governance, funding and accountability of charter schools (Stillings, 2006, p. 52). The federal government appears to be using its funding power to influence state decisions regarding utilizing charter schools as a form of educational reform (American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, § 14001-12, Title XIV (2009)); however, there is no guarantee of uniformity or consistency.

#### Definition of Terms

Accountability: Accountability is the way that charter schools are held responsible for the academic performance of students.

Appellant: An appellant is the party that appeals a case from one court to another court of higher authority (Black's Law Dictionary, 2014).

Appellee: An appellee is the party that defends a case that has been appealed from one court to another court of higher authority (Black's Law Dictionary, 2014).

Authorizer: An authorizer is an entity that grants a charter to a charter school.

Binding Authority: Binding authority is a judicial decision that must be followed by other courts, when the other courts are making their own judicial decisions.

Case law: Case law is the law on a particular subject matter that has been determined based on decisions of judges about cases that have come before judges.

Categorical funds: state or federal financial aid received by schools to service students with identified special needs

Charter school: Charter schools are taxpayer funded public schools that are distinguished from traditional public school by their governance structures, funding matrix and accountability methods.

Community Schools: A community school is another name for charter school.

CS: CS is the abbreviation for charter school.

Defendant: A defendant is the defending party in a lawsuit or litigation.

Legal decisions: A legal decision is a judge's written decision about the outcome of a lawsuit.

Legislation: Legislation is composed of statutes, ordinances, or laws.

Governance: Governance is the application, implementation and continuous monitoring of policies (Black's Law Dictionary, 2014).

Funding: Funding encompasses the method for receiving money.

Opinion: An opinion is a court's written decision about a lawsuit.

Persuasive Authority: Persuasive authority is when a court has the option of following the decision of another court but is not required to follow the other court's decision.

Plaintiff: A plaintiff is the initiating party in a lawsuit.

Public School Academy: A public school academy is the name given to Michigan's charter schools.

Primary Sources: A primary source is the actual document or firsthand information regarding a subject or matter.

Provision: A provision is a specific portion of a law that addresses a specified topic.

Secondary Resources: Secondary resources are resources that summarize, review or evaluate other resources.

Stare Decisis: Stare decisis is the legal principle that requires courts to adhere to previous judicial decisions from courts of higher authority.

Sponsor: A charter school sponsor is an entity that enters into a contract authorizing a charter school to enter into operation.

Statutes: Statutes are laws.

TPS: TPS is the abbreviation for traditional public school.

Tuition: Tuition is the fee charged to attend a school.

Voucher: Vouchers are state funded monies that pay for students to attend private schools in lieu of public schools.

### Conceptual Framework

Charter school ideology is premised upon two basic theories encompassing increased competition, autonomy and accountability. Some charter school proponents assert that charter schools provide competition, which motivates traditional public schools to improve. Another proposition is that charter schools' effectiveness is dependent upon the exchange of increased autonomy for increased accountability.

Charter schools are a form of educational reform that is premised upon a market-based theory (Davis, 2013, p.2). Market-based theory proposes that increased competition, through choice, increases academic achievement (Davis, 2013, p.2; Preston, Goldring, Berends, & Cannata, 2012, p.318; Zimmer, Gill, Booker, Lavertu & Witte, 2012, p.213). The market model of education asserts that allowing families to select their own schools will result in the creation of diverse schools that are better equipped to meet student needs (Davis, 2013, p.2). As a result of parents being provided with a choice regarding school attendance, competition is generated among schools, thereby maximizing student achievement (Davis, 2013, p.2). The market model supposes that

competition generated by charter schools will motivate poor performing schools to modify their academic practices, which in turn will result in improved student achievement (Davis, 2013, pp.2-3). According to charter school proponents, charter schools are susceptible to the market and therefore face increased accountability by the market (Finnigan, 2007, p.504). Charter schools that perform well and meet the needs of their local communities will have increased enrollment; thereby contributing to their longevity. Those schools that fail to meet the needs of their local communities will either improve or succumb to market forces and cease to exist (Poole, 2011, pp.265-266).

Some research asserts that competition offered by charter schools increases the academic performance beyond the actual charter schools (Winters, 2012, p.301; Davis, 2013, p.2). The position is that when traditional public schools face the ramifications of losing students to charter schools, the traditional public schools will improve their practices to become more competitive (Poole, 2011, p.271; Davis, 2013, pp.2-3). Therefore, competition afforded by charter schools not only improves the quality of education for the students attending the charter schools but for the entire system of education. (Poole, 2011, p.271; Winters, 2012, p.301)

Another cornerstone characteristic of charter school theory is increased autonomy (Finnigan, 2007). Charter schools are characterized by decreased governmental regulation as compared to traditional public schools (Finnigan, 2007, p. 514; Levin, 2012, p.331). Increased autonomy allows charter schools the opportunity to implement policies and practices that were previously unavailable (Finnigan, 2007, p.504). Permitting charter schools to operate more autonomously is thought to promote greater innovation and change (Finnigan, 2007, p.505). Charter schools were conceived as an approach to



education that allows for laboratories of innovation (Frankenberg, 2011, p. 101; Stillings, 2006, p. 66). These institutions are not as subject to stringent restrictive governance typically characteristic of traditional public schools (Finnigan, 2007, p.510). According to charter school proponents, autonomy allows for more individualized instruction. As a result of more autonomous governance, those closer to the front lines are empowered with the ability to implement educational policies that most effectively meet the needs of the academic community served by the charter school (Poole, 2011, p.271; Finnigan, 2007, p.504). More autonomous governance policies also afford charter schools the ability to implement innovative ideas more readily than may be available in traditional public schools (Frankenberg, 2011; Stillings, 2006).

The conceptual framework underlying charter schools is a mixture of governance, accountability and competition (Finnigan, 2007; Gronberg, 2012; Stillings, 2006). A governing matrix, which allows for more local level autonomy will produce increased academic performance or succumb to market forces (Finnigan, 2007). Rather than being held accountable by a governmental entity, charter schools are directly accountable to the community through the market (Stillings, 2006; Poole, 2011). Schools that produce desired academic outcomes will be sustained and those that fail to produce the desired results will not (Poole, 2011, pp. 265-266).

#### Research Questions

1. What similarities and differences exist in the governance, funding and accountability of charter school legislation across the United States?
2. What legislation has proven vulnerable to court challenges?

3. What problems have arisen regarding charter school funding?

#### Limitations

1. This study is limited by case law that is published. Court cases are only published if they are appealed. Cases that are not appealed are unlikely to be published in legal reporters.
2. The accuracy of the statutes as written and reported by legislatures limits this study.
3. The presence of statutory provisions concerning charter school funding, governance and accountability is a limitation of the study.
4. Not all states have charter school legislation. Presently, only 42 states and the District of Columbia have charter school statutes. Accordingly, this study is limited by the presence of charter school legislation in each state.
5. Some of the state and federal reports noted in this study may be limited by accuracy and/or bias of state and federal governmental representatives and entities. For example, Indiana Superintendent of Schools resigned amid allegations of manipulating the state's schools grading formula to ensure that a charter school operated by a major political donor would receive a certain grade (LoBianco, 2013).

#### Delimitations

1. This study only examines state statutes in the fifty United States and the District of Columbia.
2. This study does not examine federal legislation regarding charter schools.

3. This study is delimited to review of the funding, governance, and accountability provisions of charter school legislation and resulting litigation.
4. This study is delimited to provisions that appear directly in the charter school legislation.
5. This study is delimited to review of charter school legislation in effect at the end of 2014.

### Research Methodology

This legal study utilized both primary and secondary resources. The methodology of this legal study involved evaluation of charter school legislation and legal decisions resulting from the charter school legislation.

State and federal legislative websites were utilized to locate relevant legislation and legislative history. The legal databases Lexis/Nexis and Westlaw were also used to locate charter school legislation. Charter school legislation was evaluated to identify funding, governing, and accountability provisions. Legal decisions were examined to assist in interpretation of charter school legislation and determination of constitutional validity. Legal journals were utilized to provide insight on legislative intent and case law interpretations. Legislative archives were used to research the legislative history of charter school legislation. Legislative archives were also consulted to collect bills that preceded charter school legislation.

The legal databases Lexis/Nexis and Westlaw were used to locate charter school legislation, case law and legal journals. Lexis/Nexis and Westlaw were used to perform a state by state term search for the term “charter school”. The databases were used to

search all states at once and then the databases were used to perform the term search for each state and the District of Columbia. Charter schools are also referred to as “public school academies” and “community schools”. Accordingly, the terms “public school academy” and “community schools” were also used to search the all states combined databases in Lexis/Nexis and Westlaw. A term search was also performed, in the federal circuit databases within Lexis/Nexis and Westlaw for the terms “charter schools”, “public school academies” and “community schools”. The United States Supreme Court databases, within Lexis/Nexis and Westlaw, was searched for the terms “charter schools”, “public school academies” and “community schools” in order to locate court cases that had been determined by the United States Supreme Court.

Westlaw’s statutes annotated were studied for each provision of nationwide charter school legislation to identify any legal case that that resulted from the charter legislative provisions. Once cases were compiled, they were considered for study relevance.

Primary sources included state statutes and federal statutes as well as court cases from the state and federal levels. Secondary sources included law review articles, legal journals, legal encyclopedias, legal digests, legislative analysis, charter school organizations’ treatises, educational journals, legislative reports, federal governmental agency reports and state governmental agency reports, news articles and annotated statutes.

Black’s law dictionary was utilized to provide legal definitions necessary to interpret legislation. Lexis/Nexis and Westlaw were utilized to Shepardize cases for currency.

## CHAPTER 2: LITERATURE REVIEW

### Historical Background on Education and Educational Reforms Leading to Charter School Inception

“...Preach, my dear sir, a crusade against ignorance; establish and improve law for educating the common people. Let our countrymen know...that the tax which will be paid for this purpose is not more than the thousandth part of what will be paid to kings, priests, and nobles who rise up among us if we leave the people in ignorance” (Alexander & Alexander, 2012, p. 30, quoting Thomas Jefferson letter to George Wythe, Paris, August 14, 1786).

#### Initial Purposes of Education in America

Throughout time, the American educational system has continuously evolved to meet the perceived needs of the current society. While the United States Constitution intimated that all people are created equal (U.S. Const.), that principle did not appear to extend to America’s early education system. Initially, educational advancement was only available to the upper classes (Alexander & Alexander, 2012, p.28). Poor children either received no education or were relegated to trade apprenticeships where they learned to perform manual labor (Alexander & Alexander, 2012, p.28). As societal enlightenment evolved, so did the perception that universal education was necessary for a more knowledgeable population and effective democracy (Alexander & Alexander, 2012, p. 30). Among the first codified purposes, of American education, was to create good Christian citizens. Education legislation began by targeting individual homes and ultimately spread to encompass entire communities.

In 1642, Massachusetts Bay enacted legislation that required heads of households to ensure that everyone in their household be educated to read (Massachusetts Bay

School Law (1642). This legal edict extended to members of the family as well as servants. Reading was intended to ensure that each person was able to understand both governmental laws and biblical principles; thereby, ensuring a model citizenry (Massachusetts Bay School Law 1642; Alexander & Alexander, 2012, p.28). Later, in 1647, legislation mandated that children be educated in order to prevent them from falling prey to Satan's deceptions (Old Deluder Satan Act of 1647). According to the Old Deluder Satan Act of 1647, townships were responsible for hiring a teacher once the town reached fifty families (Old Deluder Satan Act of 1647). As a township swelled to 100 families, the obligation arose to construct a community grammar school (Old Deluder Satan Act of 1647). The law's enactors supposed that training children to read would ensure that the children were equipped with skills necessary to read the scriptures for themselves, thereby preventing Satan from deceiving them with smooth words that were not scripturally sound (Old deluder Satan Act of 1647). During the 1700s and 1800s, education continued to evolve to meet the needs of the time.

Throughout the 1700s, as the ideology of publicly funded schools populated America, public schools were generally purveyed for middle class White males (Gallagher, Goodyear, Brewer and Rueda, 2012, p.9). Wealthy Americans often procured private tutors to educate their children (Gallagher, Goodyear, Brewer and Rueda, 2012, p.9). The institution of formalized education was intended to maintain the patriarchal element of society (Gallagher, Goodyear, Brewer and Rueda, 2012, p.9). As such, formal education was generally preserved for males (Gallagher, Goodyear, Brewer and Rueda, 2012, p.9). While special schools existed for females and Black children, they were not a common occurrence (Gallagher, Goodyear, Brewer and Rueda, 2012, p.9).

As America transitioned into the 1800s, institutionalized education began to be viewed as necessary to address social dissonance brought on by poverty and immigration (Gallagher, Goodyear, Brewer and Rueda, 2012, p. 10). The nineteenth century saw a rise in the prevalence of unschooled children and unskilled workers (Gallagher, Goodyear, Brewer and Rueda, 2012, pp. 9-10). Indigent children were unable to afford schooling and as such became societal nuisances (Gallagher, Goodyear, Brewer and Rueda, 2012, pp. 9-10). The goal of educational reform efforts became centered on institutionalized education to reach out to potential voters and educate their children on being useful citizens (Gallagher, Goodyear, Brewer and Rueda, 2012, pp. 9-10). Free primary schools were established to educate poor children on correct behavior and proper morality (Gallagher, Goodyear, Brewer and Rueda, 2012, p. 10). As American education transitioned through the twentieth century, reform efforts were characterized by varying societally motivated objectives.

#### Educational Reforms Leading up to Charter Schools

Presidents Lyndon B. Johnson, Bill Clinton, George W. Bush, and Barack Obama each enacted education legislation concerned with addressing poverty, equity and quality education (Elementary and Secondary Education Act of 1965, PL-89-10, 1965; Improving America's Schools Act of 1994; The No Child Left Behind Act of 2001, 107 Pub. L. No. 107-110, §1001 et seq.; 115 Stat. 1425, Title XIV (2002); American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, § 14001-12, Title XIV (2009)). While each administration's approach may have differed, each was ultimately being responsive to its perception of how education could best meet societal needs. Charter

schools grew from the choice movement, which included initiatives such as magnet schools and school vouchers (Brown, 1999, pp.465-466; Davis, 2013, p.4; Knaak & Knaak, 2013, p.45). Many educational reform efforts preceded current charter school legislative initiatives.

In 1965, President Johnson was in the midst of the War on Poverty. Enactment of the initial Elementary and Secondary Education Act of 1965 signaled a redirection of educational focus to poverty and economic equality. Public Law 89-10 represented an important component of President Johnson's War on Poverty. The Act identified its purpose as:

“... recognition of the special educational needs of children of low-income families and the impact that concentrations of low-income families have on the ability of local educational agencies to support adequate educational programs, the Congress hereby declares it to be the policy of the United States to provide financial assistance...to local educational agencies serving areas with concentrations of children from low-income families to expand and improve their educational programs by various means...which contribute particularly to meeting these special educational needs of educationally deprived children” (Pub. L-89-10, Section 201, 1965).

The initial Elementary and Secondary Education Act intended to provide financial support to America's educational system (Elementary and Secondary Education Act of 1965, Pub. L. 89-10 (1965)). Title I was dedicated to assisting local education agencies in educating children of low-income families (Elementary and Secondary Education Act of 1965, Pub. L. 89-10 (1965)). Appropriation of funds for school library resources and instructional materials was outlined in Title II. (Elementary and Secondary Education Act of 1965, Pub. L. 89-10 (1965)). Title III provided funding to assist in providing educational services that were otherwise inadequately available (Elementary and Secondary Education Act of 1965, Pub. L 89-10 (1965)). Title IV financed educational



research (Elementary and Secondary Education Act of 1965, Pub. L. 89-10 (1965)). Title V made it possible for states to finance actions and programming necessary to improve the educational needs of the states (Elementary and Secondary Education Act of 1965, Pub. L. 89-10 (1965)). The Elementary and Secondary Education Act attempted to reform education in order to address societal deficiencies as a result of poverty and inequity. The Nation at Risk Report was targeted at addressing educational concerns regarding mediocrity.

In 1983, The National Commission on Excellence in Education prepared a report composed in response to the Secretary of Education's concern regarding "...the widespread public perception that something is seriously remiss in our educational system" (The National Commission on Excellence in Education (a), 1983). "This report...seeks to generate reform of our educational system in fundamental ways and to renew the Nation's commitment to schools and colleges of high quality throughout the length and breadth of our land" (The National Commission on Excellence in Education(c), 1983). The report instigated the movement away from mediocrity (The National Commission on Excellence in Education (c), 1983). A Nation at Risk reported that American students were failing to be competitive internationally (The National Commission on Excellence in Education (d), 1983). As such, The National Commission on Excellence made several recommendations for educational reform (The National Commission on Excellence in Education (e), 1983). These recommendations entailed increasing the rigor of academic content; establishing more rigorous academic standards; increasing both the quantity and quality of educational time; and improved teacher preparation (The National Commission on Excellence in Education (d), 1983). The

Nation at Risk Report ushered in a reform effort that pursued heightened levels of intellectual development in hopes that it would create a more internationally competitive America. A Nation at Risk was focused on improving education for all children in order to create a more economically and socially sound society (The National Commission on Excellence, 1983; Ravitch, 2010, p.25).

### Achievement Gap

There have been numerous initiatives implemented to close the achievement gap. The U.S. Department of Education defines an achievement gap as an occurrence “...when one group of students outperforms another group and the difference in average scores for the two groups is statistically significant” (National Assessment of Educational Progress, 2014). There has been forced desegregation of public schools (Knaak & Knaak, 2013, p.47). Targeted integration of racial factions through busing of students has also been attempted in an effort to minimize the achievement gap (Knaak & Knaak, 2013, p.47). One of the targets of magnet schools is to “...attract students of different racial/ethnic backgrounds...” (U.S. Department of Education, Grady, & Bielick, 2010, p.iii). According to Knaak & Knaak (2013), magnet schools proved to be a failure at closing the achievement gap. The Elementary and Secondary Education Act of 1965 was implemented to combat the effects of poverty (The Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, § 201, (1965)). Likewise, its reauthorizations in the form of the Improving America’s School Act and the No Child Left Behind Act were also implemented to combat the effects of financial and racial inequities (Improving America’s Schools Act of 1994; Pub. L. No. 103-382; 108 Stat. 3518 (1994); The No

Child Left Behind Act of 2001, 107 Pub. L. No. 107-110, §1001 et seq.; 115 Stat. 1425, Title XIV (2002)). Despite all of the governmental efforts to dissipate the achievement gap, the Black-White achievement gap and the Hispanic-White achievement gap have remained essentially stagnant since the 1990's (Mills, 2013, pp.320-321; Hemphill & Vanneman, 2011, pp.30, 60; Vanneman, Hamilton, Baldwin, Anderson & Rahman, 2009, pp. 6, 28). Since the 1990s, charter schools have grown in popularity as a solution to closing the achievement gap (Mills, 2013, p. 321).

Nationwide charter schools disproportionately enroll higher numbers of minority students and economically disadvantaged students when compared to the traditional public school. In its 2013 Charter School Study, the Center for Research on Educational Outcomes found that 54% of the charter students studied lived in poverty (CREDO, 2013, p.10). The National Alliance for Public Charter Schools reported that, during the 2010-2011 school year, Black students accounted for approximately 29.2% of the national charter school population while only contributing to 15.9% of the traditional public school population (National Alliance for Public Charter Schools (c), 2011). Likewise, the Hispanic student population in charter schools was 27.2% while it was 22.9% in traditional public schools (National Alliance for Public Charter Schools (c), 2011). The United States Department of Education reported that, during the 2011-2012 school year, 31% of charter students attended schools that were considered high poverty (U.S. Department of Education, April 2014, p.4). High poverty schools had a student population that was comprised of more than 75% of students who qualified for free or reduced lunch (U.S. Department of Education, April 2014, p.4).

Bifulco & Ladd studied school choice as it relates to the achievement gap in North Carolina (Bifulco & Ladd, 2006). The study found that charter schools widened the achievement gap (Bifulco & Ladd, 2006). More specifically, Bifulco and Ladd concluded “[g]iven that black students are disproportionately represented in charter schools relative to white students in North Carolina, the finding that attending a charter school has, on average, had negative effects on student achievement suggests that the introduction of charter schools has increased the black-white test score gap in North Carolina “ (Bifulco & Ladd, 2006, p. 44).

There is no definitive conclusion regarding the actual impact of charter schools on the achievement gap. Studies have shown that there is a negative impact (Bifulco & Ladd, 2006); positive impact (Abdulkadiroglu et al, 2009, p.9; Florida Department of Education, 2014); and an indistinguishable impact (Betts & Tang, 2011; Zimmer & Buddin, 2005).

In New York City there is a 35-40 point achievement score disparity between Scarsdale, one of the city’s most affluent suburbs, and Harlem one of its poorest (Hoxby, Muraraka, & Kang, 2009, pp.IV-7 – IV-8). This score disparity has been coined the “Scarsdale-Harlem achievement gap”. A study performed on 93% of New York City’s charter school students, in test-taking grades, found that a student who attends charter schools from kindergarten through eighth grade would substantially close the Scarsdale-Harlem achievement gap (Hoxby, Muraraka, & Kang, 2009). More specifically, the achievement gap in math would close by 86% and the reading gap would decrease by 66% (Hoxby, Muraraka, & Kang, 2009, p.viii).

Betts and Tang (2011) published a meta-analysis of literature evaluating the effect of charter schools on student achievement (Betts & Tang, 2011). After assessing the literature, Betts and Tang were unable to definitively conclude whether charter schools had a positive or negative effect, on student achievement, when compared to traditional public schools (Betts & Tang, 2011, p.55). Betts and Tang found that there were charter schools that both under-performed and out-performed traditional public schools when evaluated for students' performance in reading and math (Betts & Tang, 2011, p.55). While Betts and Tang do not specifically address the impact of charter schools on diminishing the achievement gap, their findings seem to lend support to the idea that charter schools may not be impacting the achievement gap or at best, only minimally (Betts & Tang, 2011). Specifically, Betts and Tang found that charter schools tend to have a negative effect on achievement gains of White Students and generally insignificant for Black and Hispanic student achievement (Betts and Tang, 2011, pp.31 - 32). The Betts and Tang findings must be tempered by the fact that the literature available to be analyzed is minimal and possess limited applicability beyond the scope of the original study (Betts and Tang, 2011, pp.31-32).

A 2013 study reported by the Center for Research on Education Outcomes ("CREDO") reveals that charter schools may be making some gains in closing the achievement gap (CREDO, 2013, pp.16-17). CREDO reported that Black students, students living in poverty and English language learners obtained significantly more days of learning in math and reading (CREDO, 2013, p.17). Further, CREDO found that Black students living in poverty, Hispanic students living in poverty and Hispanic

students who are also English language learners “...gained a substantial learning advantage in charter schools...” (CREDO, 2013, p.17).

The State of Florida compiles an annual report evaluating the academic performance of the state’s charter schools as compared to its traditional public schools (Florida Department of Education, 2014). Florida’s Department of Education compared the impact of charter schools and traditional public schools on the achievement gap (Florida Department of Education, 2014). The Black-White and Hispanic-White achievement gap was evaluated across 18 categories (Florida Department of Education, 2014). The 2013 report found that charter schools more effectively decreased the achievement gap, in all 18 categories (Florida Department of Education, 2014).

#### Privatization of Education

The 1990s were characterized by the movement toward privatization with initiatives such as vouchers, magnet schools and eventually charter schools. Proponents of school choice maintained that establishing a system of school choice was the best way to institute fundamental change in the educational system (Ravitch, 2010, p.118). While the federal government consistently rejected vouchers, Milwaukee and Cleveland, two urban districts, implemented vouchers in an effort to improve student achievement (Ravitch, 2010, p.118). Both the Cleveland and Milwaukee districts became entrenched in lengthy legal battles regarding the legitimacy of their voucher programs (Ravitch, 2010, pp.119-120). Ultimately, each school district prevailed in court, and the legislation found to be constitutional (Ravitch, 2010, pp.119-120, *Zelman v. Simmons-Harris*, 536 U.S. 639, 122 S. Ct. 246, *Jackson v. Benson*, 1998, 218 Wis. 2d 835, 578 N.W.2d 602).

After voucher proponents claimed legal victories in Cleveland and Milwaukee, the U.S. Congress initiated its own voucher legislation for the District of Columbia (Ravitch, 2010, p.121). Eventually, some form of the voucher system was initiated in various states across America. There was legislation that successfully survived legal challenges; failed legal scrutiny; and there was legislation that did not obtain voter approval (*Zelman v. Simmons-Harris*, 536 U.S. 639, 122 S. Ct. 246, *Jackson v. Benson*, 1998, 218 Wis. 2d 835, 578 N.W.2d 602; Utah House Bill 148B; National Conference of State Legislators, *Bush v Holmes*, 919 So. 2d 392). Currently, voucher laws exist in thirteen states and the District of Columbia (National Conference of State Legislatures, 2014).

Vouchers essentially take public funds and steer them to private schools (Ravitch, 2010). Allowing students to use public funds to pay private schools has given rise to a number of legal challenges (*Zelman v. Simmons-Harris*, 536 U.S. 639, 122 S. Ct. 246, *Jackson v. Benson*, 1998, 218 Wis. 2d 835, 578 N.W.2d 602; *Bush v Holmes*, 919 So. 2d 392). Vouchers eventually gave way to charter schools (Ravitch, 2010). The charter school ideology gained many supporters including, President Bill Clinton, Secretary of Education Richard Riley, Minnesota Senator Paul Wellstone and the author of Minnesota's charter school legislation, Senator Reichgott Junge (Nathan, 1996)

### Charter School Theory

#### Original Intent of Charter School Legislation

Over the last two decades, the presence of charter schools has increased dramatically (National Alliance for Public Charter Schools, 2012a; U.S. Department of Education, 2014). Charter schools are poised to become a key component of education

reform in the United States as evidenced by the Race to the Top Program, the proposed reauthorization of the Elementary and Secondary Education Act (Grady, 2012, p.514) and the rapidity with which charter legislation is spreading across the United States. Thirty-five of the forty-two states that have charter school legislation, enacted their laws within the first decade following the Minnesota legislation (National Center for Education Statistics, 2014). Central objectives of charter school legislation are to afford greater educational options, increased school autonomy and greater educator influence over the educational process (Barghaus & Boe, 2011). Charter school legislation varies from state to state. While there is no exact charter school formula; the charter school concept shares certain characteristics.

Fundamentally, charter schools are characterized by an exchange of autonomy for accountability (Finnigan, 2007; McGree, 1995; Mills, 2013). Charter school initiatives are a response to perceptions that extensive regulatory requirements stifle innovation (Morra, 1995). Greater local level autonomy is thought, by some, to promote increased innovation resulting in more meaningful academic achievement (Finnigan, 2007, p.505; Gallagher et al., 2012, p.37; Stillings, 2006, p.52). State issued charters are a form of educational reform that propose to improve the quality of America's educational system by providing families with greater choice in the type of educational process that best meets their students' need (Barghaus & Boe, 2011, p.60). Charter school initiatives are a response to perceptions that extensive regulatory requirements stifle innovation and constrain competition that might lead to academic achievement (McGree, 1995).

Central to charter school ideology is that local level educators are best situated to identify and address the needs of the local student population (Barghaus & Boe, 2011;



McGree, 1995; Stillings, 2006). When educators are freed from bureaucratic restraints, they are better equipped to implement innovative ideas uniquely designed to meet the needs of the charter school's community (Barghaus & Boe, 2011; Bierlein & Mulholland, 1993; Stillings, 2006). Inherent in the autonomy afforded to charter schools is freedom from constraints common among traditional public schools such as those associated with decisions regarding personnel, collective bargaining agreements, finances, curriculum and school hours (Gawlik, 2007, p.528; Mills, 2013, p.321). Freedom from bureaucratic constraints characteristic of traditional public schools is thought to translate into improved student achievement (Gawlik, 2007, p.528).

Charter schools were intended to afford families an alternative to the traditional educational processes characteristic of traditional public schools (Budde, 1989; Shanker 1988). As part of the choice movement, a key component of charter school legislation is to provide parents with greater options to best meet the needs of their students. A cornerstone objective of charter schools is to provide cutting edge innovation (Budde, 1989; Shanker 1988). Charter schools are intended to be laboratories for educational innovation (Budde, 1989; Shanker 1988). As experiments, some charter schools should be expected to fail and other should be expected to succeed (Barghaus & Boe, 2011, p.80).

Another keystone trait of charter schools is a heightened level of autonomy as compared to traditional public schools. Freedom from the bureaucratic restrictions that constrain traditional public schools, allow charter schools to push the envelope in the attempt to best meet students' needs (Barghaus & Boe, 2011; Morra, 1995; Stillings, 2006). Increased autonomy allows those closest to the students to make decisions regarding necessary actions to best meet student needs (Barghaus & Boe, 2011; Stillings, 2006).

## Charter School Market Theory

A key position of charter proponents is that, through market theory, charter schools improve academic achievement for all students. Market theory provides that increased competition, through choice, increases academic achievement (Davis, 2013, p.2; Preston, Goldring, Berends, & Cannata, 2012, p.318; Zimmer, Gill, Booker, Lavertu & Witte, 2012, p.213). Milton Friedman's economic free market theories serve as the foundation for charter school market theory (Grady, 2012, p.520). Friedman's proposition was that providing parents with a choice in schools would result in an improvement in the educational system (Grady, 2012, p.520). Instituting a charter school system creates a market for a school choice that is absent in the traditional public school (Grady, 2012, p.520). Market model proponents contend that empowering families to choose schools will substantially improve the educational system (Davis, 2013, p.2). According to the market model, permitting families to select their school assignment in lieu of being subject to the traditional assignment practices, will foster a variety of schools better designed to meet student needs (Davis, 2013, p.2). Additionally, it was argued, increased choice will improve academic achievement by invoking greater competition among schools (Davis, 2013, p.2). In order to retain students, teachers and schools will change their practices to be more reflective of the needs represented in their respective communities (Davis, 2013). It is asserted that competition will motivate poorly performing schools to improve their academic and operational practices resulting in enhanced student achievement (Davis, 2013, pp. 2-3).

## Charter School Accountability & Autonomy

Charter school theory is premised on the exchange of increased accountability for increased autonomy (Gallagher et al., 2012, p.37). According to proponents, heightened accountability is maintained by market theory (Davis, 2013). Charter schools are held accountable by market forces (Davis, 2013; Poole, 2011; Stillings, 2006). Schools that perform well and are responsive to the needs of their community will stay open and continue to operate. Schools that fail to meet the community needs will close for lack of business.

Key for the functioning of charter schools is freedom from the bureaucratic red tape characteristic of traditional public schools (Barghaus & Boe, 2011; Stillings, 2006). Charter schools are tasked with creating innovative means for reaching students. In order to fully realize innovative potential, charter schools must have the operational freedom to immediately effect changes that are responsive to their individual community. The idea is that those closest to students are best equipped to design programs and practices that will yield the highest academic return (Barghaus & Boe, 2011; Finnigan, 2007; Poole, 2011; Stillings, 2006).

### Charter School Effectiveness at Accomplishing Original Intent

The original intent of charter school legislation was to increase student achievement, through the use of innovative practices, designed and invoked by those closest to the local academic arena (Junge, 2012, p.5). It was intended that charter schools would possess the necessary autonomy to implement innovative practices and as such they would have heightened accountability for producing increased academic

achievement. It is unclear how well charter schools are accomplishing their original intent.

Charter schools have been found to have inconsistent quality (U.S. Department of Education, 2010; Grady, 2012). There is evidence that suggests that charter schools may and may not be improving the academic achievement of students as compared to traditional public schools (CREDO 2013; Grady, 2012, p.514).

Barghaus and Boe performed a study to obtain information regarding implementation of prominent charter school legislative objectives (Barghaus & Boe, 2011, p.76). They concluded that generally, charter schools have failed to improve student achievement, despite being implemented according to legislative intent (Barghaus & Boe, 2011).

There are mixed findings with respect to whether charter schools are in fact implementing innovative practices. Barghaus and Boe found that charter schools generally implement the legislative objective of innovativeness (Barghaus & Boe, 2011, p.77). When compared to traditional public schools, charter schools are more likely to implement alternative programs and nontraditional classroom options (Barghaus & Boe, 2011, p.77). While Barghaus and Boe reported that charter schools were more likely to "...use looping, block scheduling, and small student groups...", they qualified their finding by indicating that these alternative practices were only found in elementary schools (Barghaus & Boe, 2011, p.77). It has also been reported that traditional instructional practices are commonly found in charter schools (Chi & Welner, 2008, p. 284) and that charter schools fail to exhibit any more innovation than traditional public

schools (Knaak & Knaak, 2013, p.52; Preston, Goldring, Berends & Cannata, 2012, p.324).

Barghaus and Boe concluded that charter school principals were afforded greater autonomy than traditional public school principals; however, autonomy did not reach heightened levels anticipated by legislation (Barghaus & Boe, 2011, p.78). It was further concluded that the level of autonomy intended by state legislation was not experienced by charter school teachers and principals (Barghaus & Boe, 2011, p.76).

The market model has been criticized as doing little to increase academic achievement or decrease educational inequality (Davis, 2013, p.3). Findings suggest that charter schools are not functioning to stimulate anticipated change within traditional public schools (Davis, 2013, p.22). Knaak and Knaak opined that traditional public schools may be refusing to succumb to competition because of a perception that charter school possess multiple unfair advantages (Knaak & Knaak, 2013, p.52).

#### Charter School Effectiveness

The impact of charter schools on the academic achievement of students has been found to show mixed results (Farrell, Wohlstetter & Smith, 2012; Zimmer, Gill, Booker, Lavertu, & Witte, 2012; Zimmer, Gill, Booker, Lavertu, Sass, & Witte (2009). There are studies that indicate positive, negative and insignificant impact on student achievement (Abdulkadiroglu, Angrist, Cohodes, Dynarski, Fullerton, Kane and Pathak, 2011; Farrell, Wohlstetter & Smith, 2012; Hoxby, Muraraka, and Kang, 2009; Hoxby & Rockoff, 2005; Zimmer, Gill, Booker, Lavertu, & Witte, 2012; Zimmer, Gill, Booker, Lavertu, Sass, & Witte (2009).

Studies were performed in urban districts of Boston, Chicago and New York City to look at the impact of charter schools on student performance (Mills, 2013, pp.323-324). These studies found that charter schools had a positive impact on student achievement. (Mills, 2013, pp.323-324).

Hoxby and Rockoff used a lottery-based approach to study three charter schools in Chicago (Hoxby & Rockoff, 2005, p.53). The Hoxby and Rockoff study looked at test scores for students that participated in charter school lotteries (Hoxby & Rockoff, 2005). Academic performance of lottery-accepted students was compared to the performance of traditional public school students that were not selected through the charter school lottery (Hoxby & Rockoff, 2005). Hoxby and Rockoff found a statistically significant positive effect in reading and math for students that attended the charter schools (Hoxby & Rockoff, 2005, p.58).

Abdulkadiroglu, Angrist, Cohodes, Dynarski, Fullerton, Kane and Pathak evaluated oversubscribed charter schools in Boston (Abdulkadiroglu, Angrist, Cohodes, Dynarski, Fullerton, Kane and Pathak, 2011). One aspect of their study compared the performance of student academic performance based on charter school admissions lotteries (Abdulkadiroglu, Angrist, Cohodes, Dynarski, Fullerton, Kane and Pathak, 2011). The academic performance of charter schools students admitted through admissions lotteries was compared to the academic performance of traditional public school students who did not gain admission through the lotteries (Abdulkadiroglu, Angrist, Cohodes, Dynarski, Fullerton, Kane and Pathak, 2011). Abdulkadiroglu, Angrist, Cohodes, Dynarski, Fullerton, Kane and Pathak found large positive effects in

English Language Arts and math among charter middle school and high school students as compared to traditional public school students (Abdulkadiroglu, et al., 2011, p.9).

Hoxby, Muraraka, and Kang used lottery admissions to evaluate the effectiveness of New York's charter schools. Charter school admissions lotteries were used to create classes of comparable students to compare. The academic performance of traditional public school students who were not selected by the charter school lotteries were compared against charter school students that were selected through admissions lotteries. In studying New York city's charter schools, Hoxby, Muraraka, and Kang found that charter schools decreased the achievement gap and increased student test scores (Hoxby, Muraraka, and Kang, 2009).

There is evidence that some charter school systems, such as the Knowledge is Power Program ("KIPP"), are models of effectiveness (Henig, 2008, p.1). KIPP has 162 schools crisscrossing the country (KIPP, 2014). KIPP schools are characterized by "...high academic expectations, parent and student commitment, substantially more time in school, school-level decision-making, and a focus on measurable outcomes..." (Henig, 2008, p.3). Henig completed a policy brief on KIPP schools (Henig, 2008). It was found that students who enroll and remain in KIPP schools tend to obtain higher academic achievement than similar students in traditional public schools (Henig, 2008, p.3). Henig further concluded that KIPP student attrition was high and appeared to be selective, indicating that lower performing students tended to withdraw from KIPP schools (Henig, 2008, p.1). The policy brief cautioned that KIPP schools' heightened level of effectiveness must be considered relative to the students who are leaving the schools (Henig, 2008). "If those who leave KIPP schools are disproportionately those

who are struggling academically, or whose families lack the supportive attributes that often predict success, then their absence could account for higher test scores or group gains over time.” (Henig, 2008, p.6)

The Center for Research on Educational Outcomes performed a study to determine the effect of charter schools on the academic learning gains of students (CREDO, 2009). The 2009 report found that on average, charter school students’ academic growth was slightly below that with the traditional public school (CREDO, 2009, p.45). Nationally, there were higher learning gains for elementary and middle school charter students than equivalent students in traditional public schools (CREDO, 2009, p.45). English language learners and students living in poverty sustained higher learner gains than their traditional public school student (CREDO, 2009, p.45). CREDO reported that 17% of charter schools outperform traditional public schools; 37% significantly underperform; and 46% perform similar to traditional public schools (CREDO, 2009, p.1). The study found that there is a sharp academic decline for first year charter students (CREDO, 2009, p.7). The report further concluded that “...the overall findings of this report indicate a disturbing — and far- reaching — subset of poorly performing charter schools” (CREDO, 2009, p.7).

The Evaluation of Charter School Impacts Final Report was an evaluative study to determine the effectiveness of charter schools (U.S. Department of Education, et al., 2010, p.xvii). The study spanned 15 states and compared the outcomes of students admitted to charter middle schools via lottery against their counterparts who were unable to gain admission through the lottery process (US Department of Education, 2010 et al., p.xvii). The study found that generally there was no statistically significant impact on



student achievement for those students that attended the charter schools (U.S. Department of Education, et al., 2010, p.41). On average, the studied charter school neither significantly increased nor decreased student achievement (U.S. Department of Education, et al., 2010, p.61). The study went further to report that the findings suggest positive mathematics impacts for economically disadvantaged students. Conversely, negative impacts in math and reading were reported for economically advantaged students (U.S. Department of Education, et al., 2010, p.43). The study also reported that student achievement was not significantly impacted by race and ethnicity (U.S. Department of Education, et al., 2010, p.44).

It is unclear whether charter schools have an impact on traditional public schools (Davis, 2013, p.7). There have been studies that have found a slight increase in reading and math scores of traditional public school student that may be attributable to competition created by a local charter school (Davis, 2013, p.7). There have also been studies that found no impact or a negative impact on academic achievement of traditional public school students attributable to competition created by a local charter school (Davis, 2013, p.7). Charter school competition may not be contributing toward meaningful achievement changes in traditional public schools because charter schools may be serving to relieve traditional public schools from challenging situations such as overcrowding, low achieving students or disadvantaged students (Davis, 2013, p.7). Minority students tend to be overrepresented in charter schools (Davis, 2013, p.7). As charter school enroll greater numbers of minority students who are likely to have lower academic achievement, then academic achievement at traditional public schools may appear to increase (Davis, 2013, p.7).

It is difficult to obtain longitudinal information on the effectiveness of charter schools because fluidity of changes such as closings and management shifts (Knaak & Knaak, 2013, p.45). The admission and retention process also limits obtaining a true measure of charter school effectiveness. Many high achieving charter schools are characterized by admission processes that tend to preclude families who will not fully invest in their student's educational process (Knaak & Knaak, 2013, p.49). It has been asserted that some highly successful charter schools sustain levels of heightened effectiveness by keeping high achieving students and losing low achieving students (Knaak & Knaak, 2013, p.49).

Mills conducted a study of Arkansas charter schools using a quasi-experimental approach to evaluate the charter school effectiveness in improving student performance (Mills, 2013, pp.321-322). Student performance was evaluated by comparing their experiences in charter schools with their traditional public school experiences (Mills, 2013, p. 322). Mills reported that charter schools had a small but statistically significant negative impact on student math and literacy achievement (Mills, 2013). The report qualified its findings by indicating that the degree of negative impact diminishes the longer the school is in operation (Mills, 2013).

In 2013, the Center for Research on Education Outcomes performed a study to update its 2009 charter school study (CREDO, 2013). The National Charter School Study involved the 16 states participating in the original study along with new partner states. States involved in the study educate more than 95% of the United States' charter school students (CREDO, 2013, p.8). The National Charter School Study functioned by comparing virtual traditional public school students to existing charter school students

(CREDO, 2013, p. 9). Virtual students were determined by selecting traditional public school students enrolled at the school the charter school student would have attended had they not attended a charter school (CREDO, 2013, p. 9). The traditional public school student was then matched for identical traits and identical or similar prior test scores to the comparable charter school student (CREDO, 2013, p. 9). The study considered the academic growth of students based on their reading and math scores on state achievement assessments (CREDO, 2013, p. 9). For the 16 2009 states that continued participation in the 2013 study, charter school students' academic achievement improved for both reading and math among Black students, Hispanic students, poverty students, English Language Learners and special education students (CREDO, 2013, p. 14). When comparing all 27 participating states, CREDO determined that on average, charter schools students gain an addition eight days of math learning and perform similarly to traditional public school students in math (CREDO, 2013, p.9). The 2013 study results are in stark contrast to the 2009 study results (CREDO, 2013). According to the 2009 report, charter school students lost 7 days of learning in reading and 22 days of learning in math as compared to their traditional public school counterparts (CREDO, 2013, p.16). While the overall results demonstrate that charter schools are beginning to outperform the academic achievement of traditional public schools, there are populations such as White students, which do not excel in charter schools (CREDO, 2013). CREDO reported that charter schools contribute to student reading learning gains at a greater rate than traditional public schools; but also cautioned that quality of charter schools is uneven (CREDO, 2013, p.3). While overall, charter school were found to more positively impact student learning gains than traditional public schools, CREDO qualified that improved charter performance may

be resultant of the continued operation of high performing charter schools and the discontinued operation of lower performing schools (CREDO, 2013, p.44).

Barghaus and Boe used data from the 2003 -2004 School and Staffing Survey, conducted by the National Center for Educational Statistics, to evaluate whether charter schools were realizing the implementation of legislative objectives as they relate to charter school effectiveness (Barghaus & Boe, 2011). The School and Staffing Survey is the nation's largest survey on schools, teachers, and principals. Barghaus and Boe identified increased choice, improved academic achievement, increased teacher decision making and increased school autonomy as major legislative objectives. Findings revealed that increased teacher influence in decision- making was consistent with charter school legislative intent; however, their charter school teachers have yet to fully realize the practice (Barghaus & Boe, 2011, p.78). Barghaus and Boe found that there were no consistent findings regarding whether charter schools improved academic performance beyond that of their traditional public school counterparts. The study also found that charter school administration was privy to greater levels of autonomy than found in traditional public schools, although the level of autonomy did not reach the extent anticipated by legislation. It was concluded that charter schools are largely being implemented as intended by legislature, however, charter schools are not fully realizing the objectives intended by legislation. Barghaus and Boe concluded "[o]ur results show the choices offered by charter schools are considerably more diverse than those offered by regular schools. However, research has yet to provide evidence about the relative quality of charter schools. Given the general ineffectiveness of charter schools to improve achievement more so than regular schools, it can be hypothesized that charter schools

have not offered higher quality choices than regular schools, even though they have generally been implemented as intended” (Barghaus & Boe, 2011, p.80).

#### Charter School Finances

In a study of Texas schools, Gronberg, Jansen and Taylor questioned whether charter schools were more efficient than traditional public schools at providing educational services (Gronberg, Jansen, and Taylor, 2012, p.303). Gronberg, Jansen and Taylor used the 2004 – 2005 and 2008-2009 administrative files and public records from the Texas Education Agency (Gronberg, Jansen and Taylor, 2012, p.308). Gronberg, Jansen and Taylor concluded that “...charter schools are able to produce educational outcomes at lower cost than traditional public schools—probably because they face fewer regulations—but are not systematically more efficient than traditional public schools.” (Gronberg, Jansen and Taylor, 2012, p.316). In reaching this conclusion, they determined that charter schools were more efficient than traditional public schools of comparable size; however, charter schools tended to be less efficient than the average traditional public school (Gronberg, Jansen and Taylor, 2012, p.316). They further found that when charter schools were permitted to operate under the differing set of regulations anticipated in charter school legislation then charter schools were able to produce educational outcomes at a lower cost than traditional public schools (Gronberg, Jansen and Taylor, 2012, p.316).

#### Reports Analyzing Legislation

The Center for Education Reform evaluates charter school legislation, annually. The evaluative process identifies the major issue for analysis as “...whether the law has

strong, permanent authorizing structures, equitable funding codified in law, and autonomy across state, district, and teacher rules and regulations, giving charters the freedom to...educate kids” (Center for Education Reform, March 2014, p.1). In evaluating the relative strength or weakness of particular charter legislation, the Center for Education Reform primarily considers four criteria (Center for Education Reform, March 2014, p.2). Strong charter school legislation is identified as permitting multiple authorizers beyond traditional school boards (Center for Education Reform, March 2014, p.2). Legislation is considered for restrictions placed on the proliferation of charter schools throughout the state (Center for Education Reform, March 2014, p.2). The level of autonomy afforded to charter schools that is codified into legislation, impacts determination of the strength of charter school legislation (Center for Education Reform, March 2014,p.2). Finally, the evaluators consider the level of equity in funding of charter schools as compared to traditional public schools (Center for Education Reform, March 2014,p.2).

The Center for Education Reform does touch on charter school funding and governance in its 2014 Charter School Law Rankings and Scorecard; however, measurement for charter school accountability is noticeably absent from the determination of rankings (Center for Education Reform, March 2014; Center for Education Reform, 2014). Funding evaluation centers on whether legislation entitles charter schools to the same funding as traditional public schools (Center for Education Reform, March 2014; Center for Education Reform, 2014). The reported evaluation does not delve into how charter schools are funded. Evaluation that addresses governance is similarly limited in scope. Strength of legislation is determined by considering whether

multiple entities are permitted to authorize charter schools (Center for Education Reform, March 2014; Center for Education Reform, 2014). Additionally, the evaluative process considers the presence of autonomy and reviews the level afforded to charter schools. The evaluative report is absent of analysis or discussion of the forms of governance represented by charter legislation. Indeed, The Charter School Law Ranking and Scorecard merely reports the grade, score and rank received by each state's charter legislation (Center for Education Reform, 2014). The Charter School Law Ranking and Scorecard is noticeably silent regarding specific explanation or discussion regarding the ranking of specific legislation. Discussion is limited to the general explanation offered in the two-page 2014 Charter School Law Ranking and the Rationale Behind the Rankings (Center for Education Reform, March 2014; Center for Education Reform, 2014)

The National Alliance for Public Charter School also evaluated and ranked the nation's charter school legislation (National Alliance for Public Charter Schools, 2014). The National Alliance for Public Charter Schools evaluates the strength of charter school legislation based upon 20 essential components of a strong public charter school law. The 20 essential components are derived from the National Alliance of Public Charter Schools' A New Model for Supporting the Growth of High-Quality Public Charter Schools (National Alliance for Public Charter Schools, 2014, p.6, Measuring Up to the Model: A Ranking of State Charter School Law). Among the 20 essential components are fiscal and legal autonomy, equity in funding, and extent of performance-based charter contracts (National Alliance for Public Charter Schools, 2014, pp.6-7). Evaluation of the fiscal and legal autonomy afforded by charter legislation essentially addressed whether legislation provided that (i) schools have clear authority to receive and disburse fund as

deemed appropriate by the charter school; (ii) clear recognition as a legal entity with authority to enter into binding contracts; and (iii) the establishment of boards specifically to govern charter schools (NAPCS, 2014, p.109). Component 18 which is directed toward equitable funding specifically addresses whether legislation provides (i) equitable operational funding; (ii) equity in access to all categories of federal and state funding; and (iii) equity in transportation funding (National Alliance for Public Charter Schools, 2014, p.116). Component 19 evaluates legislation based on equitable access to capital funding and facilities (NAPCS, 2014, p.117). Specifically, equitable access to facilities funding addresses equity in funding on a per pupil basis; assistance programming for providing charter schools with facilities funding as loans and/or grants; equal access to state programs that address facilities; right of first refusal to acquire unused or underused public school property; and equity in facility-related requirements (NAPCS, 2014, p. 118). Component 7, addresses performance-based charter contracts (National Alliance for Public Charter Schools, 2014, p.103). “Defining academic and operational performance expectations by which the school will be judged, based on a performance framework that includes measures and metrics for, at a minimum, student academic proficiency and growth, achievement gaps, attendance, recurrent enrollment, postsecondary readiness (high schools), financial performance, and board stewardship (including compliance)” (National Alliance for Public Charter Schools, 2014, p.103).

National Alliance for Public Charter Schools evaluation of charter school legislation is more comprehensive than the Center for Education Reform; however, it still inadequately addresses the underlying issue of how charter schools are governed, held accountable, and funded across the United States. This study is not intended to determine



whether a law is good or bad per se but rather to determine the types of provisions that address funding, governance, and accountability in charter school legislation. The study categorized the provisions and sought patterns in legislation across the United States. The study reviewed similarities and differences regarding how various states funded, governed, and held charter schools accountable.

### Conclusion

Charter schools are rapidly becoming a cornerstone of education reform in America. In the two decades since their inception, charter schools have grown exponentially and are currently serving in excess of two million students across forty-two states. Charter school legislation is popping up all over the United States. Thirty-five states enacted legislation within ten years of the first legislation. The 2012-2013 school year saw 524 new charter schools open. The federal government has financially invested in the proliferation of charter schools and from all appearances will continue to invest in expanding charter school operations across the United States.

Charter schools are being hailed as a more effective avenue for securing advanced academic achievement when compared to traditional public schools. There is no definitive finding acknowledging the consistent effectiveness or ineffectiveness of charter schools at promoting academic achievement at greater rates than traditional public schools. Research has demonstrated that charter schools perform better, worse and similarly to traditional public schools.

Charter schools are founded on principles of increased autonomy in exchange for increased accountability. It is asserted that when given autonomy, charter schools can

produce greater results with less governmental funding. Research is inconclusive regarding whether charter schools are actually producing better results with less resources.

Charter school legislation may share similar characteristics; however, no two legislations are exactly alike as evidenced by current ranking evaluations. The Center for Education Reform and The National Alliance for Public Charter Schools both evaluate and rank charter school legislation. The evaluation process is used to determine the veritable strength and weakness of charter school legislation. Key components that characterize charter school legislation involve governance, accountability, and funding. While the Center for Education Reform and the National Alliance of Public Charter Schools evaluate different components of charter school legislation, neither examines underlying matrix of charter school governance, accountability and funding. Their study of charter school legislation is more superficial essentially considering whether or not a specific component is present in legislation. The Center for Education Reform and the National Alliance of Public Charter Schools are also evaluating the laws in order to provide a specific judgment of whether the law is good or bad for promoting charter school development. This study is not proposing to offer a value judgment regarding the legislation but rather presenting a compilation of legislation specifically addressing charter funding, governance and accountability.

## CHAPTER 3: METHODOLOGY

### Introduction

The purpose of this study was to review charter school legislation and resulting legal decision in order to assist legislatures and school systems in implementing policies that will most effectively promote academic achievement. The study researched enacted charter school laws in each of the fifty states and the District of Columbia. Legislation was reviewed for similarities and differences in governance, funding and accountability provisions. Legislation was also reviewed for constitutional compliance as addressed by court cases. Connections were made between charter school legislation and the number of operational charter schools along with the longevity of these schools.

### Research Questions

The following research questions guided this study.

1. What similarities and differences exist in the governance, funding and accountability of charter school legislation across the United States?
2. What legislation has proven vulnerable to court challenges?
3. What problems have arisen regarding charter school funding?

### Methodology

This was a qualitative, non-experimental study that encompassed charter school legislation across the fifty states and the District of Columbia. Research was performed to ascertain the states that had enacted charter school legislation. Procuring a list of states that have enacted charter school legislation began by studying reports prepared by

governmental agencies such as the U.S. Department of Education, state Departments of Education, and the National Center for Education Statistics along with organizational entities such as the National Alliance for Public Charter Schools, Center for Education Reform and American Legislative Exchange Council. Once a list had been compiled that encompassed all the states that had enacted charter school legislation, research was performed to locate the actual legislation for each state and the District of Columbia.

Research to ascertain each state's charter school legislation began by consulting each state's legislative archives as well as each state's charter school organization. State level charter school organizations were used to identify specific charter school legislation within the states' extensive legislative codes. The actual charter school legislation was retrieved from each state's legislative archive. Search terms included charter school, community schools, governance, funding, finance and accountability and charter. Once charter school legislation has been obtained from each state that has enacted legislation, Lexis/Nexis and Westlaw were utilized to check legislation for currency and locate relevant case law.

The legal search engines Lexis/Nexis and Westlaw were utilized to allow for more in depth study of identified legislation. Each charter school statute was retrieved using statutes annotated databases in Lexis/Nexis and Westlaw. The statutes annotated databases provided statutes along with commentary and relevant case law. Lexis/Nexis and Westlaw statutes annotated databases were also consulted to ensure that legislation procured from state legislatures provided the most current legal provisions. Once all statutes were obtained and currency verified, the study proceeded with review of relevant case law.

Review of case law began with cases identified by statutes annotated. The statutes annotated database provided a listing of court cases that have involved the identified legislation. Additional research was performed using Lexis/Nexis' and Westlaw's court decisions databases. State court decision databases were researched for the following terms: charter schools; community schools; funding; accountability and governance. The court decisions databases allowed for the search of published court cases by state, state district courts, federal circuit courts, and the United States Supreme Court. The United States Supreme Court is the highest authority, in the United States, for determining the validity of legislation. The second highest authority is the federal circuit court for the state in which legislation was enacted followed by other federal circuit courts. Beneath the federal circuit courts, authority would reside in the state level supreme court. Since, the highest authority on constitutional validity resides with the United States Supreme Court, research would begin with cases decided by the United States Supreme Court. The U.S. Supreme Court database was searched for decisions involving charter schools and community schools. Federal circuit court level cases were then be reviewed for relevant case law followed by state level supreme court cases. Search terms included: charter schools, charter, community schools, constitution, constitutional validity, funding, financing, governance, control and accountability. The types of court challenges and the outcomes of those challenges were reviewed and reported as they related to validity and viability of legislation.

Legislation was reviewed to identify similar types of provisions within the categories of governance, funding, and accountability. Legislative provisions were

categorized based upon governance, funding and accountability components. Similar legislative provisions were placed in the same category.

Governmental agencies and private entities such as the state and federal department of education, the National Center for Education Statistics, National Alliance for Public Charter Schools, Center for Education Reform and Center for Research on Educational Outcomes, were consulted to identify the number of charter schools operating in each state as well as the longevity of those charter schools.

The database EBSCOHOST was used to locate literature that addressed charter school funding issues. Search terms included: charter, charter school, legislation, laws,

## CHAPTER 4: DATA

### Introduction

Charter school legislation began its American existence with one piece of legislation in 1992. (Laws of Minnesota 1991, chapter 265, article 9, section 3). Since 1992, legislation dedicated to the creation and operation of charter schools has extended its reach to encompass 43 pieces of legislation across the United States. The general purpose of charter schools is to provide educational options free from bureaucratic interference characteristic of traditional public schools. California has included encouraging “...the use of different and innovative teaching methods...” and provision of “vigorous competition within the public school system to stimulate continual improvement in all public schools” as purposes of enacting charter school legislation. CAL. Education CODE §§47.601(c), 47.601(g) (West 2014). Improving learning opportunities for all students with emphasis on academically low-achieving students was determined to be a purpose of charter school legislation by Colorado. (COLO. REV. STAT. ANN. §22-30.5-102 (West 2013)). Mississippi identified allowing “...public schools freedom and flexibility in exchange for exceptional levels of results driven accountability...” as a purpose for enacting its legislation. (MISS. CODE. ANN. § 37-28-3 (West 2013)). There are as many purposes as there are pieces of charter legislation. Although charter school legislation is centered on a common goal of creating educational options that reduce bureaucratic regulation in an effort to foster more innovative and effective educational options, each piece of legislation is ultimately concerned with meeting a unique set of circumstances characteristic of the populace in which the

legislation is enacted to represent. Just as a common purpose creates similarities within various pieces of legislation, each piece of charter legislation is ultimately designed to meet the needs of various populations with differing needs; thereby, resulting in each piece of charter legislation having differing nuances that distinguish it from other pieces of charter legislation. Accordingly, this study reports on the diverse similarities and differences weaved throughout the nation's charter school legislation.

The legislative branch of government creates laws that are intended to represent the best interest of its electorate. The judicial branch of government is charged with the responsibility of determining the true intent of legislation. When ambiguity or disagreements arise regarding implementation of legislation, the judiciary steps in to give effect to the intent of the legislature in enacting laws. While the legislature may use an abundance of description, detail, and language specificity in drafting its legislation, inevitably there will be differences of opinion regarding the purpose, legality, and validity of laws enacted by the legislature. In order to truly comprehend the effect and impact of charter legislation, legislation must be reviewed in light of cases that have been litigated. Accordingly, this study examined nationwide cases involving charter schools and charter school legislation, which data will be reported in response to question number two of this study.

Finally, the data being reported will include various issues that have arisen in regard to charter school funding. Issues include charter school denials related to funding concerns; calculation of charter school funding; and constitutional challenges based on funding concerns.



Data will be reported by research questions. Questions will be presented in numerical order followed by associated data. First, there will be a reporting of similarities and differences in nationwide charter school legislation. Then, cases associated with charter schools and charter school legislation will be discussed. Data reporting will conclude with a report of issues that have arisen related to charter school funding.

Question 1: What Similarities and Differences Exist in the Governance, Funding and Accountability of Charter School Legislation Across the United States?

Of the nation's states, only 42 states and the District of Columbia possess legislation specifically addressing charter schools (CER, 2014). As of 2014, Montana, North Dakota, South Dakota, Nebraska, Vermont, West Virginia, Kentucky and Alabama did not possess charter school legislation (National Alliance for Public Charter Schools, 2013). While each state's charter school legislation addressed content that extended beyond governance, funding and accountability, this study only contemplated legal provisions regarding how charter schools are governed, funded, and held accountable for academic growth of students.

First, an overview of each state's funding, accountability and governance provisions will be presented. The general overview will be followed by a more detailed reporting of all the states' similarities and differences disaggregated by funding provisions, accountability provisions and governance provisions. Reporting of funding similarities and differences will be further disaggregated into comparisons and distinctions regarding (i) tuition charges; (ii) funding of charter schools as compared to funding of traditional public schools; (iii) facilities funding; (iv) funding by entities other

than local and state government; (v) start-up funding; and (vi) fiscal management requirements. Funding findings will be followed by reporting of a nationwide comparison and contrasting of accountability provisions divided into six categories. Nationwide accountability provisions will be described by (i) comparison of accountability standards between charter schools and traditional public schools; (ii) accountability requirements related to student achievement; (iii) accountability as maintained by annual reports from the state board of education; (iv) accountability as maintained by annual reports from the charter school authorizer or local board of education; (v) accountability as maintained by annual reports from the charter schools; (vi) and accountability as maintained by charter revocation or nonrenewal. Similarities and difference among the nation's governance provisions will be discussed last. Discussion regarding nationwide governance provisions will be disaggregated into the following four categories: (i) the requirement of a governance plan as part of the charter application; (ii) inclusion of governance structure as requisite in the charter agreement; (iii) charter school governance by the local board of education; and (iv) statutorily mandated members of the governing board.

#### Overview of State Charter School Legislation Provisions Regarding Funding, Accountability, and Governance

##### Alaska

Initially enacted in 1995 (CER, 2014), Alaska's charter school statutes can be found in Title 14, Chapter 3, Article 2 of the Alaska Statutes (ALASKA STAT. ANN. §§14.03.250 – 14.03280 (West 2014)). Funding provisions required charter school students to be funded the same as traditional public school students (ALASKA STAT.

ANN. §14.03.260(a) (West 2014)). Local school boards were required to provide charter schools with an annual program budget and could only retain amounts necessary to pay the district's administrative expenses (ALASKA STAT. ANN. §14.03.260(a) (West 2014)). Alaska's charter school statutes also addressed funding provisions for special needs students, transportation costs, vocational/technical instruction and facilities' construction and maintenance (ALASKA STAT. ANN. §14.03.260(a) (West 2013)).

Section 14.03.255 outlined charter schools' accountability (ALASKA STAT. ANN. §14.03.255(C) (West 2014)). Alaska required that its charter schools detail specific levels of achievement for educational programs and provided clauses that permitted the local school board to terminate the charter contract for a charter school's failure to meet its educational achievement goals (ALASKA STAT. ANN. §14.03.255(C) (West 2014)). Alaska's charter statute did not detail specific provisions regarding the governance of charter schools (ALASKA STAT. ANN. §§14.03.250 – 14.03280 (West 2014)).

### Arizona

Enacted in 1994 (CER, 2014) Arizona's current charter school legislation can be found in Title 15, Article 8 of the Arizona Revised Statutes (ARIZ. REV. STAT. ANN. §§15-181 to 15-189.04 (West 2014)). Funding provisions were detailed based upon whether the charter school was authorized by the local school district, state board of education, the state board for charter schools, a university, a community college district or a group of community college school districts (ARIZ. REV. STAT. ANN §15-185 (West 2014)). Charter schools authorized by local school districts were included in the

districts' budget and financial assistance calculations. Charter schools that were authorized by a university, a community college district or a group of community college school districts were funded according to funding statutes for public schools (ARIZ. REV. STAT. ANN. §15-185 (West 2014); ARIZ. REV. STAT. ANN. §15-943 (West 2014)). While the statute provided detailed formulas for calculating public school funding based on student totals, it did not explicitly provide that public charter school funding is to be identical to traditional public schools (ARIZ. REV. STAT. ANN. §§15-181 to 15-189.04 (West 2014); ARIZ. STAT. ANN. §15-943 (West 2014)).

Arizona's charter school statute required that the charter school contract provide methods for measuring student progress toward the state board of education's enumerated student outcomes. The charter school contract must have also required the charter school's participation in the nationally norm-referenced test and the Arizona state assessment identified by the state board of education. (ARIZ. REV. STAT. ANN. §15-153(E)(4) (West 2014)). Additionally, charter schools were required to complete and distribute the state prescribed annual report card (ARIZ. REV. STAT. §15-183(E)(4) (West 2014)).

Charter school contracts were required to provide for a governing body that would be responsible for the charter school's policy decisions (ARIZ. REV. STAT. §15-183(E)(8) (West 2014)). A charter school was subject to the sponsor that authorized its charter (ARIZ. REV. STAT. §15-183(R) (West 2014)). The following entities were permitted to sponsor Arizona charter schools: a school district governing board, the state board of education, the state board for charter schools, a university under the jurisdiction of the Arizona board of regents, a community college or a group of community colleges

with combines student enrollment exceeding 15,000 students (ARIZ. REV. STAT. §15-183 (West 2014)).

### Arkansas

The Arkansas Charter School Act of 1999 can be found in Title 6, Subtitle 2, Chapter 23 of the Arkansas Code (ARK. CODE ANN. §§6-23-102 to 6-23-907 (West 2013)). According to the Arkansas Charter School Act of 1999, charter schools must receive funding equal to traditional public schools (ARK. CODE ANN. §6-23-501(a)(1) (West 2013)). Section 6-23-501 outlined specific formulas for determining charter school funding during the first year of charter school operation and the first year of charter school grade expansion (ARK. CODE ANN. §6-23-501 (West 2013)). Formulas even considered calculations for school lunch and professional development (ARK. CODE ANN. §6-23-501 (West 2013)). Arkansas provided special facilities assistance to charter schools through grants and loans (ARK. CODE ANN. §6-23-902 (West 2013); ARK. CODE ANN. §6-23-902 (West 2013)). Charter school funding was available for purchase of academic equipment, facilities maintenance, facilities repair, facilities construction and renovation costs (ARK. CODE ANN. §6-23-802 (West 2013)). The Arkansas Charter School Act outlined several ways that charter schools were held accountable for increasing student academic performance (ARK. CODE ANN. §§6-23-102 to 6-23-907 (West 2013)).

Arkansas charter schools were subject to the same state public school accountability as traditional public schools (ARK. CODE ANN. § 6-23-401(b)(2) (West 2013)). Charter schools operation was contingent upon acceptable student performance

on the state board of education assessment instruments as well as compliance with accountability provisions provided in the charter school contract (ARK. CODE ANN. §6-23-306(3), 6-23-401(a)(3) (West 2013)). A charter school authorizer could modify, revoke, or deny charter contract renewal for a charter school that failed to meet state mandated accountability provisions (ARK. CODE ANN. §6-23-105 (a)(1) (West 2013)). The state department of education was required to monitor charter school performance by conducting an annual evaluation of all charter schools.

Arkansas charter school applications are required to contain a detailed governance plan (ARK. CODE ANN. §6-23-302(6) (West 2013)). The actual charter contract must also detail the governing structure (ARK. CODE ANN. §6-23-306(3) (West 2013)). Legislation required Arkansas charter schools' governing entities to be fiscally accountable and meet the parameters of the governing structure as detailed in the charter contract (ARK. CODE ANN. §6-23-401(a)(1)(West 2013)).

### California

The Charter School Act of 1992 (CER, 2014) was originally enacted in 1992 and is currently located in Title 2, Division 4, Part 26.8 of the West's Annotated California Codes (CAL. Education CODE §§47600 – 47664 (West 2014)). California's legislature required equivalent funding for charter schools and traditional public schools (CAL. Education CODE §47630 (West 2014)). Equivalent funding requirements extended to special education funding (CAL. Education CODE §47646 (West 2014)).

Section 47.605 required charter schools to meet all statewide standards and conduct the same state required student assessments as applicable to students in

traditional public schools (CAL. Education CODE §47605 (West 2014)). A charter school's failure to improve student academic outcomes could result in revocation of its charter (CAL. Education CODE §47604.5(d) (West 2014)). If a charter school's practices jeopardized the educational development of its students, it could suffer the loss of its charter (CAL. Education CODE §47604.5(c) (West 2014)). Failure to include governance structure in a charter school petition could result in denial of the charter petition (CAL. Education CODE §47605(b)(5)(D) (West 2014)).

### Colorado

Colorado's statute was initially enacted in 1993 (CER, 2014). The most current form is located in Title 22, Article 30.5 of the Colorado Revised Statutes (COLO. REV. STAT §§22-30.5-112(2)(a)(III)(A) to 22-30.5-704 (West 2013)). Local districts and charter schools had to negotiate charter school funding in the charter agreement (COLO. REV. STAT. ANN. §22-30.5-111.5(3)(a) (West 2013)). The negotiated funding must have included minimum statutorily dictated amounts (COLO. REV. STAT. ANN. §22-30.5-111.5(4)(a) (West 2013)). Non-online charter school students were entitled to the same funding as traditional public school students (COLO. REV. STAT. ANN. §22-30.5-112(2)(a)(III)(A) (West 2013)). However, local districts could retain up to 5% of the funds to pay the charter school's portion of the district's central administrative overhead costs (COLO. REV. STAT. ANN. §22-30.5-111.5(5)(b) (West 2013)). Supplemental funding was available to charter schools including moneys for at-risk students (COLO. REV. STAT. ANN. §22-30.5-112.2 (West 2013) and supplemental district funds (COLO. REV. STAT. ANN. §22-30.5-112.3 (West 2013)).

Colorado had several requirements for holding charter schools accountable for academic progress of its students (COLO. REV. STAT §§22-30.5-112(2)(a)(III)(A) to 22-30.5-704 (West 2013)). Applications for a charter had to detail how students' progress toward achievement standards will be assessed and measured (COLO. REV. STAT. ANN. §22-30.5-106(1)(f) (West 2013)). Participation in the statewide assessment program was mandatory (COLO. REV. STAT. ANN. §22-30.5-104(6) (West 2013)). Charter schools were to be reviewed annually by the local school district (COLO. REV. STAT. ANN. §22-30.5-110 (West 2013)). The state board was required to compile charter school evaluations received from the local boards of education and prepare a report comparing charter school student performance to similarly situated traditional public school student performance (COLO. REV. STAT. ANN. §22-30.5-113 (West 2013)). Charter revocation was possible for a charter school's failure to make appropriate progress toward achievement goals and student performance standards (COLO. REV. STAT. ANN. §22-30.5-110(3) (West 2013)).

In Colorado, charter applications were required to describe the governance and operation of the proposed charter school (COLO. REV. STAT. ANN. §22-30.5-106(h) (West 2013)). The charter school, along with the local board of education, selected the method of charter school governance (COLO. REV. STAT. ANN. §22-30.5-104 (West 2013)). Ultimately, the charter school was accountable to its local school board of education for governance (COLO. REV. STAT. ANN. §22-30.5-104 (West 2013)).



## Connecticut

The Connecticut Charter School Law was originally enacted in 1996 (CER, 2014) and its current form is located in Title 10, chapter 164 of the Connecticut General Statutes Annotated (CONN. GEN. STAT. ANN. §§10-66aa to 10-66nn (West 2014)). There was no requirement for charter school funding to equal traditional public school funding. Charter school funding was based on a combination of the charter school's previous year funding and the current year's student enrollment (CONN. GEN. STAT §10-66ee(b)(2)(West 2014)). Funding was also available through the state grants, which are offered to charter schools that meet certain criteria (CONN. GEN. STAT. ANN. §§10-66aa to 10-66nn (West 2014), CONN. GEN. STAT §10-66ee (West 2014)).

Accountability was maintained through assessment of student progress. Charter school applications had to detail methods for assessing student academic performance (CONN. GEN. STAT §10-66b(d)(9)(West 2014)). Charter revocation could result for a charter school's failure to make satisfactory student progress (CONN. GEN. STAT §10-66bb(d)(3)(West 2014)).

Charter school governance procedures and structures had to be described in its application. (CONN. GEN. STAT §10-66b(d)(3) (West 2014)). Connecticut charter schools were governed by governing councils (CONN. GEN. STAT §10-66kk (West 2014)).

## Delaware

Delaware's charter school statutes can be found in Title 14 of the Delaware Code Annotated (DEL. CODE ANN. tit. 14 § 501-518 (West 2014)). Original charter

legislation was enacted in 1995 (CER, 2014). Delaware charter school funding was a composite of calculations based on school staffing, facilities, equalization goals and number of students (DEL. CODE. ANN. tit 14 §509 (West 2014). High performing charter schools could qualify for additional funding (DEL. CODE. ANN. tit. 14 §509(m) (West 2014)). The state department of education administered a Charter School Performance Fund that provided funding for charter schools with a proven track record of success (DEL. CODE. ANN. tit. 14 §509(m) (West 2014)).

Delaware's charter school accountability was a composite of assessments, possible charter revocation and reports (DEL. CODE ANN. tit. 14 §§ 501 – 518 ( West 2014)). Charter schools were required to measure whether students were meeting or exceeding the charter school performance goals and the state's academic standards (DEL. CODE. ANN. tit. 14 §512(4) (West 2014)). Evaluation of student achievement had to include a charter school's participation in the same state assessments as required of traditional public school students (DEL. CODE. ANN. tit. 14 §512(4) (West 2014)). Failure of a charter school to generate improved student performance could result in charter revocation (DEL. CODE. ANN. tit. 14 §516 (West 2014)). The state's department of education reported charter schools' successes and failures annually (DEL. CODE ANN. tit. 14 §514 (West 2014)).

Charter schools were governed by a board of directors (DEL. CODE. ANN. tit. 14 §504(b) (West 2014)) and are accountable to the approving authority for oversight (DEL. CODE. ANN. tit. 14 §516 (West 2014)).

## District of Columbia

The District of Columbia's charter school legislation, District of Columbia School Reform Act of 1995, was originally enacted in 1996 (CER, 2014; D.C. CODE ANN. §38-1800.01 (West 2014)). Basic charter school funding was determined by multiplying the number of students enrolled in each charter school by a uniform dollar amount that had been determined by the Mayor and District of Columbia Council (D.C. CODE ANN. §38-1804.01(b)(2)(B) (West 2014)). The same formula was used in determining traditional public schools funding. (D.C. CODE ANN. §38-1804.01(b)(2)(A) (West 2014)). Charter school funding could be increased or decreased based on the number of students served in certain grade levels and the costs associated with educating those students. (D.C. CODE ANN. §38-1804.01(b)(3)(A) (West 2014)). Likewise, traditional public schools could have their funding adjusted based on the same grade based premises. (D.C. CODE ANN. §38-1804.01(b)(3)(A) (West 2014)). Charter school funding could be increased for schools that served student populations with high concentrations of special needs; below standard literacy achievement; or participation in a school provided residential setting (D.C. CODE ANN. §38-1804.01(b)(3)(B) (West 2014)). Traditional public schools were also eligible for increased funding based on high concentrations of the same classifications of students. (D.C. CODE ANN. §38-1804.01(b)(3)(B) (West 2014)).

The District of Columbia used student assessments and revocation as mechanisms for ensuring charter school accountability (D.C. CODE ANN. §38-1802.02(1) (West 2014); D.C. CODE ANN. §38-1802.02(5) (West 2014)). Charter school applications had

to detail how a proposed charter school would conduct any district wide assessments (D.C. CODE ANN. §38-1802.02(1) (West 2014)). Additionally, the District of Columbia required charter school applications to contain a “...description of the plan for evaluating student academic achievement at the proposed school...” (D.C. CODE ANN. §38-1802.02(5) (West 2014)). Failure to meet academic achievement expectations could result in a charter school losing its charter. (D.C. CODE ANN. §38-1802.13(a)(2) (West 2014)).

Charter school applications had to describe the “proposed rules and policies for governance and operation of the proposed school...” (D.C. CODE ANN. §38-1800.02(7) (West 2014)). This included the school’s bylaws and articles of incorporation (D.C. CODE ANN. §38-1802.02(8) (West 2014)). Governance was effectuated by a board of trustees (D.C. CODE ANN. §38-1802.04(c)(6) (West 2014)) whose names and addresses, along with selection procedures, had to be detailed in the charter application. (D.C. CODE ANN. §38-1802.02(9) (West 2014)).

### Florida

Initially enacted in 1996, Florida’s charter school provisions were found in Section 1022.33 of the Florida Statutes (FLA. STAT.ANN. §1002.33 (West 2014)). Section 1002.33(17) required that charter school students receive the same funding as traditional public school students (FLA. STAT.ANN. §1002.33(17) (West 2014)). Capital outlaying funding was available to certain schools that had been in existence a minimum of 3 years (FLA. STAT. ANN. §1002.62 (West 2014)). School districts had to forward charter school money within 10 working days of the districts’ receipt of the

funding (FLA. STAT. ANN. §1002.33(17)(e) (West 2014)). Failure to distribute funding within ten days would result in accrual of one percent interest (FLA. STAT. ANN. § 1002.33(17)(e) (West 2014)). Charter school sponsors could retain up to five percent of specified charter school funding for administrative costs (FLA. STAT. ANN. §1002.33(20)(a)(2)(West 2014)).

Charter applications had to indicate the method for measuring academic improvement (FLA. STAT. ANN. § 1002.33(6)(a)(3) (West 2014)). Charter schools were required to participate in the state's assessment program and grading system. (FLA. STAT. ANN. §1002.33(16)(a)(2)(West 2014)). Failure to participate in the state's accountability system could result in charter revocation. (FLA. STAT. ANN. §1002.33(8)(a)(1) (West 2014)). Poor academic performance could also result in charter revocation. (FLA. STAT. ANN. §1002.33(9)(n)(2) (West 2014)). Consecutive years of poor academic performance could warrant mandatory charter termination (FLA. STAT. ANN. §1002.33(9)(n)(4) (West 2014); FLA. STAT. ANN. § 1002.33(26)(c) (West 2014)).

Charter schools were governed by governing boards (FLA. STAT. ANN. §1002.33(7) (West 2014)). Governance structure for the school had to be outlined in the charter application ((FLA. STAT. ANN. §1002.33(7)(a)(15) (West 2014)). While Florida did not mandate particular membership on the governing board, employees and their spouses were prohibited from serving on a charter school's governing board (FLA. STAT. ANN. §1002.33(26)(c) (West 2014)).

## Georgia

Georgia's original charter school legislation was enacted in 1993 (CER, 2014) but the current compilation, the Charter Schools Act of 1998, is located in Title 20, Chapter 2, Article 31 of the Official Code of Georgia Annotated (GA. CODE ANN. §§20-2-2060 to 20-2-2072 (West 2014)). Section 20-2-2068.1(a) required that charter schools receive the same funding as traditional public schools for instruction, school administration, transportation, food services and when feasible building programs (GA. CODE ANN. §20-2-2068.1(a) (West 2014)). Charter schools could also receive funding through a grant program (GA. CODE ANN. §§20-2-2095.1 to 20-2-2072 (West 2014)). Section 20-2-2067.1 required charter schools to file an annual report that outlined the year's progress (GA. CODE ANN. §20-2-2067.1 (West 2014)). The annual report had to have included "state accountability data such as standardized test scores" (GA. CODE ANN. §20-2-2067.1 (West 2014)). Local school boards controlled and managed local charter schools (GA. CODE ANN. §20-2-2065(b)(2) (West 2014)). Charter schools were also subject to the state board of education (GA. CODE ANN. §20-2-2065(b)(3) (West 2014)).

## Hawaii

Hawaii's charter school legislation was originally enacted in 1994 (CER, 2014) and is currently found in chapter 302D, Title 18, Division 1 of the Hawaii Revised Statutes Annotated (HAW. REV. STAT. §302D-1 (West 2014)). Charter school financing was determined per student based on the projected student enrollment (HAW. REV. STAT. §302D-28(a) (West 2014)). Non-facility general funding per student was the same for charter school students and traditional public school students (HAW. REV.

STAT. §302D-28(a) (West 2014). Both charter schools and traditional public schools were equally eligible for federal funding (HAW. REV. STAT. §302D-28(d) (West 2014)). Facilities funding was determined based on specific criteria including charter school need and performance (HAW. REV. STAT. §302D-29.5(e) (West 2014)). Charter schools could have their charters revoked for failure to make appropriate academic progress (HAW. REV. STAT. §302D-18(g)(2) (West 2014)). Charter schools were governed by their own boards (HAW. REV. STAT. §302D-12 (West 2014)).

### Idaho

Idaho originally enacted charter school legislation in 1998 (CER, 2014). The current charter school legislation, Public Charter Schools Act of 1998 is located in Chapter 52 of Title 33 in the Idaho Code Annotated (IDAHO CODE ANN. §§ 33-5201 33-to 5216 (West 2014)). Funding provisions were generally found in section 33-5208. Charter school funding increases were limited based upon previous year funding (IDAHO CODE ANN. §33-5208(1) (West 2014)). Per student support could not increase more than 30 units from the previous year's support (IDAHO CODE ANN. §33-5205(3)(d) (West 2014)). Charter schools received funding for special education, transportation costs, and facilities costs; however, the statute did not explicitly require equal funding for charter schools and traditional public schools (IDAHO CODE ANN. §§33-5201 33-to 5216 (West 2014)). Facilities funding specifically limited charter school facilities funding from exceeding the amount of facilities funding received by traditional public schools (IDAHO CODE ANN. §33-5208(5) (West 2014)).

Idaho's charter legislation has a specific provision that addressed accountability of charter schools (IDAHO CODE ANN. §33-5209 (West 2014)). Charter contracts had contain an accountability provisions that outlined performance standards and how progress toward those standards would be measured (IDAHO CODE ANN. §33-5205(3)(c) (West 2014)). Section 33-5209A required the charter school performance framework to include measures for student academic proficiency and growth as well as measureable performance targets (IDAHO CODE ANN. §§33-5209A(1) to 33-5209A(2) (West 2014)). A charter contract was required to provide provisions regarding how its students would be assessed with the same standardized tests as traditional public school students (IDAHO CODE ANN. §33-5205(3)(d) (West 2014)). The charter contract also had to detail the charter school's governance structure (IDAHO CODE ANN. §33-5205(3)(f) (West 2014)).

### Illinois

Illinois first enacted charter school legislation in 1996 (CER, 2014). Illinois Charter Schools Law is located in Chapter 105, Act 5, Article 27A of the Illinois Compiled Statutes. (105 ILL. COMP. STAT. ANN. 5/27A-1 to 5/27A-14 (West 2014)). Section 27A-11 addressed local funding of charter schools (105 ILL. COMP. STAT. ANN. 27A-11 (West 2014)). Charter school students were included in the local district's enrollment calculations (105 ILL. COMP. STAT. ANN. 27A-11(a) (West 2014)). Legislation did not identify a specific formula for funding charter schools rather it required that the local school board and the charter school agree on funding and district provision of services to the charter school (105 ILL. COMP. STAT. ANN. 27A-11(b)



(West 2014)). The Illinois legislature limited funding for charter schools to between 75% and 125% of the school district's per capita student tuition multiplied by the number of the district's students enrolled in the charter school (105 ILL. COMP. STAT. ANN. 27A-11.5(1) (West 2014)). School districts could receive supplemental state funding to defray loss of capital due to the opening of new charter schools (105 ILL. COMP. STAT. ANN. 27A-11(b) (West 2014)).

Illinois' charter legislation outlined accountability and governance standards applicable to charter schools. Charter school students were subject to the same state goals and assessment requirements as traditional public school students (105 ILL. COMP. STAT. ANN. 5/27A-6(b) (West 2014)). Failure to make appropriate progress toward achieving student performance standards provided in the charter contract could result in loss of a school's charter (105 ILL. COMP. STAT. ANN. 5/27A-9(c)(2) (West 2014)). Illinois charter schools were governed by their own board of directors or other governing body, as provided by the charter contract (105 ILL. COMP. STAT. ANN. 27A-5(c) (West 2014)).

### Indiana

Indiana's charter school legislation was originally enacted in 2001. Its most current form was enacted in 2013 and is found in Article 24 of Chapter 20 of West's Annotated Indiana Code (IND. CODE ANN. §§20-24-1-1 to 20-24-12-12 (West 2013)). Conversion charter schools received a proportionate share of local funding for students with disabilities, federal categorical funding and state categorical funding (IND. CODE ANN. §20-24-7-3 (West 2013)). Charter legislation required the state department of

education to apply for all federal grants that charter schools were eligible to receive (IND. CODE ANN. §20-24-7-10 (West 2013)). Specifically identified adult charter schools were entitled to \$6600 per student (IND. CODE ANN. §20-24-7-14 (West 2013)). Beyond specifically identified adult charter schools, an adult high school was not entitled to any state funding unless appropriation was enacted by the state legislature (IND. CODE ANN. §20-24-7-14 (West 2013)). Section 20-24-12-2 detailed charter school facilities assistance program that assisted charter schools in constructing, purchasing, renovating, maintaining and paying first semester costs (IND. CODE ANN. §20-24-12-2 (West 2013)).

Charter schools were held accountable by the requirement that they show evidence of improvement in assessments measures, attendance, graduation rates, diplomas, academic honors and student academic growth (IND. CODE ANN. §20-24-4-1(a)(8) (West 2013)). Compliance with Indiana statutes concerning accountability for student performance and improvement was mandatory (IND. CODE ANN. §20-24-8-5(19) (West 2013)). Failure to meet the educational goals identified in the charter contract exposed the charter school to possible revocation of its charter. (IND. CODE ANN. §20-24-9-4(2) (West 2013)). Accountability was also maintained through annual reporting (IND. CODE ANN. §20-24-9-2 (West 2013)). Charter school authorizers were required to file an annual report detailing charter school student growth and improvement data, results of standardized tests along with other charter school information (IND. CODE ANN. § 20-24-9-2 (West 2013)). Charter school proposals had to include a description of the charter school's governance structure (IND. CODE ANN. §20-24-3-4(b)(2) (West 2013); IND. CODE ANN. §20-24-3-4(b)(3)(c) (West 2013)).

## Iowa

Iowa's charter school legislation was enacted in 2002 (CER, 2014). Title VII, Subtitle 1, Chapter 256F addressed charter school legislation (IOWA CODE §§256F.1 to 256F.11 (West 2014)). Iowa's charter school legislation did not detail the funding of charter schools (IOWA CODE §§256F.1 to 256F.11 (West 2014)). Charter school accountability was maintained through revocation and annual reporting (IOWA CODE §§256F.1 to 256F.11 (West 2014)). A charter school could lose its charter for failure to meet educational goals provided in the charter (IOWA CODE §256F.8(1) (West 2014)). Charters could also be revoked for failure to show student progress beyond the progress that existed prior to the charter school's inception (IOWA CODE §256F.8(1) (West 2014)). Charter schools had to submit an annual report to their local school board and the state board of education (IOWA CODE §256F.10(1) (West 2014)). In turn, the state board of education presented an annual report to the legislature which evaluated the statewide charter school program (IOWA CODE §256F.10(2) (West 2014)). Charter governance and bylaws had to be detailed in the application (IOWA CODE §256F.5(6) (West 2014)).

## Kansas

Kansas charter school legislation was enacted in 1994 (CER, 2014). Chapter 72, Article 19 of the Kansas Statutes Annotated houses the current charter school legislation (KAN. STAT. ANN §§72-1903 to 72-1930 (West 2014)). Article 19 did not detail specific charter school funding provisions (KAN. STAT. ANN §§72-1903 to 72-1930 (West 2014)).

Section 72-1906 required charter school petitions to detail how student achievement would be measured, evaluated and reported (KAN. STAT. ANN §§ 72-1906(c)(4), 72-1906(c)(5), 72-1906(c)(11) (West 2014)). Charter petitions also had to include the school's method for ensuring accountability to the board of education and student participation in the state assessment program (KAN. STAT. ANN §§72-1906(c)(4), 72-1906(c)(5), 72-1906(c)(11) (West 2014)). Failure to make progress toward achieving program goals provided in the charter would result in revocation of a school's charter (KAN. STAT. ANN §72-1907(c)(2) (West 2014)). Evaluation of charter schools' impact on the district's educational system was reported annually by each district's board of education (KAN. STAT. ANN §72-1910(b) (West 2014)). Charter schools' governance structure was detailed in the charter petition (KAN. STAT. ANN § 72-1906(c)(5) (West 2014)).

### Louisiana

Louisiana's charter school legislation was initially enacted in 1995 (CER, 2014). The Charter School Demonstration Programs Law is found in Louisiana Statutes Annotated Title 17, chapter 42 (LA. REV. STAT. ANN. §§3971 to 4002.6 (West 2014)). Section 3995 detailed charter school funding (LA. REV. STAT. ANN. §3995 (West 2014)). Charter school funding, in Louisiana, was based on the type of charter school being considered (LA. REV. STAT. ANN. §3995 (West 2014)). There were five classifications (LA. REV. STAT. ANN §3973 (West 2014)). Type 1, 2, 3, and 4 are ensured funding that was at minimum equal to traditional public schools (LA. REV. STAT. ANN. §3995 (West 2014)).

Louisiana's charter school accountability was maintained through student assessment and charter school participation in the state accountability program (LA. REV. STAT. ANN. §§3971 to 4002.6 (West 2014)). Charter school proposals were required to contain provisions that required regular assessment of charter schools' students (LA. REV. STAT. ANN. §3991(B)(21) (West 2014)). Required assessment included participation in the state testing program (LA. REV. STAT. ANN. §3991(B)(21) (West 2014)) as well as state designed tests intended to assess student progress (LA. REV. STAT. ANN. §3996(B)(17)-(18) (West 2014)). Charter schools were mandated to participate in any school or district accountability systems that were required of similarly situated students in traditional public schools (LA. REV. STAT. ANN. §3996(B)(18) (West 2014)). Proposed charter schools had to provide for their organizational governance and operation structure (LA. REV. STAT. ANN. §3991(B)(10) (West 2014)).

### Maine

Maine's charter school legislation was enacted in 2011 (CER, 2014) and is currently compiled in Chapter 112 of Title 20-A in Maine Revised Statutes Annotated (ME. REV. STAT. ANN. tit. 20-A §§2401 to 2415 (West 2014)). A number of provisions addressed funding of charter schools (ME. REV. STAT. ANN. tit. 20-A §§2403, 2412, & 2413 (West 2014)). State and local operating funds followed each student to the respective charter school; however, the school administrative unit in each student's district could retain 1% of the student's operating funds for administrative costs (ME. REV. STAT. ANN. tit. 20-A § 2413(2) (West 2014)). Charter school funding for career and technical education programming was the same as traditional public schools

(ME. REV. STAT. ANN. tit. 20-A §2412(5)(H) (West 2014). The state department of education was permitted to apply for federal aid on behalf of charter schools; however, that aid must have been used according to federal grant policy (ME. REV. STAT. ANN. tit. 20-A §§2403(2)-(3) (West 2014). Any funding that remained in charter school accounts, at the conclusion of the school year, remained with the charter school for use the following year (ME. REV. STAT. ANN. tit. 20-A §2413(2)(G) (West 2014).

The plan for using assessments to measure and report student progress was a requisite component of charter proposals (ME. REV. STAT. ANN. tit. 20-A §2406(2)(F) (West 2014). Charter schools were subject to the same assessment and accountability requirements as traditional public schools (ME. REV. STAT. ANN. tit. 20-A §2412(5)(B) (West 2014). Failure to make sufficient progress toward the charter school's performance expectation was cause for charter revocation (ME. REV. STAT. ANN. tit. 20-A §2411(6)(A)(2) (West 2014). The charter authorizer also monitored charter school performance measures in that authorizers were mandated to report annually on the performance of all of their charter schools and those charter schools' performance measures (ME. REV. STAT. ANN. tit. 20-A §2405(4) (West 2014).

Governance plans had to be outlined in charter applications (ME. REV. STAT. ANN. tit. 20-A §2406(2)(F)(2) (West 2014). Maine required that the governance plan detail (i) information on proposed board members; (ii) proposed bylaws; organization chart; (iii) roles and responsibilities of the governing board; and (iv) identification information for the proposed governing board. (ME. REV. STAT. ANN. tit. 20-A §2406(2)(F)(2) (West 2014).

## Maryland

Maryland's charter school legislation was initially enacted in 2003 (CER, 2014). Maryland's charter school legislation is located in Title 9 of Division II of the Annotated Code of Maryland (MD. CODE ANN., Elementary and Secondary Education §§9-101 to 9-112 (West 2014)). Section 9-109 required county boards of education to fund charter schools the same as traditional public schools (MD. CODE ANN., Elementary and Secondary Education §9-109(a) (West 2014)). Maryland charter schools were required to measure student academic achievement (MD. CODE ANN., Elementary and Secondary Education §9-106(c)(2) (West 2014)). Measurement of achievement included all assessments required by traditional public school students along with any other assessments mutually agreed upon by the chartering authority and the respective charter school (MD. CODE ANN., Elementary and Secondary Education §9-106(c)(2) (West 2014)). Maryland's charter school legislation did not provide provisions outlining charter school governance structure or requirement for governance structure (MD. CODE ANN., Elementary and Secondary Education §9-101 et seq. (West 2014)).

## Massachusetts

Massachusetts charter schools legislation was enacted in 1993 (CER, 2014). The most current form of legislation is found in Title XII, chapter 71, section 89 (MASS. GEN. LAWS. ch. 71, §89 (West 2014)). Massachusetts paid charter school tuition at a rate calculated by statute (MASS. GEN. LAWS. ch. 71, §89(ff) to §89(hh) (West 2014)). The goal of charter school funding was that charter school funding be as similar to traditional public school funding as practicable (MASS. GEN. LAWS. ch. 71, §89(ff) to

§89(hh) (West 2014)). Charter school tuition payments were essentially determined on a case-by-case basis as they were calculated separately for each charter school and each district (MASS. GEN. LAWS. ch. 71, §89(ff) to §89(hh) (West 2014)).

Massachusetts required charter schools to meet the same performance standards as traditional public schools (MASS. GEN. LAWS. ch. 71, §89(v) (West 2014)). Charter school progress in student achievement was a criterion used in determining whether to renew a charter (MASS. GEN. LAWS. ch. 71, §89(dd) (West 2014)). A charter school's charter could be revoked due to failure to meet any terms of its charter (MASS. GEN. LAWS. ch. 71, §89(ee) (West 2014)). Annually, each charter school was required to submit a report to the board, local school committee and parents regarding its progress made toward achievement goals established in the charter (MASS. GEN. LAWS. ch. 71, §89 (jj)(i)(West 2014)). Charter school applications were required to contain provisions regarding school governance and bylaws (MASS. GEN. LAWS. ch. 71, §89 (e)(viii) (West 2014)).

### Michigan

Michigan's charter school legislation was initially enacted in 1992. Michigan's current charter legislation is found in chapter 380 of Michigan Compiled Laws Annotated (MICH. COMP. LAWS §§380.501 to 380.507 (West 2014)). Charter school funding provisions were not located in Michigan's charter school statutes (MICH. COMP. LAWS ANN. §§380.501 to 380.507 (West 2014)). Charter schools were held accountable through various mechanisms (MICH. COMP. LAWS §§380.503, 380.507(West 2014)). According to section 380.503, charter school contracts must have outlined achievement



goals along with the methods for how the charter schools would be held accountable (MICH. COMP. LAWS §380.503(6) (West 2014)). Compliance with laws regarding participation in state assessments and accountability was mandatory for charter schools (MICH. COMP. LAWS §380.503(7)(f) (West 2014)). Charter schools must have utilized at least one Michigan Education Assessment Program Test in assessing student performance (MICH. COMP. LAWS §380.503(6) (West 2014)). Charter school authorizers were responsible for developing and implementing a process for holding charter schools accountable for meeting academic standards provided in the charter contract (MICH. COMP. LAWS §380.507(1)(e) (West 2014)). Failure to demonstrate improved student academic achievement or meet educational goals established in the charter contract could result in revocation of the charter contract (MICH. COMP. LAWS §380.507(4)(a) (West 2014)).

Michigan required that the charter school application detail its governance structure (MICH. COMP. LAWS §380.502 (West 2014)). Section 380.502 specifically provided that charter schools were to be organized and administered under the direction of a board of directors (MICH. COMP. LAWS §380.502(1) (West 2014)). As public schools, charter schools were under the general supervision of the state board.

### Minnesota

The country's first charter school legislation was enacted in 1991 (CER, 2014) and its most current form is located in chapter 124D of Minnesota Statutes Annotated Education Code (MINN. STAT. ANN. §§124D.10 to 124D.11 (West 2014)). Minnesota's charter school legislation provided funding for charter schools as though

they were school districts (MINN. STAT. ANN. §124D.11 (West 2014)). General education revenue must have been given to charter schools as though they were school districts (MINN. STAT. ANN. §124D.11(1) (West 2014)). The statute detailed specific formulas for calculating the actual amounts of funding to be paid to charter schools (MINN. STAT. ANN. § 124D.11 (1) (West 2014)). Charter schools that provided transportation to students had to receive transportation revenue (MINN. STAT. ANN. § 124D.11 (2) (West 2014)). Charter schools received funding for special education, which is determined by a statutory formula (MINN. STAT. ANN. § 124D.11 (5) (West 2014)).

Charter schools were required to comply with statewide accountability requirements governing standards and assessments (MINN. STAT. ANN. § 124D.10 (8)(b) (West 2014)). Poor academic achievement could result in a charter school's revocation (MINN. STAT. ANN. §124D.10 (23)(b) (West 2014)).

Minnesota's charter schools were run by an elected board of directors (MINN. STAT. ANN. §124D.10(4)(d) (West 2014)). Parents or legal guardians of charter school students, charter school staff and authorizers board of directors were permitted to vote on the charter school board of directors (MINN. STAT. ANN. §124D.10(4)(d) (West 2014)). Section 124D.10 outlined the criteria for composition of a charter school's board of directors (MINN. STAT. ANN. §124D.10(4)(g) (West 2014)). A board of directors must have consisted of at least five unrelated members (MINN. STAT. ANN. §124D.10 (4)(g) (West 2014)). Of those five unrelated members, there must have been at least one licensed teacher who was employed at the charter school. At least one parent or legal guardian of a student enrolled in the charter school must have served on the board of

directors (MINN. STAT. ANN. §124D.10 (4)(g) (West 2014)). The board of directors must also have consisted of at least one community members who was neither employed by the charter school nor a parent or legal guardian of a child attending the charter school (MINN. STAT. ANN. § 124D.10(4)(g) (West 2014)).

### Mississippi

Mississippi's original charter school legislation was enacted in 2010 (CER, 2014). The current legislation, the Mississippi Charter Schools Act of 2013, is located in chapter 37 of West's Annotated Mississippi Code (MISS. CODE. ANN. §§37-28-1 to 37-28-61 (West 2013)). Charter school legislation provided funding for general education, transportation and special education (MISS. CODE. ANN. §37-28-55 (West 2013)). The department of education made payments to charter schools based on the average number of students in attendance at the charter schools (MISS. CODE. ANN. §37-28-55(1)(a) (West 2013)). Based on the average daily attendance numbers, the department of education made payments to charter schools that were equal to the state's "...share of the adequate education program for each student in average daily attendance at the school district in which the charter school is located" (MISS. CODE. ANN. §37-28-55(1)(a) (West 2013)). In determining the adequate education program payment, the state department of education deducted the local pro rata contribution of the school district where the student lived (MISS. CODE. ANN. §37-28-55(1)(a) (West 2013)). The state department of education payments to charter schools were required to be made in the same manner as payments to school districts (MISS. CODE. ANN. §37-28-55(1)(b) (West 2013)). Local school districts were required to forward pro rata share of identified tax revenues directly to charter schools (MISS. CODE. ANN. §37-28-55(2) (West

2013)) and the state department of education was required to forward the proportionate share of federally generated categorical funds, such as special education, directly to the charter school serving the eligible student (MISS. CODE. ANN. §37-28-55(3)(a) (West 2013)). Disbursement of state transportation funding to charter schools was in the same manner as paid to school districts (MISS. CODE. ANN. §37-28-55(4)(a) (West 2013)).

Charter schools were subject to the same student assessment and accountability requirements applicable to traditional public schools (MISS. CODE. ANN. §37-28-45(2) (West 2013)). However, charter schools were permitted to test students beyond state requirements (MISS. CODE. ANN. §37-28-45(2) (West 2013)). Section 37-28-15 required charter school applications to outline the charter school's plan for utilizing assessments to measure and report student academic progress (MISS. CODE. ANN. §37-28-15(4)(K) (West 2013)). Failure of a charter school to make appropriate progress toward charter established performance expectations, resulted in revocation of the charter contract (MISS. CODE. ANN. §37-28-33(7) (West 2013)).

Charter schools were governed by boards with organizational structures that were detailed in the application. (MISS. CODE. ANN. §§37-28-15(4)(p), 37-28-21(2)(b) (West 2013)).

## Missouri

Missouri charter school legislation was initially enacted in 1998 (CER, 2014) and is currently found in chapter 160 of Vernon's Annotated Missouri Statutes (MO. ANN. STAT. §§160.400 to 140.425 (West 2013)). Section 160.415 addressed charter school funding (MO. ANN. STAT. § 160.415 (West 2013)). School districts were obligated to

pay charter schools, according to the statutorily calculated formula, for the districts' students that attended the charter schools (MO. ANN. STAT. §160.415(2)(1) (West 2013)). Federal and state aid followed the students to the charter schools and districts were required to forward any federal or state aid received for the students to the charter schools (MO. ANN. STAT. §160.415(2)(2) (West 2013)). Overpayments or underpayments to charter schools were adjusted in 12 equal payments during the following school year (MO. ANN. STAT. §160.415(2)(3) (West 2013)). Charter school funding was prorated for students that were enrolled for part of the school year (MO. ANN. STAT. §160.415(2)(4) (West 2013)). Districts had to forward money to charter schools within 20 days of the districts' receipt of the charter school funding (MO. ANN. STAT. §160.415 (2)(5) (West 2013)). Pursuant to section 160.415, specific funding provisions applied to a charter school that declared itself as a local educational agency (MO. ANN. STAT. §160.415(3) (West 2013)). If a school district failed to make timely payments to a charter school, the state department of elementary and secondary education paid the charter school and deducted the payment from money that was owed to the school district (MO. ANN. STAT. §160.415(5) (West 2013)).

Section 160.405 outlined a number of accountability measures (MO. ANN. STAT. §160.405(1)(7) (West 2013)). Charter contracts were required to have a description of the charter school's student performance and academic standards (MO. ANN. STAT. §160.405(1)(7) (West 2013)). Compliance with state academic assessment measures (MO. ANN. STAT. §160.405(4)(2) (West 2013)) and participation in the statewide system of assessment (MO. ANN. STAT. § 160.405(4)(6)(a) (West 2013)) was required of charter schools (MO. ANN. STAT. §§160.405(4)(2), 160.405(4)(2) (West

2013)). Charter schools were required to design a method for measuring student progress toward the academic standards as established by the state department of education (MO. ANN. STAT. §160.405(4)(6)(a) (West 2013)). Annually, charter school sponsors had to review charter schools' participation in the stateside system of assessments (MO. ANN. STAT. §160.405(7)(1)(West 2013)). Failure to meet performance standards could result in revocation of a school's charter (MO. ANN. STAT. §160.405(8)(1)(c) (West 2013)).

The charter school's organizational structure and governing body bylaws were required to be included in the charter contract (MO. ANN. STAT. §160.405(1)(1) (West 2013)).

### Nevada

Nevada's charter school legislation was original enacted in 1997 (CER, 2014). The current legislation is located in Title 34, Chapter 386 of Nevada Revised Statutes Annotated (NEV. REV. STAT. ANN. §§386.490 to 386.649 (West 2014)). For the purposes of funding from the State Distributive School Account, charter school students had to be included in in the districts' student counts (NEV. REV. STAT. ANN. §386.570(1) (West 2014)). Additionally, charter schools were entitled to receive their proportionate shares of any other money available from federal, state, or local sources that a charter school or its students would be eligible to receive (NEV. REV. STAT. ANN. § 386.570(1) (West 2014)). Locally provided special education funding to charter schools could be reduced by the amount of money received, from the State of Nevada, for the same purpose (NEV. REV. STAT. ANN. §386.570(1) (West 2014)). Charter schools were able to apply for a loan from the State Public Charter Authority (NEV. REV. STAT.

ANN.§ 386.578(2) (West 2014)). Sponsors of charter schools could receive up to 2% of charter school's apportioned money to pay for administrative costs (NEV. REV. STAT. ANN.§ 386.570(3) – (4)(West 2014)).

Nevada did not explicitly require that charter schools integrate accountability measurements into their applications; however, four of the six options for mandatory goals included some form of accountability requirement (NEV. REV. STAT. ANN.§ 386.520(5)(b)(1) – (6) (West 2014)). Upon receipt of three consecutive ratings designated as the lowest possible by Nevada's statewide assessment system, a charter school's written charter was revoked (NEV. REV. STAT. ANN.§ 386.5351(1) (West 2014)).

A charter school application was required to outline a governance system including the number of people that would govern along with details of the selection process (NEV. REV. STAT. ANN.§386.520(4)(e) (West 2014)). Section 386.549 detailed the governing board composition (NEV. REV. STAT. ANN. §386.549(1) (West 2014)). The charter school governing body was mandated to consist of (i) a licensed teacher or other statutorily identified licensed individual; (ii) licensed teacher or other statutorily identified licensed individual or administrator; (iii) a parent or guardian of an enrolled student who was not a teacher at the charter school; (ii) two members with special expertise in accounting, finance, law or human resources (NEV. REV. STAT. ANN. § 386.549(1) (West 2014)). Governing board members were prohibited from having any felony convictions (NEV. REV. STAT. ANN. §386.549(1) (West 2014)).

## New Hampshire

New Hampshire's charter school legislation was enacted in 1995 (CER, 2014). Current legislation is located in Title 15, Chapter 194B of the Revised Statutes of the State of New Hampshire (N.H. REV. STAT. ANN. §§194B:1 – 194B:22 (West 2014)). New Hampshire did not require the same funding for charter schools and traditional public schools (N.H. REV. STAT. ANN. §194B:11 (West 2014)). School districts funding of charter schools had to be at least 80% of the school district's cost per student (N.H. REV. STAT. ANN. §194B:11(I)(a) (West 2014)). Charter school students that attended charter schools outside of their residential district, received specific statutorily enumerated amounts (N.H. REV. STAT. ANN. §194B:11 (West 2014); (N.H. REV. STAT. ANN. §198:40-a (West 2014)). School districts were required to pay charter schools tuition for full time students (N.H. REV. STAT. ANN. §194B:11(I)(a) (West 2014)). The Department of Education dispersed charter school funding in four installments throughout the school year (N.H. REV. STAT. ANN. §194B:11 (I)(c)(West 2014)). A charter school could receive governmental and private funding as if it was a school district (N.H. REV. STAT. ANN. §194B:11(VI) (West 2014)). In addition to statutorily provided funding, charter school students received an additional grant of \$2,000 per student (N.H. REV. STAT. ANN. §194B:11(I)(B)(1) (West 2014)). The state board of education provided matching grants to qualifying charter schools (N.H. REV. STAT. ANN. §194B:11(X) (West 2014)).

Charter school contracts were required to contain an outline of the charter school's accountability plan, which detailed how the school planned to evaluate its



program (N.H. REV. STAT. ANN. §194B:3(dd) (West 2014)). The revocation statute provided that a charter could be revoked for a material violation of provisions in the charter application and contract (N.H. REV. STAT. ANN. §194B:16 (West 2014)).

The charter school application was required to provide plans for the governance and organizational structure (N.H. REV. STAT. ANN. §194B:3(II)(b) (West 2014)). The charter school board of trustees exercised general supervisory authority over charter school operations (N.H. REV. STAT. ANN. §194B:5(I) (West 2014)). New Hampshire provided specific criteria for the composition of charter school board of trustees (N.H. REV. STAT. ANN. §194B:5(II) (West 2014)). At least 25% of charter school board of trustees had to consist of parents of students attending the school (N.H. REV. STAT. ANN. §194B:5(II) (West 2014)). Section 194-B:5 also placed restrictions on the percentage of the charter school board of trustees that could consist of school board members (N.H. REV. STAT. ANN. §194B:5(II) (West 2014)).

### New Jersey

New Jersey's charter school legislation was enacted in 1996 (CER, 2014). Legislation is currently found in Title 18A, Chapter 36A of the New Jersey Statutes Annotated (N.J. STAT. ANN. §§18A:36A-1 to 18A:36A-17.1 (West 2014)). School districts paid charter schools 90% of pre-budget money for each student (N.J. STAT. ANN. §18A:36A-12(b) (West 2014)) and 100% of money for students that were not included in the district's projected student enrollment (N.J. STAT. ANN. §18A:36A-12(d) (West 2014)). Federal funds that were attributable to charter school students had to be forwarded directly to the charter schools, by the school district (N.J. STAT. ANN.

§18A:36A-12(b) (West 2014)). Security categorical aid attributable to charter school students had to be forwarded directly to charter schools, by the district (N.J. STAT. ANN. §18A:36A-12(b) (West 2014)). School districts were responsible for paying a pro rata share of their special educational categorical aid to charter school for students enrolled in charter schools (N.J. STAT. ANN. §18A:36A-12(b) (West 2014)).

Although charter schools had to meet the same testing and academic performance standards as traditional public schools, charter schools were permitted to provide additional assessments for their students (N.J. STAT. ANN. §18A:36A-5(d) (West 2014)). Charter schools could not receive exemption from regulations concerning assessment and testing of students (N.J. STAT. ANN. §18A:36A-5(d) (West 2014)). The charter school's educational goals as well as the methods of assessing student progress toward meeting those goals was required to be included in the charter school's application (N.J. STAT. ANN. §18A:36A-11 (West 2014)). The county superintendent was required to have ongoing access to records that insure charter school compliance with state required assessments (N.J. STAT. ANN. §18A:36A-16(a) (West 2014)). Annually, the commissioner had to evaluate whether each charter school was meeting the goals of its charter (N.J. STAT. ANN. §18A:36A-16(a) (West 2014)).

Charter school applications had to include the proposed governance structure along with information regarding selection of the board of trustees (N.J. STAT. ANN. §18A:36A-14(a) (West 2014)). The board of trustees had authority to decide matters related to operation of the charter school including issues related to the budget, curriculum and operating procedures (N.J. STAT. ANN. §18A:36A-5(d) (West 2014)).

## New Mexico

New Mexico's charter school legislation was enacted in 1993 (CER, 2014). Charter legislation is currently found in Chapter 22 of New Mexico Statutes Annotated (N.M. STAT. ANN. §22-8B-1 to 22-8B-17.1 (West 2014)). Charter school funding was set at a minimum of 98% of school generated program cost (N.M. STAT. ANN. §22-8B-13(A) (West 2014)). Up to 2% of the school generated program cost could be retained, by the school district or division, for administrative support of charter schools (N.M. STAT. ANN. §22-8B-13(A) (West 2014)). State and federal program funding followed the charter school student that generated the funding (N.M. STAT. ANN. §22-8B-13(B) (West 2014)). Charter schools were permitted to apply directly for federal funds for which they were eligible (N.M. STAT. ANN. §22-8B-13(D) (West 2014)).

Charter schools were subject to New Mexico's Assessment and Accountability Act (N.M. STAT. ANN. §22-8B-4(M) (West 2014)). New Mexico required charter application to contain several accountability safeguards (N.M. STAT. ANN. §22-8B-8(E) (West 2014)). Charter school applications must have contained the school's plan for evaluating student performance (N.M. STAT. ANN. §22-8B-8(E) (West 2014)). The types of assessments that would measure student progress toward achieving the state's standards and the school's performance goals must have been included in the charter school application (N.M. STAT. ANN. §22-8B-8(E) (West 2014)). Charter school applications also detailed a timeline for achievement of the state standards and school performance goals along with corrective action that would take place should student performance fall below the standards (N.M. STAT. ANN. §22-8B-8(E) (West 2014)).

A charter school was governed according to the manner established in the charter contract (N.M. STAT. ANN. §22-8B-4(B) (West 2014)). Section 22-8B-4 required the charter school governing body to consist of at least five members (N.M. STAT. ANN. §22-8B-4(B) (West 2014)). Members of a charter school governing body could only serve on one charter school governing body at a time (N.M. STAT. ANN. §22-8B-4(B) (West 2014)). At no time, could a member of the local school board serve on the governing board of a charter school located in the school board member's district (N.M. STAT. ANN. §22-8B-4(B) (West 2014)).

### New York

New York's charter school legislation was enacted in 1998. The charter school legislation is located in Chapter 16, Title II, Article 56 of McKinney's Consolidated Laws of New York Annotated (N.Y. Education LAW §§2850 to 2857 (McKinney 2014)). Charter school students were included in local district enrollment counts and then districts paid charter schools the charter school basic tuition for each charter school student. The statute outlined calculations for basic tuition based on various parameters such as school year (N.Y. Education LAW §2856(1) (McKinney 2014)). Charter schools received state and federal funding for disabled students in proportion to the level of services provided by the charter school to the student (N.Y. Education LAW §2856(2)(b) (McKinney 2014)).

Charter school applications had to describe the educational program's achievement goals along with the methods for assessing student attainment of those goals (N.Y. Education LAW §2851 (2)(b) (McKinney 2014)). Educational programs must have

met or exceed the state standards for traditional public schools (N.Y. Education LAW §2851 (2)(b) (McKinney 2014)).

The charter school's governance structure was to be outlined in the charter school application (N.Y. Education LAW §2851 (2)(c) (McKinney 2014)). The initial board of trustees had to be listed along with descriptions of qualifications and method for selecting members (N.Y. Education LAW §2851 (2)(c) (McKinney 2014)).

### North Carolina

North Carolina's charter legislation was enacted in 1996. The charter school laws are compiled in Article 14A of Chapter 115C in West's North Carolina General Statutes Annotated (N.C. GEN. STAT. ANN. §§115C-218 to 115C-218.110 (West 2014)). The State Board of Education provided charter school funding in an amount equal to the average per student, per average daily enrollment from the local school administrative unit allotment (N.C. GEN. STAT. ANN. §115C-218.105(a)(1) (West 2014)). An additional amount of funding was provided to each charter school for students with disabilities and limited English proficiencies (N.C. GEN. STAT. ANN. §115C-218.105(a)(2)-(3) (West 2014)). The additional funding for English language learners and students with disabilities was calculated based on a State Board formula (N.C. GEN. STAT. ANN. §115C-218.105(a)(3) (West 2014)). If a disabled student changed enrollment from a charter school to a traditional public school or from a traditional public school to a charter school within the first 60 days of the school year, then funding was reallocated to the new school pro rata (N.C. GEN. STAT. ANN. §115C-218.105(a)(3) (West 2014)). The local school administrative unit was required to transfer the charter

school student's per pupil share of the current expense fund to charter schools (N.C. GEN. STAT. ANN. §115C-218.105(a)(3) (West 2014)). Money transferred to charter schools, based on taxes, would be calculated based on the taxes of the district where the charter school is located (N.C. GEN. STAT. ANN. §115C-218.105(c) (West 2014)).

Charter school applications had to contain the school's achievement goals along with the methods for evaluating student attainment of the skills and knowledge reflected in those goals (N.C. GEN. STAT. ANN. §115C-218.1(b)(2) (West 2014)). Failure to meet the requirements for student performance container in the charter could result in termination of the charter.

Charter school applications had to contain the school's governance structure as well as the names of the initial board of directors (N.C. GEN. STAT. ANN. §115C-218.1(b)(3)(West 2014)). The board of directors decided issues concerning the charter school's operation including budget, curriculum and operating procedures (N.C. GEN. STAT. ANN. §115C-218.1 (b)(3)(West 2014)). The State Board was accountable for ensuring that charter schools complied with applicable laws and provisions of their charters (N.C. GEN. STAT. ANN. §115C-218.15(b) (West 2014)).

## Ohio

Ohio's charter school legislation was initially enacted in 1997 (CER, 2014). Charter school legislation is located in chapter 3314 of Title 33 of Baldwin's Ohio Revised Code Annotated (OHIO REV. CODE ANN. §§3314.01 to 3314.99 (West 2014)) Charter schools were included in the state department of education's annual allocation of federal funds (OHIO REV. CODE ANN. §3314.081(C)(1) (West 2014)). The state

department of education was required to deduct charter school funding directly from the state aid of the charter school student's district of residence (OHIO REV. CODE ANN. §3314.08(C)(1) (West 2014)). State funding that was deducted from the charter school student's district of residence was to be forwarded to the charter school in statutorily calculated amounts based upon specific student characteristics such as economically disadvantaged, level of English proficiency, grade level and identified special needs (OHIO REV. CODE ANN. §3314.08(C)(1) (West 2014)). Charter schools could apply to receive federal or state funds, which would be available to a school district (OHIO REV. CODE ANN. §3314.082 (West 2014)).

Charter school contracts had to include the charter school's academic goals along with the method for measuring student progress toward achieving those goals (OHIO REV. CODE ANN. §3314.03(A)(3) (West2014)). Utilization of the statewide achievement assessments was mandatory for charter schools (OHIO REV. CODE ANN. §3314.03(A)(3) (West 2014)). At least annually, charter school sponsors were required to evaluate charter schools' academic performance, fiscal performance, organization, and operation (OHIO REV. CODE ANN. §3314.03(D)(3) (West2014)).

The state department of education was responsible for the oversight of charter school sponsors (OHIO REV. CODE ANN. §3314.015(A) (West2014)). Charter schools were responsible for providing sponsors with the process for selecting the charter school's governing authority (OHIO REV. CODE ANN. §3314.03(B)(1) (West2014)). The governing authority of a charter school had to consist of at least 5 people (OHIO REV. CODE ANN. §§3314.02(E)(1) – (2) (West2014)). Members of a charter school governing authority could not serve on more than five governing boards simultaneously

(OHIO REV. CODE ANN. §§3314.02(E)(1) – (2) (West2014)). Governing authority members were prohibited from owing money to the state or having been involved in a dispute over money connected to the operation of a closed charter school (OHIO REV. CODE ANN. §§3314.02(E)(1) – (2) (West2014)).

### Oklahoma

Oklahoma’s charter school legislation was enacted in 1999 (CER, 2014). The Oklahoma Charter Schools Act is located in Title 70, Division I, Chapter 1, Article III of the Oklahoma Statutes Annotated (OKLA. STAT. ANN. tit. 70 §§3-142 to 3-145.2 (West 2014)). Funding provisions can be found in section 3-142 of Oklahoma Statutes Annotated (OKLA. STAT. ANN. tit. 70 §3-142 (West 2014)). Charter schools had to receive at least 95% of allocated funds (OKLA. STAT. ANN. tit. 70 §3-142(A) (West 2014)). Charter school sponsors were allowed to retain up to 5% of allocated funds to pay for administrative costs (OKLA. STAT. ANN. tit 70 §3-142 (West 2014)). Charter schools that were sponsored by the local school board received local and state funding directly from the local school board (OKLA. STAT. ANN. tit. 70 §3-142 (West 2014)). Charter schools that were sponsored by (i) the board of education of a technology center school district; (ii) a higher education institution; (iii) the state board of education; (iv) a federally recognized Indian tribe; or (v) statewide virtual charter schools sponsored by the statewide Virtual Charter School Board received funds directly from the state board of education (OKLA. STAT. ANN. tit. 70 §3-142 (West 2014)). Charter schools were eligible to receive other financial assistance allowed to traditional public schools (OKLA. STAT. ANN. tit. 70 §3-142(C) (West 2014)). Special facilities funding was available to



assist charter schools in the start-up cost associated with renovating existing facilities for use by charter schools (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014)). The State Department of Education allocated funds for the federal State Charter School Facilities Incentive Grants Program (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014)).

Charter schools were required to participate in the statewide testing program (OKLA. STAT. ANN. tit. 70 §3-136(4) (West 2014)). In fact, it was mandatory that charter agreements include provisions that required participation in statutorily mandated testing under the Oklahoma School Testing Program Act (OKLA. STAT. ANN. tit. 70 §3-136(4) (West 2014)). Charter schools had to comply with reporting of test results to the same extent, as school districts were required to comply (OKLA. STAT. ANN. tit. 70 §3-136(4) (West 2014)). Charter schools had to forward requisite data to the Office of Accountability (OKLA. STAT. ANN. tit. 70 §3-136(4) (West 2014)). Annual reports submitted, by charter schools to the Office of Accountability, had to include information such as schools' enrollment, testing, curriculum and finances (OKLA. STAT. ANN. Tit. 70 §3-143 (West 2014)).

A charter agreement had to contain provisions that outlined the charter school's governing body, which would be responsible for the charter school's policies and operational decisions (OKLA. STAT. ANN. tit. 70 §3-136(8) (West 2014)).

### Oregon

Oregon's charter school legislation was initially enacted in 1999 (CER, 2014). Oregon's current legislation is located in Title 30, Chapter 338 of the Oregon Revised Statutes Annotated (OR. REV. STAT. ANN. §§338.005 to 338.165 (West 2014)).

District ADMw (Weighted Average Daily Membership) was used to calculate funding and was determined by separately calculating ADMw for the district charter schools and traditional public schools then adding the calculations together (OR. REV. STAT. ANN. §338.155(1)(b)(A) (West 2014)). Except as related to calculation of ADMw, charter school funding was calculated as though charter school students were enrolled in traditional public schools (OR. REV. STAT. ANN. §338.155(1)(b)(B)(i) (West 2014)). Funding varied based on a charter school's funding authority (OR. REV. STAT. ANN. §338.155(1)(b)(A), 338.155(2)(a), 338.155(2)(b), 338.155(3)(a)-(b) (West 2014)). Charter schools sponsored by the school district had to receive a minimum of 80% (for grades kindergarten – grade 8) or 95% (for grades 9-12) of the school district's General Purpose Grant per ADMw (OR. REV. STAT. ANN. §338.155(2)(a) (West 2014)). Charter schools sponsored by the school district had to receive a minimum of 95% of the school district's General Purpose Grant per ADMw for students in grades 9-12 (OR. REV. STAT. ANN. §338.155(2)(b) (West 2014)). Charter schools that were sponsored by the State Board of Education or an institution of higher education received at least 90% of the school district's General Purpose Grant per ADMw for students that were enrolled in grades K-8 and 95% for students enrolled in grades 9-12 (OR. REV. STAT. ANN. §338.155(3)(a)-(b) (West 2014)). Charter schools could apply for Department of Education grants the same as if they were a traditional public school (OR. REV. STAT. ANN. §338.155(9)(a) (West 2014)). All money distributed from the State School Fund to charter schools had to be distributed through the school district where the charter school was located (OR. REV. STAT. ANN. §338.155(1)(b)(A), §338.155(1)(b)(C) (West 2014)). School districts had to forward charter school funding within 10 days of

receiving it from the State School Fund. (OR. REV. STAT. ANN. §338.155(8) (West 2014)).

Charter schools were required to comply with Oregon's statewide assessment system (OR. REV. STAT. ANN. §338.115(1)(k) (West 2014)). The charter school proposal had to detail the curriculum's expected results along with a description of how student progress would be measured and reported (OR. REV. STAT. ANN. §338.045(2)(e) (West 2014)). Failure to meet the terms of the charter could result in termination of the school's charter (OR. REV. STAT. ANN. §338.105(1)(a) (West 2014)). A charter school's charter could also be revoked for failure to meet student performance requirements provided in the charter (OR. REV. STAT. ANN. §338.105(1)(b) (West 2014)). Performance of the charter school and its students had to be reported to the charter school sponsor and the Department of Education at least once a year (OR. REV. STAT. ANN. §338.095(2) (West 2014)).

The charter school proposal was required to contain the charter school's governance structure (OR. REV. STAT. ANN. §338.045(2)(f) (West 2014)). An acknowledgement of understanding, regarding director liabilities and standards of conduct, was required by each member of the charter school governing body (OR. REV. STAT. ANN. §338.045(2)(f) (West 2014)).

### Pennsylvania

Pennsylvania's charter school legislation was initially enacted in 1997 (CER, 2014). Current legislation is located in Title 24, Chapter 1, Article XVII-A of the Pennsylvania Statutes and Consolidated Statutes (24 PA. CONST. STAT. ANN. §§17-

1701 to 17-1750 (West 2014)). The funding for general education charter school students was the total expenditure per average daily enrollment for the charter schools' previous year minus the district's budgeted expenditures for the traditional public schools (24 PA. CONST. STAT. ANN. §17-1725-A(a)(2) (West 2014)). Special education students that attended charter schools were entitled to the same amount of money as general education students, however; special education students received an additional amount calculated by a statutory formula (24 PA. CONST. STAT. ANN. §17-1725(A)(a)(2)-(3) (West 2014)). Charter school funding payments were made in 12 equal monthly payments (24 PA. CONST. STAT. ANN. §17-1725-A(a)(5) ( West 2014)). In the event that the school district failed to make funding payments to charter schools, then the secretary of education would deduct the unpaid amounts from the state's payment to the school district (24 PA. CONST. STAT. ANN. §17-1725(A)(a)(5) (West 2014)). The state assisted both traditional public schools and charter schools with transitional funding (24 PA. CONST. STAT. ANN. §§17-1725-A(c), §17-1731-A (West 2014)). The state provided transitional grants to assist school districts during the first year that a student attended a charter school (24 PA. CONST. STAT. ANN. §17-1725-A(c) (West 2014)). Grants were available for charter school planning and start-up funding (24 PA. CONST. STAT. ANN. §17-1731-A (West 2014)).

Charter schools were accountable to parents, the community and the state. That charter school accountability should have been outlined in its charter (24 PA. CONST. STAT. ANN. §17-1715-A(2) ( West 2014)). Charter school applications had to delineate curriculum, educational goals and methods for assessment of how well students are meeting the educational goals (24 PA. CONST. STAT. ANN. §17-1719-A(5) (West

2014)). The local board of school directors was responsible for an annual assessment of whether each charter school was meeting goals outlined in its charter (24 PA. CONST. STAT. ANN. §17-1728-A(a) (West 2014)). Prior to granting a five-year charter renewal, a comprehensive review must have been completed. (24 PA. CONST. STAT. ANN. §17-1728-A(a) (West 2014)). The local board of school directors was required to maintain ongoing access to a charter school's facilities and records to ensure charter school compliance with its charter, testing requirements and relevant statutory requirements (24 PA. CONST. STAT. ANN. §17-1728-A(a) (West 2014)). Failure to meet statutorily and charter provided student performance requirements could result in charter revocation (24 PA. CONST. STAT. ANN. §17-1715-A(2) (West 2014)).

Charter school applications were required to include the proposed governance structure including details regarding how the board of trustees would be selected (24 PA. CONST. STAT. ANN. §17-1719-A(4) West 2014)). A charter school's board of trustees was authorized to make decisions regarding school operation, budgeting, curriculum, operating procedures and employment (24 PA. CONST. STAT. ANN. §17-1716-A(a) (West 2014)).

### Rhode Island

Rhode Island's charter school legislation was originally enacted in 1995. The Charter Public School Act of Rhode Island is found in Title 16, Chapter 77 of the General Laws of Rhode Island Annotated (R.I. GEN. LAWS ANN. §§16-77.1 to 16-77.4-8 (West 2014)). The state paid charter school funding directly to the charter schools (R.I. GEN. LAWS ANN. ANN. §16-77.1-2(a) (West 2014)). The local school district paid funding

to charter schools minus the amount paid by state (R.I. GEN. LAWS ANN. §16-77.1-2(a) (West 2014)). Charter school funding consisted of state and district revenue in the same proportions as funding for traditional public schools, within the same school district (R.I. GEN. LAWS ANN. §16-77.3-5(a) (West 2014)). Both the state and the local district paid their share of operating costs to charter schools on a quarterly basis (R.I. GEN. LAWS ANN. §§16-77.1-2(d) to 16-77.1-2(e) (West 2014)). Charter school funding was determined based on the per student cost for the charter school student's home district (R.I. GEN. LAWS ANN. §16-77.1-2(a) (West 2014)). Five percent of the per student funding was retained by the local district for indirect support costs (R.I. GEN. LAWS ANN. §16-77.1-2(a) (West 2014)). For each student enrolled in a charter school, the state provided districts an additional 5% of the districts' per student cost to assist in the indirect district costs that resulted when a student enrolled in a charter school (R.I. GEN. LAWS ANN. §16-77.1-2(b) (West 2014)). Charter schools could apply for federal funding to assist with start-up costs (R.I. GEN. LAWS ANN. §16-77.1-3 (West 2014)). If federal funding was unavailable for charter school start-up, then the state was required to have a loan program that provided charter schools up to \$150,000 per charter school to be repaid in equal installments over five years or less (R.I. GEN. LAWS ANN. §16-77.1-3 (West 2014)).

Charter schools were held to the same uniform testing requirements as traditional public schools (R.I. GEN. LAWS ANN. §16-77.3-7(13) (West 2014)). Failure to meet or pursue the educational objectives contained in the charter could result in revocation of that charter (R.I. GEN. LAWS ANN. §16-77.5.1(b)(2) (West 2014)).

Rhode Island's charter school legislation provided no specific guidance regarding charter school governance structure; however, it provided that complaints regarding charter schools could be made directly to the governing body (R.I. GEN. LAWS ANN. §16-77.5.1(a) (West 2014)). Charter school complaints that reached no resolution, after being addressed by the governing body, could be directed to the commissioner for final decision (R.I. GEN. LAWS ANN. §16-77.5.1(a) (West 2014)).

### South Carolina

South Carolina's charter school legislation was initially enacted in 1996 (CER, 2014). The South Carolina Charter Schools Act of 1996 is located in Title 59, Chapter 40 of the Code of Laws of South Carolina 1976 Annotated (S.C. CODE ANN. §§59-40-10 to 59-40-240 (2014)). Charter school funding was calculated by dividing the previous year's total general funds by the previous year's weighted students (S.C. CODE ANN. §59-40-140(A) (2014)). After determining the quotient, that amount was increased by the Education Finance Act inflation factor and then multiplied by the weighted number of charter school students enrolled in the charter school (S.C. CODE ANN. §59-40-140(A) (2014)). The school district distributed all state and local funding to charter schools, on a monthly basis, beginning in the month of July (S.C. CODE ANN. §59-40-140(A) (2014)). State and federal categorical funding generated by charter school students or staff had to be forwarded to the charter school sponsor for disbursement to charter schools (S.C. CODE ANN. §59-40-140(D) (2014)). Charter school sponsors were required to direct the proportionate share of state and federal categorical funds to

qualifying charter schools within ten business days of receipt (S.C. CODE ANN. §§59-40-140(C) to 59-40-140(D) (2014)).

Charter school applications had to contain a description of the school's plan for assessing student achievement along with corrective actions should student achievement have fallen below the identified standards (S.C. CODE ANN. §§59-40-60(F)(5) to 59-40-60(F)(6) (2014)). Additionally, applications were required to detail the method for evaluating student progress toward achieving the school's achievement standards and the state assessments (S.C. CODE ANN. §§59-40-60(F)(5) to 59-40-60(F)(6) (2014)). Material violation of provisions provided in the charter required revocation or non-renewal of a school's charter (S.C. CODE ANN. §59-40-110(C)(1) (2014)). Failure to make reasonable progress toward student achievement standards identified in the charter application also mandated revocation or nonrenewal of a charter (S.C. CODE ANN. §59-40-60(F)(5) to 59-40-60(F)(6) (2014)). Annually, a charter school was required to prepare a report to its sponsor and the department of education (S.C. CODE ANN. §59-140(H)(2014)). The charter school's report had to address the success of students in achieving the specific goals for which the charter school was established (S.C. CODE ANN. §59-140(H)(1)(t) (2014)). Charter school sponsors were also required to prepare an annual report to the state department of education (S.C. CODE ANN. §59-140(H) (2014)).

Section 59-40-60 required the charter school application to describe a charter school's governance and operational plans (S.C. CODE ANN. §59-40-60(F)(8) (2014)). A minimum of seven members had to serve on a charter school's board of directors (S.C. CODE ANN. §59-40-50(B)(9) (2014)) with the exact number being specified in the



charter school's bylaws (S.C. CODE ANN. §59-40-60(F)(8) (2014)). Section 59-40-50 detailed the requisite composition of a charter school board of directors (S.C. CODE ANN. §59-40-50(B)(9) (2014)). One half of the board members needed to possess a background in K-12 education or business (S.C. CODE ANN. §59-40-50(B)(9) (2014)). A minimum of fifty percent of the board members had to be elected by charter school employees and enrolled students' parents (S.C. CODE ANN. §59-40-50(B)(9) (2014)). Only South Carolina residents could serve on the governing board of a charter school (S.C. CODE ANN. §59-40-50(B)(9) (2014)). No one with a felony conviction could serve on a charter school board. (S.C. CODE ANN. §59-40-50(B)(9) (2014)).

### Tennessee

Tennessee's original charter school legislation was enacted in 2002 (CER, 2014). The Tennessee Public Charter Schools Act of 2002 is located in Title 49, Chapter 13 of the Tennessee Code Annotated (TENN. CODE ANN. §§49-13-101 to 43-13-142 (West 2014)). Charter school funds were allocated based on per student state and local funds along with applicable federal funds (TENN. CODE ANN. §49-13-112(a) (West 2014)). The department of education was responsible for promulgating rules and regulations for determining the allocation of these state and local funds (TENN. CODE ANN. §49-13-112(b) (West 2014)). The local education agency was required to distribute money received on behalf of charter schools in at least 9 equal installments (TENN. CODE ANN. §49-13-112(a) (West 2014)). Local education agencies could not retain any portion of charter school allocations unless that retention was provided for in the charter (TENN. CODE ANN. §49-13-112(b)(3)(A) (West 2014)). Charter schools that elected to

provide student transportation must have received funds that would have been spent by the local education agency in the provision of transportation services (TENN. CODE ANN. §49-13-114(a)(West 2014).

Annually, charter schools were required to report progress to the sponsor, chartering authority and commissioner of education (TENN. CODE ANN. §49-13-120(a)(West 2014)). The report had to include information regarding the charter school's progress toward achieving the goals provided in its charter agreement (TENN. CODE ANN. §49-13-120(a)(West 2014)). Charter schools were required to comply with federal and state student assessment and accountability provisions (TENN. CODE ANN. §49-13-105(b)(10) (West 2014)). Charter schools were also required to meet the same state board of education requirements as traditional public schools (TENN. CODE ANN. §49-13-111(a)(2) (West 2014)). A charter school that fell within the bottom five percent of the state's schools, as determined by the state established achievement standards, had to have its charter revoked (TENN. CODE ANN. §49-13-122(a) (West 2014); TENN. CODE ANN. § 49-1-602 (West 2014)).

Once the charter application had been approved, the charter schools must have authorized a governing body to operate the charter school (TENN. CODE ANN. §49-13-106(b)(1)(B) (West 2014)). Governance and operation of charter schools was to be detailed in the charter agreement (TENN. CODE ANN. §49-13-110 (West 2014); TENN. CODE ANN. §49-13-107(b)(7) (West 2014)). The charter schools governing body was required to have at least one parent of a child enrolled in the charter school (TENN. CODE ANN. §49-13-109(a) (West 2014)). A charter management organization was allowed to bypass the parental involvement requirement by establishing a school advisory

council, which consisted of at least five members (TENN. CODE ANN. §49-13-109(a) (West 2014)). Of the five members, at least one must have been a (i) parent of an enrolled student, (ii) the principal and (iii) a teacher (TENN. CODE ANN. §49-13-109(a) (West 2014)). A local board of education could not function as a charter school's governing body (TENN. CODE ANN. §49-13-109(b) (West 2014)).

### Texas

Texas charter school legislation was originally enacted in 1995 (CER, 2014). Legislative provisions related to charter schools can be found in Chapter 12 of Title 2 of the Education Code (TEX. EDUCATION CODE. ANN. §§12.001 to 12.156 (West 2014)). Charter school funding was determined based on a per student weighted average daily attendance (TEX. EDUCATION CODE ANN. §12.106 (a)(2)(a) (West 2013)). Charter schools were entitled to funds from the agency or the commission unless the authorizing statute explicitly prohibited charter schools from receiving the funding (TEX. EDUCATION CODE ANN. §12.106 (b) (West 2014)). Charter applications must have provided that the charter agreement was contingent upon appropriate student performance on assessments and the charter school's compliance with appropriate accountability provisions (TEX. EDUCATION CODE ANN. §§12.016(2), 12.059(2), 12.111(a)(1)-(2) (West 2014)). Charter school applications were required to describe the school's governing structure (TEX. EDUCATION CODE ANN. §§12.025(a), 12.059(5), 12.102, 12.016(3) (West 2014)).

## Utah

Utah's charter school legislation was enacted in 1998 (CER, 2014). The Utah Charter School Act is located in Title 53A, Chapter 1A, Part 5 of the Utah Code Annotated (UTAH CODE ANN. §§53A-1a-501 to 53A-1a-522 (West 2014)). Charter schools were to receive state funds the same as traditional public schools (UTAH CODE ANN. §53A-1a-513(3)(a) (West 2014)). Charter schools that were converted from traditional public schools received funding the same as received prior to conversion from a traditional public school (UTAH CODE ANN. §53A-1a-515(3)(a)(i) (West 2014)). Charter schools could receive any federal funds for which they qualified (UTAH CODE ANN. §53A-1a-513(5) (West 2014)). Funding was available to charter schools to assist with costs associated with starting up the school. (UTAH CODE ANN. §53A-1a-513.5 (West 2014)).

Within the first year of operation, a charter school had to develop an accountability plan (UTAH CODE ANN. §53A-1a-520 (West 2014)). The charter school board was required to annually review charter schools that it authorized (UTAH CODE ANN. §53A-1a-50.6 (West 2014)). A charter school was accountable to its authorizer for performance requirements provided in the charter agreement (UTAH CODE ANN. §53A-1a-507(5)(a)(West 2014)). Failure to make adequate yearly progress as defined by the No Child Left Behind Act, could result in charter termination (UTAH CODE ANN. §53A-1a-510(1)(West 2014)). Failure to meet the requirements provided in the charter agreement could also warrant charter termination (UTAH CODE ANN. §53A-1a-513(3)(a)(West 2014)).

The charter school application was required to contain the school's governance structure (UTAH CODE ANN. §53A-1a-504(2)(c)(West 2014)). A charter application must also have provided a list of the governing board members along with a description of each member's qualifications (UTAH CODE ANN. §53A-1a-504(2)(c) (West 2014)). The charter agreement had to describe the governing boards structure including board member numbers, method of appointment and terms of office (UTAH CODE ANN. §53A-1a-508(2)(e) (West 2014)).

### Virginia

Virginia's original charter school legislation was enacted in 1998 (CER, 2014). Virginia's current charter school legislation is located in Title 22.1, Chapter 13, Article 1.2 of the Code of Virginia (VA. CODE. ANN. §§22.1-212.5 to 22.1-212.16 (West 2014)). Charter school funding was negotiated in the charter school contract but must have been commensurate with the per student funding in traditional public school (VA. CODE. ANN. §22.1-212.14(B) (West 2014)). If charter school expenses were lower than traditional public schools then the charter school funding could be lower than traditional public schools (VA. CODE. ANN. §22.1-212.14(B) (West 2014)). Funding for students with disabilities had to be distributed to the charter school enrolling qualified students and assigned teachers (VA. CODE. ANN. §22.1-212.14(F) (West 2014)). Charter schools serving students that were eligible for federal or state categorical aid were to receive their proportionate share of the moneys (VA. CODE. ANN. §22.1-212.14(F) (West 2014)).

Charter school applications must have detailed student performance standards, which were required to meet or exceed appropriate standards of quality (VA. CODE. ANN. §22.1-212.8(B)(5) (West 2014)). Assessments that were to be used in measuring student progress toward meeting the school's student performance standards also had to be contained in charter applications (VA. CODE. ANN. §22.1-212.8(B)(5) (West 2014)). Compliance with provisions regarding state required assessments was mandatory for charter schools (VA. CODE. ANN. §§22.1-212.8(B)(5), 22.1-253.13:3 (West 2014)). A charter could be revoked for a charter school's violation of conditions of its charter (VA. CODE. ANN. §22.1-212.12(B)(1) (West 2014)). A charter could also be revoked for failure of a charter school to make appropriate progress toward the achievement of student performance standards provided in the charter application (VA. CODE. ANN. §22.1-212.12(B)(12) (West 2014)).

Charter school applications must have detailed the management and operation of the charter school (VA. CODE. ANN. §22.1-212.8 (B)(9) (West 2014)). Charter schools were required to be managed by a management committee (VA. CODE. ANN. §22.1-212.6(B) (West 2014)). The committee must have consisted of parents of students enrolled in the charter school, teachers working in the charter schools, administrators working in the charter school along with representatives of any of the charter school's sponsors (VA. CODE. ANN. §22.1-212.6(B) (West 2014)). The method for management was determined by the terms of the charter agreement (VA. CODE. ANN. §22.1-212.6(B) (West 2014)).

## Washington

Washington's charter school legislation was initially enacted in 2012 (CER, 2014). Charter school statutes are located in Title 28A, Chapter 28A.710 of the Revised Code of Washington Annotated (WASH. REV. CODE. ANN. §§28A.710.005 to 28A.710.260 (West 2014)). Charter schools were entitled to the same funding as traditional public schools (WASH. REV. CODE. ANN. §28A.710.005(1)(n)(vii) (West 2014)). Funding was based on the statewide average of traditional public schools from the previous school year and the charter school's actual full-time student enrollment (WASH. REV. CODE. ANN. §28A.710.220(2) (West 2014)). Charter schools could receive state matching funds for facilities construction (WASH. REV. CODE. ANN. §28A.710.230 (West 2014)).

A charter school application had to describe the methods for utilizing assessment to measure and report student progress toward established charter school academic goals (WASH. REV. CODE. ANN. §28A.710.130(2)(1) (West 2014)). Charter schools were accountable to the same academic standards as traditional public schools (WASH. REV. CODE. ANN. §28A.710.005(1)(n)(v) (West 2014)). Charter schools were required to comply with the statewide student assessment system (WASH. REV. CODE. ANN. §28A.710.005(1)(n)(v) (West 2014)). Charter contracts could be revoked for failure to make appropriate progress toward performance goals established in the charter (WASH. REV. CODE. ANN. §28A.710.200(1)(b) (West 2014)). If a charter school's performance was in the bottom quarter of schools, as determined by the state board of

education index, at the time of renewal, its charter could not be renewed (WASH. REV. CODE. ANN. §28A.710.200(2) (West 2014)).

Charter schools were overseen by the Washington Charter School Commission or the local school board (WASH. REV. CODE. ANN. §§28A.710.040(2)(b), 28A.710.070(1) (West 2014)).

### Wisconsin

Wisconsin's charter school legislation was enacted in 1993 (CER, 2014). Charter school legislation is located in chapter 118 of the Wisconsin Statutes Annotated (WIS. STAT. ANN. §§118.40(1) to 118.40(8) (West 2013)). Charter schools received \$7,925 for each student attending a charter school during the 2013-2014 school year (WIS. STAT. ANN. §118.40(2r)(e) (West 2013)). During the 2014-2015, charter schools received \$8,075 per student attending charter schools (WIS. STAT. ANN. §118.40(2r)(e) (West 2013)).

Charter school petitions and contracts had to detail the method for measuring student progress (WIS. STAT. ANN. §118.40(1m)(b)(5); §118.40(2r)(b)(2); (West 2013)). A charter school's charter could be revoked for failure to make appropriate progress toward achieving educational goals (WIS. STAT. ANN. §118.40(2r)(5) (West 2013)).

The charter school's governance structure had to be outlined in the charter school petition (WIS. STAT. ANN. §§118.40(1m)(b)(6), 118.40(2r)(b)(2) (West 2013)).



## Wyoming

Wyoming's charter school legislation was originally enacted in 1995 (CER, 2014). Legislation concerning charter schools is located in Title 21, Chapter 3, Article 3 of the Wyoming Statutes Annotated (WYO. STAT. ANN. §§21-3-301 to 21-3-314 (West 2014)). The charter school contract must contain funding provisions that had been agreed on by both the charter school and the school district (WYO. STAT. ANN. §21-3-314(c) (West (West 2014))). The contracted agreement for charter school funding had to include 100% of charter school funding received from the foundation program and 100% of the charter school's proportionate share of district funding received for major maintenance (WYO. STAT. ANN. § §21-3-314(c)(i) to 21-3-314(c)(ii) (West 2014)).

Charter school contracts had to explain how charter schools would measure student progress toward the attainment of specified knowledge and skills (WYO. STAT. ANN. §21-3-307(a)(3) (West 2014)). Measurement of student outcomes had to include state assessment and standards (WYO. STAT. ANN. §21-3-307(a)(2) (West 2014)). A charter school's charter could be revoked for material violations on charter contract provisions (WYO. STAT. ANN. §21-3-309(c)(i) (West 2014)). Student failure to make appropriate progress toward meeting achievement standards could result in charter revocation (WYO. STAT. ANN. §21-3-309(c)(i) (West 2014)). Local school districts were required to file an annual report to the state board regarding each of the district's charter schools' compliance with the respective charters (WYO. STAT. ANN. §21-3-312 (West 2014)). The local school district's annual report to the state board had to include

an assurance that charter school students were receiving comparable education to traditional public school students (WYO. STAT. ANN. §21-3-312 (West 2014)).

Charter school contracts had to detail the school's governance structure (WYO. STAT. ANN. §21-3-307(a)(iv) (West 2014)). Charter schools were governed by a governing body, pursuant to terms agreed to, by the school district and charter school (WYO. STAT. ANN. §21-3-304(d) (West 2014)). The local school district was responsible for ensuring that charter schools comply with their charter contract and applicable laws (WYO. STAT. ANN. §21-3-304(b) (West 2014)).

Table 1 provides an overview of each of the provisions present in each state's charter school legislation. Table 2 provides the total number of charter school legislation that address each type of funding, accountability, and governance provisions.

**Table 1. Summary of Charter School Legislation Funding, Accountability and Governance Provisions Reported by State**

	Funding Provisions						Accountability Provisions						Governance Provision					
	Funding provisions provided in statute	CS Funding is the same as TPS Funding	CS Statute provides for facilities funding	Statute allows CS to receive outside funding	Statute provides for CS Start-Up Funding	CS must use standard accounting principles	CS to have same accountability as TPS	Requires annual evaluation by state DOE	Annual review by authorizer or local school board	Requires annual report by CS	Mandated revocation for academic failures	Discretionary revocation for academic failures	CS must describe method for measuring student achievement	Must use State tests to measure achievement	CS application must include governance plan	CS Charter contract must include governance plan	CS Governed by local board of education	Statutorily mandated members on CS governing board
AK	•	•										•						
AZ	•		•	•	•	•			•			•	•	•	•			
AR	•	•	•						•			•		•	•	•		
CA	•	•	•				•		•			•	•	•	•			
CO	•	•				•		•				•	•	•			•	
CT	•												•		•			
DC	•		•	•		•		•	•			•	•	•				
DE	•						•	•	•	•	•	•	•	•				
FL	•	•				•	•	•	•	•	•	•	•	•				
GA	•	•	•			•			•			•				•		

	Funding Provisions						Accountability Provisions						Governance Provision					
	Funding provisions provided in statute.	CS Funding is the same as TPS Funding	CS Statute provides for facilities funding	Statute allows CS to receive outside funding	Statute provides for CS Start-Up Funding	CS must use standard accounting principles	CS to have same accountability as TPS	Requires annual evaluation by state DOE	Annual review by authorizer or local school board	Requires annual report by CS	Mandated revocation for academic failures	Discretionary revocation for academic failures	CS must describe method for measuring student achievement	Must use State tests to measure achievement	CS application must include governance plan	CS Charter contract must include governance plan	CS Governed by local board of education	Statutorily mandated members on CS governing board
HI	•	•	•			•		•	•			•	•	•				•
ID	•		•					•					•	•	•			
IL	•			•	•	•						•	•	•	•			
IN	•		•	•		•		•	•			•	•	•	•			
IA						•		•	•			•	•	•	•	•		
KS								•		•		•	•	•	•			
LA	•	•		•	•	•	•					•	•	•	•			
ME	•			•		•	•	•				•	•	•	•			
MD	•	•					•							•				
MA	•			•			•		•					•				
MI						•	•				•		•	•				

**Funding Provisions**

**Accountability Provisions**

**Governance Provision**

	Funding provisions provided in statute.	CS Funding is the same as TPS Funding	CS Statute provides for facilities funding	Statute allows CS to receive outside funding	Statute provides for CS Start-Up Funding	CS must use standard accounting principles	CS to have same accountability as TPS	Requires annual evaluation by state DOE	Annual review by authorizer or local school board	Requires annual report by CS	Mandated revocation for academic failures	Discretionary revocation for academic failures	CS must describe method for measuring student achievement	Must use State tests to measure achievement	CS application must include governance plan	CS Charter contract must include governance plan	CS Governed by local board of education	Statutorily mandated members on CS governing board
MN	•		•			•	•			•		•	•		•			•
MS	•			•		•	•		•		•		•	•	•			
MO	•			•		•	•		•		•	•	•	•				
NV	•		•	•		•			•	•					•			•
NH	•					•				•			•	•	•			
NJ	•						•		•	•			•	•	•			
NM	•		•		•	•		•	•			•	•	•	•			•
NY	•		•	•		•	•	•		•		•	•	•	•	•		
NC	•	•				•		•		•		•	•	•	•	•		
OH	•			•		•			•			•		•				
OK	•		•	•	•	•		•		•		•		•	•			

**Funding Provisions**

**Accountability Provisions**

**Governance Provision**

	Funding provisions provided in statute.	CS Funding is the same as TPS Funding	CS Statute provides for facilities funding	Statute allows CS to receive outside funding	Statute provides for CS Start-Up Funding	CS must use standard accounting principles	CS to have same accountability as TPS	Requires annual evaluation by state DOE	Annual review by authorizer or local school board	Requires annual report by CS	Mandated revocation for academic failures	Discretionary revocation for academic failures	CS must describe method for measuring student achievement	Must use State tests to measure achievement	CS application must include governance plan	CS Charter contract must include governance plan	CS Governed by local board of education	Statutorily mandated members on CS governing board
OR	•					•				•		•	•	•				
PA	•			•	•	•			•	•		•	•	•	•			
RI	•		•		•					•		•	•	•	•			
SC	•		•	•		•			•	•	•		•	•	•	•		•
TN	•		•	•		•	•	•		•	•		•	•	•			•
TX	•					•		•		•	•		•	•	•	•		
UT	•	•	•		•	•			•			•	•	•	•	•		
VA	•			•		•		•				•	•	•	•		•	•
WA	•		•			•	•		•	•		•	•	•	•			
WI	•					•						•	•	•	•	•		
WY	•					•			•			•	•	•	•			

**Table 2. Total Number of States with Funding, Accountability and Governance Provisions in Charter School Legislation**

Statutory Provisions	Number of States that Had the Studied Statutory Provision
<b>Funding Provisions</b>	
Funding provisions provided directly in CS statute	40
CS Funding is the same as TPS Funding	11
CS Statute provides for facilities funding	18
CS statute explicitly allows CS to receive outside funding	17
CS Statute provides for Start-Up Funding	8
Requires use of standard accounting principles in fund management	32
<b>Accountability Provisions</b>	
CS statute provides for CS to have same accountability as TPS	15
CS Statute requires annual evaluation by state department of education	14
State required annual review by CS authorizer or local school board	19
CS statute requires annual report by CS	22
CS statute mandates revocation for academic failures	10
CS statutes allows discretionary revocation for academic failures	31
CS must describe method for measuring student achievement	32
State Mandated Tests must be used to measure student achievement	32
<b>Governance Provisions</b>	
CS application must include governance plan	33
CS Charter contract must include governance plan	16
CS Governed by local board of education	2
Statutorily mandated members on CS governing board	8

## Similarities and Difference in Funding, Accountability and Governance Provisions Across the 43 Pieces of Charter School Legislation

Review of all charter school statutes across the United States revealed both similarities and differences throughout the country. A noticeable commonality throughout charter school legislation was the presence of certain provisions. Almost every state's charter legislation contained provisions that addressed governance, funding and accountability. Charter school legislation in Iowa, Kansas and Michigan did not contain provisions on funding (IOWA CODE §§256F.1 to 256F.11 (West 2014); KAN. STAT. ANN §§72-1903 to 72-1930 (West 2014); MICH. COMP. LAWS §§380.501 to 380.507 (West 2014)). Every piece of charter legislation studied contained provisions regarding charter school accountability. Only Alaska, Delaware, Maryland and Ohio did not contain provisions on charter school governance.

Among the 43 pieces of charter school legislation, there entailed a breadth of similarities and differences. Certain topics appeared frequently throughout funding, accountability and governance provisions regardless of which state enacted the legislation. Common components related to funding provisions included equality of funding between charter schools and traditional public schools; presence and mechanism for providing facilities funding; ability of charter schools to receive funding from sources external to district, state and federal funding; provision for start-up funding; and the requirement for charter school usage of standard accounting principles when managing funds. Accountability topics that appeared through charter legislation included equality of accountability for charter schools and traditional public schools; state required



evaluation by the state department of education; state required evaluation by the charter school authorizer or the local school board; state required annual report submitted by charter schools; charter revocation for academic failures; mandated description of charter school measurement of student achievement; and charter school participation in state assessment system. Topics common to governance provisions included requirement that charter applications provided a governance plan; charter school agreement included a governance plan; charter schools are governed by their own governing body; governance or oversight by local board of education and statutorily mandate membership on charter school governing boards.

#### Similarities and Differences in Funding Provisions Across the United States' Forty-Three Charter School Statutes

As public schools, charter schools are generally not permitted to charge students for attending the school (FLA. STAT.ANN. §1002.33(9)(d) (West 2014); MD. CODE ANN., Elementary and Secondary Education §9-102(7) (West 2014); MINN. STAT. ANN. §124D.10 8(g) (West 2014); MISS. CODE. ANN. §37-28-43(4) (West 2013)). MO. ANN. STAT. §160.415(11)(2013; NEV. REV. STAT. ANN. §386.550(1)(c) (West 2014); N.H. REV. STAT. ANN. §194B:11(I)(a) (West 2014); N.Y. Education LAW §2854 (McKinney 2014); OKLA. STAT. ANN. tit. 70 §3-136(A)(10) (West 2014); 24 PA. CONST. STAT. ANN. §17-1719-A(5) (West 2014); R.I. GEN. LAWS ANN. §16-77-6.1(a) (West 2014)). While New York and Florida did not permit charter schools to charge tuition, charter schools were permitted to charge fees to the same extent as traditional public schools (FLA. STAT.ANN. §1002.33(9)(d) (West 2014); N.Y. Education LAW § 2854 (McKinney 2014)). Likewise, Illinois permitted its charter

schools to collect reasonable fees from students, even though it asserts that charter schools are tuition free to students (105 ILL. COMP. STAT. ANN. 27A-11(b) (West 2014)).

#### Provision for Funding of Charter Schools Found Directly in the Charter Legislation

There were 40 out of 43 charter school legislations that provided for funding directly in the charter statutes (ALASKA STAT. ANN. §14.03.260 (West 2013); ARIZ.REV.STAT.ANN §15-185 (West 2014); ARK. CODE ANN. §§6-23-102 to 6-23-907 (West 2013); CAL. Education CODE §§47600 – 47664 (West 2014); COLO. REV. STAT §§22-30.5-112.5, 22-30.5-112 (West 2013); CONN. GEN. STAT. ANN. §§10-66ee (West 2014), DEL. CODE ANN. tit. 14 §509 (West 2014); D.C. CODE ANN. §§38-1804.01 (2014); FLA. STAT.ANN. §1002.33(17) (West 2014); GA. CODE ANN. §§ 20-2-2068, 20-2-2068.2 (West 2014); HAW.REV.STAT. §302D28 (West 2014); IDAHO CODE ANN. § 33-5208, 105 ILL. COMP. STAT. ANN. §§5/27A-1 to 5/27A-11 (West 2014); IND. CODE ANN. § 20-24-7-13.5 (West 2013); LA. REV. STAT. ANN. §§3971 to 4002.6 (West 2014); ME. REV. STAT. ANN. tit. 20-A §2413 (West 2014); MD. CODE ANN. Elementary and Secondary Education §9-109(a) (West 2014); MASS. GEN. LAWS. ANN. ch.71, §89(ff) to (bb) (West 2014); MISS. CODE. ANN. §§37-28-1 to 37-28-61 (West 2013); Mississippi Charter Schools Act of 2013, MINN. STAT. ANN. §124D.11(West 2014); MO. ANN. STAT. § 160.415 (West 2013); NEV. REV. STAT. ANN. §386.570 (West 2014); N.H. REV. STAT. ANN. §194B:11 (West 2014); N.J. STAT. ANN. §18A:36A-12 (West 2014); N.M. STAT. ANN. §22-8B-13 (West 2014); N.Y. Education LAW §2856 (McKinney 2014); N.C. GEN. STAT. ANN. §115C218.105

(West 2014); OKLA. STAT. ANN. tit. 70 §3-142 (West 2014); OR. REV. STAT. ANN. §§338.155 (West 2014); 24 PA. CONST. STAT. ANN. §§17-1725-A (West 2014); R.I. GEN. LAWS ANN. §16-77.1 (West 2014); S.C. CODE ANN. §§59-40-140 (2014); TENN. CODE ANN. § 49-13-112 (West 2014); TEX. EDUCATION CODE. ANN. §12.106 (West 2014); UTAH CODE ANN. §§53A-1a-513 (West 2014); VA. CODE. ANN. §§22.1-212.14 (West 2014); WASH. REV. CODE. ANN. §28A.710.220 (West 2014); WIS. STAT. ANN. §§118.40(2r)(e)(2n), 118.40(2r)(e)(2m) (West 2013); WYO. STAT. ANN. §§21-3-314 (West 2014)). Only Iowa, Kansas, and Michigan failed to provide for funding directly in the charter school statute (IOWA CODE §§256F.1 to 256F.11 (West 2014); KAN. STAT. ANN §§72-1903 to 72-1930(West 2014); MICH. COMP. LAWS §§380.501 to 380.507 (West 2014)).

#### Requirement for Equal Funding Between Charter Schools and Traditional Public Schools

Of the 43 pieces of charter legislation, 11 pieces explicitly provided for equal funding of charter schools and traditional public schools. (ALASKA STAT. ANN. §14.03.260(a) (2013 West); ARK CODE ANN. §6-23-501(a)(1) (West 2013); CAL. Education CODE §47630 (West 2014); COLO. REV. STAT. ANN. §22-30.5-112(2)(a)(III)(A) (West 2013); FLA. STAT. ANN. §1002.33(17) (West 2014); GA. CODE ANN. §20-2-2068.1(a) (West 2014); HAW. REV. STAT §302D-28(a) (West 2014); LA. REV. STAT. ANN. §3995(A)(1) (West 2014); MD. CODE ANN., Elementary and Secondary Education §9-109(a) (West 2014); N.C. GEN. STAT. ANN. §115C-218.105(a)(1)(West 2014); UTAH CODE ANN. §53A-1a-513(3)(a)(West 2014)).

Alaska, Arkansas, California, Colorado, Florida, Georgia, Hawaii, Louisiana, Maryland, North Carolina and Utah explicitly provided that charter schools were to be funded the same as traditional public schools (ALASKA STAT. ANN. §14.03.260(a) (2013 West); ARK CODE ANN. §6-23-501(a)(1)(West 2013); CAL. Education CODE §47.630 (West 2014); COLO. REV. STAT. ANN. §22-30.5-112(2)(a)(III)(A) (West 2013)); FLA. STAT. ANN. §1002.33(17) (West 2014); GA. CODE ANN. §20-2-2068.1(a) (West 2014); HAW. REV. STAT. §302D-28(a) (West 2014); LA. REV. STAT. ANN. §3995(A)(1) (West 2014); MD. CODE ANN., Elementary and Secondary Education §9-109(a) (West 2014)); UTAH CODE ANN. §§53A-1a-513(3)(a)(West 2014)). North Carolina’s statutory language regarding equitable funding for charter schools and traditional public schools was not as clear; however, the judiciary determined that the legislative intent was to effectuate equitable funding. *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348, 357 (N.C. Ct. App. 2009). Even though the result of equitable funding between charter schools and traditional public schools was the same amongst the above states, each state proceeded differently in achieving that result.

Alaska required that an annual program budget be provided to charter schools based on the amount generated by students enrolled in the charter school (ALASKA STAT. ANN. §14.03.260(a) (2013 West)). The statute explained that “[T]he ‘amount generated by students enrolled in the charter school’ is to be determined in the same manner as it would be for a student enrolled in another public school in that school district” (ALASKA STAT. ANN. §14.03.260(a) (2013 West)). While Alaska explicitly provided for equal charter school funding, it did allow the local school district to retain

“administrative costs” from charter school funding (ALASKA STAT. ANN. §14.03.260(a) (2013 West)). Permission for the local school district to retain administrative costs would seem to counteract the explicit statement of equal funding. Arkansas enacted language that specifically provided for equal funding (ARK CODE ANN. §6-23-501(a)(1)(West 2013)).

Arkansas charter school statute provided that “[a]n open-enrollment public charter school shall receive funds equal to the amount that a public school would receive...”(ARK CODE ANN. § 6-23-501(a)(1) (West 2013)). Similarly, California provided “...[i]t is the intent of the Legislature that each charter school be provided with operational funding that is equal to the total funding that would be available to a similar school district serving a similar pupil population...” (CAL. Education CODE §47.630(West 2014))

Colorado required that charter schools “...shall receive one hundred percent of the district per pupil revenues for each pupil enrolled in the charter school who is not an on-line pupil...” (COLO. REV. STAT. ANN. §22-30.5-112(2)(a)(III)(A) (West 2013)). Colorado also provided that online students were to receive “...one hundred percent of the district per pupil on-line funding for each on-line pupil enrolled in the charter school” (COLO. REV. STAT. ANN. §22-30.5-112(2)(a)(III)(A) (West 2014)). After explicitly requiring that charter schools receive the same funding as traditional public schools, the legislature allowed the chartering school district to retain a portion of charter school funding for the district’s administrative costs (COLO. REV. STAT. ANN. §22-30.5-112(2)(a)(III)(A) (West 2013)). Specifically, the statute provided that “... the chartering school district may choose to retain the actual amount of the charter school's per pupil

share of the central administrative overhead costs for services actually provided to the charter school, up to five percent of the district per pupil revenues...” (COLO. REV. STAT. ANN. §22-30.5-112(2)(a)(III)(A) (West 2013)). Similarly, Louisiana’s charter legislation provided that the charter school authorizer could retain “...two percent of the total per pupil amount ... that is received by a charter school for administrative overhead costs incurred by the chartering authority...” (LA. REV. STAT. ANN. §3995(A)(4)(a)(i) (West 2014)). While Colorado’s statute explicitly provided for equal funding, it could be disputed that the district’s retention of any charter school funding constitutes inequitable funding (COLO. REV. STAT. ANN. §22-30.5-112(2)(a)(III)(A) (West 2013)).

Florida provided that “[s]tudents enrolled in a charter school, regardless of the sponsorship, shall be funded as if they are in a basic program or a special program, the same as students enrolled in other public schools in the school district”. (§FLA. STAT. ANN. §1002.33(17) (West 2014)).

Georgia provided that charter schools should be treated no less favorably than traditional public schools. Specifically, “[t]he local board and the state board shall treat a conversion charter school...[and] a start-up charter school no less favorably than other local schools within the applicable local system with respect to the provision of funds for instruction, school administration, transportation, food services, and, where feasible, building programs (GA. CODE ANN. §20-2-2068.1(a) (West 2014)).

Hawaii’s legislation provided for the same non-facility funding for traditional public schools (HAW.REV.STAT. §302D-28(a) (West 2014)). The legislature required that “...the non-facility general fund per-pupil funding request for charter school students shall be the same as the general fund per-pupil amount to the department...” (HAW.

REV. STAT. §302D-28(a) (West 2014). The statute went on to distinguish various categories that were to be included and excluded from calculation of general fund per-pupil funding (HAW. REV. STAT. §§302D-28(a) to 302D-28 (b) (West 2014)).

Hawaii's legislature was concerned about equitable funding for non-facility amounts to the extent that they instituted safeguards to secure an extension of equitable funding for non-facility amounts (HAW. REV. STAT. §302D-28(c) (West 2014). Specifically, the statute provided "... to ensure non-facility per-pupil general fund amounts allocated for the department and charter school students are equal on an annualized fiscal year basis, each year the director of finance shall..." followed by a list of specific actions to be taken (HAW. REV. STAT. §302D-28(c) (West 2014).

Maryland's charter schools statute provided for commensurate funding for charter schools and traditional public schools (MD. CODE ANN., Elementary and Secondary Education §9-109(a) (West 2014)). A county board was mandated to "...disburse to a public charter school an amount of county, State, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction" (MD. CODE ANN., Elementary and Secondary Education §9-109(a) (West 2014)).

North Carolina's language regarding equal funding is unclear. The state board of education was required to provide each charter schools with "...[a]n amount equal to the average per pupil allocation for average daily membership from the local school administrative unit allotments in which the charter school is located for each child attending the charter school..." (N.C. GEN. STAT. ANN. §115C-218.105(a)(1) (West 2014). An additional amount of funding was provided for students with disabilities and

limited English proficiency (N.C. GEN. STAT. ANN. §115C-218.105(a)(1)-(3) (West 2014). The fact that charter schools were provided with funding based on an average daily membership for the school districts could be indicative that North Carolina was attempting to equalize funding between charter schools and traditional public schools; however, North Carolina's statutory language did not explicitly provide for equal funding (N.C. GEN. STAT. ANN. §115C-218.105(West 2014). The issue of equitable funding was addressed by North Carolina's appellate court in *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348, 357 (N.C. Ct. App. 2009). The North Carolina appellate court stated that "It is clear to this Court that the General Assembly intended that charter school children have access to the same level of funding as children attending the regular public schools of this State." *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348, 357 (N.C. Ct. App. 2009). Accordingly, the study concluded that North Carolina's statutory language did provide for equitable funding.

Utah provided for equal funding for charter schools and traditional public schools; however, there were some exceptions (UTAH CODE ANN. §§53A-1a-513(3)(a)(West 2014)). Section 53A-1a-513 provided that "...a charter school shall receive state funds, as applicable on the same basis as a school district receives funds" (UTAH CODE ANN. §53A-1a-513(3)(a) (West 2014)). Specific statutory formulas were provided for determining charter school funding during the 2013-2014 and 2014-2015 school years (UTAH CODE ANN. §§53A-1a-513(3)(a) to 53A-1a-513(3)(b)(West 2014)). Charter school funding under Utah's Minimum School Program Act also provided specific values to be used in determining charter school student funding (UTAH CODE ANN. §§53A-



1a-513(3)(a) and 53A-1a-513(3)(c)(West 2014)).

Whether each of these state provided for equal funding through a mandate for the same manner of determination; requirement for one hundred percent funding; determination of commensurate funding, prohibition of less favorable treatment; or language specifically enunciating a requirement for same funding, the statement of equitable funding was unequivocal. While states such as Arkansas, California, Colorado, Florida, Georgia, Hawaii and Maryland were explicit in their intent for equal funding, others presented some ambiguity.

The District of Columbia did not explicitly provide that charter school funding was to be the same as that of traditional public school; however, when defining funding parameters, traditional public schools were mentioned simultaneously with charter schools. (D.C. CODE ANN. §38-1804.01 (West 2014)). Section 38-1804.01(b)(2) provided that “...the amount of the annual payment... shall be calculated by multiplying a uniform dollar amount... by: (A) *The number of students calculated under § 38-1804.02 that are enrolled at District of Columbia public schools, ... or (B) The number of students calculated under § 38-1804.02 that are enrolled at each public charter school* [emphasis added]...” (D.C. CODE ANN. §38-1804.01(b)(2) (West 2014)). When discussing adjustment of school funding, the statute provided that the funding formula could be adjusted “...to increase or decrease the amount of the annual payment *to the District of Columbia public schools or each public charter school* [emphasis added] based on a calculation of: (i) The number of students served by such schools in certain grade levels; and (ii) The cost of educating students at such certain grade levels”. (D.C. CODE ANN. §38-1804.01(b)(3)(A) (West 2014)). Similarly, Section 38-

1804.01(b)(3)(B) allowed for increase of “...the amount of such payment [annual payment] if a *District of Columbia public school or a public charter school* [emphasis added] serves a high number of students with (i) With special needs; (ii) Who do not meet minimum literacy standards; or (iii) To whom the school provides room and board in a residential setting. (D.C. CODE ANN. §38-1804.01(b)(3)(B) (West 2014)). The concurrent discussion of charter schools and traditional public schools could indicate intent for charter schools and traditional schools to be treated the same for funding purposes. However, since the statute was absent of explicit language providing for equal funding, this study did not find that the District of Columbia funded traditional public schools and charter schools the same.

Maine’s charter school funding for career and technical education programming was the same as traditional public schools (ME. REV. STAT. ANN. tit. 20-A §2412(5)(H) (West 2014). Although Maine’s charter legislation did not explicitly provide for equal funding outside of career and technical education programming, it did indicate that student funding followed the students to charter schools (ME. REV. STAT. ANN. tit. 20-A § 2413(2) (West 2014). Language requiring funding to follow the student would seem to intimate somewhat equitable funding; however, because the statutory language was not explicit, equitable funding could not be presumed.

New Jersey’s charter school funding statute provided charter schools 90% of equalization aid and tax funding but a proportionate share of state categorical aid (N.J. STAT. ANN. §18A:36A-12(b) (West 2014)). While the statute was silent regarding the existence or nonexistence of equal funding between charter schools and traditional public school, the mandate that charter schools receive less than 100% of a specified amount

seems an implicit statement of inequitable funding (N.J. STAT. ANN. §18A:36A-12(b) (West 2014)). However, the statute is also silent regarding the amount that traditional public schools received of equalization and tax funding. Accordingly, without definitive information detailing the same portions of funding received by traditional public schools, a conclusive finding of inequity is indeterminable.

New Mexico set a basement on charter school funding (N.M. STAT. ANN. §22-8B-13(A) (West 2014)). New Mexico charter schools were required to be funded at a minimum of 98% of the school generated program costs. Up to two percent of the school generated program costs could be retained, by the district or charter schools division, for administrative support of charter schools (N.M. STAT. ANN. §22-8B-13(A) (West 2014)).

Oklahoma's charter legislation did not specifically provide whether funding allocation was the same for charter schools and traditional public schools (OKLA. STAT. ANN. tit. 70 §§3-142(C) to 3-142 (D) (West 2014)). However, it did explicitly provide that school districts could retain up to five percent of state aid allocation as a fee for administrative services rendered to charter schools. It reasonably follows that even if charter schools and traditional public schools received the exact same funding, statutory permission to retain up to five percent of one school's funding would have the net result of unequal funding (OKLA. STAT. ANN. tit. 70 §§3-142(C) to 3-142(D) (West 2014)).

Rhode Island's charter school legislation did not explicitly quantify charter school funding as compared to traditional public school funding (R.I. GEN. LAWS ANN. §§16-77.1-2(a) to 16-77.1-2(b)(West 2014)). The statute did provide that charter school funding was based on the district's average student cost, which could indicate legislative

intent for similar funding for charter schools and traditional public schools (R.I. GEN. LAWS ANN. §16-77.1-2(a)(West 2014). Specifically, section 16-77.1.2 provided that “[o]perating costs of a charter public school shall be the total of the per pupil payments for each student attending the charter public school. The per pupil payment for each student shall be determined based on the per pupil cost for the district of residence” (R.I. GEN. LAWS ANN. §16-77.1-2(a)(West 2014)). There was also indication of inequitable funding in that school districts receive an extra five percent in funding to assist school districts with the indirect district costs associated with a student attending a charter school (R.I. GEN. LAWS ANN. §§16-77.1-2(a) to 16-77.1-2(b) (West 2014)).

While only 11 states had charter school legislation that specifically required some form of equitable funding between charter schools and traditional public schools, the language in other states’ statutes could have been interpreted as manifesting intent to effectuate equivalent funding. Interpretation of legislative intent is the purview of the judiciary. Accordingly, data was only reported for legislation that specifically identified requirements for equivalent funding.

#### Facilities funding for charter schools

Facilities funding can encompass construction costs, space rental, purchase of supplies, building renovation, building repair, purchase of real property, equipment and furnishings (ARIZ. REV. STAT. ANN §15-188(A) (West 2014); D.C. CODE ANN. §38-1833.02 (West 2014); GA. CODE ANN. §20-2-2068.2(c) (West 2014). Eighteen pieces of funding legislation addressed facilities funding. Arizona, Arkansas, California, District of Columbia, Georgia, Hawaii, Idaho, Indiana, Minnesota, Nevada, New Mexico,

New York, Oklahoma, Rhode Island, South Carolina, Tennessee, Utah and Washington each had provisions for facilities funding within the charter school legislation (ARIZ. REV. STAT. ANN. §15-188(A) (West 2014); ARK. CODE ANN. § 6-23-802 (West 2013); CAL. Education CODE §47614.5 (West 2014); D.C. CODE ANN. § 38-1833.02 (West 2014); GA. CODE ANN. § 20-2-2068.2 (West 2014); HAW. REV. STAT. §302D-29.5(a) (West 2014); IDAHO CODE ANN. §33-5208(5) (West 2014); IND. CODE ANN. §§ 20-24-12-4 to 20-24-12-8 (West 2013); MINN. STAT. ANN. §124D.11 (West 2014); NEV. REV. STAT. ANN. §386.5515 (West 2014); N.M. STAT. ANN. §22-8B-4(o) to 22-8B-17.1(West 2014); N.Y. Education LAW § 2856 (McKinney 2014); OKLA. STAT. ANN. tit. 70 §3-142(C)(D) (West 2014); R.I. GEN. LAWS ANN. §16-77.1-5 (West 2014); S.C. CODE ANN. §59-40-175 (2014); TENN. CODE ANN. §§ 49-13-101 to 43-13-136 (West 2014); UTAH CODE ANN. §§53A-1a-513(4)(e)(West 2014); WASH. REV. CODE. ANN. §28A.710.230(West 2014)).

Facilities funding encompassed charter school assistance with facilities rent, leases, construction and remodeling (ARIZ. REV. STAT. ANN §15-188(A) (West 2014); ARK. CODE ANN. §6-23-802 (West 2013); CAL. Education CODE §47614.5 (West 2014)); D.C. CODE ANN. §38-1833.02 (West 2014); GA. CODE ANN. §20-2-2068.2 (West 2014)). While many statutes provided funding for facilities, there were diverse methods for providing that funding (COLO. REV. STAT §§22-30.5-112(2)(a)(III)(A) to 22-30.5-704 (West 2013)). Some legislation provided for facilities funding through grant programs (ARK. CODE ANN. § 6-23-802 (West 2013); CAL. Education CODE §47614.5 (West 2014)). Grant programs could be based upon applicant eligibility (NEV. REV. STAT. ANN.§ 386.515(1) (West 2014)); academic performance (NEV. REV.

STAT. ANN. § 386.515(1) (West 2014)); or financial need (GA. CODE ANN. § 20-2-2068.2 (West 2014)). Facilities funding could also be provided in the form of loans (ARK. CODE ANN. § 6-23-901 (West 2013); D.C. CODE ANN. § 38-1833.02 (West 2014); S.C. CODE ANN. § 59-40-175 (2014); WASH. REV. CODE. ANN. § 28A.710.230 (West 2014)).

Legislation such as that found in Arkansas, District of Columbia and Ohio provided facilities loans. Arkansas provided the Open-Enrollment Public Charter School Facilities Loan Fund to “...provide funding for safe and secure facilities in which to conduct educational services and administrative activities for open-enrollment public charter schools.” (ARK. CODE ANN. § 6-23-901 (West 2013)). The District of Columbia allowed eligible charter schools to receive loans of up to two million dollars for construction, purchase, renovation and maintenance of charter school facilities D.C. CODE ANN. §§ 38-1833.02(c) to 38-1833.02(d) (West 2014). Ohio permitted charter schools to borrow money in order to procure facilities (OHIO REV. CODE ANN. § 3314.08(G)(1)(b) (West 2014)). Georgia facilities funding was precipitated on need based funding (GA. CODE ANN. § 20-2-2068.2 (West 2014)).

Hawaii allowed the charter school commission to request that the director of finance provide charter school facilities funding as part of the charter school commissions’ annual budget (HAW. REV. STAT. § 302D-29.5(a) (West 2014); see also HAW. REV. STAT. § 302D-28(b) (West 2014)) but did not specifically allot facilities revenues as part of the charter school funding matrix.

Idaho’s charter school legislation provided for charter school funding based on a percentage of statewide average facilities funds (IDAHO CODE ANN. § 33-5208(5)

(West 2014)). Facilities funding fluctuated between 20% and 50% of an average statewide value but at no point was it allowed to “...exceed the average amount of funding received by each school district...” (IDAHO CODE ANN. §33-5208(5) (West 2014)).

Indiana provided a facilities assistance fund, which was available to assist with first semester costs; repay charter school advances and loans; and match federal grants (IND. CODE ANN. § 20-24-12-6 (West 2013)).

Building lease aid was available to Minnesota charter schools. The commissioner determined approval of building lease funding by considering (1) “...the reasonableness of price based on current market values; (2) the extent to which the lease conforms to applicable state laws and rules; and (3) the appropriateness of the proposed lease in context of the space needs and financial circumstances of the charter school.” (MINN. STAT. ANN. §124D.11 (4) (West 2014)).

Nevada allowed charter schools to apply for facilities funding as long as they had met a list of criteria, which included operating for a minimum of five consecutive years in Nevada (NEV. REV. STAT. ANN. §386.515(1) (West 2014)). Other criteria included being in good financial standing; five consecutive years of audits without major notations; good academic performance for the majority of its years of operation; and twelfth grade student satisfaction of specific state board criteria (NEV. REV. STAT. ANN. §386.515(d) (West 2014)). Nevada also provided for charter school usage of school districts’ facilities (NEV. REV. STAT. ANN. §386.560(2) (West 2014)). Section 386.560 allowed charter schools to use any public facility within its school district (NEV. REV. STAT. ANN. § 386.560(2) (West 2014)). A charter school was also permitted to

use school buildings owned by its school district during non-school hours as long as the charter school had the school district's approval (NEV. REV. STAT. ANN. §386.560(2) (West 2014)).

Oklahoma had a "Charter Schools Incentive Fund" to provide assistance to charter schools for "...costs associated with renovating or remodeling existing buildings and structures for use by a charter school." (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014)).

Rhode Island provided reimbursement for school housing costs. (R.I. GEN. LAWS ANN. §16-77.1-5(West 2014)). Non district sponsored charter schools were limited to 30% reimbursement for school housing if the charter school established a demonstrated need (R.I. GEN. LAWS ANN. §16-77.1-5 (West 2014)). In Washington, charter schools were eligible for state matching funds for facilities (WASH. REV. CODE. ANN. §28A.710.230(1) (West 2014)). While some charter school legislation did not explicitly provide facilities funding, there was direction on addressing charter schools' facilities needs.

Maine provided rules and parameters for charter school procurement of facilities but fell short of addressing provision of funding for facilities (ME. REV. STAT. ANN. tit. 20-A § 2414 (West 2014)). Similarly, Maryland did not specifically provide facilities funding for charter schools; however, it did make provisions for charter school facilities (MD. CODE ANN., Elementary and Secondary Education §9-111 (West 2014). Section 9-111, required local school boards to make unused school buildings available for charter school usage (MD. CODE ANN., Elementary and Secondary Education §9-111 (West 2014)).



Mississippi did not provide specific funding for charter school facilities but it outlined some charter school rights with respect to obtaining facilities (MISS. CODE. ANN. §37-28-61 (West 2013)). For example, charter school legislation provided charter schools with the

“...right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or unused portions of a public school facility or property in the school district in which the charter school is located...” (MISS. CODE. ANN. §37-28-61(1) (West 2013)).

Section 37-28-61 also allowed charter schools to obtain facilities at or below fair market value from state institutions of higher learning and businesses (MISS. CODE. ANN. §37-28-61(2) (West 2013)). Likewise, Florida did not provide for facilities funding but it did outline some charter school rights with regarding to available school district facilities.

Florida provided that “...[i]f a district school board facility or property is available because it is surplus, marked for disposal, or otherwise unused, it shall be provided for a charter school's use on the same basis as it is made available to other public schools in the district” (FLA. STAT. ANN. §1002.33(18)(e) (West 2014)). Louisiana had a provision similar to Florida.

Louisiana provided that “[l]ocal school boards shall make available to chartering groups any vacant school facilities or any facility slated to be vacant for lease or purchase up to fair market value” (LA. REV. STAT. ANN. §3982(B)(1) (West 2014)).

Conversion charter schools were entitled to facility usage within the existing school subject to their proportionate share of the school board’s indebtedness on the facility. (LA. REV. STAT. ANN. §3982(B)(1)(West 2014)).

While Missouri did not explicitly provide for facilities funding, it did allow charter schools and school districts to incur debt so that charter school facilities could be financed (MO. ANN. STAT. §160.415(12) (West 2013)). Likewise, North Carolina did not specifically provide facilities funding; but it did provide that funds allocated by the State Board of Education could be used to secure charter school facilities (N.C. GEN. STAT. ANN. §115C-218.105(b) (West 2014)).

#### Similarities and Differences Among Charter School Legislation Concerning Charter School Funding Beyond What is Statutorily Provided Through Local, State and Federal Government

Charter schools provided various avenues for funding. Funding avenues could include revenues from the local school district, state government and federal government. Charter school funding matrices could extend from a direct numerical value (WIS. STAT. ANN. §118.40(2r)(e) (West 2013) to extensive funding formulas (COLO. REV. STAT. §§22-30.5-112(2)(a)(III)(A) to 22-30.5-704 (West 2013)). Some charter statutes explicitly permitted charter schools to supplement statutorily allocated funding through alternative funding sources such as private entities and eligible governmental programs. Seventeen charter school legislations explicitly allowed charter schools to seek revenues outside statutorily allocated funding. These states included Arizona, District of Columbia, Illinois, Indiana, Louisiana, Maine, Massachusetts, Mississippi, Missouri, Nevada, New York, Ohio, Oklahoma, Pennsylvania, South Carolina, Tennessee and Virginia (ARIZ. REV. STAT. ANN. §15-185(D) (West 2014); D.C. CODE ANN. §§ 38-1800.04(6), 38-1805.72(a) (2014); 105 ILL. COMP. STAT. ANN. §5/27A-11(d)(West 2014); IND. CODE ANN. § 20-24-7-5 (West 2013); LA. REV. STAT. ANN. §3995(D)

(West 2014); ME. REV. STAT. ANN. tit. 20-A, §§2412(2)(D), 2413(2)(H) (West 2014); MASS. GEN. LAWS. ANN. ch.71, §89(k)(7) (West 2014); MISS. CODE. ANN. §37-28-59(2) (West 2013); MO. ANN. STAT. §160.415(14) (West 2013); NEV. REV. STAT. ANN. §386.5570(7) (West 2014); N.Y. Education LAW § 2856(3) (McKinney 2014); OHIO REV. CODE ANN. §§3314.081 to (West 2014); OKLA. STAT. ANN. tit. 70 §3-142(C)(D) (West 2014); 24 PA. CONST. STAT. ANN. §17-1725-A(d) (West 2014); S.C. CODE ANN. §59-40-140(G) (2014); TENN. CODE ANN. § 49-13-112(e) (West 2014); VA. CODE. ANN. §22.1-212.14(G) (West 2014). Some of the different ways that charter statutes permitted schools to seek outside revenues included gifts, donations, grants, devises and bequests (105 ILL. COMP. STAT. ANN. 27A-11(d) (West 2014)); ME. REV. STAT. ANN. tit. 20-A §2413(2)(H) (West 2014); N.M. STAT. ANN. §22-8B-4(0) (West 2014)). Although all seventeen of the statutes permitted receipt of funding from private and alternative sources, each legislature drafted slight language nuances, which distinguished provisions from state to state.

Illinois and Maine provided that charter schools were authorized to “...accept gifts, donations, or grants of any kind...” as long as the conditions for the funding were not contrary to law (105 ILL. COMP. STAT. ANN. 27A-11(d) (West 2014); ME. REV. STAT. ANN. tit. 20-A § 2413(2)(H) (West 2014). Indiana permitted charter schools to accept “independent financial grants and funds from public or private sources other than the department” (IND. CODE ANN. § 20-24-7-5(a) (West 2013)). Maine allowed a charter school to “...receive gifts and grants from private sources in any manner that is available to an administrative unit” (ME. REV. STAT. ANN. tit. 20-A § 2413(2)(D) (West 2014)).

Massachusetts did not specifically state that charter schools could receive revenue from outside sources but it did provide that charter schools could “...solicit and accept grants or gifts for school purposes...” (MASS. GEN. LAWS. ch. 71, §89(k)(7) (West 2014)). Minnesota provided that charter schools were “...eligible to receive other aids, grants, and revenue...as though it were a district”. (MINN. STAT. ANN. §124D.11 (6)(a) (West 2014)). Minnesota further provided that a “...charter school may receive money from any source for capital facilities needs.” (MINN. STAT. ANN. §124D.11(6) (West 2014)).

Mississippi provided that charter schools could “...accept gifts, donations and grants of any kind made to the charter school and may expend or use such gifts, donations and grants in accordance with the conditions prescribed by donor...” as long as the conditions were not contrary to law (MISS. CODE. ANN. §37-28-59(2) (West 2013))

Missouri authorized charter schools to “...accept grants, gifts or donations of any kind and to expend or use such grants, gifts or donations” (MO. ANN. STAT. § 160.415(14) (West 2013)). However, charter schools were restricted from receiving funds that were subject to illegal provisions (MO. ANN. STAT. §160.415(14) (West 2013)).

Nevada allowed charter schools to “...solicit and accept donations, money, grants, property, loans, personal services or other assistance for purposes relating to education from members of the general public, corporations or agencies (NEV. REV. STAT. ANN. § 386.560(2) (West 2014)). Louisiana’s provision was similarly broad in its allowance that charter schools could “...solicit, accept, and administer donations or any other financial assistance in the form of money, grants, property, loans, or personal services for educational purposes from any public or private person, corporation, or

agency and comply with rules and regulations governing grants from the federal government or from any other person or agency...” that wasn’t contrary to law. (LA. REV. STAT. ANN. §§3995(D) (West 2014). Likewise, Ohio charter schools could receive private funding. Ohio allowed the “...governing authority of a community school to...apply to any private entity for additional funds” (OHIO REV. CODE ANN. §3314.082 (West2014)).

New Mexico’s provision was different in that it provided that charter school could reject funds. New Mexico permitted charter schools to “...accept or reject any charitable gift, grant, devise or bequest; provided that no such gift, grant, devise or bequest shall be accepted if subject to any condition contrary to law or to the terms of the charter” (N.M. STAT. ANN. §22-8B-4(0) (West 2014)).

Pennsylvania allowed charter schools to utilize any “...bequest, grant, endowment, gift or donation of any property, real or personal and/or mixed, which shall be made to the charter school for any of the purposes of this article” (24 PA. CONST. STAT. ANN. §17-1725-A(d) ( West 2014)).

#### Similarities and Differences Among Charter School Provision for Start- Up Funding

Start-up funding provides money to charter schools for the initial set up and operation of charter schools. Different mechanisms provided for start-up funding. There were eight charter school legislations that provided some form of charter funding to assist charter schools with costs associated with starting up charter schools.

(ARIZ.REV.STAT.ANN §15-188 (West 2014); 105 ILL. COMP. STAT. ANN. 27A-11.5 (West 2014); LA. REV. STAT. ANN. §4001 (West 2014); MINN. STAT. ANN.

§124D.11 (1) (West 2014); N.M. STAT. ANN. §22-8B-14(A) (West 2014); OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014); R.I. GEN. LAWS ANN. §16-77.1-4(West 2014); 24 PA. CONST. STAT. ANN. §17-1731-A(a)(West 2014); UTAH CODE ANN. §§53A-1a-513(8)(a)(West 2014)). Arizona, Illinois, Louisiana, New Mexico, Oklahoma, Pennsylvania, Rhode Island and Utah were among the states that explicitly provided some form of start-up funding for charter schools (ARIZ. REV. STAT. ANN §15-188 (West 2014); 105 ILL. COMP. STAT. ANN. 27A-11.5 (West 2014); MINN. STAT. ANN. §124D.11(1) (West 2014); N.M. STAT. ANN. §22-8B-14(A) (West 2014); OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014); R.I. GEN. LAWS ANN. §16-77.1-4(West 2014); 24 PA. CONST. STAT. ANN. §17-1731-A(a)( West 2014); UTAH CODE ANN. §§53A-1a-513(8)(a)(West 2014). Start-up funding was most commonly found in the form of grant and loan programs but was also simply identified as aid to charter schools ((ARIZ.REV.STAT.ANN §15-188 (West 2014); (105 ILL. COMP. STAT. ANN. 27A-11.5 (West 2014); (N.M. STAT. ANN. §22-8B-14(A) (West 2014); (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014); (R.I. GEN. LAWS ANN. §16-77.1-4(West 2014); (24 PA. CONST. STAT. ANN. §17-1731-A(a) (West 2014)).

Arizona established a charter school stimulus fund, which served to provide financial support to charter schools for start-up costs and facilities renovation in the form of grants (ARIZ.REV.STAT.ANN §15-188(A) (West 2014)). Qualifying charter school applicants could receive an initial grant of up to one hundred thousand dollars during or preceding the first year of its operation (ARIZ. REV. STAT. ANN §15-188(B)(1) (West 2014)). Charter school applicants that received initial grants could apply for an additional grant of up to one hundred thousand dollars (ARIZ. REV. STAT. ANN §15-

188(B)(2) (West 2014)). Failure of a charter schools to begin operating within eighteen months of grant receipt, necessitated the charter school repaying all grant monies at a rate of ten percent annually (ARIZ. REV. STAT. ANN §15-188(B) (West 2014)).

Illinois provided transition impact aid to local school districts that approved new charter schools or lost funding due to approval of new charter schools (105 ILL. COMP. STAT. ANN. 27A-11.5(1) (West 2014)). Transition aid was provided to local school districts on a sliding scale starting at 90% of per capita funding that was paid to charter schools, during the first year of charter school operation, and decreasing to 65% and 35% during the second and third years of charter school operation (105 ILL. COMP. STAT. ANN. 27A-11.5(1) (West 2014)). Illinois State Board of Education also provided up to \$250 per charter school student for “...start-up costs of acquiring educational materials and supplies, textbooks, electronic textbooks and the technological equipment necessary to gain access to and use electronic textbooks, furniture, and other equipment needed during their initial term” (105 ILL. COMP. STAT. ANN. 27A-11.5(2) (West 2014)).

Louisiana provided a Charter School Start-Up Loan program, which provided no interest loans to assist charter schools with “...initial start-up funding and for funding the administrative and legal cost associated with the charter school program”. (LA. REV. STAT. ANN. §4001(A) (West 2014)). Loans were only available to select categories of charter schools in amounts up to one hundred thousand dollars (LA. REV. STAT. ANN. §4001(c)(2)(a) (West 2014)).

New Mexico provided for a charter school stimulus fund to “...provide financial support to charter schools...for initial start-up costs and initial costs associated with

renovating or remodeling existing building structures (N.M. STAT. ANN. §22-8B-14(A) (West 2014)).

Oklahoma created the Charter Schools Incentive Fund to provide funding costs associated with charter school start-up and facilities renovations (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014)). Allocation could be on a per student basis to provide matching funds under the No Child Left Behind Act (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014)).

Pennsylvania allocated grants for charter school planning and start-up funding (24 PA. CONST. STAT. ANN. §17-1731-A (a) (West 2014)). Grant amounts varied depending on the size and scope of the charter school's plans ( 24 PA. CONST. STAT. ANN. §17-1731-A (a) (West 2014)).

Rhode Island established a system of free loans to provide assistance to charter schools for start-up costs (R.I. GEN. LAWS ANN. §16-77.1-4(West 2014)). A charter school could receive up to one hundred fifty thousand dollars, which would be repaid in equal monthly installments over a maximum of five years (R.I. GEN. LAWS ANN. §16-77.1-4 (West 2014)).

Oklahoma's Charter Schools Incentive Fund was administered by the state department of education to provide financial support to charters schools for start-up costs (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014)). This was a continuing fund that was not limited to fiscal year limitations (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014)). The Charter Schools Incentive Fund consists of "...all monies appropriated by the Legislature, gifts, grants, devises and donations from any public or private source" (OKLA. STAT. ANN. tit. 70 §3-144(A) (West 2014)).



Pennsylvania provided grants to statutorily eligible applicants (24 PA. CONST. STAT. ANN. §17-1731-A(a) (West 2014)).

#### Requirement That Charter Schools Use Standardized Fiscal Management Principles

Another issue commonly weaved throughout charter school funding legislation is fiscal management of charter school funds. Thirty-two of the forty-three charter school legislations required utilization of some form of generally accepted accounting principles in the management of charter schools' funds. Specific terminology differed and forms of enforcement varied; however, the concept that appropriate fiscal management was requisite to maintaining a charter agreement was explicitly evident in much of charter school legislation. These states included Arizona, Colorado, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming (ARIZ. REV. STAT. ANN. §15-183(E)(6) (West 2014); COLO. REV. STAT §22-30.5-511(3)(d) (West 2013); D.C. CODE ANN. §§ 38-1802.13(b)(1) (2014); FLA. STAT.ANN. §1002.33(9)(g)(b), 1002.39(8)(a)(2) (West 2014)); GA. CODE ANN. §20-2-2068(2)(d) (West 2014); HAW. REV. STAT. §302D-18(g)(3) (West 2014); 105 ILL. COMP. STAT. ANN. §5/27A-9(c)(2) (West 2014); IND. CODE ANN. §§ 20-24-5(2), 20-39-1-1 (West 2013); IOWA CODE §256F.8(1)(c) (West 2014); LA. REV. STAT. ANN. §3992(c)(3)(West 2014); ME. REV. STAT. ANN. tit. 20-A, §2411(6)(A)(3) (West 2014); MICH. COMP. LAWS §380.507(4)(c) (West 2014); MINN. STAT. ANN. §124D.10 (West 2014); MISS.

CODE. ANN. §37-28-33(7)(b)(West 2013); MO. ANN. STAT. §160.4051(10) (West 2013); NEV. REV. STAT. ANN. §386.535(1)(a)(2) (West 2014); N.H. REV. STAT. ANN. §194B:16(II)(b) (West 2014); N.M. STAT. ANN. §22-8B-12(K)(2) (West 2014); N.Y. Education LAW §§ 2855(1)(c), 2854(2)(c) (McKinney 2014); N.C. GEN. STAT. ANN. §115C-218.95(a)(1) (West 2014); OHIO REV. CODE ANN. §314.07(B)(1)(b) (West 2014); OKLA. STAT. ANN. tit. 70 §3-136(A)(6) (West 2014); OR. REV. STAT. ANN. §338.095 (West 2014)); 24 PA. CONST. STAT. ANN. §17-1729(A)(a)(3) (West 2014); S.C. CODE ANN. §§59-40-110(C)(3) (2014); TENN. CODE ANN. §§ 49-13-111(m), 49-13-122(c)(2) (West 2014); TEX. EDUCATION CODE. ANN. §12.115(a)(2) (West 2014); UTAH CODE ANN. §53A-1a-510(1)(b) (West 2014); VA. CODE. ANN. §22.1-212.12(B)(2) (West 2014); WASH. REV. CODE. ANN. §§28A.710.040(2)(e), 28A710.200(1)(c) (West 2014); WIS. STAT. ANN. §118.40(5)(c) (West 2013)); WYO. STAT. ANN.§21-3-309(c)(iii) (West 2014)). The requirement for certain levels of fiscal management was expressed through threat of revocation as well as mandatory provisions in charter applications and agreements.

Specific levels of fiscal management were frequently maintained through the threat of charter revocation. Hawaii, Illinois, Maine, Minnesota, Missouri, New Mexico and North Carolina permitted charter revocation in situations where a charter school failed "...to meet generally accepted standards of fiscal management..." (HAW. REV. STAT §302D-18(g)(3) (West 2014); 105 ILL. COMP. STAT. ANN. 27A-9(c)(3) (West 2014); ME. REV. STAT. ANN. tit. 20-A §2411(6)(A)(2) (West 2014)); MINN. STAT. ANN. §124D.11 (1) (West 2014); MO. ANN. STAT. § 160.405(8)(1)(c) (West 2013); N.H. REV. STAT. ANN. §194B:16(II)(b) (West 2014); N.M. STAT. ANN. §22-8B-

12(K)(3) (West 2014); N.C. GEN. STAT. ANN. §115C-218.95(a)(2) (West 2014); 24 PA. CONST. STAT. ANN. §17-1729-A(3) (West 2014)). Iowa and Michigan allowed for charter revocation when a charter school failed to “...meet generally accepted public sector accounting principles” (IOWA CODE §256F.8(1)(c) (West 2014); MICH. COMP. LAWS §380.507(4)(a) (West 2014)).

Mississippi required charter schools to “...adhere to generally accepted accounting principles...” (MISS. CODE. ANN. §37-28-57(1) (West 2013) and mandated revocation or nonrenewal when a charter schools failed to “...meet generally accepted standards of fiscal management...” (MISS. CODE. ANN. §37-28-33(7)(c) (West 2013)). Florida did not mandate revocation but did permit revocation for “...[f]ailure to meet generally accepted standards of fiscal management”. (FLA. STAT. ANN. §1002.33(8)(a)(2) (West 2014). Similarly, Nevada allowed for optional revocation when a charter school failed “...to comply with generally accepted standards of fiscal management...” (NEV. REV. STAT. ANN. § 386.535(1)(a)(2) (West 2014)). Both Iowa and Michigan allowed for charter revocation when a charter school failed to “...meet generally accepted public sector accounting principles” (IOWA CODE §256F.8(1)(c) (West 2014); MICH. COMP. LAWS §380.507(4)(a) (West 2014)). Louisiana allowed for revocation when a school “[f]ailed to meet generally accepted accounting standards of fiscal management” (LA. REV. STAT. ANN. §3992(C)(3) (West 2014)).

Some legislation mandated charter school accounting practices to mirror those of traditional public schools. Idaho required charter schools to comply with the financial reporting requirements the same as traditional public schools (IDAHO CODE ANN. §33-5210(3)(West 2014)). Minnesota required that charter school financial audits be

conducted to the same extent as traditional public schools and with “...generally accepted governmental auditing standards...” (MINN. STAT. ANN. §124D.10 (8)(j) (West 2014)).

There was charter school legislation that required charter schools to adhere to fiscal management practices commensurate with a statewide accounting system. Indiana required charter schools to “...adopt and fully and accurately implement a single, unified accounting system as prescribed by the state board and the state board of accounts” (IND. CODE ANN. §§20-39-1-1; §20-24-8-5 (West 2013)). Its revocation statute allowed for revocation when a charter school “...failed to meet generally accepted fiscal management and government accounting principles “(IND. CODE ANN. §20-24-9-4 (4) (West 2013)). Just as Indiana required charter schools to adhere to a unified statewide accounting system so did Oklahoma. Oklahoma’s charter schools were required to “...use the Oklahoma Cost Accounting System to report financial transactions to the sponsoring school district (OKLA. STAT. ANN. tit. 70 §3-136(6) (West 2014)). A charter could be terminated for “...failure to meet the standards of fiscal management...” (OKLA. STAT. ANN. tit. 70 §3-137(C) (West 2014)). Missouri compelled charter schools to have procedures that followed the Missouri Financial Accountability Manual (MO. ANN. STAT. §160.405(1)(10) (West 2013)). Oregon’s charter schools were obligated to comply with the “...requirements of the uniform budget and accounting system...” (OR. REV. STAT. ANN. §338.095(1)(b)(West 2014)).

Ohio provided that charter school governing authorities must “...comply with the standards for financial reporting adopted under division (B)(2) of section 3301.07 of the Revised Code (OHIO REV. CODE ANN. §3314.042 (West 2014)). Similarly, Florida

provided that charter schools had to adhere to a specifically identified statewide accounting system (FLA. STAT. ANN. §1002.33(9)(g)(1) (West 2014). Charter schools had the option of mandatory compliance with the Financial and Program Cost Accounting and Reporting for Florida Schools or “...generally accepted accounting standards for not-for-profit organizations...”(FLA. STAT. ANN. §1002.33(9)(g)(1) (West 2014).

Table 3 summarizes the most prominent statutory language requiring the usage of generally accepted accounting principles. The statutory language is then paired with states that invoke the language in their charter school legislation. Table 4 disaggregates states based on statutory language providing for charter termination based on inappropriate fiscal management. States are divided by discretionary, mandatory, and absence of revocation language.

**Table 3. Statutory Language Used by States to Identify the Fiscal Management Standard to be Applied in Charter School Operation**

<b>Key Language/Terms</b>	<b>States That Use It</b>
Generally accepted standards of fiscal management	Colorado, Florida, Georgia, Hawaii, Illinois, Maine, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, Oklahoma, Pennsylvania, Utah, Virginia, Wisconsin, Wyoming, Ohio
Generally accepted public sector accounting principles	Iowa, Michigan
Generally accepted accounting principles	District of Columbia, Mississippi, South Carolina, Tennessee, Washington
Generally accepted governmental auditing standards	Minnesota
Adherence to statewide accounting system	Florida, Indiana, Ohio, Oklahoma, Missouri, Oregon
Commonly accepted accounting principles	Arizona
Generally accepted accounting standards of fiscal management	Louisiana, Texas
Generally accepted accounting and audit standards	New York

**Table 4. State Statutory Language Providing for Revocation When a Charter School Fails to use Specified Standards of Fiscal Management**

Appropriate Fiscal Management	
Key Language/Terms	States That Use It
Discretionary revocation language such as a charter <i>may</i> be revoked for failure to use statutorily identified standards of fiscal management.	Colorado, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Louisiana, Maine, Michigan, Minnesota, Missouri, Nevada, New Hampshire, New Mexico, North Carolina, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin, Wyoming
Mandatory revocation language such as a charter <i>shall</i> be revoked for failure to use statutorily identified standards of fiscal management.	DC, Mississippi, South Carolina,
No specific revocation provision for improper fiscal management.	Arizona

Similarities and Differences in Accountability Provisions Across the United States’  
Forty-Three pieces of Charter School Legislation.

Introduction

All charter school legislation required some form of accountability from charter schools (ALASKA STAT. ANN. §14.03.260(a) (West 2014); ARIZ. REV. STAT. ANN. §§15-181 to 15-189.04 (West 2014); ARK. CODE ANN. §§6-23-102 to 6-23-907 (West 2013); CAL. Education CODE §§47600 – 47664 (West 2014); COLO. REV. STAT §§22-30.5-112(2)(a)(III)(A) to 22-30.5-704 (West 2013); CONN. GEN. STAT. ANN. §§10-66aa to 10-66nn (West 2014); DEL. CODE ANN. tit. 14 §§501 – 518 (West 2014); D.C. CODE ANN. §§38-1800.01 to 38-1837.02 (2014); FLA. STAT.ANN. §1002.33 (West 2014); GA. CODE ANN. §§ 20-2-2060 to 20-2-2072 (West 2014); HAW.REV.STAT. §302D- to 302D-34. (West 2014); IDAHO CODE ANN. § 33-5201 33-to 5216 (West 2014); 105 ILL. COMP. STAT. ANN. §§5/27A-1 to 5/27A-14 (West 2014); IND. CODE ANN. §§ 20-24-1-1 to 20-24-12-12 (West 2013); IOWA CODE §§256F.1 to 256F.11 (West 2014); KAN. STAT. ANN §72-1903 to 72-1930(West 2014); LA. REV. STAT. ANN. §§3971 to 4002.6 (West 2014); ME. REV. STAT. ANN. tit. 20-A,§§2401 to 2415 (West 2014); MD. CODE ANN., Elementary and Secondary Education §§9-101to 9-112 (West 2014); MASS. GEN. LAWS. ANN. ch.71, §89 (West 2014); MICH. COMP. LAWS §§380.501 to 380.507 (West 2014); MINN. STAT. ANN. §§124D.10 to 124D.11 (West 2014); MISS. CODE. ANN. §§ 37-28-1 to 37-28-61 (West 2013); MO. ANN. STAT. § 160.400 to 140.425 (West 2013); NEV. REV. STAT. ANN. §§386.490 to 386.649 (West 2014); N.H. REV. STAT. ANN. §§194B:1 – 194B:22 (West 2014); N.J. STAT. ANN. §§18A:36A-1 to 18A:36A-17.1 (West 2014); N.M. STAT.



ANN. §22-8B-1 to 22-8B-17.1(West 2014); N.Y. Education LAW §§ 2850 to 2857 (McKinney 2014); N.C. GEN. STAT. ANN. §115C-218 to 115C-218.110 (West 2014); OHIO REV. CODE ANN. §§3314.01to 3314.99 (West 2014); OKLA. STAT. ANN. tit. 70 §§3-142 to 3-145.2 (West 2014); OR. REV. STAT. ANN. §§338.005 to 338.165 (West 2014)); 24 PA. CONST. STAT. ANN. §§17-1701 to 17-1750 (West 2014); R.I. GEN. LAWS ANN. §16-77.1 to 16-77.4-8 (West 2014); S.C. CODE ANN. §§59-40-10 to 59-40-240 (2014); TENN. CODE ANN. §§ 49-13-101 to 43-13-142 (West 2014); TEX. EDUCATION CODE. ANN. §§12.001 to 12.156 (West 2014); UTAH CODE ANN. §§53A-1a-501 to 53A-1a-522 (West 2014); VA. CODE. ANN. §§22.1-212.5 to 22.1-212.16 (West 2014); WASH. REV. CODE. ANN. §§28A.710.005 to 28A.710.260 (West 2014); WIS. STAT. ANN. §§118.40(1) to 118.40(8) (West 2013); WYO. STAT. ANN.§§21-3-301to 21-3-314 (West 2014)). The most prevalent accountability requirements extended to measuring student achievement, report preparation, and evaluative review of charter school programs. Consistent throughout charter school legislation was the presence of state mandated annual evaluation by the state Department of Education; state required annual evaluation by the charter school authorizer or local school board; annual charter school report; charter revocation resulting from poor academic performance; participation in state assessment systems and established methods for measuring student performance. Table 5 provides a summary of various methods of ensuring charter school accountability found in charter school legislation. States are then distributed throughout the chart based on the methods of accountability provided for in the states' charter school legislation.

**Table 5. Methods Used by States to Ensure Charter School Accountability**

<b>Methods of Accountability</b>				
Measure Student Performance Through Assessment	Evaluative Framework	Report Submitted to State Legislature	Report Submitted to State Governor	Charter Termination, Revocation, Nonrenewal
				Alaska
Arizona				Arizona
Arkansas		**	**	Arkansas
California				California
Colorado		**	**	Colorado
				District of Columbia
Delaware		Delaware	Delaware	Delaware
Florida		Florida	Florida	Florida
				Georgia
	Hawaii	Hawaii	Hawaii	Hawaii
Idaho	Idaho			
				Illinois
Indiana				Indiana
Iowa		Iowa		Iowa
Kansas		Kansas	Kansas	Kansas
Louisiana				
Maine	Maine			Maine
Maryland				
Michigan				Michigan
Minnesota				
Mississippi	Mississippi	Mississippi*	Mississippi*	Missouri
Missouri				
				Nevada
New Hampshire				
New Jersey				New Jersey
New Mexico	New Mexico	New Mexico	New Mexico	New Mexico
New York		New York	New York	New York
North Carolina		North Carolina		North Carolina
Ohio				Ohio
Oklahoma		Oklahoma	Oklahoma	Oklahoma
Oregon				Oregon
Pennsylvania				Pennsylvania
Rhode Island				Rhode Island
South Carolina				
Tennessee		Tennessee		
Texas		**	**	
Utah				Utah
Virginia		Virginia	Virginia	Virginia
				Washington
				Wisconsin
				Wyoming

\* Report is prepared by charter school board not department of education.

\*\* Charter statute does not indicate who is the recipient of the report.

## Provisions Regarding the Same Accountability for Charter Schools and Traditional Public Schools

Fifteen pieces of legislation explicitly provided that charter schools and traditional public schools were held to the same accountability standards. California, Delaware, Florida, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Jersey, New York, Tennessee and Washington each provided for the same accountability measures for charter schools and traditional public schools (CAL. Education CODE §47605 (West 2014); DEL. CODE ANN. tit. 14 § 512(4) (West 2014); FLA. STAT. ANN. §1002.33(5)(b)(1)(f) (West 2014); LA. REV. STAT. ANN. §3996(B)(18) (West 2014). ME. REV. STAT. ANN. tit. 20-A, §2412(5)(B) (West 2014); MD. CODE ANN., Elementary and Secondary Education §§9-106(c)(2) to (West 2014); MASS. GEN. LAWS. ch. 71, §89(v)(West 2014); (MICH. COMP. LAWS §380.503(7)(f) (West 2014) MINN. STAT. ANN. §§124D.10 (West 2014); MISS. CODE. ANN. §§ 37-28-45(2)(West 2013); MO. ANN. STAT. §160.405(1)(10) (West 2013); N.J. STAT. ANN. N.Y. Education LAW §§ 2854(1)(b), 2854(1)(d) (McKinney 2014); TENN. CODE ANN. §§ 49-13-111(b)(2) (West 2014); WASH. REV. CODE. ANN. §§28A.710.005(n)(v) (West 2014)).

Massachusetts provided that charter schools students “...shall be required to meet the same performance standards, testing and portfolio requirements set for students in traditional public schools (MASS. GEN. LAWS. ch. 71, §89(v) (West 2014)). Maryland prohibited waiver of the requirement that charter students measure “...student academic achievement, including all assessments required for other public schools...” (MD. CODE ANN., Elementary and Secondary Education §9-106(c)(2) (West 2014)). Michigan

provided that charter schools must adhere to “[l]aws concerning participation in state assessments, data collection systems, state level student growth models, state accountability and accreditation systems, and other public comparative data collection required for public schools” ...” (MD. CODE ANN., Elementary and Secondary Education §9-107(f) (West 2014). Mississippi mandated that charter schools be “...subject to the student assessments and accountability requirements applicable to noncharter public schools in the state...” (MISS. CODE. ANN. §37-28-45 (West 2013)). Louisiana required charter schools to comply with “[a]ny school and district accountability system requirement by law of a public school of similar grade or type”. LA. REV. STAT. ANN. §3996(B)(18) (West 2014).

Minnesota, Missouri, and New York did not specifically quantify accountability as compared to traditional public schools but they did provide that charter schools must comply with statewide assessment to the same extent as traditional public schools. While Minnesota did not explicitly assign the same accountability requirements, charter school programs were required, at a minimum, to meet the outcomes outlined by the commissioner for public school students (MINN. STAT. ANN. § 124D.10(10) (West 2014)). Missouri also required participation in the statewide system of assessments but did not explicitly require charter schools and traditional public schools to adhere to the same accountability provisions (MO. ANN. STAT. §160.405(4)(6)(a) (West 2013). The statute did provide that “[n]othing in this subdivision shall be construed as permitting a charter school to be held to lower performance standards than other public schools within a district...” (MO. ANN. STAT. §160.405(4)(6)(c) (West 2013). Such an assertion could reasonably lead to the conclusion that Missouri charter schools were required to adhere to

the same accountability standards as traditional public schools. New York required charter school students to take the same state assessments to the same extent as traditional public schools (N.Y. Education LAW § 2854(1)(d) (McKinney 2014)).

North Carolina did not explicitly provide for the same accountability and assessments for charter schools and traditional public schools. However, statutory language could be interpreted as requiring the same testing measures. Section 2854 specifically provides that a charter must adhere to the same “...student assessment requirements applicable to other public schools...” (N.C. GEN. STAT. ANN. §115C-218.105(a)(1) (West 2014)).

#### Measurement of Student Achievement to Maintain Charter School Accountability

Much charter school legislation provided for accountability through a system of measuring student achievement. Measurement of student achievement was often performed through some form of assessment either charter school designed or a state established system. Virtually, all charter school legislation required charter schools to measure student achievement. Only Alaska, Georgia, Massachusetts and Nevada were silent on the issue of measuring student achievement (ALASKA STAT. ANN. §14.03.260(a) (West 2014); GA. CODE ANN. §§ 20-2-2060 to 20-2-2072 (West 2014); GA. CODE ANN. §§ 20-2-2060 to 20-2-2072 (West 2014)). Thirty-two charter school statutes required charter schools to describe how they would measure student achievement toward educational goals. Arizona, California, Colorado, Connecticut, Delaware, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New

Mexico, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, South Carolina, Utah, Virginia, Washington, Wisconsin and Wyoming each required method for measuring student achievement (ARIZ. REV. STAT. ANN. §15-183(E)(4)(West 2014); CAL. Education CODE §47605(b)(5)(c) (West 2014); COLO. REV. STAT §§22-30.5-106(1)(f) (West 2013); CONN. GEN. STAT. ANN. §§10-66b(d)(3) (West 2014); DEL. CODE ANN. tit. 14 §512(4) (West 2014); D.C. CODE ANN. §§38-1802.01(1), 13802.01(5) (2014); FLA. STAT. ANN. §1002.33(6)(a)(3) (West 2014); HAW. REV. STAT. §302D-16 (West 2014); IDAHO CODE ANN. §33-5205(3)(c) (West 2014); 105 ILL. COMP. STAT. ANN. §5/27A-7(a)(8) (West 2014); IND. CODE ANN. §20-24-3-4(b)(3)(G) (West 2013); IOWA CODE §256F.5(3) (West 2014); KAN. STAT. ANN. §72-1906(c)(4) (West 2014); LA. REV. STAT. ANN. §§3991(B)(21), 3991(c)(1)(d) (West 2014); ME. REV. STAT. ANN. tit. 20-A, §2408(A)(1) (West 2014); MINN. STAT. ANN. §124D.10 (West 2014); MISS. CODE. ANN. §37-28-21(2)(a) (West 2013); MO. ANN. STAT. §160.405(1)(7) (West 2013); N.H. REV. STAT. ANN. §194B:3(II)(h) (West 2014); N.J. STAT. ANN. §§18A:36A-5(d) (West 2014); N.M. STAT. ANN. §22-8B-8(E) (West 2014); N.Y. Education LAW §§ 2851(2)(b) (McKinney 2014); N.C. GEN. STAT. ANN. §115C-218.1(B)(2) (West 2014); OR. REV. STAT. ANN. §338.045(2)(e) (West 2014); 24 PA. CONST. STAT. ANN. §17-1719-A(5) (West 2014); R.I. GEN. LAWS ANN. §16-77.3(2)(a)(4) (West 2014); S.C. CODE ANN. §59-40-60(F)(6) (2014); UTAH CODE ANN. §53A-1a-504(3)(b) (West 2014); VA. CODE. ANN. §22.1-212.8(B)(5) (West 2014); WASH. REV. CODE. ANN. §28A.710.130(2)(G) (West 2014); WIS. STAT. ANN. §§118.40(1m)(b)(5) (West 2013); WYO. STAT. ANN. §§21-3-307(a)(iii) (West 2014)). Thirty-two states explicitly provided that the state

mandated assessment system must be a tool in measuring student achievement toward educational goals. States that required a charter school's participation in the statewide testing system included Arizona, Arkansas, California, Colorado, Delaware, Florida, Idaho, Indiana, Kansas, Louisiana, Maine, Maryland, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, and Washington (ARIZ. REV. STAT. ANN. §15-183(E)(4) (West 2014); ARK. CODE ANN. §6-23-306(3) (West 2013); CAL. Education CODE §47605 (West 2014); COLO. REV. STAT. §§22-30.5-104(6) (West 2013); DEL. CODE ANN. tit. 14 §512(4) (West 2014); FLA. STAT. ANN. §§1002.33(8)(a)(1), 1002.33(16)(2) (West 2014); IDAHO CODE ANN. § 33-5205(3)(d) (West 2014); IND. CODE ANN. § 20-24-4-1(8)(A)(i) (West 2013); KAN. STAT. ANN. §72-1906(c)(11) (West 2014); LA. REV. STAT. ANN. §3991(B)(21) (West 2014); ME. REV. STAT. ANN. tit. 20-A, §2408(B) (West 2014); MD. CODE ANN., Elementary and Secondary Education §9-106(c)(2) (West 2014); MICH. COMP. LAWS §§380.503(7)(f), 380.503(6)(a) (West 2014); MINN. STAT. ANN. §124D.10 (West 2014); MISS. CODE ANN. §§37-28-21(2)(a) (West 2013); MO. ANN. STAT. §160.405(4)(6)(a); N.H. REV. STAT. ANN. §194B:8(V) (West 2014); N.J. STAT. ANN. §18A:36A-5(d) (West 2014); N.M. STAT. ANN. §22-8B-4(M) (West 2014); N.Y. Education LAW §2854(d) (McKinney 2014); N.C. GEN. STAT. ANN. §115C-218.85 (West 2014); OHIO REV. CODE ANN. §3314.03(A)(3) (West 2014); OKLA. STAT. ANN. tit. 70 §3-136(A)(4) (West 2014); OR. REV. STAT. ANN. §338.115(1)(L) (West 2014); 24 PA. CONST. STAT. ANN. §17-1715(A)(8) (West 2014); R.I. GEN. LAWS ANN. §§16-22-9, 16-77.3-7(West 2014); S.C. CODE ANN.

§59-40-60(F)(6) (2014); TENN. CODE ANN. §49-13-105(10), 49-13-111 (West 2014); TEX. EDUCATION CODE. ANN. §§12.016(2)(B), 39.022 (West 2014); UTAH CODE ANN. §§53A-1a-504(3)(b) (West 2014); VA. CODE. ANN. §22.1-212.8(B)(5) (West 2014); WASH. REV. CODE. ANN. §28A.710.040(2)(b) (West 2014). Just as there are various states that required measurement of assessment as a component for ensuring charter school accountability, there were a variety of methods for implementing those requirements.

Some legislation used performance frameworks as the foundation for evaluating charter school performance. Hawaii, Idaho, New Mexico, Maine and Mississippi were among states that used performance framework in maintaining charter school accountability. Hawaii and Idaho required charter contracts to be based on a performance framework which required indicators, measures and metrics for student academic proficiency and growth (HAW. REV. STAT §§302D-16(a)(1) to 302D-16(a)(2) (West 2014); IDAHO CODE ANN. §§33-5209A(1)(a) to 33-5209A(1)(b) (West 2014)). Hawaii’s charter legislation fell short of mandating specific assessment for measurement of student achievement (HAW. REV. STAT. §§302D- to 302D-34 (West 2014)) while Idaho specifically provided a requirement that charter school students “...will be tested with the same standardized tests as other Idaho public school students” (IDAHO CODE ANN. § 33-5205(3)(d)(West 2014)). Similarly, Nevada required charter contracts to incorporate a performance framework, which included “...performance indicators, measures and metrics for the categories of academics, finances and organization (NEV. REV. STAT. ANN. §386.528(1) (West 2014)).



Nevada specifically defined what constituted academics, finances and organizations (NEV. REV. STAT. ANN. § 386.28(1) (West 2014)). Academics consisted of “...academic achievement and proficiency of pupils enrolled in the charter school...disparities in academic achievement and proficiency of pupils...” and for high school charter students “...the rate of graduation of those pupils and the preparation of those pupils for success in postsecondary educational institutions and in a career and workforce readiness...” (NEV. REV. STAT. ANN. §386.28(1)(a) (West 2014)). Finances were defined as “...the financial condition and sustainability of the charter school” (NEV. REV. STAT. ANN. §386.28(1)(b) (West 2014)). Organization was the “...percentage of pupils who reenroll in the charter school from year-to-year; the rate of attendance of pupils enrolled in the charter school; and the performance of the governing body of the charter school...” (NEV. REV. STAT. ANN. §386.28(1)(c) (West 2014)). Likewise, New Mexico required the performance provisions of charter contracts to be based upon a performance framework. (N.M. STAT. ANN. §22-8B-9.1(A) (West 2014)). The performance framework must have contained the “...academic and operations performance indicators, measures and metrics that will guide the chartering authority’s evaluation of each school” (N.M. STAT. ANN. §22-8B-9.1(A) (West 2014)). At minimum, the performance framework must have included indicators, measures and metrics for (i) student academic performance and growth; (ii) proficiency and growth achievement gaps between student subgroups; (iii) attendance and recurrent enrollment; (iv) post secondary readiness and graduation rates for high schools; and (v) governing body and financial performance (N.M. STAT. ANN. §22-8B-9.1(A) (West 2014)).

Maine and Mississippi also monitored charter school accountability through the use of a performance framework. Maine’s charter schools were obligated to “...report student progress on the measures and metrics of the performance framework” (ME. REV. STAT. ANN. tit. 20-A §2406(2)(F)(6)(c) (West 2014). Maine’s performance framework included student academic growth and proficiency; achievement gap in proficiency and growth between major subgroups; attendance; recurrent enrollment; postsecondary readiness; parent and community involvement; governing board performance and financial performance (ME. REV. STAT. ANN. tit. 20-A §2409(2) (West 2014)). Similarly, Mississippi required that a charter contract’s performance provisions “...be based on a performance framework that clearly sets forth the academic and operational performance indicators, measures and metrics that will guide the authorizer’s evaluations of the charter school” (MISS. CODE. ANN. §37-28-29(1) (West 2013)). The performance framework consisted of at least nine mandatory criteria (MISS. CODE. ANN. §37-28-21(2)(a) (West 2013)). Mississippi and Maine shared similar framework criteria with the exception that Mississippi did not require inclusion of parent and community involvement and did include student suspension and expulsion rates (ME. REV. STAT. ANN. tit. 20-A §2409(2) (West 2014); MISS. CODE. ANN. §37-28-29(1) (West 2013)).

There were states that maintained charter accountability by requiring charter schools to detail their methods for assessing academic progress. Included among these states were Indiana, Kansas, Mississippi, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island and South Carolina.

Indiana’s charter school legislation required the charter agreement to detail how charter schools would be held accountable for improved student achievement (IND. CODE ANN. §20-24-4-1(a)(8) (West 2013)). The statute provided specific areas for assessing accountability. The areas included assessment measures; attendance rates; graduation rates; diplomas received; receipt of academic honors and student academic growth (IND. CODE ANN. § 20-24-4-1(a)(8) (West 2013)).

Kansas required charter contracts to have an “...explanation of how pupil performance in achieving the specified outcomes will be measured, evaluated, and reported...” (KAN. STAT. ANN §72-1906(c)(4) (West 2014)).

Mississippi’s charter school contracts must have detailed the measures by which the charter school would be judged for academic performance (MISS. CODE. ANN. §37-28-21(2)(a) (West 2013)). Section 37-28-21 specifically provided that “[t]he performance and expectations and measures set forth in the charter contract must include...applicable federal and accountability requirements (MISS. CODE. ANN. §37-28-21(2)(a) (West 2013)).

North Carolina did not specifically indicate that charter schools must detail how they would measure academic progress but it did provide that charter school applications must provide a description of “...the method of demonstrating that students have attained the skills and knowledge specified for those student achievement goals” (N.C. GEN. STAT. ANN. §115C-218.1(b)(2) (West 2014)).

Oklahoma did not specifically indicate that charter schools must provide the method of measuring student achievement; however, it did require charter school

applications to outline the “...criteria designed to measure the effectiveness of the charter school...” (OKLA. STAT. ANN. tit. 70 §3-134(B)(8) (West 2014)).

Oregon required charter school application to contain “...verified methods of measuring and reporting objective results that would show the growth of knowledge of students attending the public charter school and allow comparisons with public schools...” (OR. REV. STAT. ANN. §338.045(2)(e) (West 2014)).

Pennsylvania required the charter school application to detail the “...methods of assessing whether students are meeting educational goals.” (24 PA. CONST. STAT. ANN. §17-1719-A(5) (West 2014)).

Rhode Island required charter school applications to “...[i]ndicate performance criteria that will be used to measure student learning and to comply with the charter, state and national educational goals and standard...” (R.I. GEN. LAWS ANN. §16-77.3-2 (West 2014)).

South Carolina required charter school applications to describe the plan for evaluating student achievement and progress toward achieving the school’s standards (S.C. CODE ANN. §59-40-60(F)(6) (2014)). The charter school’s plan for evaluating student achievement was in addition to state required assessments (S.C. CODE ANN. §59-40-60(F)(6) (2014)).

There was a category of states that specifically utilized assessment as the measure of student academic progress used to hold charter schools accountable. Iowa, Michigan, Missouri, New Hampshire, New Jersey and New York were among the states that fit into this category.

Iowa required measurement of student achievement but it was distinguishable from other states because charter schools had to obtain an initial baseline measurement for student achievement of goals (IOWA CODE §256F.5(3) (West 2014)).

Michigan's legislation mandated charter compliance with "[l]aws concerning participation in state assessments" (MICH. COMP. LAWS §380.503(7)(f) (West 2014)).

Missouri required charter schools to "...participate in the statewide assessments, comprised of essential skills tests and the nationally standardized norm-referenced achievement tests..." (MO. ANN. STAT. §160.405(4)(6)(a) (West 2013)). Although

Missouri's legislation specifically required that charter schools be held to the same performance standards as traditional public schools, it did allow for charter schools to meet the performance standards "...on a different time frame as specified in its charter..." (MO. ANN. STAT. §160.405(4)(6)(c) (West 2013)). Charter schools that serviced high risk students were also allowed to deviate from traditional performance expectations. Specifically, charter schools that served high risk student populations were permitted to measure student performance against the performance standards established in the charter school's charter contract (MO. ANN. STAT. § 160.405(4)(6)(c) (West 2013)).

New Hampshire charter school applications had to detail "[a]chievement tests to be used to measure pupil academic and other goal achievement including, but not limited to, objective and age-appropriate measures of literacy and numeracy skills, including spelling, reading, expository writing, history, geography, science and mathematics." student (N.H. REV. STAT. ANN. §194B:3(II)(h) (West 2014)). Charter schools were also

required to annually evaluate students using the statewide education improvement and assessment program (N.H. REV. STAT. ANN. §194B:8(V) (West 2014)).

New Jersey required its charter school application to include the “...the method of assessing whether students are meeting educational goals” (N.J. STAT. ANN. §18A:36A-5(d) (West 2014)). Further, charter schools were required to “...meet the same academic performance standards as established by law and regulation for public school students. (N.J. STAT. ANN. §18A:36A-5(d) (West 2014)).

New York allowed revocation when a charter school’s outcome on state mandated student assessment measures “...fell below the level that would allow the commission to revoke the registration of another public school” (N.Y. Education LAW § 2855(a) (McKinney 2014)). A charter could be revoked after the charter school’s poor academic performance had continued for three years (N.Y. Education LAW § 2855(a) (McKinney 2014)).

#### Reports from Department of Education

Fourteen pieces of legislation required the state Department of Education to review charter schools annually (ARK. CODE ANN. §6-23-404 (West 2013); COLO. REV. STAT §§22-30.5-113, 22-30.4-104(b), 22-11-210(2)(a) (West 2013); DEL. CODE ANN. tit. 14 § 514 (West 2014); FLA. STAT. ANN. §1002.33(12) (West 2014); HAW.REV.STAT. §302D-21(West 2014); IOWA CODE §256F.8(1)(c) (West 2014); N.M. STAT. ANN. §22-8B-1 to 22-8B-17.1(West 2014); N.Y. Education LAW §§2857(3) (McKinney 2014); N.C. GEN. STAT. ANN. §115C-218.110 (West 2014); OKLA. STAT. ANN. tit. 70 §§3-143 (West 2014); TENN. CODE ANN. §§49-13-120(b)

West 2014); TEX. EDUCATION CODE. ANN. §12.1013 (West 2014); VA. CODE. ANN. §§22.1-212.15, 22.1-212.18 (West 2014). Arkansas, California, Colorado, Delaware, Florida, Hawaii, Iowa, New Mexico, New York, North Carolina, Oklahoma, Tennessee, Texas and Virginia each contained legislative provisions that required the state board of education to conduct an annual review of the state's charter schools. Many of the statutorily mandated reports were made directly to the respective states' legislatures and governors. The extent of the evaluation varied from legislation to legislation. Some legislation merely required the state Department of Education to compile reports from local boards and authorizers and then report those findings (TENN. CODE ANN. §49-13-120(b) (West 2014) while other legislation involved review of multiple facets of the charter schools operation such as student attendance, academic assessments and parental involvement (ARK. CODE ANN. §6-23-404 (West 2013)).

States such as Arkansas, Iowa, New York and Mississippi and Texas entailed the states' comprehensive review of individual charter school programs. Charter school legislation, in these states, required the states' annual reporting to look at specifically identified criteria in evaluating charter school performance. While a number of criteria overlapped across statutes, there were still a number of distinguishable factors within the various pieces of legislation.

Arkansas' Department of Education conducted annual charter school evaluations which considered student performance on statewide assessments; student attendance and grades; student discipline incidents; student socioeconomic data; parental and student satisfaction with the charter school; and the schools' compliance with statutory reporting requirements (ARK. CODE ANN. §6-23-404 (West 2013)). Colorado charter statute

required evaluation by the department of education; however, the evaluation was only required every three years (COLO. REV. STAT. ANN. §22-30.5-113 (West 2014)).

Another provision of Colorado's charter school statute indicated that charter schools were subject to a separate statutory section, which provided that the department of education was to complete an annual review of each public school's performance and make recommendations for the upcoming school year (COLO. REV. STAT. ANN. §§22-30.4-104(b), 22-11-210(2)(a) (West 2013)).

Iowa's state board of education filed an annual report to the state legislature (IOWA CODE §256F.10(2) (West 2014)). The state board of education was tasked with evaluating the charter school program generally and specifically providing data on each charter school (IOWA CODE §256F.10(2) (West 2014)). Individual charter school information to be contained in the annual report included "...attendance statistics and dropout rate, aggregate assessment test scores, projections of financial stability, the number and qualifications of teachers and administrators, and number of and comments on supervisory visits by the department of education" (IOWA CODE §256F.10(2) (West 2014)).

New York required the board of regents, a division of the board of education, to submit an annual report to the governor and the legislature (N.Y. Education LAW § 2857(3) (McKinney 2014)). The board of regents report included information regarding charter schools established and closed during the previous year; assessment of the charter schools' impact on school districts; comparison of charter school student academic progress against comparable traditional public school students; list of actions taken on charter school applications as well as explanations for any revocations or nonrenewals



and any other charter school information deemed necessary by the board of regents (N.Y. Education LAW §2857(3) (McKinney 2014)).

Mississippi did not require the state board of education to complete an annual report, however; the Mississippi Charter School Authorizer Board was required to submit an annual report to the Governor, Legislature, and State Board of Education (MISS. CODE. ANN. §37-28-37(1) (West 2013)). The Charter School Authorizer Board's report had to include "...a comparison of performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in the school district in which the charter school is located" (MISS. CODE. ANN. §37-28-37(1) (West 2013)). The report also detailed the "...authorizer's assessment of the successes, challenges and areas for improvement in meeting the purposes..." of Mississippi's Charter School Act (MISS. CODE. ANN. §37-28-37(1) (West 2013)).

Texas was unique in that it was required to select an authorized center for education research to perform its annual report on charter schools (TEX. EDUCATION CODE. ANN. §12.1013(a) (West 2014)). Texas' annual evaluation had to include information that allowed "...the public to distinguish and compare the performance of each type of public school..." (TEX. EDUCATION CODE. ANN. §12.1013(b) (West 2014)). Evaluative information had to include the performance of each school as measured by student achievement indicators and attrition rates (TEX. EDUCATION CODE. ANN. §12.1013(c) (West 2014)). There had to be a comparison of the performance of the different categories of charter schools and matched traditional public schools (TEX. EDUCATION CODE. ANN. §12.1013(d)(1) (West 2014)). Performance also had to be aggregated into groups of elementary schools, middle schools and high

schools within each category of charter school (TEX. EDUCATION CODE. ANN. §12.1013(d)(2) (West 2014).

Just as some charter school reports focused more specifically on evaluating actual charter school performance, other charter school reports centered more on the policy implications of charter school performance. Delaware, Hawaii, New Mexico and North Carolina were among states that had state compiled evaluations that focused more on evaluative information centered on policy implications of charter operation.

Delaware prepared an annual report for the governor, legislature and state board of education (DEL. CODE. ANN. tit. 14 §514 (West 2014). The annual report included information regarding the success or failure of charter schools along with proposed changes to the state laws that would be necessary to improve or change the state's charter school program (DEL. CODE. ANN. tit. 14 §514 (West 2014). The department of education's report was also to include the secretary of education's analysis and recommendations related to proposed changes in the state's education laws (DEL. CODE. ANN. tit. 14 §514(1) (West 2014). The secretary of education's assessment of opportunities or barriers as related to charter school innovation implementation, in the state's education system, was also included in the department of education's annual report (DEL. CODE. ANN. tit. 14 §514(2) (West 2014).

Hawaii's Board of Education was required to report annually to the governor, legislature and public on the state's charter schools (HAW. REV. STAT §302D-21 (West 2014). The report was to contain the state board of education's assessments regarding funding sufficiency, recommendations for policy and law changes to strengthen charter schools; line item report of federal funding distributed to charter school authorizers;

equity concerns and recommendations for improved access and distribution of federal funding to charters schools; and listing of the state board of education's policies and their applicability to charter schools (HAW.REV.STAT. §302D-21 (West 2014)).

New Mexico's charter school division, which was created in the department of education, issued an annual report to the governor and legislature (N.M. STAT. ANN. §22-8B-17; §22-8B-17.1) (West 2014)). The report had to include comparison of charter school student performance to that of comparable traditional public school students (N.M. STAT. ANN. §22-8B-17.1) (West 2014)). The report also included "...an assessment of the successes, challenges and areas for improvement in meeting the purposes of the Charter Schools Act..." (N.M. STAT. ANN. §22-8B-17.1) (West 2014)). Sufficiency of charter school funding and efficacy of the state charter funding formula must have been included in the annual report (N.M. STAT. ANN. §22-8B-17.1) (West 2014)). Suggested law and policy changes necessary to strengthen charter schools was also a requisite part of the charter school division's annual report (N.M. STAT. ANN. §22-8B-17.1) (West 2014)).

North Carolina required annual review of the education effectiveness of charter schools (N.C. GEN. STAT. ANN. §115C-218.110(b) (West 2014)). The report had to include the current and expected impact of charter schools on traditional public schools' provision of services; the academic progress of charter schools students compared against previous year's measurement; charter school operation best practices; and any information deemed appropriate by the state board of education (N.C. GEN. STAT. ANN. §115C-218.110(b)(West 2014)).

Oklahoma, Tennessee and Virginia were among states that essentially completed a compilation based upon reports and information from charter schools or authorizers. Oklahoma's state board of education had to issue an annual report to the legislature and the governor regarding the status of charter schools across the state (OKLA. STAT. ANN. tit. 70 §3-143 (West 2014)). Tennessee's commissioner of education used the mandatory reports submitted by charter schools to prepare an annual report to legislature's education committees (TENN. CODE ANN. § 49-13-120(b) (West 2014)). Virginia's charter school legislation required submission of an annual report, to the governor and legislature, including the number of charter schools established and charter application denials (VA. CODE. ANN. §22.1-212.15 (West 2014)). The charter statute also referenced another provision, outside of the charter statute, that required the board of education to submit an annual report to the governor and legislature regarding the state's public schools and information regarding school choice. (VA. CODE. ANN. §22.1-18 (West 2014)).

Florida's department of education compiled mandatory annual reports received from charter schools regarding their progress (FLA. STAT. ANN. § 1002.33(23) (West 2014)). The department of education submitted an annual report to the state board of education, commissioner of education, governor, and legislature analyzing and comparing the overall performance of charter school students, on the statewide mandated assessment, to that of comparable traditional public school students, on the statewide mandated assessment (FLA. STAT. ANN. § 1002.33(23) (West 2014)).

Kansas required the state board of education to review, assess and compile charter school evaluations that were submitted by the local boards of educations and present

them to the governor and the legislature. (KAN. STAT. ANN § 72-1910(b) (West 2014)). While the evaluations submitted by the local boards of education were filed with the state board of education annually, there was no explicit statutory direction providing that the state board of education must have filed its report annually (KAN. STAT. ANN §72-1910(b) (West 2014)).

#### Annual Report from Charter School Authorizer or Local School Board

Some legislation required the charter school authorizer or the local school board to submit an annual evaluation on charter schools. Eighteen states and the District of Columbia required local report on charter schools. Colorado, District of Columbia, Florida, Hawaii, Idaho, Indiana, Kansas, Maine, Mississippi, Missouri, Nevada, New Jersey, New Mexico, Ohio, Pennsylvania, South Carolina, Utah, Washington and Wyoming each required some form of annual evaluation by either the charter school authorizer or the local school board (COLO. REV. STAT. ANN. §22-30.5-110(1)(b) (West 2014); D.C. CODE ANN. § 38-1802.11(d) (West 2013); FLA. STAT. ANN. §1002.33(9)(k) (West 2014); HAW. REV. STAT. §302D-7 (West 2014); IDAHO CODE ANN. §33-5209C(2) (West 2014); IND. CODE ANN. §20-24-9-1(a) (West 2013); (KAN. STAT. ANN §72-1910(b) (West 2014); (ME. REV. STAT. ANN. tit. 20-A § 2405(4) (West 2014); MISS. CODE. ANN. § 37-28-31(1) &(2) (West 2013); NEV. REV. STAT. ANN.§ 386.610 (West 2014); (N.J. STAT. ANN. §18A:36A-16(e) (West 2014); MO. ANN. STAT. § 160.405(7) (West 2013); (N.M. STAT. ANN. §22-8B-12(G) (West 2014); (OHIO REV. CODE ANN. §3314.03(D) (West 2014); 24 PA. CONST. STAT. ANN. §17-1728-A(a)( West 2014); S.C. CODE ANN. §59-40-140(H)( 2014); UTAH

CODE ANN. §§53A-1a-501 to 53A-1a-522 (West 2014); WASH. REV. CODE. ANN. §28A.710.100(4) (West 2014); WYO. STAT. ANN. §§21-3-312 (West 2014). The requirement for local level evaluation of charter schools is distinguishable on the content of reports, method for collection of data, and audience receiving report.

Colorado's school districts evaluated charter schools' performance annually (COLO. REV. STAT. ANN. §22-30.5-110(1)(b) (West 2013)). The review included charter schools' progress in meeting their plan objectives along with the most recent year's financial audit results. Written feedback had to be provided by the school district to the charter school (COLO. REV. STAT. ANN. §22-30.5-110(1)(b) (West 2013)).

The District of Columbia charter school authorizers submitted an annual report to the mayor, District of Columbia Council, the board of education, the secretary of education, congressional committees, and the consensus commission (D.C. CODE ANN. § 38-1802.11(d) (West 2014)). Information included in the report entailed a list and address of chartering authority members; dates and places of each chartering authority's meetings during the previous year; number of charter petitions received by the authority; results of each charter application whether approved or denied along with reasons for denial; information regarding renewal, revocation or non-renewal of charters during the previous year; recommendations for improving the administration of charter schools; information regarding major board actions; summary of yearly financial audits for all charter schools; and number of charter schools that required intervention by the authorizing authority (D.C. CODE ANN. §38-1802.11(d) (West 2014)).

Hawaii required charter school authorizers to submit annual reports to the board of education and the legislature (HAW. REV. STAT. §302D-7 (West 2014)). The report

included information such as the chartering authorizer's strategic vision for chartering as well as the progress toward achieving that vision; financial and academic performance of all the charter schools overseen by the authorizer; concerns and recommendation regarding funding equity and access; and comparison of the charter school students' academic performance with that of the state's traditional public school students; (HAW. REV. STAT. §302D-7(West 2014))

Idaho's charter school legislation mandated that authorized chartering entities publish an annual report for each charter school that it oversaw (IDAHO CODE ANN. §33-5209C(2) (West 2014)). The report had be to based on the charter schools' performance frameworks which included information such as student academic proficiency and growth; college and career readiness, governing board performance proficiency; and establishment of measureable performance targets (IDAHO CODE ANN. § 33-5209C(2), 33-5209A(1)to 33-5209A(2) (West 2014)).

Indiana required charter school authorizers to file annual reports to the department and the board (IND. CODE ANN. § 20-24-9-1(a) (West 2013)). The authorizers' annual reports were filed for informational and research purposes (IND. CODE ANN. § 20-24-9-1(a) (West 2013)). Indiana's annual reports had to include results of standardized test; student growth and improvement for each charter school; attendance rates for each charter school; graduation rates; student enrollment data; listing of charter schools that were open, closed and approved but waiting to be opened; names of authorizer's board members; listing of fees collected and expended; evidence that authorizer had not lost authorizing authority and the most recent audit for each charter school (IND. CODE ANN. § 20-24-9-1(a) (West 2013)).

The local board of education for each Kansas school district had to annually evaluate the impact that a charter school had on the district's educational system (KAN. STAT. ANN § 72-1910(b) (West 2014)). The completed evaluation had to be submitted to the state board of education (KAN. STAT. ANN § 72-1910(b) (West 2014)).

Maine's charter school authorizers were required to submit annual reports to the commissioner (ME. REV. STAT. ANN. tit. 20-A § 2405(4) (West 2014)). The report summarized the performances of all of the authorizer's charter schools; current operating status of all the authorizer's approved charter schools; services provided to charter schools by the authorizer; total amount of money collected from each charter school; and "...the costs incurred by the authorizer to oversee each public school" (ME. REV. STAT. ANN. tit. 20-A § 2405(4) (West 2014)).

Mississippi required authorizers to "...monitor annually the performance and legal compliance of each charter school it oversees, including collecting and analyzing data to support the school's evaluation according to the charter contract" (MISS. CODE. ANN. §§37-28-31(1) to 37-28-31(2) (West 2013)). The annual report submitted to both the legislature and the public must include a performance report for each charter school overseen by the authorizer (MISS. CODE. ANN. §§37-28-31(1) to 37-28-31(2) (West 2013)). The authorizer's report on each charter school had to be in accordance with the performance framework established in each charter schools' contract (MISS. CODE. ANN. §§37-28-31(1) to 37-28-31(2) (West 2013)).

Nevada's charter school authorizers were required to submit annual reports, to the department of education, evaluating each of its charter schools (NEV. REV. STAT. ANN. §386.610 (West 2014)). The authorizer's report had to evaluate each charter



school's progress toward achieving the objectives of its charter (NEV. REV. STAT. ANN. §386.610(1) (West 2014)). The authorizer must have evaluated the "...academic, financial and organizational performance of the charter schools, as measured by the performance indicators, measures and metrics set forth in the performance framework of the charter school" (NEV. REV. STAT. ANN. §386.610(2) (West 2014)). The authorizer must have reported whether each charter school is open, closed, transferred sponsorship, revoked charter, nonrenewed charter or in the process of opening. (NEV. REV. STAT. ANN. §386.610(3) (West 2014)). The charter school authorizer's progress toward accomplishing its strategic vision had to be included in its annual report (NEV. REV. STAT. ANN. §386.610(4) (West 2014)). Services provided by the authorizer to charter schools must have been detailed along with an itemized cost of those services (NEV. REV. STAT. ANN. §386.610(5) (West 2014)). Federal funding distributed to each charter school as well as concerns and recommendations regarding equity in distribution of federal funds should also have been included in the authorizer's report (NEV. REV. STAT. ANN. §386.610(6) (West 2014)).

New Jersey required the commissioner of education, who was responsible for authorizing charter schools, to file an annual report regarding the state's charter school program (N.J. STAT. ANN. §18A:36A-16(e) (West 2014)). The commissioner's report had to be submitted to the governor, legislature and state board of education (N.J. STAT. ANN. §18A:36A-16(e) (West 2014)). Evaluation included the impact of the charter school program on people and finances (N.J. STAT. ANN. §§18A:36A-16(e)(1) to 18A:36A-16(e)(2) (West 2014)). "[T]he fairness and impact of reduction of available resources on ability of resident districts to promote competitive educational offering..."

had to be included in the report (N.J. STAT. ANN. §18A:36A-16(e)(3) (West 2014)). The impact of pupils shifting from nonpublic schools to charter schools had to be evaluated in the commissioner’s report (N.J. STAT. ANN. §18A:36A-16(e)(4) (West 2014)). The program evaluation required (i) comparative demographics between traditional public schools and charter schools; (ii) involvement of private entities in the operation and financing of charter schools; (iii) student progress toward charter schools goals; (iv) family and community satisfaction with charter schools; and (v) verification of charter school compliance with laws and regulations (N.J. STAT. ANN. §§18A:36A-16(e)(5) to 18A:36A-16(e)(9) (West 2014)). The report must have also provided information regarding charter schools wait lists and attrition. (N.J. STAT. ANN. §§18A:36A-16(e)(10) to 18A:36A-16(e)(12) (West 2014)). Finally, the commissioner report “...shall include a recommendation on the advisability of the continuation, modification, expansion or termination of the [charter school] program” (N.J. STAT. ANN. §18A:36A-16(e) (West 2014)).

Annually, New Mexico submitted a report regarding the performance of each charter school that it oversaw (N.M. STAT. ANN. §22-8B-12(G) (West 2014)).

Ohio’s charter school sponsor was required to annually “[m]onitor and evaluate the academic and fiscal performance and the organization and operation of...” charter schools (OHIO REV. CODE ANN. §3314.03(D)(2) (West 2014)). Results of the evaluation had to be reported annually to the department of education and parents of students enrolled in the charter school (OHIO REV. CODE ANN. §3314.03(D)(3) (West 2014)).

Pennsylvania's local board of schools directors annually assessed whether charter schools were meeting the goals of their respective charters (24 PA. CONST. STAT. ANN. §17-1728-A(a)( West 2014)).

South Carolina authorizers had to compile individual charter school reports into a single document that was submitted to the state department of education (S.C. CODE ANN. §59-40-140(H) (2014). Individual charter school reports had to include information such as the number of students enrolled in a charter school from year to year; student success in achieving goals for which charter school was established; analysis of achievement gaps; certification of teachers; financial performance and sustainability of charter schools; governing boards' performance and stewardship in achieving (S.C. CODE ANN. §59-40-140(H) (2014).

Utah required its charter school board to annually review and evaluate the performance of charter schools that it authorized (UTAH CODE ANN. §53A-1a-501.6(1)(b) (West 2014)).

Washington's charter school authorizers submitted annual reports to the state board of education (WASH. REV. CODE. ANN. §28A.710.100(4) (West 2014)). Information reported included the "...authorizer's strategic vision for chartering and progress toward achieving that vision..."; academic and financial performance of charter schools overseen by the authorizer; status of authorizer's charter schools such as approved, operating, renewed, revoked and not renewed; authorizer's annual audited financial statement; and services that charter schools purchased from the authorizers and the actual costs of those purchased services (WASH. REV. CODE. ANN. §28A.710.100(4) (West 2014)).

Wyoming required each district board that granted a charter to submit an annual report to the state board of education (WYO. STAT. ANN. §21-3-312 (West 2014)). The local district board was responsible for reporting on each charter school that operated within its district and whether each school was in compliance with its charter (WYO. STAT. ANN. §21-3-312 (West 2014)). The local district had to include an assurance that “...students attending the charter school are receiving an education consistent with the educational opportunities available to all students within the school district...” (WYO. STAT. ANN. §21-3-312 (West 2014)).

Louisiana’s chartering authorities had to submit annual reports on the number of schools chartered along with the status of those schools. (LA. REV. STAT. ANN. §3998(A) (West 2014). However, actual evaluation of charter schools only took place following the third year of operation. (LA. REV. STAT. ANN. §3998(B) (West 2014).  
Annual Reports from Charter Schools

Another type of report that is common among charter school legislation is an annual report from charter schools directly. Twenty-two charter school legislation required charter schools to prepare an annual report. Arizona, District of Columbia, Delaware, Florida, Georgia, Indiana, Iowa, Massachusetts, Minnesota, Nevada, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania and Rhode Island included provisions that required charter schools to submit annual reports (ARIZ. REV. STAT. ANN. §15-183(E)(4) (West 2014); DEL. CODE ANN. tit. 14 §§513 (West 2014); D.C. CODE ANN. § 38-1802.04(c)(11) (West 2014); FLA. STAT. ANN. §1002.33(9)(k) (West 2014); GA. CODE ANN. §§20-2-2068(a)(2)(B)

(West 2014); (IND. CODE ANN. §§20-24-9-6, 20-20-8-8 (West 2013); IOWA CODE §256F.10(1) (West 2014)); MASS. GEN. LAWS. ch. 71, §89(ii) (West 2014); MINN. STAT. ANN. §124D.10(14) (West 2014); NEV. REV. STAT. ANN. §386.600 (West 2014)); N.J. STAT. ANN. §18A:36A-16(b) (West 2014); N.H. REV. STAT. ANN. §194B:10(I) (West 2014); N.Y. Education LAW §2852(2) (McKinney 2014); N.C. GEN. STAT. ANN. §115C-218.30(c) (West 2014); OKLA. STAT. ANN. tit. 70 §3-143 (West 2014); OR. REV. STAT. ANN. §338.095(2) (West 2014)); 24 PA. CONST. STAT. ANN. §17-1728-A(b) (West 2014)); R.I. GEN. LAWS ANN. §16-77.3-2 (West 2014)(a)(4) (West 2014); S.C. CODE ANN. §59-40-140(H) (2014); TENN. CODE ANN. § 49-13-120(a) (West 2014); TEX. EDUCATION CODE. ANN. §12.119 (West 2014); WASH. REV. CODE. ANN. §28A.710.040(2)(f) (West 2014)). When viewed across the United States, the reports are distinguishable on the content, type of report, time parameters for completion, and ultimate audience.

Arizona required charter schools to complete and distribute an annual report card (ARIZ. REV. STAT. ANN §15-183(E)(4) (West 2014)).

The District of Columbia required charter schools to submit annual reports to the chartering authority (D.C. CODE ANN. §38-1802.04(c)(11)(A) (West 2014). Reports contained information regarding the schools' progress toward meeting the goals established in the charters; student performance on district assessments; student grade advancements; parental involvement; student enrollment; graduation rates, college admissions test scores and admission rates; average daily attendance; financial audit information; qualifications and responsibilities of staff; and a list of donors that

contributed value exceeding \$500 during the year (D.C. CODE ANN. §38-1802.04(c)(11)(B) (West 2014)).

Florida charter schools had to file annual reports to their sponsors providing information regarding (i) student achievement data; (ii) financial status of the school; (iii) regarding school personnel such as type of teaching certificate held; (iv) and facility usage (FLA. STAT. ANN. §1002.33(9)(k) (West 2014)).

Indiana's charter schools were required to perform an annual report the same as traditional public schools (IND. CODE ANN. §20-24-9-6, §20-20-8-8 (West 2013)). The published report had to contain over 26 pieces of information including student enrollment and attendance rate; number of students meeting academic standards as determined by state and local assessments; graduation rate; average class size; number of students participating in special programs such as Limited English Language Proficiency; number of graduates who attend post secondary schools; number of third graders reading at a third grade level; technology accessibility and usage; per student expenditures; and average teacher salary (IND. CODE ANN. §20-20-8-8 (West 2013)).

Iowa's charter schools were obligated to file annual reports with the local school board and the state board of education (IOWA CODE §256F.10(1) (West 2014)). Contents of the report were not enumerated in the statute but left to the discretion of the local school board and the state board of education (IOWA CODE §256F.10(1) (West 2014)). Similarly, New Jersey's charter schools were required to submit annual reports to the "...local board of education, the county superintendent of schools, and the commissioner [of education] in the form prescribed by the commissioner" (N.J. STAT. ANN. §18A:36A-16(b) (West 2014)).

Massachusetts required its charter schools to submit annual reports to the board of elementary and secondary education, local school committee, parents of currently enrolled students and prospectively enrolled students (MASS. GEN. LAWS. ch. 71, §89(ii) (West 2014)). Massachusetts' annual report had to include information regarding student achievement toward charter school goals and explanation of the charter school's assets, liabilities and balances (MASS. GEN. LAWS. ch. 71, §89(ii) (West 2014)).

Minnesota required charter schools to publish annual reports, which included information on "...school enrollment, student attrition, governance and management, staffing, finances, academic performance, innovative practices and implementation, and future plans". (MINN. STAT. ANN. §124D.10 (14) (West 2014)). The annual report had to be posted on the charter school's website and distributed directly to the charter school's authorizer, employees and parents (MINN. STAT. ANN. §124D.10(14) (West 2014)). Charter schools that received specified state aid were required to file quarterly reports with the department of education (MINN. STAT. ANN. § 124D.11 (9)(f) (West 2014)).

Nevada required charter schools to submit an annual report to the superintendent of public instruction and the legislature regarding the financial status of the charter school (NEV. REV. STAT. ANN. § 386.600 (West 2014)). The charter school sponsor was required to submit a more comprehensive annual report detailing aspects beyond finances (NEV. REV. STAT. ANN. §386.610 (West 2014)).

New York mandated annual charter school reports to be submitted to the board of regents (N.Y. Education LAW §2852(2) (McKinney 2014)). Reported information included the charter school's comparative academic and fiscal performances; information

regarding “...progress made towards achievement of the goals set forth in the charter...”; “...certified financial statement...”; and a description of actions to enroll and retain English language learners, disabled students and students eligible for free and reduced lunch (N.Y. Education LAW §2852(2) (McKinney 2014)).

North Carolina required charter schools to report, at minimum, once a year to the state board of education (N.C. GEN. STAT. ANN. §115C-218.30(c) (West 2014)). The report had to contain information outlined by the state board of education (N.C. GEN. STAT. ANN. §115C-218.30(c) (West 2014)).

Oklahoma required charter schools to submit annual reports regarding enrollment, testing, curriculum, finances, employees and any other information requested by the Office of Accountability (OKLA. STAT. ANN. tit. 70 §3-143 (West 2014)).

Oregon’s charter schools had to file an annual report with the sponsors regarding the academic performance of the charter schools and their students (OR. REV. STAT. ANN. §338.095(2) (West 2014)).

Pennsylvania’s charter schools had to submit annual reports to the local board of school directors (24 PA. CONST. STAT. ANN. §17-1728-A(b) (West 2014)).

Rhode Island’s charter school application had to include a provision that provided charter schools would provide annual report to parents, the community, school district and commissioner regarding charter school progress during the previous year (R.I. GEN. LAWS ANN. §16-77.3-2 (West 2014)).

Texas’s annual report, filed by charter schools, does not include evaluative information. Texas charter schools were required to file, with the commission, the name, addresses, telephone numbers of the charter schools’ governing body along with the



amount of compensation paid to each governing body member (TEX. EDUCATION CODE. ANN. §12.119(b) (West 2014).

#### Charter Termination

A common mechanism for securing academic achievement among charter schools is through the availability of revocation provisions. Ten states had mandatory revocation provisions and thirty-one states had discretionary revocation provisions. Among the states that mandated revocation included Delaware, Florida, Kansas, Mississippi, Missouri, Nevada, South Carolina, Tennessee, Texas, and Washington. Legislation that contained discretionary termination procedures could be found in Alaska, Arizona, Arkansas, California, Colorado, District of Columbia, Florida, Georgia, Hawaii, Illinois, Indiana, Iowa, Maine, Michigan, Minnesota, Missouri, Nevada, New Jersey, New Mexico, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, Utah, Virginia, Washington, Wisconsin and Wyoming. Revocation provisions generally provide that a charter school's charter contract can be revoked or not renewed based upon the existence of enumerated circumstances. A commonly cited circumstance that warrants charter revocation or nonrenewal is poor academic performance. Legislation that provided for charter revocation or nonrenewal based upon poor student achievement was either mandatory or discretionary. Revocation provisions were distinguishable by the specific language granting authority for revocation or nonrenewal. Some language related to academically supported charter school termination involved (i) failure to make sufficient progress toward academic expectations; (ii) failure to meet statutory standards or charter agreement terms; (iii) using language that did not explicitly

provide for termination based on academic failures; (iv) failure to meet program goals; (v) failure to show improvement for all students to allow charter revocation; and (vi) consistent poor academic performance.

Arizona, Hawaii, Illinois, Maine and Mississippi were among states that permitted charter termination for failure to make sufficient progress toward academic expectations.

Arizona charters could be revoked or nonrenewal for failure to "... [m]eet or make sufficient progress toward the academic performance expectations set forth in the performance framework [or] ... the operational performance expectations set forth in the performance framework or any improvement plans" (ARIZ.REV.STAT.ANN §§15-183(I)(1), 15-183(I) (3) (West 2014)).

Hawaii allowed the option for charter revocation or nonrenewal at any time "...if the authorizer determines that the charter school did any of the following or otherwise failed to comply with the provisions of this chapter...failed to meet or make sufficient progress; toward performance expectations set forth in the contract..." (HAW. REV. STAT. §302D-18(g) (West 2014)). Similarly, Illinois' charter statutes allow for revocation or non-renewal when a charter fails "...to meet or make reasonable progress toward achievement of the content standards identified in the charter" (105 ILL. COMP. STAT. ANN. 27A-9(c)(2) (West 2014)).

Maine's revocation statute provided for revocation when a charter school failed "...to meet or make sufficient progress toward the performance expectations set forth in the charter contract (ME. REV. STAT. ANN. tit. 20-A § 2411(6)(A)(2) (West 2014)). Mississippi required revocation or nonrenewal under the same circumstances (MISS. CODE. ANN. § 37-28-33(7)(b) (West 2013)). "A charter contract must be revoked at

any time or not renewed if the authorizer determines that the charter school has...Failed to meet or make sufficient progress toward performance expectations set forth in the charter contract...” (MISS. CODE. ANN. §37-28-33(7)(b) (West 2013)). Another line of statutes centered on language that allowed for charter termination when there is a failure to meet statutory standards or terms of a charter agreement.

The District of Columbia, Georgia, Missouri, North Carolina, Oklahoma, Pennsylvania, Rhode Island and South Carolina are representative of states that entailed language that permitted charter termination for failure to meet statutory standards or charter agreement terms. Failure to “...meet the goals and student academic achievement expectations set forth in the charter...” could warrant charter revocation in the District of Columbia (D.C. CODE ANN. § 38-1802.13(a)(2) (West 2014). Georgia permitted charter revocation for a “...failure to adhere to any material term of the charter, including but not limited to the performance goals set forth in the charter...” (GA. CODE ANN. §20-2-2068(a)(2)(B) (West 2014).

Missouri’s charter school statute required a charter school sponsor to revoke a charter when a charter school failed to meet the performance standards established in the charter (MO. ANN. STAT. §160.405(8)(1)(c) (West 2013)). However, the same section also provided that the charter school sponsor had the option of placing a charter school on probationary status for academic failures (MO. ANN. STAT. §160.405(8)(1)(c) (West 2013)). “ A sponsor shall revoke a charter or take other appropriate remedial action, which may include placing the charter school on probationary status for no more than twelve months, provided that no more than one designation of probationary status shall be allowed for the duration of the charter contracts...[for] failure to meet the performance

contract....” (MO. ANN. STAT. §160.405(8)(1)(c) (West 2013)). While the statutory language appeared to be mandatory, in reality revocation may actually be optional so long as a failing charter school had not been on probation during its contractual term (MO. ANN. STAT. §160.405(8)(1)(c) (West 2013)).

North Carolina provided for optional revocation when a charter school failed “...to meet the requirements for student performance contained in the charter...” (N.C. GEN. STAT. ANN. §115C-218.9(a)(1) (West 2014)). Similarly, Oklahoma allowed for revocation when a charter school failed to “...meet the requirements for student performance contained in the contract...” (OKLA. STAT. ANN. tit. 70 §3-137(C) (West 2014)). Likewise, Oregon allows for revocation when a charter school fails “...to meet the requirements for student performance stated in the charter...” (OR. REV. STAT. ANN. §338.105(1)(b) (West 2014)).

New Mexico allowed for suspension, revocation or nonrenewal when a charter school failed “...to meet or make substantial progress toward achievement of the department’s minimum educational standards or student performance standards identified in the charter contract...”(N.M. STAT. ANN. §22-8B-12(K)(2) (West 2014)).

Pennsylvania allowed revocation when charter schools failed to meet statutorily required student performance or “...failure to meet any performance standards set forth in the written charter...(24 PA. CONST. STAT. ANN. §17-1729-A(a)(2)( West 2014)). Pennsylvania also provides that a charter school’s failure to “...meet the performance targets within the stated period of time...shall be sufficient cause for revocation of the charter. (24 PA. CONST. STAT. ANN. §17-1729-A(a.1)(iii) (West 2014))

Rhode Island allowed for charter school revocation when a school “...[f]ails to meet or pursue the educational objectives contained in the charter” (R.I. GEN. LAWS ANN. §§16-77.1-5.1(b)(2), 16-77.3-4(a)(2) (West 2014).

South Carolina required charter revocation or nonrenewal when a charter school’s sponsor determined that a charter school committed a material violation of standards or performance expectations (S.C. CODE ANN. §59-40-110(C)(1) (2014)). Revocation is also mandated when there is a failure to “...meet the academic performance standards and expectations as defined in the charter application or charter school contract...”(S.C. CODE ANN. §59-40-110(C)(2) (2014)).

Idaho, Massachusetts, New Hampshire and New Jersey were among states that provided for charter termination using language that did not explicitly provided for termination based on academic failures.

Idaho provided for charter revocation but did not explicitly provide that a charter could be revoked or not renewed for failure to maintain appropriate academic achievement (IDAHO CODE ANN. § 33-5209C; §33-5209B (West 2014)). Instead, Idaho provided that a charter can only be revoked for “..failure to meet the terms of the performance certificate...” (IDAHO CODE ANN. §33-5209B(8)(a) (West 2014); if it “..has failed to meet any of the specific, written conditions for necessary improvements...by the dates specified...” (IDAHO CODE ANN. §33-5209C(8) (West 2014)). Similarly, Massachusetts did not specifically provide for charter revocation in the event of poor academic performance but it did specify that a charter could be revoked “...if the school has not fulfilled any conditions imposed by the board in connection with the grant of the charter or the school has violated any provision of its charter” (MASS.

GEN. LAWS. ch. 71, §89(ee) (West 2014)). New Hampshire’s revocation statute did not specifically provide for revocation in the event of academic failures; however, it did provide for revocation when a charter school “...commits a material violation of any of the conditions, standards or procedures set forth in its charter application and contract” (N.H. REV. STAT. ANN. §194B:16(II)(a) (West 2014)). The charter application and contract must outline the charter school’s accountability plan, which set forth expectations for evaluating the charter school’s program. It would reasonably follow that a charter could be revoked for a school’s failure to adhere to the accountability plan outlined in the charter application and contract (N.H. REV. STAT. ANN. §194B:16(II)(dd) (West 2014)).

Similarly, New Jersey did not specifically provide for revocation in the event of academic failures; however, it did allow the commissioner of education to “...revoke a school’s charter if the school has not fulfilled any condition imposed by the commissioner in connection with the granting of the charter or if the school has violated any provision of its charter” (N.J. STAT. ANN. §18A:36A-17 (West 2014)). Section 18A:36A-5 required academic achievement goals and measures as part of the charter application process. (N.J. STAT. ANN. §18A:36A-5 (West 2014)). Accordingly, a charter schools failure to meet standards regarding educational goals or academic performance measurement would arguable meet the announced reasons for revocation. Unlike numerous other statutes, there was no explicit language calling for revocation due to academic failures (N.J. STAT. ANN. §§18A:36A-1 to 18A:36A-17.1 (West 2014)).

Florida, Iowa and Kansas were states that used language that allowed for charter termination when a school failed to meet program goals.

A Florida charter could be terminated for “[f]ailure to participate in the state's education accountability system ...or failure to meet the requirements for student performance as stated in the charter (FLA. STAT. ANN. §1002.33(8)(a)(1) (West 2014).

Iowa allowed charter revocation when there was a failure “...to abide by and meet the provisions set forth in the contract, including educational goals” (IOWA CODE §256F.8(1)(a) (West 2014)). Section 256F.8 further provided that a charter may be revoked when “[a]ssessment of student progress...does not show improvement in student progress over that which existed in the same student population prior to the establishment of the charter school...” (IOWA CODE §256F.8(1)(e) (West 2014)).

Kansas required the state board of education to revoke a charter if a school “...fails to make progress in achieving the program goals contained in the charter...” KAN. STAT. ANN §72-1907(c)(2) (West 2014)).

Michigan and Minnesota were among states that used language regarding failure to show improvement for all students to allow charter revocation.

Michigan permitted charter revocation when there was a failure to “...demonstrate improved pupil academic achievement for all groups of pupils or meet the educational goals set forth in the contract” contract (MICH. COMP. LAWS §380.507(4)(a) (West 2014)).

Minnesota allowed for revocation when a charter school failed to “...demonstrate satisfactory academic achievement for all students, including the requirements for pupil performance contained in the contract...” (MINN. STAT. ANN. §124D.10(8)(b)(2) (West 2014)).

States such as Florida, Nevada and Rhode Island provided for charter termination using language regarding consistent poor academic performance.

Florida's provisions detailed parameters for both mandatory and discretionary revocation. Florida's charter schools could be closed for receiving "...three consecutive grades of 'D', two consecutive grades of 'D' followed by a grade of 'F', or two nonconsecutive grades of 'F' within a 3-year period..."(FLA. STAT. ANN. §1002.33(9)(n)(2) (West 2014). Charter schools that received two consecutive grades of "F" were mandated to have their charters revoked unless (i) "[t]he charter school was established to turn around the performance of a district public school..."; (ii) student population is from a traditional public school that earned an "F" in the previous year; (iii) a waiver is granted from the state. (FLA. STAT. ANN. § 1002.33(9)(n)(4) (West 2014).

Nevada provided provisions for both mandatory and optional charter revocation. A charter school sponsor could revoke a charter for persistent underperformance "...as measured by the performance indicators, measures and metrics set forth in the performance framework for the charter school..." (NEV. REV. STAT. ANN. §386.535(1)(a)(4) (West 2014)). A charter school sponsor had to revoke a charter "...if the charter school received three consecutive annual ratings established as the lowest rating possible indicating underperformance of a public school, as determined by the Department pursuant to the statewide system of accountability of public schools." (NEV. REV. STAT. ANN. § 386.535(1) (West 2014)).

Revocation was acceptable in Rhode Island when charter schools failed to obtain the status of "high performing charter school" within three consecutive years of operation (R.I. GEN. LAWS ANN. §§16-77.1-5.1(b)(5), 16-77.3-4(a)(5) (West 2014). A high



performing charter school demonstrates “...overall success including substantial progress in improving student achievement...” (R.I. GEN. LAWS ANN. §16-77.1-5.1(b)(5), 16-77.3-4(a)(5) (West 2014)).

Maryland did not detail revocation criteria but merely provided that each county board was required to develop charter revocation procedures (MD. CODE ANN., Elementary and Secondary Education §9-110(a)(2)(ii) (West 2014)).

### Similarities and Differences in Governance Provisions Across the United States’ Forty-Three Pieces of Charter School Legislation

Governance structure addressed how charter schools were operated and managed. A common topic across charter legislation was the requisite provision that detailed how charter schools were to be governed. The actual provisions varied among the states; however, commonalities included requirements that the actual governing structure be detailed in the charter application (ME. REV. STAT. ANN. tit. 20-A §2406(2)(F) (West 2014)) or charter agreements (MINN. STAT. ANN. §124D.10 (West 2014)). Thirty-three pieces of charter legislation required that governance structure be detailed in the charter application. States that mandated governance in the charter application included Arkansas, California, Colorado, Connecticut, District of Columbia, Florida, Hawaii, Idaho, Illinois, Indiana, Iowa, Maine, Massachusetts, Michigan, Mississippi, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Virginia, Washington, Wisconsin and Wyoming. Sixteen states required governance to be outlined in the charter agreement. States that mandated governance provisions in the charter contract included Arizona, Arkansas, Iowa, Kansas, Louisiana, Minnesota, New York,

North Carolina, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Texas, Utah, and Wisconsin. Only Colorado and Georgia had charter school legislation that provided for charter school governance by the local board of education (ARK. CODE ANN. § 6-23-302(c)(6) (West 2013); CAL. Education CODE §47.605(b)(5)(D) (West 2014); COLO. REV. STAT §22-30.5-106(1)(h) (West 2013); CONN. GEN. STAT. ANN. §10-66bb(d)(3) (West 2014); D.C. CODE ANN. §38-1802.02(7) (2014); FLA. STAT. ANN. §1002.33(7)(a)(15) (West 2014); HAW. REV. STAT. §302D-13(d)(6) (West 2014); IDAHO CODE ANN. §33-5205(3)(f) (West 2014); 105 ILL. COMP. STAT. ANN. §5/27-7(a)(10) (West 2014); IND. CODE ANN. §§20-24-3-4(b)(2)(C), 20-24-3-4(b)(2) (West 2013); IOWA CODE §256F.5(6) (West 2014); ME. REV. STAT. ANN. tit. 20-A, §2406(2)(F)(2) (West 2014); MASS. GEN. LAWS. ANN. ch.71, §89(e)(viii) (West 2014); MICH. COMP. LAWS §380.502 (West 2014); MISS. CODE ANN. §37-28-15(4)(u) (West 2013); NEV. REV. STAT. ANN. §386.520(5)(e) (West 2014); N.H. REV. STAT. ANN. §194-B:3(II)(b) (West 2014); N.J. STAT. ANN. §18A:36A-5(c) (West 2014); N.M. STAT. ANN. §§22-8B-8(I) (West 2014); N.Y. Education LAW §2851(2)(b) (McKinney 2014); N.C. GEN. STAT. ANN. §115C-218.1(B)(3) (West 2014); OKLA. STAT. ANN. tit. 70 §3-134(B)(2) (West 2014); OR. REV. STAT. ANN. §338.045(2)(f) (West 2014)); 24 PA. CONST. STAT. ANN. §17-1719-A(4) (West 2014); R.I. GEN. LAWS ANN. §16-77.3-2(a)(6) (West 2014); S.C. CODE ANN. §59-40-60 (F)(8) (2014); TEX. EDUCATION CODE. ANN. 12.016(4); 12.059(5) (West 2014); UTAH CODE ANN. 53A-1a-504(2)(c) (West 2014); WIS. STAT. ANN. §118.40(1m)(b)(6) (West 2013)). Alaska, Delaware, Maryland and Ohio were silent on charter school governance (ALASKA STAT. ANN. §14.03.260(a) (West

2014); DEL. CODE ANN. tit. 14 §§501 – 518 (West 2014); MD. CODE ANN., Elementary and Secondary Education §§9-101 to 9-112 (West 2014); OHIO REV. CODE ANN. §§3314.01 to 3314.99 (West 2014)). Some charter legislation provided discretion to the actual charter school for determination of school governance by merely requiring the governance to be detailed in the charter application or agreement. (See generally, ARIZ. REV. STAT. §15-183(E)(8)(West 2014); MISS. CODE. ANN. §37-28-15(4)(u) (West 2013); N.H. REV. STAT. ANN. §194B:3(II)(b) (West 2014)) while other statutes detailed specific criteria to be met by members of charter school governing boards. Eight states statutorily mandated specific members to be on the charter school governing boards. District of Columbia, Hawaii, Minnesota, Nevada, New Mexico, South Carolina, Tennessee, and Virginia each had statutory requirements for members to serve on the governing board of charter schools (D.C. CODE ANN. §38-1802.05 (2014); HAW.REV.STAT. §302D-12(a)(d)(West 2014); MINN. STAT. ANN. §124D.10 (West 2014); NEV. REV. STAT. ANN. §§386.490 to 386.549 (West 2014); N.M. STAT. ANN. §22-8B-4(B) (West 2014); S.C. CODE ANN. §59-40-50(B)(9) (2014); TENN. CODE ANN. § 49-13-109(a) (West 2014); VA. CODE. ANN. §22.1-212.6(B) (West 2014)). Beyond mandates for governance to be detailed in either the application or actual charter and requirements for governing board composition governance, provisions were merely distinguishable on the language used to effectuate the provisions.

#### General Simple Language Governing Structure and Bylaws

Arizona required that the charter agreement provided for “...a governing body for the charter school that is responsible for the policy decisions of the charter school”

(ARIZ. REV. STAT. §15-183(E)(8) (West 2014)). Likewise, Arkansas required that the charter application and charter agreement detail the governing structure of the charter program (ARK. CODE ANN. §6-23-302(c)(6) (West 2013); (ARK. CODE ANN. §6-23-306(8) (West 2013)). District of Columbia charter petitions had to describe “... the proposed rules and policies for governance and operation of the proposed school...” (D.C. CODE ANN. §38-1802.02(7) (West 2014)). Florida identified “...governance structure of the school, including the status of the charter school as a public or private employer...” as a criterion for charter approval (FLA. STAT. ANN. § 1002.33(7)(a)(15) (West 2014)).

Illinois required the charter school proposal to contain “[a] description of the governance and operation of the charter school, including the nature and extent of parental, professional educator, and community involvement in the governance and operation of the charter school” (105 ILL. COMP. STAT. ANN. 27A-7(a)(10) (West 2014)). Indiana’s charter proposal had to provide “[a] description of the organizer's organizational structure and governance plan...” (IND. CODE ANN. §20-24-3-4(b)(2) (West 2013)). The charter school application in both Iowa and Massachusetts had to include the “...school governance and bylaws” (IOWA CODE §256F.5(6) (West 2014); MASS. GEN. LAWS. ch. 71, §89(e)(viii) (West 2014)). Kansas charters must include “... the governance structure of the school...” (KAN. STAT. ANN §72-1906(c)(5) (West 2014)). Mississippi charter school proposal had to have “...proposed governing bylaws...” (MISS. CODE. ANN. §37-28-15(4)(u) (West 2013)). New Hampshire charter legislation required the application to contain the “...governance and organizational structure and plan...” (N.H. REV. STAT. ANN. §194B:3(II)(b) (West 2014)).

Massachusetts required charter applications to include the “...school governance and bylaws...” (MASS. GEN. LAWS. ch. 71, §89(e) (West 2014)) but did not explicitly state that the actual charter agreement must include governance language (MASS. GEN. LAWS. ch. 71, §89 (West 2014)). Section 89(e) does intimate that information provided in the charter application is necessary for approval of a charter school. Accordingly, it could be maintained that a charter agreement must have governance language. However, since the requirement that governance be included in the charter agreement is not explicit, it was not included in the data for charter statutes that required governance to be included in charter agreements.

Oklahoma required that provisions detailing the “...[m]anagement and administration of the charter school...” be included in the charter contract (OKLA. STAT. ANN. tit. 70 §3-135(A)(3) (West 2014)). “A charter school shall provide for a governing body for the school which shall be responsible for the policies and operational decisions of the charter school” (OKLA. STAT. ANN. tit. 70 §3-136(A)(8) (West 2014)).

California provided that a charter petition could be denied based upon written factual findings that the petition did not contain reasonably comprehensive descriptions of the “... governance structure of the school, including, but not limited to, the process to be followed by the school to ensure parental involvement” (CAL. Education CODE §47.605(b)(5)(D) (West 2014)).

Colorado’s charter legislation indicated that a charter application was a proposed agreement which had to contain a “...description of the governance and operation of the proposed charter school, including the nature and extent of parental, professional educator, and community involvement in the governance and operation of the proposed

charter school...” (COLO. REV. STAT. ANN. §22-30.5-106(1)(h) (West 2013)).

Connecticut charter school legislation required that petitions include a description of “...the school governance and procedures for the establishment of a governing council that includes teachers and parents and guardians of students enrolled in the school and...is responsible for the oversight of charter school operations, provided no member or employee of the governing council may have a personal or financial interest in the assets, real or personal, of the school...” (CONN. GEN. STAT. ANN. §10-66bb(d)(3) (West 2014)).

Governance plans had to be outlined in Maine’s charter applications (ME. REV. STAT. ANN. tit. 20-A §2406(2)(F)(2) (West 2014). Governance plans had to detail (i) information on proposed board members; (ii) proposed bylaws; organization chart; (iii) roles and responsibilities of the governing board; and (iv) identification information for the proposed governing board. (ME. REV. STAT. ANN. tit. 20-A §2406(2)(F)(2) (West 2014).

#### Specific Requirements Regarding Board Membership

Hawaii did not mandate that the governing board be composed of specific members but it did enumerate parameters and limitations regarding who can serve on the board (HAW. REV. STAT. §§302D-12(a) to 302D-12(d) (West 2014)). Former employees, relatives of former employees and former vendors or contractors of a charter school, under the governing board’s jurisdiction, may not serve on the governing board of a charter school unless the former relationship was concluded at least one year prior to service on charter school governing board (HAW. REV. STAT. §302D-12(a) (West

2014)). Former employees, relatives of former employees, and former vendors or contractors may not compose more than one third of the governing board's voting members (HAW. REV. STAT. §302D-12(a) (West 2014)). While not mandating specific criteria, Hawaii recommends that certain criteria be considered when selecting governing board members, such as diversity of perspective that is representative of charter school interests and the surrounding community; demonstrated understanding of nonprofit governance best practices; and strong financial and academic management experience (HAW. REV. STAT. §302D-12(b) (West 2014)).

Louisiana's charter schools were required to be established with a governing board, however, the governing board was prohibited from receiving any compensation beyond reimbursement of actual expenses incurred during the commission of board members' duties (LA. REV. STAT. ANN. §3991(B)(10) (West 2014)). While most charter schools require some form of governance, provision of terms requiring payment to governing board is rare and prohibition of payment is even more rare.

A Maine charter school proposal had to include the governance plan (ME. REV. STAT. ANN. tit. 20-A §2406(2)(E)(2) (West 2014)). The governance plan had to include "...background information on proposed board members..."; governing bylaws; organization charter that depicts the school's organizational structure; description of governing board's roles and responsibilities; identification of initial governing board members.

Minnesota required that the charter school board of directors be composed of at least five nonrelated parties (MINN. STAT. ANN. §124D.10 (4)(d) (West 2014)). The board of directors must consist of at least one licensed teacher employed at the charter

school; (ii) at least one parent of student enrolled in the charter school and (iii) at least one member of the community (MINN. STAT. ANN. §124D.10 (4)(g) (West 2014)). No board member can have a family member or business partner who is involved in the provision of services, goods, or facilities to the board member's charter school (MINN. STAT. ANN. §124D.10 (4a)(a) (West 2014)). A party is prohibited from serving as a charter school board of director member if she has an immediate family who is an employee of the charter school (MINN. STAT. ANN. §124D.10 (4a)(a) (West 2014)).

Missouri did not mandate specific governing board members; however, it did specify certain procedures that must be performed when selecting board members. Universities and colleges could not grant charters to a corporation whose board of directors has the university or college's employee as a member of the governing board (MO. ANN. STAT. §160.400(13) (West 2013)). Governing board members had to undergo criminal background and family care safety registry checks (MO. ANN. STAT. §160.400(14) (West 2013)). Governing board members were prohibited from possessing any substantial interest in any entity conducts business with the governing board (MO. ANN. STAT. §160.400(15) (West 2013)).

Nevada required charter school applications to include a proposed system of governance, which included "...the number of persons who will govern, the method for nominating and electing the persons who will govern and the term of office for each person" (NEV. REV. STAT. ANN. §386.520(5)(e) (West 2014)). Nevada outlined specific criteria for composition of charter school governing boards (NEV. REV. STAT. ANN. §386.549(1) (West 2014)). One member must be a licensed teacher (NEV. REV. STAT. ANN. § 386.549(a) (West 2014)). A licensed administrator or another licensed



teacher must also serve on the board (NEV. REV. STAT. ANN. §386.549(a) (West 2014)). One parent of a student enrolled in the charter school must sit on the board. Two people who have knowledge in accounting, financial services, law or human resources must serve on the charter school board. The board could also have additional members consisting of parents and representatives of nonprofit companies or organizations; however, there can be no more than one representative from any one business or organization (NEV. REV. STAT. ANN. § 386.549(2) (West 2014)).

New Jersey's charter school application had to include "...a list of the proposed members of the board of trustees of the charter school or a description of the qualifications and methods for the appointment of members of the board of trustees..." (N.J. STAT. ANN. §18A:36A-5(c) (West 2014)). While New Jersey's legislation did not detail specific members, it did provide guidance regarding member qualifications (N.J. STAT. ANN. §18A:36-11.1 (West 2014)). Charter school board members had to undergo a criminal background check within 30 days of appointment (N.J. STAT. ANN. §18A:36-11.1(b) (West 2014)). Conviction of certain crimes prohibited a person from serving as a charter school board of trustee (N.J. STAT. ANN. §18A:36-11.1(a) (West 2014)).

New Mexico required that charter school governing boards consist of a minimum of five members (N.M. STAT. ANN. §22-8B-4(B) (West 2014)). Governing board members were only permitted to serve on one charter school board at a time (N.M. STAT. ANN. §22-8B-4(B) (West 2014)). Local school board members were prohibited from serving on a charter school governing board located within the school board member's school district (N.M. STAT. ANN. §22-8B-4(B) (West 2014)). Any person

directly involved in the oversight or evaluation of a charter school was prohibited from serving on the charter school's governing board (N.M. STAT. ANN. §22-8B-5.2(C) (West 2014)). The charter school application had to include specified information in describing the charter school's governing body and operation. Application must have included a description of "...how the governing body will be selected...qualification and terms of members....how vacancies on the governing body will be filled...nature and extent of parental, professional educator and community involvement in the governance and operation of the school..."(N.M. STAT. ANN. §22-8B-8(I) (West 2014)). New York had provisions similar to New Mexico's application requirements in that New York's charter schools had to provide a list of the initial board members along with their qualifications; terms and methods of selecting members; school's organizational structure; procedures for conducting board meetings; and the process for promoting parental and staff involvement in the charter school's governance (N.Y. Education LAW §2851(2) (b) (McKinney 2014)).

South Carolina required that charter schools have a board of directors that consists of at least seven people (S.C. CODE ANN. §59-40-50(B)(9) (2014)). Fifty percent of the board membership must be composed of people with a background in K-12 education or business (S.C. CODE ANN. §59-40-50(B)(9) (2014)). At least fifty percent of the board of directors, must be elected by the charter school's employees and parents of enrolled students (S.C. CODE ANN. §59-40-50(B)(9) (2014)).

While Florida did not enumerate specific criteria precipitating board membership, it did provide criteria prohibiting membership. "An employee of the charter school, or his or her spouse, or an employee of a charter management organization, or his or her spouse,

may not be a member of the governing board of the charter school...” (FLA. STAT.ANN. §1002.33(26)(c) (West 2014).

#### Governance and Oversight Authority

Arizona provided that the “...sponsoring entity of a charter school shall have oversight and administrative responsibility for the charter school that it sponsors.” ARIZ. REV. STAT. §15-183(R) (West 2014)). Colorado provided that charter schools were accountable to its local school board of education for governance (COLO. REV. STAT. ANN. §22-30.5-104 (West 2013)). Local school boards controlled and managed local charter schools (GA. CODE ANN. §20-2-2065(b)(2) (West 2014). Charter schools are also subject to the state board of education (GA. CODE ANN. §20-2-2065(b)(3) (West 2014)).

Illinois charter schools were governed by their own board of directors or other governing body, as provided by the charter contract (105 ILL. COMP. STAT. ANN. 27A-5(c) (West 2014)). In Colorado, the charter school, along with the local board of education, selected the method of charter school governance (COLO. REV. STAT. ANN. §22-30.5-104 (West 2013)

Rhode Island’s charter school legislations provided that charter schools were governed by their own governing bodies; however, their actions could be superseded by the commissioner (R.I. GEN. LAWS ANN. §16-77-5.1(a) (West 2014)). Section 16-77-5.1 provided that complaints regarding violations of the Charter Public School Act of Rhode Island could be made directly to a charter school’s governing body; however, in the event that the complainant did not believe that their complaint has been adequately

addressed, then the complainant can submit their complaint to the commissioner for determination (R.I. GEN. LAWS ANN. §16-77-5.1(a) (West 2014)). The charter application must contain the “...plan for governance, administration, and operation of the independent charter school, including the manner in which the governing board of the school will be chosen, the nature and extent of parental, professional educatory and community involvement in the governance and operation of the independent charter school...” (R.I. GEN. LAWS ANN. §16-77.3-2(a)(4) (West 2014))

North Carolina enunciated that the “...board of directors of the charter school shall decide matters related to the operation of the school, including budgeting, curriculum, and operating procedures (N.C. GEN. STAT. ANN. §115C-215(c) (West 2014). It also provided that charter schools were accountable to the State Board of Education to ensure compliance with appropriate laws and charter provisions. (N.C. GEN. STAT. ANN. §115C-215(a) (West 2014).

Maryland did not detail the actual governance structure of charter schools but it did offer guidance on supervisory authority (MD. CODE ANN., Elementary and Secondary Education §9-102(11) (West 2014). Specifically, it maintained that a charter school “...[o]perates under the supervision of the public chartering authority from which its charter is granted and in accordance with its charter...” (MD. CODE ANN., Elementary and Secondary Education §9-102(11) (West 2014). Similarly, Idaho specifically enumerates the general supervisory authority of the state board of education over all of the state’s charter schools (IDAHO CODE ANN. § 33-5210 (West 2014)).

## Question 2: What Legislation Has Proven Vulnerable to Court Challenges?

Although charter school legislation has been around since 1991, it is constantly evolving. Question number two of this study required the review of nationwide legal cases that involved charter legislation and charter schools. Reporting of data related to question number two will be disseminated into three primary categories. First, there will be a reporting of legal cases that involved constitutional challenges to aspects of charter legislation. Next, there will be a discussion of legal cases related to the approval, denial and revocation of charters. Finally, there will be reporting of cases connected with charter school governance.

### Legal Cases that Result From Claims of Violation of Protections Enumerated in the United States Constitution

Reporting on constitutional challenges is divided into seven subcategories. Constitutional challenges that have impacted charter school legislation included claims concerning (i) equal protection; (ii) immunity; (iii) validity; (iv) discrimination; (v) protected rights; (vi) establishment clause; and (vii) due process.

### Legal Cases That Challenge the Constitutionality of Charter Legislation Based Upon Claims of Equal Protection Violation

The equal protection clause of the United States Constitution provided that “[n]o state shall make or enforce any law which shall...deny to any person within its jurisdiction the equal protection of the laws (U.S. Constitution, 14<sup>th</sup> amendment, section 1). The line of cases discussed in this section address a variety of equal protection violation claims involving unequal funding; redirection of funding; disparate requirements of charter schools as opposed to traditional public schools; withholding of

state funding to charter schools because of a charter school's receipt of federal funding; discriminatory intent; disparate treatment; and denial of charter school student's participation in extracurricular activities at traditional public school,

*J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. 375, (N.J. Super. Ct. App. Div. 2010) is a New Jersey appellate case involving equal protection violation claims as a result of inequitable charter school funding. *J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. at 377-378 (N.J. Super. Ct. App. Div. 2010). Charter school students filed a lawsuit alleging that funding charter schools less than traditional public schools and exclusion from receipt of any facilities funding was a violation of their right to equal protection. In *J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. at 377-378 (N.J. Super. Ct. App. Div. 2010). New Jersey's Appellate Court ruled that statutes providing charter schools with 10% less funding than traditional public schools and prohibition against charter schools receipt of state facilities funding was not a violation of charter school students' equal protection rights. *J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. 375 (N.J. Super. Ct. App. Div. 2010). The court determined that the funding scheme represented a deliberative legislative design that was intended as a reform measure to enhance the education for all students in both traditional public schools and charter schools and as such was reasonably designed to further "... the appropriate governmental intent of promoting comprehensive education reform"; therefore creating no equal protection violation. *J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. at 397-401 (N.J. Super. Ct. App. Div. 2010).

*In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999), involved challenges of

New Jersey's Charter School Program Act of 1995. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174 (N.J. Super. Ct. App. Div. 1999). It was contended that the Charter School Program Act violated the constitutional right to thorough and efficient education; unconstitutionally diverted public funds for private purposes; and violated procedural due process and equal protection requirements (*In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174. New Jersey's appellate court ruled that the Charter Program Act of 1995 did not "...violate the constitutional right to thorough and efficient education..." *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999). New Jersey's appellate court also found that the Charter School Program Act of 1995 did not violate the equal protection rights of students and parents from an existing school district *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, 240-241 (N.J. Super. Ct. App. Div. 1999). Even though charter school funding was obtained primarily from the existing school district, there had to be one of two findings in order to support a determination of constitutional violations. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, 240-241 (N.J. Super. Ct. App. Div. 1999). There had to be a finding that decreased per student spending in the existing school district was necessary to support a charter school's guaranteed level of spending or there had to be a finding that parents of the existing school district would be required to pay greater taxes than charter school student parents. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, 240-241 (N.J. Super. Ct. App. Div. 1999). A lack

of a school district's voters to have approval power over charter school budget allocation, does not violate equal protections rights by creating two sets of similarly situated voters and denying the right to vote to one set. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 241-243 (N.J. Super. Ct. App. Div. 1999).

The *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998), is a 1998 case that came before the Arizona Court of Appeals, Division 1. The Shelby School applied for a charter from the State Board of Education and its application was unanimously approved. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156,161, 962 P.2d 230, 235 (ARIZ. Ct. App. 1998). After approval of Shelby School's application, the State Board of Education notified the school that it would be requesting additional information, from the school, prior to entering into a charter contract. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The State Board of Education performed reference and credit checks on the four proposed members of the Shelby School's governing board. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). Two proposed members of the Shelby School proposed governing board, had credit reports that revealed a number of unpaid debts and liens. *Shelby School v. Arizona State Board of Education* 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The State Board of Education voted unanimously to deny the charter to the Shelby School "...based on unacceptable financial history as reflected in the credit report. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The Shelby School maintained that the State Board of Education



violated their equal protection rights because it required charter school applicants to undergo credit check evaluations while not imposing the same credit check requirement on employees of traditional public schools. *Shelby School v. Arizona State Board of Education* 192 Ariz. 156, 169, 962 P.2d 230, 243 (ARIZ. Ct. App. 1998). The Arizona Court of Appeals found that there was no equal protection violation because charter schools are classified differently from traditional public schools as they are formed and operated in a different manner. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 169, 962 P.2d 230, 243 (ARIZ. Ct. App. 1998). As such, the appellate court found that “...because the directors and board members of charter schools have more direct access to state funds than do employees of non-charter schools, it is reasonable for the charter school classification to have financial requirements that apply only to that class. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 169, 962 P.2d 230, 243 (ARIZ. Ct. App. 1998). Accordingly, the court found that the creditworthiness requirement placed on charter school directors and board members was reasonable and not violate of equal protection rights. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 169, 962 P.2d 230,243 (ARIZ. Ct. App. 1998).

*Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108, 23 P.3d 103 (ARIZ. Ct. App. 2001), involved a case where an Indian charter school had its state funding decreased because it received federal funding from the Bureau of Indian Affairs. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 109, 23 P.3d at 104 (ARIZ. Ct. App. 2001). The applicable state statutes required that the base level of support for a charter school be reduced by the amount of financial support received from a federal agency when the federal money was

intended for basic maintenance and operation of the charter school. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 110, 23 P.3d at 105 (ARIZ. Ct. App. 2001). The charter school argued that the reduction of state money because of its receipt of federal money was a violation of the Equal Protection Clause of the Fourteenth Amendment. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 111, 23 P.3d at 106 (App. Div. 1 2001). The appellate court found that there was no equal protection violation. The court reasoned that the constitution only required that the state reasonably classify and provide equal treatment to those who are similarly situated. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 111, 23 P.3d at 106 (ARIZ. Ct. App. 2001). However, the Bureau of Indian Affairs charter schools and non Bureau of Indian Affairs charter schools are not similarly situated as contemplated by the Constitutional clause. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 111, 23 P.3d at 106 (ARIZ. Ct. App. 2001). The court further explained that the charter school funding from the Bureau of Indian Affairs exceeded amounts that would be received by the state funding provisions while the non Bureau of Indian Affairs charter schools did not receive the extra federal funding. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 111, 23 P.3d at 106 (ARIZ. Ct. App. 2001). Accordingly, there was no equal protection violation, by the state, for refusal to provide the same funding as it provided to non Bureau of Indian Affairs charter schools. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 111, 23 P.3d at 106 (ARIZ. Ct. App. 2001).

The charter school also argued that the disparate treatment in funding required a strict scrutiny analysis when assessing whether there had been an equal protection violation. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 112, 23 P.3d at 107 (ARIZ. Ct. App. 2001). Strict scrutiny analysis requires the reviewing court to presume that the statute, at issue, is invalid. The charter school maintained that the decrease in state funding hampered the Bureau of Indian Affairs funded charter school students' fundamental right to education. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 112, 23 P.3d at 107 (ARIZ. Ct. App. 2001). The court rejected this proposition indicating that the state statute decreasing the charter school's funding neither treated students differently from other similarly situated students nor denied or substantially hindered the students' access to education. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. at 112, 23 P.3d at 107 (ARIZ. Ct. App. 2001).

*Villanueva v. Carere*, 85 F. 3d 481 (10th Cir. 1996), is a 1996 Colorado case that was appealed to the tenth circuit of the United States Court of Appeals. The case resulted from the approval of a charter school and the subsequent closing of two neighborhood traditional public schools (hereinafter "neighborhood schools") within the same community. *Villanueva v. Carere*, 85 F. 3d at 483 (10th Cir. 1996). The charter school proposal indicated that it was committed to admitting a student body that was reflective of the community and that it would admit students on a first-come, first-serve basis. *Villanueva v. Carere*, 85 F. 3d at 484 (10th Cir. 1996).

The school district was comprised of approximately 50% Hispanic students. *Villanueva v. Carere*, 85 F. 3d 481, 484 (10th Cir. 1996). Both of the closing

neighborhood schools were comprised of approximately 75% Hispanic students while the opening charter school was comprised of approximately 52% Hispanic students.

*Villanueva v. Carere*, 85 F. 3d at 484-485 (10th Cir. 1996). Students of the closing neighborhood schools were transferred to predominately minority schools. *Villanueva v. Carere*, 85 F. 3d at 485 (10th Cir. 1996). Several of the school board members and the superintendent were Hispanic with “...notable records of commitment to the Hispanic and minority communities...”. *Villanueva v. Carere*, 85 F. 3d at 485 (10th Cir. 1996).

The Hispanic parents of the closing neighborhood schools brought suit alleging that the approval to open the charter school and the subsequent closure of the neighborhood schools deprived them of their Fourteenth Amendment right to equal protection.

*Villanueva v. Carere*, 85 F. 3d at 483-484 (10th Cir. 1996). The United States Court of Appeals found that the parents failed to establish either discriminatory intent or impact related to the closing of the two neighborhood schools and the opening of the charter school. *Villanueva v. Carere*, 85 F. 3d at 486-487 (10th Cir. 1996). Absent the requisite establishment of discriminatory intent or disparate impact, there could be no finding of constitutional violation of equal protection rights. *Villanueva v. Carere*, 85 F. 3d at 486-487 (10th Cir. 1996).

*Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (S.D. Ohio 2002), is a United States District Court case originating in Ohio. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (S.D. Ohio 2002). The State Board of Education (“Board”) entered into a sponsorship contract with Board of Trustees Sabis International School (“Charter School”). *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 839 (S.D. Ohio 2002).

Charter School also entered into a management agreement with a management company. *Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 840 (S.D. Ohio 2002). Charter School and the management company became involved in a dispute, which ended in the contract cancellation of the management company. *Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 840-841 (S.D. Ohio 2002). The Charter School sued the Board alleging equal protection violations. *Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 841 (S.D. Ohio 2002). Charter school maintained that Board's refusal to assist Charter School in resolving the dispute with the management company amounted to violation of its right to equal protection. *Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 847 (S.D. Ohio 2002). The court rejected Charter School's proposition indicating that Charter School failed to demonstrate that Board treated similarly situated school boards differently than it treated Charter School's board. *Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 849 (S.D. Ohio 2002). Absent a showing of disparate treatment between similarly situated charter school boards, there can be no finding of unconstitutional equal protection violation. *Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 849 (S.D. Ohio 2002).

*Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004), is a Third Circuit United States Court of Appeals case originating from Pennsylvania. *Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004). *Angstadt* involved Mid-West School District's (School District) refusal to allow a cyber charter school student to participate in interscholastic basketball at a traditional public school. *Angstadt v. Midd-West School District*, 377 F. 3d at 340 (3d Cir. 2004). The pertinent school code

provision required traditional public schools to permit charter school students to participate in extracurricular activities in situations where the charter school does not offer the activity and the charter student fulfills the same requirements for participation as the traditional public school student. *Angstadt v. Midd-West School District*, 377 F. 3d at 341 (3d Cir. 2004). School District refused to permit charter school student to participate in the extracurricular activity because she failed to meet all of the requirements for participation. The student's parents filed suit alleging equal protection and due process rights violations. *Angstadt v. Midd-West School District*, 377 F. 3d at 341(3d Cir. 2004). The charter school student's parents argued that the School District violated Student's rights to equal protection by discriminating against her based on her classification as a cyber charter school student. *Angstadt v. Midd-West School District*, 377 F. 3d at 344(3d Cir. 2004). The court found that School District's requirements did not burden any fundamental constitutional rights and as such the restrictions associated with participation in extracurricular activities only had to be rationally related to a legitimate state interest. *Angstadt v. Midd-West School District*, 377 F. 3d at 344 (3d Cir. 2004). The Court found that School District's interest in "... (1) ensuring that its student athletes have the academic eligibility to play high school sports; (2) ensuring that its athletes meet its physical education requirements; (3) discouraging students from cutting class or taking unauthorized trips away from school during the school day; (4) encouraging students to maintain passing grades[;] and (5) promoting good citizenship..." are sufficient to establish a rational relationship between the restrictions and the legitimate governmental interests. As such, School District committed no equal protection violation by prohibiting charter school student from participating in extracurricular activity. *Angstadt*

*v. Midd-West School District*, 377 F. 3d at 344 (3d Cir. 2004).

### Legal Cases Involving Charter Schools and Challenges to Sovereign Immunity

The doctrine of sovereign immunity stems from the Eleventh Amendment of the United States Constitution and serves to prevent a state from being sued in federal court. *Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159, 1165 (D. Hawaii 2013). The Eleventh Amendment provides that “[t]he judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by Citizens of another State or Subjects of any Foreign State”. U.S. CONST. amend. XI. Generally, a state’s official, acting within the scope of her office and involved in constitutionally valid actions, cannot be sued in federal court as she is considered an arm of the state. *Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159, 1165 (D. Hawaii 2013); see also *Ex parte Young*, 209 U.S. 123, 159-60 (1908). The cases in this section address attempts to challenge charter schools’ right to assert sovereign immunity against lawsuits.

*King v. U.S.*, 53 F. Supp. 2d 1056, 1061 (10<sup>th</sup> Cir. 1999) is a U.S. District Court case arising from a forest fire. A charter schoolteacher took his students camping. The students set up a fire pit, which resulted in a forest fire. The forest fire destroyed the Plaintiffs’ property. Among others, the Plaintiffs’ sued the charter school for damages. The Plaintiffs alleged that the charter school was not a government entity, therefore not protected by Colorado’s Governmental Immunity Act. *King v. U.S.*, 53 F. Supp. 2d at 1065 (D. Colo. 1999). To support the Plaintiff’s contention, they argued that the charter school was not a public entity because (i) “...a public school is not necessarily a public

entity for sovereign immunity purposes...”; (ii) mere association with a school district does not make a charter school a public entity; (iii) the charter school “...operates more like a private school than a public school...”; and (iv) the charter school’s “...unique characteristics eliminate the possibility that it is a public entity...”. *King v. U.S.*, 53 F. Supp. 2d 1056, 1065 (D. Colo. 1999). The United States District Court rejected the Plaintiff’s contention instead finding that the charter school was a public entity and dismissed the Plaintiffs’ case against the charter school. *King v. U.S.*, 53 F. Supp. 2d at s 1065 (D. Colo. 1999). In reaching its determination, the Court reasoned that the State of Colorado delegated the charter school, power to conduct the business of educating public school students. *King v. U.S.*, 53 F. Supp. 2d 1056, 1066 (D. Colo. 1999). The Court also reasoned that “ [d]espite some degree of statutory autonomy, charter schools are ‘accountable to the school district’s local board of education for purposes of insuring compliance with applicable laws and charter provisions...’”. *King v. U.S.*, 53 F. Supp. 2d at 1066 (D. Colo. 1999). Colorado statute permits charter schools to organize as a nonprofit corporation without compromising their status as public schools. *King v. U.S.*, 53 F. Supp. 2d 1056, 1066 (D. Colo. 1999). The charter school’s elected governing board is still accountable to the school district’s board of education. *King v. U.S.*, 53 F. Supp. 2d at 10657 (D. Colo. 1999). While the charter school was not wholly funded by the state, it was primarily funded by state moneys. *King v. U.S.*, 53 F. Supp. 2d at 1067 - 1068 (D. Colo. 1999). Accordingly, the charter school was held to be “...an agency, instrumentality, and political subdivision of the School District”; therefore, prohibited from being sued the Colorado Governmental Immunity Act. *King v. U.S.*, 53 F. Supp. 2d at 1069 (D. Colo. 1999).



*Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159, 1161 (D. Hawaii 2013) is a United States District Court case that originated from Hawaii. Lindsey involved a case where a charter school student was expelled because of her participation in fighting and inappropriate Facebook postings that used abusive language and name calling which was contrary to the schools no tolerance policy. *Lindsey v. Matayoshi*, 950 F. Supp. 2d at 1162-1164 (D. Hawaii 2013). The student's parent was repeatedly offered alternative educational options at other public and private schools as well as the option of home schooling. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1163-1164 (D. Hawaii 2013). The student's parent refused the offers to have student placed in an alternative school. *Lindsey v. Matayoshi*, 950 F. Supp. 2d at 1163 (D. Hawaii 2013). The student's parents brought suit alleging due process violations and sued the state superintendent along with the charter school's officials. *Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159 (D. Hawaii 2013). Hawaii's charter school legislation identified charter schools as "...public schools and entities of the state." *Lindsey v. Matayoshi*, 950 F. Supp. 2d at 1166 (D. Hawaii 2013). Hawaii is the only state in the nation that has placed the primary responsibility for public education on the state rather than local or county government. *Lindsey v. Matayoshi*, 950 F. Supp. 2d at 1166 (D. Hawaii 2013). The U.S. District Court found that charter schools were state agencies for the purpose of applying Eleventh Amendment sovereign immunity. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1166 (D. Hawaii 2013). In the absence of three factors, charter school officials were prohibited from being sued by the Eleventh Amendment of the U.S. Constitution. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1165 (D. Hawaii 2013). State officials may only be sued in federal court when (i) the state waives its Eleventh Amendment immunity; (ii) Congress expressly abrogates

Eleventh Amendment immunity or (iii) Congress creates a statute where the only possible defendants are the states. *Lindsey v. Matayoshi*, 950 F. Supp. 2d at 1165 (D. Hawaii 2013). The U.S. District Court found none of those events in the Lindsey case. Accordingly, as a state entity, the charter school could not be sued and the case was dismissed. *Lindsey v. Matayoshi*, 950 F. Supp. 2d at 1168 (D. Hawaii 2013).

*Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (S.D. Ohio 2002), is a United States District Court case originating in Ohio. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (S.D. Ohio 2002). The State Board of Education (“Board”) entered into a sponsorship contract with Board of Trustees Sabis International School (“Charter School”). *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 839 (S.D. Ohio 2002). The Board drafted the charter contract which provided that any dispute involving Charter School and Board would be resolved by binding arbitration. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 840 (S.D. Ohio 2002). Charter School and Board became embroiled in a dispute and the Board refused to participate in arbitration citing an inability to waive its sovereign immunity. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 841-842 (S.D. Ohio 2002). A state can only be sued in federal court if waives its sovereign immunity, thereby consenting to be sued in federal court. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 845 (S.D. Ohio 2002). The United States District Court ruled that the “... State’s insertion of a binding arbitration clause into the Sponsorship Contract waives the State’s Eleventh Amendment immunity, and constitutes consent to be sued in federal court”. *Board of Trustees Sabis International School v. Montgomery*,

205 F. Supp. 2d at 846 (S.D. Ohio 2002). The Court reasoned that "...insertion of the binding arbitration clause into the contract constitutes pre-litigation conduct, or action undertaken in anticipation of future disputes that might result in litigation". *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 846 (S.D. Ohio 2002). Accordingly, the Board's action of inserting a binding arbitration clause into the sponsorship contract constitutes a waiver of the State's sovereign immunity; thereby allowing it to be sued in federal court. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 846 (S.D. Ohio 2002).

#### Legal Cases That Challenge the Constitutionality Validity of Charter Legislation

*Wilson v. State Board of Education*, 75 Cal. App. 4th 1125 (Cal. Ct. App. 1999), is a California First District Court of Appeals case that involved a constitutional validity challenge to California's charter school legislation. Wilson, a concerned San Francisco resident, filed a writ of mandate to prevent the Board of Education from granting any charters or expending public funding to implement charter legislation. *Wilson v. State Board of Education*, 75 Cal. App. 4th at 1130 (Cal. Ct. App. 1999). Wilson's contention was that California's charter school legislation's delegation of authority over issues such as over text books, teaching methods and charter school operations, amounted to an unconstitutional abdication of state control over essential educational functions. *Wilson v. State Board of Education*, 75 Cal. App. 4th at 1135 (Cal. Ct. App. 1999). The appellate court found that the legislature had constitutional authority to delegate aspects of the overall educational system necessary to further the purposes of education. *Wilson v. State Board of Education*, 75 Cal. App. 4th at 1135 (Cal. Ct. App. 1999).

Accordingly, the legislature has the authority to delegate responsibilities for implementation of its charter school legislation without amounting to an unconstitutional abrogation of its legislative power. *Wilson v. State Board of Education*, 75 Cal. App. 4th at 1135 (Cal. Ct. App. 1999).

*Villanueva v. Carere*, 85 F. 3d 481 (10th Cir. 1996), is a 1996 Colorado case that was appealed to the tenth circuit of the United States Court of Appeals. The case resulted from the approval of a charter school and the subsequent closing of two neighborhood traditional public schools (hereinafter “neighborhood schools”) within the same community. *Villanueva v. Carere*, 85 F. 3d at 483 (10th Cir. 1996). Provisions of Colorado’s Charter School Act reserved “...thirteen charters for ‘applications which are designed to increase the education opportunities of at-risk pupils,’ ...”. Colorado’s Charter School Act defined “...’at-risk pupils’ as those ‘who because of physical, emotional, socioeconomic, or cultural factors, [are] less likely to succeed in a conventional educational environment’ ...”. *Villanueva v. Carere*, 85 F. 3d at 488 (10th Cir. 1996). The Hispanic parents of the closing neighborhood schools brought suit challenging the constitutionality of Colorado’s Charter School Act. *Villanueva v. Carere*, 85 F. 3d at 484 (10th Cir. 1996). The closing schools’ parents alleged that “cultural” really meant ethnic minority, which indicated that Colorado’s Charter School Act actually separated and classified students based on race and ethnicity, which would require a strict scrutiny standard of review. *Villanueva v. Carere*, 85 F. 3d at 488 (10th Cir. 1996). A strict scrutiny standard of review would require the government to justify why the classification was necessary in order for Colorado’s Charter School Act to be valid, rather than the parents having to establish why Colorado’s Charter School Act is

constitutionally invalid. The U.S. Court of Appeals explained that reading one provision of Colorado's Charter School Act did not provide adequate insight into the legislation's creation of specific classifications based on culture. *Villanueva v. Carere*, 85 F. 3d at 488 (10th Cir. 1996). The Tenth Circuit found that "...the carefully crafted provisions of the Act mandating open enrollment and expressly proscribing discrimination convince us that no suspect classification has been created". *Villanueva v. Carere*, 85 F. 3d at 488 (10th Cir. 1996). Since there was no suspect class created, the rational basis analysis was applied in reviewing the constitutionality of Colorado's Charter School Act. *Villanueva v. Carere*, 85 F. 3d 481, 488 (10th Cir. 1996). The U.S. Court of Appeals had to determine whether Colorado's Charter School Act rationally furthered a legitimate state purpose. *Villanueva v. Carere*, 85 F. 3d at 488 (10th Cir. 1996). The Court found that "Colorado had a legitimate interest in encouraging innovation in education". *Villanueva v. Carere*, 85 F. 3d at 488 (10th Cir. 1996). Colorado's Charter Schools Act was rationally related to its interest in encouraging educational innovation; therefore, it was found to be constitutionally valid. *Villanueva v. Carere*, 85 F. 3d at 488 (10th Cir. 1996)

*In re Charter School Appeal of Greater Brunswick Charter School*, 332 N.J. Super. 409, 411, 753 A.2d 1155, 1156 (N.J. Super. Ct. App. Div. 1999), was a Superior Court of New Jersey Appellate decision stemming from the approval of a regional charter school. The board of education for one of the covered school districts objected to the charter school's approval on various grounds, including inadequate consideration of racial impact resultant from charter school opening. *In re Charter School Appeal of Greater Brunswick Charter School*, 332 N.J. Super. 409, 753 A.2d 1155 (N.J. Super. Ct. App. Div. 1999). The District Board of Education alleged that, although required, the

Commissioner failed to consider the racial impact that approval of the charter school would have on its school district. *In re Charter School Appeal of Greater Brunswick Charter School*, 332 N.J. Super. 409, 422-425, 753 A.2d 1155, 1163 (N.J. Super. Ct. App. Div. 1999). The District Board of Education further maintained that the absence of the Charter School Program Act to mandate consideration of racial impact in approval of charter applications rendered the Charter School Program Act unconstitutional. *In re Charter School Appeal of Greater Brunswick Charter School*, 332 N.J. Super. 409, 425, 753 A.2d 1155, 1163 (N.J. Super. Ct. App. Div. 1999). The Superior Court rejected the argument citing prematurity of complaint. *In re Charter School Appeal of Greater Brunswick Charter School*, 332 N.J. Super. 409, 425, 753 A.2d 1155, 1163-1164 (N.J. Super. Ct. App. Div. 1999). The Superior Court explained that should there be a skewed racial mix due to the charter school opening, the commissioner of education could take remedial action. *In re Charter School Appeal of Greater Brunswick Charter School*, 332 N.J. Super. 409, 753 A.2d 1155 (N.J. Super. Ct. App. Div. 1999)

*In re the Matter of the 1999-2000 Abbott v/ Burke Implementing Regulations*, 348 N.J. Super. 382 (N.J. Super. Ct. App. Div. 2002) is based on challenges to implementation of the court's mandates regarding educational funding of poor children in special needs districts. *In re the Matter of the 1999-2000 Abbott v/ Burke Implementing Regulations*, 348 N.J. Super. 382, 388 (N.J. Super. Ct. App. Div. 2002). Implementation of the court's order extended to funding and a bevy reform efforts. *In re the Matter of the 1999-2000 Abbott v/ Burke Implementing Regulations*, 348 N.J. Super. 382 (N.J. Super. Ct. App. Div. 2002). The "Abbott regulations" were challenged as unconstitutional because they excluded charter schools from being subject to the regulations. *In re the*

*Matter of the 1999-2000 Abbott v/ Burke Implementing Regulations*, 348 N.J. Super. 382, 438-439 (N.J. Super. Ct. App. Div. 2002). The court determined that charter schools were appropriately excluded from the Abbott regulations because to include charter schools in the Abbott funding matrix would subject charter schools to a demanding regulatory framework that would subvert the purpose of charter schools to “...foster ‘an alternative vision for schooling’ ...”. *In re the Matter of the 1999-2000 Abbott v. Burke Implementing Regulations*, 348 N.J. Super. 382, 440 (N.J. Super. Ct. App. Div. 2002).

*Utah School Boards Association v. Utah State Board of Education*, 17 P.3d 1125, (UTAH 2001) involved the Utah School Boards Association’s challenge of the constitutional validity of the Utah Charter Schools Act. *Utah School Boards Association v. Utah State Board of Education*, 17 P.3d at 1127 (UTAH 2001). The Utah legislature enacted the Utah Charter School Act authorizing the creation of charter schools. *Utah School Boards Association v. Utah State Board of Education*, 17 P.3d at 1127 (UTAH 2001). The Utah Charter School Act identified charter schools as part of the state’s public education system under the supervision of the State Board of Education. *Utah School Boards Association v Utah State Board of Education*, 17 P.3d at 1127 (UTAH 2001). The State Board of Education was given authority to (i) approve or deny charter school applications; (ii) formulate charter contracts with approved applicants; (iii) develop rules for provision of specific facets of charter school funding; (iv) terminate or refuse to renew a charter under certain circumstances; and (v) receive statutorily mandate charter school reports. *Utah School Boards Association v Utah State Board of Education*, 17 P.3d at 1127 (UTAH 2001). The Utah School Boards Association challenged the constitutional validity of the Utah Charter School Act because the charter

school act granted local and specific control of charter schools to the State Board of Education. *Utah School Boards Association v. Utah State Board of Education*, 17 P.3d at 1127 (UTAH 2001). The Utah School Boards Association argued Utah’s “...constitution vested the State Board [of Education] only with the ‘general control and supervision of the public education system’...”. *Utah School Boards Association v Utah State Board of Education*, 17 P.3d at 1127 (UTAH 2001). Accordingly, it was unconstitutional for the legislature to authorize for the State Board of Education to (i) approve and deny charters applications; (ii) establish terms and conditions for individual charter school operation; (iii) terminate charters; and (iv) determine distribution of local school district funding to charter schools. *Utah School Boards Association v. Utah State Board of Education*, 17 P.3d at 1128 (UTAH 2001). Utah’s Supreme Court upheld the constitutionality of the Utah Charter School Act indicating that “...it is clear that the State Board has been vested with the authority to direct and manage all aspects of the public education system in accordance with the laws made by the legislature...”. *Utah School Boards Association v. Utah State Board of Education*, 17 P.3d at 1131. Therefore, the legislatures’ grant of specific authority to the State Board of Education for specific and local control of charter schools is constitutionally valid. *Utah School Boards Association .v Utah State Board of Education*, 17 P.3d at 1131.

*School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008), involved review of a charter school application denial by the School Board of Volusia County. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008). Academies of Excellence charter school was denied a charter because of insufficiencies in its application. *School*



*Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1188 (Fla. Dist. Ct. App. 2008). The charter school appealed the denial to the State Board of Education.

*School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008). The State Board of Education found that the charter school application did possess insufficiencies but not to the extent to warrant an application denial. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1189 (Fla. Dist. Ct. App. 2008). The State Board of Education ordered the School Board of Volusia County to grant the charter school’s application. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1189 (Fla. Dist. Ct. App. 2008).

The School Board of Volusia County appealed the State Board of Education’s decision alleging that the State Board of Education unconstitutionally violated the School Board of Volusia County’s constitutional authority. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1191 (Fla. Dist. Ct. App. 2008). The School Board of Volusia County maintained that the state constitution gave authority to “...operate, control and supervise public schools...” in Volusia County to the local school board.

*School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186, 1191 (Fla. Dist. Ct. App. 2008). Volusia County School Board’s position was that charter school legislation permitting the State Board of Education to open a charter school was a violation the School Board of Volusia County’s authority to operate, control and supervise public schools. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1191 (Fla. Dist. Ct. App. 2008). The Fifth District Court of Appeals rejected The School Board of Volusia County’s argument. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1193 (Fla. Dist. Ct. App. 2008).

The court found that the charter school legislation did not “...permit the State Board to open a charter school. Rather, the statute permits the State Board to approve or deny a charter application after it completes an extensive review process”. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1193 (Fla. Dist. Ct. App. 2008). The court further explained that “[g]ranting a charter application is not equivalent to opening a public school”. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1191 (Fla. Dist. Ct. App. 2008). Although, the local school board does have the authority to operate, control and supervise schools within its district, ultimate supervision of the entire system of public education is vested in the State Board of Education. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1193 (Fla. Dist. Ct. App. 2008). Accordingly, the charter school legislation grant of review authority to the State Board of Education did not render the legislation unconstitutional. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186, 1193 (Fla. Dist. Ct. App. 2008).

*Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. Dist. Ct. App. 2008) involved a constitutional challenge to the validity of a provision of Florida’s charter school legislation. *Duval County School Board v. State Board of Education*, 998 So. 2d at 642 (Fla. Dist. Ct. App. 2008). A provision of Florida’s charter school legislation established the “Florida Schools of Excellence Commission” which was a state level entity empowered with authority to authorize charter schools throughout the state. *Duval County School Board v. State Board of Education*, 998 So. 2d at 642 (Fla. Dist. Ct. App. 2008). Prior to enactment of the provision creating the Florida Schools of Excellence Commission, only local school districts could authorize charter

schools. *Duval County School Board v. State Board of Education*, 998 So. 2d at 642 (Fla. Dist. Ct. App. 2008). Subsequent to creation of the Florida Schools of Excellence Commission, local school boards could only exercise exclusive authority to authorize charter schools if the State Board of Education granted the local school districts that authority. *Duval County School Board v. State Board of Education*, 998 So. 2d at 642 (Fla. Dist. Ct. App. 2008). Duval County applied for exclusive authority to grant charter school applications in its district but its request was denied. *Duval County School Board v. State Board of Education*, 998 So. 2d at 642 (Fla. Dist. Ct. App. 2008). A notice of appeal was filed to challenge the constitutionality of the charter legislation provision. *Duval County School Board v. State Board of Education*, 998 So. 2d at 642 (Fla. Dist. Ct. App. 2008). Florida's constitution gives local school boards the authority to operate control and supervise all public schools within the school board's district. *Duval County School Board v. State Board of Education*, 998 So. 2d at 643 (Fla. Dist. Ct. App. 2008). The First District Court of Appeals found that the charter school provision permitted and encouraged "...the creation of a parallel system of free public education escaping the operation and control of local elected school boards". *Duval County School Board v. State Board of Education*, 998 So. 2d at 642 (Fla. Dist. Ct. App. 2008). The charter school provision vested powers in a state commission that were specifically reserved, by Florida's constitution, to local school boards. *Duval County School Board v. State Board of Education*, 998 So. 2d at 643 (Fla. Dist. Ct. App. 2008). The court found that there were no circumstances where the statute would be valid. *Duval County School Board v. State Board of Education*, 998 So. 2d at 643 (Fla. Dist. Ct. App. 2008). Accordingly, the

charter school provision was determined to be facially unconstitutional. *Duval County School Board v. State Board of Education*, 998 So. 2d at 643 (Fla. Dist. Ct. App. 2008).

#### Legal Cases Involving Issues Related to Discrimination

*Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195 (Pa. Commw. Ct. 2004), involved a charter school application denial due to allegations of intellectual discrimination. The pertinent part of Pennsylvania’s charter school legislation provided that a “...charter school shall not discriminate in its admission policies or practices on the basis of intellectual ability...”. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 199 (Pa. Commw. Ct. 2004). *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 197 (Pa. Commw. Ct. 2004). The Founding Coalition of the Infinity Charter School’s (“charter school”) primary purpose was to “...provide an educational option for mentally gifted students”. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 197 (Pa. Commw. Ct. 2004). Charter School targeted and marketed toward mentally-gifted students. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 200 (Pa. Commw. Ct. 2004). However, Charter School’s policies specifically provided that students would be admitted without regard to intellectual ability. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 200 (Pa. Commw. Ct. 2004). Charter School’s proposed budget included funding for a learning specialist to address the needs of uneven student development. *Central Dauphin School District v. Founding Coalition of the Infinity*

*Charter School*, 847 A.2d at 199 (Pa. Commw. Ct. 2004). There was also a consultation with a special needs service provider regarding contracting for services to meet the needs of students with learning disabilities. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 199 (Pa. Commw. Ct. 2004). The Central Dauphin School District (“school district”) denied the charter school’s application for several reasons, one of which was that “...the proposed charter school would impermissibly discriminate on the basis of intellectual ability”. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 197 (Common Wealth Court of Penn 2004). School District’s denial was reviewed by the State Charter School Board (“Board”). *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195, 197 (Pa. Commw. Ct. 2004). The Board determined that Charter School’s charter application was inappropriately denied and School Board appealed the Board’s decision. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 197 (Pa. Commw. Ct. 2004). Pennsylvania’s court determined that Charter School policies provided equal access admissions and curriculum without regard to intellectual ability. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 200 (Pa. Commw. Ct. 2004). It was further determined that Charter school was “...adequately prepared to address the needs of non-gifted students...”. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 200 (Pa. Commw. Ct. 2004). The Court ultimately ruled that while Charter School’s target population was mentally-gifted students and as such mentally-gifted students were more like to thrive at the charter school, that did not create a discriminatory environment.

*Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d at 200 (Pa. Commw. Ct. 2004).

*Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108, 23 P.3d 103 (ARIZ. Ct. App. 2001), involved a case where an Indian charter school had its state funding decreased because it received federal funding from the Bureau of Indian Affairs. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108, 109, 23 P.3d at 104 (ARIZ. Ct. App. 2001). The applicable state statutes required that the base level of support for a charter school be reduced by the amount of financial support received from a federal agency when the federal money is intended for basic maintenance and operation of the charter school. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108,110, 23 P.3d 103, 105 (ARIZ. Ct. App. 2001). The charter school argued that the applicable statute was discriminatory and violated the students' civil rights. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108,112, 23 P.3d 103, 107 (ARIZ. Ct. App. 2001). The court found that there was no discrimination because the charter school failed to establish that the applicable statute adversely and disproportionately affected its students. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108,112, 23 P.3d 103, 107 (ARIZ. Ct. App. 2001). In support of its finding, the court explained that Bureau of Indian Affairs funded charter schools received either the same amount or more governmental funding than non Bureau of Indian Affairs funded charter schools. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108,112, 23 P.3d 103, 107 (ARIZ. Ct. App. 2001). Additionally, Bureau of Indian Affairs funded charter schools were guaranteed to receive state funding to equalize

funding difference, should the Bureau of Indian funding ever fall below the state's basic maintenance and operation requirement. *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108,112, 23 P.3d 103, 107 (ARIZ. Ct. App. 2001). Since the Bureau of Indian Affairs funded charter schools were guaranteed to receive at minimum, the same funding as other charter schools, there could be no finding of discriminatory exclusion or denial of funding *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108,112, 23 P.3d 103, 107 (ARIZ. Ct. App. 2001).

*In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000) is a case that was heard by the New Jersey Supreme Court regarding the Commissioner of Education's ("Commissioner") responsibility to maintain racial balance within school districts. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000). *In re Grant of Charter School Application of Englewood on the Palisades Charter School* involved allegations of racial and economic imbalance resulting from approval of a charter application. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 320 N.J. 174 (NJ appellate Division 1999); *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000). New Jersey's Supreme Court held that the Commissioner of Education "...must assess the racial impact that a charter school applicant will have on the district of residence in which the charter school will operate". *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316, 329 (N.J. 2000). The court further concluded that the Commissioner of Education was obligated to

use the full extent of his power to prevent segregation from occurring as a result of a charter school's approval. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316, 329 (N.J. 2000). During the charter approval process, once a school district makes a preliminary showing that charter approval will impact the district's ability to adequately provide education to its students, then the Commissioner of Education must consider the economic impact that may result from charter application approval. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316, 336 (N.J. 2000).

#### Legal Cases Involving Protected Rights of Charter Schools

A "protected right" generally applies to a property interest that requires procedural due process prior to deprivation of that property interest. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868, 877 (M.D. Tenn. 2013). Prior to determining the validity of a due process violation claim, the court must determine whether the complainant has a constitutionally protected property interest. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868, 877 (M.D. Tenn. 2013). If there is a constitutionally protected property interest, then the U.S. Constitution requires procedural due process prior to the deprivation of that protected property interest. (U.S. Constitution, Amendment XIV).

*In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999), involved a challenge to the approval of a charter school application. *In re Grant of Charter School Application of*



*Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div.1999). Among the contested issues was the entitlement of the local school districts to a hearing on the merits of a charter school’s application. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 234, (N.J. Super. Ct. App. Div. 1999). The court determined that the commissioner of education’s determination of whether to approve a charter school application was an approval process rather than an adjudicatory process, which involved contested issues of fact. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 236, (N.J. Super. Ct. App. Div. 1999). Since the commissioner of education’s approval process was not adjudicatory, there could be no protected right in an adjudicatory proceeding. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 234, (N.J. Super. Ct. App. Div. 1999).

*Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024 (N.Y. App. Div. 2013), was a New York Supreme Court case from the appellate division involving a denial of an application for charter renewal. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024, 1025 (N.Y. App. Div. 2013). The University of the State of New York (“Authorizer”) denied the renewal application of Pinnacle Charter School (“Charter School”). *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1025 (N.Y. App. Div. 2013). Charter School filed an action alleging constitutional violations and requesting a preliminary injunction to prevent the closure of the charter school. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1025 (N.Y. App. Div. 2013). Initially, New York’s

Supreme Court granted an injunction preventing Authorizer from closing the charter school. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024, 1025 (N.Y. App. Div. 2013). The Supreme Court found that the injunction was inappropriately issued and that Charter School’s lawsuit should have been dismissed. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1025-1027 (N.Y. App. Div. 2013). The Supreme Court found that Charter School was not entitled to state or federal constitutional due process because New York Charter Schools Act created no constitutionally protected property interest in charter contract renewal. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1026 (N.Y. App. Div. 2013). In order to be entitled to due process protection, there must be a constitutionally protected right at issue. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1026 (N.Y. App. Div. 2013). Since New York’s charter school legislation vested no property interest in charter renewal, Charter School was not entitled to due process protections. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1026 (N.Y. App. Div. 2013). Accordingly, there could be no unconstitutional violation. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1026 (N.Y. App. Div. 2013).

*Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (S.D. Ohio 2002), is a United States District Court case originating in Ohio. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (S.D. Ohio 2002). The State Board of Education (“Board”) entered into a sponsorship contract with Board of Trustees Sabis International School (“Charter School”). *Board of Trustees*

*Sabis International School v. Montgomery*, 205 F. Supp. 2d at 839 (S.D. Ohio 2002). The Charter School sued the Board alleging due process violations. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 849-850 (S.D. Ohio 2002). Charter School alleged that the state superintendent's failure to properly monitor charter school's management company resulted in Charter School's loss of its sponsorship contract. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 850 (S.D. Ohio 2002). Charter School argued that the Board denied Charter School of (i) its right in the charter school contract; (ii) its legal interest in providing education for African American Students; and (iii) its property interest in its position as the governing board. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 850 (S.D. Ohio 2002). The United States District Court found that Charter School had no property interest in maintaining a sponsorship contract. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 850 (S.D. Ohio 2002). The court also rejected Charter School's argument that it had an interest in providing education for African American students. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 850 (S.D. Ohio 2002). The court explained that Charter School has no claim on the property interest of Ohio's students. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 850 (S.D. Ohio 2002). Ohio students have a property interest in obtaining an education and any claim of constitutional deprivation must be claimed by the student and not the Charter School. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 850 (S.D. Ohio 2002). The Court found that Charter School Board did have a protected interest in maintaining the sponsorship contract since a sponsorship contract

could only be terminated, prior to its expiration, based on a showing of good cause.

*Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 850

(S.D. Ohio 2002). Even though the court found that Charter School Board had a

protected interest in maintaining its sponsorship contract, there was no constitutional

deprivation of that property interest because there was no statutory requirement that the

state superintendent monitor and report on Charter School's management company.

*Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d at 852

(S.D. Ohio 2002).

*Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868 (Fed. Cir. M.D. Tenn. 2013), is a United

States District Court case that arose from Tennessee's Metropolitan Nashville Board of

Public Education's ("Board") vote to revoke Project Reflect, Inc. Smithson Craighead

Middle School's ("Charter School") charter. *Project Reflect, Inc. Smithson Craighead*

*Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at

871 (Fed. Cir. M.D. Tenn. 2013). Charter School initially opened in a dilapidated

building, which necessitated its relocation prior to the third year of operation. *Project*

*Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of*

*Public Education*, 947 F. Supp. 2d at 872 (Fed. Cir. M.D. Tenn. 2013). Student

displacement associated with this move resulted in low standardized test scores. *Project*

*Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of*

*Public Education*, 947 F. Supp. 2d at 872 (Fed. Cir. M.D. Tenn. 2013). The Metro

Nashville Public Schools Office of Innovation Executive Director failed to provide any

support or notification regarding areas of concern and ultimately recommended charter

revocation. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 872 (Fed. Cir. M.D. Tenn. 2013). Even though the test scores were improving incrementally and the school presented a safe environment, the charter was revoked for academic underperformance. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 872 (Fed. Cir. M.D. Tenn. 2013). Charter School along with parents of enrolled students alleged that Board violated their constitutionally protected rights under the equal protection and due process clauses of the Fourteenth Amendment to the United States Constitution. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 871 (Fed. Cir. M.D. Tenn. 2013). The federal court found that Charter School lacked a property interest in maintaining the charter agreement. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 878 (Fed. Cir. M.D. Tenn. 2013). Pursuant to Tennessee's charter legislation language and Charter School's charter agreement, the benefit of maintaining the charter agreement was subject to the State's discretion. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 878 (Fed. Cir. M.D. Tenn. 2013). Charter School's charter agreement incorporated Tennessee's charter legislation, which permitted revocation or non-renewal upon determination of a charter school's poor academic performance. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 878 (Fed. Cir. M.D. Tenn. 2013). Ultimately, a charter school cannot possess a property interest in a benefit which is which is in the sole discretion of the state

to issue or withhold. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 878 (Fed. Cir. M.D. Tenn. 2013). Parents of students attending Charter School also alleged due process violations. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868 (United States District Court Fed. Cir. M.D. Tenn. 2013).

The parents argued that Tennessee's charter school legislation created a substantive right for their children to attend a charter school, which translated into a protected property interest. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 879-880 (Fed. Cir. M.D. Tenn. 2013). The court rejected the parent's argument citing the discretionary nature of charter agreements. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 880 (Fed. Cir. M.D. Tenn. 2013). There can be no entitlement or property interest in a benefit that is issued or withheld at the discretion of the state. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 880 (Fed. Cir. M.D. Tenn. 2013). Accordingly, the parents were not entitled to procedural due process prior to revocation of Charter School's charter. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d at 880 (Fed. Cir. M.D. Tenn. 2013).

*James Academy of Excellence v. Dorchester County School District*, 376 S.C. 293 (S.C. 2008) is a South Carolina Supreme Court case involving allegations of unconstitutional deprivation of property rights without due process of law. *James*

*Academy of Excellence v. Dorchester County School District*, 376 S.C. 293, 296 (S.C. 2008). Dorchester County School District (“District”) provided a conditional charter to James Academy of Excellence (“Charter School”). The charter was contingent upon Charter School finding a facilities site in the district. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. at 296 (S.C. 2008). Charter School provided District with an approved facilities site and then changed the location without notifying District. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. at 296 (S.C. 2008). Upon discovering that charter schools was not operating out of the approved site, the State Department of Education ordered District to close Charter School. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. at 297 (S.C. 2008). The closure resulted in litigation. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. at 297 (S.C. 2008). The circuit court of appeals found that once Charter School began operating as a school it acquired rights that necessitated application of due process procedures prior to denial of that right to operate as a charter school. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. at 298 (S.C. 2008). South Carolina’s Supreme Court overruled the circuit court finding that “no rights accrue from a conditional charter”. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. at 298 (S.C. 2008). The supreme court cited charter school legislation that specifically provided that “...[c]onditional authorization does not give rise to any equitable or other claims based on reliance, notwithstanding any promise, parole (sic), written, or otherwise, contained in the authorization or acceptance of it, whether preceding or following the conditional authorization”. *James Academy of Excellence v. Dorchester County School District*, 376

S.C. at 298 (S.C. 2008). Since state law provided that no rights were created based upon a conditional charter authorization, there could be no implication of due process rights related to termination of a conditional charter. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. 293 (S.C. 2008).

*Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004), is a Third Circuit United States Court of Appeals case originating from Pennsylvania. *Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004). *Angstadt* involves Mid-West School District's (School District) refusal to allow a cyber charter school student to participate, in interscholastic basketball, at a traditional public school. *Angstadt v. Midd-West School District*, 377 F. 3d at 340 (3d Cir. 2004). The pertinent school code provision required traditional public schools to permit charter school students to participate in extracurricular activities in situations where the charter school does not offer the activity and the charter student fulfills the same requirements for participation as the traditional public school student. *Angstadt v. Midd-West School District*, 377 F. 3d at 341 (3d Cir. 2004). School District refused to permit charter school student to participate in the extracurricular activity because she failed to meet all of the requirements for participation. The student's parents filed suit alleging equal protection and due process rights violations. *Angstadt v. Midd-West School District*, 377 F. 3d at 341 (3d Cir. 2004). The Court found that the charter student had no property interest the ability to participate in extracurricular activities. *Angstadt v. Midd-West School District*, 377 F. 3d at 344 (3d Cir. 2004).



Legal Case Related to Allegations of a Charter School’s Violation of the First Amendment’s Establishment Clause

The Establishment Clause provides that “Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof...”. (U.S. CONST. Amend. I). In determining whether there is a violation of the establishment clause, a court must determine whether (i) there is a government indoctrination of religious beliefs (i) recipients are defined by religious reference or (iii) there is an excessive entanglement between state and religion. *Porta v. Klagholz*, 19 F. Supp. 2d 290, 297-298 (Fed. Cir. D. N.J. 1998).

*Porta v. Klagholz*, 19 F. Supp. 2d 290 (D. N.J. 1998), is a United States District Court case that originated in New Jersey. The case involved a taxpayer challenge of the constitutionality of New Jersey’s charter school legislation based on alleged establishment clause violations. *Porta v. Klagholz*, 19 F. Supp. 2d 290 (Fed. Cir. D. N.J. 1998). A charter school leased school space from a church at fair market value. *Porta v. Klagholz*, 19 F. Supp. 2d at 299 (Fed. Cir. D. N.J. 1998). The church building was a modern rectangular construction with no religious symbols. *Porta v. Klagholz*, 19 F. Supp. 2d at 299 (Fed. Cir. D. N.J. 1998). The charter school’s entrance was separate from the church’s entrance and outside the view of the church’s signage. *Porta v. Klagholz*, 19 F. Supp. 2d at 299 (Fed. Cir. D. N.J. 1998). The church did not utilize the school facilities during school time and students were not exposed to any religious materials. *Porta v. Klagholz*, 19 F. Supp. 2d at 299 (Fed. Cir. D. N.J. 1998). Religious belief or church membership did not impact admissions decisions. *Porta v. Klagholz*, 19 F. Supp. 2d at 300 (Fed. Cir. D. N.J. 1998).

Plaintiff failed to demonstrate that a charter school's leasing of space in a church building had the effect of advancing or inhibiting religion. *Porta v. Klagholz*, 19 F. Supp. 2d at 301 (Fed. Cir. D. N.J. 1998). The plaintiff failed to establish that the charter school's lease arrangement resulted in "...governmental indoctrination of religious beliefs...". *Porta v. Klagholz*, 19 F. Supp. 2d at 303 (Fed. Cir. D. N.J. 1998). The recipient of charter school funding, the charter school, did not "...define its students, faculty, or governance by reference to religion...". *Porta v. Klagholz*, 19 F. Supp. 2d at 303 (Fed. Cir. D. N.J. 1998). Finally, the plaintiff failed to establish that the landlord-tenant relationship, resulting from the charter school's lease arrangement, created "...an excessive government entanglement with religion". *Porta v. Klagholz*, 19 F. Supp. 2d at 303 (Fed. Cir. D. N.J. 1998). A charter school's lease of space in a religious building, alone, does not constitute a violation of the First Amendment's Establishment Clause. *Porta v. Klagholz*, 19 F. Supp. 2d at 302-303 (Fed. Cir. D. N.J. 1998).

#### Legal Cases That Involved Claims of Constitutional Due Process Violations

Due Process protection refers to a clause in the Fourteenth Amendment of the United States Constitution which provides that "... [n]o State...shall deprive any person of life, liberty, or property without due process of law...". (U.S. CONST. Amend. XIV, §1). Evaluation of a claim for violation of due process rights entails a two-part analysis. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868, 877 (Fed. Cir. M.D. Tenn. 2013). First the court must determine whether there is a constitutionally protected property interest. See *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board*

*of Public Education*, 947 F. Supp. 2d 868, 877 (Fed. Cir. M.D. Tenn. 2013). Once the court determines that a constitutionally protected property interest exists, then the court must determine what process is due prior to the deprivation of that interest. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868 (Fed. Cir. M.D. Tenn. 2013).

*The Shelby School v. Arizona State Board of Education* (1998), is a 1998 case that came before the Arizona Court of Appeals, Division 1. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The Shelby School applied for a charter from the State Board of Education and its application was unanimously approved. *Shelby School v. Arizona State Board of Education* (ARIZ. Ct. App. 1998), 192 Ariz. 156,161, 962 P.2d 230,235. After approval of Shelby School’s application, the State Board of Education notified the school that it would be requesting additional information, from the school, prior to entering into a charter contract. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The State Board of Education performed reference and credit checks on the four proposed members of the Shelby School’s governing board. *Shelby School v. Arizona State Board of Education* 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). Two proposed members of the Shelby School proposed governing board, had credit reports that revealed a number of unpaid debts and liens. *Shelby School v. Arizona State Board of Education* 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The State Board of Education voted unanimously to deny the charter to the Shelby School “...based on unacceptable financial history as reflected in the credit report”. *Shelby School v. Arizona State Board of Education* 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998).

The Shelby School argued that the State Board of Education violated its right to due process. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 168, 962 P.2d at 242 (ARIZ. Ct. App. 1998). The Shelby School's position was that it acquired a protected property interest from the time the charter act went into effect. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 168, 962 P.2d at 242 (ARIZ. Ct. App. 1998). The appellate court found that the Shelby School did not possess any protected property interest in having a school charter because there was insufficient entitlement as represented by mandatory language in the charter school statute. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 168, 962 P.2d at 242 (ARIZ. Ct. App. 1998). The court further found that no one possessed a claim of entitlement to a school charter. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, at 962 P.2d at 242 (ARIZ. Ct. App. 1998). The court explained that "...granting of a charter is based on the broad discretion of the sponsor. Only twenty-five charters can be granted by the Board each fiscal year. Clearly then, if more than twenty-five charter applications are submitted to the Board, not all of them can be granted. Indeed, the Charter Act does not require the Board to grant any charters at all." *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 168, 962 P.2d at 242 (ARIZ. Ct. App. 1998). The court concluded its findings with "... [t]herefore, the School did not have a property right in a charter and accordingly, it was not entitled to due process". *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 168, 962 P.2d at 242 (ARIZ. Ct. App. 1998).

*Lindsey v. Matayoshi*, 950 F. Supp.2d 1159, 1161 (D. Hawaii 2013) is a United States District Court case that originated from Hawaii. Lindsey involved a case where a charter school student was expelled because of her participation in fighting and

inappropriate Facebook postings that used abusive language and name calling which was contrary to the schools no tolerance policy. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1162-1164 (D. Hawaii 2013). The student's parent was repeatedly offered alternative educational options at other public and private schools as well as the option of home schooling. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1163-1164 (D. Hawaii 2013). The student's parent refused the offers to have student placed in an alternative school. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1163 (D. Hawaii 2013). The parents maintained that superintendent and charter school officials deprived the student of a constitutionally-protected interest and denied adequate procedural protection by expelling student from the charter school. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1169-1171 (D. Hawaii 2013). The student's parents brought suit alleging due process violations and sued the state superintendent along with the charter school's officials. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1169 (D. Hawaii 2013). The U.S. District Court found that there was no Due Process violation. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1171 (D. Hawaii 2013). The Court explained that Student's right to a public education does not included entitlement to attend a specific school, *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1169 (D. Hawaii 2013), and as such "Plaintiffs' rejection of all offered alternative public schools, in lieu of no schooling, does not constitute a deprivation of education". *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1171 (D. Hawaii 2013). In order to establish a deprivation of education, Parents had the onus of proving that the alternatives offered were significantly inferior to education offered at the charter school. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1170 (D. Hawaii 2013). Parents' position that alternative schools did not afford a similar cultural experience, same class sizes, or distance of travel was not

sufficient to establish a constitutionally-protected interest. Accordingly, there was no entitlement to protections afforded by procedural due process related to Student's expulsion from charter school. *Lindsey v. Matayoshi*, 950 F. Supp.2d at 1171 (D. Hawaii 2013).

*The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009), is a Florida Supreme Court case resulting from the immediate revocation of a charter school's charter agreement. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009). The School Board of Palm Beach County ("Local School Board") voted to immediately terminate the Survivors Charter Schools, Inc. ("Charter School") charter agreement for good cause due to the severity of audit findings. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d at 1224-1225 (Fla. 2009). Local School Board provided Charter School 24 hours notice of the termination. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d at 1225 (Fla. 2009). Charter School instituted litigation citing due process violations, by the Local School Board, in failing to utilize the provisions of Florida's Administrative Procedure Act prior to terminating Charter School's charter agreement. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d at 1225-1226 (Fla. 2009). Florida's Administrative Procedure Act outlines due process procedures to be followed by state agencies in decision-making that affects substantial interests of citizens. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d at 1231 (Fla. 2009).

Florida's supreme court accepted certiorari to determine whether a school board is required to utilize the procedural safeguards provided by Florida's Administrative Procedure Act prior to immediate termination of a charter agreement. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220, 1223-1224 (Fla. 2009). When Florida's legislature provided for immediate charter termination in "...situations where 'the health, safety, or welfare of students is threatened' and where 'good cause' for immediate termination is shown", it did not contemplate the delay that would be necessitated by the procedural safeguards of Florida's Administrative Procedure Act. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220, 1233-1234 (Fla. 2009). Accordingly, when there is a situation where the health, safety or welfare of students is threatened or there is other good cause for immediate termination of a charter, there is no requirement that charter sponsors follow the provisions for Florida's Administrative Procedure Act. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220, 1236 (Fla. 2009).

*Greater Heights Academy v. Zelman*, 522 F. 3d 678 (6th Cir. 2008), is a Sixth Circuit, United State Court of Appeals case originating in Ohio. *Greater Heights Academy v. Zelman*, 522 F. 3d 678 (6th Cir. 2008). Two charter schools sued Ohio state officials alleging Fourteenth Amendment Due Process violation arising from denial of funding. *Greater Heights Academy v. Zelman*, 522 F. 3d 678 (6th Cir. 2008). Ohio's charter school funding is diverted from local school districts and directed to charter schools on a per student basis. *Greater Heights Academy v. Zelman*, 522 F. 3d at 679 (6th Cir. 2008). Charter schools must submit student enrollment data and traditional school districts are permitted to identify students that the school districts believe are not

actually enrolled in charter schools. *Greater Heights Academy v. Zelman*, 522 F. 3d at 679 (6th Cir. 2008). If the students remain on the identified list, charter schools are not provided funding for the identified students. *Greater Heights Academy v. Zelman*, 522 F. 3d at 679 (6th Cir. 2008). Any disputes regarding funding for identified students can be resolved during Ohio Department of Education's reconciliation period. *Greater Heights Academy v. Zelman*, 522 F. 3d at 679 (6th Cir. 2008). The two charter schools had students identified that they received neither funding nor a hearing regarding funding for those students. *Greater Heights Academy v. Zelman*, 522 F. 3d 6at78, 679 (6th Cir. 2008). The charter schools argued that the State's denial of funding without a hearing amounted to unconstitutional deprivation of a property right with out required procedural due process. *Greater Heights Academy v. Zelman*, 522 F. 3d at 679 (6th Cir. 2008). The court ruled that the charter schools were political subdivisions of the State and as such were precluded from invoking due process protections against the State. *Greater Heights Academy v. Zelman*, 522 F. 3d at 679 (6th Cir. 2008). Accordingly, the charter schools' case was dismissed. *Greater Heights Academy v. Zelman*, 522 F. 3d 678, 681 (6th Cir. 2008).

*Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004), is a Third Circuit United States Court of Appeals case originating from Pennsylvania. *Angstadt v. Midd-West School District*, 377 F. 3d 338, (3d Cir. 2004). *Angstadt* involves Mid-West School District's (School District) refusal to allow a cyber charter school student to participate, in interscholastic basketball, at a traditional public school. *Angstadt v. Midd-West School District*, 377 F. 3d at 340 (3d Cir. 2004). The pertinent school code provision required traditional public schools to permit charter school students to



participate in extracurricular activities in situations where the charter school does not offer the activity and the charter student fulfills the same requirements for participation as the traditional public school student. *Angstadt v. Midd-West School District*, 377 F. 3d at 341 (3d Cir. 2004). School District refused to permit charter school student to participate in the extracurricular activity because she failed to meet all of the requirements for participation. The student's parents filed suit alleging equal protection and due process rights violations. *Angstadt v. Midd-West School District*, 377 F. 3d at 341 (3d Cir. 2004). The Court found that the charter student had no property interest the ability to participate in extracurricular activities. *Angstadt v. Midd-West School District*, 377 F. 3d 338, 344 (3d Cir. 2004). Even if there were a property interest in the ability to participate in extracurricular activities, that interest is subject to condition that charter school student fulfill all the requirements of participation in the extracurricular activity. *Angstadt v. Midd-West School District*, 377 F. 3d at 344 (3d Cir. 2004). Since there was no protected property interest, charter student was not entitled to procedural due process before being prohibited from participated in interscholastic basketball. *Angstadt v. Midd-West School District*, 377 F. 3d at 344 (3d Cir. 2004).

Table 6 summarizes litigated court decisions based upon the type of constitutional challenges at issue in the litigation. Case law summary provided, in Table 6, also reports deciding jurisdiction and year of the court determination.

**Table 6. Summary of Litigated Cases Reported by Type of Constitutional Challenge**

<b>Equal Protection</b>							
Disparate funding is not EP violation NJ <i>J.D. ex. rel. - (2010)</i>	Lack of school district's voter approval over CS budget allocation is not EP violation. NJ Appellate <i>In re Grant of Charter School Application</i>	Requiring board to prove creditworthiness but not school district employees not EP violation AZ Appellate <i>Shelby School v. Arizona</i>	CS Different funding for CS students not EP violation AZ Appellate <i>Salt River Pima-Maricopa Indian Community School v. State of Arizona (2001)</i>	Closure of neighborhood schools serving high minority population and opening of CS serving less of the minority population not EP violation. 10 <sup>th</sup> Circuit from Colorado <i>Villanueva v. Carere (1996)</i>	State board of education refusal to assist CS not EP Violation Ohio App <i>Trustees Sabis International School v. Montgomery (2002)</i>	Refusal to allow CS student to participate in TPS activity w/out fulfilling same requirements as TPS students is not EP violation. 3 <sup>rd</sup> Cir from Pennsylvania <i>Angstadt v. Midd-West School District (2004)</i>	
<b>11<sup>th</sup> Amendment Immunity</b>							
CS is govt. entity due 11 <sup>th</sup> amend protections. 10 <sup>th</sup> Cir from Colorado <i>King (1999)</i>	CS officials were protected by 11 <sup>th</sup> Amend immunity. D. Hawaii federal <i>Lindsey (2013)</i>	Binding arbitration clause in CS contract abrogates state's 11 <sup>th</sup> amend immunity. S.D. Ohio Federal <i>Board of Trustees Sabis International School (2002)</i>					

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### Constitutional Validity

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Legislature can delegate authority to implement CS legislation CA <i>Wilson</i> (1999)	Specific provisions of CS legislation could be based on culture-based classifications without invalidating statute. 10 <sup>th</sup> Circuit from Colorado <i>Villanueva</i> (1996)	Failure of CS statute to require consideration of racial impact in CS approval did not invalidate the statute. NJ <i>In re Charter School Appeal of Greater Brunswick Charter School</i> (1999)	Failure of a funding regulation to mandate inclusion of CS participation did not invalidate the statute. NJ <i>In re the Matter of the 1999-200 Abbott</i> (2002)	CS legislation granting charter application decision review authority to state board of education does not invalidate statute. FL <i>School Board of Volusia County</i> (2008)	Statutory provision vesting a state entity with powers specifically reserved to local school board made provision invalid. FL <i>Duval County School Board</i> (2008)
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### Discrimination

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Environment favoring particular category of students does not necessarily create a discriminatory environment. Penn. <i>Central Dauphin School District</i> (2008)	Statute requiring reduced funding for a Native American CS was not discriminatory because no adverse and disproportionate impact on students. AZ Appellate <i>Salt River Pima-Maricopa Indian Community School</i>	Commissioner of education must assess racial impact a CS approval will have on surrounding school districts power take action to prevent segregation. NJ <i>In re Grant of Charter School Application of Englewood</i> (2000)
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**Protected Rights**

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State decision to grant charter is more like a legislative or executive function not judicial, so school district has no right to a hearing prior to CS application decision. NJ <i>In re Grant of Charter School Application of Englewood (1999)</i>	CS does not have an independent right to a sponsorship contract unless the contract creates a property interest. CS can't exert students' right to be educated. US SD of Ohio <i>Board of Trustees Sabis International School (2002)</i>	There can be no property interest in maintaining a charter when it is in the sole discretion of the state to grant or withhold that property interest. US MD Tenn <i>Project Reflect, Inc. Smithson Craighead Middle School v. (2013)</i>	Since CS statute provided that charter was conditional, there was no protected right to have a charter. S.C. <i>James Academy of Excellence (2008)</i>	CS student has no property interest in participating in extracurricular activity at TPS. 3 <sup>rd</sup> Cir from Penn. <i>Angstadt (2004)</i>
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**Establishment Clause**

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*CS's lease of space in a religious building does not constitute violation of Establishment clause absent governmental indoctrination of religious beliefs. US D.NJ Porta (1998)*

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**Due Process**

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There can be no property interest subject to due process requirements when there is no mandatory statutory language requiring the issuance of a charter. <i>AZ Shelby School (1998)</i>	CS student right to public education does not entitle attendance at a specific school. To establish deprivation of education, must show alternatives are significantly inferior to CS; otherwise no right to due process. D. Hawaii federal <i>Lindsey (2013)</i>	Where there is a situation that threatens the health, safety or welfare of students, or other good cause for immediate charter termination, procedural DP is not required. (FL SC) <i>The School Board of Palm Beach County v. Survivors Charter Schools (2009)</i>	CS, as political subdivisions of the state, cannot assert DP claims against the state. 6 <sup>th</sup> Cir from Ohio. <i>Greater Heights Academy (2008)</i>	CS student has no property interest in participating in extracurricular activity at TPS; therefore no due process is required prior to refusal to allow CS student's participation. 3 <sup>rd</sup> Cir from Penn. <i>Angstadt (2004)</i>
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## Legal Cases Resulting From Charter Application Approval, Denial and Termination

### Litigation Related to Charter Approval

*In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000) is a case that was heard by the New Jersey Supreme Court stemming from the approval of a regional charter school. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000). Several district school boards instituted litigation challenging the commissioner of education's approval of a regional charter school. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316, 319 (N.J. 2000). *In re Grant of Charter School Application of Englewood on the Palisades Charter School* involved allegations of economic imbalance resulting from approval of a charter application. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 320 N.J. 174 (NJ appellate Division 1999). The school districts alleged that the redirection of local levy budget funding from the school districts to the charter school would significantly impact their respective districts. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. at 331 (N.J. 2000). New Jersey's Supreme Court ruled that during the charter approval process, once a school district makes a preliminary showing that charter approval will impact the district's ability to adequately provide education to its students, then the Commissioner of Education must consider the economic impact that may result from charter application approval. *In re Grant of Charter School Application of Englewood on the Palisades*

*Charter School*, 164 N.J. at 336 (N.J. 2000). A charter school's economic impact on surrounding districts is relevant to the Commissioner of Education's determination regarding charter application approval and the use of presumptive per-pupil funding established in New Jersey's charter school legislation or delegation of a different funding amount by the Commissioner of Education. In re Grant of Charter School Application of Englewood on the Palisades Charter School, 164 N.J. at 336 (N.J. 2000).

#### Litigation Related to Charter Denial

*School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008), involved review of a charter school application denial by the School Board of Volusia County. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008). Academies of Excellence charter school was denied a charter application because it was statutorily deficient in the areas of student assessment/accountability and finance/class size requirements. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186, 1188 (Fla. Dist. Ct. App. 2008). The charter school appealed the denial to the State Board of Education. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008). The State Board of Education found that the charter school application did possess statutory deficiencies but not to the extent that would warrant an application denial. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d at 1189 (Fla. Dist. Ct. App. 2008). The State Board of Education ordered the School Board of Volusia County to grant the charter school's application. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So.

2d at 1189 (Fla. Dist. Ct. App. 2008). The School Board of Volusia County appealed alleging that it had good cause for denying the charter school's application. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186, 1189, 1190-1191 (Fla. Dist. Ct. App. 2008). The Fifth District Court of Appeals ruled in favor of the charter school finding that the State Board of Education was justified in granting the charter application. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186, 1191 (Fla. Dist. Ct. App. 2008).

*School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d 72, (Fla. Dist. Ct. App. 2013), is an appeal regarding denial of a charter application. Renaissance Charter School ("Charter School") applied for a charter pursuant to the high performing charter provision of Florida's charter school legislation. This provision required an applicant to substantially replicate the educational program of a high performing charter. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 74-75 (Fla. Dist. Ct. App. 2013). Charter School indicated that it was replicating a high performing middle school that taught grades 6-8. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 73 (Fla. Dist. Ct. App. 2013). Charter School was applying for a charter to cover grades K-8. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d 72, 73 (Fla. Dist. Ct. App. 2013). Charter School was being managed by the same education service provider as the high performing school that it was emulating. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 72, 73 (Fla. Dist. Ct. App. 2013). School Board of Seminole County ("Local School Board") denied Charter School's application citing as one of the reasons "...failure to substantially replicate the



educational program of the high-performing charter school...”. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 73 (Fla. Dist. Ct. App. 2013). Preferential treatment is provided to high performing charter schools, during the application process. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 74 (Fla. Dist. Ct. App. 2013). Charter School appealed the decision to the State Board of Education, which granted the application. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 74 (Fla. Dist. Ct. App. 2013). The Local School Board appealed the State Board’s decision to Florida’s Fifth District Court of Appeals. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 74 (Fla. Dist. Ct. App. 2013). The Fifth District Court of Appeals found that Charter School’s program did not substantially replicate the identified high- performing charter school. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 75 (Fla. Dist. Ct. App. 2013). To support its ruling, the court explained that Charter School was supposedly emulating the a program that teaches grades 6-8 but Charter School was opening a school that taught grades K-8. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 75(Fla. Dist. Ct. App. 2013). There is an inherent difference in programs designed for elementary school students and middle school students. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 75 (Fla. Dist. Ct. App. 2013). Accordingly, the Local School Board was correct in its determination that Charter School’s proposed program did not substantially replicate the identified higher performing charter middle school. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d at 75 (Fla. Dist. Ct. App. 2013).

*School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. Dist. Ct. App. 2005), is a Florida Fifth District Court of Appeal case regarding denial of a charter application due to inadequate funding. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. Dist. Ct. App. 2005). UCP of Central Florida (“Charter School”) filed an application to establish a charter school. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909, 910 (Fla. Dist. Ct. App. 2005). The School Board of Osceola (“Local School Board”) awarded the application 51.8 points out of a possible 60 but denied the application based on funding. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 910 (Fla. Dist. Ct. App. 2005). Local School Board denied Charter School’s application because (i) approving the application would decrease funding to the district’s new and existing charter schools and (ii) Charter School’s funding plan would decrease operating budgets of the district’s new and existing charter schools which would result in students receiving lower quality of education. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 910 (Fla. Dist. Ct. App. 2005). The denial was appealed to the State Board of Education (“State Board”) and Charter School Appeals Commission, which approved the charter application. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 910 (Fla. Dist. Ct. App. 2005). The case was then appealed to Florida’s Fifth District Court of Appeals, which upheld the State Board’s approval of Charter School’s application. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 915-916 (Fla. Dist. Ct. App. 2005)). The court reasoned that “...a denial based on good cause contemplates a legally sufficient reason”. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 914 (Fla. Dist. Ct. App. 2005). Denial of a charter

school application was intended to be “...based on more than projections of future financial impact on other schools or unsupported assumptions on the quality of education that may be provided by under-funded schools”. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 915 (Fla. Dist. Ct. App. 2005). Neither inadequate capital funding nor the funding of capital expenses with operational dollars constitute “good cause” necessary to support denial of a charter school application. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 915 (Fla. Dist. Ct. App. 2005).

In *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d 919 (Fla. Dist. Ct. App. 2013), Tampa School Development Corp (“Charter School”) applied to consolidate its two charter schools into one charter school. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 920 (Fla. Dist. Ct. App. 2013). Charter school had previously operated as one combined kindergarten through grade eight school but divided into an elementary and a middle school. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 920 (Fla. Dist. Ct. App. 2013). Both the elementary and middle school were “A” schools as determined by Florida’s Department of Education. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 920 (Fla. Dist. Ct. App. 2013). Although Charter School existed in two separate buildings, it was viewed, by the community as a single school. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 921 (Fla. Dist. Ct. App. 2013). Consolidation would have saved Charter School \$120,000. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 921 (Fla. Dist.

Ct. App. 2013). Due to new legislative changes, School Board would have lost \$60,000 in funding from Charter School if the consolidation request was granted. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 921 (Fla. Dist. Ct. App. 2013). The School Board of Hillsborough County (“School Board”) denied the consolidation request citing that the consolidation would not provide students with any educational benefit. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 923 (Fla. Dist. Ct. App. 2013). Charter School appealed the denial to the Division of Administrative Hearing, which approved the consolidation request. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 921 (Fla. Dist. Ct. App. 2013). School Board appealed to Florida’s Second District Court Appeals questioning both the Division of Administrative Hearing’s Authority to resolve the matter and the validity of its final determination. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d 921-923 (Fla. Dist. Ct. App. 2013). The Second District Court of Appeals found that School Board’s rejection of Charter School’s consolidation request was neither a charter school application denial, termination nor nonrenewal such that determination by an administrative law judge was appropriate. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 922 (Fla. Dist. Ct. App. 2013). The administrative law judge’s decision did not diminish the constitutional role of School Board to operate, control and supervise public schools within its district. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 924 (Fla. Dist. Ct. App. 2013). The administrative law judge’s order approving the consolidation request was supported by competent substantial evidence unlike the School Board’s

consolidation rejection. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 923 (Fla. Dist. Ct. App. 2013).

*Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024 (N.Y. App. Div. 2013), was a New York Supreme Court case from the appellate division involving a denial of an application for charter renewal. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1025 (N.Y. App. Div. 2013). The University of the State of New York (“Authorizer”) denied the renewal application of Pinnacle Charter School (“Charter School”). *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1025 (N.Y. App. Div. 2013). Charter School filed an action alleging constitutional violations and requesting a preliminary injunction to prevent the closure of the charter school. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1025 (N.Y. App. Div. 2013). Initially, New York’s Supreme Court granted an injunction preventing Authorizer from closing the charter school. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024, 1025 (N.Y. App. Div. 2013). The Supreme Court found that the injunction was inappropriately issued and that Charter School’s lawsuit should have been dismissed. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1025-1027 (N.Y. App. Div. 2013). The Supreme Court found that Charter School was not entitled to state or federal constitutional due process because New York Charter Schools Act created no constitutionally protected property interest in charter contract renewal. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024, 1026 (N.Y. App. Div. 2013). In order to be entitled to due

process protection, there must be a constitutionally protected right at issue. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d at 1026 (N.Y. App. Div. 2013).

*Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109 (Ill. App. Ct. 2004) arose from a charter application denial that was affirmed by the Illinois State Board of Education and the circuit court.

*Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109, 111 (Ill. App. Ct. 2004). Illinois' Fourth District Appellate Court affirmed the previously litigated decisions denying the charter application. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109, 111 (Ill. App. Ct. 2004). Comprehensive Community Solutions, Inc.'s ("Charter School") charter proposal was denied by Rockford School District No. 205 ("School District") because the provided services would be duplicative and School District's finances could not support additional debt. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d at 111 (Ill. App. Ct. 2004). Charter School appealed and argued that denial of a charter application based solely on school district economics violated Illinois' charter school legislation. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d at 117 (Ill. App. Ct. 2004). The Fourth District Appellate Court disagreed and explained that Illinois charter school legislation required a charter proposal to provide "[e]vidence that the terms of the charter as proposed are economically sound for both the charter school and the school district." *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d at 111 (Ill. App. Ct. 2004). The court further cited

charter school law provisions requiring charter school and local school districts to agree on funding and services to be provided by the local school districts. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d at 117 (Ill. App. Ct. 2004). Accordingly, economic concerns are appropriately considered as part of charter proposal determinations. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d at 117 (Ill. App. Ct. 2004).

Litigation Related to Charter Termination, Revocation and Nonrenewal

*The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009), is a Florida Supreme Court case resulting from the immediate revocation of a charter school's charter agreement. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009). The School Board of Palm Beach County ("Local School Board") voted to immediately terminate the Survivors Charter Schools, Inc. ("Charter School") charter agreement due to the severity of audit findings. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d at 1224-1225 (Fla. 2009). Local School Board provided Charter School 24 hours notice of the termination. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220, 1225 (Fla. 2009). Charter School instituted litigation citing the requirement that Local School Board must adhere to the provisions of Florida's Administrative Procedure Act prior to terminating Charter School's charter agreement. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d at 1225-1226 (Fla. 2009). Florida's Administrative Procedure Act outlines due process procedures to be followed by state agencies in decision-making that affects

substantial interests of citizens. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d at 1220,1231 (Fla. 2009).

Florida's supreme court accepted certiorari to determine whether a school board is required to utilize the procedural safeguards provided by Florida's Administrative Procedure Act prior to immediate termination of a charter agreement. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d at 1223-1224 (Fla. 2009). Florida's supreme court determined that in situations where the health, safety or welfare of students is threatened or there is other good cause for immediate termination of a charter, there is no requirement that charter sponsors follow the provisions for Florida's Administrative Procedure Act. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220, 1236 (Fla. 2009).

*The School Board of Miami-Dade County, Florida v. Rise Academy of South Dade Charter School*, 90. 20.3d 1001, (Fla. Dist. Ct. App. 2012) involved the immediate termination of a charter school's contract. *The School Board of Miami-Dade County, Florida v. Rise Academy of South Date Charter School*, 90. 20.3d 1001 (Fla. Dist. Ct. App. 2012). Florida permitted immediate revocation when the charter sponsor determined that good cause existed or when student health, safety or welfare is threatened. *The School Board of Miami-Dade County, Florida v. Rise Academy of South Date Charter School*, 90. 20.3d 1001 (Fla. Dist. Ct. App. 2012). At the time of termination, charter school had a school grade of "F" as determined by Florida's Department of Education. *The School Board of Miami-Dade County, Florida v. Rise Academy of South Date Charter School*, 90. 20.3d 1001, (Fla. Dist. Ct. App. 2012). Subsequent to termination, Florida's Department of Education released new school



grades indicting that charter school had risen from a grade of F to an A in one year. *The School Board of Miami-Dade County, Florida v. Rise Academy of South Dade Charter School*, 90. 20.3d 1001 (Fla. Dist. Ct. App. 2012). The State Board of Education reversed the local school board's decision. *The School Board of Miami-Dade County, Florida v. Rise Academy of South Date Charter School*, 90. 20.3d 1001, (Fla. Dist. Ct. App. 2012). The Third District Court of Appeals reversed the State Board of Education's finding and upheld the local school board's decision terminating the charter school's contract. *The School Board of Miami-Dade County, Florida v. Rise Academy of South Date Charter School*, 90. 20.3d 1001 (Fla. Dist. Ct. App. 2012)

*Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Commw. Ct. 2014) involved revocation of a charter contract for a variety of reasons including material violations of the charter agreement. *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d at 128 (Pa. Commw. Ct. 2014). The charter school maintained that there was no material violation of the charter agreement because according to the charter school's bylaws and the state's charter school legislation, its board of trustees was specifically imbued with authority to make operational changes. *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d at 137 (Pa. Commw. Ct. 2014). The court acknowledged that the charter school's board of trustees was permitted to make changes to the school's charter but those changes were subject to the school district's approval. *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d at 138 (Pa. Commw. Ct. 2014). The court reasoned that the charter school does not have "...unfettered authority to make changes to its operations if those changes require deviation from the charter and

the charter application incorporated into the charter by operation of law”. *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125, 138 (Pa. Commw. Ct. 2014). Any unilateral changes to operations that are not in accordance with the charter or charter application were a deviation from the charter, which subjected charter school to statutorily prescribed closure. *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125, 138128 (Pa. Commw. Ct. 2014).

*Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d 736 (Pa. Commw. Ct. 2014) arose from a local school board’s decision to decline renewal of a charter school, which was affirmed by the state’s charter school appeal board. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 738 (Pa. Commw. Ct. 2014). The school board’s denial of charter renewal was predicated on a number of issues including (i) failure to meet student performance standards and violations of the charter agreement. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 739-740 (Pa. Commw. Ct. 2014). The court ruled that while the modifications of the charter school’s course offerings were not substantial enough to constitute a material violation of its charter agreement, the changes in its daily schedule and school calendar were substantial enough to support a decision to non-renew for violation of charter agreement terms. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 747 (Pa. Commw. Ct. 2014).

The facts revealed that charter school failed to make annual yearly progress for seven consecutive years and was consistently outperformed by the majority of the top 12 feeder schools in its district. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 742 (Pa. Commw. Ct. 2014). The charter school’s failure to

show improvement in student performance substantiated a decision for non-renewal. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d 736, 742 (Pa. Commw. Ct. 2014). The charter school also implemented changes that were contrary to its initial charter application and agreement. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 742-746 (Pa. Commw. Ct. 2014).

A charter school's application is ultimately incorporated into the terms of the charter contract, thereby converting the information contained in the charter application into a binding contract between the charter school and the authorizing authority. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 743-744 (Pa. Commw. Ct. 2014). Initially, the charter school offered two alternative daily schedules in order to better meet students needs regarding transportation, childcare and employment opportunities; however, it was found that the flexible scheduling was only used for one year and that was to separate younger students from older students rather than for the purposes espoused in the charter application. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 743 (Pa. Commw. Ct. 2014). The charter school application also indicated that it would operate as a year round school. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 743 (Pa. Commw. Ct. 2014). At some time following the initial years of operation, the charter school reverted to a traditional two semester, two term school calendar. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 743 (Pa. Commw. Ct. 2014). The court found that these changes to the daily schedule and academic calendar were material changes, which required approval from the chartering

authority prior to being implemented. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 744 (Pa. Commw. Ct. 2014). Absent approval from the sponsoring authority, these modifications constituted material violations of the charter school's charter contract that would substantiate a decisions of non-renewal. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 744 (Pa. Commw. Ct. 2014). The charter school's changes in course offerings; however, were not substantial enough to warrant charter nonrenewal. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 747 (Pa. Commw. Ct. 2014).

Rather than continuing to offer individual classes that taught particular content, the charter school revised its course offering to integrate the content from its humanities and economics classes into other courses such as civics. The court found that these changes were not substantial enough to justify a decision to non-renew the charter. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d at 746-747 (Pa. Commw. Ct. 2014).

Table 7 summarizes litigated case determinations involving charter application decisions. The court decisions are categorized based on whether the challenge involved a charter approval, denial, or termination. Summaries of legal decisions include the jurisdiction and year if judicial determination.

**Table 7. Summary of Litigated Cases Reported by Type of Application Decision**

<b>Application Decisions</b>		
<b>Approval</b>	<b>Denial</b>	<b>Revocation</b>
CS's economic impact on surrounding school districts is relevant in charter application decision. NJ Appellate <i>In re Grant of Charter School Application</i> (2000)	<p>To warrant denial of CS application, statutory deficits must be substantial. FL <i>School Board of Volusia County</i> (2008)</p> <p>When CS applies under Florida's high performing charter provision, applicant must significantly replicate the identified existing charter. FL <i>School Board of Seminole County</i>. (2013)</p> <p>Inadequate funding is not a legally sufficient reason to deny charter application. FL <i>School Board of Osceola County</i> (2005)</p> <p>Administrative law judge's grant of CS's consolidation request, contrary to school board's decision, did not impact school board's constitutional right to operate, control &amp; supervise schools. FL <i>School Board of Hillsborough County</i> (2013)</p> <p>NY charter schools had no constitutionally protected right in charter renewal; therefore, no due process required. NY <i>Pinnacle Charter School</i> (2013)</p> <p>Economic concerns are appropriate considerations in charter proposal determinations ILL <i>Comprehensive Community Solutions, Inc.</i> (1999)</p>	<p>In Florida, charter can be immediately terminated when there is a situation that threatens the health, safety or welfare of students, or other good cause FL <i>The School Board of Palm Beach County</i> (2009); <i>The School Board of Miami-Dade County, I</i> (2012)</p> <p>Changes to CS operation, not in accord with application or charter, were deviations subjecting CS to closure. PENN <i>Graystone Academy Charter School</i> (2014)</p> <p>Substantial modification in CS's operation can warrant non-renewal. PENN <i>Career Connections Charter High School</i> (2014)</p>

## Governance

The *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998), is a 1998 case that came before the Arizona Court of Appeals, Division 1. The Shelby School applied for a charter from the State Board of Education and its application was unanimously approved. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156,161, 962 P.2d 230,235 (ARIZ. Ct. App. 1998). After approval of Shelby School's application, the State Board of Education notified the school that it would be requesting additional information, from the school, prior to entering into a charter contract. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The State Board of Education performed reference and credit checks on the four proposed members of the Shelby School's governing board. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). Two proposed members of the Shelby School proposed governing board, had credit reports that revealed a number of unpaid debts and liens. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The State Board of Education voted unanimously to deny the charter to the Shelby School "...based on unacceptable financial history as reflected in the credit report. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The Shelby School argued that the State Board of Education lacked statutory authority to deny its charter on the basis of creditworthiness. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 165, 962 P.2d at 239 (ARIZ. Ct. App.

1998). The appellate court found that while the applicable statute did not enumerate creditworthiness as a criterion in the requirement for charter school applications, the State Board of Education was vested with the authority to create rules and policies regarding the criteria to be used in granting charters. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 165, 962 P.2d 230,239 (ARIZ. Ct. App. 1998). The court explained that prior to granting a charter, the State Board of Education must possess some method of determining whether an applicant has a financial history indicating competence in the management of finances. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 165, 962 P.2d at 239 (ARIZ. Ct. App. 1998). According to the appellate court, obtaining a credit history is an acceptable method for evaluating an applicant's financial abilities and was within the purview of the State Board of Education's authority.

*School Board of Hillsborough County v. Tampa School Development Corp.*

In *School Board of Hillsborough County v. Tampa School Development Corp.* 113 So.3d 919 (Fla. Dist. Ct. App. 2013), Tampa School Development Corp ("Charter School") applied to consolidate its two charter schools into one charter school. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 920 (Fla. Dist. Ct. App. 2013). Charter school had previously operated as one combined kindergarten through grade eight school but divided into an elementary and a middle school. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d 919, 920 (Fla. Dist. Ct. App. 2013). Both the elementary and middle school were "A" schools as determined by Florida's Department of Education. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 920 (Fla. Dist.

Ct. App. 2013). Although Charter School existed in two separate buildings, it was viewed by the community as a single school. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 921 (Fla. Dist. Ct. App. 2013). Consolidation would have saved Charter School \$120,000. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 921 (Fla. Dist. Ct. App. 2013). Due to new legislative changes, School Board would have lost \$60,000 in funding from Charter School if the consolidation request was granted. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 921 (Fla. Dist. Ct. App. 2013). The School Board of Hillsborough County (“School Board”) denied the consolidation request citing that the consolidation would not provide students with any educational benefit. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 923 (Fla. Dist. Ct. App. 2013). Charter School appealed the denial to the Division of Administrative Hearing, which approved the consolidation request. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d 919, 921 (Fla. Dist. Ct. App. 2013). School Board appealed to Florida’s Second District Court Appeals questioning both the Division of Administrative Hearing’s Authority to resolve the matter and the validity of its final determination. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 921-923 (Fla. Dist. Ct. App. 2013). The Second District Court of Appeals found that School Board’s rejection of Charter School’s consolidation request was neither a charter school application denial, termination or nonrenewal such that determination by an administrative law judge was appropriate. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 922 (Fla. Dist. Ct. App. 2013). The



administrative law judge’s decision did not diminish the constitutional role of School Board to operate, control and supervise public schools within its district. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 924 (Fla. Dist. Ct. App. 2013). Whether Charter School was operated as one school or two schools, the School Board still maintained the right to operate, control and supervise it. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d at 924 (Fla. Dist. Ct. App. 2013).

*In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999), involved a variety of challenges of New Jersey’s Charter School Program Act of 1995. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999). Among the contested issues were challenges to the State Board of Education’s authority and responsibility in implementation of the state’s charter school legislation. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999). The court determined that the State Board of Education had the authority to “...establish a process reasonably designed to meet practical issues triggered by the Act’s requirements” so long as those regulations were not inconsistent nor antagonistic toward the charter school act. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 220 (N.J. Super. Ct. App. Div. 1999).

Table 8 provides a summary of cases litigated cases involving governance issues. The cases are categorized by the type of authority being challenged.

**Table 8. Summary of Litigated Cases Reported by Type of Governance Issues**

<b>Governance Issues</b>		
<b>Authority to determine criteria for implementing charter legislation.</b>	<b>Authority to review local school board decisions regarding charter schools.</b>	<b>Authority to establish a process for implementing charter legislation.</b>
State Board of Education was vested with the authority to create rules and policies regarding the criteria to be used in granting charters. <i>AZ Shelby School (1998)</i>	Review of a CS request for consolidation is appropriate exercise of administrative law judge authority that does not infringe on school district's constitutional right to operate, control and supervise public schools. <i>FL School Board of Hillsborough County (2013)</i>	State board of education has authority to establish process necessary to implement charter legislation NJ <i>In re Grant of Charter School Application of Englewood on Palisades Charter School (1999)</i>

### Question 3: What Problems Have Arisen Regarding Charter School Funding?

Financial and Credit History of Charter School Board of Directors is Appropriate Criteria for Consideration in a Charter Application

*Shelby School v. Arizona State Board of Education* (ARIZ. Ct. App. 1998), is a 1998 case that came before the Arizona Court of Appeals, Division 1. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The Shelby School applied for a charter from the State Board of Education and its application was unanimously approved. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 161, 962 P.2d at 235 (ARIZ. Ct. App. 1998). After approval of Shelby School's application, the State Board of Education notified the school that it would be requesting additional information, from the school, prior to entering into a charter contract. *Shelby School v. Arizona State Board of Education* 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The State Board of Education performed reference and credit checks on the four proposed members of the Shelby School's governing board. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). Two proposed members of the Shelby School proposed governing board, had credit reports that revealed a number of unpaid debts and liens. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The State Board of Education voted unanimously to deny the charter to the Shelby School "...based on unacceptable financial history as reflected in the credit report". *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). The Shelby School maintained that the State Board of Education violated their equal protection rights because it required charter school applicants to undergo credit check

evaluations while not imposing the same credit check requirement on employees of traditional public schools. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 169, 962 P.2d at 243 (ARIZ. Ct. App. 1998). The Arizona Court of Appeals found that there was no equal protection violation because charter schools are classified differently from traditional public schools as they are formed and operated in a different manner. *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 169, 962 P.2d 230,243 (ARIZ. Ct. App. 1998). As such, the appellate court found that "...because the directors and board members of charter schools have more direct access to state funds than do employees of non-charter schools, it is reasonable for the charter school classification to have financial requirements that apply only to that class". *Shelby School v. Arizona State Board of Education*, 192 Ariz. at 169, 962 P.2d at 243 (ARIZ. Ct. App. 1998).

#### Inadequate Funding is Insufficient Cause to Substantiate Denial of Charter Application

*School Board of Osceola County v. UCP of Central Florida*, 905 SO.2d 909 (Fla. Dist. Ct. App. 2005), is a Florida Fifth District Court of Appeal case regarding denial of a charter application due to inadequate funding. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. Dist. Ct. App. 2005). UCP of Central Florida ("Charter School") filed an application to establish a charter school. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 910 (Fla. Dist. Ct. App. 2005). The School Board of Osceola ("Local School Board") awarded the application 51.8 points out of a possible 60 but denied the application based on funding. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 910 (Fla. Dist. Ct. App. 2005). Local School Board denied Charter School's application because (i)

approving the application would decrease funding to the district's new and existing charter schools and (ii) Charter School's funding plan would decrease operating budgets of the district's new and existing charter schools which would result in students receiving lower quality of education. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909, 910 (Fla. Dist. Ct. App. 2005). The denial was appealed to the State Board of Education ("State Board") and Charter School Appeals Commission, which approved the charter application. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 910 (Fla. Dist. Ct. App. 2005). The case was then appealed to Florida's Fifth District Court of Appeals, which upheld the State Board's approval of Charter School's application. *School Board of Osceola County v. UCP of Central Florida*, 905 SO.2d 909, 915-916 (Fla. Dist. Ct. App. 2005). The court reasoned that "...a denial based on good cause contemplates a legally sufficient reason" *School Board of Osceola County v. UCP of Central Florida*, 905 SO.2d 909, 914 (Fla. Dist. Ct. App. 2005). Denial of a charter school application is intended to be "...based on more than projections of future financial impact on other schools or unsupported assumptions on the quality of education that may be provided by under-funded schools". *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909, 915 (Fla. Dist. Ct. App. 2005). Neither inadequate capital funding nor the funding of capital expenses with operational dollars constitute "good cause" necessary to support denial of a charter school application. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d at 909, 915 (Fla. Dist. Ct. App. 2005).

Inadequate Availability of District Funding is Appropriate for Consideration When  
Determining Whether to Approve a Charter Application

*Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109 (Ill. App. Ct. 2004) arose from a charter application denial that was affirmed by the Illinois State Board of Education and the circuit court.

*Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1111 (Ill. App. Ct. 2004). Illinois' Fourth District Appellate Court affirmed the previously litigated decisions denying the charter application. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109,111 (Ill. App. Ct. 2004). Comprehensive Community Solutions, Inc.'s ("Charter School") charter proposal was denied by Rockford School District No. 205 ("School District") because the provided services would be duplicative and School District's finances could not support additional debt. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1111 (Ill. App. Ct. 2004). Charter School appealed and argued that denial of a charter application based solely on school district economics violated Illinois' charter school legislation. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109,117 (Ill. App. Ct. 2004). The Fourth District Appellate Court disagreed and explained that Illinois charter school legislation required a charter proposal to provide "[e]vidence that the terms of the charter as proposed are economically sound for both the charter school and the school district." *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1111 (Ill. App. Ct. 2004). The court further cited charter school law provisions requiring charter school and local school

districts to agree on funding and services to be provided by the local school districts.

*Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d at 117 (Ill. App. Ct. 2004). Accordingly, economic concerns are appropriately considered as part of charter proposal determinations. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d at 117 (Ill. App. Ct. 2004).

School Districts Must Determine Commensurate Charter School Funding on an Average District Per Pupil Basis to be Distributed in the Form of Money

*Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007) is an aggregate of three appellate cases that involved funding of charter schools. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 328 (Md. 2007). The charter schools involved in this litigation applied for funding from their respective school districts. Each of the schools was provided funding that was below the per student average of their respective school districts. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 331-334 (Md. 2007). The district provided funding also consisted of composites of actual cash funding; district services in lieu of cash funding and in one instance only district services in lieu of monetary funding was provided. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 331-334 (Md. 2007). Some funding provision did not include appropriate federal entitlement and special category funding such as special education, transportation expenses, and food services costs. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 332-333 (Md. 2007). Maryland's charter legislation required local

school boards to “...’ disburse to a public charter school an amount of county, State, and federal money for elementary, middle, and secondary students that is commensurate with the amount disbursed to other public schools in the local jurisdiction’ ...” *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 331 (Md. 2007). Maryland had no statewide method for determining funding of local schools by local school districts. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324, 336 (Md. 2007). The court supported State Board of Education’s (“Board”) determination that commensurate funding was determined on a per pupil basis and that the per pupil amount should be based on the district’s average funding per pupil. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 355-356 (Md. 2007). The court also supported the Board’s determination that school districts had to provide charter school funding in the form of money. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 356 (Md. 2007). Charter schools were afforded the option of negotiating for school district services and then paying for those services with the money received from the school districts. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 356 (Md. 2007). However, school districts could not require charter schools to accept school district services in lieu of monetary funding. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324, 356 (Md. 2007). The amount of money disbursed to charter schools must include Title I and special education funds to the extent that charter school students are eligible for those services. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 356 (Md. 2007). School districts were



prohibited from retaining more than 2% of charter funding for central administration expenses because charter schools exercised a degree of autonomy that would not necessitate the full range of central administrative services contemplated by traditional public schools. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. at 356 (Md. 2007).

The State's Redistribution of Funding, Based on Local Tax Levy, From a School District to Charter Schools is Not a Violation of the State's Constitution

*School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d 599, (Mo. 2010) was a Missouri Supreme Court case that involved challenges to charter school funding provisions of Missouri's charter school law. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 601 (Mo. 2010). The School District of Kansas City ("School District") alleged that Missouri's charter law required local tax levy to go to local educational agency (LEA) charter schools in violation of the Missouri constitution. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 601 (Mo. 2010). School Board also alleged that the charter school law unconstitutionally required programming that the state did not fund. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 601 (Mo. 2010). Missouri's supreme court found that no constitutional violations existed. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 601-602 (Mo. 2010). The court explained that the state charter school law did not require a transfer of funds, either directly or indirectly, from School District to LEA charter schools. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 601-602 (Mo. 2010). The state forwarded funding equivalent to School District's operating levy directly to charter schools and deducted

this amount from state funding provided to school district. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 609 (Mo. 2010). The supreme court explained that School District "...cited no law or constitutional provision prohibiting the legislature from considering that the ..[School District]...now has fewer pupils on which it must pend the local levy...in deciding that the... [School District]... needs fewer state funds". *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 609-610 (Mo. 2010). School Board maintained that the "Hancock Amendment" to Missouri's constitution prohibited the state from mandating new activities, by political subdivisions, without providing state funding for implementation of those activities. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 610 (Mo. 2010). The supreme court rejected the School Board's assertion providing that there are only two ways that the Hancock amendment could be violated and this was by either requiring a political subdivision to provide a new or increased activity or the state required a political subdivision to increase the cost of performing an existing activity without receipt of additional state funding. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W. 3d at 611 (Mo. 2010). While School District may have had increased expenditures, there was no showing that those expenditures were state mandated. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d at 613 (Mo. 2010).

Economic Impact of Charter Approval on Surrounding School Districts is Relevant When Determining Whether to Grant Charter Application

*In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000) is a case that was heard by the New Jersey Supreme Court stemming from the approval of charter schools in three school districts. *In re*

*Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000). Several district school boards instituted litigation challenging the commissioner of education's approval of a regional charter school. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. at 319 (N.J. 2000). *In re Grant of Charter School Application of Englewood on the Palisades Charter School* involved allegations of economic imbalance resulting from approval of a charter application. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 320 N.J. 174 (N.J. Super. Ct. App. Div. 1999). The school districts alleged that the redirection of local levy budget funding from the school districts to the charter school would significantly impact their respective districts. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. at 331 (N.J. 2000). New Jersey's Supreme Court ruled that during the charter approval process, once a school district makes a preliminary showing that charter approval will impact the district's ability to adequately provide education to its students, then the Commissioner of Education must consider the economic impact that may result from charter application approval. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. at 336 (N.J. 2000). A charter school's economic impact on surrounding districts is relevant to the Commissioner of Education's determination regarding charter application approval and the use of presumptive per-pupil funding established in New Jersey's charter school legislation or delegation of a different funding amount by the Commissioner of Education. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 31 at 336 (N.J. 2000).

Consideration of the Economic Impact of a Charter School on the Surrounding School District is a Relevant Consideration When Determining Whether to Grant a Charter Application

*In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super.174 (N.J. Super. Ct. App. Div. 1999) involved appeals of charter schools in three districts. One school board challenged the approval of a charter alleging that a financial plan that yields a deficit is an inadequate financial plan, which does not support approval. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 212 (N.J. Super. Ct. App. Div. 1999). The appellate court found that absent specific direction from the legislation regarding content and adequacy of a financial plan, the commissioner of education has discretion to evaluate the financial plan's adequacy. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 212 (N.J. Super. Ct. App. Div. 1999). There was another school board challenge to the funding provisions arguing that redirection of funding from the school district to the charter school would cripple the school district's ability to provide thorough and efficient education. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 223-225 (N.J. Super. Ct. App. Div. 1999) The court rejected the school district's argument noting that the argument was premature and necessitated actual occurrence of events that demonstrate a subverting of the school district's ability to provide thorough and efficient education to its students. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. at 224-225 (N.J. Super. Ct. App. Div. 1999). This court's opinion was actually superseded by *In re Grant of Charter*

*School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000) where New Jersey's supreme court indicated that economic impact of charter school approval on surrounding district is a valid consideration in determining whether to grant a charter application. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000).

Calculation of Pro Rata Funding to be Shared with Charter Schools is Based Only on the Current Local Funding Allocations and Cannot Consider Funds That Are Not Allocated in the Year That Funding is Being Forwarded to Charter School And the Only Students Included in Determination of Per Pupil Average Are Those Subject to the State's Mandatory Attendance Requirement.

*Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d 229 (N.C. Ct. App. 2014) is a North Carolina appellate case based on determination of the correct calculation of funding to be forwarded by the local school district to a charter school. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 231 (N.C. Ct. App. 2014). Charter Day School, Inc. ("Charter School") alleged that the New Hanover Board of Education ("School District") had been underfunding it for years. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 231 (N.C. Ct. App. 2014). The trial court found that School District had forwarded incorrect funding amounts thereby underfunding Charter School by failing to include appropriate funds in the numerator of the calculation while including extra students in the denominator resulting in the net effect of less money to Charter School. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 231-232 (N.C. Ct. App. 2014). The appellate case turned on what funds comprised the local current expense appropriation that must be

forwarded pro rata to charter schools. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 232 (N.C. Ct. App. 2014). Also at issue, was the determination of whether pre-K students could be included in determining the per pupil calculation. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 232 (N.C. Ct. App. 2014). North Carolina's legislation provided that local school districts were required to forward charter schools the per pupil local current expense appropriation for each of the School District's students that were enrolled in the charter school. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 232 (N.C. Ct. App. 2014). The School District maintained that it was not required to include fund balances when calculating amounts to be forwarded to charter School. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 232 (N.C. Ct. App. 2014). A "fund balance" resulted when appropriated money remained unspent during the year of its allocation but was saved for future use. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 232 (N.C. Ct. App. 2014). The appellate court determined that only the portion of the fund balance that was appropriated for a particular year could be used for calculation of pro rata funding to be forwarded to Charter School during that year. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d 229, 234 (N.C. Ct. App. 2014). Accordingly, Charter School was only entitled to per pupil allocation of local current expense appropriation based on funds that were actually designated for the year that funding is being forwarded to the Charter School. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 233 (N.C. Ct. App. 2014). The appellate court also determined that Pre-K students could

not be included in per pupil allocation because they are not mandated recipients of public education and their inclusion in the funding calculation would inappropriately decrease amount of funding available to charter schools and increase amount retained by school districts. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d at 235-236 (N.C. Ct. App. 2014).

In Determining a Charter Schools Pro Rata Share of the Local Current Expense  
Appropriation, All Funds Deposited into the Local Current Expense Fund Must Be  
Included the Calculation

*Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348 (N.C. Ct. App. 2009) is a North Carolina court of appeals case arising from a school district's underfunding of a charter school. *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348, 349 (N.C. Ct. App. 2009). North Carolina's funding legislation provided that "[i]f a student attends a charter school, the local school administrative unit in which the child resides shall transfer to the charter school an amount equal to the per pupil local current expense appropriation to the local school administrative unit for the fiscal year". *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. at 356-357 (N.C. Ct. App. 2009). The appellate court noted that "[i]t is clear to this Court that the General Assembly intended that charter school children have access to the same level of funding as children attending the regular public schools of this State. " *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348, 356-357 (N.C. Ct. App. 2009). The funding dispute revolved around what funds comprised "local current expense appropriation" Charlotte-Mecklenburg Board of

Education (“School District”) was required to share with Sugar Creek Charter School (“Charter School”). *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. at 357-358 (N.C. Ct. App. 2009). The appellate court determined that any funds deposited into School District’s local expense fund must be split pro rata with Charter School. *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. at 360-362 (N.C. Ct. App. 2009). Restricted funding or funding that serves a special purpose should be placed in a separate account from the local expense fund. *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. at 361-362 (N.C. Ct. App. 2009). To the extent that any funds are placed in School District’s local expense fund, those funds must be distributed pro rata to Charter schools. Funds to be included in calculating amounts due to Charter School include (i) fund balance; (2) Hurricane Katrina relief funds; (3) sales tax reimbursement; (4) preschool programs and facilities; and (5) donations for other specific programs. *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. at 360-362 (N.C. Ct. App. 2009). School District did not have to consider the value received for text book funding because textbooks were on loan from the state; therefore, School District received no monetary funding to be considered in the calculation. *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. at 357-358 (N.C. Ct. App. 2009).



Charter Schools Are Only Entitled to Funding for Students Properly Enrolled in the School, Pursuant to the Charter Contract

*Alternative Unlimited-Special, Inc. v. Ohio Department of Education*, 2008 WL 5160165 (Ohio Ct. App. Dec. 9, 2008) arose from a dispute over charter school funding for students enrolled in grades that were not included in the charter contract. *Alternative Unlimited-Special, Inc. v. Ohio Department of Education*, 2008 WL 5160165 at ¶ 3-4 (Ohio Ct. App. Dec. 9, 2008). The charter school received a charter for grades 3-6. Subsequently, the charter school added grades two, seven and eight without receiving approval from its charter sponsor. *Alternative Unlimited-Special, Inc. v. Ohio Department of Education*, 2008 WL 5160165 at ¶ 18 (Ohio Ct. App. Dec. 9, 2008). The additional grades were never added to the charter contract. *Alternative Unlimited-Special, Inc. v. Ohio Department of Education*, 2008 WL 5160165 at ¶ 18 (Ohio Ct. App. Dec. 9, 2008). The department of education refused to pay charter school for students it taught in grades two, seven and eight. *Alternative Unlimited-Special, Inc. v. Ohio Department of Education*, 2008 WL 5160165 at ¶ 4 (Ohio Ct. App. Dec. 9, 2008). Ohio's appellate court ruled that charter school was not entitled to funding for grades, two, seven and each which were never included in its charter contract. *Alternative Unlimited-Special, Inc. v. Ohio Department of Education*, 2008 WL 5160165 at ¶ 24 (Ohio Ct. App. Dec. 9, 2008).

The State Was Not Required to Provide Charter School Funding for Students Who Were Not Attending a Qualified Public Charter School

*Coquille School District 8 v. Casillo*, 212 Or. App. 596 (Or. Ct. App. 2007) is an Oregon appellate case arising from the State Superintendent of Public Instruction's

(“Superintendent”) refusal to provide Coquille School District 8 (“School District”) with funding for students projected to attend a home school based charter school. *Coquille School District 8 v. Casillo*, 212 Or. App. 596 (Or. Ct. App. 2007). Superintendent maintained that School District’s school was not a charter school within the meaning of Oregon statutes because less than half of the school’s teachers were certified. *Coquille School District 8 v. Casillo*, 212 Or. App. at 609-610 (Or. Ct. App. 2007). The charter school was created to “...provide resources and support to parents who have elected to educate their children in the home”. *Coquille School District 8 v. Casillo*, 212 Or. App. 596, 598 (Or. Ct. App. 2007). The certified teachers employed by the charter school did not provide instruction directly to students nor directly supervise the provision of student instruction. *Coquille School District 8 v. Casillo*, 212 Or. App. at 609 (Or. Ct. App. 2007). Parents actually provided the instruction and submitted time sheets. *Coquille School District 8 v. Casillo*, 212 Or. App. at 540 (Or. Ct. App. 2007). The appellate court determined that legislative intent was that those performing the day to day task of instruction are required to be treated as teaching staff. At least 50% of a charter school’s teaching staff must be certified. Therefore, Superintendent appropriately refused to distribute state funding to “...students who would not be attending a qualified public charter school”. *Coquille School District 8 v. Casillo*, 212 Or. App. at 614 (Or. Ct. App. 2007).

Charter Schools Are Not Entitled to Funding For the Number of Enrolled Students That Exceed the Charter Provided Cap

*The School District of Philadelphia v. Department of Education*, 92 D.3d 746 (Pa. 2014) arose from Department of Education’s refusal to fund charter school for student

enrollment above the charter contracted cap. *The School District of Philadelphia v. Department of Education*, 92 D.3d 746 (Pa. 2014) was a Pennsylvania Supreme Court case that challenged the validity of funding refusal for students enrolled beyond a contractually negotiated charter enrollment cap. *The School District of Philadelphia v. Department of Education*, 92 D.3d 746 (Pa. 2014). The Walter D. Palmer Leadership Learning Partners Charter School (“Charter School”) entered into a charter renewal contact which capped student enrollment at 675 students. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 748 (Pa. 2014). Subsequently, charter school legislation was amended to prohibit charter school caps unless the cap was agreed to in the charter contract. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 750 (Pa. 2014). Charter School instituted action to recover funding for students it educated above the 675 cap. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 749 (Pa. 2014). The charter school was awarded funding for students over the 675 cap, prior to enactment of the enrollment cap amendment. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 750 (Pa. 2014). Once the enrollment cap amendment was enacted, the Secretary of Education determined that the charter school and its sponsor had to sign a new charter agreement submitting to the enrollment cap. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 750 (Pa. 2014). The District Court affirmed the Secretary of Education’s finding. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 750 (Pa. 2014). The supreme court rejected the secretary of education and district court finding of the charter school’s entitlement to funding. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 753 (Pa. 2014).

Instead, the supreme court ruled that the charter school was bound by the enrollment cap it agreed to in its charter. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 752-753 (Pa. 2014). As such, the school district was not required to forward funding for students that were enrolled above the charter agreement cap. *The School District of Philadelphia v. Department of Education*, 92 D.3d at 753 (Pa. 2014).

Table 9 Summarizes legal decisions involving charter schools funding issues.

Table 9 organizes cases based upon jurisdiction of the litigation

**Table 9. Summary of Litigated Funding Cases Reported by Type of Decision**

<b>Funding Considerations as Part of Application Decision</b>	<b>Defining Funding Provisions</b>	<b>Funding for Enrolled Students</b>
<p>Financial and credit history of CS board of directors is appropriate criteria for consideration in a charter application as CS have more direct access to state funds than traditional public school employees. <i>AZ Shelby School</i></p>	<p>School districts must determine commensurate charter school funding on an average district per pupil basis to be distributed in the form of money. The distribution of funding to CS must include applicable federal funding for which enrolled charter schools students are eligible. <i>MD Baltimore City Board of School Commissioners</i></p>	<p>The state can redirect its per pupil funding from the school district to the charter school where students are enrolled without violating state’s constitution. <i>MO District of Kansas City, Missouri</i></p>
<p>Insufficient availability of funding is insufficient to substantiate denial of a charter application. <i>FL School Board of Osceola County</i></p>	<p>Calculation of pro rata funding to be shared with charter schools is based only on the current local funding allocations and cannot consider funds that are not allocated in the year that funding is being forwarded to charter school. Students included in determination of per pupil average can only be students that are subject to the state’s mandatory attendance requirement. <i>NC Charter Day School, Inc.</i></p>	<p>Charter schools are only entitled to funding for students properly enrolled in the school, pursuant to the charter contract. <i>OH Alternative Unlimited-Special, Inc.</i></p>
<p>Inadequate availability of district funding is appropriate for consideration when determining whether to approve a charter application. <i>ILL Comprehensive Community Solutions, Inc.</i></p>	<p>In determining a charter schools pro rata share of the local current expense appropriation, all funds deposited into the local current expense fund must be included the calculation. <i>NC Sugar Creek Charter School, Inc.</i></p>	<p>The state was not required to provide charter school funding for students who were not attending a qualified public charter school. <i>OR Coquille School District 8</i></p>
<p>Economic impact of charter approval on surrounding districts is relevant when determining whether to grant charter application. <i>NJ In re Grant of Charter School Application of Englewood on the Palisades Charter School</i></p>		<p>Charter schools are not entitled to funding for the number of enrolled students that exceed the charter provided cap. <i>PENN The School District of Philadelphia</i></p>

## CHAPTER 5: SUMMARIES, CONCLUSIONS AND IMPLICATIONS FOR PRACTICE

### Summary

Question 1: What Similarities and Differences Exist in the Governance, Funding and Accountability of Charter School Legislation Across the United States?

Nationwide charter legislation is fundamentally similar in regard to funding, governance and accountability provisions distinguished primarily by nuances that are most likely representative of regional concerns.

While thirty-nine states and the District of Columbia provided funding provisions directly in their charter statute, only eleven of those provisions explicitly provided for equal funding for charter schools and traditional public schools. Some legislation expressed intent for at least some equity of funding; but fell short of an explicit declaration mandating equal funding. Other legislation specifically provided for school districts' retention of enumerated portions of charter school funding to defray the school districts' administrative costs. Even with a mandate for equal funding for charter schools and traditional public schools, statutory permission for one category of school to retain a portion of funding from the other category of school could lead to the interpretation of unequal funding.

Eighteen legislatures, seventeen states and the District of Columbia, addressed facilities funding as part of their charter school statute. Facilities funding provided assistances for costs associated with securing appropriate educational facilities. Facilities funding generally assisted with costs associated with facilities rental, lease, construction

and remodeling. Funding was provided in the form of grants and loans. Actual funding varied in award amount; method for calculating the amounts; criteria prerequisite to receiving the award and usage terms. While some legislation did not provide specific funding for charter schools' facilities needs, they did appropriate provisions for charter school usage of school district facilities.

Seventeen out of forty-three statutes allowed charter schools to receive outside funding. Statutes that allowed for outside funding generally had very similar language allowing for the acceptance of donations, grants, bequests and devises as long as conditions for the funding were not contrary to law.

Eight of the forty-three pieces of legislation provided start-up funding. Start-up funding was usually provided as a loan or a grant. Funding served to assist charter schools with costs related to start-up such as acquiring educational materials, technology, facilities remodeling/renovation, electronic equipment and furniture. Start-up funding provisions were distinguishable on the amount of the funding and terms associated with funding.

Thirty-two of the forty-three charter school legislations required charter schools to use some form of generally accepted accounting principles when managing charter schools' funds. The specific terminology varied throughout states but ultimately implicated accounting systems that were premised on a state based system, government based system, or generally accepted accounting system. Inappropriate fiscal management was often remedied by the availability of charter revocation.

Essentially three types of accountability were found in charter legislation: measures of student performance, annual reports and charter revocation or nonrenewal.

Accountability was primarily maintained through assessment/measurement of student achievement and performance reporting on a local and state level. Consistent throughout revocation statutes was a provision for charter revocation or non-renewal based on poor academic performance. A common catchall basis for revocation was violation of any provision of the charter agreement which usually had provisions related to academic performance.

Fifteen out of forty-three charter school legislations explicitly provided that charter schools and traditional public schools were held to the same accountability standards. Thirty-Nine of the forty-three statutes addressed measuring student achievement. Thirty-two statutes required charter schools to measure student achievement toward academic goals. Thirty-two statutes explicitly provided that charter schools had to use the state mandated assessment as a tool in measuring student achievement toward educational goals.

There were two primary methods of evaluating charter schools' academic performance: performance frameworks and assessments of student academic progress. Performance frameworks evaluated charter schools on a variety of factors including academics, finances, governance, achievement gaps, attendance and recurrent enrollment, graduation rates, parent participation and community involvement. While the states that used performance frameworks had very similar factors, the factors tended to vary slightly from state to state. Utilization of assessments to measure student academic progress usually entailed either participation in a statewide assessment program, charter school selected assessments or a combination of both.



Reports by the state departments of education generally reported to states' legislatures and governors on charter school performance. Reports were primarily classified into 3 categories: performance evaluation based upon statutorily enumerated criteria; policy implications of charter school operation; and compilation summary.

Common evaluative criteria included attendance statistics and dropout rate; aggregate assessment test scores; projections of financial stability; the number and qualifications of teachers and administrators; information regarding charter schools established and closed during the previous year; comparison of charter school student academic progress against comparable traditional public school students. Policy implications included information regarding the success or failure of charter schools along with proposed changes to the state laws that would be necessary to improve or change the state's charter school program; assessments regarding funding sufficiency; concerns and recommendations for improved access and distribution of federal funding to charters schools; assessment of the successes, challenges and areas for improvement in meeting the purposes of the charter school legislation; current and expected impact of charter schools on traditional public schools' provision of services; the academic progress of charter school's students compared against previous year's measurement and charter school operation best practices. Some statutes required annual review of charter schools but merely required that the state review information or reports and submit that information to the governor or legislature.

Charter school accountability was also maintained through potential charter termination. Charter termination typically took two forms: revocation or non-renewal. Termination was either mandatory or discretionary. Thirty-one charter school statutes

allowed for discretionary charter termination based on poor academic performance while only ten required mandatory charter revocation in instances of poor academic performance. Revocation provisions were primarily distinguishable on two points: (i) whether termination was mandatory or discretionary and (ii) specific language that detailed circumstances warranting charter termination. There were six common categories of legislative language permitting revocation for academic indiscretions (i) failure to make sufficient progress toward academic expectations; (ii) failure to meet statutory standards or charter agreement terms; (iii) using language that did not explicitly provide for termination based on academic failures; (iv) failure to meet program goals; (v) failure to show improvement for all students to allow charter revocation; and (vi) consistent poor academic performance.

Self-governance is one of the foundation principles of charter school operation. There was really no great distinction between how charter schools were governed. Charter schools were primarily governed by their own governing bodies but ultimately accountable to their authorizing authority and the state board of education. The primary distinction across the types of governance include specific composition of the governing board and specific criteria that must have been met in order to qualify to be on the board.

#### Question 2: What Legislation Has Proven Vulnerable to Court Challenges?

Charter school legislation that has been vulnerable to litigation challenges was classified into three categories (i) constitutional challenges; (ii) challenges based on charter application decisions; and (iii) challenges to authority.

There were seven categories of cases that involved constitutional challenges: (i) equal protection; (ii) sovereign immunity; (iii) Constitutional validity; (iv) discrimination; (v) protected rights; (vi) establishment clause; and (vii) due process.

### Constitutional Challenges

#### Equal Protection

The Fourteenth Amendment of the United States Constitution affords its citizens the right to equal protection of the laws. When state action results in discriminatory treatment or disparate impact, that action could be a constitutional violation of the right to equal protection. Generally, the cases involving a challenge based on claims of equal protection violation resulted in determination that the state action or legislation was appropriate and presented no constitutional violation based on equal protection.

Charter schools can be statutorily required to receive less funding than traditional public schools without violating charter school students' right to equal protection. *J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. 375, (N.J. Super. Ct. App. Div. 2010). As long as the funding scheme represents a deliberative legislative design intended as a reform measure to enhance the education for students in both traditional public school and charters schools, the disparate treatment falls within the appropriate governmental intent of promoting comprehensive educational reform. *J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. 375, 397-401 (N.J. Super. Ct. App. Div. 2010).

The redirection of funds from a school district to charter schools does not constitute an equal protection violation absent specific findings that a decrease in per student spending in an existing school district was requisite to supporting a charter

school's guaranteed level of spending. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174 (N.J. Super. Ct. App. Div. 1999).

Placing credit check requirements on charter school applicants while not requiring the same credit evaluations of traditional public school employees does not constitute an equal protection violation. There can be more stringent financial requirements on charter schools because there is easier access to finances than would be available to employees of traditional public schools. *The Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998).

The closing of predominately minority neighborhood schools and the opening of a charter school that served less minority students, in the same neighborhood, do not warrant a determination of discriminatory violation of the equal protection clause. There must be either a discriminatory intent or disparate impact related to the closing of the neighborhood schools and the opening of the charter school. *Villanueva v. Carere*, 85 F. 3d 481, 484 (10th Cir. 1996).

The state's failure to intervene on behalf of a charter school does not constitute an equal protection violation unless it can be demonstrated that the state treated the charter school differently than similarly situated charter schools. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (Fed. Cir. S.D. Ohio 2002).

Holding a charter school student to the same standards as required of traditional public school students, for participation in extracurricular activities taking place at a traditional public school, does not constitute an unconstitutional equal protection violation. As long as the traditional public school can show a rational relationship

between the restrictions placed on participation in the extracurricular activity and a legitimate state interest, the charter school student must comply with the requirements in order to participate. *Angstadt v. Midd-West School District*, 377 F. 3d 338, (3d Cir. 2004).

### Sovereign Immunity

The doctrine of sovereign immunity prevents states and arms of the states from being sued in court unless the state abrogates its immunity; has its immunity abrogated by congress; or congress creates a statute where only possible defendants are the states. Charter schools are considered to be political subdivisions of the state and their employees are considered to be arms of the state; as such, they are entitled to the protections afforded through the Eleventh Amendment's sovereign immunity. *Lindsey v. Matayoshi*, 950 F. Supp.2d 1159, 1165 (Fed. Cir. D. Hawaii 2013). Accordingly, charter schools and charter school officials cannot be sued. As political subdivisions of the state, charter schools are also prohibited from suing the state unless the state specifically abrogates its sovereign immunity against lawsuits. A state's inclusion of a binding arbitration clause into a charter agreement is an abrogation of the state's sovereign immunity. Thereby, constituting consent to be sued in federal court. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (Fed. Cir. S.D. Ohio 2002).

### Constitutional Validity

A state's delegation of authority to implement charter legislation is not an unconstitutional abdication of state control over essential educational functions. The

state has constitutional authority to delegate aspects of the overall educational system that are necessary to further the purposes of education. *Wilson v. State Board of Education*, 75 Cal.App.4<sup>th</sup> 1125 (Cal. Ct. App. 1999).

Using cultural factors to define at-risk students does not create a constitutionally suspect class requiring the charter legislation to be presumptively unconstitutional. Rather, the utilization of cultural factors in drafting charter legislation must be rationally related to a legitimate state interest. Specifically setting aside charters for schools dedicated to meeting the needs of culturally targeted populations can be rationally related to the state's interest in encouraging educational innovation. Thereby retaining the legislation's constitutional validity. *Villanueva v. Carere*, 85 F. 3d 481 (10th Cir. 1996),

Failure of charter school legislation to mandate consideration of the potential racial impact that could result from approval of a charter school does not constitutionally invalidate the legislation. *In re Charter School Appeal of Greater Brunswick Charter School*, 332 N.J.Super.409, 411, 753 A.2d 1155, 1156 (N.J. Super. Ct. App. Div. 1999).

Charter schools are appropriately excluded from mandates that hamper their ability to operate as alternative visions of education. *In re the Matter of the 1999-2000 Abbott v/ Burke Implementing Regulations*, 348 N.J.Super. 382 (N.J. Super. Ct. App. Div. 2002).

Charter school legislation can grant the state board of education authority to control local aspects of charter schools without risking constitutional validity. When a state constitution vests general control and supervision of the public education system, there is an inherent authority to direct and manage all aspects of the education system

without regard to whether it is a local or state level aspect. *Utah School Boards Association v Utah State Board of Education*, 17 P.3d 1125, (UTAH 2001).

Charter school legislation can give application review authority to the state board of education without constituting an inappropriate exercise of local authority resulting in invalidation of the statute. Even though the local school board had the authority to operate, control and supervise schools within its district, the state board of education is ultimately responsible for supervision of the entire educational system. Accordingly, when the state board grants a charter application, it is not opening the school. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008).

Charter school legislation cannot create a state level entity that is empowered with authority that is constitutionally reserved to the local school districts. When local school districts are constitutionally empowered to authorize schools and a statute gives that power to a state level entity, the legislation is unconstitutional. *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. Dist. Ct. App. 2008).

#### Discrimination

Creating a learning environment and educational practices that are better suited for the success of a particular group of students does not equate to constitutionally prohibited discriminatory practices when there is equal access provided to all groups of students. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195 (Pa. Commw. Ct. 2004).

## Protected Rights

There is no protected right in charter contract renewal. Accordingly, no due process protections are required prior to denial of a charter renewal. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024 (N.Y. App. Div. 2013).

There is no protected interest in maintaining a charter sponsorship. Accordingly, due process protections are not required prior to withdrawal of charter sponsorship. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (Fed. Cir. S.D. Ohio 2002).

There is no protected property interest in maintaining a benefit that is in the sole discretion of the state to issue or withhold. Accordingly, no constitutional due process is required prior to terminating a charter for academic underperformance. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868 (Fed Cir. M.D. Tenn. 2013).

There is no protected interest in a conditional or contingent charter (benefit) so no due process is required prior to terminating the conditional charter. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. 293 (S.C. 2008).

## Establishment Clause

The mere presence of a charter school in a religious facility does not constitute a violation of the First Amendment requirement for separation of church and state. There must be a governmental indoctrination of religious beliefs to warrant a finding of First



Amendment Establishment Clause violation. *Porta v. Klagholz*, 19 F. Supp. 2d 290 (Fed. Cir. D. N.J. 1998)

#### Due Process

When there is no statutorily mandated language requiring the state to grant charters, there can be no protected right warranting due process protections. *Shelby School v. Arizona State Board of Education* 192 Ariz. 156, 962 P.2d 230 (App. Div.1 1998).

There is no constitutionally protected interest in attending a specific school so there is no due process protection required prior to expelling a student from a charter school. *Lindsey v. Matayoshi*, 950 F. Supp.2d 1159, 1161 (Fed. Cir. D. Hawaii 2013).

In Florida, when there is a situation where the health, safety or welfare of students is threatened or there is other good cause for immediate termination of a charter, there is no requirement for due process. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So. 3d 1220 (Fla. 2009)

Charter schools, as political subdivisions of the state cannot invoke due process violation claims against the state. *Greater Heights Academy v. Zelman*, 522 F. 3d 678 (6th Cir. 2008).

A charter school student does not have a constitutionally protected interest in participating in extracurricular activities as such there is no due process afforded for denial of the ability to participate. *Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004).

## Charter Application Decisions

Charter application decisions are divided into cases that address charter (i) approvals; (ii) denials and (iii) terminations. Litigation involving charter decisions is centered on decisions to deny or revoke charters.

### Approval

During the charter approval process, once a school district establishes a preliminary showing that a charter approval will impact the schools district's ability to adequately provide education, the commission of education must consider the economic impact that may result from charter application approval. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000)

### Denial

When denying a charter application for deficiencies, the deficiencies must be substantial. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008).

An application pursuant to the high performing charter provision of Florida's charter legislation requires that applicant substantially replicate an existing charter school program. It is not enough to replicate a portion of the existing program. *School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d 72, (Fla. Dist. Ct. App. 2013).

In Florida, a charter school application cannot be denied based on the potential financial impact on other schools. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. Dist. Ct. App. 2005). Florida's decision is in direct conflict

with New Jersey's recommendation. While Florida prohibits consideration of financial impact on other schools in the decision to approve a charter application, New Jersey requires that the economic impact be considered once an allegation of economic impact is made by the school district. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. Dist. Ct. App. 2005); *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000)

In Illinois, economic impact on the local school district is an appropriate concern when determining whether to approve a charter application. Accordingly, denial was appropriate when the school district's finances would not support the charter school's duplicative programming. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109 (Ill. App. Ct. 2004).

A request for contract renewal can be denied without due process because there is no protected interest in charter renewal. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024 (N.Y. App. Div. 2013).

#### Termination/Revocation

In Florida, when there is a situation where the health, safety or welfare of students is threatened or there is other good cause for immediate termination of a charter, there is no requirement for due process. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009); *The School Board of Miami-Dade County, Florida v. Rise Academy of South Date Charter School*, 90. 20.3d 1001, (Fla. Dist. Ct. App. 2012).

Unilateral implementation of changes to the charter without approval of the sponsor, justify charter termination in Pennsylvania. *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Commw. Ct. 2014).

Unilateral implementation of changes to the charter without approval of the sponsor, justify charter non-renewal in Pennsylvania. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d 736 (Pa. Commw. Ct. 2014).

### Governance Challenges

Arizona's state board of education is empowered with the authority to determine criteria that it deems relevant for determining whether to approve a charter application. The *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998).

Another entity's review of a local schools board's charter application decision did not impact the local school board's constitutional authority to operate, control and supervise public schools within its district. Regardless of the decision made by the reviewing entity, the local school board still maintained the right to operate, control and supervise the charter school. *Hillsborough County v. Tampa School Development Corp.*, 113 So.3d 919, 922 (Fla. Dist. Ct. App. 2013).

New Jersey's state board of education has the authority to establish a process to address the issues triggered by charter school legislation. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999).

### Question 3: What Problems Have Arisen Regarding Charter School Funding?

Financial and credit history of charter school board of directors are appropriate criteria for consideration in a charter application as charter schools have more direct access to state funds than traditional public school employees. *The Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998).

Insufficient availability of funding is inadequate to substantiate denial of a charter application. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. Dist. Ct. App. 2005).

Inadequate availability of district funding is appropriate for consideration when determining whether to approve a charter application. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109 (Ill. App. Ct. 2004).

Economic impact of charter approval on surrounding districts is relevant when determining whether to grant charter application. *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000).

School districts must determine commensurate charter school funding on an average district per pupil basis to be distributed in the form of money. The distribution of funding to charter schools must include applicable federal funding for which enrolled charter schools students are eligible. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007).

The state's redistribution of funding, based on local tax levy, from a school district to charter schools is not a violation of the state's constitution. The state is entitled

to make the determination that a school district requires less funding because it is serving less students. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d 599, (Mo. 2010).

Calculation of pro rata funding to be shared with charter schools is based only on the current local funding allocations and cannot consider funds that are not allocated in the year that funding is being forwarded to charter school. Students included in determination of per pupil average can only be students that are subject to the state's mandatory attendance requirement. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d 229 (N.C. Ct. App. 2014).

In determining a charter schools pro rata share of the local current expense appropriation, all funds deposited into the local current expense fund must be included in the calculation. *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348 (N.C. Ct. App. 2009).

Charter schools are only entitled to funding for students properly enrolled in the school, pursuant to the charter contract. *Alternative Unlimited-Special, Inc. v. Ohio Department of Education*, 2008 WL 5160165 paragraph 24 (Ohio Ct. App. Dec. 9, 2008).

The state was not required to provide charter school funding for students who were not attending a qualified public charter school. *Coquille School District 8 v. Casillo*, 212 Or. App. 596, 614 (Or. Ct. App. 2007).

Charter schools are not entitled to funding for the number of enrolled students that exceed the charter provided student enrollment cap. *The School District of Philadelphia v. Department of Education*, 92 D.3d 746 (Pa. 2014).

## Conclusions

Question 1: What Similarities and Differences Exist in the Governance, Funding and Accountability of Charter School Legislation Across the United States?

1. Charter school legislation is fundamentally similar across the United States.

Almost all charter school legislation contains provisions detailing funding, accountability and governance. Charter school funding, accountability and governance vary for each piece of legislation; however, distinctions tend to be more nuances than stark contrasts.

For example, thirty-two states required some form of generally accepted fiscal management; however, the language and methods for enforcement were slightly different. Some states required charter schools to use “generally accepted standards of fiscal management”, while others required “generally accepted accounting principles” and yet others required adherence to statewide accounting systems. Similarly, some states allowed for discretionary charter termination for failure to use identified standards of fiscal management while other states required charter termination. Regardless of the exact mechanism utilized, each piece of legislation ultimately communicated the same idea; charter schools were required to implement standardized principles for fiscal management or face charter termination.

Similarly, thirty-one different legislations addressed charter school measurement of student achievement, yet the distinctions could be disaggregated into two primary categories encompassing assessments and frameworks. States that utilized frameworks as the foundation for evaluating charter school

performance invoked much of the same evaluative criteria. For example, Mississippi had at least nine mandatory framework criteria and Maine had similar criteria with the exception of one criterion. Mississippi did not require inclusion of parent and community involvement and did include suspension and expulsion rates as part of its evaluative framework. Charter school legislation was replete with the requirement that charter schools detail how they would measure student achievement. Whether charter schools were required to provide an explanation of how students' performance would be measured or detail how they would ensure that students were achieving desired outcomes, the impact was the same. Charter schools were required to detail how they would be held accountable for the academic achievement of students.

Even among the 33 provisions requiring charter schools to detail their governance plans, the language is noticeably similar and similarly vague. Regardless of whether the legislation required charter applicants to include school governance and bylaws; governance and organizational structures and plans; a description of the governance and operation; or school governance and procedures, there was no specific direction on what governance plan or structure should be implemented by charter schools.

2. Generally, charter schools and traditional public schools are not required to have the same funding. Forty of the forty-three charter school legislations provided for charter school funding directly in the statute. Of the forty provisions, only eight specifically mandated the same funding between charter schools and traditional public schools. The vast majority of charter legislation is either unclear, silent or



specifically allow for disparate funding. Alternative funding is among founding principles of charter schools. According, this finding is consistent with founding purposes of charter schools.

3. Charter school legislation that contain provisions for facilities funding, supplemental private funding and start-up funding have portions that essentially mirror one another and tend to be distinguishable primarily on certain inconsequential points which present no particular pattern.
4. One hundred percent of charter school legislation entailed some form of accountability for charter schools. Primary accountability included measurement of academic performance, report compilation and charter termination. Charter schools were distinguished by the method for measuring academic performance; method for compiling the reports; information contained in reports; audience for report submission; report preparer; mandatory or discretionary nature of charter termination and terms precipitating charter termination. Charter school theory is premised on an exchange of autonomy for accountability; therefore, this finding is consistent with the founding purposes of charter schools.
5. While, thirty-nine statutes addressed charter school governance, actual details concerning governance were limited. Statutes primarily specified charter schools detail their intended governance structure and bylaws without any further instruction regarding parameters for governance structure and operation. Only eight statutes interfered in the charter school governance determinations by providing requirements for governing board composition. Even though eight states outlined parameters for charter school board composition, infringement on

actual governance was still minimal. Charter schools theory is founded upon an exchange of autonomy for accountability. Accordingly, the lack of legislative specificity for charter school governance is consistent with founding principles of charter schools.

6. Governance provisions were distinguished by types of details required when detailing governance; the actual statutory language related to governance provisions; and governing board composition.

States like Illinois and Colorado required charter schools to include the nature and extent of parental, educator and community involvement in the charter schools governance and operation, while states like Arizona, Arkansas and Massachusetts merely required that charter schools detail the organizational structure and governance plan.

Even among states that merely required charter schools to detail the organizational structure and governance plan, the language varied. Indiana required a description of the organizational structure and governance plan while New Hampshire required that charter school applicants provide the governance and organizational structure and plan. Kansas required the governance structure of the school and Mississippi required charter applications to contain the governing bylaws. The statutory requirements served the same purpose but utilized different language to effectuate that purpose.

The eight states that had specific requirements regarding board membership were distinguishable based on those requirements. For example, Maine required charter school governance plans to include a description of the

roles and responsibilities of the governing board along with the identity of the original governing board while Nevada required charter applicants to detail the number of governing members, the method for election or nomination of governing members and their terms of office. States like Minnesota and South Carolina had even more extensive requirements.

Minnesota required charter school board of directors to be composed of at least five unrelated parties. The board of directors had to have at least one of the charter school's teachers and parents along with a member of the community. Board of directors was prohibited from having business or familial relationships with anyone providing goods or services to the charter school. South Carolina required that charter school governing boards consist of at least seven members with a minimum of fifty percent possessing a background in K-12 education or business. South Carolina further required that fifty percent of the board must also be elected by the charter school's employees and parents.

Question 2: What Legislation Has Proven Vulnerable to Court Challenges?

1. Charter legislation has proven vulnerable in Arizona, California, Colorado, Florida, Hawaii, New Jersey, New York, Ohio, South Carolina, Tennessee and Utah. Each of these states was embroiled in litigation that ultimately reflected upon the legitimacy of its legislation. Hawaii's case, *Lindsey v. Matayoshi* was not a direct attack on Hawaii's charter school legislation but rather a constitutional challenge which entailed the federal court's review of Hawaii's charter legislation to address the plaintiff's constitutional challenges involving a

charter school, charter school officials and the state superintendent (*Lindsey v. Matayoshi*, 950 F. Supp.2d 1159 (D. Hawaii 2013)).

2. Litigated court cases involved issues related to (i) constitutional protections; (ii) charter application decisions and (iii) appropriateness of exercised authority. Constitutional protections entailed challenges based on alleged equal protection violations; applicability of sovereign immunity; constitutional validity; discriminatory practices; constitutionally protected rights; due process rights; and separation of church and state. Court cases involving charter application decisions resulted due to challenges based on charter approval, denial or termination. Issues that involved exercise authority related to appropriate authority to determine criteria for implementing charter legislation; review local school board decisions regarding charter schools; and establish a process for implementing charter legislation.
3. Constitutional challenges were typically resolved in favor of the state; thereby, resulting in the determination of constitutionality of the contested statutory provision or state action. For example, the state's requirement that charter schools' governing board members prove creditworthiness but not school district employees was found to be a constitutional action that was not in violation of equal rights protections. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). Similarly, provisions of charter school legislation could be based on culture-based classification without invalidating the statute. *Villanueva v. Carere*, 85 F. 3d 481 (10th Cir. 1996).

4. While litigated constitutional challenges tended to be resolved in favor of constitutionality of state action; there was case in Florida, which resulted in a decision that the charter legislation provision was facially unconstitutional. *Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. Dist. Ct. App. 2008). The contested legislation in this case was later repealed by Florida's legislature.
5. There were litigated cases on charter application approvals, denials and revocations; however, cases involving charter application decisions were primarily related to charter application denials and charter terminations. The study reported findings on ten cases addressing charter application decisions. Only one decision addressed charter approval. Six cases were a response to charter application denials and three cases addressed charter revocation.
6. Five of the nine charter denial and termination court cases were from the state of Florida, which is indicative of an issue with charter application decisions in Florida.
7. The studied charter school denial cases primarily involved judiciaries' interpretation of legislative intent with regard to implementation of state statutes. For example, in the *School Board of Volusia County v. Academies of Excellence, Inc.*, the court's decision turned on its interpretation of what constituted a substantial statutory deficit in a charter application. *School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008). In determining that a school district appropriately denied a charter application, an Illinois court interpreted provisions of Illinois' charter statute as

intending for economic concerns to be considered in charter proposal decisions. *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109 (Ill. App. Ct. 2004).

8. Studied cases regarding the appropriateness of authority exercised, as a result of charter school legislation, generally supported the governmental exercise of authority as appropriate.
9. In Arizona and New Jersey, different funding for charter schools and traditional public schools does not constitute an equal protection violation. *J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. 375, (N.J. Super. Ct. App. Div. 2010); *Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108, 23 P.3d 103 (ARIZ. Ct. App. 2001).
10. In Arizona, Tennessee, and South Carolina there is no protected interest in having a charter; therefore, there is no entitlement to due process prior to deprivation of a charter. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998); *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868, 877 (Fed Cir. M.D. Tenn. 2013); *James Academy of Excellence v. Dorchester County School District*, 376 S.C. 293 (S.C. 2008).
11. In California, the legislature can delegate its authority to implement charter school legislation without unconstitutionally abdicating its legislative power over essential state functions. *Wilson v. State Board of Education*, 75 Cal. App. 4th 1125 (Cal. Ct. App. 1999). This rule may have persuasive authority outside of

California but has limited applicability beyond California as the legal decision is based on California law.

12. In Colorado, charter schools are government officials that are entitled to Eleventh Amendment protections. *King v. U.S.*, 53 F. Supp. 2d 1056, 1061 (10<sup>th</sup> Cir. 1999), rev'd 301 F.3d 1270 (10th Cir. 2002). Because this legal decision was based on Colorado's legislation, it is the rule in Colorado and is probably the rule throughout the 10<sup>th</sup> circuit, which includes Colorado, Kansas, New Mexico, Utah, Northern Oklahoma, Eastern Oklahoma, Western Oklahoma, and Wyoming. Application of this rule outside of Colorado is limited because a charter school's entitlement to Eleventh Amendment protection is predicated on a particular Colorado law.
13. In Florida, charters can be immediately terminated when there is a situation that threatens the health, safety or welfare of students or other good cause. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009).
14. In Florida, a charter can be immediately terminated for severe audit findings. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009). Severe audit findings could be considered a situation that threatens the health, safety or welfare of students or other good cause such that a charter can be immediately terminated. *The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009).
15. In Florida, an administrative law judge can grant a charter school's consolidation request contrary to the local school board's decision without infringing on the

local school board's constitutional right to operate, control and supervise schools within its district. *School Board of Hillsborough County v. Tampa School Development Corp.*, 113 So.3d 919 (Fla. Dist. Ct. App. 2013).

16. In Florida, a charter school that applies, under Florida's high performing charter provision, must significantly replicate the identified existing charter school.

*School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d 72 (Fla. Dist. Ct. App. 2013).

17. In Hawaii, charter school officials are protected by Eleventh Amendment immunity and are prohibited from being sued in relation to their official duties.

*Lindsey v. Matayoshi*, 950 F. Supp.2d 1159, 1165 (Fed. Cir. D. Hawaii 2013).

This is the rule for Hawaii but is only persuasive for other states. In states that have not definitively decided the issue of Eleventh Amendment immunity for charter school officials, either through legislation or case law, Eleventh Amendment Immunity could protect charter school officials.

18. In Hawaii, a charter school student can be provided attendance at an alternative public school as long as it is not significantly inferior to the charter school being attending by the charter school student. *Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159, 1165 (Fed. Cir. D. Hawaii 2013). A charter school student's right to public education does not entitle attendance at a specific school. In order to trigger procedural due process rights, prior to removal from the charter school, the student must establish that the alternative schools are significantly inferior to the charter school that student is attending. This legal decision is binding in Hawaii but may have persuasive authority in other states.



19. In New Jersey, a school district is not entitled to receive a hearing prior to a charter school application decision because the state decision to grant a charter is more akin to a legislative or executive function rather than a judicial function. *In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999). This rule is only binding in New Jersey and may only have persuasive authority beyond New Jersey.
20. In New Jersey, a charter school's lease of space in a religious building does not constitute a violation of the Establishment Clause absent governmental indoctrination of religious beliefs. *Porta v. Klagholz*, 19 F. Supp. 2d 290, 297-298 (Fed. Cir. D. N.J. 1998). This rule is binding in New Jersey and may be persuasive in other states where this issue has not been previously addressed through legislation or court decision.
21. In New York, there is no constitutionally protected right in charter renewal; therefore, no due process is required prior to denial of a renewal application. *Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024 (N.Y. App. Div. 2013).
22. In Ohio, a binding arbitration clause in a charter school contract abrogates the state's Eleventh amendment immunity; thereby, allowing the state to be sued in federal court. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (Fed. Cir. S.D. Ohio 2002). While this federal ruling is not binding outside of Ohio, it is persuasive in other jurisdictions that have not addressed this issue. Therefore, a state's insertion of a binding arbitration clause

into a charter school contract could serve to waive protections afforded by the Eleventh Amendment.

23. In Ohio, there is no right to a charter sponsorship contract unless the right is created through the sponsorship contract. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (Fed. Cir. S.D. Ohio 2002).
24. In Ohio, a charter school is considered a political subdivision of the state and therefore cannot assert Due Process violation claims against the state. The United States Sixth Circuit Court of Appeals rendered this legal decision; therefore, the decision is also applicable in Kentucky, Michigan, Ohio and Tennessee. While not binding on other states, this rule may have persuasive authority in states that have not addressed the issue.
25. In Pennsylvania, changes to a charter schools operation that are not in accord with the school's application or charter are deviations from the charter that will subject a charter school to statutorily prescribed closure. *Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Commw. Ct. 2014).
26. In Pennsylvania, changes in a charter school's daily schedule and school calendar are substantial modifications in a charter school's operation, which can warrant non-renewal. *Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d 736 (Pa. Commw. Ct. 2014).
27. In Pennsylvania, charter school students can be compelled to comply with the same requirements as traditional public school students, in order to participate in activities at the traditional public school. *Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004). A charter school student's failure to comply with

the same requirements as traditional public school students can justify prohibition from participation in the activity, as long as the requirements are related to a legitimate state interest. *Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004). This is the rule for Eastern Pennsylvania, Middle Pennsylvania and Western Pennsylvania but because it is a Third Circuit District Court of Appeals decision related to constitutional issues, the rule is also applicable in Delaware, New Jersey and the Virgin Islands. While this legal decision is not binding outside of the Third Circuit for the United States, it is persuasive on other United States Circuit Court of Appeals that have not addressed the issue.

28. In Pennsylvania, an environment that favors a particular category of students does not necessarily create a discriminatory intent. *Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195 (Pa. Commw. Ct. 2004). As this legal decision was based on Pennsylvania's charter school law, it is binding only in Pennsylvania but may have persuasive value on other states that have not addressed this particular issue.

Question 3: What Problems Have Arisen Regarding Charter School Funding?

#### 1.The Form of Funding Distributed By Districts to Charter Schools

School districts had to be instructed to distribute charter school funding in the form of money rather than district provided services. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007).

### The Economic Impact on Surrounding Districts Resulting From New Charter School

Courts in multiple jurisdictions differed on whether determination of the financial impact on surrounding school districts was appropriate consideration in determining whether to approve a charter application. Florida has determined that consideration of financial impact is inappropriate while Illinois and New Jersey have found that economic concerns are appropriate. *School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. 5<sup>th</sup> DCA 2005); *Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109 (Fourth District Appellate Court of Illinois 2004); *In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000).

### Creditworthiness of Board of Directors Who Have Direct Access to Charter School Funding.

Financial evaluation of charter school board of directors was relevant in determining charter application approval. *The Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998).

### The Calculation and Payment of What Constitutes Commensurate Charter School Funding

Maryland school districts had to be instructed on the funding to be contributed to calculations when determining commensurate charter school funding. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007).

Constitutional Appropriateness of Redistributing School District Funding to Charter Schools

The court determined that the state had the authority to redistribute funding. *School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d 599, (Mo. 2010).

Determination of District Funds That Are to Be Included in Calculation of Charter Schools' Pro Rata Share of District's Funds

Judiciaries had to specifically identify funds that school districts were required to include in charter school funding. *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348 (N.C. Ct. App. 2009); *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d 229 (N.C. Ct. App. 2014).

Students Included in a Per Pupil District Average for the Purpose of Determining a Charter School's Pro Rata Funding, Can only Be Students That Are Subject to a State's Mandatory Attendance Requirements

School districts were prohibited from including students who were not subject to the state's mandatory attendance requirement in per pupil averages to be distributed pro rata to charter schools. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d 229 (N.C. Ct. App. 2014).

Entitlement of funding for charter schools students who are not attending a qualified charter school.

The state was not required to provide funding for students who attended an unqualified charter school. *Coquille School District 8 v. Casillo*, 212 Or. App. 596, 614 (Or. Ct. App. 2007).

## Entitlement of Funding for Enrolled Charter School Students That Exceed the Charter Provided Cap

Charter schools were not entitled to funding for students that exceeded the charter's enrollment cap. *The School District of Philadelphia v. Department of Education*, 92 D.3d 746 (Pa. 2014).

### Implications for Practices

This study's legislative and case law findings represent legislation and litigation across forty-two states and the District of Columbia. In the United States, education has been reserved as a function of the state and local government (Alexander & Alexander, 2012, p.82; U.S. CONST; U.S. CONST, Amend. X). Accordingly, one state's educational legislation and policies are not binding on another state. The principle of stare decisis requires that courts adhere to their own previously issued decisions as well as the decisions of higher courts. There is no requirement that courts adhere to legal decisions of lateral courts, lower courts or courts outside of their judicial jurisdiction. Accordingly, when considering legislation and legal decisions, they must be considered with regard to location. For example, state legislation and court decisions in Florida will likely not be applicable or binding in California. Implications for practices must be considered with the understanding that most of the study's legislative and case findings may only be binding in one state or at most a few states. Accordingly, implications for practices consider both binding and persuasive authority.

1. Charter schools should be evaluated annually based on actual school performance and on policy implications of charter school operation.

Nationwide review of charter legislation revealed two primary mechanisms

for charter school evaluation. Some states used frameworks comprised of multiple evaluative criteria while other states chose to use various forms of assessments. Many states also utilized various forms of mandatory reporting to ascertain charter school performance in achieving desired outcomes. The use of both evaluative criteria and policy implication criteria takes advantage of nationwide legislative practices and provides a more accurate reflection of charter school performance.

*Evaluative criteria should include:*

- a comparison of performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in the school district in which the charter school is located
- authorizer's assessment of the successes, challenges and areas for improvement in meeting the purposes
- student performance on statewide assessments;
- student attendance and grades;
- student discipline incidents;
- student socioeconomic data;
- parental and student satisfaction with the charter school;
- projections of financial stability; and
- the number and qualifications of teachers and administrators

*Policy implication criteria should include:*

- charter schools established and closed during the previous year;

- assessment of the charter schools’ impact on school districts;
  - comparison of charter school student academic progress against comparable traditional public school students;
    - i. a comparison of performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in the school district in which the charter school is located and
    - ii. a comparison of performance of charter school students with the performance of academically, ethnically and economically comparable groups of students in the state in which the charter school is located;
  - list of actions taken on charter school applications as well as explanations for any revocations or nonrenewals;
  - authorizer’s assessment of the successes, challenges and areas for improvement in meeting the purposes
2. Creditworthiness of charter school board of directors should be a consideration in the application and renewal process, for charter schools. The legislature should include the creditworthiness of governing board members as a relevant criterion in approving and maintaining charter applications. The fact that thirty-two of the forty-three pieces of charter legislation require the use of standardized accounting principles in the management of charter school funds is indicative that appropriate fiscal management is a concern throughout a majority of the country. An Arizona court found that the creditworthiness of



charter school governing boards was a relevant consideration because the governing board had more direct access to charter school funding than traditional public school officials. *Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998). Similar logic could be applied to other states, in a proactive manner, through the requirement for consideration of creditworthiness.

3. Charter schools should be statutorily mandated to comply with standard accounting principles for fiscal management. Thirty-two pieces of charter legislation already include the requirement for the use of standard accounting principles. The use of standard accounting principles allows for more objective transparency and operates to better hold charter schools accountable for educational funding.
4. Charter school boards and policy makers should institute certain qualification for board membership such as requiring that a minimum composition of the governing board consist of members with special training in business, law, and finance. (This requirement should not be memorialized by statute because it would erode the autonomous governance inherent in charter school operation). Some charter schools have been reported to fail due to inadequate management. Appropriately trained and credentialed governing boards contribute to better charter school sustainability due to more effective management.
5. Legislatures should enact revocation provisions in charter statutes. Charter schools are premised on market theory and an exchange of autonomy and

accountability. Market theory holds that successful charter schools continue to exist and unsuccessful charter school cease to exist. Charter schools' obligation to produce promised outcomes should be maintained through the potential of revocation for failure to perform.

6. Legislatures should provide for charter termination (i) if they fail to meet appropriate performance objectives; (ii) fail to meet terms of their charter; or (iii) fail to use standard accounting practices for fiscal management.
7. Legislatures should include specific statutory language that identifies the benefits of obtaining and maintaining charters are within the discretion of the state to issue, withhold or retract. Case law has indicated there can be no protected property interest in maintaining a charter when it is in the sole discretion of the state to grant or withhold that property interest. *Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868, 877 (Fed Cir. M.D. Tenn. 2013). Case law has also indicated that there is no protected right to have a charter when the charter statute provided that the charter was conditional. *James Academy of Excellence v. Dorchester County School District*, 376 S.C. 293 (S.C. 2008). When there is no protected property interest, there is no entitlement to procedural due process. Accordingly, if states were to specifically provide that a charter is discretionary, then there would be no entitlement to procedural due process prior to deprivation of a charter either through application denial or charter termination. While the referenced case law may have limited applicability, it can provide persuasive authority to

other jurisdictions considering the issue of due process required before deprivation of a charter.

8. The legislature should enact legislative language that specifically identifies charter schools as political subdivisions of the state. Case law has indicated that political subdivisions of the state are entitled to Eleventh Amendment protections. *King v. U.S.*, 53 F. Supp. 2d 1056, 1061 (10<sup>th</sup> Cir. 1999). Additionally, political subdivisions of the state have been prohibited from suing the state for alleged due process violations. *Greater Heights Academy v. Zelman*, 522 F. 3d 678 (6th Cir. 2008).
9. The state should exclude binding arbitration from all of its charter contracts. A state's inclusion of a binding arbitration clause in its charter contract has been found to act as an abrogation of the state's Eleventh Amendment immunity from lawsuits. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (Fed. Cir. S.D. Ohio 2002). The federal court determined that the state's inclusion of an arbitration clause in its charter contract indicated anticipation of litigation, which effectuated a waiver of the state's Eleventh Amendment protection against lawsuits. *Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (Fed. Cir. S.D. Ohio 2002).
10. Legislative language should be very specific in order to properly effectuate legislative intent. If legislative intent is for charter school funding to be the same as traditional public schools, there should be explicit language indicating that funding is to be the same. When the legislative language is not clear,

determination of legislative intent is left to the judiciary. North Carolina's funding legislation became embroiled in litigation because of disputes regarding what was the legislative intent for charter school funding. *Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d 229 (N.C. Ct. App. 2014); *Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348 (N.C. Ct. App. 2009). North Carolina's court ultimately determined that the legislature intended for charter schools to have the same funding as traditional public schools. Litigation could have been prevented if the legislative language was more explicit and specifically enunciated that charter schools and traditional public schools were to have the same funding.

11. Legislation should explicitly state appropriate forms of funding to be distributed to charter schools. If the legislature intends for funding to be distributed in the form of money rather than services, the intent should be explicitly communicated in the language of the statute. Case law, originating in Maryland, entailed a dispute over what constituted "commensurate" funding for charter schools. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007). School districts were providing "commensurate" funding in the form of district provided services rather than money. *Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007). Litigation ensued to determine what the legislature intended by providing that charter schools should receive commensurate funding. *Baltimore City Board of*

*School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007). Ultimately, judiciary determined that the legislative intent was that districts should provide charter schools funding in the form of money.

*Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007).

12. If a policy is created providing for disparate funding for charter schools and traditional public schools, it should be done as a deliberative legislative design intended as a reform measure to enhance education for both traditional public school students and charter school students. Drafting of disparate funding legislation in this manner assists in defeating constitutional challenge. New Jersey case law found that the state's charter legislation providing charter schools with less funding than traditional public schools did not create an equal protection violation because the disparate funding was a deliberative legislative design. *J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. 375, (N.J. Super. Ct. App. Div. 2010).
13. When designing policies for removal of students from charter schools, the school officials should advise the student of comparable alternative educational options and ensure that those options are offered to the student. These actions prevent a potential constitutional challenge based on deprivation of education claims. A Hawaii federal court found that a charter school student was not entitled to attendance at a particular school but the alternative schools could not be significantly inferior to the student's charter school. *Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159, 1165 (Fed. Cir. D.

Hawaii 2013). As long as the student is provided with comparable alternative educational options, there is no entitlement to procedural due process, prior to removing the student from the charter school. *Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159, 1165 (Fed. Cir. D. Hawaii 2013). Although, providing students with comparable alternative educational options negate the necessity for procedural due process, the best practice is to always provide procedural due process prior to removing a student from school.

14. When designing legislation and policies that allow charter school students to participate in activities at traditional public schools, charter school students can be required to adhere to the same standards and requirements as the traditional public school students that participate, in the same activity. Charter school students do not have a protected property interest in participating in extracurricular activities at traditional public school; therefore, due process is not required prior to denying students the ability to participate in the activity. *Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004).
15. When placing restrictions on student participation in extracurricular activities, the school (state) must be able to show a legitimate state interest in the standards or requirements being placed on the traditional public school students. *Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004). As long as there is a legitimate state interest in the restrictions, as applied to traditional public school students, charter schools students must comply to the same extent as traditional public school students, in order to

participate in the activity. *Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004)

#### Recommendation for Future Studies

Review of nationwide legislation revealed numerous issues that would meaningfully contribute to a the body of knowledge regarding charter school law and assist in further development of legislation and policies furthering educational reform efforts.

An avenue for future studies would be a study of the charter application process and chartering authorities. Some states have very detailed provisions regarding the charter application process and chartering authorities while others provide limited information. States vary on the types of chartering authorities and powers granted to each type of chartering authority. What are the nationwide distinctions? Why do some states have extensive provisions and requirements for the application process? Why do some states have limited chartering authorities while others have multiple authorities vested with the power to authorize charters? Does the type of chartering authority impact prevalence or success of charter schools?

Another topic would be a study of financing provisions and requirements in charter schools. There are forty pieces of charter school legislation that provide for charter school funding directly in the statute and there are at least that many provisions and matrices to determine charter school funding across the United States. This area is ripe for further study. Does funding impact longevity of charter schools?

A final area for further research would be a study of charter school admissions policies and procedures. There are forty-three pieces of charter school legislation and more than 5000 charter schools in America. What are similarities and differences in the admission policies and procedures? How do charter school admission policies and procedures impact charter school performance? Do admissions policies and procedures impact charter school longevity? What types of admissions policies and procedures produce greater academic achievement?



## APPENDIX A: LIST OF LAW

ALASKA STAT. ANN. §14.03.260(a) (West 2014)

American Recovery and Reinvestment Act of 2009, Pub. L. 111-5, §14001-12, Title XIV  
(2009)).

ARIZ. REV. STAT. ANN. §§15-181 to 15-189.04 (West 2014)

ARK. CODE ANN. §6-23-102 to 6-23-907 (West 2013)

CAL. Education CODE §§47600 – 47664 (West 2014)

COLO. REV. STAT §§22-30.5-112(2)(a)(III)(A) to 22-30.5-704 (West 2013)

CONN. GEN. STAT. ANN. §§10-66aa to 10-66nn (West 2014)

DEL. CODE ANN. tit. 14 §§ 501 – 518 ( West 2014)

D.C. CODE ANN. §§ 38-1800.01 to 38-1837.02 (2014)

The Elementary and Secondary Education Act of 1965, Pub. L. No. 89-10, § 201, (1965)

FLA. STAT.ANN. §1002.33 (West 2014)

GA. CODE ANN. §§ 20-2-2060 to 20-2-2072 (West 2014)

HAW.REV.STAT. §302D- to 302D-34. (West 2014)

IDAHO CODE ANN. § 33-5201 33-to 5216 (West 2014)

105 ILL. COMP. STAT. ANN. §§5/27A-1 to 5/27A-14 (West 2014)

IND. CODE ANN. §§ 20-24-1-1 to 20-24-12-12 (West 2013)

Improving America’s Schools Act of 1994; P.L. 103-382; 108 Stat.

3518 (1994). Retrieved from: <http://www2.ed.gov/legislation/ESEA/toc.html>.

IOWA CODE §§256F.1 to 256F.11 (West 2014)

KAN. STAT. ANN §72-1903 to 72-1930(West 2014)

Laws of Minnesota 1991, Chapter 265, Art. 9, § 3 . Retrieved from

<https://www.revisor.mn.gov/laws/?id=265&year=1991&type=0>

LA. REV. STAT. ANN. §§3971 to 4002.6 (West 2014)

ME. REV. STAT. ANN. tit. 20-A, §§2401 to 2415 (West 2014)

MD. CODE ANN., Elementary and Secondary Education §§9-101 to 9-112 (West 2014)

MASS. GEN. LAWS. ANN. ch.71, §89 (West 2014)

Massachusetts Bay School Law (1642)

MICH. COMP. LAWS §§380.501 to 380.507 (West 2014)

MINN. STAT. ANN. §§124D.10 to 124D.11 (West 2014)

MISS. CODE. ANN. §§ 37-28-1 to 37-28-61 (West 2013)

MO. ANN. STAT. § 160.400 to 140.425 (West 2013)

The No Child Left Behind Act of 2001, 107 Pub. L. No. 107-110, §1001 et seq.; 115 Stat. 1425, Title XIV (2002).

NEV. REV. STAT. ANN. §§386.490 to 386.649 (West 2014)

N.H. REV. STAT. ANN. §§194B:1 – 194B:22 (West 2014))

N.J. STAT. ANN. §§18A:36A-1 to 18A:36A-17.1 (West 2014)

N.M. STAT. ANN. §22-8B-1 to 22-8B-17.1(West 2014) Charter Schools Act

N.Y. Education LAW §§ 2850 to 2857 (McKinney 2014)

N.C. GEN. STAT. ANN. §115C-218 to 115C-218.110 (West 2014)

OHIO REV. CODE ANN. §§3314.01 to 3314.99 (West 2014)

OKLA. STAT. ANN. tit. 70 §§3-142 to 3-145.2 (West 2014)

Old Deluder Satan Act of 1647

OR. REV. STAT. ANN. §§338.005 to 338.165 (West 2014))

24 PA. CONST. STAT. ANN. §§17-1701 to 17-1750 (West 2014) Charter School Law

R.I. GEN. LAWS ANN. §16-77.1 to 16-77.4-8 (West 2014)

S.C. CODE ANN. §§59-40-10 to 59-40-240 (2014)

TENN. CODE ANN. §§ 49-13-101 to 43-13-142 (West 2014)

TEX. EDUCATION CODE. ANN. §§12.001 to 12.156 (West 2014)

U.S. CONST.

U.S. CONST. Amend. I

U.S. CONST. Amend X

U.S. CONST. Amend. XIV, Section 1

UTAH CODE ANN. §§53A-1a-501 to 53A-1a-522 (West 2014)

VA. CODE. ANN. §§22.1-212.5 to 22.1-212.16 (West 2014)

WASH. REV. CODE. ANN. §§28A.710.005 to 28A.710.260 (West 2014)

WIS. STAT. ANN. §§118.40(1) to 118.40(8) (West 2013))

WYO. STAT. ANN. §§21-3-301 to 21-3-314 (West 2014)

APPENDIX B: LIST OF CASES

*Alternative Unlimited-Special, Inc. v. Ohio Department of Education*, 2008 WL 5160165 (Ohio Ct. App. Dec. 9, 2008)

*Angstadt v. Midd-West School District*, 377 F. 3d 338 (3d Cir. 2004)

*Baltimore City Board of School Commissioners v. City Neighbors Charter School*, 400 Md. 324 (Md. 2007).

*Board of Trustees Sabis International School v. Montgomery*, 205 F. Supp. 2d 835 (Fed. Cir. S.D. Ohio 2002).

*Bush v Holmes*, 919 So. 2d 392 (Fla. 2006).

*Career Connections Charter High School v. School District of Pittsburgh*, 91 A.3d 736 (Pa. Commw. Ct. 2014)

*Central Dauphin School District v. Founding Coalition of the Infinity Charter School*, 847 A.2d 195 (Pa. Commw. Ct. 2004)

*Charter Day School, Inc. v. The New Hanover County Board of Education*, 754 S.E. 2d 229 (N.C. Ct. App. 2014)

*Comprehensive Community Solutions, Inc. v. Rockford School District No. 205*, 351 Ill. App. 3d 1109 (Ill. App. Ct. 2004)

*Coquille School District 8 v. Casillo*, 212 Or. App. 596 (Or. Ct. App. 2007)

*Duval County School Board v. State Board of Education*, 998 So. 2d 641 (Fla. Dist. Ct. App. 2008)

*Graystone Academy Charter School v. Coatesville Area School District*, 99 A.3d 125 (Pa. Commw. Ct. 2014)

*Greater Heights Academy v. Zelman*, 522 F. 3d 678 (6th Cir. 2008)

*Hillsborough County v. Tampa School Development Corp.* , 113 So.3d 919, 922 (Fla. Dist. Ct. App. 2013).

*In re Charter School Appeal of Greater Brunswick Charter School*, 332 N.J.Super.409, 753 A.2d 1155 (N.J. Super. Ct. App. Div. 1999)

*In re Grant of Charter School Application of Englewood on Palisades Charter School*, 320 N.J. Super. 174, (N.J. Super. Ct. App. Div. 1999)

*In re Grant of Charter School Application of Englewood on the Palisades Charter School*, 164 N.J. 316 (N.J. 2000)

*In re the Matter of the 1999-2000Abbott v/ Burke Implementing Regulations*, 348 N.J.Super. 382 (N.J. Super. Ct. App. Div. 2002)

*Jackson v. Benson*, 218 Wis. 2d 835, 578 N.W.2d 602 (Wis. 1998)

*James Academy of Excellence v. Dorchester County School District*, 376 S.C. 293 (S.C. 2008)

*J.D. ex. rel. Scipio-Derrick v. Day*, 415 N.J. Super. 375, (N.J. Super. Ct. App. Div. 2010)

*King v. U.S.*, 53 F. Supp. 2d 1056, 1061 (10<sup>th</sup> Cir. 1999), rev'd 301 F.3d 1270 (10th Cir. 2002)

*Reversed and remanded on issue of charter school teacher having governmental immunity. The US government brought its action under federal contract law rather than any type of tort law so governmental immunity did not apply and government could sue charter school*

*Lindsey v. Matayoshi*, 950 F. Supp. 2d 1159, 1165 (Fed. Cir. D. Hawaii 2013)

*Pinnacle Charter School v. Board of Regents of University of State of New York*, 108 A.D. 3d 1024 (N.Y. App. Div. 2013)

*Porta v. Klagholz*, 19 F. Supp. 2d 290, 297-298 (Fed. Cir. D. N.J. 1998).

*Project Reflect, Inc. Smithson Craighead Middle School v. Metropolitan Nashville Board of Public Education*, 947 F. Supp. 2d 868, 877 (Fed Cir. M.D. Tenn. 2013)

*Salt River Pima-Maricopa Indian Community School v. State of Arizona*, 200 Ariz. 108, 23 P.3d 103 (ARIZ. Ct. App. 2001)

*School Board of Hillsborough County v. Tampa School Development Corp.* , 113 So.3d 919 (Fla. Dist. Ct. App. 2013)

*School Board of Miami-Dade County, Florida v. Rise Academy of South Date Charter School*, 90. 20.3d 1001, (Fla. Dist. Ct. App. 2012)

*School Board of Osceola County v. UCP of Central Florida*, 905 So.2d 909 (Fla. Dist. Ct. App. 2005)

*The School Board of Palm Beach County v. Survivors Charter Schools, Inc.*, 3 So.3d 1220 (Fla. 2009)

*School Board of Seminole County v. Renaissance Charter School, Inc.*, 113 So. 3d 72, (Fla. Dist. Ct. App. 2013)

*School Board of Volusia County v. Academies of Excellence, Inc.*, 974 So. 2d 1186 (Fla. Dist. Ct. App. 2008)

*School District of Kansas City, Missouri v. State of Missouri*, 317 S.W.3d 599, (Mo. 2010)

*The School District of Philadelphia v. Department of Education*, 92 D.3d 746 (Pa. 2014)

*Shelby School v. Arizona State Board of Education*, 192 Ariz. 156, 962 P.2d 230 (ARIZ. Ct. App. 1998)

*Sugar Creek Charter School, Inc. v Charlotte-Mecklenburg Board of Education*, 195 N.C. App. 348 (N.C. Ct. App. 2009)

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*Villanueva v. Carere*, 85 F. 3d 481 (10th Cir. 1996)

*Wilson v. State Board of Education*, 75 Cal. App. 4th 1125 (Cal. Ct. App. 1999)

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