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AN ANALYSIS OF THE LEGAL, STATUTORY, AND GOVERNANCE ISSUES OF
VIRTUAL CHARTER SCHOOLS

by

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A dissertation submitted in partial fulfillment of the requirements
for the degree of Doctor of Education
in the Department of Educational Research, Technology, and Leadership
in the College of Education
at the University of Central Florida
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Major Professor: Barbara Murray

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ABSTRACT

This study examined the legal, statutory, and governance issues facing virtual charter schools. Virtual models of schooling have the potential to change the face of public education as such schools challenge traditional forms of education. Legislators, policy makers, and school boards must carefully consider existing charter school legislation and determine whether such language is applicable to virtual charter school models. As virtual forms of schooling increase, and choice options for parents become more readily available, the challenge is to develop statutory language that is not overly restrictive but provides a framework from which authorizers and governing boards may operate to ensure the quality, equity, and fiscal responsibility of virtual charter schools.

The focus of the study was on the existing legislation in the 19 states with current virtual charter school statutes. The qualitative examination of case law, combined with a review of statutory language, provided the sources of data. Recommendations for policymakers, legislators, departments of education, and school boards were developed to ensure the instructional quality control, the compliance with state and federal statute, and the financial security of virtual charter schools. In an era where choice in education has become mainstream, monitoring the quality of choice options becomes paramount.

The development of policies and laws relative to the careful operation of virtual charter schools, from authorization, to governance, to appropriate funding is in the purview of the state. Case law developed in states such as Pennsylvania and Wisconsin where the legality of virtual charter schools has been challenged provides the legal standards for other state legislatures. The establishment of carefully worded legislation

that addresses the issues inherent in the next version of school choice is critical to the successful operation of virtual charter schools. Oversight for funding, attendance, curriculum and instruction, and teacher certification is critical in both the authorizing and governance of such schools. Legislation that details the process for enrolling district and out of district students, the process for how the funding flows from the state, to the district, to the virtual charter school, and how the students will be counted for accountability purposes is critical to the successful implementation of virtual charter schools.

In honor of my husband, Lou, my children, Brian and Natalie, and my mother, Theresa,
whose patience and support made this dream a reality

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CHAPTER 1 INTRODUCTION

The launch into orbit of the Russian satellite Sputnik in October 1957 marked an historic day for American public education, setting the stage for the gradual transformation in public schooling from traditional schools to school choice options previously unheard of in the realm of American democracy. Although the transformation is still occurring, in the fifty intervening years since Sputnik the nation has seen an increase in private, home, charter, and now virtual schooling. Public schools, long blamed for the ills of society, continue to withstand the worst of criticism as "...the scapegoat of choice..." (Bracey, 2003a, p. 45). Nearly a quarter of a century after Sputnik the National Commission on Excellence in Education (NCEE) released *A Nation at Risk* (NAR, 1983) which perpetuated the public sentiment that American public schools were and are failing to appropriately educate children. According to Viteritti (2004), "NAR articulated a demand for educational excellence and an understanding that for reform to be meaningful it must result in changes that have tangible academic results." (p. 65). The shift in American thought, initiated with Sputnik, gained momentum with NAR; however, in order to truly understand the shift in thinking and the events leading to present day schooling options, the history of equity, access, excellence, and accountability in education must be determined.

The politics of education have undergone a paradigm shift in the latter half of the twentieth century with emphasis shifting from equity, to access, to excellence, to accountability, and finally, to choice (Doherty, 2008). The 14th amendment of the United

States Constitution, section 1, states in part "...nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." (US Const., amend. XIV), yet landmark cases such as *Plessy v. Ferguson*, 163U.S. 537 (1896) upheld the "separate but equal" doctrine that influenced educational policy for over fifty years. The eventual dismantling of racial segregation in the United States was initiated through the Supreme Court landmark case of *Brown v. Board of Education*, 347 U.S. 483 (1954). The Brown decision held that separate schools for black children and white children denied black children equal educational opportunities and that "...separate educational facilities are inherently unequal..." (*Brown v. Board of Educ.*, 347 U.S. 483, 1954), thus paving the way for further educational equity, integration of schools, and the civil rights movement.

Prior to the *Brown* decision, the issue of equity was loosely addressed, with separate but equal facilities determined to be an acceptable alternative not just for education, but also for many other necessities of *Plessy v. Ferguson* (1896). With the advent of desegregation, the question of equitable schooling once again arose, with equity and access to quality educational experiences for all students the underlying theme. Public Law 94-142, Education of All Handicapped Children Act, now known as the Individuals with Disabilities Education Act of 2004 (IDEA), 20 U.S.C. § 1400, was enacted in 1975 and required states to develop policies that provide a free, appropriate, public education for all students with disabilities (Boyer, 1979). According to the U.S. Department of Education, "...in 1970, U.S. schools educated only one in five children with disabilities, and many states had laws excluding certain students, including children

who were deaf, blind, emotionally disturbed, or mentally retarded...” (2007a, para. 5);

however, 39 years later, the vision for disabled students includes:

Improving educational results for children with disabilities [requiring] a continued focus on the full implementation of IDEA to ensure that each student’s educational placement and services are determined on an individual basis, according to the unique needs of each child, and are provided in the least restrictive environment. The focus must be on teaching and learning that use individualized approaches to accessing the general education curriculum and that support learning and high achievement for all (U.S.DOE, 2007, para. 35).

Closely following the Individuals with Disabilities Education Improvement Act of 2004, 20 U.S.C. § 1400 was Title IX of the Educational Amendments of 1972 (Title 20 U.S.C. section 1681), which states, in part, “No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance...” (para. a). The Americans with Disabilities Act of 1990 (Pub. L. No. 101-336, § 2, 104 Stat. 328 (1991)), which provided access for individuals with handicapping conditions to public places, provided further equitable access to education and educational facilities.

America’s public schools have long been accused of failing their students, of being anachronistic, and of failing to provide an equal, equitable, accessible education for all, beginning in 1983 with *A Nation at Risk* (NAR, National Commission on Excellence in Education [NCEE]), which resulted in increased demands for accountability from all facets of the public domain, including political, business, and corporate communities (Giddings, 2003). *A Nation at Risk* opened the door for excellence and choice in education and set the stage for the development of the first charter legislation in the

United States. The *Nation at Risk* document identified many areas of risk, including (a) [that] 23 million Americans were functionally illiterate, (b) a multi-year decline in Scholastic Aptitude Test (SAT) verbal and mathematics results, (c) average achievement of high school students on standardized tests lower than pre-Sputnik, and (d) an increase in the need for remedial mathematics courses in American universities, among many other identified risks to public education (NAR, 1983). Furthermore, the resultant backlash toward American public schools for what was characterized as failing performance provided the impetus for many state, federal, and local reforms. Chester Finn, an educational policy analyst and former United States Assistant Secretary of Education, in his op-ed page in *The Wall Street Journal* in February 1998, stated:

The public school system as we know it has proved that it cannot fix itself. It is an ossified government monopoly that functions largely for the benefit of its employees and interest groups rather than that of children and taxpayers. American education needs a radical overhaul. For starters, control over education must be shifted into the hands of parents and true reformers - people who will insist on something altogether different rather than murmuring excuses for the catastrophe that surrounds us (p.1).

Bracey (2003a) indicates, “Finn and his fellow advocates for charter schools ignore a fundamental fact of the human condition: Everyone wants to look good. . . .the for-profit companies that run charter schools arrange their data to create the most positive image they can. Truth loses out to advertising.” (p.77). The importance of the contrasting views cannot be overstated, as brick and mortar charter schools have morphed into virtual charter schools with supporters and detractors on both sides of the choice argument. Supporters of virtual charters argue, “They are first and foremost accountable to parents and students, the consumers of their products. If they fail to meet their needs, they will

cease to exist.” (McCluskey, 2002, para. 5). Glass (2010) contends; however, that although schooling has been delivered in non-traditional ways for many years through correspondence, mail, and televised courses, “...experienced education leaders worry that something is lost when teachers are replaced by avatars and real life is replaced by real Facebook.” (p. 34).

Education in America continues to evolve, and advances in technology have provided the impetus for the development of virtual schools; however, the uncharted territory that is virtual education has capacious challenges to overcome, including policy concerns such as accreditation, quality of instruction, access for students with disabilities, funding, financial solvency, and governance. Additionally, legal and statutory issues relative to virtual school operations, boundaries, and student selection must also be addressed and overcome.

Purpose of the Study

The purpose of this study was to provide a qualitative analysis of the legal, statutory, and governance issues facing virtual charter schools, and to discern the implications of such regulatory issues on the future of public schools. Furthermore, the researcher reviewed the various state statutes relative to virtual charter school legislation in the 19 states with such legislation. Recommendations for policymakers, legislators, departments of education, and school boards were developed to ensure the instructional quality control, the compliance with state and federal statute, and the financial security of virtual charter schools.

Virtual models of schooling have the potential to change the face of public education, as such schools challenge traditional forms of education, and "...policymakers will need to identify the teaching and learning, organizational and governance models employed by nonclassroom-based charters, and address how they fit within the existing definitions of what is permissible under both charter legislation and general state education statutes." (Huerta, González, & d'Entremont, 2006a, p. 109). Greenway and Vanourek (2006) postulate that "...in many cases, policies are being established after virtual schools are up and running and by people without a good working understanding of how they operate." (pp. 40-41). According to Huerta, González, and d'Entremont (2006a):

The rapid expansion of nonclassroom-based charters has surpassed the ability of states to address important policy issues linked to the oversight, standards, and accountability models needed to govern these nontraditional public schools. Several states have worked to create statutes that explicitly define nonclassroom-based charter schools. However, nonclassroom-based charters have surfaced in other states where both charter law and home education statutes do not expressly permit the schools to operate. (p.109).

The development of nonclassroom-based instructional models in states without legislation either expressly permitting or forbidding such schools requires states to determine methods for authorizing, monitoring accountability, and determining fiscal stability.

Statement of the Problem

The problem posed in the study was to analyze the implications of the legal, statutory, and governance issues of virtual charter schools on the future of choice options

and of public education. During a time when the public school options available to families are myriad, there exists a scarcity of qualitative and empirical evidence regarding the success or failure of charter choice options. Virtual charter schools are the most recent in the choice frontier and the necessity of comprehensive research is clear. Arguably, according to Sizer & Wood (2008), charter legislation was initially enacted to create "...small, self-governing yet public institutions [that] were initially put forward as one of the many ways to improve our public schools" (p.3). With the passing of the first charter school legislation in 1991 in Minnesota to the opening of what is believed to have been the nation's first virtual school, the CyberSchool Project in Eugene, Oregon, which began operations in 1995, to present day, where 19 states have virtual school legislation, there is no consistent application of process and procedure to virtual charter schools (Ellis, 2008). As school districts and states explore new methods for delivering instruction in the highly competitive choice environment, they are facing unresolved issues relative to the equitable access to curriculum for all students, the legal and statutory requirements and loopholes of virtual legislation, and the leadership and governance of virtual charter schools. School districts and states are charged with providing a public education for all students, and the development of virtual charter schools has added a layer of complexity for which there is little clear understanding of policy and oversight.

Lack of consistent oversight of charter schools in general, and virtual charter schools specifically, coupled with state statutes that are in some cases vague and in other cases overly restrictive, present a conundrum for educators and policy makers. As the

number of virtual charter schools increases nationwide, addressing the issues of policy previously mentioned is paramount to the continued existence of not only charter schools, but also of traditional public schools.

Research Questions

Using the theoretical framework as a guide, the researcher developed three guiding research questions regarding virtual charter schools:

1. What are the current legal standards common within virtual charter legislation, as defined by state statute, in the 19 states with such laws?
2. What are the most common legal standards in virtual charter legislation as defined by current case law?
3. What are the legal and statutory issues that must be addressed in developing policies and guidelines for states regarding virtual charter schools?

Delimitations

The study was delimited to only those 19 states with virtual charter school statutes in place as of the 2008-2009 legislative sessions. Other states may have virtual charter schools that arose out of existing brick and mortar charter legislation in the absence of specific laws governing virtual charter schools; however, such states were not included in the study. The study was also delimited to specific case law involving virtual charter schools that informed the development of legislation in the states where the cases occurred. The study did not address states where statute required or permitted state-run or

district-run virtual schools unless the state statute also specifically provided for virtual charter schools.

Limitations

The primary focus of this study was an analysis of the legal, statutory, and governance issues of virtual charter schools. The results of the analysis were limited to the historical availability of statutes, policies, and case laws in the states that have such laws. The states include: Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Kansas, Minnesota, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, South Carolina, Wisconsin, and Wyoming. The study was further limited by the accuracy of information presented in *Lexis-Nexis* for both related case law and state statutes.

Definition of Terms

The definitions presented within are offered to ensure understanding of the terms used in the study of virtual charter schools.

Access: For the purpose of this study, access in education is the ability of all students to participate in a high-quality, rigorous course of study at a public school and to gain admittance to all programs and services for which the student is qualified.

Accountability: Accountability is the process by which schools are held liable for student knowledge.

Asynchronous Learning: Asynchronous learning is instruction that is delivered over the Internet when student and teacher are not necessarily online at the same time. Students post answers on discussion boards and teachers evaluate discussions at a different time.

Attorney General: The chief law officer of a state or of the United States, responsible for advising the government on legal matters and representing it in litigation (*Black's Law Dictionary*, 2004, p. 139).

Authorizing Body: Authorizing bodies are entities with authority by law to approve new charter schools that are responsible for assuring compliance with governing laws and for evaluating fiscal responsibility and student achievement. (United States Department of Education, 2007b).

Blended Learning: “Blended learning refers to courses that combine face-to-face classroom instruction with online learning and reduced classroom contact hours (reduced seat time).” (Dziuban, Hartman, & Moskal, 2004, p. 2).

Case Law: The law to be found in a collection of reported cases that form all or part of the body of law within a given jurisdiction (*Black's Law Dictionary*, 2004, p. 229).

Charter School: Charter schools are public schools of choice that operate free from many of the statutory and policy regulations of traditional schools and are chartered under an agreement with a sponsor (Kafer, 2003; U.S. Charter Schools, 2009).

Choice: Choice is the process by which parents exercise control over the education of their children through pursuing the most appropriate educational placement in a traditional school, a private school, a charter school, a home school, or a virtual school.

Cyber Charter School: For the purposes of this study, cyber charter schools are the same as virtual charter schools.

eLearning: eLearning consists of multiple levels of instruction, from face-to-face with only a small percentage of instruction delivered online to fully online in which 100% of the content is delivered through the learning or course management system. For the purposes of this study, the levels of eLearning include: face-to-face instruction in which up to 29% of the instruction is delivered online in a web-facilitated model, blended learning in which 30-80% of the content is delivered online, online learning in which more than 80% of the content is delivered online with few or no face-to-face contact, and fully online courses in which 100% of the content is delivered online (Allen & Seaman, 2010; G. Gunter, personal communication, June 24, 2010).

Equity: For the purposes of this study, equity in education is the fair and equal access of all students to educational programs regardless of race/ethnicity or disability.

Governance: “Governance is the set of processes, customs, policies, laws and institutions by which an organization is controlled. It defines the relationships among the many players who have stakes in an organization’s activities and outcomes.” (Hill & Lake, 2006, p. 3)

Free or open market: “A free or open market is one based on voluntary exchange among individuals rather than coercion. In education, the free or open market allows the economic laws of competition and supply and demand to operate undistorted, thereby encouraging innovation, providing schools with essential feedback on consumer

satisfaction, fostering accountability and qualitative improvement, and reducing waste and inefficiency.” (Brouillette, 1999, p.59).

Full-Time Equivalent: Full-Time Equivalent (FTE), refers to a student who is eligible for funding during a specific survey period as the student “...meets program membership and attendance requirements.” (Florida Department of Education, 2009).

Governance: Governance refers to decision-making and leadership structures in a school or system that make decisions regarding policy and procedure.

Holding: A court’s determination of a matter of law pivotal to its decision (*Black’s Law Dictionary*, 2004, p. 749).

Leadership: According to Lambert (2003), leadership “...can be understood as reciprocal, purposeful learning in a community” in which the leader seeks and values teacher input that results in a shared vision for program unity (p. 2).

Nonclassroom-based charters: According to Huerta, González, and d’Entremont (2006b), nonclassroom-based charter schools deliver “...instruction from beyond the classroom walls of traditional ‘brick and mortar’ schoolhouses.” (p. 104).

Omnibus Bill: For the purposes of this study, an omnibus bill is a bill that deals with all proposals related to education (*Black’s Law Dictionary*, 2004).

Online Learning: For the purposes of this study, online learning is education delivered via the Internet, where all or a portion of courses may be taken online, such as in fully online courses or in blended or hybrid models of instruction.

Opinion: A court's written statement explaining its decision in a given case, usually including the statement of facts, points of law, and rationale (*Black's Law Dictionary*, 2004, p.1125).

Statute: For the purpose of this study, statutes refer to laws enacted by state legislatures.

Summary Judgment: A judgment granted on a claim or defense about which there is no genuine issue of material fact and upon which the movant is entitled to prevail as a matter of law (*Black's Law Dictionary*, 2004, p.1476).

Synchronous Learning: For the purposes of this study, synchronous learning is instruction where both the student and the teacher are online at the same time and where learning occurs in real time.

Virtual Charter School: Virtual charter schools are public schools typically chartered in a single district where students and teachers are separated by time and location and where instruction is delivered via Internet in a synchronous or asynchronous manner (National Forum on Education Statistics, 2006).

Writ of Certiorari: "An extraordinary writ issued by an appellate court, at its discretion, directing a lower court to deliver the record in a case for review." (*Black's Law Dictionary*, 2004, p. 241).

Theoretical Framework

The theoretical framework supporting this research was the market theory of choice. The launch of Sputnik, followed nearly 25 years later with *A Nation at Risk*, often referred to as the paper Sputnik set the stage for the gradual development of charter

school legislation (Bracey, 2003a, pp. 40-41). From the first charter school legislation developed in Minnesota in 1991 to present day with the advent of virtual charter schools, public school choice has never before presented so many opportunities and challenges. The underlying themes of charter school creation, including virtual charter schools, embody several forms, from the public as consumers of education in the market theory to students creating meaning from experiences in the constructivist learning theory. Walberg's (2000) market theory of school choice is based on the fundamental assumption of rational choice (para. 2). In essence, market theory embodies the tenets of the people choosing for themselves how funds will be spent without the intrusion of the government in a decentralized model where local interests are best served (Walberg). Indeed, Walberg states:

School choice makes for incongruous allies, including some classic and modern liberals as well as some conservatives. Among them are those who want choice as a governing ideal, economists who want efficiency, entrepreneurs with new ideas to try, and religious and other parents who want to preserve their family values. They are joined by big-city poor and minorities who often face indifferent and inefficient school bureaucracies thoroughly tied by multitudinous strings that come with federal funds. Although these groups differ in their views, they aim rationally for the same ends, namely, charter schools and public and private vouchers which allow parent voice and choice (para. 13, 14).

The competing values of the various stakeholders provide a framework for the supply and demand of public education in market theory. Parents want to have input into curricular decisions of schools and want to be able to choose a school that meets the unique needs of their child without the involvement of the government. Furthermore, the issue of choice in the market economy posited by Walberg presents the biggest dichotomy in the choice argument; choice begets competition, segregates schools and:

School choice troubles both political parties. If it doesn't affect their particular industry, some Republicans favor competition. But suburban Republicans fear choice would bring poor kids to their schools, which was the undoing of choice legislation in California. Choice also splits the interests of the Democrats' two biggest and most reliable factions: the teachers' unions, which fear the competition that choice engenders, and African-American parents, who favor choice more than any other ethnic group. (para. 13,14).

Nevertheless, the idea that choice involves making educational decisions without the involvement of the government is inherently flawed, as the development of choice options in public education has been further enhanced through voucher systems, tax credits, and school choice under *No Child Left Behind*, all of which involve the government to some degree.

Proponents of the choice argument believe that allowing choice creates healthy competition among schools, encouraging public schools to improve instruction and student learning outcomes in order to compete for students. According to the market theory of choice, "...the school must meet the needs of the consumer [parents and students] in order to stay in business." which may lead to greater accountability (Choice: *Education Week*, 2004, para. 4). Chubb and Moe (1990) indicate that in a market system:

...decisions about the structure of education [are] no longer the province of public authority, no longer the product of a struggle to gain legitimate governing status, no longer built around the imposition of higher-order values, and no longer driven by the need for protection against the political uncertainties of the democratic process. Emancipated from the hierarchical imperatives of the democratic 'organization,' and with property rights – and therefore governing rights – guaranteed, they would be free to adopt structures that, given the technology of education, the difficulties of hierarchical control, and the market requirement of pleasing clients, would tend to grant substantial autonomy to schools and their personnel (p.47).

Therein lays the basic framework of the market ideology, where demand drives supply and the responsiveness of the organization to the needs of the customer determines its

success or failure. Friedman (1955), in his argument for systematizing and nationalizing education and allowing vouchers for attendance at private schools of the parents' choosing, indicates "...competition would do much to promote a healthy variety of schools...[and] introduce flexibility into school systems." (para.17).

The market theory of choice, according to Walberg (2000), "...explains why public and private interests seek to exclude competition in the hope of increasing their power and income while reducing their costs and risks." (p.2). Furthering the idea of market theory of choice and the development of charter and virtual charter schools, Lubienski (2003) postulates that "Charter schools are premised on individual (or family) choices where such choices are thought to best reflect the diverse preferences of the choosers rather than the dictates of monolithic bureaucracies." (p.398). According to Ellis (2008), "Public school systems...are not designed to foster market competition. Demand for them depends upon population, mandatory attendance laws, and statutory requirements. Supply is influenced by democratic governance, bureaucracies at various levels, and local circumstances." (p.142). Indeed, providing an open market for public education stakeholders to exert pressure on schools through the reallocation of resources to charters and virtual charters advances the idea that public school choice increases parental satisfaction, as parents have the opportunity to choose the most appropriate forum in which to educate their children.

The theoretical framework of market theory of school choice provided the rationale for the study and for the increasing demand for public school choice options in American schooling. The increased accountability of the NCLB era demands that schools

become transparent instructional institutions and school choice, especially with sanctions for failing to meet Adequate Yearly Progress expectations, has become a viable option for many parents. The employment of effective leadership for building capacity within the school for sustained student achievement is paramount to success of virtual charter schools, and ensuring that virtual charters are authorized properly, are fiscally responsible, and serve all students with excellence, equity, and accountability are critical to their success.

A Nation at Risk focused on dismal student achievement, especially the achievement of low income and minority students. The resulting education reform movement led to vouchers, private schools, magnet schools, and, to a small degree, home schools (Zavislak, 2002). As the desire to reform the current educational system gained momentum, so did the available choice options, including charter and virtual charter schools. Virtual charters, like public schools, are not immune to problems with staffing, accountability, student achievement, finances, or legal issues, and have in some cases, faced serious scrutiny relative to leadership and governance practices, curricula, adherence to Individuals with Disabilities Education Improvement Act (IDEA), and fiscal responsibility. Additional theorists regarding the market theory of school choice are covered in the review of the literature. Following the tenets of the market theory of school choice, it is a curiosity whether or not the very factors that have led to the proliferation of choice options will also lead to their demise.

Overview of Methodology

The history of the charter school and virtual charter school movements, including the legal, statutory, and governance issues associated with deregulated school choice, were studied through qualitative research. Legal cases and legislation were gathered from the 19 states with virtual charter legislation in order to ascertain the similarities and differences in the authorization and governance of virtual charters. State statutes and regulations were analyzed for the issues that affect the development and success or failure of virtual charter schools. A review of states' case law relative to charter and virtual charter schools provided the policy backdrop for the amended statutes.

Primary sources of related research included state statutes and state constitutions. Case law related to charter and virtual charter authorizing and funding, attorney general opinions, and annotated statutes provided information related to the legality of virtual charter schools. *Lexis Nexis* was used for statutory and constitutional research, as well as for legal research regarding case law. This study included communication with attorneys general and state superintendents of public instruction in the 19 states with current virtual charter school legislation. Legal terms were researched using *Black's Law Dictionary*.

Significance of the Study

The explosion of public school choice options available in the United States today has created a market economy whereby public funds are diverted to private, charter, and virtual charter schools. Increasing standards of accountability through the *No Child Left Behind Act* of 2001 (Pub. L. 107-110, 115 Stat. 1425), and the blurring of the lines

between church and state have provided much of the impetus for the growth of public school choice options. Virtual charter schools are still in relative infancy, with few qualitative or empirical studies conducted on the efficacy of online schooling as a viable option for students in kindergarten through twelfth grades. Additionally, a comprehensive study of the legal guidelines that regulate development of virtual charters combined with the relative lack of oversight into issues such as access for students with disabilities and for minorities has yet to be undertaken. The researcher determined the legislative and legal standards that guide school choice, specifically virtual charter choice options, in order to assist policymakers and others in developing guidelines for the governance of virtual charter schools.

Assumptions of the Study

1. It was assumed that the provision of a free, appropriate, public education for all students, regardless of delivery method, is a relevant concern for all states and school districts.
2. It was assumed that local school boards, state boards of education, charter authorizers, and legislators will benefit from knowledge of current legal and statutory issues of virtual charter schools.
3. It was assumed that the information contained within the study will assist school boards of education, state boards of education, charter authorizers, and legislators in developing appropriate policy to ensure the quality of instruction and fiscal stability of virtual charter schools.

4. It was assumed that the recommendations provided herein will provide governing bodies of virtual charter schools with the information necessary to effectively manage the operation, curriculum, and leadership of the school.

Organization of the Study

Chapter 1 presented an overview of the history of public school choice and how politics and landmark cases related to school desegregation and choice have shaped the current reality of public schooling. Chapter 1 also included the statement of the problem, the significance of the study, the theoretical framework that guided the study and the research methodology employed.

Chapter 2 presented a review of the literature and related research concerning the historical perspectives of schooling, recent reforms, philosophical foundations of choice, and related case law. Chapter 2 further provided an analysis of the characteristics of successful online learners as well as the impact on teachers in terms of pedagogy and training. As part of the section on learners and teachers, connectivism as a learning style was also discussed. Governance of virtual charter schools, a critical element of successful online schools, was addressed in chapter 2.

Chapter 3 included the analysis of the legal, statutory, and governance issues that affect the development of virtual charter schools. States' statutes relative to charter and virtual charter schools were analyzed and discussed as well as attorneys general opinions related to the legality of virtual charter schools.

Chapter 4 provided an explanation of the data obtained in the study. State statutes, case law, and attorneys general opinions were summarized as they related to each of the research questions, and a discussion of the findings along with implications and recommendations for policy makers and school boards were offered.

CHAPTER 2 REVIEW OF LITERATURE

Introduction

Chapter two presents a review of the literature pertinent to the history of school choice options in general, related case law, and statutory issues that have provided the impetus for the development of virtual charter schools. The implications of such school choice options for public schools are myriad, thus the review of the literature will serve to trace the history of such options, the philosophical foundation related to school choice, and the extent to which related case law, statutes, and policies have influenced the development of virtual charter schools. The focus of the study was to provide a qualitative analysis of the legal, statutory, and governance issues facing virtual charter schools, and to address the differing state statutes relative to virtual charter school legislation in the 19 states with such legislation.

The review of the literature regarding virtual charter schools was divided into five comprehensive sections. Section one addressed the historical perspectives of school choice evolution. Section two provided an overview of the literature related to the recent reform movements in school choice leading to the development of virtual charter schools. Section three focused on the development of philosophical foundations of school choice, including the market theory of choice. Section four examined the characteristics of successful online learners, connectivity as a learning theory, and delved into the impact on the pedagogy and training of teachers of virtual courses. Section five examined case law related to the development of school choice. As the choice movement gains

momentum, the necessity of clear oversight becomes increasingly apparent, although the basic premise under which charter school choice was conceived, that of freedom from restrictive rules and regulations, must be maintained. Maintenance of this delicate balance will determine the future of public schooling.

Historical Perspectives

Common School

John Stuart Mill, a nineteenth century political theorist and British philosopher, framed the argument for school choice in 1869 with surprising prescience into modern times. According to Mill:

...if the government would make up its mind to require for every child a good education, it might save itself the trouble of providing one. It might leave to parents to obtain the education where and how they pleased, and content itself with helping to pay the school fees of the poorer classes of children, and defraying the entire school expenses of those who have no one else to pay for them...An education established and controlled by the state should only exist, if it exists at all, as one among many competing experiments, carried on for the purpose of example and stimulus, to keep the others up to a certain standard of excellence (Mill, 1869/1921, pp. 62-63).

Segue from Mill's beliefs in the mid-nineteenth century to Horace Mann's during the same timeframe, who argued in his Twelfth Annual Report (1848) that the development of the Common School, to be attended by all children, regardless of religious affiliation or wealth, would serve to not only provide the same educational experience for all, but would also serve the best interests of society. McCluskey (2007) indicated Mann's vision of common schools included the idea schools "...would unify the state's citizens and equip them to execute their civic duties." (p. 8). Mann's theory and beliefs are in direct

contrast to Mill's, yet his thinking is indicative of the eventual direction of public education. As Mann states "Education, then, beyond all other devices of human origin, is the great equalizer of the conditions of men - the balance-wheel of the social machinery." (1848, para. 9). However, the paradigm of a single educational design for all students postulated in Mann's report continues to both define and haunt public schools, and accusations of failing to meet the needs of all students have continued. The later struggles for school choice and reform, born out of the one size fits all model, can be traced back to this time when formal schooling for all was in its infancy.

Brouillette (1999) suggests Mann's model for educational reform was established not so the state could exercise complete and direct influence over schools, but so three objectives could be accomplished:

1. state collection of education data;
2. state adoption of textbooks through the establishment of state-approved school libraries in each district; and
3. state control of teacher preparation through the establishment of "Normal Schools" (p. 9).

Mann advocated for public schools that fell under the direct control of the government, although his theories met with resistance from those who believed that the role and right of the parent to exercise choice in public schooling was paramount so that children may be educated in the beliefs of the parents (Brouillette, 1999). Integral to the times and to the argument regarding the government's responsibility and authority in educating children was the sentiment of the people that catholic schools and other parochial schools should not be supported out of public funds, thus leading to the development of centralized governmental schooling. Mann's framework for public schooling represented

a distinct change from the largely privately funded religious schools previously in existence, and paved the way for public schooling as it continues to operate today. However, the progress of the development of the common school model for which Mann advocated was impeded by industrialization, a paradigm in which schooling was “...designed to prepare students to work in factories, not to be free and responsible citizens.” (McCluskey, 2007, p. 9).

Following Mann’s desire to curb what had amounted to a free-market education previously, restrictions on the use of public funds for religious schools became the norm in the mid-1800s, with states developing legislation specifically designed to prohibit the use of public funds for private schooling. Kirkpatrick (2003) indicates the path to removing free market education was not only promulgated through the work of Mann, but also through the legislation of James G. Blaine, who was a member of Congress and proposed “...a constitutional amendment prohibiting public aid to religious schools – a common sentiment at a time when public schools were overwhelmingly protestant in their orientation.” (part 2, para. 5); these are now referred to as the Blaine Amendments. In fact, Owens and Valesky (2007) suggest that “Much of the present-day conflict over schooling in the United States is a continuation and extension of the clash of two very different and very opposing points of view about schooling that erupted in the late 1880s and that have been battling for dominance in the United States literally for generations.” (p. 43).

Scientific Management

The argument regarding the nature of public schooling and parental choice in educating children continued unabated through the early 1900s, when Frederick Taylor's scientific management theories dominated mainstream thought. Sweetland (2002) suggests the product of public schools in the industrial age was schooling rather than an educated student and whether or not "...all children learned was not particularly important...defects and rejects were tolerated...[and] schooling was considered effective as long as some or enough children learned." (p. 11). Schooling under the auspices of scientific management included an "...emphasis...on efficiency (that is, low per-unit cost), rigid application of detailed, uniform work procedures..., and detailed accounting procedures." (Owens & Valesky, 2007, p. 90).

Taylor, an engineering consultant, formulated his scientific principles based on the "...middle-management level of industry..." and focused on incentive pay scales and little contact between workers (Owens & Valesky, 2007, p. 88). Taylor's principles of scientific management included:

1. Eliminate the guesswork of rule-of-thumb approaches to deciding how each worker is to do a job by adopting scientific measurements to break the job down into a series of small, related tasks;
2. Use more scientific, systematic methods for selecting workers and training them for specific jobs;
3. Establish a clear division of responsibility between management and workers, with management doing the goal setting, planning and supervising and workers executing the required tasks;
4. Establish the discipline whereby management sets the objectives and the workers cooperate in achieving them (Owens & Valesky, 2007, p. 87).

Scientific management, in its purest form, provided the impetus for educators of the early 1900s to create bureaucratic institutions that operated much in the manner of the machine in scientific management. Chubb and Moe (1990) and Tyack (1974) suggest the reforms of the late 1800s and early 1900s took root in the idea that "...reformers and education leaders...possessed of the best scientific knowledge...succeeded in building a rational system of schools for the nation as a whole....bureaucratic and professional, designed to ensure,...,that education would be taken out of politics and placed in the hands of impartial experts devoted to the public interest." (p.4). Essentially, the reformers of the time advocated for the development of one system of education to meet the needs of all students, although "The search for one best system has ill-served the pluralistic character of American society." (Tyack, 1974, p.11). Tyack further explains "Urban schools did not create the injustices of American urban life, although they had a systematic part in perpetuating them...yet in the old goal of a common school, reinterpreted in radically reformed institutions, lies a legacy essential to a quest for social justice." (p.12).

Owens and Valesky (2007) further suggest that the methods presented in scientific management and advanced through the notion that one system of education, designed to serve the needs of all stakeholders, regardless of community, background, or religious preferences, provided the panacea for all educational ills. In addition, the scientific management paradigm gave superintendents and principals justification to "...resist...such ideas as collegial, collaborative approaches to goal setting, planning and problem solving and other 'bottom-up' approaches to school reform in favor of more traditional authoritarian approaches." (p.87). In fact, the management style espoused by

Taylor relies on a hierarchical arrangement of worker and supervisor that still exists in some educational organizations today. Doyle and Hartle (1985) observed:

The explicit model for [top-down] such reform was the factory; Frederick Taylor's scientific management revolution did for the schools the same thing it did for business and industry – created an environment whose principal characteristics were pyramidal organization.... The teacher was the worker on the assembly line of education; the student, the product; the superintendent, the chief executive officer; the school trustees, the board of directors; and the taxpayer, the shareholder (p. 116).

Cubberley (1916), a leading educational scholar in the early twentieth century, suggested:

...our schools are, in a sense, factories in which raw products (children) are to be shaped and fashioned into products to meet the various demands of life... [it] is the business of the school to build its pupils according to the specifications laid down. This demands good tools, specialized machinery, continuous measurement of production to see if it is according to specifications, the elimination of waste in manufacture, and a large variety on the output" (p. 338).

It may be extrapolated from analysis of the scientific model of schooling that the underpinnings of the eventual choice movement grew from the rigid structure, the lack of innovation, and the reliance on the one-size-fits-all methodology so evident in Taylor's description of the factory model.

Cubberley (1916) described the changes in schooling from parent-controlled to state controlled as the "...transference of powers from smaller to larger units of administration..." (p.21) and further discussed the "Uniform laws relating to...subjects of instruction, type of school-building, sanitary conditions, compulsory attendance of children, and taxes which must be raised, have likewise superseded the earlier policy of leaving each district full authority in all such matters." (p.21). Believing the advantages of a centralized system of state control over local educational decisions outweighed the possible negatives, Cubberley further postulated that provisions of uniform policies for

education allow for the determination of minimum competency standards, the financing of educational endeavors, and the oversight to determine the needs of students, which “...can only be properly safeguarded by the intervention of the State itself...” (p. 23). However, he further indicated the disadvantages of state control, while not as influential nor as important as the advantages, are still present in the uniformity of instruction and instructional methods and undermine the idea that sometimes the local input into the needs of the children in the community is valuable and necessary.

The mid-nineteenth century school of thought had profound influences on the structure of modern day schooling. The factory model of schooling, with the hierarchical arrangement of teachers, principals, district managers, and superintendents became the guiding paradigm for school districts. Schools were designed to run on a specified timeline, using a standardized curriculum, with all students, or products, coming off the assembly line of education at the same time, with the same skills, with no thought given to human differences (Senge et al., 2000; Owens & Valesky, 2007). Indeed, the machine model of the industrial age, with the line and staff arrangement of the organization between the top-level policy makers and the position at the bottom of the ladder “...played a role in creating unified systems” as evidenced in Boston in 1884 (Senge et al., 2000, p.31). The implementation of standardized testing and the ensuing poor results created public furor that led to the centralization of Boston’s public schools, creating “...a model of schooling that was separate from daily life, governed in an authoritarian manner, oriented above all else to producing a standardized product, the labor-input

needed for the rapidly growing industrial-age workplace – and as dependent on maintaining control as Frederick the Great.” (Senge et al., 2000, p.31).

The natural assumptions of the assembly line prototype of schooling presuppose that all students learn in the same manner, at the same rate of speed, and have the same innate curiosity regarding learning. However, instead of learning for the sake of understanding and interacting with the environment, students learned for the sake of becoming a product to meet the industrial needs of the time. Students, in essence, were the clay to be molded into the final outcome that would meet the exact specifications of the system. Bolman and Deal (2003) state “The ethical imperative of the factory is excellence: ensuring work is done as well and efficiently as possible to produce high-quality output.” (p. 400). Yet, with no opportunities for innovation, for growth, or for recognizing that children are not machine parts, reliance on a rigid factory structure continued to result in disenfranchised students who cannot make the grade, or in the verbiage of the industrial age, who could not be molded into the desired output, and are thus essentially discarded.

John Dewey spoke of education and democracy, and viewed the process of educating individuals as active and relevant, not passive and irrelevant, and certainly not in the model of factory schooling. According to Dewey, the active participation of students in learning, with a focus on both the psychological and social aspects of school, provided meaning. Dewey (1897) believed:

...that much of present education fails because it neglects [the] fundamental principle of the school as a form of community life. It conceives the school as a place where certain information is to be given, where certain lessons are to be learned, or where certain habits are to be formed. The value of these is conceived

as lying largely in the remote future; the child must do these things for the sake of something else he is to do; they are mere preparation. As a result they do not become a part of the life experience of the child and so are not truly educative. (article II, para. 10).

Dewey saw the rigid application of rules and policies of the scientific era as establishing schooling much like a production line in which students have no opportunity to interact with their environment. Dewey (1916) indicates:

Efficiency in production often demands division of labor. But it is reduced to a mechanical routine unless workers see the technical, intellectual, and social relationships involved in what they do, and engage in their work because of the motivation furnished by such perceptions. The tendency to reduce such things as efficiency of activity and scientific management to purely technical externals is evidence of the one-sided stimulation of thought given to those in control of industry -- those who supply its aims. (1916, chap. 7).

Hence, schooling remained an inflexible arrangement whereby a centralized bureaucracy created policies, dictated curriculum, and suppressed the opportunity for parents to have control over and input into the schooling of their children. Yet, the central tenet of Dewey's beliefs regarding public schooling included all students learning in an environment free from the hierarchical arrangement of the bureaucratic institutions that characterized public schools of the time and removed from the restrictions of socio-economic status and race (McCluskey, 2007). However, through the 1950s, his vision of a unified school system was not to be realized, and with the overt segregation of the nation at the time, the race to unify schools and provide choice to parents was not to be realized.

Free School Movement

Prior to the reforms of the 1990s and early 2000s, the radical free school movement of the 1960s and 1970s was an attempt to break free from the constraints of schooling under the industrial, scientific model and promote decentralized schools where hierarchical arrangements of teachers, students, superintendents, and staff did not occur. Forman (2005) indicates "...free schools were a direct challenge by left-leaning reformers and progressive educators to the existing educational establishment." (p. 1300). Germane to the discussion of the future of school choice is the notion suggested by Forman (2005) that the desire to attend a free school was influenced in part by race and by socio-economic status, with white parents choosing such schools for freedom of expression and minority parents choosing due to the perceived or real failure of the public school to properly educate their children. According to K12 Academics, "Free schools often operate outside the market economy in favor of the gift economy." (Free Schools, para. 3). In this case, the term free does not necessarily refer to cost, rather, it refers as well to the idea that free speech and academic freedoms are guiding principles. Clark (2000) suggests the free school movement:

...back in the late Sixties and early Seventies, once carried an understood meaning. The "free schools" then taking shape across the country were generally labors of love on the part of counterculture-dabbling teachers and students who found conventional school oppressive and "irrelevant." These alternatives were envisioned as noncoercive, inclusive, flexible, and caring, and most were designed with doses of avant-garde curricula, experimental scheduling, and white-hat social causes. (para. 12).

Clark further suggests that the radical free school movement of the 1960s has manifested itself in the charter school movement of contemporary society, as the original premises

upon which free schools were based – “...democratic schools that emphasized citizenship and student power...that stressed moral development and ‘experimental’ programs...” (para. 13) have largely disappeared, only to be replaced by the charter school movement’s attempts to revive freedom in educational opportunities. Swidler (1979) sums the reasons for the decline of the free school movement through her assertion that “...there are also heavy costs to the decision to renounce authority. Charismatic influence is fragile and unpredictable. Group sentiments are subject to swings...which alternatively overload and then paralyze collective organization.” (p. 1). Free schools, as a model of reform, have had an impact on the development of the charter and virtual charter movement through the idea that schools, once free from the bureaucratic stranglehold of conventional arrangements, address individual student needs. However, much like the charter debate of current times, the free school movement was replete with challenges of deregulation and accountability. Forman (2005); however, indicates:

Before the free schools movement, most educational reform efforts focused on reforming the public education system from within. But the free schools were premised on the notion that the state-run system was too bureaucratic and entrenched to change without outside pressure. Though the free schools themselves only provided that pressure for a few years, they would lay the foundation for the wide variety of alternatives that come under the umbrella of school choice today. (p. 1305).

The eventual establishment of school choice options, from vouchers to virtual charter schools, has its foundation in the ideals of both the radical and the conservative thinkers of America’s history. Indeed, the education of children continues to be a topic of great debate, regardless of political affiliation, and the arguments both for and against school choice continue to ignite.

Community Control Movement

The community control movement of the late 1960s, while not a traditional model of school choice, grew out of the discontent of the black community regarding the education of their children in ghetto schools (Barraclough, 1973, Forman, 2005). Forman describes the premise of community control schools as based on the "...notion that the public system was unwilling or unable to meet the needs of poor and working-class black children." (p. 1287). A similar philosophy continues to be espoused today, as one of the main tenets of the No Child Left Behind Act of 2001 is to provide parents with choice in determining the schools their children attend (Colvin, 2004).

School choice in the post-*Brown* era was largely unavailable to poor minority children, and the unrest that existed during that time exacerbated the issues. In 1967 President Johnson established the National Advisory Committee on Civil Disorders that was charged with finding a peaceful solution to the rioting that occurred during the summer of 1967. The report, issued in February of 1968, known as the Kerner Report, indicated:

Education in a democratic society must equip children to develop their potential and to participate fully in American life. For the community at large, the schools have discharged this responsibility well. But for many minorities, and particularly for the children of the ghetto, the schools have failed to provide the educational experience which could overcome the effects of discrimination and deprivation....But the most dramatic evidence of the relationship between educational practices and civil disorders lies in the high incidence of riot participation by ghetto youth who have not completed high school. (Kerner, 1968, p.21).

The Kerner commission advocated an overhaul of the educational system with the overarching theme the equality of education for both minority and white children. Due to the perception that the public school bureaucracy was too inflexible to address adequately the unique needs of the black community (Forman, 2005), the commission offered the following suggestions for reform:

1. Sharply increased efforts to eliminate de facto segregation in our schools through substantial federal aid to school systems seeking to desegregate either within the system or in cooperation with neighboring school systems.
2. Elimination of racial discrimination in Northern as well as Southern schools by vigorous application of Title VI of the Civil Rights Act of 1964.
3. Extension of quality early childhood education to every disadvantaged child in the country.
4. Efforts to improve dramatically schools serving disadvantaged children through substantial federal funding of year-round compensatory education programs, improved teaching, and expanded experimentation and research.
5. Elimination of illiteracy through greater federal support for adult basic education.
6. Enlarged opportunities for parent and community participation in the public schools.
7. Reoriented vocational education emphasizing work-experience training and the involvement of business and industry.
8. Expanded opportunities for higher education through increased federal assistance to disadvantaged students.
9. Revision of state aid formulas to assure more per student aid to districts having a high proportion of disadvantaged school-age children. (p. 22).

Although the intention was for the education of the children in the ghettos to improve,

Tyack (1974) indicates:

...the ghetto parent saw that his child's school was segregated, that he had little voice in determining school policies, and that his child would graduate woefully ill-prepared to compete in a complex technological society...[and] rejected 'equality' if that meant Anglo-conformity, sameness, and familiar failure in the 'one best system'. (p. 284).

The impetus behind the community control of schools grew out of the results of the Kerner Report as well as through the desire of parents of poverty in ghetto areas to

improve the education of their children, demanding "...community control by their own people in place of the traditional corporate model of governance which sought to rise above 'interest groups'..." (Tyack, 1974, p. 284). For all the efforts on the part of communities to unite; however, the idea of the "...radical decentralization that marked the community control movement of the late 1960s has not been realized in urban school districts." (Foreman, 2005, p. 1309).

Hagood (1969) differentiates between decentralization of public schools and community control indicating that decentralization involves community participation in the schools whereas:

- 'Community control of schools' includes a board duly elected by the local community, one having the power to make and enforce the following decisions:
- a. Expenditure of funds – local, state, and federal
 - b. Hiring and firing of all staff
 - c. Site selection and naming of schools
 - d. Design and construction of schools, arranging and supervision of contracts
 - e. Purchasing power – for books, supplies, equipment, food service, etc.
 - f. Arranging for and supervision of contracts
 - g. School policy and curriculum design. (p.1).

Forman (2005) argues that the history of school choice, including the community control movement, rose from both the conservative and the liberal ends of the political spectrum, with "...choice [having] deep roots in liberal educational reform movements, the civil rights movement, and black nationalism." (p. 1289). In terms of community control, "...advocates included civil rights organizations, black nationalists, and some members of the liberal political establishment...[who] demanded that ghetto residents have more control over their neighborhood schools." (Forman, 2005, p. 1290).

Supporters of the community control movement believed that it "...integrates the school and the community, greatly reducing the friction between the neighborhood and the educational establishment....[and] the professional bureaucracy that has run the schools for so long will not be deposed, but will be held accountable to the community." Barraclough, 1973, p. 2). Hagood (1969) describes the rigid bureaucracy of public education as being unresponsive to the needs of the black community, and thus a call for accountability in all aspects of schooling was issued. In his view, accountability:

...means that educators view themselves as being employed as an agent of the community, and that community represents the power structure through which they operate....students are not viewed as faceless products of big business, but as individuals. For, unlike big business, the Educational Power Complex does not have the option to recall a defective product once it has left the plant (p.4).

Regardless of the reasons for the rise of community control in the late 1960s, Chubb and Moe (1990) indicate "...political conflict has centered on the more fundamental issue of how power should be allocated within the system." (p. 6). Chubb and Moe further indicate the conflicts over decisions concerning students and schools, who is most able to make such decisions, and "...the struggle by minorities in urban ghettos for 'community control' was a reaction against the insularity of bureaucratic professionalism and a demand for greater political responsiveness and control." (p. 6).

Community control of schools was based on the shared geography of the community, rather than on the free schooling paradigm in which a shared educational interest and a desire to control the school predominated (Foreman, 2005). According to Foreman, community control as a choice option in the 1960s is not the same as school choice today, as:

...these schools were not outside of the state system, nor were they chosen by students. But at the same time, the community control movement helped advance a notion forwarded by the free schoolers and later adopted by charter school advocates in inner-cities – namely, that when disenfranchised community groups took control of their own children’s schools, they were more likely to create nurturing and successful educational environments. (p. 1307).

The underlying theme for community control advocates was the achievement of authority to control the hiring, placement, evaluation, and firing of school personnel, the allocation of scarce resources, the adoption of curricular materials, and the progression of students through the system (Foreman, 2005). As Brouillette (1999) indicates, the debate regarding parental choice in schooling became a policy issue in the 1950s, and people, regardless of race, socio-economic status, or ethnicity, continue to demand school choice options.

Recent Reforms

Vouchers

The debate regarding the democratic control of schools continued to rage throughout the first half of the twentieth century, with students receiving their education much in the manner of scientific management. However, compulsory attendance laws and the stratification of schools into school districts defined by the socio-economic status of the community renewed the choice debate. Sweetland (2002) describes the freedom of choice that existed for parents as the choice to pay tuition for private schools or remain in sometimes substandard systems where segregation by socioeconomic status was the norm. Sweetland suggests one of the oldest forms of school choice today, the voucher system, is actually rooted in the beliefs of early pioneers such as Thomas Paine and

Adam Smith. Coulson (1997) further hypothesizes that Pliny the Younger, who lived in the first century A.D., initially postulated the idea of school choice through his gift of an endowment to a school where choices, including the hiring of the teachers, was the responsibility of the parents. In 1776, the need for schooling was based on supply and demand, both of which were lacking. Regardless of the need for schooling in 1776, Sweetland indicates “Smith envisioned the voucher as a means for encouraging more citizens to acquire education.” (p. 9).

Centuries later, Friedman, in his 1955 essay “The Role of Government in Education”, discussed the role of government in schooling as “...playing three major roles: (1) legislating compulsory schooling, (2) financing schools, and (3) administering schools.” (1955/2006, p. vii). His overarching theme was that administration and finance could be separated, and that parents could avail themselves of choice if the “...present public expenditure were made available...regardless of where they send their children [and a] wide variety of schools would spring up to meet the demand....” (p. vii-viii). He further believed that increasing competition would provide incentives for schools to improve; if they do not, they will cease to exist. Yet, his entire focus was not about competition; it was about the overall role of the government in schooling, and the role parents play in ensuring appropriate schooling for their children (Greene, 2006). In essence, vouchers were touted as a method to destroy the governmental monopoly present in education in order to allow parental choice, especially for those underserved groups such as minorities and those living in poverty (Sweetland, 2002).

Friedman has been credited with advancing the modern school choice movement (Hacsi, 2004). According to Coons (2006), Friedman furthered the idea that "...America needs to subsidize choice and to remake schooling into a market that includes all players, particularly parents." (p. 57). Merrifield (2006) defines "...Friedman's 1955 essay [as] the opening salvo in the modern intellectual and political struggle to level the education playing field for America's children." (p. 125). Merrifield further indicates that Friedman's concept of vouchers defines this choice option as government-funded schooling only for activities deemed essential rather than for subsidizing institutions, which, in theory, would "...level [the] playing field for private and government-operated schools [and] would generate the market accountability Friedman thought was essential for a least-cost, most-effective menu of schooling alternatives as diverse and dynamic as our children." (p. 125).

Berliner, Farrell, Huerta, and Mickelson (2001) suggest that vouchers will do nothing for minorities and children living in poverty, and the amount of the voucher funding per student rarely, if ever, reaches the level of private school tuition. They further indicate when poor children do enroll in private and other schools that typically cater to the middle and upper class, the differences between the poor children and the others are immediately evident and "...cannot be the product of failing public schools...as voucher advocates charge." (p.1). Proponents of the voucher programs; however, argue that such programs give parents options and, because offering vouchers to private schools provides a modicum of competition to public schools, vouchers will impel public schools to improve (Hacsi, 2004). Similarly, Sweetland (2002) describes those advocating for

vouchers as believing "...vouchers [are] a way to make school exchanges and transactions more market-based-thus overcoming the downside of public bureaucracy and, through the market mechanism, forcing public schools to be more responsive and efficient..." (p.11) yet he also discusses that "...the aim of public policy and purpose, however, must be to improve the responsiveness and efficiency of public schooling, not that of policymakers or the marketplace." (p.11).

McCarthy (2000) discusses the Florida voucher program, initiated in 1999, as the first state to allow public funds to support student attendance in private schools. "Under the Florida program, students attending public schools that are rated as deficient (based on test scores, attendance, graduation rates, and other factors) are entitled to government vouchers that can be used in qualified public or private schools of their choice." (McCarthy, 2000, p.372). The parameters under which students qualified for vouchers included attending a school that has received a letter grade of F for two out of four years (Sandham, 1999). According to Sandham, the vouchers provided in 1999 were worth approximately \$4,000 for students "...to attend a qualified public school other than the one to which they have been assigned or to pay for tuition at a private or religious school." (p. 1). The funds utilized consisted of those funds set aside to educate the child in the public school but instead the funding will follow the child to the private or religious school (Sandham). Elam (1999) indicated that a provision in the law; however, "...specifies that a receiving school cannot charge a voucher student more than the value of his or her opportunity scholarship, which is equivalent to the per-pupil expenditure in the affected school district." (p. 81). With many private schools charging tuition rates far

in excess of the amount available through the voucher, Elam suggested that such schools may be unwilling to accept voucher students. The opportunity for school choice through the voucher system, according to Hacsí (2004), whether for "...children attending failing schools,...for students with disabilities,...[or] for children from low-income families..." (p.8.1) provides parents with power to make educational decisions for their children.

Forman (2005) indicated "...a properly constructed [voucher program] has the potential to increase educational opportunities for disadvantaged children in a way that should appeal to all – including progressives." (p. 1319). McCarthy (2000) echoed Forman's sentiments, indicating "...policy makers must be deliberate and thoughtful in exploring the implications of decisions pertaining to voucher programs, because the school privatization movement has tremendous potential to alter the nature and role of public education in the United States." (p. 378). Jin and Rubin (2008), however, pointed to divergent views of school voucher programs postulating:

Advocates of such programs claim that vouchers provide poor parents more choices for their children's education and thus, through competition, improve the efficiency of the whole public education system. Opponents claim that they drain badly needed funds from public schools and violate the constitutional prohibition between church and state because about three quarters of private schools are linked with particular churches. (p.24).

The question of whether or not vouchers have provided the educational opportunities for poor students as advocates tout has yet to be answered. According to Lewis (2008), "The voucher was the epitome of free choice in schools. Moreover, free marketers said vouchers would improve all schools because traditional public schools would have to compete for students..." (p.235). However, few empirical studies utilizing randomly selected students and schools have been conducted to determine the efficacy of

voucher programs, thus the impact is difficult to determine (Lewis, 2008). Moreover, analysis of whether or not the choice options actually benefited children is also up for debate. Bracey (2003a) sums the argument by suggesting "...voucher students perform quite similarly to regular public school students and, if their achievement is higher, it might have nothing to do with vouchers. Students using vouchers usually attend small schools with small classes, and both factors are known to increase achievement." (p.

137). Furthermore, Bracey suggests:

The concept of a voucher contributes nothing directly to the improvement of education. A voucher scheme is a means of paying for schools, not for improving them. It offers no innovative curriculum. It offers no new or more effective instructional strategies. Its actions are secondary and, if the market metaphor proves not to fit education well, illusory. (p. 139).

The analysis of why choice has developed as a viable option, including choice through voucher systems, involves a systematic look at the educational institution. Chubb and Moe (1990) suggest "...schools' most fundamental problems are rooted in the institutions of democratic control by which they are governed; and, despite all the talk about 'restructuring,' the current wave of grab-bag reforms leaves those institutions intact and not in charge. The basic causes of America's educational problems do not get addressed." (p. 216). Bracey (2003a) suggests that vouchers are "...the most potentially devastating weapon in the armory of those warring against public schools." (p. 137) yet at the inception vouchers were devised to provide a means for families, especially those living in poverty, to exercise choice in where their children attend school. The belief is, according to Bracey, that public money follows the child, and in that manner of thinking, the full-time equivalent funding belongs to the child regardless of the school chosen. Yet

the existence of vouchers as choice option simply allows for student transfers to other schools, and does not address the issue of why Americans believe choice is necessary.

Viteritti (2002) suggests:

School choice is not a panacea for the problems of urban schools. But to succeed on any level, school choice must be designed to succeed. It must be targeted to benefit those students with the greatest needs. Vouchers should be restricted to economically disadvantaged students who attend chronically failing schools. (p.47).

Milwaukee's tuition voucher program is one of the oldest and largest in the United States and "...serves more than 20,000 students in some 125 schools." (Robelen, 2009, p.20). Recent changes in legislation will require private schools accepting voucher students to report standardized test scores, require teachers and administrators to have bachelor's degrees, and require schools with more than 10 percent of the population identified as limited English proficient to provide bilingual education, all while reducing the amount of each voucher (Robelen). Costrell (2009) indicates that in Milwaukee, "...data from voucher experiments...indicate that about 10 percent of low-income voucher users would have attended private schools anyway." (p.65). The shift of public funds to private schools, traditionally without the accountability for student performance, has resulted in voucher opponents to push for measures that increase accountability and transparency, although voucher supporters oppose such measures (Robelen). Jin and Rubin (2008) present the argument that:

Advocates of such programs claim that vouchers provide poor parents more choices for their children's education and thus, through competition, improve the efficiency of the whole public education system. Opponents claim that they drain badly needed funds from public schools and violate the constitutional prohibition between church and state because about three quarters of private schools are linked with particular churches. (p.24).

Lewis (2008) indicates that regardless of advocacy for one side or the other, voucher programs are touted as the "...epitome of free choice in schools..." (p. 235). The essence of voucher programs is the idea that competition among schools will spur improvements in all schools.

The emergence of choice options for parents, from vouchers, to tuition tax credits, to home schools, to charter schools, to virtual charter schools, did not develop in a vacuum. As Senge et al., (2000), indicated:

School may be the starkest example in modern society of an institution modeled after the assembly line. Like any assembly line, the system was organized in discrete stages. Called grades, they segregated children by age...the whole school was designed to run at a uniform speed, complete with bells and rigid daily time schedules. Each teacher knew what had to be covered in order to keep the line moving, even though he or she had little influence on its preset speed, which was determined by school boards and standardized curricula. (pp. 30-31).

Continuing to function in a similar manner today, traditional public schools define set curricula, set grade levels, inflexible calendars, and standardized pacing guides, which in turn "...established uniformity of product and process as norms..." (p.31). Chubb and Moe (1990) suggested there is an answer to the rigid inflexibility of democratically controlled schools through the establishment of a choice system that is "...almost entirely beyond the reach of public authority." (p. 218), which, twenty years later, is still developing in most states. Chubb and Moe further identify reforms over the years as "grab-bag" approaches destined to fail, as the institution of education is the issue, and unless the institution itself is reformed and changed, the solutions are most certainly going to fail.

Charter Schools

Some advocates of the charter school movement see the goal of charters as “...the privatization of the educational system.” (Bracey, 2003a, p. 75). Still others see charters as money-making opportunities designed to address the students who have not been successful in traditional public schools (Bracey, 2003a). Regardless of how one chooses to view charter schools, whether as a method to fund public education in private settings or as money making schemes intent upon privatizing educational delivery in the United States, one thing is clear; the charter movement grew out of the reform efforts of the nation over the last 200 years. Calls to improve public education for minority children and to provide parents with a voice in the choice of schooling for their children have been repeated through the decades.

Huerta and Zuckerman (2009) indicated charter schools, while “...granted autonomy from many regulations that govern traditional public schools,...are not evolving within a decentralized policy vacuum that insulates them from the forces of the wider institutional environment. Rather, charter schools are still subject to normative definitions of effective schooling advanced by the institutional environment.” (p. 415). They further suggested that charter schools have evolved over the years since the first charter school opened in Minnesota in 1992 and have now become diverse in forms of management, including:

...diffuse forms of leadership and school organizations that have evolved in the form of community-based schools, external management of schools that are tightly aligned with market-based principals and are promoted by educational management organization (EMO)-run charters, and newly emerging charter management organization (CMO) charters that have created hybrid management

structures that both mimic existing institutional governance structures and adopt centralized efficiencies as tools to scale-up more technically oriented forms of schooling. (p. 416).

Initially, charters were opened by those with a passionate belief regarding pedagogy, specific classes of students, and the methods through which children learn, but who had no power over the bureaucracy of the traditional public school (Huerta & Zuckerman). Lubienski (2003) suggested that “Market theory criticizes state administration on the assumption that public bureaucracies cannot innovate, whereas consumer choice and competition between autonomous providers offer the opportunity and incentives for innovation.” (p. 398), which provides the link between the early service-driven charter school innovators and the emerging for-profit companies. Prior to discussion of charter schools and how such schools provide a piece of the timeline leading to the development of virtual charter schools, an understanding of the genesis of charter schools as a choice option must be undertaken.

Ray Budde, a junior high school principal and university teacher of educational administration is widely credited with initially proposing the idea of charter schools in the early 1970s (Bracey, 2003a). In Budde’s (1996) view, “...teams of teachers could be ‘chartered’ directly by a school board for a period of three to five years. No one – not the superintendent or the principal or any central office supervisors – would stand between the school board and the teachers when it came to matters of instruction...no mention was made of the idea of chartering whole schools.” (pp. 5-6). Budde’s view of chartering included teachers presenting ideas to the school board for approval that would, once approved, allow for control of the budget and authority regarding the selection of teachers

and staff (Hassel, 1999). Albert Shanker, the former director of the American Federation of Teachers, was simultaneously credited with advancing the idea of the charter school concept (Huerta & Zuckerman, 2009). Shanker's views mirrored, to some extent, the views of Budde, in that free from the rigid, bureaucratic constraints of the public school system, teachers and administrators would be able to provide innovative instruction and curriculum aligned to learning styles and needs of the students (Huerta & Zuckerman, 2009; Lubienski, 2003; Sizer & Wood, 2008; Darling-Hammond & Montgomery, 2008). According to Gawlik (2007), organizational theorists postulate that increasing efficiency of organizations, schools included, may be realized through allowing decentralization of decision-making and providing teachers with the autonomy to make curricular and instructional decisions. As Shanker and Budde believed, providing autonomy to teachers in the context of teaching students according to individual learning styles would improve student achievement.

Minnesota enacted the nation's first charter school law in 1991, paving the way for other states to follow suit in successive years (Hoxby, 2006). According to Minnesota state statute governing charter schools (2009), the purpose of charter schools is to:

(1) improve pupil learning and student achievement; (2) increase learning opportunities for pupils; (3) encourage the use of different and innovative teaching methods; (4) measure learning outcomes and create different and innovative forms of measuring outcomes; (5) establish new forms of accountability for schools; and (6) create new professional opportunities for teachers, including the opportunity to be responsible for the learning program at the school site. (Minnesota, 2009, 124D.10 Sub. 1).

The legislation of many other states is similar in scope (Hoxby). Finn (2006) suggested the innovation of charter schools was conceived at the outset, with proponents making four claims:

First, these novel schools would provide needed and healthy competition for the moribund and monopolistic district public schools and thus force them to change as a result of external pressure. Second, they would provide quality education options for children who lacked them, especially disadvantaged youngsters unable to afford private schools. Third, they would offer creative educators, community groups and organizations, entrepreneurs, philanthropists, and others the opportunity to develop and operate their own public schools according to their own educational lights or the needs of the children for whom they are most concerned. Fourth, these schools would serve as sources of innovation and discovery for American education as a whole, as laboratories or research development centers, devising new forms of teaching and learning, unique curricula, distinctive ways of organizing schools and novel modes of effectively delivering instruction to children. (pp. 159-160).

The idea that charter schools were to be innovative in devising curricular opportunities for students and that such innovations would force public schools to keep pace or close was initially seen as a method to improve public schools (Sizer & Wood, 2008).

Originally conceived by educators frustrated with the bureaucracy perceived to be present in public schools systems that were "...immune to change, the concept was driven by a desire to innovate on behalf of children while furthering the most fundamental values of our public education system." (Sizer & Wood, 2008, p. 3).

Hassel (1999) indicates charter schools have become a prominent school choice opportunity because such schools manage to avoid the political posturing present in public schools and because reforms are difficult, at best, to implement systemically in public schools. In terms of political ramifications, Hassel further indicated, "...public schools are battlegrounds on which political interests and factions fight for advantage."

(p.2). In times of scarce resources and federal mandates to improve student achievement, the relative freedom of charter schools from the rules and regulations of public schools appears to be the panacea for implementing sweeping changes to curriculum and to instruction. Murnane and Levy (1996) propose; however, that the underlying theory to improving student achievement is "...if schools were free to design their programs and to market these programs to families, U.S. education would improve." (p. 108). According to Darling-Hammond and Montgomery (2008), the promise of charter schools in a market economy to improve and reform public schools is premised in the argument that "...individual schools will be motivated to provide a better product so that they will not lose customers (students), and education as a whole will improve as schools compete against one another to create more attractive products." (p. 92).

Murnane and Levy (1996) compare the status of choice options such as charter schools to the situation facing General Motors in the 1980s. General Motors was losing market share due to poor product quality and competition from other car makers (Murnane & Levy). The organization of the company was seemingly based on the work of Frederick W. Taylor, who championed the human-machine theory of scientific management where the spotlight was on making individuals at work more focused, more reliable, and less apt to fall prey to human weaknesses. Such organizations must maintain a delicate balance between too much or too little work, too much autonomy or too little, shifting goals in the global economy, and loose management versus tight management (Bolman & Deal, 2003). In the case of General Motors, Roger Smith, the leader of the organization, instituted many top-down reforms that were "...focused more on reducing

costs than selling cars.” (Bolman & Deal, p.353). The net effect of the failure to adequately and accurately ascertain why General Motors needed to change its operations and the failure to involve those workers in the trenches instead of devising approaches that were out of the realm of the expertise of the leader resulted in ill-conceived solutions to the wrong problems. The relationship between the story of General Motors and the charter school movement, according to Murnane and Levy, is that the search for quick solutions to problems “...distracts attention and saps energy from the real work that successful change requires.” (p. 111). Comparing the experience of General Motors to American public schools of today, Murnane and Levy postulate that the public schools have changed little in the past two decades, yet the skills necessary for individuals to succeed in the current economy are significantly different, leading to a disconnect between the schools and the employers. Similarly, according to Lubienski (2003), the impetus for the development of charter school initiatives is to “...elevate choice and competition to foster educational innovations.” (p. 395).

According to the research of Lubienski (2003), the dynamics of charter school choice, where the market provides the competition and where perceived or real quality outweighs the one-size-fits all model of education, “...are expected to induce better achievement, more options for parents, and new ways of educating students – particularly those groups traditionally marginalized in the current public system.” (p.396) yet the reality is that in the competitive nature of vying for students, many charter schools simply embrace the status quo of instructional delivery. Bracey (2003a) echoes the sentiments of Murnane and Levy (1999), Bolman and Deal (2003), and Lubienski (2003), indicating

“...it is clear that hopes for what charter schools would accomplish fall into the long line of proposed miracle cures and magic bullets for education’s perceived ills.” (p. 78).

Virtual Charter Schools

While the genesis of charter schools may be traced to Shanker, or Friedman, or the market’s influence on education and choice, the birth of the virtual charter, or cyber charter school, is not as clear. Ellis (2008) indicates virtual charter schools are the result of the reforms initiated through *A Nation at Risk* (National Commission on Excellence in Education, 1983). According to McClusky (2002) and The Center for Education Reform, the integration of charters and the internet was inevitable. McClusky indicates that in 1991 Michigan became the first state to pass charter school law, “...permitting the creation of institutions freed from the rules and regulations that were stifling innovation and hobbling education in traditional schools.” (p.1). At the University of Minnesota during the same time period, a team of programmers developed an Internet tool called Gopher which opened the door for people with a computer and an Internet connection to obtain information from the Internet previously available to only select institutions (McClusky). The collision of charter law and widespread Internet availability resulted in part in the development of virtual charter schools, and although the initial progress has been slow, Watson and Gemin (2009) indicate “Online learning is growing rapidly as states and districts are creating new online schools, and existing programs are adding new courses and students.” (p. 3).

Virtual charter schools have roots and delivery methods based somewhat on the correspondence, radio, and television courses and other distance learning opportunities of the past. Greenway and Vanourek (2006) identify several precursors to virtual charters, including the Star Schools program which began in 1988 with the intention of focusing on serving "...small rural schools through grants to advance distance-education technologies via telecommunications partnerships." (p. 36). Greenway and Vanourek postulate the first iteration of the now-popular K-12 virtual school opened in the summer of 1995 in Eugene, Oregon. Known as the CyberSchool Project, the courses offered were developed to supplement high school courses already in existence. Supplementary virtual education is the precursor to full-time models now evident in many states (Watson, 2008).

Virtual charters have many names, including cyber charters, eLearning schools, and online charter schools. Regardless of the name associated with the virtual charter, all contain common elements, including that the very existence of the school is dependent upon the successful service to the stakeholders, in this case the parents and the students, as well as the governing board and authorizer (McClusky, 2002). Rapp, Eckes, and Plucker (2006) define virtual charter schools as "...independent public schools created through formal agreements with a sponsoring entity....[which]...operate free from the many regulations which govern traditional public schools." (p. 1). According to Huerta, d'Entremont, and González (2006a), schools that operate virtually, whether charters, state-run programs, or district-sponsored, have important differences from traditional brick and mortar charter schools, including:

1. Learning occurs primarily outside of a classroom and often in isolation from peers.
2. Instruction is delivered through an alternative medium, usually a computer.
3. Schools enroll students who did not previously attend public schools, especially home-schoolers.
4. Schools do not conform to district enrollment lines and can draw students from across a given state line (p. 24).

According to Greenway and Vanourek (2006), another major difference between online and traditional methods of schooling includes the relationship between time and learning acquisition. In the traditional classroom, classes are defined by the bell schedule, and the amount of learning that occurs is variable according to the student. In the virtual setting; however, the opposite is true. Students work at their own pace without the constraints of the bell schedule, with the ultimate goal of student mastery of content material (Greenway & Vanourek). Although the goal of student mastery of content is applicable to both forms of schooling, the virtual environment allows students to work at an individual pace until mastery is achieved, whereas students in brick-and-mortar schools face the challenge of a finite period of time in which to master content. The information presented above is not true in all states; however, with states such as Florida not allowing home-school students to participate in state-run or district-run virtual school programs, although charter authorizers have the ability to approve such an arrangement. Regardless of structure, virtual charter schools all operate relatively free from the constraints and bureaucratic control of the traditional schools and are permitted autonomy in staffing, curriculum, resource allocation, among others (McClusky, 2002; Anderson, 2003).

Greenway and Vanourek (2006) identify:

...six defining dimensions of 'virtual' schooling: comprehensiveness (whether activity is complete or supplemental), reach (whether spanning a district or the

entire globe or something in between), type (whether public, private, charter, contract, magnet, or even home school), location (in school, at home, somewhere else, or a combination), delivery (synchronous or asynchronous), and control (run by a school district, university, state, other provider, or combination). (p. 37).

Other classifications include those based on who administers the charter school, whether or not the school is full-time or part-time, and the location of students who attend the school (Clark, 2001; Watson, 2009). Clark (2001) classifies virtual schools as:

(a) state-sanctioned where different entities act as the state's 'own' virtual school, (b) college and/or university-based where courses are offered to K-12 students through dual enrollment, (c) regionally-based consortia where several schools or school districts operate a virtual school, (d) local education agency-based where districts or schools operate their own virtual instruction programs, often utilizing their own teachers, (e) virtual charter schools where for-profit and nonprofit entities run virtual charter schools which are somewhat free from the bureaucratic constraints of public schools, (f) private virtual schools where courses are offered to home school students, and (g) for-profit companies where curricula and learning delivery platforms are provided.

Watson, Gemin, and Ryan (2008) identified two categories of online schools, as they are referred to in their research, including supplemental and full-time programs.

Watson et al. (2008) described the differences between supplemental and full-time as critical to understanding the common language, as students in supplemental programs typically attend brick-and-mortar schools separate from and in addition to the online schools whereas full-time students include students enrolled only in an online program.

Watson, et al. (2008) defined the differences as:

Full-time programs typically are responsible for these students' scores on state assessments required by *No Child Left Behind*, which is the primary way in which student outcomes, and school performance, are measured; and [f]ull time programs are often funded by the per-pupil (also known as FTE for full-time equivalent) public education funding formula that follows the student, while most state-led supplemental programs are funded primarily by separate legislative appropriations (Florida Virtual School is an exception in that FLVS receives per-pupil formula funding.) While both types of programs are state-funded, using taxpayer dollars, the difference in funding mechanisms is significant. (p.5).

Klein and Poplin (2008) identify virtual charter schools as a blend of "...home schooling, charter schools, and virtual schools..." (p. 369), stating that "This new alternative provides curriculum to home learners through advanced technologies within the traditional charter school setting, allowing for innovation, freedom from traditional structure, and tuition-free education for students." (p. 369). The idea that virtual charter schools operate under the same policies as charter schools creates the opportunity for creative education within the public education system. Huerta, González, and d'Entremont (2006b) define cyber and home school charter schools as "Similar to traditional charter schools..." (p. 104) in that they are "...created through formal agreement with a state or local sponsoring agency." (p.104). Huerta et al. (2006b) further differentiate cyber charter schools from other, more traditional methods of schooling, indicating that the cyber charter schools consist of "...nonclassroom-based instruction that students receive outside the confines of a traditional schoolhouse setting." (p. 104).

Virtual schooling may be delivered in either a synchronous or asynchronous manner. Huerta, González, and d'Entremont (2006b) define synchronous instruction as:

Synchronous instruction is delivered through the Internet in a real-time virtual classroom environment by a teacher or paraprofessional who guides the students through instructional units. In most cases, students can communicate directly with the teacher and other students during lessons and may ask questions and

participate in interactive discussions. However, synchronous instruction demands expensive technology and teacher resources, making it the least common model for delivering instruction. (p. 110).

Due to the nature of virtual schooling, where education may be delivered anywhere, at any time, synchronous delivery methods are difficult to implement. As a result, asynchronous learning is a more common model in virtual schools. In the asynchronous model, students log onto the virtual curricular platform, view syllabi and lessons for the courses, complete assignments, and return assignments to the instructor through the Internet (Huerta et al. 2006b; Barbour & Reeves, 2009). According to Huerta et al (2006b):

Asynchronous instructional delivery is more widely used among cyber charters, usually in the form of prerecorded lessons created by a third-party curriculum provider. This instructional model often utilizes prepackaged curriculum delivered via software packages, and students work at their own pace while completing assigned tasks and assessments. (p. 111).

Regardless of the method of instruction, whether synchronous, asynchronous, or a blending of the two delivery methods, virtual methods of delivering public education have become prominent in the United States, and challenge the paradigms associated with traditional education.

Watson and Gemin (2009) and Glick (2009) identify several reasons for the growth of virtual programs, including the ability to differentiate instruction for all students, to provide more course offerings to students living in remote or rural locations, to allow for non-traditional flexibility and pacing of course work, to allow disengaged students the opportunity to engage through flexible time, place, and instruction, and to meet the expectations of today's learners. Watson (2008) further suggests that the future

of virtual schools rests in the concept of blended models of instruction, where students access courses and resources both inside and outside the traditional classroom, and indicates these are likely to be the "...predominant model of the future – and to become far more common than either one alone." (p. 3). Although the model for blended learning exists, Watson offers the following as caveats to the future implementation of blended options:

First, there is no single type of blended education, and over time we can expect all the spaces along the continuum from fully online to fully face-to-face to be filled. Online curricula will evolve as a ubiquitous component of classroom instruction. At the same time, an increasing number of programs that are primarily distance-based may include a face-to-face teaching component....

Second, in the same way that online teaching is recognized as different than face-to-face teaching, blended learning is also unique and requires new methods of instruction, content development, and professional development. Online program leaders know that they cannot simply use face-to-face teaching methods in an online class, and vice versa....

Third, for school districts and programs that use both fully online and blended courses, content will need to be readily accessible as learning objects to support both types of instruction. Text-based content will be less effective than animation, video, simulations and other engaging and illustrative content that can convey concepts visually and dynamically, more effectively than either paper or an instructor drawing on the blackboard....

Fourth, because blended learning relies on a significant level of web-based communication and content, it relies on a course management system or a learning management system to organize the content and facilitate communication. The presence of software that organizes the course may, in fact, be a distinguishing characteristic between a truly blended course and a face-to-face course that simply incorporates a few digital elements...(p. 14).

Dziuban, Hartman, and Moskal (2004) defined blended learning in college and university courses as "...courses that combine face-to-face classroom instruction with online learning and reduced classroom contact hours (reduced seat time)." (p. 2). Beyond simply

referring to such a course as blended depending upon the percent of online content, Dziuban et al., posit "...that blended learning should be viewed as a pedagogical approach that combines the effectiveness and socialization opportunities of the classroom with the technologically enhanced active learning possibilities of the online environment, rather than a ratio of delivery modalities." (p. 3). Although there is a scarcity of research in the K-12 arena regarding online blended models of instruction, recent successes in the higher education realm suggest that blended models may indeed become the "...predominant model of the future...." (Watson, 2008, p. 3).

Philosophical Foundations of Choice

Market Theory

The philosophical foundations of school choice vary, from democratic theories of action to free-market approaches. The market approach operates on the assumption that school choice provides educators with the opportunity to design innovative programs that are free from the bureaucracy of the traditional public school setting, thus providing parents an opportunity to choose the educational setting most appropriate for their children. School choice and the marketplace have long been considered an inevitable partnership. The basic premise of school choice is that traditional public schools are failing America's children, and competition from charter schools, magnet schools, vouchers, tuition tax credits, and virtual charter schools will force schools to improve or close. According to the work of Ridenour, Lasley, and Bainbridge (2001), "Education is being transformed at a rapid pace because of a variety of political and social

forces....School reform advocates in general and political conservatives in particular see the market approach as one that can and will positively affect educational practices.” (p. 66). The historical perspective of market theory traces back to Adam Smith who believed that monopolies in education were not efficient and that the provisions of vouchers would entice more people to become educated (Sweetland, 2002; Ridenour et al. 2001).

According to Sweetland (2002), Milton Friedman also suggested that competition of schools would increase their efficiency as parents, with the opportunity and means to select schools appropriate for their children, would drive the market in the supply and demand of particular schooling options. As Ridenour et al. suggest, by “...creating competition and giving parents options, strong schools will thrive; weak schools will be forced to change or close.” (p. 69).

Market theory and how it applied to public education, provided insight into the development of school choice and the recent development of virtual charter schools. Coulson (1996) suggested that “...competitive educational markets have been more responsive to the needs and demands of parents than centrally controlled, subsidized systems.” (p. 21). Proponents of school choice; in fact, believe that the introduction of competition into the traditional schools will force teachers, administrators, and school boards into meeting the needs of the students and families they serve, or they will cease to exist (Coulson, 1996; Ridenour, 2001; McClusky, 2005). Darling-Hammond and Montgomery (2008) suggest:

...the marketplace approach assumes that the market is best equipped to reform public education...[because]...individual schools will be motivated to provide a better product so they will not lose customers (students), and education as a whole

will improve as schools compete against one another to create more attractive products. (p. 92).

Senge et al. (2000) provide the antithesis to the argument that competition begets improvements in schools, indicating that school choice options are premised with the idea that traditional schools will become more effective at serving students when faced with other entities all competing for the same students. “Unfortunately, when resources are finite and shared, the innovators and efficiency builders tend to focus not on providing better service but on taking more of the pie away (including the highest-scoring students) from their competitors.” (Senge et al. 2000, p. 507), which is not the original premise conceptualizing school choice. Owens and Valesky (2007) suggest there are two camps in the school reform movement; “...market-oriented theorists, who tend to see government organizations as phenotypically inferior to market-oriented organizations, and business investors, who see private control of education as a potential source of vast profits.” (p. 401). This view suggests that market-based education, while to some inherently better than democratic control of schools, to others creates a single-minded focus on the profit available in educational institutions, not on the innovations possible in an environment free from regulations.

Chubb and Moe (1990) presented the idea that democratic control of the schools is what leads to bureaucratic institutions mired in rules and regulations with no opportunities for innovative instruction or curriculum. They indicate “Effective authority within market settings...is radically decentralized...” (p. 29) whereas “...democratic institutions allocate decision making rights by attaching public authority to elected and appointed positions of government...[who] have the legal right to make public policies

and to devise governmental structures that are binding on everyone in the polity.” (p. 28). The key, according to Chubb and Moe, “...is having something to offer that other people want.” (p. 30).

The allocation of scarce resources to meet the needs of competing entities provides a tie between the market theory of education and the political frame of Bolman and Deal (2003). The basic tenets of the political frame include:

1. Organizations are *coalitions* of diverse individuals and interest groups.
2. There are *enduring differences* among coalition members in values, beliefs, information, interests, and perceptions of reality.
3. Most important decisions involve allocating *scarce resources* – who gets what.
4. Scarce resources and enduring differences make *conflict* central to organizational dynamics and underline *power* as the most important asset.
5. Goals and decisions emerge from *bargaining, negotiation, and jockeying for position* among competing stakeholders. (p. 186).

Given the assumptions of the political frame, Walberg’s (2000) statement that “Rational choice, the premise of market theory, also explains why public and private interests seek to exclude competition in the hope of increasing their power and income while reducing their costs and risks...” (p. 2) takes on a new meaning when applied to school choice.

Walberg suggests that “School choice makes for incongruous allies....among them are those who want choice as a governing ideal, economists who want efficiency, entrepreneurs with new ideas to try, and religious and other parents who want to preserve their family values.” (p.3). Indeed, the necessary resources for materials, buildings, and salaries are scarce and must be considered within the political framework of other needs, but the complexities of the public school system in America provide challenges to any

form of school choice, whether based on the market theory or on democratic control (Owens & Valesky, 2007).

Coulson (1996) provides an overview of the history of the educational system and highlights:

...the differences between markets and centralized bureaucratic school systems on three important measures of school performance: how well they respond to and satisfy the demands of parents and students (e.g. through innovation and diversity in curriculum), the degree to which they benefit their students directly (e.g. higher literacy, job/life skills), and their indirect benefits to the rest of society (e.g. thriving economy, social harmony). (p.4).

The conclusions Coulson draws include the notion that over the centuries competitive schooling in the form of market-based structures "...have been more responsive to the needs and demands of parents than centrally controlled, subsidized systems." (p. 21). The conflicts inherent in the political frame are brought to the forefront as according to Coulson "Whenever the state chooses one world view over all others, it places its own people in conflict with one another." (p.22). He suggests that the introduction into the educational system of competition and profit as motivators will provide administrators and teachers with the necessary impetus to serve all children in a differentiated manner (Coulson, 1996). Owens and Valesky (2007) further suggest, "Advocates of marketplace concepts of schooling have proffered some powerful criticisms and some genuine new alternatives to traditional ways of providing public schooling, such as the idea of school choice and vouchers, that merit thoughtful consideration..." (p.405).

Characteristics of Successful Online Learners and Teachers

Roblyer, Davis, Mills, Marshall, and Pape (2008) conducted a study to determine “...whether a combination of learner characteristics and learning environment variables derived from past research could predict success in one kind of distance learning population (virtual school students) and how organizations that offer distance courses might use findings from such a model to facilitate online learning success for future students.” (p.91). Roblyer, et al. suggested it is critical to identify students who may be unsuccessful with online work, and for schools and teachers to intervene early and often with such students. The findings further suggested, after analysis of course offerings, that online courses appeal to the independent, motivated learner, such as those whom avail themselves of advanced placement coursework, whereas the “...dropout and failure rates remain a significant problem for virtual schools, especially those with heterogeneous populations....” (p. 107). Due to the nature of online schooling and the independence necessary for success, Ash (2009) suggested “...it is important for K-12 districts to take the time to evaluate the quality of the curriculum and the teachers in online education programs in order to determine what works and what doesn’t before implementing an online education program.” (p.20).

Before a relevant discussion of successful online learners and teachers may commence, a perusal of the limitations of current models of schooling must occur.

Christensen (2008) suggested that today’s schooling architecture is:

...laced with interdependencies. Some of these interdependencies are *temporal*: you can’t study this in ninth grade if you didn’t cover that in seventh. There are *lateral* interdependencies, too...*physical* interdependencies,...And finally, there

are *hierarchical* interdependencies. These range from well-intentioned mandates...from local, state, and federal policymakers that influence what happens in schools to union-negotiated work rules that become enshrined in contracts and policies at the state and local levels. (p. 33).

The apparent inflexibility of traditional education systems has led to an explosion of new paradigms for teaching and learning. Christiansen suggests changing public schools into student-centered environments requires a "...common language, power, and separation." (p. 192). Christiansen defines common language as "...the 'mechanism of movement'..." (p. 192) and further suggests that the effectiveness of strategic planning is contingent upon the use of common language throughout the organization. In order to effect change, "Political and school leaders who seek fundamental school reform need to become much more comfortable amassing and wielding power because the other tools of cooperation will yield begrudging results at best." (p. 193). Separation as a tool for gaining cooperation and change from public schools, according to Christiansen, is the reason for the growth of the charter movement. When power and common language do not effect change, Christiansen suggests "Setting up new schools with a set of teachers, parents, and administrators who have much stronger agreement on what they want from participating in the school and how to get it is an important and powerful tool if the parties at large cannot agree to cooperate in the requisite course of action." (Christiansen, 2008, p.194).

Central to the characteristics of learners and teachers in a virtual environment is the theory of connectivism. While connectivism typically refers to the student as learner, it is critical to understand that the teacher must also embrace releasing responsibility for learning to the student. According to Kop and Hill (2008), "Connectivism is a theoretical framework for understanding learning. In connectivism, the starting point for learning

occurs when knowledge is actuated through the process of a learner connecting to and feeding information into a community.” (n.p.). Advances in social networking, from Facebook, to Twitter, to MySpace, to blogs, wikis, and Oovoo provide opportunities for people to interact and connect from anywhere. Access to information on the Internet, from open source textbooks to Creative Commons licenses provides educators and students with a wealth of information, literally at the touch of a button. Such networking has had a not-so-subtle impact on the classroom, both in relation to learning and to teaching. Increasingly, learning is not limited by the minutes that form the class period, or by the teacher’s knowledge; rather, it is limited only by the learner.

Siemens (2008) suggested, “A growing discontent in the tools and methods of classroom activity and those of youth culture and larger society is evident.” (p.7). The discontent is fueling a shift in the educational model from the hierarchical classroom arrangement of teacher and students to one predicated on the knowledge that learner engagement is crucial for transforming learning to “...flexible and adaptive networked models.” (Siemens, 2008, p. 8). According to Strong and Hutchins (2009), “Learning, according to the connectivist view, is distributed within a networked environment that is technologically and socially enhanced.” (p.54). In his “...original theory of connectivism...” Siemens (2005, p.23) presented the eight attributes of connected learning:

Principle 1: Learning and knowledge rests in diversity of opinions.

Principle 2: Learning is a process of connecting specialized nodes or information sources.

Principle 3: Learning may reside in non-human appliances.

Principle 4: Capacity to know more is more critical than what is currently known

Principle 5: Nurturing and maintaining connections is needed to facilitate

continual learning.

Principle 6: Ability to see connections between fields, ideas, and concepts is a core skill.

Principle 7: Currency (accurate, up-to-date knowledge) is the intent of all connectivist learning activities.

Principle 8: Decision-making is itself a learning process. Choosing what to learn and the meaning of incoming information is seen through the lens of a shifting reality. While there is a right answer now, it may be wrong tomorrow due to alterations in the information climate affecting the decision. (2005, pp. 23-24).

Siemens posits, “Meaning in a network is created through the formation of connections and encoding nodes....The node must first be encoded and connected to other elements of the network.” (p. 13).

Strong and Hutchins (2009) suggest connectivist learning theory “...picks up where traditional learning theories leave off in preparing learners for a world of growing complexity.” (p.54). Integral to connectivism is the movement from the pedagogical relationship between student and teacher, where the teacher is the decision-maker, to heutagogy, where the learner directs the learning (Hase & Kenyon, 2000). Conner (1997-2004) suggests andragogy, “...initially defined as ‘the art and science of helping adults learn,’ has taken on a broader meaning ...defines an alternative to pedagogy and refers to learner-focused education for people of all ages.” (andragogy section, para. 1). Segue from andragogy to heutagogy, which defines a new paradigm for contemplating the process of learning (Ashton & Newman, 2006). Ashton and Newman draw on the work of Hase, indicating “Learners educated within a heutogological framework develop confidence in their perceptions and learn to question interpretations of reality from their position of competence.... [which] differentiates teaching between traditional and newer methods.” (p.829). Ashton and Newman further suggest that twenty-first century learners

require a change in the learning paradigm, as "...today's teacher educators must develop students' capabilities, not just their skills and knowledge, and in so doing must relinquish some power." (p.829). Hase and Kenyon (2000) provide the link between the characteristics of virtual learners and heutagogy, posting "The world is no place for the inflexible, the unprepared, and the ostrich with head in sand..." (Heutagogy section, para.

2). They further suggest:

A heutagogical approach recognizes the need to be flexible in the learning where the teacher provides resources but the learner designs the actual course he or she might take by negotiating the learning. Thus learners might read around critical issues or questions and determine what is of interest and relevance to them and then negotiate further reading and assessment tasks. With respect to the latter, assessment becomes more of a learning experience rather than a means to measure attainment. As teachers we should concern ourselves with developing the learner's capability not just embedding discipline based skills and knowledge. We should relinquish any power we deem ourselves to have. (Heutagogy section, para. 5).

Hase and Kenyon suggest "...a shift in thinking towards heutagogy will enable the control of learning to shift more appropriately to the learner. Furthermore it will enable a far more creative approach to learning, no matter what the context." (Conclusion section, para. 2).

House (2002) provides a connection between the learning theories of connectivism and heutagogy through the work of Gagne. According to House, Gagne's nine events of instruction "...enhance learning outcomes." (p.114). The nine events include:

- (1) Gaining attention,
- (2) informing the learner of the objective,
- (3) stimulating the recall of prerequisite learning
- (4) presenting the stimulus material,
- (5) providing learner guidance,

- (6) eliciting the performance,
- (7) providing feedback about performance correctness,
- (8) assessing the performance, and
- (9) enhancing retention and transfer. (p.114).

House indicated application of the nine events to the design framework of online courses “...provide a useful framework for designing and assessing school lessons that use computers as part of teaching.” (p. 114).

The role of the teacher in the digital age has changed. According to Shesky (2010), “To make authentic connections with students, we must change our strategies to fit this new age of students.” (p.197). Davis and Roblyer (2005) indicated, “Just as today’s virtual student differs in fundamental ways from those of the past, virtual teachers must also reflect different qualities.” (p.400). Cavanaugh, et al. (2009) stated, “Online teaching is a complex professional practice. In addition to their content knowledge and pedagogical skill, online teachers must be qualified in methods of teaching the content online and have experience in online learning.” (p.4). According to Cavanaugh, et al.:

Virtual teachers must be able to orchestrate arrays of opportunities for students, to continually learn, to model effective practice, to provide guidance and leadership, to set standards and help students assess themselves, to intervene when necessary, and to maximize the potential of every student....Online teachers must become adept at using web-based technologies to offer students activities that make use of the web’s powerful tools for collaborative learning. (p.5).

Watson (2007) discussed the role of the online teacher, indicating the development of online pedagogy is the most critical attribute of a successful online teacher. Online teachers must possess certain skills relative to content delivery, communication, and management of the learning environment:

- Teachers must develop heightened communication skills, particularly in written communication....

- In asynchronous programs, time management skills are critical for teachers (and students) because they can be online at any time....
- In synchronous programs, teacher planning is an issue as the lessons taught must have a multimedia component that requires much more planning for than is usual for traditional classrooms.....
- Teachers must be able to recognize different learning styles and adapt the class to them. Some online programs, and many online teachers, pay special attention to gaining an understanding of each student's skills and challenges in the early days of an online course to ensure that the course meets all students' needs....
- If teachers have any students with disabilities, they must know how to adapt course content and instruction to meet these students' needs....(p.14).

Pape and Wick (2009) focused on teaching and learning standards for successful online programs and posited that in quality online programs, the teaching staff participates in mentoring, is provided feedback relative to pedagogy, and is provided professional development opportunities. The North American Council for Online Learning (n.d.) offered the following as qualities of successful online teachers:

- (a) certification in the subject and state in which the teacher is employed and teaching,
- (b) possession of technological skills to be effective in an online environment,
- (c) demonstration of pedagogical skills to incorporate student collaboration and participation,
- (d) provisions of rubric for expectations and consistent feedback,
- (e) modeling of appropriate online behavior,
- (f) participation in online learning as a student,
- (g) possession of an understanding of and an ability to respond to students with disabilities in the online classroom,
- (h) provision of valid and reliable assessments of student learning,

- (i) establishment of standards and methods for evaluating student achievement,
- (j) demonstration of use of data to inform instructional decisions,
- (k) demonstration of effective collaboration with other teachers.

While the characteristics of successful online teachers in some cases mimic the characteristics necessary for success in traditional brick and mortar classrooms, the online teacher must be prepared to provide engaging, rigorous content in which maintains the fidelity of assessment of student learning.

Successful online students share several characteristics. Wang and Newlin (2000) found that online learners exhibited a higher locus of control than their traditional brick and mortar classroom counterparts, and suggested that "...web instructors should closely monitor students' on-line course activity during the first week of the semester. The lack of this activity may be interpreted as a reliable early-warning indicator of poor performance later in the semester." (p.142). Roblyer, Davis, Mills, Marshall, and Pape (2008) in their analysis of successful online students, indicated "...certain learning conditions (e.g., allowing time at school to complete an online course, having a computer at home) can be combined with the prior achievement of a student (GPA) and individual cognitive student characteristics...." (p. 105) to identify the potential for success or failure of online students. Roblyer, et al., cautions; however, that the results of the study may not be representative of the general population as the study focused on a school with a demographic of 77% white with a low dropout rate and thus may not be "...generalized to students from inner-city virtual schools with a high minority enrollment and higher dropout and failure rates." (p. 105).

Dabbagh (2007) suggested, “The research to date has not converged on an archetypal profile of the online learner. Although some situational, affective, and demographic characteristics may cut across this learner population, what seems to be more prevalent is the changing or emerging nature of the online learner and the multiplicity of learning styles and generational differences represented.” (p.217).

Additional indicators of success in online courses include self-directed learning and an understanding of the value of collaboration in online activities in order to engage more appropriately in the learning. Dabbagh further presented seven characteristics that are integral to the success of students engaging in online learning activities:

- Having a strong academic self-concept.
- Exhibiting fluency in the use of online learning technologies.
- Possessing interpersonal and communication skills.
- Understanding and valuing interaction and collaborative learning.
- Possessing an internal locus of control.
- Exhibiting self-directed learning skills.
- Exhibiting a need for affiliation. (p. 220).

Identifying the characteristics of successful online learners is multi-faceted. The research suggests students in an online environment must exhibit an internal locus of control, must be able to self-direct the learning experience, and must be self-motivated (Wang & Newlin, 2000; Dabbagh, 2007; Roblyer, et al., 2008). With more opportunities for learning online, from full-time models to blended instruction, where students learn certain course content online and the remaining content in a face-to-face environment, to single courses taken entirely online either at the public school or on the home computer, it is critical for authorizers of virtual charter schools to carefully ascertain the supports in place for both the online teacher and the student to ensure success of both parties.

Related Case Law

The history of school choice and the virtual charter movement would not be complete without a discussion of how landmark cases have influenced the direction of public education. Decisions in such cases as *Plessy v. Ferguson* (163 U.S. 537, 1896) and *Brown v. Board of Educ.* (347 U.S. 483, 1954) continue to mold the system of education in the United States. Interestingly enough, the United States Supreme Court did not initially decide the issues relative to equal educational services for all students in the context of education, but rather in the realm of transportation. *Plessy v. Ferguson* (1896) involved the railways and whether or not Louisiana law prohibiting blacks from riding in the same rail cars as whites was a violation of the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. Through the opinion of the Court, delivered by Justice Brown, the relationship to equity in educational practices becomes evident:

The object of the amendment was undoubtedly to enforce the absolute equality of the two races before the law, but in the nature of things it could not have been intended to abolish distinctions based upon color, or to enforce social, as distinguished from political equality, or a commingling of the two races upon terms unsatisfactory to either....The most common instance of this is connected with the establishment of separate schools for white and colored children, which has been held to be a valid exercise of the legislative power even by courts of States where the political rights of the colored race have been longest and most earnestly enforced. (section 2, para. 3)

Fifty years prior to the *Plessy* ruling, in *Roberts v. City of Boston* (59 Mass [1 Cush.] 198, 1849), the Supreme Court of Massachusetts held that "...the general school committee of the city of Boston have power, under the constitution and laws of this commonwealth, to

make provision for the instruction of colored children, in separate schools established exclusively for them, and to prohibit their attendance upon the other schools.” (*Roberts v. City of Boston*, 198 ref 2). Charles Sumner, the attorney for the plaintiff, argued that the establishment of schools in the laws of the state did not speak to separate facilities and opportunities for black children, but rather spoke of qualification for attendance, and consideration of color as a qualification established a social order system that violated equality for all. The issue of allowing Sarah Roberts, a five-year old black child, admittance to a white school closest to her home, rather than passing several white schools on her way to the segregated school, was less an issue about equality and integration than it was about convenience for her parents. Her attorney; however, argued that separate schools were unequal.

Across the country, similar cases were decided in state supreme courts. In California, the 1874 decision of the court in the case of *Ward v. Flood* (48 Cal. 36) held that separate schools for blacks and whites did not violate the constitution of the United States. Eleven-year old Mary Ward desired admittance into the public school nearest her home, and was denied due to her race. Again, the separate but equal doctrine of the constitution was upheld. In Missouri, the 1890 Supreme Court case of *Lehew v. Brummell* (103 Mo. 546, 15 S.W. 765, 11 L.R.A. 828) was decided in an analogous manner. In each of the preceding cases; however, the issues of equity in schooling location were the primary issues, not the issue of integration of the races. In *Bertonneau v. Board of Directors of City Schools* (3 F. Cas. 294, 1878) a black parent of four children sought an injunction to allow his children to attend the white school located in his town. As his

were the only black children in the town, no separate school had been established to serve the needs of such children, so he was directed to take them to the established black school in a town three and a half miles away. In deciding the case, the Supreme Court Justice, William Woods, held that “...equality of rights does not necessarily imply identity of rights...” (*Bertonneau*, 3 F. Cas. at 296; Biographical Dictionary, supra note 41, at 309).

The Compulsory Education Act of 1922 (Oreg. Ls., § 5259), known as Oregon School Law, provided the backdrop to a critical case regarding parental choice in the schooling of their children. The Compulsory Education Act of 1922 compelled parents to send their children, who were between the ages of eight and sixteen years, to public schools during the time of year public schools were in operation. Failure to comply was a misdemeanor under Oregon law. The case of *Pierce v. The Society of the Sisters of the Holy Names of Jesus*, 268 U.S. 510 (1925), challenged the law alleging that the Compulsory Attendance Act of 1922 violated the First Amendment of the constitution, as parents no longer had the option to send their children to private religious schools. Mr. Justice McReynolds, in delivering the opinion of the court, described the issue as:

...the Society's bill alleges that the enactment conflicts with the right of parents to choose schools where their children will receive appropriate mental and religious training, the right of the child to influence the parents' choice of a school, the right of schools and teachers therein to engage in a useful business or profession, and is accordingly repugnant to the Constitution and void. And, further, that unless enforcement of the measure is enjoined the corporation's business and property will suffer irreparable injury. (para. 4).

The court held that the Compulsory Education Act of 1922 “...unreasonably interferes with the liberty of parents and guardians to direct the upbringing and education of children under their control.” (para. 10) and further held that “The child is not the mere

creature of the state; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations.” (para. 10). The holding provides a link to the status of school choice and the development of choice options such as voucher systems, charter schools, and virtual charter schools through the decision that the state does not retain the right to dictate to parents how their children will be educated.

Challenges to the question of whether or not separate schools for blacks and whites provided equal access for all students to quality educational experiences continued in the courts until the landmark 1954 decision in *Brown v. Board of Education* 347 U.S. 483 (1954). Wraga (2006) indicated “...one of the tactics employed during the 1950s and 1960s to dodge the High Court’s desegregation order involved instituting ‘free choice’ schemes...” (p. 426). Choice involved students in the racial majority voluntarily transferring to schools in which they would be the racial minority. Regardless of whether such transfers actually occurred, the very existence of the plan was offered as an attempt to end segregation in the schools.

The court held in *Brown v. Board of Educ.*, 347 U.S. 483 (1954):

We conclude that in the field of public education the doctrine of "separate but equal" has no place. Separate educational facilities are inherently unequal. Therefore, we hold that the plaintiffs and others similarly situated for whom the actions have been brought are, by reason of the segregation complained of, deprived of the equal protection of the laws guaranteed by the Fourteenth Amendment. This disposition makes unnecessary any discussion whether such segregation also violates the Due Process Clause of the Fourteenth Amendment. (para. 29).

According to Wraga, “In deciding to render ‘separate but equal’ educational facilities unconstitutional, the Supreme Court affirmed fundamental educational ideals; implicitly,

the unifying function of common schooling and explicitly, the imperatives for citizenship education and for a publicly supported system of education.” (p. 428). The significance of the *Brown* decision in the era of school choice is two-fold. The proliferation of school choice options such as charters, vouchers, and virtual charters where students are targeted for attendance based on “...academic or vocational ability, aptitude, or aspiration...” (p. 427) or other such limiting factors, serves to further segregate students based on socioeconomic status (Wraga, 2006). The second critical element of the *Brown* decision involves the expenditure of public funds to support private schools and the commercialization of schools through vouchers and educational management organizations. While the *Brown* decision had little to do with the expenditure of funds, the vision of common schools for all students without regard for race or socioeconomic status have been eroded (Wraga, 2006). Bracey (2003b) concludes that proponents of voucher systems are less interested in whether vouchers work as they are in “...the larger aim of voucher advocates: to privatize the public schools.” (p. 154).

The landmark Supreme Court decision *Zelman v. Simmons-Harris* (536 U.S. 639) provides further impetus for the development of school choice options for students. The court held the Ohio voucher program did not violate the Establishment Clause of the First Amendment of the United States Constitution thus further paving the way for school choice options to flourish. Chief Justice Rehnquist, writing for majority in *Zelman v. Simmons-Harris*, held that the voucher program was:

...neutral in all respects towards religion, (2) was part of a general and multifaceted undertaking by the State to provide educational opportunities, (3) conferred assistance to a broad class of individuals defined without reference to religion, and (4) permitted the participation of all religious and nonreligious

private schools in Cleveland, as well as adjacent public schools (Liekweg, 2004, p. 52).

The holding that the voucher program "...did not offend the establishment of religion clause...[and] did not create a public perception that the state was endorsing religious practices and beliefs..." provided the backdrop for the continuing debate regarding the constitutionality of school choice options.

Summary

Market theory and the application to school choice reinforce the question of whether or not there exists "one best system" of public education. Historical analysis indicates there is no one best system, with school choice and parental freedoms to provide education for their children documented in the literature. Through the recent history; however, the general premise of schooling has revolved around the kindergarten to twelfth grade system, with all students progressing through the grade levels at a prescribed time and rate of speed, following the same curriculum.

The design of the system has not been successful for all students, as is apparent in the literature regarding segregation and integration, and recent reforms such as *No Child Left Behind* have furthered the argument of the existence of "one best system" through the legislation of success for all students. Davis and Roblyer (2005) indicate:

The demand for virtual schools is driven at least in part by fundamental changes in our society and the students who inhabit it. As ubiquitous communications and immediate access to information have become more common, learners recognize that learning can be an anytime-anywhere experience....The disconnect between many current educational methods and those possible in an information-connected environment is becoming increasingly obvious. A new kind of student requires a new kind of schooling. (p.400).

A focus on the learning theories inherent in online learning, from pedagogy to androgogy, to heutagogy, provides the framework for analyzing the changes in public education in the last two decades. An understanding of how students learn, combined with a common vocabulary regarding learning styles and theories, provides the window for envisioning future educational opportunities.

Recent court cases and state legislation have opened the door to the creation of choice options such as virtual charter schools that were previously unheard of and unimagined as solutions to the perceived or real educational crisis in American today. The question remains regarding the oversight of such choice options, as is the price for educational freedom of choice the complete lack of governance and accountability?

CHAPTER 3 STATES' LAWS AND CASES

Introduction

The purpose of this study was to provide a qualitative analysis of the legal, statutory, and governance issues of virtual charter schools and to discern the implications of such regulatory issues on the future of public schools. At issue was the use of public funds, the costs associated with virtual schooling, the ramifications of home school virtual charter schools and nonclassroom-based charter schools, and the related case law that has shaped policy in the 19 states with current legislation permitting virtual or cyber charter schools.

The expansion of public school choice options, from vouchers, to charters, to virtual schooling has created a need for specific policies to address the accountability of such options, as well as the legality. According to Sizer and Wood (2008):

...schools – one of our most democratic of institutions – are to be owned by the public and run by local boards of laypeople who provide not only funding but facilities and support for children and their teachers. This country's long-standing vision was that public schools were to be governed closest to the people they served, requiring little need to trek to the state or federal capital for redress of grievances. The failure of so many systems of public education to live up to these principles helped give rise to the charter movement. (p.6).

Chubb and Moe (1990) described the American school system as "...too heavily bureaucratic – too hierarchical, too rule-bound, too formalistic – to allow for the kind of autonomy and professionalism schools need if they are to perform well." (p.26). Chubb and Moe further indicate the rigid hierarchy that exists in traditional forms of schooling has led to the choice movement:

Choice is a self-contained reform with its own rationale and justification. It has the capacity *all by itself* to bring about the kind of transformation that, for years, reformers have been seeking to engineer in myriad other ways....Taken seriously, choice is not a system-preserving reform. It is a revolutionary reform that introduces a new system of public education. (p.217)

Choice without accountability is not the panacea envisioned in the early 1990s. In terms of charter schools, and by extension, virtual charter schools, “It has often been said that charter schools trade public accountability for autonomy.” (Mead, 2003, p. 350). Chubb (2006) summarizes the issues of accountability through politics and the marketplace, indicating “The scale of public school systems...has been determined entirely through political decision-making, constrained by local political geography. Policymakers have never had the opportunity to ask: what scale school system would maximize student achievement for a given level of taxpayer commitment?” (p.156).

The context of statewide policy development has been framed in several states, including California and Pennsylvania, where the challenge has been “...to better define the hazy lines of public accountability that have resulted from the devolution of public authority under the charter school model.” (Huerta, González, & d’Entremont, 2006b, p.106). It is through analysis of the statutes that legislate the expansion of virtual or cyber charter schools and the case law that has shaped policy development that will guide states in future legislation of choice options. The following 19 states were included in the study as they are the only states that currently have legislation relative to virtual charter schools.

Alaska Statutes and Case Law

Alaska Statutes

Article VII, section 1 of the Alaska Constitution provides for the establishment and maintenance of: "...a system of public schools open to all children of the State....Schools and institutions so established shall be free from sectarian control. No money shall be paid from public funds for the direct benefit of any religious or other private educational institution." (Alaska Constitution 2009, Art. VII, § 1). Due in part to the geography of Alaska, with many small villages inaccessible through means other than air travel:

...the Constitution of Alaska does not require uniformity in the school system. The phrase "open to all" appears in lieu of the customary uniformity requirements. It seems likely that the drafters of the constitution had in mind the vast expanses of Alaska, its many isolated small communities which lack effective transportation and communication systems, and the diverse culture and heritage of its citizens. Since educational programs may well require special design to confront the divergent problems presented, a uniformity requirement in the Alaska education system might well prove unworkable. Thus, in art. VII, § 1, the Alaska Constitution appears to contemplate different types of educational opportunities including boarding, correspondence and other programs without requiring that all options be available to all students. (*Hootch v. Alaska State-Operated Sch. Sys.*, 536 P.2d 793 (1975)).

Traditionally, Alaska offered correspondence courses to students as a means for delivering educational services, and many of these courses are now online (Watson, Gemin, Ryan, & Wicks, 2009). An interesting point to note; however, is that Alaska statute relative to charter schools seemingly precludes the existence of virtual schools, as according to Alaska Stat. § 14.03.255 (2009) charter schools:

...may be operated in an existing school district facility or in a facility within the school district that is not currently being used as a public school, if the chief

school administrator determines the facility meets requirements for health and safety applicable to public buildings or other public schools in the district (Sec. 14.03.255 (d)).

Section c of the statute requires a description and location of the building in which the school will be operated in the contract between the charter school and the local school board. While there appears to be a conflict between statute and practice, Alaska Administrative Code (AAC) 4 AAC 33.410 provides for the development and operation of virtual charter schools, and AAC 33.410 provides the guidelines for correspondence courses and for enrolling both part-time students and those who live outside the district where the school is located.

The Alaska Department of Education and Early Development in 2008 provided for standards of curriculum, textbooks, and instruction for online or correspondence schools aligned to the state standards as well as established standards for enrolling out-of-district and part-time students (4 AAC 33.410, Watson et al., 2009). The regulations further establish requirements for each student in an online environment to have an individual learning plan, monthly teacher-parent-student contact, and participate in statewide assessment programs with the school district providing for a physical location in which students may test (4 AAC 33.410, 4 AAC 33.421). Virtual charter schools may limit enrollment periods but may not exclude students with disabilities from participating although students may only be counted as 1.0 full-time equivalent regardless of program category (4 AAC 33.430, 4 AAC 33.432). Nothing in Alaska statute or administrative code precludes virtual charter schools from operating as home schools (Mead, 2003).

House Bill No. 197, introduced by Representative Keller in March 2009, provided for open enrollment virtual charter schools in Alaska, a funding formula adjustment to assist smaller charter schools, and an adjustment in the reporting of part time students in such programs (HB 197). The proposed bill also maintained the requirement for an individual learning plan, and added language such that the school may contract with outside agencies to provide equipment and/or support for the program. Although the bill did not pass in the 2009 legislative session, it "...is expected to be re-introduced in the next session." (Watson et al., 2009).

Alaska Case Law

None

Alaska Virtual Charter Governance

The authorization of virtual charter schools in Alaska is left to the local school boards, with the state Board of Education and Early Development providing the final approval, and only 60 charter schools may operate at any given time in the state (AS 14.03.250). Alaska statute does not address the issue of private schools converting to charter or virtual charter status, although section 14.03.255(c) (13) states "...the charter school will comply with all state and federal requirements for receipt and use of public money." (AS 14.03.255).

Arizona Statutes and Case Law

Arizona Statutes

Arizona Revised Statute (A.R.S.) § 15-181 (2010) provides for the establishment of charter schools, while the establishment of virtual charter schools is permitted through A.R.S. § 15-808. Arizona statute provides for full- and part-time online learning through either state-selected public schools or charter schools identified by the state board governing charter schools. Vanourek (2006) indicates in Arizona, the Arizona State Board for Charter Schools “...oversees 7 virtual charter schools under the state’s TAPBI (technology-assisted project-based instruction) program...” (p.3) with an enrollment of approximately 2,000 students in 2006. Senate Bill 1422, first amended in 2003, provided for the creation of up to seven TAPBI virtual charter schools in Arizona, while there existed no caps for brick-and-mortar charter schools. TAPBI schools were required to adhere to a rigid set of criteria, including maintaining an individual log for each participant that delineated the time spent on instructional tasks each day. The log for each student was then utilized for enrollment calculations based on average daily attendance (Senate Bill 1422, 2003).

Omnibus Senate Bill 1196, passed in 2009, amended §15-808, changing the name from TAPBI schools to Arizona Online Instruction. Senate Bill 1196 required the removal of restrictions regarding the number of online traditional schools and the number of online charter schools, defined that students enrolled in online schools must be residents of the State of Arizona, and removed specific reporting requirements unique to online schools:

§15-808. Arizona Online Instruction shall be instituted to meet the needs of pupils in the information age. The state board of education shall select traditional public schools and the state board for charter schools shall sponsor charter schools to be online course providers or online schools.

With regard to attendance, the requirement for a daily log remained in statute, as it provides a record of student attendance that schools must use to determine average daily attendance pursuant to §15-901.

Senate Bill 1196 further defines the funding of online schools, part-time and full-time students, and the use of the average daily membership for such funding purposes:

§15-808(F). If a pupil is enrolled in a school district or charter school and also participates in Arizona Online Instruction, the sum of the average daily membership, which includes enrollment as prescribed in section 15-901, subsection A, paragraph 2, subdivisions (a) and (b) and daily attendance as prescribed in section 15-901, subsection A, paragraph 6, for that pupil in the school district or charter school and in Arizona Online Instruction shall not exceed 1.0. If the pupil is enrolled in a school district or a charter school and also participates in Arizona Online Instruction and the sum of the daily membership or daily attendance for that pupil is greater than 1.0, the sum shall be reduced to 1.0 and shall be apportioned between the school district or charter school and Arizona Online Instruction based on the percentage of total time that the pupil is enrolled or in attendance in the school district or charter school and Arizona Online Instruction. The uniform system of financial records shall include guidelines for the apportionment of the pupil enrollment and attendance as provided in this subsection.

A challenge for online schools not clearly delineated in many states' statutes is the calculation of absences and a clear description of what constitutes attendance.

Vanourek (2006) indicates "What constitutes 'attendance' in a virtual school – hours logged or lessons completed/mastered...is not always a straight-forward proposition, and virtual schooling creates opportunities for innovative thinking on how to restructure the relationship between time and learning." (p. 9). Arizona statute defines attendance during any time of the day or day of the week as meeting the requirements of section 15-901,

and further describes the use of the individual daily log to calculate average daily membership for funding purposes. It also provides for the academic year to mirror the fiscal year, allowing attendance in online schools any time between July 1 and June 30 to generate the average daily membership calculation:

§15-808(F). Pupils in Arizona Online Instruction do not incur absences for purposes of section 15-901 and may generate an average daily attendance of 1.0 for attendance hours during any hour of the day, during any day of the week and at any time between July 1 and June 30 of each fiscal year. For kindergarten programs and grades one through eight, average daily membership shall be calculated by dividing the instructional hours as reported in the daily log required in subsection e of this section by the applicable hourly requirements prescribed in section 15-901. For grades nine through twelve, average daily membership shall be calculated by dividing the instructional hours as reported in the daily log required in subsection e of this section by nine hundred. The average daily membership of a pupil who participates in online instruction shall not exceed 1.0. Average daily membership shall not be calculated on the one hundredth day of instruction for the purposes of this section.

The funding of online charter schools is another area not clearly outlined in many states' statutes. Anderson, Augenblick, DeCescre, and Conrad (2006) reported on the costs to run virtual schools and the funding formulas for the maintenance of these schools, identifying several variables inherent in the costs associated with such schools, including (a) governance structure of the school, (b) salaries of teachers and staff, (c) needs of the student population, (d) location of the program, whether in a home or in a school, (e) completion of courses, and (f) size of the school. Arizona statute section 15-808(f)(1) defines the funding for students enrolled full-time in Arizona Online Instruction as:

§15-808(1). Pupils who are enrolled full-time in Arizona Online Instruction shall be funded for online instruction at ninety-five per cent of the base support level that would be calculated for that pupil if that pupil were enrolled as a full-time student in a school district or charter school that does not participate in Arizona

Online Instruction. Additional assistance, capital outlay revenue limit and soft capital allocation limit shall be calculated in the same manner they would be calculated if the student were enrolled in a district or charter school that does not participate in Arizona Online Instruction. A pupil enrolled in Arizona Online Instruction shall be considered full time if the pupil's average instructional hours, as reported in the daily log required in subsection e of this section, exceed one hundred nineteen minutes for kindergarten programs, two hundred thirty-eight minutes for grades one through three, two hundred ninety-seven minutes for grades four through six, three hundred fifty-six minutes for grades seven and eight and three hundred minutes for grades nine through twelve.

The statute further designates a funding formula for students enrolled part-time in

Arizona Online Instruction:

§15-808(2). Pupils who are enrolled part-time in Arizona Online Instruction shall be funded for online instruction at eighty-five per cent of the base support level that would be calculated for that pupil if that pupil were enrolled as a part-time student in a school district or charter school that does not participate in Arizona Online Instruction. Additional assistance, capital outlay revenue limit and soft capital allocation limit shall be calculated in the same manner they would be calculated if the student were enrolled in a district or charter school that does not participate in Arizona Online Instruction. A pupil enrolled in Arizona Online Instruction shall be considered part time if the pupil's average instructional hours, as reported in the daily log required in subsection e of this section, are less than the hours required for a full-time pupil pursuant to paragraph 1 of this subsection.

The omnibus bill 1196 removed the requirement that 80% of the students in the online school shall be reported in membership in a public school the prior year, and further removed the restriction that kindergarten students must have siblings enrolled in the school in order to qualify (Awwad, 2009).

The funding formula and attendance calculations for Arizona Online Instruction provide a model unique in online schooling. Allowing attendance to run through the fiscal year, at any time of the day or week, provides students with the opportunity to tailor instruction to individual needs, while the funding formula provides the impetus for state schools managed and run by private companies to continue to grow. The Center for

Education Reform; however, reports that charter school funding in Arizona is not equitable in some cases as not all of the categories used to fund traditional brick and mortar schools are included in charter school funding (Race to the Top for Charter Schools, 2010a). Arizona statute provides for Full-Time Equivalent (FTE) funding to follow the student thus allowing for division of earned funds between the online school, a district brick and mortar school, or a district charter school, prorated by the amount of time the student spends in each school (Watson, et al., 2009).

Arizona Case Law

None.

Arizona Virtual Charter Governance

Arizona statute 15-183 (C) (2010) provides for virtual charter authorization through the district board of education, the state board of education, or the state board of education for charter schools and further provides for the school to contract with a public entity, private individual, or private company to provide educational services (A.R.S. 15-183 (B), 2010). The public or private entity that sponsors the charter retains authority for governance of the charter school. Finn and Hill (2006) describe authorizing of charter schools as "...the most neglected part of the charter school phenomenon in the early days." (p. 103). By the time of the creation of the first virtual charter school, states began paying attention to the governance and authorization of charter schools, with Arizona creating a "...statewide charter board whose authority in this area paralleled the state board of education." (Finn & Hill, 2006, p. 105). Although virtual charter schools in

Arizona may contract with the statewide charter board, there are also options that include the local governance of the school board. At the time of this writing, A.R.S. 15-808(C) provides for the development of a new annual reporting mechanism to the state to be presented to the legislature in November of each year.

Arkansas Statutes and Case Law

Arkansas Statutes

Arkansas charter school law, initially enacted in 1995, allowed for new charter schools and for the unlimited conversion of public schools to charter status. Act 2005 of the 85th Arkansas General Assembly authorized the increase in open-enrollment charters from 12 to 24; however, state funding was limited to charters in traditional brick and mortar settings (Arkansas General Assembly, 2005). Beginning with the 2007-2008 school year, Acts 2007, no.1420, § 38 removed the language limiting funding to only brick and mortar schools and further defined the maximum number of students served in “...an internet, long-distance or virtual technology open-enrollment charter school to the extent the maximum number of students does not exceed five hundred (500) students.” (A.C.A. § 6-23-503, 2009). Acts 2009, no. 1421, § 23 addressed the funding for virtual charter schools and district public schools that have previously served students now enrolled in virtual charter schools, stating:

(a) Regardless of any provision of any law to the contrary, no internet, long-distance or virtual technology open-enrollment charter school shall receive state funding for more than five hundred (500) students.

(b) Regardless of any provision of law to the contrary, no school district shall receive state funding for the 2009-2010 school year for those students who are

included in the district's average daily membership for the previous school year but who are attending any open-enrollment charter school that uses the internet, long distance, or virtual technology as the primary method of teaching. (A.C.A. § 6-23-503, 2009).

Act 1421 of 2007 effectively removed the previous provision that per-student funding would flow from the state to the district rather than from the state to the virtual charter school, allowing for funding to flow directly to virtual charter schools.

According to The Center for Education Reform's Race to the Top for Charter Schools (2010), Arkansas has the tenth weakest of the 40 states with charter laws. Kraft (2003) indicates weak charter laws share common characteristics, including a narrow definition of the types of entities that may open charter schools, limitations placed on the total number of charters that may open in the state, lack of an appeals process for denials of start-up charter applications, and typically receive less funding than their brick and mortar counterparts. Arkansas charter school law is considered weak due to the limitations on the number of charters that may open and the number of students who may participate in the virtual charter school. (Race to the Top for Charter Schools, 2010b). Saiger (2007) indicates caps on the number of charter schools that may enter the market limits parental choice, although placing caps on the number of charters in a given state initially may ensure "...the market is not...flooded with more new entrants than it can absorb, leading to widespread failures for want of enrollment." (p.18). In some states; however, the artificial limitations on the number of charters that may operate create a situation whereby the demand outpaces supply, leading to fewer choice options for parents (Saiger).

The Arkansas Department of Education developed a document governing distance learning in 2005. The purpose was to “...set reasonable guidelines for the implementation of the Arkansas Distance Learning Development Program, the Public School District and Charter School Distance Learning Program and the operation of distance learning in the public schools of Arkansas.” (Arkansas Department of Education, 2005, n.p.). The rules were promulgated pursuant to Arkansas Code Annotated §§ 6-47-201, 6-47-302 and Act 2325 of 2005. Three of the four focus areas of Act 2325 were directly related to student course needs and included (a) providing a model for utilizing highly qualified teachers, (b) providing students with enrichment course opportunities outside the standards set in the Standards for Accreditation of Arkansas Public Schools, and (c) providing increased course scheduling opportunities (Blankenbaker & Cougan, 2009). The initiation of the Arkansas Distance Learning Development Program served to meet the needs of the students in Arkansas, especially those who live in rural areas or whose schools do not offer specific enrichment courses.

The 2009 regular session of the 87th General Assembly of Arkansas enacted Act 1469 that amended distance learning. Arkansas Code §6-47-201(c) provides for schools to offer courses from providers located in states other than Arkansas given the course provider is approved by the department of education before the commencement of the distance learning course. All courses offered through out of state providers must still meet the Arkansas Department of Education course frameworks and must include, at a minimum, calculus, physics, Arkansas history, foreign languages, computer sciences, and technological courses. A.C.A § 6-47-404 (2009) provides for the distance learning

courses to be available for public, private, and home-schooled students in the State of Arkansas. A.C.A. § 6-47-406 (2009) delimits attendance of such students to those who live in the district in which the public or virtual charter school is located and who agree to participate in state tests required for the course in which the student is enrolled. The funding of private or home-schooled students is also addressed in A.C.A. § 6-47-406 (2009). Statute allows the public school district or charter school to receive one-sixth of the state funding for each course taught to a private or home-schooled student; however, no district or charter school may receive more than the equivalent of one average daily membership regardless of the number of courses taken over the specified amount.

The Distance Learning Coordinating Council was originally created in Act 1425 (2005) and amended in 2009. The purpose of A.C.A § 6-47-305 (2009) was to “...evaluate distance learning activities for kindergarten through grade twelve (K-12) education across the State of Arkansas and to determine whether distance learning activities are being fully utilized through a collaborative process that maximizes the utilization of the state’s technical and educational resources.” The primary purpose of the Council is to make recommendations to the Department of Education regarding:

- (1) Distance learning standards and rules;
- (2) Online distance learning curriculum;
- (3) Supplemental distance learning course material;
- (4) Coordination of distance learning services;
- (5) Methods for fostering collaborative processes by which distance learning content can be shared more effectively with and delivered to public schools;
- (6) Strategies for reducing the occurrences of isolated distance learning activities;
- (7) Options for spreading distance learning costs and increasing the value of shared distance learning services; and
- (8) Improving utilization of distance learning resources. (A.C.A § 6-47-305 (2009))

Arkansas Department of Education received a grant from the United States Department of Education to expand public school choice under *No Child Left Behind*, resulting in the 2003 launch of the Arkansas Virtual School, a public charter school serving all students in the state (“Arkansas Virtual School”, n.d.). Arizona statute does not expressly prohibit enrollment of home school or private school students, thus 51% of student enrollments come from those arenas, while 11% of the students have no prior public school experience, with the remainder coming from other public schools (“Arkansas Virtual School”). Hoff (2007) indicates the establishment of the school under the Voluntary Public School Choice program provided for most of the funding to flow to K¹², a for-profit educational management organization co-founded by William Bennett, the former Secretary of Education under Reagan’s second term in office. In 2007, the Arkansas school did not reapply for the grant, as it “...fulfilled the purpose of the federal grant program because it created new opportunities for students who might otherwise have been in low-performing schools...” (p.24). As of August 2007, the Arkansas Virtual Academy pays the K¹² company approximately \$5,700 in per-pupil state funds it receives as an open-enrollment statewide charter school (Hoff). Due to the steady funding source provided through the enrollment of 500 students in the academy, the need for a federal grant to maintain the operation of the school was no longer necessary.

Arkansas Case Law

In *Lake View School District v. Huckabee* (370 Ark. 1349; 257 S.W. 3rd 879 (2007)) the Supreme Court of Arkansas addressed the issue of funding education as the

state's first priority relative to the equal opportunity for all students to receive an adequate education. In 2002, the court held "...that public school funding was inadequate and that substantially equal educational opportunity was not being afforded to Arkansas students." In the opinion delivered in May 2007, the Masters indicated the constitutional requirement to "...ever maintain a general, suitable, and efficient system of free public schools..." (Arkansas Constitution) was addressed by the General Assembly. The establishment of the Arkansas Distance Learning Development Program provided for the access for all students to rigorous courses, including those not offered in a particular school district due in part to lack of qualified teachers.

Arkansas Virtual Charter Governance

The governance of Arkansas virtual charter schools is contingent upon the type of charter authorized. The superintendent of the school district provides governance for conversion virtual charter schools and for new virtual charter schools the chief operating officer of the charter is the governing authority.

California Statutes and Case Law

California Statutes

Article IX § 5 of the California Constitution provides "...for a system of common schools by which a free school shall be kept up and supported in each district at least six months in every year..." while Article XIII § 2 provides for students to "...have access to the learning tools of the 21st Century like computers and the Internet..." California Education Code § 47600 et seq., known as the Charter Schools Act of 1992, established

charter schools in California. Under this act charter schools are designated as public “school districts” pursuant to §§ 8 and 8.3 of Article XVI of the California Constitution. Charter schools may be housed in traditional brick and mortar settings, may provide a percentage of instruction online and face-to-face, and may provide independent study. California statute governs all non-classroom based instruction, including online charter schools and independent study programs. Senate Bill 740 (2001) “...prohibit[ed] charter schools from receiving any funding for nonclassroom-based instruction unless the State Board of Education (SBE) determines its eligibility for funding.” According to the California Department of Education (2009), the implementation of Senate Bill 740 for fiscal year 2010 requires charter school operators to request a funding rate per California Education Code (EC) sections 47612.5 and 47634.2 for charter schools that do not meet all of the conditions below:

- The charter school's pupils are engaged in educational activities required of those pupils, and the pupils are under the immediate supervision and control of an employee of the charter school who is authorized to provide instruction to the pupils.
- The charter school requires its pupils to be in attendance at the school site at least 80 percent of the instructional time required.
- The charter's school site is a facility that is used principally for classroom instruction (see below).
- At least 80 percent of the instructional time offered at the charter school is at the school site.

The definition of "at the school site" is satisfied if the facility in which the pupils receive instruction meets any of the following conditions, and is not at an individual's personal residence:

- The facility is owned, rented, or leased by the charter school and is used principally for classroom instruction.
- The facility is provided to the charter school by a school district pursuant to EC Section 47614 principally for classroom instruction.

- The facility is provided to the charter school free-of-charge and is principally used for classroom instruction pursuant to a written agreement. (Barkley)

Charter schools that meet the definition of nonclassroom-based instruction as outlined in Section 11963.5 of 5 CCR are those “...in which at least 80 percent of teaching and student interaction occurs via the Internet.” In order for a virtual charter school to receive funding, the school must meet specific performance indices outlined by the California Department of Education, including “...instructional expenditures are at least 85 percent of the overall school budget...[and] a substantial portion of these expenditures...are spent on technology that directly benefits students and teachers and results in improved student achievement.” Provisions of the code include the development of individualized learning plans for each student, the furnishing of a computer and all related peripherals for each student, and the offering of all special education services outlined in the student’s individualized education plan. According to Guarino, Zimmer, Krop, and Chau (2005):

...at least 50 percent of public revenues must be spent on certificated-staff salaries and benefits, and ...the pupil-teacher ratio must be equal to or lower than the pupil-teacher ratio in the largest school district in the county or counties in which the school operates. A school that fails to meet these criteria may receive substantial cuts in its funding. (p. xv).

While the intent of Senate Bill 740 was to increase “...the fiscal accountability of nonclassroom-based schools...the administrative burden placed on schools and on the state authorities has been considerable, and the link between some of SB 740s requirements and instructional quality has been weak.” (Guarino et al. p. xxi). Guarino et al. further define nonclassroom-based charter schools as “...publicly funded schools that

have been granted the flexibility to operate outside normal district control.” (p.1). In

California, nonclassroom-based instruction has a three-pronged definition:

homeschooling, where the parent teaches the child in the home, independent study, where the teacher, parent, and student create an individualized learning plan that is used for acceleration, drop-out prevention, and remediation, and distance learning, where students receive instruction online in either an asynchronous, or synchronous manner, or a combination of the two (Guarino et al., 2005; § 11963.5, 5 CCR) .

Huerta, González, and d’Entremont (2006) indicate “Cyber and home school charter schools have silently become a prominent part of the charter school movement.” (p. 103). The distinctions between cyber and home school charter schools, according to Huerta, González, and d’Entremont, include “...who delivers instruction, how it is delivered, and where it is delivered.” (2006, p.110). The primary difference is that in home school charters, parents provide the majority of the instruction, whereas in cyber charter schools instruction is delivered primarily online through a combination of synchronous and asynchronous means.

Section 78910.10 of the California Education Code created the California Virtual Campus, the purpose of which was to:

(A) To enrich formal and informal educational experiences and improve students' academic performance by supporting the development of highly engaging, research-based innovations in teaching and learning in K-12 public schools and the California Community Colleges, the California State University, and the University of California.

(B) To enhance the awareness of, and access to, highly engaging online courses of study, emphasizing courses of study that support a diverse and highly skilled science, technology, engineering, and mathematics workforce.

The California Virtual Campus was also created to provide development of twenty-first century skills and to provide a mechanism for collaboration among the state universities and public K-12 schools to “...support education research,...[and] research-based practices.” (§ 78910.10, EC). The statute further defines online instruction as “...technology-enabled online real time (synchronous) interaction between the instructor and the student, near time (asynchronous) interaction between the instructor and the student, or any combination thereof.” (§ 78910.10, EC). Section 78910.10(2)(i) further requires the development of online courses “...in partnership with local education agencies and the California Technology Assistance Project...” that are in compliance with *Americans with Disabilities Act* (P.L. 101-336).

California Case Law

The constitutionality of California charter schools was upheld in a California court of appeals in *Wilson v. State Board of Education* (75 Cal. App. 4th 1125; 89 Cal. Rptr. 2d 745), a case involving a challenge to the legal authority of the board of education to grant charters. The court held that the Charter School Act of 1992 did not violate Article IX, § 5 of the California Constitution, which provides for a state “...system of common schools...” and “...further held that the act brings charter schools within the constitutional system uniformity requirement by providing for uniformity in teacher requirements, program standards, and student assessments.” (75 Cal. App. 4th 1125; 89 Cal. Rptr. 2d 745). The court further held that “...the legislature had plenary power over

public schools and broad discretion to determine the types of programs and services which broadened the purposes of education.” (Cal. Const., art. IX, §§ 1 and 5).

The funding of online charter schools for students living outside the boundaries of the district in which the school chartered provides for questions regarding the Charter School Act of 1992. An Attorney General Opinion regarding funding answered the question of whether or not such schools may receive funding in AGO Opinion no. 06-201 (2006). The attorney general quoted *Sequoia Union High School Dist. v. Aurora Charter High School* (2003) (112 Cal. App. 4th 185, 189) to support online charter schools not qualifying for state funding if the student resides outside the boundary of the county in which the charter was granted. The AGO states that a charter school is “...normally required to operate within the boundaries of the chartering district...” under Education Code § 47605, subd. (a)(1)². According to § 51865, subd. (a), charter schools are permitted to provide instruction via the Internet, as an “...online charter school provides ‘distance learning’ and ‘computer-based education,’ which are forms of ‘nonclassroom-based instruction.” (§ 47612.5, subd. (d)(1). The AGO opined that “The State Board of Education...has complied with the Legislature’s mandate by adopting regulations governing the state funding of charter schools for their nonclassroom-based instruction, including distance learning and computer-based education.” Specifically, regulation 11963.5 authorized online charter schools to receive state funding provided in part that 80 percent of the teaching and learning occurs via the Internet and that admissions policies will not include the recruitment of a student population not reflective of the county served by the online charter school. The AGO acquiesced that although regulations specifically

governing online charter schools do not contain an explicit residency requirement, §§ 47612.5 and Reg. 51745 are “...generally applicable to all schools offering ‘independent study’ programs.” Finally, the AGO indicated “The Board’s regulations require online charter schools to comply with the restrictions and conditions placed upon independent study programs...that the pupils must reside in the charter school’s home county or in an adjacent county in order for the school to receive state funding for the pupils’ instruction.” (AGO 06-201, 2006).

California Virtual Charter Governance

Darling-Hammond and Montgomery (2008) provide insight into the governance of charter schools in California, stating “Although California policy also allows charters exemptions from many state rules, the local chartering board must monitor budgets, teacher qualifications, and achievement, and verify that a number of state and federal laws are met.” (p. 96). The provision of a seemingly high level of scrutiny for public charters in California, combined with the review process for local school boards acting as authorizers to review educational and financial plans, seems to assure that charters, and by extension, virtual charters, maintain fiscal and educational fidelity. Darling-Hammond and Montgomery indicate, “Despite its efforts to create public ownership through local authorization, California has had difficulty with fiscal monitoring...[as evidenced by]...a chain of independent study charter schools that for three years overcharged the state.” (p.97). HomeSmartKids, a California home school charter charged a management fee of 37.5 percent that resulted in a profit for the owners, a former principal and his wife, of

almost \$520,000 from the state revenue received to educate students. (Huerta, González, & d'Entremont, 2006; Asimov, 2001). Assembly Bill 1994, passed in 2002, provided for increased oversight into the financial operations of charter schools in California.

Assembly Bill 1137, passed in 2003, also increased the accountability of charter school governance, requiring authorizers, whether school districts or other agencies, to visit charter schools each year and must monitor fiscal solvency of the charters authorized.

California Education Code §§ 47605- 47608 requires as part of the application process for the school to delineate the governance structure of the school, including methods to ensure parental participation (§ 47605(D)). According to Huerta and González (2004), the governance of cyber charters rests with the teachers, the curriculum provider, and ultimately with the charter school board, charter authorizer, or the state agency that regulates charter schools.

Colorado Statutes and Case Law

Colorado Statutes

The Colorado Constitution, Article IX, § 2, provides for the establishment of public schools. According to Art. IX, § 2, “The general assembly shall, as soon as practicable, provide for the establishment and maintenance of a thorough and uniform system of free public schools throughout the state....” Charter schools are promulgated pursuant to Part 1 of the Colorado Revised Statutes (C.R.S.) Title 22, Article 30.5, known as the Charter Schools Act. Article 30.7-101 provides for both full- and part-time online programs and recognizes that “...the growth of online education is challenging existing

educational policy, administration, and oversight....” House Bill 02-1349, passed in 2002:

...provided for one hundred thirty-five (135) full-time student slots for students receiving their education predominantly online through a Colorado cyberschool via the world wide web. These student slots are only for Colorado students who, during the preceding school year, were enrolled after October 1 in the public or charter schools of Colorado school districts, were enrolled in private schools or were participating in nonpublic home-based education programs or in home instruction by licensed teachers.

House Bill 02-1349 further provided for minimum per-pupil funding for online students and provided the opportunity for an additional 500 students to take courses online. The growth of online opportunities for students not expressly prohibited in statute led to a proliferation of unregulated online opportunities. C.R.S. 22-30.5-103 (6)(a) provided the definition of “online pupil:” “For the 2008-2009 budget year, a child who receives educational services predominantly through an online program created pursuant to article 30.7 of this title [and] for the 2008-2009 budget year, and for each budget year thereafter, a child who received educational services predominantly through a multi-district program, as defined in section 22-30.7-102(6) created pursuant to article 30.7of this title.” Colorado statute is comprehensive in providing definitions for all types of online learning. C.R.S. 22-30.7-102 further defines learning centers, mentors, multi-district programs, on-line division, online learning expert, online program, and online pupil enrollment, providing references for districts in Colorado as a comprehensive resource.

In reference to recent legislation, and relevant to the discussion of the genesis of online charter law in Colorado is the definition of “learning center” in C.R.S. 22-30.7-102: “‘Learning Center’ means a facility in which a consistent group of students meets

more often than once per week under the supervision of a teacher or mentor for a significant portion of the school day for the purpose of participating in an on-line program.” The statute further defines what a “learning center” is not: “A group of parents and students meeting repeatedly, occasionally, and informally, even if facilitated by a school, shall not constitute a “learning center”, and a private home shall not be considered a “learning center” under any circumstances. The Colorado Code of Regulations, 1 CCR 301-71(2.10) (2010) defines an online program as a “...non-religious, non-sectarian full-time online education program or school authorized pursuant to § 22.30.7-101 C.R.S. et seq., that delivers a sequential program of synchronous or asynchronous instruction from a teacher to a student primarily through the use of technology via the Internet in a virtual or remote setting.”

The Code of Colorado Regulations (CCR) 1 CCR 301-71 provides for the State Board of Education to:

- (a) Establish quality standards for online programs;
- (b) Promoting online program student participation in statewide assessments;
- (c) Establishing criteria to be used by the Online Division in certifying Multi-District Online Programs;...

The establishment of the CCR relative to online schools came in response to a 2006 Report of the State Auditor regarding the audit of online education in which the poor performance of online students on state assessments was revealed, accreditation processes were not utilized effectively, and state statute and federal law relative to teacher certification was not in compliance. At the time of the audit, there were approximately 18 online schools operated by 14 districts in Colorado, serving

approximately 6,200 students (Report of State Auditor, 2006, p.1). C.R.S. 22-30.7-

101(3)(a) and (b), indicates:

...the state should: (a) Avail itself of enhanced technological services, which are available as a result of technological advances, to serve the educational needs of the citizens of the state more appropriately; and (b) Take immediate action to ensure quality and accountability in the on-line educational programs offered within the state.

Due in part to the results of the audit, two separate groups were formed to study the audit and make recommendations for the legislature. The audit report further recommended the Department of Education should analyze performance data of online students to inform instructional decisions, develop policies relative to the underperformance of students in online schools, and strengthen policies as they relate to the curricular oversight of online schools. As previous oversight was weak, the audit report recommended strict adherence to state and federal requirements for teacher certification and accreditation of online schools.

During the course of the audit, it was determined that the disbursement of public funds for online programs did not occur in accordance with statute. The Hope Online Learning Academy Co-Op (Hope Academy), chartered by the Vilas school district, contracted with various community organizations, including private schools and churches, for the purposes of providing physical buildings, or learning centers, for students to access the online learning curriculum (Report of State Auditor, 2006). The Colorado Constitution, Article IX, § 7 disallows public funds to be used for the purpose of supporting private, religious education. The Hope Academy contracted with private religious schools, and the students in fact participated in classes of a religious nature, thus

the payment of public funding to the religious institutions for the purposes of providing a physical location for the students to access online curriculum was determined to be a violation of the Constitution of Colorado.

The Code of Colorado Regulations 1 CCR 301-41 requires all charter schools to “...be in compliance with the teacher certification; licensure; teacher employment...” in accordance with C.R.S. articles 60 to 64 of Title 22. Colorado Revised Statute (C.R.S.) 22-2-117 also provides for criminal history checks for employees of schools, including online schools and learning centers. The Hope Academy did not have the proper documentation to assure that all mentors and teachers were properly screened. C.R.S. 22-30.7-102 (2009) provides for the definition of a mentor as used in learning centers: “‘Mentor’ means an individual who is responsible for providing supervision at a learning center. A ‘mentor’ shall not be required to be a licensed teacher but shall, at a minimum, satisfy the requirements specified for a paraprofessional as such requirements are described in the federal ‘No Child Left Behind Act of 2001’, 20 U.S.C. sec. 6301 et seq.” The critical aspect of the definitions in the Colorado statute regarding online programs is that few states have carefully defined the tenets of online learning. Colorado, through perhaps the audit of online programs that brought to light deficiencies in monitoring and accountability, has taken several critical steps in bringing online programs into compliance with state and federal law.

The audit resulted in the creation in 2007 of the Trujillo Commission and a task force formed by the State Board of Education to examine the results of the audit and make recommendations for legislators (Watson et al., 2009). The Colorado State Board

of Education Online Education Task Force created an interim report in 2007 in which it was recommended that the legislature should:

- 1) Consider multiple meanings of the term “at-risk,” including students who are behind academically, when comparing online student outcomes to students in physical schools and when evaluating the efficacy of schools in general;
- 2) The State Board of Education rather than the legislature should define “complete educational program,” do so in a way that allows for innovation, and consider its application to online schools and learning centers;
- 3) Clarify the application of rules and requirements for online learning centers in a way that does not discourage online schools from using learning centers to serve at-risk students;
- 4) Encourage the sharing, documenting, and clarifying of performance indicators;
- 5) Clarify the roles and responsibilities of online educators;
- 6) Encourage state and/or district cooperation for the CSAP testing for online students;
- 7) Examine options for a state inter-district entity for online school accountability such as CSI, the Colorado Department of Education, or BOCES;
- 8) Remove the current funding restriction that mandates enrollment in a public school in at least one semester of the previous year for online students;
- 9) Provide the state PPR average for online students or a consistent and reasonable amount of state funds for online student regardless of the local share capacity; and
- 10) The State Board of Education should encourage partnering and collaboration between districts with the online option and those without their own online options so that funding can be negotiated between districts or could be taken from the district of residence. (Spence & Polis, 2007, p.22).

The final analysis of the Task Force concluded that online education provides an instructional delivery method for students who might otherwise drop out of school. While it is clear that online learning is not for all students, the Task Force concluded that online learning is an innovation that requires forward thinking and legislation that allows for careful consideration of the challenges that arise from new forms of public schooling.

The recommendations for the Colorado legislature to tighten regulations, define programs, roles, and responsibilities, while avoiding enacting policy or legislation that

stifles the creativity and innovation has resulted in online charter school law that is comprehensive in scope.

The Trujillo Commission on Online Education: Final Finding and Recommendations, presented in February 2007, was also commissioned in response to the Report of the State Auditor. As the Online Education Task Force identified, the audit report focused on the Hope Academy, not because it was the only school identified as violating policy, but because the oversight issues with the Hope Academy were symptomatic of larger issues with legislation, including the initial statute governing online programs, C.R.S. 22-33-104.6, which has since been repealed. Colorado Revised Statute 22-33-104.6, according to the Trujillo Report, "...does not address the use of online learning in a designated physical location provided by the school, the use of technology within traditional classrooms, or the combination of traditional classroom learning with online learning." (p.4). The recommendations for legislators set forth in the Trujillo Commission Report include: "The state should engage in a longer-term and ongoing study about online education to ensure that complex policy issues are addressed in a careful, inclusive and transparent manner." (p.6). The findings of the Trujillo Commission suggest legislators should carefully analyze national standards for best practices in online education, and should consider carefully why students choose online learning opportunities and how such choices affect funding for schools, especially when the student participates in a blended model, accessing both online and face-to-face courses. The Trujillo Commission further recommended that the "...Legislature should create a new Online Division within the Colorado Department of Education to support

online education and quality oversight of online programs.” (p.6). Due to what was identified as “...ineffective oversight by the CDE...” (p. 7), the Commission’s recommendation for more strict oversight resulted in C.R.S. 22-30.7-103, which created the Division of On-line Learning. The duties of the Division of On-line Learning, as outlined in C.S.R. 22-30.7-103, include:

- (a) To consult with the state board in its creation of quality standards pursuant to section 22-30.7-105 for use by authorizers in preparing and submitting annual reports to the on-line division pursuant to section 22-30.7-109;
- (b) To evaluate applications for certification of multi-district programs using criteria adopted by rules promulgated by the state board pursuant to section 22-30.7-106 and to recommend that the state board grant or deny certification based upon the criteria;
- (c) To establish a review process and timeline whereby the on-line division shall review a multi-district program two years after its initial certification pursuant to section 22-30.7-106, which review process shall include input from stakeholders, including but not limited to input from students, parents, and school districts in which a learning center of the multi-district program is located;
- (d) To recommend to the state board on or before September 1, 2007, a process, timeline, and standard MOU form for use by multi-district programs and school districts in crafting memoranda of understanding pursuant to section 22-30.7-111 regarding the placement of learning centers within the boundaries of a school district. At a minimum, the standard MOU form shall include the information specified in section 22-30.7-111 (1) (b).
- (e) To establish annual reporting requirements for on-line programs pursuant to the provisions of section 22-30.7-109;
- (f) To evaluate reports submitted by on-line programs pursuant to section 22-30.7-109, as such evaluation is described in section 22-30.7-110;
- (g) To publish annual reports concerning on-line programs and supplemental programs and other information about on-line learning in a clearly identifiable section on the department's web site;
- (h) To compile the reports submitted by authorizers and school districts pursuant to section 22-30.7-109 and prepare a summary report to be submitted on or before February 1, 2009, and on or before February 1 each year thereafter, to the state board and the education committees of the house of representatives and the senate, or any successor committees;

- (i) To establish a process and timeline for documenting and tracking complaints concerning on-line programs;
- (j) To collect resources to support the implementation of quality on-line programs and make the resources available to on-line programs upon request; and
- (k) To use the final report of the Trujillo commission on on-line education, which report was released February 15, 2007, as a basis for the recommendations, criteria, standards, reporting requirements, and rules required pursuant to this subsection (3).

The comprehensive nature of the duties of the Division provides the impetus for careful oversight of all online learning opportunities in Colorado.

Also addressed in the recommendations of the Commission that resulted in legislation was the funding of online programs. Funding is addressed in the Colorado Constitution Art. IX, § 2, which states, in part, "...wherein all residents of the state, between the ages of six and twenty-one years, may be educated gratuitously." The Commission recommended removal of the prohibition of funding for students who were not in public schools the year prior, stating "Online education increases educational opportunities and to deny online public education to some students in the state is not consistent with the Commission's vision or with the Colorado Constitution." (Trujillo Commission, 2007, p. 12). The resultant statute, C.R.S. 22-54-103, provides for the funding of students enrolled online programs. According to Watson et al. (2009), funding for online charter schools is based on:

Per-pupil revenue (PPR), and FTE funding model that sets a minimum level of funding and is adjusted upward based on a number of factors for brick-and-mortar districts, remains at the state minimum for online students. Funding is limited to 1.0 FTE per student and may be split in half but into smaller units. (p.125).

As a result of the recommendations provided in both the Online Education Task Force's and the Trujillo Commission's reports, Colorado statute was revised to reflect updated information relative to oversight, funding, accountability, and accreditation. The current Colorado Revised Statutes provide for the definitions of online programs, both full-and part-time, and the responsibility of the authorizers of online charter schools for the fiscal and other oversight of the school.

Colorado Case Law

The case of *Villanueva v. Carere* (85 F.3d 481; 1996 U.S. App. LEXIS 13254) consisted of Hispanic parents who brought court action alleging that the closing of two Pueblo public schools and the opening of a charter school, pursuant to C.R.S. §§ 22-30.5-101 to 114, "...deprived them of their Fourteenth Amendment right to equal protection of the laws and of those rights guaranteed by Title VI of the Civil Rights Act of 1964." (42 U.S.C. §§ 2000d to 2000d-4a). At issue was whether or not the splitting of the Pueblo school district into eight regions for the purposes of the charter school, Pueblo School for Arts and Sciences (PSAS), to "...ensure geographic and ethnic diversity..." was a violation of the rights of the students. PSAS proposed to develop a program to address the needs of "at risk" and minority students under C.R.S. § 22-30.5-103(1). To achieve the purpose of the proposed charter school, two other schools were closed, with students previously attending the schools transferred to other schools. The court held that the school board, in closing the two schools, did not discriminate against Hispanic parents. The United States Court of Appeals for the Tenth Circuit further held that the "...Parents

had failed to demonstrate that then school closures would have discriminatory impact on Hispanic students...” The district court’s denial of permanent injunction was affirmed. The application of the *Villanueva* case to online schools is germane in that Colorado statute for both brick and mortar charter schools and online charter schools, pursuant to the Colorado Charter Schools Act, C.R.S. §§ 22-30.5-101 to -114 requires of charter schools “...that enrollment must be open to any child who resides within the school district and that enrollment decisions shall be made in a nondiscriminatory manner.” (C.S.R. § 22-30.5-104(3)).

Colorado Virtual Charter Governance

Colorado virtual charter schools are authorized pursuant to C.R.S. § 22-30.7-102. Authorizers include “ ...a school district, any group of two or more school districts, a board of cooperative services created pursuant to section 22-5-104, or the state Charter School Institute established pursuant to section 22-30.5-503.” Colorado Code of Regulations 1 CCR 301-71 also requires the development of policy for each online program relative to program governance. The Charter Schools Act, C.R.S. § 22-30.5-104 provides for a charter school to be administered and governed according to the agreement between the charter schools and the chartering board of education. According to Hill and Lake (2006), Colorado charter schools do not have to be governed by a nonprofit board.

Idaho Statutes and Case Law

Idaho Statutes

The Idaho Constitution, Article IX, § 1 provides for the legislature to “...establish and maintain a general, uniform and thorough system of public, free common schools.” Idaho’s Public Charter Schools Act of 1998 provided for the development of charter schools, which initially permitted six new charter schools per year. Idaho Code § 33-5203 does not include public virtual charter schools which are approved by the public charter school commission. Section 33-5203 (2)(b) of Idaho Code limits the authorization of public charters “...physically located within any one (1) school district in any one (1) school year...” to not more than one new school. Ballou, Teasley, and Zeidner (2006) indicate under the original charter school act, “...no district can add more than one new charter school each year and no district can convert to an all charter district.” (p.3). Pursuant to Idaho Code Title 33, Chapter 52, charter schools may not be operated by for-profit companies and are “...organized and managed under the Idaho non-profit corporation act.” While the Idaho code § 33-5203(4)(b) does not permit charters to be operated by for-profit entities, it also contains language such that “...nothing herein shall prevent the board of directors of a public charter school from legally contracting with for-profit entities for the provision of products or services that aid in the operation of the school.”

The Idaho Joint Legislative Oversight Committee in 2008 commissioned the Office of Performance Evaluations to develop a report on virtual school operations. The committee found that statutory regulations and definitions as of 2008 “...relating to

virtual schools did not provide an adequate framework for schools to operate, resulting in wide variations among schools.” (Virtual School Operations, p.1). Resultant legislation provided for petitions for new virtual charter schools that “...must contain information specifying, among other things, the role of the teacher, how the teacher and student will have direct interaction, and how instruction will be delivered to the student.” (p.1).

House Bill 303, enacted in 2009, provides for “...school districts [to] offer virtual school instruction and a blend of virtual and traditional instruction and to provide for the counting and reporting of average daily attendance.” According to § 33-5202A, amended in 2008, “‘Virtual school’ means a school that delivers a full-time, sequential program of synchronous and/or asynchronous instruction primarily through the use of technology via the Internet in a distributed environment. Schools classified as virtual must have an online component to their school with online lessons and tools for student and data management.” The legislative intent of § 33-5202 is, through the authorizing of public charter schools, to create opportunities for parents, community members, or teachers to utilize innovative methods of teaching and learning, such as virtual learning, to improve student achievement.

Section 33-100(f)(4) of the Idaho Code permits districts to use up to five percent of the funding for positions to offset the costs for teachers to provide both virtual courses and virtual dual enrollment courses without impacting the number of positions funded. Section 33-1619 provides for districts to “...count and report the average daily attendance of the program’s students in the manner prescribed in section 33-5208(8)(b), Idaho Code.” In school districts where a combination of virtual and traditional instruction is

offered, the district may base average daily attendance for funding purposes “...upon either the actual hours of attendance in the public virtual school on a flexible schedule, or the percentage of coursework completed, whichever is more advantageous to the school up to the maximum of one (1) full-time equivalent student.” If the virtual charter school has been designated as a local education agency (LEA), Idaho Code § 33-5203(7) provides for all federal funds to be distributed to the virtual charter school. The other option for districts offering a blended model of instruction is to count the student’s average daily attendance in the same manner as a traditional brick-and-mortar school. In either case, the average daily attendance of a student participating in a virtual or a blended model of instruction may not exceed one FTE.

Absent from many state statutes governing virtual charter schools is mention of how the schools will comply with regulations promulgated pursuant to IDEA. Idaho Code § 33-5205(3)(q); however, addresses the issue of access for students with disabilities, as virtual charter schools must delineate “The manner by which special education services will be provided to students with disabilities who are eligible pursuant to the federal individuals with disabilities education act [sic], including disciplinary procedures for these students.” (*Individuals with Disabilities Education Act*, 20 U.S.C.S. § 1400 et seq.). Regardless of disability and services delineated on the student’s Individual Education Plan (IEP), students participating in a virtual charter school programs are funded at the basic level of one FTE. Equal access to virtual charter programs for all students is also discussed in § 33-5205, requiring virtual charter schools to provide a method for ensuring that all students will be afforded the necessary computer

hardware, software, and Internet connectivity in order to successfully participate in virtual coursework.

Idaho Case Law

Although there is no relevant case law in Idaho pertaining to virtual charter schools, a 1986 attorney general opinion regarding the constitutionality of school districts “...aiding any non-profit corporation...” (AGO 86-13, 1986) raises the question of whether or not school districts may provide oversight of a charter school. Pursuant to Idaho Code Title 33, Chapter 52, charter schools are managed under the Idaho Nonprofit Corporation Act. AGO Opinion no. 86-13 (1986) to the Secretary of State indicates “School districts are constitutionally prohibited from creating or aiding any non-profit corporation, and are not statutorily authorized to create public corporations.” The question Ford (2006) raises regarding AGO 86-13(1986) is “Charters are non-profit corporations. Is the oversight of a charter school by a school district ‘aiding’ a nonprofit corporation?” (p. 15). Hill and Lake (2006) argue the only method for ensuring fiscal oversight, accountability to parents, students, and community, and curricular and instructional fidelity “...is to strengthen the external governance arrangements by which designated government agencies approve and oversee charter schools.” (p.16).

Idaho Virtual Charter Governance

Charter schools in Idaho may be “...authorized in one of three ways: through the local school board, by the State Charter School Commission, or by appeal to the State Board of Education.” (Ballou, Teasley, & Zeidner, 2006, p.3). Idaho Code § 33-5202

defines “Authorized chartering entity” as “...either the local board of trustees of a school district in this state, or the public charter school commission pursuant to the provisions of this chapter.” According to the National Alliance for Public Charter Schools; however, virtual charter school applications in Idaho must “...be submitted to the state commission.”(2009). According to Ford (2006), the entity that authorizes the virtual charter has oversight over the charter school governing board, which has oversight over the school administration of the charter school, which has oversight over the school staff. Authorizers are responsible for assuring that charter schools comply with education laws of Idaho. Section 33-5202 of the Idaho code established the Public Charter School Commission, which now oversees the authorizing of all virtual charter schools for the state; as such, schools “...serve the whole state rather than a single district.” (p.8).

Concerns exist with the governance structure of virtual charter schools in Idaho and include inadequate oversight, lack of accountability to the local populace, and lack of resources for oversight activities (Ford, 2006). Due to the Public Charter School Commission acting as authorizers, and the students for the state’s virtual charter schools residing in various districts, the potential for little oversight and little accountability exists. Governing boards of virtual charter schools in Idaho are responsible for staffing decisions, instructional design and curricular resources, financial stability, and exceptional education services (Ford).

Illinois Statutes and Case Law

Illinois Statutes

Illinois first enacted charter school legislation in 1996, with the Charter Schools Law (§ 105 ILCS 5/27A-1). Illinois statute 105 ILCS 5/27A-5 defines a charter school as a “...public, nonsectarian, nonreligious, non-home based...non-profit school. A charter school shall be organized and operated as a nonprofit corporation or other discrete, legal, nonprofit entity authorized under the laws of the State of Illinois.” According to 105 ILCS 5/27A-2, it is the intent of the General Assembly “To create a legitimate avenue for parents, teachers, and community members to take responsible risks and create new, innovative, and more flexible ways of educating children within the public school system.” Pursuant to Article X, § 1 (2010) of the Constitution of Illinois provides “...for an efficient system of high quality public educational institutions and services. Education in public schools through the secondary level shall be free.”

Charter school caps for the initial Charter Schools Law were set at 120, with not more than 70 charter schools permitted in one city with a population in excess of 500,000 and not more than 45 charter schools permitted to operate at any one time in the rest of the state (§ 105 ILCS 5/27A-4). The 2003 amendment allowed up to 60 charter schools to operate in the rest of the state. According to the Illinois Policy Institute (2008), “Since Illinois charter school law was passed in 1996, state lawmakers have maintained a series of artificial and unnecessary caps on the total number of charter schools permitted to open in communities throughout Illinois.” (n.p.). The Center for Education Reform suggests charter schools in Illinois are typically a Chicago movement, with “...downstate

school boards...hostile...” (Race to The Top for Charter Schools, 2010, n.p.). Limited local autonomy and inequitable funding formulas serve to further weaken the charter school law in Illinois.

House Bill 2448 (2009) amended the School Code through the addition of § 10-29(a), which provides for remote educational programs, defined as: “...an educational program delivered to students in the home or other location outside of a school building...” In order to participate in Illinois remote learning, the school district and the parent must determine that a remote learning environment will best serve the student’s needs, must provide for a process to ensure students with disabilities receive approval to participate from the IEP team, and must provide a process for calculating clock hours of student participation in remote learning. Section 6 requires “Students participating in a remote educational program must be enrolled in a school district attendance center pursuant to the school district’s enrollment policy or policies...[and] must be tested as part of all assessments administered by the local school district...” Enrollment in the attendance center addresses the statutory requirement that charter schools not be home-based (Watson, et a., 2009). Illinois statute also governs the inclusion of the student in “...adequate yearly progress and other accountability determinations for the school district and attendance center under State and federal law.” (§ 105 ILCS 5/10-29(6)). A limitation of this law is evident in that a student may only participate in remote learning after it is determined that it is the best educational placement for the student. The further requirement that the term of the student’s participation in the remote program may not exceed 12 months unless specific conditions are met precludes this legislation from

encouraging the development of multi-district virtual charter schools (Watson, et al., 2009).

During the current legislative session, General Assembly 96, House Bill 5168 created the Illinois Virtual School Act, which allows for the development of a statewide virtual school program for students in grades kindergarten through 12. Although current statute requires remote or virtual learning to occur in non-home-based settings, House Bill 5168 provides for students who participate in home or public school to access the Illinois Virtual School; however, private school students are not expressly mentioned in the bill. Section 25 addresses the access and equity of courses offered by Illinois Virtual school, indicating “...the Illinois Virtual School shall establish policies and practices that are explicitly intended to serve those students not currently receiving access to such offerings. Fees for courses... may be charged to schools and home-schooled families on a per enrollment basis to cover costs directly associated with the offering of online courses and the providing of online curriculum to Illinois schools.” (HB 5168, §10).

Funding for Illinois remote learning programs is addressed in 105 ILCS 5/18-8.05. Section 18-8.05 provides for funding for participation to be awarded only on specific days of student attendance pursuant to § 10-19. House Bill 4711 (2010) amends the School Code and provides for district noncompliance with mandates that do not carry a separate appropriation providing for funding of the mandate. As of February 17, 2010, HB 4711 was placed on the calendar for a second reading.

A 2003 Attorney General Opinion regarding the adequacy of public school funding answered questions relating to the constitutional requirement to provide a

“...minimally adequate education...” and “...an efficient system of high quality public educational institutions and services...[that] shall be free.”(Ill. Const. Art. X, § 1). In the Opinion rendered by Lisa Madigan, it is discussed that the level of per pupil funding varies drastically from district to district and that “...property tax rates levied for educational purposes in Illinois range from less than 1.00% in some communities to over 8.00% elsewhere.” She further opines that in an analysis of Illinois Supreme Court decisions, it has been affirmed that:

...the Illinois Constitution does not create an enforceable right to a specific level of funding by the State or guarantee that every child in Illinois will receive the same quality education. The Court has repeatedly held that it is the province of the General Assembly, and not the courts, to determine the method of providing funds and the level of funding to be contributed by the State to satisfy the requirement to provide an adequate public school education. (2003 Ill. AG Lexis 4).

Illinois Case Law

The case of the *State of Illinois v. Chicago Virtual Charter School* (2006) was brought pursuant to 105 ILCS 5/27A-5, which requires that charter schools operate as “...public, nonsectarian, nonreligious, non-home based...non-profit school[s].” The complaint asserts that the Chicago Virtual Charter School “...is premised upon a ‘home-based’ curriculum...” and improperly counts students in attendance for the provision of procuring General State Aid (*State of Illinois v. Chicago Virtual Charter School*, 2006). According to Watson et al. (2009), the lawsuit was dismissed in June 2009 with Judge Riley of the Circuit Court of Cook County ruling “...CVCS was not home-based...[and]

was not required to meet the definition of direct supervision specified in Illinois school code.” (p. 93).

Illinois Virtual Charter School Governance

Illinois statute § 105 ILCS 5/27A-5(c) provides for the governance of Illinois charter schools, stating: “A charter school shall be administered and governed by its board of directors or other governing body in the manner provided in its charter. The governing body of a charter school shall be subject to the Freedom of Information Act [5 ILCS 140/1 et seq.] and the Open Meetings Act [5 ILCS 120/1 et seq.]” A non-profit board consisting of community leaders governs the Chicago Virtual Charter School, which offers grades kindergarten through 11 and was created in 2006. At this time, the Chicago Virtual Charter School, serving grades kindergarten through 11, is the only virtual charter school in the State of Illinois.

Indiana Statutes and Case Law

Indiana Statutes

Article 8, section 1 of the Indiana Constitution provides “...for a general and uniform system of Common Schools, wherein tuition shall be without charge, and equally open to all.” Indiana Code Annotated § 20-24-7-13 (2009) created the virtual charter school pilot program and defines a virtual charter school as that which “...provides for the delivery of more than fifty percent (50%) of instruction to students through: (1) virtual distance learning; (2) online technologies; or (3) computer based instruction.” The pilot program, known as the Virtual Pilot School, provides for funding for “...a statewide

total of up to two hundred (200) students who attend virtual charter schools in the school year ending in 2010 and five hundred (500) students who attend virtual charter schools in the school year ending in 2011.” The statute further provides for the Virtual Pilot School to focus on students for whom traditional brick and mortar public school settings are not appropriate alternatives, such as for children with health issues that preclude them from attending traditional schools.

Charter schools, under § 20-24-8-2, may not operate out of a private residence or provide home based instruction, although the language in the same section does not prohibit charter schools from offering a portion of instruction online through Internet connections provided there is adherence to all requirements set forth in Indiana State Board policy regarding use of computers and online instruction. The section of the statute relative to charter schools and online courses was enacted in 2005, which grants charter schools the ability to offer some courses online. The Hoosier Academy, a public charter school, provides for a blended approach to virtual learning in order to meet the tenets of the statute prohibiting home based instruction. Opened in 2008 and authorized by Ball State University, the Hoosier Academy delivers forty-nine percent of the instruction online and fifty-one percent in a traditional brick and mortar face-to-face environment where students meet with teachers at a physical location two days per week and was thus eligible for funding under Indiana charter school statutes.(Watson, 2008; Watson et al., 2009; Holstead, Spradlin, & Plucker, 2008)). The Indiana Virtual Charter School and the Indiana Connections Academy were also authorized by Ball State University in 2007; however, “...the funding for these two cyber charter schools, which would have come

through the charter school funding system already established by the state, was rejected in 2007 by the Indiana General Assembly during budget deliberations...the legislature placed a two year moratorium on funding for virtual charter schools.” (p.7). Rapp, Eckes, and Plucker (2006) indicate Indiana charter schools are permitted to enroll students across district lines, although many cyber charter school students were previously homeschooled “...and therefore not previously covered by public dollars.” (p. 2). The Indiana statute regarding these students is not entirely clear, as it does not expressly forbid home schooled students from participating; rather, it disallows completely home based instruction.

The funding for the Virtual Pilot Program includes eighty percent of the state’s basic allocation and in order to receive funding, at least seventy-five percent of the students enrolled in any given year must have been in membership for the previous school year. According to Watson, et al., (2009), “From 2007-009, legislation denied funding to virtual charter schools that offered more than 50% of instruction online. That legislation expired in June 2009, and virtual charters are now governed by Indiana Code 20-24-7-13.” (p. 95).

Indiana Case Law

None.

Indiana Virtual Charter School Governance

Indiana charter school statutes do not expressly define what constitutes a charter other than charters must be nonsectarian and nonreligious. Sections 20-24-3-13 (2009) through 20-24-3-16 defines sponsorship arrangements of charters, including virtual

charters. Statute allows for universities and mayors of consolidated cities to sponsor charters but § 20-24-3-2(2009) expressly prohibits sponsors from granting charters to for-profit entities. According to § 20-29-2-10, the definition of the governing body of a charter school is:

- (1) a township trustee and the township board of a school township;
- (2) a county board of education;
- (3) a board of school commissioners;
- (4) a metropolitan board of education;
- (5) a board of trustees;
- (6) any other board or commission charged by law with the responsibility of administering the affairs of a school, corporation; or
- (7) the body that administers a charter school established under IC 20-24.

Kansas Statutes and Case Law

Kansas Statutes

The Kansas Virtual School Act (K.S.A. 72-3711 (2009)) defines virtual schools as:

...any school or educational program that: (1) Is offered for credit; (2) uses distance-learning technologies which predominately use internet-based methods to deliver instruction; (3) involves instruction that occurs asynchronously with the teacher and pupil in separate locations; (4) requires the pupil to make academic progress toward the next grade level and matriculation from kindergarten through high school graduation; (5) requires the pupil to demonstrate competence in subject matter for each class or subject in which the pupil is enrolled as part of the virtual school; and (6) requires age-appropriate pupils to complete state assessment tests.

Section 72-1903 establishes charter schools and defines such as “...a separate and distinct school...[that] may be maintained in a separate facility or an existing school facility...”

Nothing in Kansas statute expressly permits or forbids establishment of virtual charter schools. According to a statewide audit of virtual programs conducted in 2007, districts

in Kansas may run either "...a 'virtual program' within one of their existing schools, or as a 'charter school' – a new school approved by the local school board that must be accredited separately by the State." (School District Performance Audit Report, p.3).

Section 72-3715 establishes a virtual school fund for the purposes of providing aid to Kansas district virtual schools and requires that in order to be counted in full-time membership, students must be present in the virtual setting on specific dates certain during the full-time equivalent count periods. Student usage of the online learning management system through login records and an activity log may also be counted as meeting the requirements of compulsory attendance. Students who participate in both online and traditional schooling receive no more than the one full-time equivalent funding and the traditional school is given priority in funding over the virtual school. The funding formula for virtual charter schools does not preclude home schooled or private schooled students from participating in virtual charters; furthermore, virtual charters may draw students from across district lines.

The Kansas Counting Kids (Kansas Individual Data on Students) Handbook (2009) provides guidance for districts regarding counting students for full-time equivalent purposes. The Kansas Counting Kids Handbook defines a virtual student as one who "...is enrolled in virtual course(s) and accesses the course materials primarily through the Internet from any location outside the district's school building. The student is not required to be physically present in a classroom for all or part of a course." (p.25). According to the School District Performance Audit of 2007, although Kansas State Board of Education provides for tracking of virtual charter schools, "Kansas' actual

oversight of virtual schools is weak, because the Department often hasn't carried out the policies it has established.” (p. 17). One policy oversight identified in the audit includes lack of tracking of students who live outside the State of Kansas actually receiving funding for participating in virtual charter schools in Kansas, although section 72-3715 (e) precludes students who are not residents of the state of Kansas to be “...counted in the full-time equivalent enrollment of the virtual school.”

Senate Bill 669, enacted in 2008, created the formula for State Aid for virtual schools, allowing for calculation by “...multiplying the number of full-time equivalent pupils enrolled in a virtual school times 105.0 percent of the unweighted Base State Aid Per Pupil. In addition, virtual schools would receive a non-proficient weighting of 25 percent multiplied by the full-time equivalent enrollment of non-proficient pupils in an approved at-risk program offered by the virtual school.”

Kansas Case Law

None.

Kansas Virtual Charter School Governance

Senate Bill 669 amended sections 72-6407 and 72-8187 of the Kansas statutes, providing for virtual school supervision through the state board of education. According to the text of the bill, “The state board may adopt any rules and regulations relating to virtual schools which the state board deems necessary to administer and enforce the virtual school act.” The Kansas State Board of Education requires virtual schools to provide reports and audits of performance and fiscal responsibility (Watson et al., 2009).

Minnesota Statutes and Case Law

Minnesota Statutes

Minnesota enacted the first charter school law in the nation in 1991 (Mead, 2003). Section 124D.10 of Minnesota statute provides for the establishment of charter schools for the purposes of improving student achievement through the application of different and innovative instructional methods while utilizing different methods of measuring student outcomes. Section 124D.095, known as the “Online Learning Option Act”, defines online learning as:

- (a) ‘Online learning’ is an interactive course or program that delivers instruction from a teacher to a student by computer; is combined with other traditional delivery methods that include frequent student assessment and may include actual teacher contact time; and meets or exceeds state academic standards.
- (b) ‘Online learning provider’ is a school district, an intermediate school district, an organization of two or more school districts operating under a joint powers agreement, or a charter school located in Minnesota that provides online learning to student.
- (c) ‘Student’ is a Minnesota resident enrolled in a school under section 120A.22, subdivision 4, in kindergarten through grade 12.
- (d) ‘Online learning student’ is a student enrolled in an online learning course or program delivered by an online provider under paragraph (b).
- (e) ‘Enrolling district’ means the school district or charter school in which a student is enrolled under section 120A.22, subdivision 4, for purposes of compulsory attendance.
- (f) ‘Supplemental online learning’ means an online course taken in place of a course period during the regular school day at a local district school. (§ 124D.095).

Minnesota statute relative to online learning is comprehensive in scope, providing for online learning students to receive the same credit for courses as students in traditional brick and mortar schools, and prohibiting districts or charter schools from denying a student the opportunity to apply to participate in online learning. Section 124D.095 (2) further provides for students to “...complete course work as a grade level that is different from the student’s current grade level...” and gives online students:

...the same access to the computer hardware and education software available in a school as all other students in the enrolling district. An online learning provider must assist an online learning student whose family qualifies for the education tax credit under section 290.0674 to acquire computer hardware and educational software for online learning purposes.

Minnesota statute §124D.095 establishes the Online Learning Advisory Council, which has the responsibility of bringing:

...to the attention of the commissioner any matters related to online learning and provide input to the department in matters related, but not restricted, to:

- (1) quality assurance;
- (2) teacher qualifications;
- (3) program approval;
- (4) special education;
- (5) attendance;
- (6) program design and requirements; and
- (7) fair and equal access to programs.

The funding of online programs is promulgated pursuant to § 124D.095 and requires the average daily membership to be equal to 1/12 for a semester course or “...a proportionate amount for courses of different lengths. The adjusted online learning average daily membership equals the initial online learning average daily membership times .88.” The statute also clearly defines that an enrolling district that provides online learning to students may not generate funding for such courses “...unless the enrolling

district is a full-time online provider.” Section 124D.10 (e) provides reference to students participating in home education and states “Charter schools must not be used as a method of providing education or generating revenue for students who are being home-schooled.”

Minnesota Case Law

Certification of online learning programs in the state of Minnesota requires the Department of Education to “...review and approve online learning providers...” while the online provider must:

...give the commissioner written assurance that: (1) all courses meet state academic standards; and (2) the online learning curriculum, instruction, and assessment, expectations for actual teacher-contact time or other student-to-teacher communication, and academic support meet nationally recognized professional standards and are described as such in an online course syllabus that meets the commissioner’s requirements.

The Online Learning Advisory Council, established pursuant to § 124D.095, provides, among other input, decisions regarding program approval. In the case of *Education Minnesota, et al. vs. Cheri Pierson Yecke, Commissioner, Minnesota Department of Education, et al.*, (2005 Minn. App. LEXIS 627), the court held in an unpublished decision that the decision of the review team in certifying online providers is binding. As there is “...no remedy for appeal...provided by statute, appellants should have sought review by certiorari.” The appellants, consisting of two school districts and taxpayers et al., challenged the certification of the Houston School District online program certification. In determining the outcome, the Court of Appeals of Minnesota held that since statute does not provide for challenges to decisions regarding certification of online

learning programs, the only remedy for the challenge was a writ of certiorari, and thus the decision of the district court was affirmed.

Minnesota Virtual Charter School Governance

Authorizers of Minnesota charter schools, according to Minn. Stat. § 124D.10, include “...(1) a school board; intermediate school district school board; education district organized under sections 123A.15 to 123A.19; (2) a charitable organization under section 501(c) (3) of the Internal revenue Code of 1986, excluding a nonpublic sectarian or religious institution....a Minnesota private college....a nonprofit corporation....”

Section 124D.10(c) of Minnesota statute further extensively defines charter school authorizers and outlines the requirements for eligible authorizers to provide “...(1) capacity and infrastructure; (2) application criteria and process; (3) contracting process; (4) ongoing oversight and evaluation processes; and (5) renewal criteria and processes.”

Authorizers of charter schools, whether virtual or brick and mortar, are responsible for ensuring oversight of the curriculum, finances, instruction, and for ascertaining that the mission under which the school was chartered is upheld. Subdivision 4a of Minnesota statute 124D.10 defines the membership of the board of directors and expressly prohibits anyone from serving on the board who has a personal interest in the for-profit or not-for-profit entity with whom the charter school contracts, and provides for liability to the charter school for anyone who violates the tenets of the statute.

Nevada Statutes and Case Law

Nevada Statutes

Nevada Revised Statute 386.505 authorizes the formation of charter schools but prohibits the conversion of existing public or home schools to charter schools for the express purpose of providing financial aid to such schools. Section 388.823 defines courses of distance education and distance education in general, stating:

‘Course of distance education’ means a course of study that uses distance education as its primary mechanism for delivery of instruction...[and] ‘Distance education’ means instruction which is delivered by means of video, computer television, or the Internet or other electronic means of communication, or any combination thereof, in such a manner that the person supervising or providing the instruction and the pupil receiving the instruction are separated geographically for a majority of the time during which the instruction is delivered.

Nevada Revised Statute 388.842 provides for students to access distance education courses in a full-time capacity provided the program “...included at least as many hours or minutes of instruction as would be provided under a program consisting of 180 days.”

Virtual charter schools, under section 388.846, are required to:

...provide written notice to the board of trustees of the school district in which the pupil resides of the type of educational services that will be provided to the pupil through the program. The written notice must be provided to the board of trustees before the pupil receives educational services through the program of distance education.

Eligibility for participation in distance learning virtual charter schools or other distance learning opportunities is promulgated pursuant to N.R.S. 388.850, which requires that a distance learning student:

- (a) Is participating in a program for pupils at risk of dropping out of school pursuant to NRS 388.537;
- (b) Is participating in a program of independent study pursuant to NRS 389.155;

- (c) Is enrolled in a public school that does not offer certain advanced or specialized courses that the pupil desires to attend;
- (d) Has a physical or mental condition that would otherwise require an excuse from compulsory attendance pursuant to NRS 392.050;
- (e) Would otherwise be excused from compulsory attendance pursuant to NRS 392.080;
- (f) Is otherwise prohibited from attending public school pursuant to NRS 392.264, 392.4642 to 392.4648, inclusive, 392.466, 392.467 or 392.4675;
- (g) Is otherwise permitted to enroll in a program of distance education provided by the board of trustees of a school district if the board of trustees determines that the pupil will benefit from the program; or
- (h) Is otherwise permitted to enroll in a program of distance education provided by the governing body of a charter school if the governing body of the charter school determines that the pupil will benefit from the program.

Section 388.854 allows students to participate in a program of distance education full- or part-time outside the school district of residence:

1. Except as otherwise provided in this subsection, before a pupil may enroll full-time or part-time in a program of distance education that is provided by a school district other than the school district in which the pupil resides, the pupil must obtain the written permission of the board of trustees of the school district in which the pupil resides. Before a pupil who is enrolled in a public school of a school district may enroll part-time in a program of distance education that is provided by a charter school, the pupil must obtain the written permission of the board of trustees of the school district in which the pupil resides. A pupil who enrolls full-time in a program of distance education that is provided by a charter school is not required to obtain the approval of the board of trustees of the school district in which the pupil resides.
2. If the board of trustees of a school district grants permission pursuant to subsection 1, the board of trustees shall enter into a written agreement with the board of trustees or governing body, as applicable, that provides the program of distance education. A separate agreement must be prepared for each year that a pupil enrolls in a program of distance education. (§ 388.854).

According to Watson et al. (2009), “Nevada Administrative Code addressing student attendance does not have a daily minutes of attendance requirement for the student but instead allows the acceptance of competency-based instruction in lieu of seat time. Distance education programs must meet the same state attendance standards as

other schools in the district...” (p.134). Effective June 17, 2008, the Adopted Regulation of the State Board of Education amended section 387.193 of the Nevada Administrative Code as follows:

1. A pupil who is enrolled in a program of distance education that has been approved pursuant to NAC 388.830 shall be deemed an enrolled pupil if, for each course of distance education in which the pupil is enrolled:
 - (a) The course is included on the list of approved courses of distance education prepared and published by the Department pursuant to NRS 388.834; and
 - (b) A teacher meets or otherwise communicates with the pupil at least once each week during the course to discuss the pupil’s progress.
2. Each pupil enrolled in a course of distance education offered through a program of distance education must be recorded in full attendance for each week that a teacher meets or otherwise communicates with the pupil during the course to discuss the pupil’s progress. Each weekly meeting or communication with a pupil must be included in the master register of enrollment and attendance required by NAC 387.171.
3. A pupil who is enrolled full-time in a program of distance education provided by:
 - (a) The board of trustees of a school district must be entered as an enrolled pupil in the master register of enrollment and attendance for the public school to which the pupil is declared affiliated by the board of trustees pursuant to NRS 388.862.
 - (b) A charter school must be entered as an enrolled pupil in the master register of enrollment and attendance for the charter school.
4. A pupil shall be deemed enrolled full-time in a program of distance education if:
 - (a) The program of distance education contains the number of school days in session required pursuant to NAC 387.120;
 - (b) The time that the pupil spends in the program is recorded by the pupil, the parent or legal guardian of the pupil, or by a computerized program; and....
5. For purposes of full-time enrollment in a program of distance education, a pupil in kindergarten or in any grade from grades 1 to 8, inclusive, must be enrolled in:
 - (a) The minimum daily period required pursuant to NAC 387.131; or
 - (b) A curriculum that is equivalent to the regular school curriculum, if an exception to the minimum daily period has been approved pursuant to subsection 3 of NAC 387.131.
6. For purposes of full-time enrollment in a program of distance education, a pupil in any grade from grades 9 to 12, inclusive, must:

- (a) Be enrolled in the number of courses required for full-time pupils pursuant to subsection 4 of NAC 387.345; or
- (b) Have a written plan for enrollment prepared for the pupil which demonstrates that the pupil will complete during the school year the number of courses required for full-time pupils.

7. If a pupil is enrolled part-time in a program of distance education, the record of the part time attendance of the pupil must be maintained separately from the record of attendance maintained by the school in which the pupil is otherwise enrolled.

Nevada Case Law

None.

Nevada Virtual Charter School Governance

Authorizers of charter schools in Nevada may include individual district boards of trustees, the Nevada State Board of Education, and the Nevada System of Higher Education. Nevada statute section 386.549 defines the governance of a virtual, or distance learning, charter school as consisting of:

- (1) At least three teachers, as defined in subsection 5; or
- (2) Two teachers, as defined in subsection 5, and one person who previously held a license to teach issued pursuant to chapter 391 of NRS as long as his or her license was held in good standing, including, without limitation, a retired teacher.
 - (b) May consist of, without limitation, parents and representatives of nonprofit organizations and businesses. Not more than two persons who serve on the governing body may represent the same organization or business or otherwise represent the interests of the same organization or business. A majority of the members of the governing body must reside in this State. If the membership of the governing body changes, the governing body shall provide written notice to the sponsor of the charter school within 10 working days after such change.

The governing body is required to hold a minimum of one public meeting per quarter, and has powers and duties such “...as may be required to attain the ends for which the charter school is established and to promote the welfare of pupils who are enrolled in the

charter school.” (386.549(3,4). Pursuant to section 392.070, virtual charter schools may not provide distance-learning enrollment to students who are in private schools or who are home schooled.

New Hampshire Statutes and Case Law

New Hampshire Statutes

New Hampshire charter school law, the “Charter Schools and Open Enrollment Act” (R.S.A. 194-B) was enacted in 1995. Section 194-B:1 of the New Hampshire statutes defines a public charter school as “...an open enrollment public school, operated independent of any school board and managed by a board of trustees. A chartered public school shall operate as a nonprofit secular organization under a charter granted by the state board...” Open enrollment schools in New Hampshire may enroll students from any district, although pupils who reside in the district that has authorized the charter school have enrollment preference over those who reside outside the district. According to Watson et al., (2009), section 194-B:3-a provides for a pilot program for chartered virtual schools, and is the statute under which the Virtual Learning Academy Charter School (VLACS) opened in 2007 as New Hampshire’s first statewide online charter school. The Virtual Learning Academy Charter School consists of mostly supplemental classes with “...nearly 5,800 course enrollments in 2008-2009.” (p. 84). The supplemental nature of this charter school is unusual in that typically virtual charter schools provide full-time online instruction and do not operate as a source of additional courses for students not enrolled full-time in the charter school.

New Hampshire state statute does not specifically govern virtual charter schools; however, section 306.22 of the New Hampshire Administrative Rules defines distance education as "...correspondence, video-based, internet-based, and online courses."

Districts that offer distance education courses are responsible for:

- (1) The approval, coordination, and supervision of distance education courses offered for instructional purposes or high school credit, or both, in the district; and
- (2) Granting student credit for completion of distance education courses. (§306.22 Distance Education).

If multiple districts want to operate distance education courses together:

- ... (e) The local school board shall adopt policies relative to all distance education courses offered by the school district to require that:
- (1) The courses comply with all federal and state statutes pertaining to student privacy and to public broadcasting of audio and video;
 - (2) Credit courses require students to meet similar academic standards as required by the school for students enrolled in credit courses offered by the school;
 - (3) Only students approved by the school principal or designee shall be eligible to receive credit for distance education courses; and
 - (4) Students earning credit for distance education courses shall participate in all assessments required by the statewide education improvement and assessment program.
- (f) The local school board shall adopt policies relative to all distance education courses offered by the school district relative to:
- (1) The number of students a teacher may be required to supervise;
 - (2) Monitoring of student progress, grading of assignments, and testing;
 - (3) Security of individual student records, provided that no individual student records obtained through participation in distance education courses shall be used for any purposes other than those that support the instruction of the individual student; and
 - (4) Gathering and disseminating of district-level aggregated data obtained through participation in distance education courses. (§ 306.22 Distance Education).

According to the New Hampshire Department of Education (2007), "The 1995 charter school law provided no state funding for charter schools." (p.9). New Hampshire

Revised Statute Annotated (R.S.A.) “...required each charter school pupil’s resident school district to pay the charter school an amount equal to at least 80 percent of that district’s average cost per pupil for the prior fiscal year...[and] charter schools that are eligible for grants ‘shall match funds provided by the state through private contributions in order to receive funding that exceeds the state’s average per pupil cost for the grade level weight of the pupil.” (New Hampshire Department of Education, 2007, p.9). The funding for the Virtual Learning Academy Charter School, which is authorized by the state board of education pursuant to Revised Statutes Annotated (R.S.A.) § 194-B:11, “...comes from the state board, not from local school districts. VLACS funding per full-time student in 2008-2009 was \$3,830, increasing to \$5,450 per full-time student in 2009-2010.” (Watson et al., 2009, p.84). New Hampshire statute does not delineate virtual charter schools from open enrollment chartered public schools, and House Bill 688 (2009) provided for “...any federal or other funding available in any year to a sending district shall, to the extent and in a manner acceptable to the funding source, be directed to an open enrollment school in a receiving district on an eligible per pupil basis.” (§ 194-D:5). Funding for online students follows the student from the district of residence to the open enrollment charter school or to the statewide virtual charter school, VLACS.

New Hampshire Case Law

While there is no applicable case law relative to virtual charter schools in the State of New Hampshire, the Supreme Court of New Hampshire’s holding in the case of *Claremont Sch. Dist. v. Governor* (147 N.H. 499, 749 A.2d 744, 2002 N.H. Lexis 20 (2002) provides insight into the funding issues of charter schools in general in New

Hampshire. The court held that “...accountability was an essential component of the State’s duty and that the existing statutory scheme had deficiencies that were inconsistent with the State’s duty to provide a constitutionally adequate education.” At issue initially was the funding of public education and whether or not the funding formula was constitutional. The trial court held “...that the New Hampshire Constitution ‘imposes no quantifiable financial duty regarding education’.” On appeal, the Supreme Court of New Hampshire held that “...there was more work to be done for the State to fulfill its duty to provide a constitutionally adequate education and incorporate meaningful accountability in the education system.” (147 N.H. 499, 749 A.2d 744, 2002 N.H. Lexis 20 (2002).

New Hampshire Virtual Charter School Governance

The board of trustees of a charter school “...shall have full authority to determine the chartered public school’s organization, methods, and goals.” (New Hampshire Statute 194-B:3). According to 194-B:3, chartered public schools may be established by “A nonprofit organization including, but not limited to, a college, university, museum, service club, or similar entity....A group of 2 or more New Hampshire certified teachers...A group of 10 or more parents....[or] any existing public school may by a vote of the school board become a charter conversion school....” According to section 194-B:5, the governing board of a charter school, whether virtual or brick-and-mortar, “...shall include no fewer than 25 percent or two parents of pupils attending the chartered public school, whichever is greater.” The duties of the governing board include reporting to the state board of education regarding the achievement of the chartered public school’s

stated goals and financial status, and to hold meetings of the board of trustees in a public forum.

New Mexico Statutes and Case Law

New Mexico Statutes

New Mexico Administrative Code, 6.30.8.6 describes the general requirements for distance learning in New Mexico and establishes the requirements for such courses taken by students “...enrolled in public school districts, charter schools, state-supported schools, nonpublic schools, and for children and youth detained or committed to juvenile detention facilities...as well as for professional development opportunities for teachers, instructional support providers and administrators.” Section 6.30.8.7 of the New Mexico Administrative Code defines distance learning as “...the technology and educational process used to provide instruction for credit or grade when the course provider and the distance-learning student are not necessarily physically present at the same time or place...where the student and primary instructor are separated by time or space and linked by technology.” Section 6.30.8.7 also provides for the establishment of the Innovative Digital Education and Learning – New Mexico (IDEAL-NM) statewide cyber academy. According to Watson et al. (2009), the administrative code “...specifies that school districts cannot restrict student access to online courses.” (p. 136).

The New Mexico Administrative Code does not provide for full-time distance learning opportunities, as § 6.30.8.8 delineates that “...asynchronous distance learning shall not be used as a substitute for all direct, face-to-face student and teacher interactions unless approved by the local board of education.” Sites that offer distance learning are

required to provide onsite access to computers, Internet, and any other related hardware necessary to successfully interact in an online course. Students with disabilities may also have access, with section 6.30.8.8 providing for "...accompanying electronic formats that are usable by a person with a disability using assistive technology...." Districts, including public and charter schools, are further required to provide all students with information regarding the distance learning courses available. In the event a public school and a charter school enter into an agreement to offer distance learning courses together, § 6.30.8.8 contains provisions for determining which entity is responsible for providing grades and awarding credits to the students.

Students involved in distance learning opportunities may be enrolled in courses offered by a charter school other than those in the student's district of enrollment, and the funding for such students must be arranged between districts in accordance with the rules for the state equalization guarantee funding regulations (§ 6.30.8.9). For synchronous courses, students must "...log on to their computers at the scheduled class times and certify they are enrolled students." (§ 6.30.8.9). New Mexico Administrative Code also provides for students enrolled in home or private schools to participate in public distance education courses. Section 6.30.8.11 NMAC provides for homeschooled students to pay for enrollments in half or more of the minimum course requirements, although students enrolled in less than half of the minimum may pay the district in which the student is located "...not more than thirty-five percent of the current unit value per curricular area." Students enrolling from nonpublic schools must pay the specified per-semester course fees districts must pay to IDEAL-NM.

Section 6.30.8.10 of the New Mexico Administrative Code established the IDEAL-NM:

The department and HED shall create and maintain a single central facility for statewide distance education services in New Mexico known as IDEAL-NM in cooperation with RECs, public school districts, charter schools, and post-secondary institutions to facilitate the delivery of distance learning courses statewide for students, training courses for state agency employees, and professional development courses for teachers, instructional support providers and school administrators. IDEAL-NM shall, at a minimum, provide distance learning courses for grades 6-12. Training courses for state agency employees and professional development courses for teachers, instructional support providers and school administrators shall be provided as resources permit.

The specific purpose of the IDEAL-NM, according to section 6.30.8.10 is to provide coordination of the roles and responsibilities and "...to establish a distance learning governance and accountability framework." (§ 6.30.8.10). The IDEAL-NM may also establish course fees, and may waive such fees for charter schools in exchange for online teaching.

Charter schools with students involved in distance learning opportunities must designate a site coordinator of distance learning and must schedule a class period per day that corresponds to and equals the number of courses the student is participating in through distance learning. A caveat for charter schools; however, involves the restriction that the school must be physically located in the state of New Mexico.

The funding for charter schools and distance learning charter schools was promulgated pursuant to chapter 22; article 8B NMSA 1978, known as the "Charter Schools Act." Section 22-8B-13 provides for charter school funding to "...be not less than ninety-eight percent of the school generated program cost..." and the district is permitted to retain two percent of the program cost for administrative support. The

“Statewide Cyber Academy Act”, established in section 22-30-1, is a “...collaborative program that offers distance learning courses to all local distance learning sites.”

New Mexico Case Law

A February 2008, advisory letter regarding open enrollment and distance education examined whether New Mexico Statutes Annotated (1978), section 22-1-4 pertaining to open enrollment also pertains to distance education schools. The attorney general opined that the open enrollment section of the New Mexico Statutes relates to students who are physically present in school but does not address students present in distance or virtual education courses, as the statute refers to attendance zones and the residence of the student (§ 22-1-4 NMSA 1978). The advisory letter concluded that the state’s open enrollment statute, § 22-1-4, does not include distance or virtual education courses or the Statewide Cyber Academy Act and thus does not conflict with distance learning rules (Watson et al., 2009).

New Mexico Virtual Charter School Governance

Governance of New Mexico virtual or distance learning charter schools is regulated by New Mexico Statute Annotated § 22-8B-4 (2009). The governing board of virtual charter schools “...shall have at least five members; and provided further that no member of a governing body for a charter school that is initially approved on or after July 1, 2005 or whose charter is renewed on or after July 1, 2005 shall serve on the governing body of another charter school.” (§ 22-8B-4, 2009). Charter schools, as well as distance learning charter schools, may be authorized by local school board or the state board of education.

Ohio Statutes and Case Law

Ohio Statutes

Public charter schools in Ohio are referred to as “community schools” and public virtual charter schools as “internet or computer-based community schools” (§ ORC 3314.01). According to ORC § 3314.013, the number of conversion schools to Internet or computer-based schools was limited to thirty prior to July 1, 2007 for new conversions plus the schools that were in operation prior to May 1, 2005. According to Watson et al., § 3314.013 established a moratorium on new Internet-based schools until the General Assembly promulgated standards to govern such schools.

Section 3314.02 ORC defines an Internet or computer-based community school as:

...a community school established under this chapter in which the enrolled students work primarily from their residences on assignments in nonclassroom-based learning opportunities provided via an internet- or other computer-based instructional method that does not rely on regular classroom instruction or via comprehensive instructional methods that include internet-based, other computer-based, and noncomputer-based learning opportunities.

Section 3314.08(N)(1) outlines the responsibility of the Internet- or computer-based community school to provide the computer hardware and software necessary to ensure the student may participate fully in the online experience. It further defines the funding of community schools as consisting of a “...per capita subsidy taken from the state’s basic aid to the school districts that the students in community schools are entitled to attend.” (§ 3314.08). Section 3314.22 prohibits districts from providing a stipend to parents in lieu of hardware and software, although the parent may waive the provision of computer

equipment. The Internet- or computer-based community school may provide less than one computer per child in a home with multiple children attending the school at the option of the parent. Section 3314.08(2) provides for a reduction in the funding available to an Internet- or computer-based community school that:

...includes in its program the provision of computer hardware and software materials to any student, if such hardware and software materials have not been delivered, installed, and activated for each such student in a timely manner or other educational materials or services have not been provided according to the contract between the individual community school and its sponsor.

The base student funding for fiscal year 2010 will be \$5,718 per pupil, and weighted funding for special education students will be calculated and applied to community schools serving exceptional education populations (§ 3314.088).

According to section 3314.21(B)(1), "...it is the intent of the general assembly that teachers employed by Internet- or computer-based community schools conduct visits with their students in person throughout the school year." The section identifies the teacher of record as the person who not only instructs a student in a subject but who also is responsible for the "...overall academic development and achievement of the student." (§3314.21). The number of students to whom a teacher of record may be assigned is governed by § 3314.21:

Each student enrolled in an internet- or computer-based community school shall be assigned to at least one teacher of record. No teacher of record shall be primarily responsible for the academic development and achievement of more than one hundred twenty-five students enrolled in the internet- or computer-based community school that has retained that teacher.

Internet- or computer-based schools are not permitted under section 3314.24 to "...use or rent any facility space at the nonpublic school for the provision of instructional services

to the students enrolled in the internet- or computer-based community school.” Schools that maintain contracts with nonpublic entities and provide instruction from the internet- or computer-based community school at the nonpublic school will not receive funds pursuant to § 3314.24. Students in computer-based schools may participate in not more than ten hours of learning opportunities per day and hours over the limit will not count in the “...annual minimum number of hours required to be provided...” (§ 3314.27).

Ohio Case Law

Ohio Revised Code § 3314.01(B) provides for community schools and defines such schools as independent of school districts and as part of the educational program in Ohio. The Ohio Constitution, article VI, § 2, established the Thorough and Efficient clause which provides “The General Assembly shall make such provisions, by taxation, or otherwise, as, with the income arising from the school trust fund, will secure a thorough and efficient system of common schools throughout the state.” In 2006, the Ohio Supreme Court upheld the constitutionality of community schools and computer-based community schools under § 3314 of the Ohio Revised Code (*State ex rel. Ohio Cong. of Parents and Teachers v. State Bd. Of Educ.*, 2004 Ohio 4421, 2004 Ohio App. LEXIS 4009). At issue was whether or not the Ohio Constitution, Article VI, § 2, prohibited the funding of community and computer-based community schools. The court held there was no violation of the Ohio Constitution as the “...the ownership and standards of CSs were subject to state regulation, and the funding did not create an unconstitutional scheme under that or under Ohio Const. art. VIII, §§ 4 and 5....[and]

There was no violation of local citizens' rights of local educational self-determination by use of local tax dollars for CSs....” (*State ex rel. Ohio Cong. of Parents and Teachers v. State Bd. of Educ.*, 2004 Ohio 4421 Ohio App. LEXIS 4009). The court further held that “Funds raised by local school districts, such as funds derived from local levies, are never sent from the local school district to the community schools, nor are any funds from the local school district to the state ever redirected to the community schools...” thus negating the argument that local tax dollars were diverted to fund community and Internet- or computer-based schools in Ohio.

In 2009, the case of *State, ex rel., Nancy Rogers, Attny. Gen., Plaintiff-Appellant v. New Choices Community School, et al. Defendants-Appellees* (2009 Ohio 4608; 2009 Ohio App. LEXIS 3912) the Ohio Supreme Court ruled the Community Schools Act (R.C. Chapter 3314) defined community schools as “...privately-governed public schools, which are independent of any school district, but part of the State’s program of education. R.C. 3314.01(B).” The Ohio Attorney General “...alleged that the CS had engaged in academic and other failures, and the OAG sought to exert control under R.C. 109.23 and 109.24 based on a theory that the CS was a charitable trust.” The court held the specific provisions of the Ohio Community Schools Act (R.C. § 3314) would prevail over charitable trust determinations and when the community school entered into a contract with a sponsor, the court held it effectively “...expressed its intent to become a political subdivision and a legislatively-created public school....Although the CS received funding from the state pursuant to R.C. 3314.08, it was not a charitable trust that was under the control of the OAG.”

Pursuant to R.C. 3314.072, the Ohio Community Schools Act provides for parental choice and sponsors to hold community schools accountable for finances and academics, stating "...internet- or computer-based community schools lose their funding if they do not show expected gains for two years, and any community school will be permanently shut down if it fails to meet expected goals for three years. R.C. 3314.36." The case law established in the above cases points to a need for more restrictive legislation regarding the funding and authorization of community and computer-based community schools.

Ohio Virtual Charter School Governance

According to § 3314.01(B) of the ORC, the governing body of a community school has the authority to ensure compliance with the Ohio Constitution and all applicable statutes. Section 3314.015 provides for the department of education to "...approve entities to be sponsors of community schools; [and] monitor the effectiveness of any and all sponsors in their oversight of the schools with which they have contracted...." Section 3314.02 of the ORC limits those serving on the governing board of an Internet or computer-based community school to those who are not embroiled "...in a dispute over whether the person owes the state any money concerning the operation of a community school that has closed." The governing authority of the Internet or computer-based school is responsible for assuring the provisions of the contract are carried out and policies are promulgated pursuant with the charter of the Internet or computer-based community school. Internet- or computer-based community school governing boards are further responsible for delineating in the contract:

(1) A requirement that the school use a filtering device or install filtering software that protects against internet access to materials that are obscene or harmful to juveniles on each computer provided to students for instructional use. The school shall provide such device or software at no cost to any student who works primarily from the student's residence on a computer obtained from a source other than the school.

(2) A plan for fulfilling the intent of the general assembly specified in division (B)(1) of this section. The plan shall indicate the number of times teachers will visit each student throughout the school year and the manner in which those visits will be conducted.

(3) That the school will set up a central base of operation and the sponsor will maintain a representative within fifty miles of that base of operation to provide monitoring and assistance.

Section 3301-104-03 of the Ohio Administrative Code Annotated (OAC) provided for sponsors of Internet- or computer-based community schools to report all expenditures related to student instruction, beginning in fiscal year 2007. The specific reporting requirements include teacher salaries, curriculum expenditures, and academic materials such as textbooks and related reference materials. Should it be determined the school has failed to comply with statute relative to R.C section 3314.085:

...the department shall assess a civil forfeiture or penalty against the school equivalent to the greater of the following: five percent of the total state payments to the school under Chapter 3314 of the Revised Code...or the difference between the amount the department determines the school was required to have spent for pupil instruction for non-special needs students and the amount the department determines the school actually spent for pupil instruction for non-special needs students...

Oregon Statutes and Case Law

Oregon Statutes

Senate Bill 100 (1999) established public charter school choice in the state of Oregon. Senate Bill 767, narrowly passed in 2009, created limits on virtual charter

schools in the state of Oregon and “...places a two-year moratorium on the growth of existing schools by restricting them to the student counts enrolled on May 1, 2009.”

(Watson et al., 2009, p. 138). Section 338.135(A) of the Oregon Revised Statute provides an exception to the moratorium provided:

Fifty percent or more of the students who attend the virtual public charter school are district students, in which case the number of students receiving online instruction may increase until the number of nondistrict students receiving online instruction is no greater than 50 percent of the total number of students receiving online instruction; or (B) the...school has been granted a waiver by the State Board of Education.”

Oregon Administrative Rules 581-020-0337 (2010) set forth requirements for virtual public charter schools pursuant to sections 8, 13, 13a, and 17 of the chapter 691 of the enrolled Senate Bill 767 (2009). Chapter 338, Oregon Revised Statute, defines a virtual public charter school as a “...public charter school that provides online courses.”

Online courses are clearly delineated in Or. Admin. R. 581-020-0337:

(A) Instruction and content are delivered primarily on a computer using the Internet, other electronic network or other technology such as CDs or DVDs;

(B) The student and teacher are in different physical locations for a majority of the student's instructional period while participating in the course;

(C) The online instructional activities are integral to the academic program of the school as described in its charter; and

(D) The student is not required to be located at the physical location of a school while participating in the course.

(3) Notwithstanding section (2) of this rule, "virtual public charter school" does not include a public charter school that primarily serves students in a physical location. A charter school is not a virtual public charter school if the school meets all of the following requirements:

(A) More than 50 percent of the core courses offered by the school are offered at a physical location and are not online courses;

(B) More than 50 percent of the total number of students attending the school are receiving instructional services at a physical location and not in an online course; and

(C) More than 50 percent of the minimum number of instructional hours required to be provided to students by the school under [OAR 581-022-1620](#) during a school year are provided at a physical location and not through an online course.

Oregon Revised Statute § 329.840 (2009) provides for the creation of the Oregon Virtual School District within the Department of Education and indicates "...The Oregon Virtual School District shall provide online courses that meet academic content standards...and meet other criteria adopted by the State Board of Education....All school districts and public charter schools may allow students to access the online courses offered by the Oregon Virtual school District." The statute further establishes that the Oregon Virtual School District "...is not considered a school district for purposes of apportionment of the State School Fund and the department may not receive a direct apportionment under ORS 327.008 from the State School Fund for the Oregon Virtual School District." (ORS §329.840, 2009).

Section 338.005 established the Online Learning Task Force to ensure that public charter schools provide appropriate access to online learning and promulgated the responsibilities of the task force, including preparing report that addresses:

(A) Grades and ages to be served by public online instruction through public charter schools;

(B) Curriculum descriptions and accreditation or certification standards of online instruction offered through public charter schools;

(C) Accessibility of online instruction and accommodations of students to public charter schools that offer online instruction;

- (D) Methods of financing public charter schools that offer online instruction;
- (E) Levels of funding for public charter schools that offer online instruction;
- (F) Financial accountability of public charter schools that offer online instruction;
- (G) Reporting of student outcomes and compliance with academic accountability standards at public charter schools that offer online instruction;
- (H) The use of teachers licensed by the Teacher Standards and Practices Commission, the teaching standards and the frequency of teacher contact at public charter schools that offer online instruction;
- (I) Examples of school policies at a public charter school that offers online instruction, including policies involving online harassment, intimidation or bullying;
- (J) The method of offering online instruction through school districts and education service districts;
- (K) Class sizes of online courses, including the student-to-teacher ratio for the online courses;
- (L) How to transition students currently enrolled in public charter schools that offer online instruction to alternative learning options, if necessary;
- (M) Methods to determine whether a school district is an appropriate sponsor of a public charter school that provides online instruction;
- (N) How to best serve students who are learning English as a second language; and
- (O) Any other topic concerning the provision of high-quality online instruction to students in this state and the accessibility of online instruction by students attending public schools in this state. (ORS § 338.005, 2009).

According to ORS § 338.120, virtual public charter schools in Oregon must also have plans for improving student achievement, criteria to be used to measure achievement, plans for parental involvement, plans for utilizing an Internet-based platform to deliver student progress reports, attendance, and assessment functions, and plans for employing

only highly qualified teachers pursuant to *No Child Left Behind Act* of 2001 (P.L. 107-110, 115 Stat. 1425). Students must be provided access to computers and printers, and must be offered Internet service reimbursement where applicable (ORS § 338.120).

Virtual public charter schools are further required to provide at least six opportunities per year for students to participate in school-sponsored face-to-face activities as well for teachers, parents, and students to participate in face-to-face conferences. In addition to the requirement to have six meetings per year, virtual public charter schools are also mandated to conduct "...biweekly meetings between teachers and students enrolled in the school, either in person or through the use of conference calls or other technology." (ORS § 338.120).

Admission of students to virtual public charter schools is regulated by ORS § 338.135, which defines district students as those who live in the district in which the charter school is located and refers to nondistrict students as those who reside outside the district in which the charter school is located. Funding for virtual public charter schools is governed by § 338.155 wherein:

A school district shall contractually establish, with any public charter school that is sponsored by the board of the school district, payment for the provision of educational services to the public charter school's students....[amounting to] eighty percent of the amount of the school district's General Purpose Grant per ADMw...for students who are enrolled in grades kindergarten through grade eight; and (b) ninety-five percent of the amount of the school district's General Purpose Grant per ADMw...for students who are enrolled in grades 9 through 12.

Oregon Case Law

Oregon statute defines public charter schools and sets forth parameters under which students may be considered virtual public charter school students and requires the

“...use of teachers licensed by the Teacher Standards and Practices Commission...” (ORS chapter 338, § 338.005). Section 338.135(7)(c) further defines that “...at least one-half of the total full-time equivalent (FTE) teaching and administrative staff at the public charter school shall be licensed by the commission...” In *Coquille School District 8, Plaintiff – Appellant, v. Susan Castillo, Superintendent of Public Instruction, and the Department of Education, Defendants-Respondents* (212 Ore. App. 596; 159 P.3d 338; 2007 Ore. App. LEXIS 700), the court of appeals held that the superintendent of public instruction acted within her statutory authority to deny funding to a distance-learning charter school in which parents were considered part of the teaching staff. Considering parents as teachers violated state statutory requirements for the fifty percent licensure of teaching staff; thus the school could not be considered a public charter school pursuant to §338.135. In the case of the Coquille-Oregon Independent Distance Education Academy (COR-IDEA) the school’s charter speaks to parents who wish to educate their children in the home through home education. As Oregon statute ORS 327.125 requires the superintendent “...to administer the State School Fund...”, the court held it was reasonable to deny funding to the COR-IDEA on the basis of the failure to meet the fifty percent threshold for teacher licensure, so determining that the students were not attending a statutorily qualified virtual public charter school.

A 2000 Attorney General Opinion regarding public charter schools contracting out to for-profit entities answered questions pertaining to the constitutionality of contracting out the operation of a charter school in AGO Opinion 8273 (2000). The attorney general quoted two cases supporting public charter schools as governmental

agencies performing a public function in the business of maintaining “...a uniform and general system of the public schools.” (Constitution of Oregon, Art. VIII, Sec. 3) (*Vestal v. Pickering*, 125 Or 553, 557, 267 P 821 (1928), *Campbell v. Aldrich*, 159 Or 208, 218, 79 P2d 257 (1938)). The attorney general posited that ORS chapter 338 “...provides for public charter schools operating as a part of the public school system...” concluding that “...public charter schools perform the executive department’s administrative function of educating the state’s children.” (AGO Opinion 8273). Thus, public charter schools may contract out to private for-profit entities for the operation of the school.

Oregon Virtual Charter School Governance

Oregon Revised Statute 338.005 defines the sponsor of a public charter school as “...The board of the common school district or the union high school district in which the public charter school is located that has developed a written charter with an applicant to create a public charter school.” Further, § 338.005 established school district boards as authorizers of public charter schools, and ORS § 338.075 permits the State Board of Education to review the decision of the local district in the event the charter application is denied. Section 338.135 provides for the sponsor of a virtual public charter school to contract “...with a for-profit entity to provide educational services through the virtual public charter school...” but the for-profit entity “...may not be the employer of an employee of the virtual public charter school.”

Charter schools and virtual charter schools may be sponsored by one of the 198 school districts in Oregon, and may be operated “...by a governing body that is entirely

independent from traditional public education providers....[or may] be created as part of a school district, located within a traditional public school..." (Senate Bill 100, 1999).

Pennsylvania Statutes and Case Law

Pennsylvania Statutes

Section 17-1701-A of the Pennsylvania Code established the "Charter School Law" Section 16-1615 of the Pennsylvania Code Archive (24 P.S. § 16-1615 (2009)) established the virtual high school study commission which was developed to "...examine the feasibility and costs associated with creating a State-operated, Internet-based high school,...which would provide secondary students throughout this Commonwealth with access to a wide range of learning services..." The purpose of the development of an Internet-based high school was to provide access to:

- (1) Expanded curricular offerings such as higher level mathematics and science courses, foreign language courses and advanced placement courses.
- (2) Increased options for concurrent enrollment in higher education.
- (3) Scholastic Aptitude Testing preparation programs.
- (4) Summer enrichment and tutoring courses.
- (5) Increased instructional options for at-risk students, home-bound and alternative education students.
- (6) Expanded offerings for gifted and talented students.
- (7) Establishment of linkages between students and prospective employers, including those offering high school internships and apprenticeships.
- (8) Establishment of programs or services to offer students at risk of dropping out or who have dropped out an opportunity to obtain a high school diploma.(24 P.S. § 16-1615).

Section 17-1703-A 24 P.S. defines cyber charter schools as:

...independent public school[s] established and operated under a charter from the Department of education and in which the school uses technology n order to provide a significant portion of its curriculum and to deliver a significant portion of instruction to its students through Internet or other electronic means. A cyber

charter school must be organized as a public, nonprofit corporation. A charter may not be granted to a for-profit entity.

Section 17-1717-A of Pennsylvania Code established charter schools and defines who may establish a charter school and who may authorize the school. According to §1701717-A, “No charter school shall be established or funded by and no charter shall be granted to any sectarian school, institution or other entity. No funds allocated or disbursed under this article shall be used to directly support instruction pursuant to section 1327.1.”

Funding for charter schools is described in §17-1725-A, which states charter schools will receive the budgeted amount per average daily membership of the prior school year, minus:

... the budgeted expenditures of the district of residence for nonpublic school programs; adult education programs; community/junior college programs; student transportation services; for special education programs; facilities acquisition, construction and improvement services; and other financing uses, including debt service and fund transfers as provided in the Manual of Accounting and Related Financial Procedures for Pennsylvania School Systems established by the department. This amount shall be paid by the district of residence of each student.

Section 17-1725 further provides for funding of special education students such that charter schools receive the average daily membership “...plus an additional amount determined by dividing the district of residence's total special education expenditure by the product of multiplying the combined percentage of section 2509.5(k) times the district of residence's total average daily membership for the prior school year.” Section 17-1743 sets forth requirements for cyber charter schools, and includes provisions related to financial requirements:

A cyber charter school shall not: (1) provide discounts to a school district or waive payments under section 1725-A for any student; (2) except as provided for in subsection (e), provide payments to parents or guardians for the purchase of instructional materials; or (3) except as compensation for the provision of specific services, enter into agreements to provide funds to a school entity.

Per section 17-1743-A cyber charter schools are required to provide, for each student enrolled, instructional materials, computers, monitors, printers, and reimburse for “...technology and services necessary for the on-line delivery of the curriculum and instruction.”

Pennsylvania statute section 17-1744 clearly delineates the requirements of the school district of residence for cyber charter students:

- (1) Provide the cyber charter school within ten days of receipt of the notice of the admission of the student under section 1748-A(a) with all records relating to the student, including transcripts, test scores and a copy of any individualized education program for that student.
- (2) Provide the cyber charter school with reasonable access to its facilities for the administration of standardized tests required under this subdivision.
- (3) Upon request, provide assistance to the cyber charter school in the delivery of services to a student with disabilities. The school district or intermediate unit shall not charge the cyber charter school more for a service than it charges a school district.
- (4) Make payments to the cyber charter school under section 1725-A.

Section 17-1745-A provides for the establishment of cyber charter schools, and states that cyber charters may be established by a “...nonsectarian corporation not-for-profit as defined in 15 Pa C.S. § 5103...”, which defines such as “...corporation[s] not incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise.” Attendance at cyber charter schools is defined under 24 P.S. § 17-1745-A and states that “Attendance at a cyber charter school shall satisfy requirements for compulsory attendance.”

The application process for establishing a cyber charter school is lengthy and requires the applicant to demonstrate how the curriculum to be provided aligns with expected academic standards, an explanation of the amount of time online expected for different grade levels elementary through high school, how instruction will be delivered and how communication with students and parents will be handled (24 P.S. § 17-1747-A). The section further provides for a description of the face-to-face supplementary instructional activities, a description of the required hardware and software, and how the “...cyber charter school will define and monitor a student’s school day, including the delineation of on-line and off-line time.” (24 P.S. §17-1747-A). Cyber charters are further required, under §17-1747-A, to provide:

- (8) A description of commercially prepared standardized achievement tests that will be used by the cyber charter school in addition to the Pennsylvania System of School Assessment test, including the grade levels that will be tested and how the data collected from the tests will be used to improve instruction.
- (9) The technical support that will be available to students and parents or guardians.
- (10) The privacy and security measures to ensure the confidentiality of data gathered online.
- (11) The level of anticipated enrollment during each school year of the proposed charter, including expected increases due to the addition of grade levels.
- (12) The methods to be used to insure the authenticity of student work and adequate proctoring of examinations.
- (13) The provision of education and related services to students with disabilities, including evaluation and the development and revision of individualized education programs.
- (14) Policies regarding truancy, absences and withdrawal of students, including the manner in which the cyber charter school will monitor attendance consistent with the provisions of section 1715-A(9)
- (15) The types and frequency of communication between the cyber charter school and the student and the manner in which the cyber charter school will communicate with parents and guardians.
- (16) The addresses of all facilities and offices of the cyber charter school, the ownership thereof and any lease arrangements.

Section 17-1748 addresses the issues of funding for cyber charter schools when students who are not residents of the district in which the cyber charter is operating enroll in the school:

- (1) Within 15 days of the enrollment of a student to a cyber charter school, the parent or guardian and the cyber charter school shall notify the student's school district of residence of the enrollment through the use of the notification form under subsection (b).
- (2) If a school district which has received notice under paragraph (1) determines that a student is not a resident of the school district, the following apply:
 - (i) Within seven days of receipt of the notice under paragraph (1), the school district shall notify the cyber charter school and the department that the student is not a resident of the school district. Notification of nonresidence shall include the basis for the determination.
 - (ii) Within seven days of notification under subparagraph (i), the cyber charter school shall review the notification of nonresidence, respond to the school district and provide a copy of the response to the department. If the cyber charter school agrees that a student is not a resident of the school district, it shall determine the proper district of residence of the student before requesting funds from another school district.
 - (iii) Within seven days of receipt of the response under subparagraph (ii), the school district shall notify the cyber charter school that it agrees with the cyber charter school's determination or does not agree with the cyber charter school's determination.
 - (iv) A school district that has notified the cyber charter school that it does not agree with the cyber charter school's determination under subparagraph (iii) shall appeal to the department for a final determination.
 - (v) All decisions of the department regarding the school district of residence of a student shall be subject to review by the Commonwealth Court.
 - (vi) A school district shall continue to make payments to a cyber charter school under section 1725-A during the time in which the school district of residence of a student is in dispute.
 - (vii) If a final determination is made that a student is not a resident of an appealing school district, the cyber charter school shall return all funds provided on behalf of that student to the school district within 30 days.

Due to funding issues regarding payments made to cyber charter schools, the

Pennsylvania legislature promulgated regulations pursuant to § 25-2502.45 and § 25-

2591.1 to address the funding inequities (Appendix D). Section 711.9 of the Pennsylvania

Code addressed the payment of special education funds by the district of the child's residence to the cyber charter school as required per § 17-1725-A, funding for charter schools.

Pennsylvania Code contains specific provisions related to cyber charter schools serving students with disabilities under IDEA (22 Pa Code § 711.2 (2010)). Section 711.2(a)-(e) provides regulations for districts and cyber charter schools:

(a) This chapter specifies how the Commonwealth, through the Department, will meet its obligation to ensure that charter schools and cyber charter schools comply with IDEA and its implementing regulations in 34 CFR Part 300 (relating to assistance to states for the education of children with disabilities), and Section 504 and its implementing regulations in 34 CFR Part 104 (relating to nondiscrimination on the basis of handicap in programs and activities receiving federal financial assistance).

(b) This chapter does not prevent a charter school or cyber charter school and a school district from entering into agreements regarding the provision of services and programs to comply with this chapter, whether or not the agreements involve payment for the services and programs by the charter school or the cyber charter school.

(c) Charter schools and cyber charter schools are exempt from Chapter 14 (relating to special education services and programs). See 24 P. S. § 17-1732-A.

(d) Children with disabilities shall have access to the general curriculum, and participate in State and local assessments as established and described in Chapter 4 (relating to academic standards and assessment).

(e) The Department supports the use of prereferral intervention strategies, in accordance with 34 CFR 300.226 (relating to early intervening services) and as outlined in § 711.23(c) (relating to screening) to promote students' success in the general education environment.

Section 711.3 requires cyber charter schools to ensure that a free, appropriate public education (FAPE) is available to children with disabilities and that cyber charter schools comply with all laws associated with IDEA with regard to services provided, notification

to parents, access to general curriculum, and placement of children according to federal regulations. The Department of Education is responsible for ensuring the compliance of cyber charter schools under § 711.4. Statute defines the certification required for teachers of students with disabilities stating “Persons who provide special education or related services to children with disabilities in charter schools and cyber charter schools shall have the appropriate certification...” (22 Pa. Code § 711.5). Section 711.6 requires cyber charter schools to provide an annual report to the state that delineates:

- (1) The number of children with disabilities in special education.
- (2) The services, programs and resources being implemented by the charter school or cyber charter school staff.
- (3) The services and programs utilized by the charter school or the cyber charter school through contracting with another public agency, other organizations or individuals.
- (4) The services and programs utilized by the charter school or the cyber charter school through the assistance of an intermediate unit as prescribed under sections 1725-A(a)(4) and 1744-A(3) of the act (24 P. S. §§ 17-1725-A(a)(4) and 1744-A(3)).
- (5) Staff training in special education utilized by the charter school or the cyber charter school through the Department's training and technical assistance network and intermediate unit.
 - (b) The annual report must include an assurance that the charter school or the cyber charter school is in compliance with Federal laws and regulations governing children with disabilities and the requirements of this chapter.
 - (c) The annual report must include the age and type of exceptionality for each enrolled child with a disability; the level of intervention provided to each child with a disability; certification of staff providing services to each child with a disability; and programs and services available to children with a disability.

Section 711.7 regulates cyber charter school enrollment practices, allowing for cyber charter schools to “...establish reasonable criteria to evaluate prospective students....Admission criteria may not discriminate include measures of achievement or aptitude.” (§ 711.7). Section 711.8 provides for the transfer of educational records,

including Individualized Education Plans (IEPs), within 10 days of the student with an IEP enrolling in a cyber charter school, and cyber charters are required to maintain all educational records in accordance with the *Family Educational Rights and Privacy Act of 1974* (20 U.S.C.A. § § 1221 note and 1232g). Cyber charter schools are also required to provide parents with information at the time of enrollment regarding special education programs available at the cyber charter school (22 Pa Code § 711.21).

Cyber charter schools, according to 22 Pa. Code § 711.23, requires screening of children for special education, for hearing and vision, and for student academic aptitude. Section 711.23 further provides for “...appropriate instruction in reading, including the essential components of reading instruction (as defined in section 1208(3) of the Elementary and Secondary Education Act (ESEA) (20 U.S.C.A. § 6368(3)), and appropriate instruction in math.” This section also provides rules governing intervention programs, repeated assessments as progress monitoring, and parental notification regarding student progress. Sections 711.24 – 711.25 provide regulations governing the identification of special education students in cyber charter schools, and lists the specific requirements for areas under which the child has not met specified performance standards. Prior to identification of a child for special education services, it is required that the cyber charter school document “...the child was provided scientifically-based instruction in regular education settings, delivered by qualified personnel, as indicated observations of routine classroom instruction.” (22 Pa. Code § 711.25). Section 711.42 provides guidance regarding the transportation of cyber charter school students who require services for special education:

(c) Cyber charter school students are not required to attend a specific facility to receive their educational services. The act does not require that a student's school district of residence provide transportation for cyber charter school students. If transportation is required as a related service in the IEP of the student with disabilities, who is enrolled in a cyber charter school, the cyber charter school shall provide the required transportation.

(d) This chapter does not prohibit a charter school or cyber charter school and a school district from entering into agreements regarding the provision of transportation as a related service or accommodation to children with disabilities eligible under IDEA, or students eligible under Section 504.

Pennsylvania Case Law

There exists much case law surrounding the establishment and funding Pennsylvania cyber charter schools. The case of *Butler Area School District v. Einstein Academy* (2001 Pa. Dist. & Cnty. Dec. LEXIS 321; 60 Pa. D. & C. 4th 207) represented the first of several cases regarding funding of cyber charter schools. Einstein Academy, a cyber charter school, solicited students from the Butler Area School District (BASD) and subsequently provided bills for educational services to BASD. Einstein Academy held “...a charter pursuant to the Charter School Law, 24 P.S. § 16-1701 et seq. as a result of an agreement and charter...between the Morrisville Borough School District and the E-Academy Charter School (TEACH).” (*Butler Area School District v. Einstein Academy* (2001 Pa. Dist. & Cnty. Dec. LEXIS 321; 60 Pa. D. & C. 4th 207). As a result of the charter, Einstein agreed to not only pay Morrisville \$200 per student enrolled in the cyber charter, but also agreed not to seek additional charters from other school districts. Among other issues, the founders of Einstein Academy also owned Tutorbots, the management company hired to run Einstein Academy, which billed the school districts for enrolled

students although instruction had not been provided. The court held the Charter School Law was enacted prior to the development of the Internet and the legislation at the time did not address the specifics regarding cyber charter schools. The court further held that “There is serious question of the propriety of Morrisville essentially selling a charter in return for ‘head money’ per student and an exclusivity provision.” The holding in this case enjoined Einstein Academy from providing educational services to students in the Butler Area School District as well as prohibited Einstein from billing for services or attempting to collect on bills previously provided to school districts (*Butler Area School District v. Einstein Academy* (2001 Pa. Dist. & Cnty. Dec. LEXIS 321; 60 Pa. D. & C. 4th 207).

Pennsylvania charter school law, enacted in 1997, did not specifically prohibit or allow the operation of cyber charter schools. Section 17-1745-A of the Pennsylvania code provides for the establishment of cyber charter schools, and states that cyber charters may be established by a “...nonsectarian corporation not-for-profit as defined in 15 Pa C.S. § 5103...”, which defines such as “...corporation[s] not incorporated for a purpose or purposes involving pecuniary profit, incidental or otherwise.” One of the issues presented in *Fairfield Area Sch. Dist. v. Nat’l Org. for Children, Inc.*, (2001 Pa. Dist. & Cnty. Dec. LEXIS 172, 59 Pa. D. & C.4th 158 (2001)) involved the payment of funds from school districts to Einstein Academy. The court held that The Charter School Law (24 P.S. § 1701701-A et seq.) enacted in 1997, “...authorized local boards of school directors to issue charters. Although the Act specifically prohibited the grant of charters to entities for profit, it is silent concerning management contracts...” under which Einstein was

operating. The court further held that charter schools are not obligated under the Charter School Law to provide advance information to districts regarding the enrollment of students in the charter school or regarding expenses. In this case, and in the related case of *Butler Area School District v. Einstein Academy* (2001 Pa. Dist. & Cnty. Dec. LEXIS 321; 60 Pa. D. & C. 4th 207), Einstein Academy was not completely ready for operation at the time of securing the charter with the Morrisville School District and presented bills for services for students who were not residents of the district in which the charter was granted. The court held that according to Pennsylvania statute, section 17-1723-A, “Defendants are, pursuant to Charter School Law, authorized to enroll nonresident students on a space available basis ‘if available classroom space permits’” yet the court determined that classroom space “...in the confines of the student’s home, would make ‘classroom’ meaningless.” (2001 Pa. Dist. & Cnty. Dec. LEXIS 172, 59 Pa. D. & C.4th 158 (2001)). The court opined that the defendants did not have any classrooms, thus they had no authority to enroll students, whether from the district that chartered the school initially or from other districts in the state of Pennsylvania. In *Fairfield Area Sch. Dist. v. Nat’l Org. for Children, Inc.*, (2001 Pa. Dist. & Cnty. Dec. LEXIS 172, 59 Pa. D. & C.4th 158 (2001)), the school districts sought, among other remedies, declaratory judgment that Pennsylvania charter school law violates the Pennsylvania Constitution, Article III, Section 31, which states “...the General Assembly shall not delegate to any private corporation any power to perform any municipal function whatever.” The court held that charter schools are public schools and are nonprofit entities and thus do not violate the Constitution.

The case of *Boyertown Area School District et al., v. Department of Education* (861 A.2d 418; 2004 Pa. Commw. LEXIS 817) was the first challenge to the charter school law and funding of cyber charter schools. The court held the Department of Education's withholding of state subsidies from the districts that failed to remunerate cyber charter school for educational services constituted an "adjudication" under Pennsylvania charter school law. The districts did not adhere to the resultant process to be heard regarding the withholding of state subsidies, and once again the funds were withheld. The court reversed the Secretary's order and "...the case was remanded to the Department for further proceedings."

In the case of *Pennsylvania School Boards Association, Inc. v. Zogby* (802 A.2d 6; 2002 Pa. Commw. LEXIS 505), the State Department of Education withheld state education subsidies from petitioner districts due to failure of districts to pay tuition bills to cyber charter schools. The Commonwealth Court held that cyber charter schools were legal under the existing law, and the case was remanded to the Pennsylvania Department of Education for petitioner districts to challenge withheld state subsidies without challenging the legality of cyber charter schools. The legality of the cyber charter school establishment was upheld under section 17-1741-A(a)(1) of Pennsylvania Code which provides for only the district that granted the charter and the appeal board to determine whether or not to grant a charter school application. In further proceedings, the petition for appeal to the Supreme Court of Pennsylvania (573 Pa. 687823 A.2d 146; 2003 Pa. LEXIS 929) was denied without a published opinion.

Another Pennsylvania case that dealt with funds for cyber charter schools was *Slippery Rock Area School District v. Pennsylvania Cyber Charter School* (975 A.2d 1221; 2009 Pa. Commw. LEXIS 453). The school district failed to pay for a four-year old kindergarten student who was enrolled in the Pennsylvania Cyber Charter School, as the school district provided for kindergarten programs for students aged five years or older. The Secretary of Education "...deducted the funds from the district's state payment pursuant to § 17-1725-A(a)(2)-(5)." The Commonwealth Court of Pennsylvania "...affirmed the order of the Secretary."

Einstein Academy's most recent funding issue may be found in *Larry Waslow, Liquidating Supervisor of The National Organization for Children, Inc., f.d.b.a.T.E.A.C.H. f.d.b.a. The Einstein Academy Charter School* (984 A.2d 575; 2009 Pa. Commw. LEXIS 1542). At issue was Einstein's claims for reimbursement of special education services provided to students in the cyber charter school. Einstein claimed the inability to maintain IEPs in accordance with 24 P.S. § 17-1725-A(a) in order to receive special education funding from the school district of residence. Einstein "...invoiced the various school districts only for General Education Funds, not for any additional special education funds." The court held in this case that "The Secretary's...letter effectively denies Einstein reimbursement as it also denies Einstein an opportunity for further consideration of its claims..." and overruled the Department's objection and directed "...the Department to file an answer to the Petition for Review..."

The case of *Angstadt and Angstadt v. Midd-West School District* (182 F. Supp. 2d 435; 2002 U.S. Dist. LEXIS 1986) involved the question of whether or not a cyber

charter school was legal under Pennsylvania charter school law (§ 17-1701-A et seq.). At issue was the ability of a home schooled child who was also part of a cyber charter school to participate and compete in interscholastic basketball for the school district of her residence. As a home schooled student, the district of residence disallowed participation in interscholastic and extra-curricular activities. The student, Megan Angstadt, was granted an exception to play basketball for her middle school of residence during the 1999-2000 school year. The following school year, 2000-2001, Megan again participated in interscholastic basketball, but this time she was not granted an exception, so she played basketball in violation of the policy of the board of directors. During the 2001-2002 school year, Megan enrolled in the Western Pennsylvania Cyber Charter School, and implored the district board of directors to allow her to participate and compete in interscholastic basketball at the junior varsity level, contending her enrollment in the cyber charter school made her a public school student for purposes of participation in school activities. Megan was excluded from participation in basketball for the majority of the 2001-2002 season.

According to the defendants, Pennsylvania charter school law permitted students enrolled in charter schools to participate in district of residence extra-curricular activities provided the charter school does not offer the same activity (24 Pa. Stat. Ann. § 17-1719-A(14)). The Pennsylvania General Assembly, in House Bill 1733, determined that charter school law in Pennsylvania was enacted prior to the explosion of the Internet and the deliverance of curriculum and instruction without a physical location for the cyber charter school violated the charter school law that required a physical location and minimum

instructional hours (House Bill 1733, Session of 2001, P.N. No. 2176). The court, in deciding the outcome of the case, held that the “Plaintiffs have failed to establish a high likelihood of success on the merits as to any of the counts in the complaint.” (*Angstadt v. Mid-West School District*, 182 F. Supp. 2d 435; 2002 U.S. Dist. LEXIS 1986). To the issue of irreparable harm, the court held that the plaintiff did not establish irreparable harm in Megan not competing in the remaining four games of the junior varsity season. United States District Judge James F. McClure denied the defendant’s motion for injunction.

Pennsylvania Virtual Charter School Governance

The governance of Pennsylvania cyber charter schools is established through 24 P.S. § 17-1716-A (2009):

- (a) The board of trustees of a charter school shall have the authority to decide matters related to the operation of the school, including, but not limited to, budgeting, curriculum and operating procedures, subject to the school's charter. The board shall have the authority to employ, discharge and contract with necessary professional and nonprofessional employees subject to the school's charter and the provisions of this article.

The State Charter School Appeal Board has the exclusive power to review appeals of rejected cyber charter school applicants or cyber charters that have been revoked. Section 12.16 addresses the governing board of cyber charter schools, stating “The board of school directors of a school district, joint school committee of a joint school...intermediate unit board of directors, or the board of trustees of a charter school or a cyber-charter school.”

South Carolina Statutes and Case Law

South Carolina Statutes

South Carolina Code Annotated § 59-40-65 establishes requirements for the Virtual School Program. The code allows for the governing body of a charter school to offer “...as part of its curriculum a program of online or computer instruction...” and further requires the governing body to:

- (1) provide each student enrolled in the program with a course or courses of online or computer instruction approved by the State Department of Education that must meet or exceed the South Carolina content and grade specific standards. Students enrolled in the program of online or computer instruction must receive all instructional materials required for the student's program;
- (2) ensure that the persons who operate the program on a day-to-day basis comply with and carry out all applicable requirements, statutes, regulations, rules, and policies of the charter school... (S.C. Code Ann. § 59-40-65).

A certified teacher, pursuant to section 59-40-50, must teach online courses. Parents are required to verify the number of hours per year the student participates in online activities, and the virtual charter school must adopt a plan that provides for:

- ...(a) frequent, ongoing monitoring to ensure and verify that each student is participating in the program, including proctored assessment(s) per semester in core subjects graded or evaluated by the teacher, and at least bi-weekly parent-teacher conferences in person or by telephone;
- (b) regular instructional opportunities in real time that are directly related to the school's curricular objectives, including, but not limited to, meetings with teachers and educational field trips and outings;
- (c) verification of ongoing student attendance in the program;
- (d) verification of ongoing student progress and performance in each course as documented by ongoing assessments and examples of student coursework;
- (6) administer to all students in a proctored setting all applicable assessments as required by the South Carolina Education Accountability Act. (S.C. Code Ann. § 59-40-65).

Section 59-40-65(C) requires the charter school to provide no more than seventy-five percent of the academic instruction "...in kindergarten through twelfth grade via an online or computer instruction program. The twenty-five percent of the student's core academic instruction may be met through the regular instructional opportunities outlined in subitem (A)(5)(b)." Charter schools are permitted to reimburse families for Internet connection costs in order to participate in the program.

Section 59-40-65(E) precludes the charter school from providing at the state's expense instructional materials to "...private or homeschool students choosing to take courses from a virtual charter school..." Finally, only those students enrolled full-time in the charter school may be counted in membership for the purposes of funding. Students who are private or homeschooled and participate in online courses may not be counted or reported to the state.

Section 43-601 provides the definition of a virtual charter school:

...a virtual charter school is a charter school whereby students are taught primarily through online methods; however, at least 25 percent of the instruction in core areas as defined in Section IV(E)(1) must be through regular instructional opportunities. Regular instructional opportunities may include, but are not limited to, the opportunities outlined in Section IV(E)(2).

The virtual charter application must contain the following elements:

- (1) List of currently developed courses that are ready for curriculum alignment;
- (2) Access to one course per level that can be previewed by South Carolina Department of Education (SCDE) to assess depth of work necessary for curriculum alignment;
- (3) Description of how the proposed charter will comply with the 25 percent real time requirement;
- (4) A timeline of how curriculum development will be completed and then approved by the SCDE;
- (5) A description of how much teacher interaction students will receive within the online instruction;

- (6) A description of the portal used and how it works;
- (7) A description of how the applicant plans to comply with the teacher requirements in S.C. Code Ann. Section 59-40-50 (S.C Code Regs. 43-601).

Virtual charter schools must provide frequent progress monitoring, proctored assessments, parent conferences via telephone or in person, and twenty-five percent of the instruction in language arts, mathematics, science, foreign languages, civics, economics, arts, history, and geography must be provided in a face-to-face or real-time environment. The face-to-face or real-time activities may consist of:

- (a) meetings with teachers;
- (b) educational field trips and outings;
- (c) virtual field trips that are in real time attended by other charter school students;
- (d) virtual conferencing sessions;
- (e) offline work or projects assigned by the teacher of record (S.C. Code Regs. 43-601).

The allowance of web-based instructional methods that meet the twenty-five percent rule provides for schools that were completely online to maintain their status with little adjustments to the curriculum (Watson et al., 2009).

South Carolina Case Law

None.

South Carolina Virtual Charter School Governance

Section 59-40-220 established the South Carolina Public Charter School District as a "...public body....[that] must be considered a local education agency and is eligible to receive state and federal funds and grants available for public charter school...[and] may not have a local tax base and may not receive local property taxes." The sponsor of a charter school may be the South Carolina Public Charter School District Board of

Trustees “...or the local school board of trustees in which the charter school is located...” (Section 59-40-40(4)). The governing body of virtual charter schools are responsible for verifying student hours in online courses, ongoing progress monitoring and frequent assessment, and ensuring all students participate in assessment as required by the South Carolina Education Accountability Act.

Wisconsin Statutes and Case Law

Wisconsin Statutes

Wisconsin Statute § 118.40(8)(a)(1)(2) defines the location of virtual charter schools:

1. If a school board contracts with a person to establish the virtual charter school, in the school district governed by that school board.
2. If 2 or more school boards enter into an agreement under s. 66.0301 to establish the virtual charter school, or if one or more school boards enter into an agreement with the board of control of a cooperative educational service agency to establish the virtual charter school, in the school district specified in the agreement.

Teachers must be appropriately certified for each online course offered, and teachers with “...permit to teach exclusively in a charter school may teach in a virtual charter school, and no person holding both a license to teach exclusively in a charter school and a license to teach in other public schools may teach, in a virtual charter school, a subject or at a level that is not authorized by the latter license.” (Wis. Stat. § 118.40(b)(1). Parents or guardians in the home are “...not required to hold a license or permit to teach issued by the department...” other than the instructional staff of the school.

Section 118.40(c) requires the instructional staff of the virtual charter school to, for each student taught, improve student learning, assess and diagnose student learning

needs, evaluate the efficacy of instruction, provide content through activities, and report progress to parents and administrators. Virtual charter schools, under § 118.40, are further expected to instruct a minimum of 150 days per year with a minimum number of hours per year. Teachers are required to respond to parent and student inquiries "...by the end of the first school day following the day on which the inquiry is received."

Attendance and participation are required by section 118.40(g). The governing body of the virtual charter school is responsible for notifying the parent of a student who fails to participate or complete assignments. The third time in the same semester "...that a pupil attending a virtual charter school fails to respond appropriately within five days, the governing body of the virtual charter school shall also notify the school board that contracted for the...virtual charter school..." and the student may be transferred back to his/her home district to complete the semester.

Section 118.40(h) limits enrollment of students in virtual charter schools under the open enrollment program to 5,250 beginning with the 2009-2010 school year.

Wisconsin Case Law

Virtual charter schools have faced issues relative to teacher certification and licensing and open enrollment statutes. The case of *Johnson v. Burmaster* (2008 WI 40, 749 N.W. 2d 662, Wisc. LEXIS 194 (2008)) highlighted the issues virtual charter schools faced in Wisconsin. In this case, the open-enrollment statutes, teacher licensing requirements, and charter school statutes were all called into question by the Wisconsin Education Association Council, which claimed the school district's operation of a virtual charter school, Wisconsin Virtual Academy (WIVA), violated the above-mentioned

statutes. Wisconsin statute § 118.40(3)(c) (2005-2006) prohibits students living outside the district in which the charter school is located from enrolling in the charter school. As the statute did not specifically include or exclude virtual charter schools, the court granted summary judgment in favor of the school district. The Wisconsin Education Association Council (WEAC) appealed the case, and the appellate court ruled the district was in violation of § 118.40(3)(c) (2005-2006) as the students were educated outside the district's boundaries (2008 WI App 4; 307 Wis. 2d 213; 744 N.W. 2d 900; 2007 Wisc. App. LEXIS 1067). In this case, parents were acting as the educators in an unpaid status, thus the contention that the district was also violating §§ 118.21 and Wisconsin Administrative Code § PI 8.01(2) by using unlicensed teachers was not affirmed.

The Wisconsin Virtual Academy is a charter school established and operated by the Northern Ozaukee School District that serves students throughout the state of Wisconsin (2008 WI App 4; 307 Wis. 2d 213; 744 N.W. 2d 900; 2007 Wisc. App. LEXIS 1067). Although certified teachers are employed, the parent in the home provides the majority of the instruction and assistance. The school is funded through the open enrollment statute, which requires the district of residence to pay the district authorizing and operating the virtual charter school full-time equivalent for each student enrolled. In the opinion delivered by Justice Brown, summary judgment to the district was reversed and granted to the plaintiffs because:

The relevant provisions of these statutes prohibit a school district from operating a charter school located outside the district, require that open-enrollment students attend a school in the district, and require that teachers in all public schools, including charter schools, be state-certified. For each statute, the District presents a creative reading allowing WIVA to continue its present operations, but our job is not to bend the statutory framework to fit WIVA. If, as its proponents claim

(and its opponents dispute), WIVA has hit upon a bold new educational model that educates pupils in a way equal to traditional school at a fraction of the cost, then the legislature may well choose to change the law to accommodate WIVA and other schools like it. However, as the law presently stands, the charter school, open-enrollment, and teacher certification statutes are clear and unambiguous, and the District is not in compliance with any of them.

The court held that WIVA , which required parents to supervise and implement the educational process of the their children was in violation of the teacher certification statute and the allowance of students to attend WIVA from outside the authorizing district further violated the open-enrollment statute.

According to Watson et al. (2009), the ruling that the Wisconsin Virtual Academy (WIVA) violated state statute and was thus ineligible for state funding caused the legislature to enact Act 222, "...which makes changes to charter school, open enrollment, and teacher licensing laws to allow virtual charter schools to operate with public funding." (p. 116). The significance of Act 222 is that due to the *Johnson* case, legislation was enacted that addressed the statutory and regulatory issues germane to the holding in the case, and allowed virtual charter schools to operate with state funding.

Wisconsin Virtual Charter School Governance

The governing body of a virtual charter school is responsible for assuring the certification of the teachers of the online courses. Parent advisory councils are required under Wis. Stat. § 118.40(3)(e) and the governing board is charged with ensuring the council meets on a regular basis. The determination of members is the responsibility of the governing agency. Wisconsin statute provides for the notification to all parents, the names of:

1. The members of the school board that contracted for the establishment of the virtual charter school and the administrators of that school district.
2. The members of the virtual charter schools governing body, if different than the persons under subd. 1.
3. The members of the virtual charter schools parent advisory council established under par. (e)
4. The staff of the virtual charter school.

The governing body of the virtual charter school is required to, under § 118.40(2), report the following to the department of education:

- a. The number of pupils who have initially applied and been accepted to attend the virtual charter school through the open enrollment program under s. 118.51
- b. The number of pupils attending the virtual charter school through the open enrollment program under s. 118.51 in the current school year who are expected to continue attending a virtual charter school through the open enrollment program under s. 118.51 in the succeeding school year.
- c. Of the applicants reported under subd. 2. a., those who are siblings of pupils reported under subd. 2. b.

For the purposes of funding virtual charter schools, § 118.40(2m):

- 2m. If the department determines that the sum of the pupils reported under subd. 2. a. and b. by all virtual charter schools is no more than the limit under subd. 1., the department shall notify the virtual charter schools that all pupils reported under subd. 2. a. and b. may attend virtual charter schools in the succeeding school year. If the department determines that the sum of the pupils reported under subd. 2. a. and b. by all virtual charter schools is more than the limit under subd. 1., the department shall calculate the sum of pupils reported under subd. 2. b. by all virtual charter schools....
- 4m. In performing the calculations under subsd. 2m. to 4., the department shall count a pupil who has applied to more than one virtual charter school only once.
5. The department shall maintain a waiting list for those pupils not selected at random under subd. 4. Each virtual charter school shall notify the department whenever it determines that a pupil determined to be eligible to attend the virtual charter school under subd. 4. will not be attending the virtual charter school. The department shall select pupils on a random basis from the waiting list to fill the newly available spaces.

Students who are not residents of the state of Wisconsin may attend a virtual charter school in the state according to Wis. Stat. § 121.83. The school board that contracted to

establish the virtual charter school "...shall charge tuition for the pupil in an amount equal to at least the amount determined under s. 118.51(16)(a)3."

Wyoming Statutes and Case Law

Wyoming Statutes

Wyoming statute section 21-3-301 established charter schools with the express purpose of providing students and parents with choice options to improve student achievement and increase educational opportunities for all students. In § 21-3-302, charter schools are defined as those which operate in an existing public school facility or are a conversion school existing in the facility which previously operated as a district public school. Section 21-3-303 expressly prohibits charter school applicants from "...proposing to convert a private school or a nonpublic home-based educational program into a charter school..." and further prohibits any charter schools from "...entering into a contract with an independent management company without prior written consent of the district board..." Section 21-3-304 further defines charter schools as those which "...shall be...public, nonsectarian, nonreligious, nonhome-based school which operates within a public school district." The specific requirements of the above statutes seemingly preclude the development of virtual charter schools within Wyoming, although section 21-3-304(m) allows charter schools to "...offer an educational program that may be offered by a school district unless expressly prohibited by its charter or state law."

Section 21-12-330 of Wyoming statute defines distance education as "...instruction in the statewide educational program prescribed by W.S. 21-9-101 and 21-

9-102 and accredited by the state board under W.S. 21-2-304(a)(ii), whereby the teacher and student, physically separated by time and space, are connected by means of a communications source used to provide synchronous or asynchronous instruction....”

The statute requires the development of a distance-learning plan for each student that delineates the learning objectives and expected outcomes for the student and that is developed in cooperation with the student, the parent, and the teacher. Section (iii) of 21-12-330 allows for students both in the district that sponsors and monitors the distance-learning program and students from outside the district to enroll and participate in distance education.

The state department of education oversees online education in Wyoming.

Districts that operate distance learning programs, according to § 21-13-330(g)(i-vi) must:

- (i) Complete a distance learning plan appropriate to the learning capabilities of the participating student and ensure the plan is in compliance with criteria established by the department of education;
- (ii) Assign the participating student to a school within the district offering appropriate grade level instruction if the student is not physically attending a school within the resident district and the district has not entered into an agreement with a nonresident district pursuant to subsection (h) of this section for that student;
- (iii) Monitor the participating student's progress as measured by his distance learning plan and in accordance with the district's assessment policies, administer or ensure his participation in required student performance evaluations and assessments at the same intervals required of other students at the participating student's grade level;
- (iv) Facilitate necessary instructional support for the student and notify and assist any student not performing satisfactorily or failing to achieve performance benchmarks established within his distance learning plan;
- (v) Maintain the student's records within the district's permanent student data system including his district learning plan, equivalent attendance as specified by his plan, assessment and other performance evaluation data, immunization and other information required by the district;
- (vi) Verify the distance education program received by the participating student complies with and fulfills the state education program established by

W.S. 21-9-101 and 21-9-102 and rule and regulation of the state board under W.S. 21-2-202(a)(xxxi) and that the program otherwise meets district program standards;

(vii) Restrict the student's distance education to programs approved by the department of education pursuant to W.S. 21-2-202(a)(xxxi) and accredited by the state board.

Section (h) of Wyoming Statute 21-13-330 provides for resident districts to enter into agreements with nonresident districts to provide distance education opportunities for students where the nonresident district providing the distance education captures the membership of the student for funding purposes provided the nonresident district comply with all requirements specified in the distance education statutes.

Funding for students enrolled in distance learning programs is provided pursuant to § 21-13-330, which requires students to be counted for not more than one average daily membership (ADM) pursuant to § 21-3-314. Part-time distance education students are counted on a prorated basis and the total ADM funding split between the distance education program and the brick-and-mortar program if the student participates in both. Students who reside in districts outside the district offering the distance education program are funded through the district of residence, which must provide the equivalent of one ADM to the nonresident district of the student is participating full time in the distance education program offered by the nonresident district. Section 21-13-330(j) further maintains provisions for students who are children of active duty military parents and allows for such students to continue to access distance learning from out of the state provided the parent maintains a permanent Wyoming address.

Wyoming statute § 21-2-202(a)(xxxi) requires the Wyoming Department of Education to:

- (A) [Establish], [approve], [facilitate] and [monitor] a state network of distance education courses that meet state standards for course content and delivery by Wyoming certified teachers;
- (B) Providing training and technical assistance to school districts for the delivery of distance education;
- (C) Monitoring the design, content, delivery and the accreditation of distance education programs provided by school districts under W.S. 21-13-330;
- (D) Establishing criteria and necessary components of individual student distance learning plans required by W.S. 21-13-330;
- (E) Implementing a comprehensive reporting process as necessary for federal and state funding requirements and establishing necessary data collection instruments and systems to monitor and improve distance education programs statewide.

Chapter 41, Distance Education, established rules promulgated pursuant to the Wyoming Department of Education and the State Board of Education. Chapter 41 requires a Memorandum of Understanding between resident and nonresident districts relative to the provision of distance education funding for students. Section 4 of chapter 41 outlines the process for programs desiring to join the Wyoming Switchboard Network, which was created to monitor and approve distance education courses. The various requirements include providing assurances that the program is financially solvent, the program is accredited, the process for ensuring student accountability for enrollments and funding, the process for ensuring the teachers are appropriately trained to offer distance education courses, and the process for ensuring compliance with student performance standards. Section 15 of chapter 41 further defines student participation in state, local, or district assessments and requires resident districts to ensure “Student performance, accountability, state and local assessment results, and adequate yearly progress (AYP) ...” standards are appropriately monitored.

Wyoming Case Law

None

Wyoming Virtual Charter School Governance

Wyoming distance education schools are monitored and authorized by the Wyoming Switchboard Network. The resident district is responsible for monitoring the student's progress toward the goals of the Distance Learning Plan on a schedule cooperatively developed between the district and the provider of distance education.

Summary

The following table (Table1) provides a summary of the virtual charter provisions in the 19 states with legislation permitting virtual charter schools. The table contains: virtual charter school statutory provisions, description, governance structure, and any litigation.

Table 1
States' Virtual Charter School Provisions

State	Virtual Charter Provision	Year Enacted	Description	Governance/ Authorizer	Litigation
Alaska	4 AAC 33.410; 4AAC 33.421; 4AAC 33.430; 4AAC 33.432; §14.03.25- §14.03.290	1995 (Charter School Legislation) 2008 (Virtual School)	Grades K-12; Individual learning plan; Certified teachers; Must participate in state wide assessment program; Students may not be counted for more than one full FTE	Local school boards, with final approval through State Board of Education and Early Development	None
Arizona	ARS § 15-808 ARS § 15-183(B)(C)	1993 (Charter schools); 2003 (Virtual School)	Grades K-12; Daily log required for attendance; FTE not to exceed 1.0; Attendance runs July 1-June 30; Funding at 95% of base student level	District board of education; State board of education; May contract with public or private entity; Statewide charter board	None
Arkansas	Acts 2007, no. 1420 § 38 Acts 2009 no. 1421 § 23 ACA §§ 6-47-201, 302	1995(Charter Schools); 2007 (Virtual School)	Grades K-12; home-school public, private students; FTE not to exceed 1.0; Distance Learning Coordinating Council	State Board of Education; Superintendent provides governance for conversion virtual charter schools; Chief operating officer is governing authority for new virtual charters	<i>Lake View School District v. Huckabee</i>
California	EC § 47600 et seq. EC § 47612.5 EC 47634.2 CCR § 11963.5 § 78910.10	1992 (Charter schools) 2001 (Cyber charter schools)	Must request funding rate; At least 80% of teaching and learning occurs via Internet; Instructional expenditures must be at least 85% of total budget; Individualized learning plans required; Computer and peripherals must be supplied	School boards and State Board of Education; State Charter School Institute; Local school boards; Required to monitor budgets, teacher qualifications, and student achievement	<i>Wilson v. State Board of Education</i> ; AGO 06-201(2006)
Colorado	C.R.S. 30.5 (Charter Schools Act) C.R.S. 30.7-101 C.R.S. 22-30.5-	2002 (Cyber Charter Schools)	Learning centers; Mentors; multi-district programs; Online division, Online learning expert; Nonreligious; Nonsectarian;	School district; Group of two or more school districts; Board of cooperative services	<i>Villanueva v. Carere</i>

State	Virtual Charter Provision	Year Enacted	Description	Governance/ Authorizer	Litigation
	103(6)(a) C.R.S. 22-30.7-101 C.R.S. 22-30.7-102 C.R.S. 22-30.7-103 1CCR 301-71 1CCR 301-71(2.10) 1CCR 301-41		Division of Online Learning; No prior year attendance requirement; Must participate in all statewide assessments		
Idaho	§ 33-5202A § 33-100(f)(4) § 33-1619 § 33-5203(7) § 33-5205(3)(q)	1998 (Charter schools); 2008 (Virtual charter schools)	Full-time, sequential program; Asynchronous or synchronous; Districts permitted to use up to 5% of funding for virtual courses and dual enrollment courses; Federal funds distributed to virtual charter school; Blended models; May exceed 1.0 FTE; Students with disabilities must be served; Computer and related peripherals must be supplied	Local school board; State Charter School Commission; State Board of Education; Must comply with all education laws in Idaho	AGO 86-13
Illinois	105 ILCS 5/27A-5 § 10-29(a) § 10-29(6) HB 5168 § 10 § 5/18-8.05	1996 (Charter schools) 2009 (Virtual schools)	Grades K-11; Remote educational programs; Approval from IEP team required; clock hours calculation; Must participate in all statewide assessments; May not be home-based charters; Participation may not exceed 12 months; Fees may be charged to home- or private-school students;	School boards are authorizers; Board of Directors as defined in charter; Subject to Freedom of Information Act, Open Meetings Act	1003 Ill. AG Lexis 4 <i>State of Illinois v. Chicago Virtual School</i>
Indiana	§ 20-24-7-13 § 20-24-8-2 § 20-24-3-13 § 20-24-3-16	2001 (Charter schools); 2005 (Virtual charter)	50% or more of instruction through distance learning, online technologies, computer based instruction; Provides funding for up to 200 students to attend virtual charter through 2010, up to 500 through 2011; May not be	Universities, mayors of consolidated cities, township board of a school township, county board of education, board of school commissioners, metropolitan board of education, board of trustees;	None

State	Virtual Charter Provision	Year Enacted	Description	Governance/ Authorizer	Litigation
			operated out of a private residence or provide home-based instruction; Students must meet face-to-face for a portion of instruction	May not be a for-profit entity	
Kansas	K.S.A. 72-3711 § 72-1903 §72-3715 SB 669	1994 (Charter schools); 2009 (Virtual schools)	Grades K-12 Schools may run a virtual program in an existing school or a virtual charter – a new school that must be approved; Students must be present during specific times in FTE count periods; Use of login records and activity logs count toward compulsory attendance requirements; May draw students from across district lines; May not earn more than 1.0 FTE	State Board of Education	None
Minnesota	124D.095 124D.10	1991 (Charter schools) 2003 (Virtual schools)	Online Learning Option Act; Allows for coursework at higher grade level; Must provide access to computer hardware and software; Online Learning Advisory Council; Virtual charters may not provide a mechanism of enrolling home school students	School district, Intermediate school district, organization of two or more school districts, charitable organization, colleges and universities	<i>Education Minnesota et al., v. Cheri Pierson Yecke, Commissioner, Minnesota Department of Education et al.</i>
Nevada	§ 386.505 § 388.823 § 388.842 § 388.846 § 388.850 § 388.854 § 387.193	1997 (Charter Schools) 2004 (Virtual schools)	Defines distance education as separation of time and space of teacher and learner; allows for out of district students to enroll; No daily minutes of attendance requirement – competency-based; May not provide education to home or private	State committee of charter schools, Individual district boards of trustees, Nevada state board of education, Nevada system of higher education; Must hold minimum of one public meeting per quarter	None

State	Virtual Charter Provision	Year Enacted	Description	Governance/ Authorizer	Litigation
New Hampshire	§ 194-B:1	1995 (Charter schools)	schooled students	Board of Trustees; Colleges; Universities; Museums; Must hold meetings in a public forum	<i>Claremont Sch. Dist. v. Governor</i>
	§ 194-B:3 § 306.22 § 194-B:11		Virtual Learning Academy Charter School; Provides supplemental courses to students from any school in the state; Defined as correspondence, video-based, Internet-based, online courses; Resident school district must pay at least 80% of per pupil funding to charter school		
New Mexico	§ 6.30.8.6	1993 (Charter schools)	New Mexico Innovative Digital Education and Learning (IDEAL-NM); Sites that offer distance learning required to provide onsite access to computers and related peripherals; Must provide all students with information regarding availability of online courses; Students must log on at specified times for synchronous courses; Private and homeschooled students permitted to enroll although must pay tuition; District must pay 98% of school generated program cost – may retain 2% for administrative costs	Local school boards, state board of education; IDEAL-NM; State board of education; Local school board; Governing board must have at least five members	None
	§ 6.30.8.7 § 6.30.8.8 § 6.30.8.9 § 6.30.8.10 § 6.30.8.11	2008 (Virtual schools)	Virtual Learning Academy Charter School; Provides supplemental courses to students from any school in the state; Defined as correspondence, video-based, Internet-based, online courses; Resident school district must pay at least 80% of per pupil funding to charter school		
Ohio	§ 3314.01	1997 (Charter schools);	Internet or computer-based schools; School must provide the hardware and software necessary; Base student allocation for 2010 is \$5,718 plus weighted funding for	School boards, state universities, Department of Education	<i>State ex rel., Ohio Cong. of Parents and Teachers v. State Bd. of Educ.</i>
	§ 3314.02		2003		
	§ 3314.08	(eCommunity charter			
	§ 3314.22				
	§ 3314.21				

State	Virtual Charter Provision	Year Enacted	Description	Governance/ Authorizer	Litigation
	§ 3314.088		special education students; Teacher of record may not be assigned more than 125 students; May not use or rent space in nonpublic school; Must establish a physical location as the eCommunity school office		<i>State ex rel., Nancy Rogers, Attny. Gen., v. New Choices Community School, et al.</i>
Oregon	§ 338.135(A) § 338.005 581-020-0337	1999 (Charter schools) 2004 (Virtual schools)	Defined as public charter that provides online courses; Less than 50% of courses are offered at a physical location; Oregon Virtual School District; Online Learning Task Force; Teachers must be certified; Must delineate class sizes for virtual courses; Develop methods for serving ESOL students; Must develop plans for improving student achievement, parent involvement; Must utilize an Internet-based platform for grading and for parental access to student grades; Must provide computer and related peripherals, plus Internet connection if needed; Must provide six opportunities per year for face-to-face interaction	Board of common school district; Board of union high school district; District school boards; State board of education	<i>Coquille School District 8 v. Susan Castillo, Superintendent of Public Instruction, and the Department of Education</i> <i>AGO 8273 (2000)</i>
Pennsylvania	§ 17-1701-A § 16-1615 § 17-1717-A § 17-1725-A § 17-1743 § 17-1743-A § 17-1744	1997 (Charter schools); 2001 (Cyber charter schools)	Virtual high school study commission; Independent public schools chartered by the Department of Education; Must be a public, nonprofit organization; Sectarian and home education entities not	Board of trustees; State Charter School Appeal Board; Board of school directors of a school district; Joint schools committee of a joint school; Intermediate unit board of directors; Board of trustees of	<i>Butler Area School District v. Einstein Academy</i> <i>Fairfield Area Sch. Dist. v.</i>

State	Virtual Charter Provision	Year Enacted	Description	Governance/ Authorizer	Litigation
	§ 17-1745-A § 17-1747 § 17-1747-A § 17-1748 § 25-2502.45 § 25-2591.1 § 711.2 § 711.3 § 711.4 § 711.5 § 711.6 § 711.7 § 711.8 § 711.9 § 711.23		permitted to apply for virtual charter; Funding provided through average daily membership plus weighted FTE for special education students; Must provide instructional materials, computers, monitors, printers, and Internet access reimbursement; Must participate in statewide assessments; Requires face-to-face supplementary activities; Defines online and offline activities; Must establish policies for discipline, truancy, grading, and communication; Permits nonresident students to enroll; Must serve students with disabilities; Must provide progress monitoring and academic interventions	cyber charter school	<i>Nat'l Org. for Children, Inc. Boyertown Area School District et al., v. Department of Education</i> <i>Pennsylvania School Boards Association, Inc. v. Zogby</i> <i>Slippery Rock Area School District v. Pennsylvania Cyber Charter School</i> <i>Waslow v. Pennsylvania Department of Education</i> <i>Angstadt and Angstadt v. Midd-West School District</i>
South Carolina	§ 59-40-65 § 59-40-65(E) § 59-40-50 § 43-601	1996 (Charter schools) 2007 (Virtual schools)	Grades K-12; Must use certified teachers; Parents verify number of hours per year; Must provide frequent progress monitoring, proctored assessments, bi-weekly parent conferences face-	South Carolina Public Charter School District Board of Trustees; Local school board of trustees	None

State	Virtual Charter Provision	Year Enacted	Description	Governance/ Authorizer	Litigation
Wisconsin	§ 118.40(8)(a)(1)(2) § 118.40(g) § 118.40(h)	1993 (Charter schools) 2004 (Virtual schools)	to-face or via telephone; May provide no more than 75% of academic instruction online; Precludes private or home schooled students from participating at state's expense; Teachers must be certified; Must improve student learning, assess and diagnose student learning needs; report progress to parents and administrators; Teachers must respond to inquiries within 24 hours; Attendance is required	Local school board; Two or more school boards that have entered into an agreement to charter a virtual school	<i>Johnson v. Burmaster</i>
Wyoming	§ 21-3-301 § 21-3-302 § 21-3-303 § 21-3-304 § 21-12-330 § 21-3-314 § 21-2-202	1995 (Charter schools) 2007 (Virtual schools)	Distance learning plan that contains the learning objectives and expected outcomes; May enroll students from outside district; Resident districts may enter into agreements with nonresident districts to provide distance education; Nonresident district captures all FTE funding for student enrolled in distance education; Children of active military may continue distance education from out of state provided parent maintains a Wyoming address	School boards, Wyoming Switchboard Network; State department of education	None

Table 2 details the attendance requirements for funding, the enrollment caps, if any, and the amount of FTE earned for basic and exceptional education virtual charter students.

Table 2
Virtual Charter Attendance, Caps, and Funding

State	Attendance Requirement for Funding	Enrollment Caps	Funding	FTE
Alaska	No specific language	Yes/60	Flows from district to virtual charter	Less than or equal to 1.0 FTE
Arizona	Yes	No	95% of base student funding for full time students	Less than or equal to 1.0
Arkansas	Yes	Yes/24 new starts	Flows directly to virtual charter school	Less than or equal to 1.0
California	No specific language	Yes/100 additional charters per year	Must request funding formula from state and is less than traditional schools	Less than or equal to 1.0
Colorado	No specific language	No	95% of base student allocation	Less than or equal to 1.0
Idaho	Average daily Attendance	Yes/6 per year	95% of base student allocation	Less than or equal to 1.0
	Based on hours of attendance at virtual charter school or percent of coursework completed		Flows through district to virtual charter	
Illinois	Average daily Attendance	Yes/120 total	Flows through district although amount not specified	No specific language
Indiana	Must provide part of instruction in brick and mortar school; otherwise, no specific language	Yes/unlimited for school board sponsored charters; five per year for mayor of Indianapolis	80% of base student allocation	No specific language
Kansas	Login records, activity logs,	No	Number of full-time equivalent	Less than or equal to 1.0

State	Attendance Requirement for Funding	Enrollment Caps	Funding	FTE
	participation on specific count days required		students times 105% of unweighted base student aid	
Minnesota	No specific language	No	Average Daily Membership times .88	No specific language
Nevada	Competency-based in lieu of seat time requirement	No	Flows through state	No specific language
New Hampshire	No specific language	No	Same funding as brick and mortar schools Flows from state to virtual charter school with exception of Virtual Learning Academy Charter school – funding directly from State Board	No specific language
New Mexico	Must login at specified times	Yes/75 new starts	98% of school-generated program cost	No specific language
Ohio	No specific language	Yes/Moratorium on virtual schools	Flows through state Per capita subsidy taken from state's basic aid to schools	No specific virtual language but charter language allows weighted funding for charter schools serving special education students
Oregon	No specific language	No/Moratorium on virtual charter schools	No specific language	No specific language
Pennsylvania	Average Daily Membership	No	Flows through the district and based on	Can be greater than 1.0

State	Attendance Requirement for Funding	Enrollment Caps	Funding	FTE
	Must meet compulsory attendance requirement		expenditures, not revenue	
South Carolina	No specific language	No	Virtual charter receives budget amount for ADM minus expenditures for adult education, transportation, construction No specific language	No specific language
Wisconsin	Minimum 150 days per year	Yes/enrollment cap of 5,250 students in virtual charter schools	Funds flow through district for full time students only Flows through the authorizer of the virtual charter school	No specific language
Wyoming	Average Daily Membership	No	No specific language	Less than or equal to 1.0

CHAPTER 4 SUMMARY, CONCLUSIONS AND RECOMMENDATIONS

Introduction

The purpose of this study was to provide a qualitative analysis of the legal, statutory, and governance issues of virtual charter schools and to discern the implications of such regulatory issues on the future of public schools. The specificity in states' statutes, or lack thereof, provided the backdrop for the study. At issue was the use of public funds, the costs associated with virtual schooling, the ramifications of home school virtual charter schools and nonclassroom-based charter schools, and the related case law that has shaped policy in the 19 states with current legislation permitting virtual or cyber charter schools. With the increasing number of public school choice options, states are in a position to where it is necessary to evaluate current practice and policy relative to virtual charter schools in order to ensure appropriate utilization of state and federal funds, teacher certification, and to ascertain that the governance model provides for rigorous oversight. In states where statute does not expressly prohibit virtual charter schools, there have been court challenges to funding formulas, to open-enrollment statutes, and to teacher certification laws when parents are identified as the primary providers of academic content. The results of this study may be valuable to state boards of education and state legislatures charged with developing, enacting, and monitoring virtual charter schools.

Methodology and Data Collection

The data utilized consisted of an analysis of states' statutes relative to virtual charter schools. Attorney General Opinions and case law specific to virtual charter schools provided the data necessary to discern the impact of the legal, statutory, and governance issues associated with deregulated school choice.

Summary and Discussion of the Findings

Research Question 1

What are the current legal standards common within virtual charter legislation, as defined by state statute, in the 19 states with such laws?

According to Beem (2010), as online schools proliferate, policy development is occurring after initiating the practice. Requirements such as seat time, teacher of record, teacher certification, credit allowances, and rigorous course offerings present a conundrum to policy makers. Few state statutes regarding virtual charter schools address the seat-time requirement of brick-and-mortar schools, and Beem suggests the requirement:

...to log face-to-face time or physical attendance to get credit for a class...can create a barrier for true online learning, where completing the coursework may be a better predictor of success than whether a student is spending time sitting at a desk in a classroom. (p. 11).

Few states have statutory language delineating the requirements calculating average daily attendance based on seat-time or course completions. Specificity in virtual charter school legislation is absent in all but a handful of states, which include Arizona, Arkansas, Idaho, Illinois, Kansas, Nevada, New Mexico, Pennsylvania, Wisconsin, and Wyoming.

Nevada is currently the only state of the 19 states with virtual charter school legislation that includes specific competency-based regulations for course completions rather than using seat-time as a mechanism for determining funding. Pennsylvania statute specifies compulsory attendance as a requirement for virtual charter schools, and the statute requires Average Daily Membership counts for funding purposes. Arizona statute allows for the use of a time log to calculate average daily attendance (Senate Bill 1422, 2003) and further defines attendance during any day of the week or time of the day as meeting the requirements of § 15-901. The remaining state statutes contain no specific language relative to attendance for virtual charter schools.

Attendance in virtual charter schools must allow flexibility to the student and the family. Seat-time requirements negate the purpose of virtual schooling, especially when some of the instruction is delivered asynchronously. Allowing use of time logs to monitor attendance over a 24-hour period during a calendar year, combined with competency-based parameters for course completions provides the accountability and flexibility for virtual charter schools to provide education to students in an any time, any place format. State legislators should consider the funding formula for virtual charter schools and defining average daily attendance or membership specifically in relation to virtual schools, rather than applying a definition designed for brick and mortar environments.

Enrollment caps in statute limit the availability of virtual charter schools as a school choice option in many states. Alaska, Arkansas, California, Idaho, Illinois, Indiana, New Mexico, Ohio, Oregon, and Wisconsin all cap charter school growth or enrollment, with Ohio, Oregon, and Wisconsin capping virtual charter school growth. In

Ohio and Oregon, statute provides for a moratorium on new start virtual charter schools, and Wisconsin caps the number of students allowed to participate in the virtual charter schools at 5,200. Capping enrollment at virtual charter schools artificially limits the opportunities for parents to exercise choice in the education of their children. In theory, virtual charter schools should be able to handle greater numbers than brick and mortar schools as the students are not occupying a physical space in a building; however, capping enrollment in schools that are otherwise performing according to established standards raises the issue of equity and access for all students.

According to Hill and Lake (2006), internal and external charter school governance is "...an innovation in public school governance." (p.1). The external arrangements include the authorizers of virtual charter schools and the process in states with statutory language permitting such schools. Authorizers include local school boards, state boards of education, colleges and universities, non-profit entities, and consortia of two or more school districts. In Arizona, a statewide charter board may approve or authorize virtual charter schools, while in Indiana mayors of consolidated cities have authority to approve virtual charter schools. Several states, including Arizona, Idaho, New Mexico, Pennsylvania, and Wyoming have statutory language permitting state charter school commissions to authorize virtual charter schools. Authorizers of virtual charter schools should be those entities most able to monitor the performance of the students and the charter school's adherence to established policy. When the authorizer of a virtual charter school is geographically removed from the headquarters of the school, monitoring compliance becomes a difficult challenge to overcome. Although the basic

tenet of virtual charter schools is that they are online, and thus the operations of the school should also be online, there is value in the ability to have face to face contact with those administering the virtual charter program.

The internal governance arrangements of virtual charter schools are vague in statute, and all but Arizona, Colorado, and Wisconsin prohibit for-profit entities from authorizing charter schools. Although for-profit entities may not authorize charter schools, the statutes in Alaska, Arizona, Arkansas, California, Colorado, Idaho, Illinois, Indiana, Minnesota, Nevada, New Hampshire, New Mexico, Ohio, Oregon, Pennsylvania, South Carolina, Wisconsin, and Wyoming provide for management of charter schools by a for-profit entity. Statute in all 19 states is vague regarding governance of virtual charter schools. In all 19 states, the statutes relative to governance are found only in charter, not virtual charter, legislation. Kansas and New Mexico have no specific language in statute regarding the authorizing or management of virtual charters by for-profit entities. Governance models should be clearly delineated in statute, with the responsibilities of the governing body defined. The governing body of the virtual charter school must be responsible for the oversight of the entire school, including teacher certification, financial matters, curriculum, instruction, and program evaluation.

Vanourek (2006) identified two areas in which differences between virtual charters and brick and mortar charter schools present issues for lawmakers and school districts: "...1) politics and policies, and 2) internal school operations." (p.4). Many states with virtual charter legislation do not define authorizing and governance beyond that which is delineated for brick and mortar charter schools. Statutes requiring seat-time

minimums for the purposes of calculating average daily attendance or membership for funding creates a policy dichotomy between that which is appropriate and realistic for a traditional school versus that which is appropriate for virtual schools. The lack of specificity in states' statutes regarding boundaries, part- versus full-time status of students, and funding arrangements for nondistrict students presents challenges to the governance and accountability of virtual charter schools.

According to Hill and Lake (2006), "...charter schools' internal governance arrangements help take away the freedom of actions that their external governance arrangements are supposed to promote..." (p. 2) due to limitations in state laws. In all states with virtual charter legislation, the authorizing entity is outlined in brick and mortar charter, not virtual charter, statute. While it is intended for the oversight of virtual charter schools to fall to the authorizing agency, there is little specificity in statute in the 19 states with virtual charter legislation that outlines the exact duties of such authorizers.

Kansas' lack of oversight for virtual charter schools led to a school district providing students to other districts for the purposes of counting the students in the funding formula for full-time equivalents (School District Performance Audit, 2007). The superintendent of the Mullinville School District gave students to three other districts for the following reasons:

- He realized early on that the Mullinville district didn't need all the funding its virtual school enrollment was generating....
- "Giving" away some of the Mullinville virtual school's "excess" enrollment allowed him to help other districts financially....
- He was compensating two of the districts for not opening their own virtual schools in the area. According to officials from Mullinville and Southwest Plains Regional Service Center, both Comanche County and Pawnee Heights had voiced an interest in opening their own virtual schools for adult students

in the past. Officials from the Service Center had concerns about the area's ability to support more than one school, and Mullinville ended up agreeing to provide some of its virtual enrollment to these districts....

- He initially indicated he was trying to give each district “back” the number of virtual students who lived in these districts general areas....
- He said Department of Education officials had expressed concerns that the district's virtual enrollment had surpassed its brick-and-mortar enrollment. (School District Performance Audit, 2007, p. 27).

The extreme lack of oversight, in relation to established policies prohibiting such behavior, provides the opportunity for districts to manipulate funding and assessment results, as well as Adequate Yearly Progress outcomes, to represent unfairly the district in a better light than appropriate. In Kansas, smaller districts generate more state aid than do larger districts through low-enrollment funding, and arrangements such as described above, according to the School District Performance Audit of 2007, can be used to manipulate funding in such a way that districts share the excess funding generated in the smaller district. Lack of specificity in statute regarding the funding of students, the funding of students shared among districts, and the formula for students enrolled in virtual and brick and mortar programs must be addressed to avoid double-counting of students.

Similar oversight issues occurred in California, where lack of monitoring allowed for a virtual charter school to overcharge the state for services. The Hope Online Learning Academy Co-Op in Colorado used public funds to support private, religious education and did not provide background checks for all employees. Lack of statutory guidance in Pennsylvania led to the proliferation of virtual charter schools with many districts refusing to pay for the students because there was no legislation supporting the development of virtual charter schools.

Development of virtual charter schools has occurred in many states under existing charter school legislation. Issues such as funding, authorizing, and governance of virtual charter schools, as well as caps imposed to limit the number of new virtual or brick and mortar charters that open, must be addressed.

Research Question 2

What are the most common legal standards in virtual charter legislation as defined by current case law?

The case law relative to virtual charter schools has been concentrated in Arkansas, California, Colorado, Illinois, Minnesota, New Hampshire, Ohio, Oregon, Pennsylvania, and Wisconsin. While other states have not had legal challenges to virtual charter schools loopholes in the legislation in areas such as funding, governance, and adherence to federal and state regulations are possible without the careful designing of legislation relative to virtual charter schools.

The funding of virtual charter schools was addressed in *Butler Area School District v. Einstein Academy* (2001 Pa. Dist. & Cnty. Dec. LEXIA 321; 60 Pa. D. & C. 4th 207). According to Carr-Chelman and Marsh (2008), “Cyber charter schools in Pennsylvania fall under the Charter School law, known as Act 22.” (p.52). As a result of Act 22, the Pennsylvania Department of Education oversees virtual charter schools, from authorization through closure. In the case of *Butler Area School District v. Einstein Academy* profit from state funds to a for-profit entity became an issue. According to Carr-Chelman and Marsh, “Proponents of contracting out to EMOs argue that competition, the profit motive, and freedom from what they view as cumbersome governmental

bureaucracies allow private management companies to provide more value for the money.” (p.52). The use of for-profit entities to provide educational services to children in Pennsylvania, where it was not prohibited by statute, was questioned.

Einstein Academy operated a virtual charter school under the 1997 Pennsylvania statute for charter schools, which did not specifically permit nor prohibit operation of virtual charter schools. The court held that Einstein could not provide educational services to students in the Butler Area School District and further prohibited Einstein from attempting to collect payment from school districts for students in the virtual charter school. Einstein’s charter was revoked by the Morrisville School District and the appeal to the state charter board was lost due to the financial mismanagement of the Einstein Academy.

In the related case of *Fairfield Area Sch. Dist. v. Nat’l Org. for Children, Inc.* (2001 Pa. Dist. & Cnty. LEXIS 172, 59 Pa. D. & C. 4th 158 (2001)) the school district sought declaratory judgment that the virtual charter school violated Article III, § 31 of the Pennsylvania Constitution yet the court held that charter schools are public schools and do not violate the Constitution. In the case of *Boyertown Area School District et al., v. Department of Education* (861 A.2d. 418; 2004 Pa. Commw. LEXIS 817) 13 school districts withheld payments to virtual charter schools and the state thus withheld state subsidies to those districts. The court held that the districts were entitled to a hearing prior to the state withholding funds, and the “...actions of the department were vacated, and the matters were remanded to the department for further expedited proceedings.” In this case, the appellate court returned the case to the lower court for ruling. An eight-step

process was developed as a result of the ruling in which the Pennsylvania Department of Education provided the districts with required notice and hearings regarding the withholding of state subsidies due to the districts' failure to pay the virtual charter schools.

The case of *Pennsylvania Schools Boards Association, Inc. v. Zogby* (802 A.2d 6; 2002 Pa. Commw. LEXIS 505) challenged the legality of one school district authorizing a virtual charter school that then enrolled students from all over the state of Pennsylvania. The vague language in existing state statute in 2002 provided the avenue for challenge in that Act 22 required a physical location and specified hours of instruction, neither of which could be documented by the virtual charter school. Also at issue was whether state funds were being utilized to support home school students in violation of § 1717-A of Act 22. The ruling in *Zogby* stopped the withholding of state subsidies from districts refusing to pay Einstein and also upheld the legality of virtual charter schools under existing Pennsylvania statute. The result of this litigation and the holding in the case was the development of Pennsylvania Public School Code Act 88 of 2002, an amendment to the initial charter school law, which provided the definition of virtual charter schools. Due to this legislation, the State Department of Education may only authorize virtual charter schools, and individual districts are not responsible for monitoring virtual charter school programs that enroll students from multiple districts across the state. It also established a reporting mechanism for districts whose students are enrolled in a statewide virtual charter program to receive information relative to student performance as well as

detailed the process for the responsibilities of both the districts and the virtual charter school.

In Arkansas, the challenge was centered on the funding for equitable access to education for all students. The holding in the initial case of *Lake View School District v. Huckabee* (370 Ark. 1349; 257 S.W. 3rd 879 (2007)) determined that funding of public schools in Arkansas was inadequate to provide an equitable education for all. As a result, the General Assembly addressed the issues and one outcome was the establishment of the Arkansas Distance Learning Development Program that provided access for all students in Arkansas to rigorous course offerings through distance learning opportunities. The development of the distance learning program allowed for students in rural areas to access courses such as Advanced Placement, which were not available in district schools. Addressing the inequities present in Arkansas schools through distance learning met the requirement of equitable access to education for all.

In California, the case of *Wilson v. State Board of Education* (75 Cal. App. 4th 1125; 89 Cal. Rptr. 2d 745) challenged the authority of the board of education to grant charters. The court held that the Charter School Act of 1992 does not violate the California Constitution and the establishment of charter schools and the regulations under which they operate meet the intent of the law, paving the way for growth in the charter realm. A 2006 Attorney General Opinion centered around the funding for online charter schools when students from outside the chartering district enrolled in the school (AGO no. 06-201 (2006)). The attorney general opined in this case that students must reside in

the charter school's county or in a neighboring county in order for the virtual charter school to receive funding for the students.

Another challenge to virtual charter schools involves the funding mechanism that allows public funds to support home school students. The case of *State of Illinois v. Chicago Virtual Charter School* (2006) was premised on the requirement in statute that charter schools operate as "...public, nonsectarian, nonreligious, non-home based...non-profit school[s]." (105 ILCS 5.27A-5). The suit was dismissed with the judge ruling that the Chicago Virtual School is not home based and is therefore not governed under the Illinois school code relative to home school. Districts and state policy-makers must consider the effect of allowing home schooled students to participate in virtual charter schools. In some cases, the funding formula precludes students not counted in the previous year's FTE cycle from participating, yet if the virtual charter school is providing an education in compliance with statutes governing operation of public schools, legislators should consider enrollment of such students.

The constitutionality of computer-based community schools in Ohio was challenged relative to funding. The case of *State ex rel. Ohio Cong. of Parents and Teachers v. State Bd. of Educ.*, (2004 Ohio 4421, 2004 Ohio App. LEXIS 4009) provided the backdrop for the challenge to local tax dollars flowing through to community and Internet or computer-based schools. The holding in this case was that funds do not flow from the local school district to the community schools, negating the argument that local tax revenues were funding community schools and Internet or computer-based schools.

The challenge of allowing virtual charter school students to participate in interscholastic sports was addressed in the case of *Angstadt and Angstadt v. Midd-West School District* (182 F. Supp. 2d 435; 2002 U.S. Dist. LEXIS 1986). At issue was the ability of a home schooled child who was also part of a cyber charter school to participate and compete in interscholastic basketball for the school district of her residence. Statutes relative to charter and virtual charter schools in Pennsylvania and in many other states do not specifically delineate who can participate in interscholastic sports. The case of *Angstadt and Angstadt v. Midd-West School District* is a case in point, with the question of whether virtual charter schools fall under the same legislation as traditional brick and mortar charter schools. Although the court held the plaintiffs failed to provide evidence of irreparable harm to the student and the motion for injunction was denied, the case points to the necessity of specificity in legislation relative to interscholastic sports, clubs, and activities for students who participate not only in virtual charter schools, but in charter schools in general.

The themes common to the legal challenges presented in the research include financial remuneration, authorizing entities, for-profit management companies, student participation in extracurricular activities, and instructional and curricular quality. In an era where choice opportunities in schooling are myriad, addressing the issues of a quality educational experience for all students in a virtual charter school setting is paramount. Virtual schools present challenges for legislators and school boards as they require a shift in thinking regarding student learning, teacher certification, professional development, pedagogy, and evaluation. Evaluating the efficacy of the curriculum, of instructional

techniques, and of teacher quality require the development of policies and procedures specific to the virtual learning environment. Reliance on methods for evaluation of the above that are rooted in brick and mortar policies and procedures will ultimately negatively affect the operation of virtual charter schools as educators and policymakers must change the educational paradigm under which schools have been operating for hundreds of years.

Research Question 3

What are the legal and statutory issues that must be addressed in developing policies and guidelines for states regarding virtual charter schools?

Perhaps the landmark case in deciding funding of virtual charter schools occurred in Pennsylvania in the case of *Pennsylvania School Boards Association, Inc. v. Zogby* (802 A.2d 6; 2002 Pa. Commw. LEXIS 505) in which the funding structure and payments to virtual charter schools resulted in legislation specific to the parameters that must be followed in determining payments to virtual charter schools. Specificity in Pennsylvania statute relative to funding provides a model for other states in determining how to fund virtual charter schools. Further attention must be paid in legislation germane to the funding of students for meeting seat-time requirements versus competency-based course completions. The models in most states require some form or fashion of average daily attendance or membership at specified times during the day or during specific count days with a specified number of hours required for credit to be obtained. Other states, such as Arizona, define attendance in terms generating average daily attendance at any

time of day, any day of the week, from July 1 - June30. The total funding generated; however, may not be in excess of 1.0 FTE (A.R.S. § 15-808(F)). While Arizona statute contains specificity in calculating average daily attendance, there is no detail of funding for exceptional student education programs, nor is there specificity in funding based upon course completions versus seat-time requirements.

Virtual charter school authorizers and state legislators must develop policies related to:

1. Participation in interscholastic activities;
2. Participation in clubs and activities;
3. Funding mechanisms for exceptional student education;
4. Funding mechanisms for part-time virtual charter school students who also participate in a brick and mortar school instructional program;
5. Funding mechanisms for course completions, competency-based programs, and/or seat-time requirements;
6. Oversight of for-profit companies that provide educational and instructional services to virtual charter schools;
7. Governance of virtual charter schools;
8. Teacher certification, including certification of teachers in virtual charter schools that draw teachers from across state lines;
9. Student achievement, measurement of Adequate Yearly Progress, and attendance; and
10. Boundaries from which virtual charter schools may enroll students.

Legislation in the key state of Pennsylvania has provided some guidance for states in developing policies and practices; however, states are still applying brick and mortar charter statutory language to virtual charter schools without regard for the unique needs and programs of such schools.

Conclusions and Recommendations

Development of policies and laws relative to the careful operation of virtual charter schools, from authorization, to governance, to appropriate funding is within the purview of the state. Lessons may be learned from the case law in specific states such as Pennsylvania and Wisconsin where the legality of virtual charter schools has been challenged. The establishment of carefully worded legislation that addresses the issues inherent in the next version of school choice is critical to the successful operation of virtual charter schools. Oversight for funding, attendance, curriculum and instruction, and teacher certification is critical in both the authorizing and governance of such schools. Legislation that details the process for enrolling district and out of district students, the process for how the funding flows from the state, to the district, to the virtual charter school, and how the students will be counted for accountability purposes is critical to the successful implementation of virtual charter schools. Under the Race To The Top legislation, districts with schools performing in the bottom five percent have four choices of models for improving these schools, one of which is the restart model, where the school is closed and reopened as a charter school. The impact of thoughtfully crafted statute relative to virtual charter schools cannot be overstated, as if charter models will be

used to improve low performing schools, the legislation that governs their development and operation must address the issues of authorization and governance so that students may be served in an educationally sound environment.

According to the National Association of Charter School Authorizers (2009), quality authorizers of charter schools define relationships, manage and deploy funds to schools in an efficient manner, and provide criteria for applicants that cover the entire operation of the school, including the process for closing the school if the requirements are not met. The articulation of measureable student achievement goals that include the statutory requirements for the state, along with monitoring compliance with state and federal regulations, and ensuring that all policies and procedures relative to fiscal accountability, student achievement, and exceptional student education are followed is critical to the role of a successful authorizer.

The quality authorization and governance of virtual charter schools, under the parameters of state statute that is specific to the unique nature of these schools, is essential. As case law in Pennsylvania has demonstrated, lack of specificity in law, policy, and practice has led to critical lapses in monitoring of the financial status of the schools, and has further led to questions of effective curriculum, instruction, and teacher certification that call the quality of virtual charter schools into question.

Implications of the Study

The authorization and governance of virtual charter schools are critical components in ensuring the educational services promised are delivered. This study

evaluated legal, statutory, and governance issues of virtual charter schools, and the implications of such schools on the future of public education.

Based on the review of the literature and the analysis of state statute and case law, the American public has been articulating a desire for freedom in school choice. Parents wish to choose schooling for their children based on convenience, based on religion, and based on quality. Increased demands for accountability, coupled with increased desire for convenient access to high quality, rigorous courses for students, regardless of location, have presented challenges for traditional public schooling. According to Owens and Valesky (2007), “Advocates of marketplace concepts of schooling have proffered some powerful criticisms and some genuine new alternatives to traditional ways of providing public schooling, such as the idea of school choice and vouchers, that merit thoughtful consideration....” (p. 405). According to critics of American public education, schooling has remained an inflexible bureaucracy that does not serve the needs of all students. The voucher debate was fueled with the desire of some to remove the government monopoly from education and allow parents choices in removing their children from underperforming schools. The idea behind the voucher movement, and indeed behind the entire school choice argument, is that competition among schools for students would force improvements, and providing parents choices for schooling, such as charter schools, virtual charter schools, and vouchers, provides the needed competition in the market economy. The proliferation of choice options; however, without regulation and oversight, has led, in some cases, to abuses of finances, substandard educational quality, uncertified teachers, and abysmal student performance. The competition for students, the focus on

high quality, equitable education for all, and the desire to curb the proliferation of new models of schooling without regulation must be addressed in thoughtfully crafted legislation.

Recommendations for School Boards and Legislators

Recommendations for policymakers, school boards, and legislators were developed as a result of this study.

1. Legislators and policymakers should develop laws that address the specifics of virtual charter education, including authorization and governance.
2. Legislators should address the exemptions from statute that will be afforded to virtual charter schools, such as compulsory attendance, teacher certification, and seat-time requirements.
3. Legislators should define geographical boundaries for virtual charter schools and specify whether or not students may be enrolled from across district lines. If legislation permits enrollments from multiple districts, specificity in who authorizes the virtual charter school must be addressed.
4. When addressing the issue of enrollments across districts, financial remuneration to the virtual charter school must be specified in statute.
5. Legislators should address the funding of virtual charter schools, including reporting of student membership, accounting practices, and per student payments based on level of technology that must be provided for specific students, charges to for-profit curriculum and instruction providers.

6. Legislators should address the funding formula for virtual charter schools, and address the limit of 1.0 FTE present in most states with statutes specific to virtual schooling. Inherent in policy relative to funding is the ability of home and private school students to participate in virtual charter schools.
7. Legislators should analyze various funding models for virtual charter schools and consider basing the model on competency-based course completions, with thought given to funding for transient populations who enter and leave virtual charter schools without completing the courses.
8. Legislators should address the provisions of a free, appropriate, public education for all students in the realm of exceptional education students. How services will be rendered, who will monitor and address the IEP of the student, and who will receive funding for the provision of services are tasks for policymakers to undertake in crafting legislation.
9. Legislators should analyze the process for evaluating virtual charter schools and should develop legislation specific to the parameters for accountability at the state and local levels.
10. Legislators should develop laws specifically governing the use of for-profit companies to provide curriculum and instruction.
11. Legislators should develop legislation regarding the accreditation of virtual charter schools.

12. School boards as authorizers of virtual charter schools must develop policies for oversight, including the accountability for student achievement, fiscal responsibility, and contractual fidelity.
13. School boards should carefully determine the governance structure of the virtual charter schools during the authorization process, and hold the governance body accountable for the terms of the charter.
14. School boards should ensure through policy development that virtual charter schools align with state standards, participate in all statewide assessments, appropriately serve students with disabilities, gifted students, and English language learners.
15. School boards as authorizers should regularly audit the finances of the virtual charter schools, and should conduct evaluations of the programs to determine the cost-benefit of the virtual program.

Recommendations for Further Research

Recommendations for future research were identified from the review of the research and from the data analysis.

1. Analyze the student achievement of students participating in virtual charter school programs through analysis of progress monitoring, benchmark, and summative assessments while controlling for variables such as socio-economic status and ethnicity.
2. Analyze the cost-benefit of virtual charter schools.

3. Analyze the potential for a state and/or national virtual teacher certification program.
4. Analyze the components of the various online curricula available to determine if levels of student engagement are contingent upon the nature of the online curriculum, whether it is heavily text-based, manipulative-based, or a combination of the two.
5. Analyze the levels of professional development of teachers in virtual charter schools and the impact of the professional development on student achievement.
6. Analyze the governance and authorization structures of virtual charter schools to evaluate the efficacy of effective authorizing and oversight on virtual charter school success.
7. Analyze the racial segregation of virtual charter schools to determine if this new frontier in school choice is indeed segregating schools.
8. Analyze virtual charter school legislation from the perspective of weak versus strong laws and how such laws affect the opening, success, and potential closure of virtual charter schools.
9. Analyze why parents and students are choosing to opt out of traditional forms of schooling for virtual charter schools.
10. Analyze the impact of home schooling on virtual charter schools and how legislation affects the ability of home schooling families to access virtual charter schools.

Application of the recommendations for school boards and legislators to legal and policy decisions in states and districts will provide the framework for implementing and managing the newest frontier in school choice, the virtual charter school.

APPENDIX A
IRB COMMITTEE APPROVAL FORM



University of Central Florida Institutional Review Board
Office of Research & Commercialization
12201 Research Parkway, Suite 501
Orlando, Florida 32826-3246
Telephone: 407-823-2901, 407-882-2901 or 407-882-2276
www.research.ucf.edu/compliance/irb.html

Not Human Subjects Research

From : UCF Institutional Review Board
FWA00000351, Exp. 10/8/11, IRB00001138

To : Elizabeth Thedy

Date : July 17, 2009

IRB Number: SBE-09-06337

Study Title: **The Legal, Statutory, and Governance Issues of Public School Choice: Implications for Virtual Charter Schools and the Future of Public Education**

Dear Researcher:

After reviewing the materials that you have submitted, the UCF Institutional Review Board has determined that your project, listed above, does not fit the definition of human subjects research. This is a doctoral dissertation that uses de-identified, publically available data. Therefore, IRB review is not needed.

Thank you for your time in resolving this issue. Please continue to submit applications or contact the IRB office when involved in research activities that could potentially involve human subjects as research participants.

On behalf of Sophia Dziegielewski, Ph.D., UCF IRB Vice-chair, this letter is signed by:

Signature applied by Janice Turchin on 07/17/2009 12:51:16 PM EDT

A handwritten signature in cursive script that reads 'Janice Turchin'.

IRB Coordinator

APPENDIX B
SAMPLE LETTER TO STATE ATTORNEY GENERAL

415 Heathrow Circle
Rockledge, Florida 32955

March 6, 2010

«Title»

Attorney General

«Attorney_General_Address_1»

«Attorney_General_Address_2»

«Attorney_General_Address_3»

Dear Mr. Attorney General,

I am writing to you as a doctoral student in Educational Leadership at the University of Central Florida. I am conducting dissertation research regarding state statutes and case law relative to *virtual charter schools*, and I am particularly interested in how recent case law has influenced virtual charter legislation in your state.

I am writing to request your assistance in confirming both state statute and case law from your state. Specifically, I am interested in the following:

- The year statute relative to virtual charter schools was enacted,
- Current virtual charter school statutory language in your state, and
- Whether or not there have been court challenges to virtual charter statutory language.

The purpose of my study is to analyze the legal, statutory, and governance issues of virtual charter schools, including the extent to which recent case law has affected statutory requirements. It is my hope this research will have a positive impact on the newest frontier of public schooling. I further hope this analysis will provide recommendations for policymakers, legislators, departments of education, and school boards to ensure the instructional quality control and the compliance with state and federal statute of virtual charter schools.

I appreciate any assistance you can offer in addressing the above bulleted issues. Please respond via e-mail to: thedy.beth@knights.ucf.edu. I can also be reached by telephone at (321)633-1000, extension 583 or (321)639-9597, or via my secondary e-mail address: thedy.beth@brevardschools.org.

Thank you in advance for your assistance.

Sincerely,

Beth Thedy, Doctoral Candidate, University of Central Florida

APPENDIX C
SAMPLE LETTER TO CHIEF STATE SCHOOL OFFICER

415 Heathrow Circle
Rockledge, Florida 32955

March 6, 2010

«Chief_State_School_Officer_Name», «Chief_State_School_Officer_Title»
«Chief_State_School_Officer_Address_1»
«CSSO_Address_2»
«CSSO_Address_3»
«CSSO_Address_4»
«CSSO_Address_5»

Dear «CSSO_Salutation»,

I am writing to you as a doctoral student in Educational Leadership at the University of Central Florida. I am conducting dissertation research regarding state statutes and case law relative to *virtual charter schools*, and I am particularly interested in how recent case law has influenced virtual charter legislation in your state.

I am writing to request your assistance in confirming both state statute and case law from your state. Specifically, I am interested in the following:

- The year statute relative to virtual charter schools was enacted,
- Current virtual charter school statutory language in your state, and
- Whether or not there have been court challenges to virtual charter statutory language.

The purpose of my study is to analyze the legal, statutory, and governance issues of virtual charter schools, including the extent to which recent case law has affected statutory requirements. It is my hope this research will have a positive impact on the newest frontier of public schooling. I further hope this analysis will provide recommendations for policy makers, legislators, departments of education, and school boards to ensure the instructional quality control and the compliance with state and federal statute of virtual charter schools.

I appreciate any assistance you can offer in addressing the above bulleted issues. Please respond via e-mail to: thedy.beth@knights.ucf.edu. I can also be reached by telephone at (321)633-1000, extension 583 or (321)639-9597, or via my secondary e-mail address: thedy.beth@brevardschools.org.

Thank you in advance for your assistance.

Sincerely,
Beth Thedy, Doctoral Candidate, University of Central Florida

APPENDIX D
PENNSYLVANIA STATUTE 24 P.S. §§ 25-2502.45 – 25-2591.1

24 P.S. § 25-2502.45 (2009)

§ 25-2502.45. Basic education funding for 2005-2006 school year

For the 2005-2006 school year, the Commonwealth shall pay to each school district a basic education funding allocation which shall consist of the following:

- (1) An amount equal to the basic education funding allocation for the 2004-2005 school year pursuant to sections 2502.13, 2502.44 and 2504.4
- (2) Where the school district received a grant under section 1709-B during the 2005-2006 school year but is not eligible to receive such a grant during the 2006-2007 school year, an amount equal to the grant amount the district received during the 2005-2006 school year multiplied by fifty percent (50%).
- (3) An amount equal to any payment made pursuant to section 2502.10 during the 2004-2005 school year.
- (4) Where the school district received payments under section 34 of the act of June 29, 2002 (P.L. 524, No. 88), entitled "An act amending the act of March 10, 1949 (P.L. 30, No. 14), entitled 'An act relating to the public school system, including certain provisions applicable as well to private and parochial schools; amending, revising, consolidating and changing the laws relating thereto,' further defining the "Pennsylvania System of School Assessment test" or "PSSA test"; providing for report of graduate rates for certain colleges and universities; further providing for establishment of independent schools, for school athletics, publications and organizations, for retention of records and for annual budgets; providing for membership of the School Reform Commission and responsibilities relating to financial matters of first class school districts in distress; further providing for intermediate unit board of directors; providing for conditional employment; further providing for age limits and temporary residence and for educational support services definitions and providers, for high school certificates, for charter school definitions, for funding for charter schools and for provisions applicable to charter schools; adding provisions for cyber charter schools; further providing for regulations and provisions applicable to charter schools, for education empowerment districts, for waivers, for alternative education and for trustee councils in institutions of the State System of Higher Education; providing for placement of adjudicated delinquents in first class school districts; further providing for Commonwealth reimbursement definitions, for small district assistance and for temporary special aid to certain school districts; providing for basic education funding for 2001-2002 school year; further providing for payments to intermediate units, for payments on account of transportation of nonpublic school pupils, for special education payments and for certain payments; providing for Commonwealth reimbursement for charter schools and cyber charter schools; further providing for school performance incentives; authorizing the Multipurpose Service Center Grant Program; further providing for powers and duties of

the State Board of Education; and making an appropriation," an amount equal to such payments.

(5) Where a school district has been declared a Commonwealth partnership school district under Article XVII-B, an amount equal to five million two hundred thousand dollars (\$ 5,200,000).

(6) A base supplement calculated as follows:

(i) If the school district's market value/income aid ratio is equal to or greater than seven thousand three hundred seventy-one ten-thousandths (.7371):

(A) Multiply the school district's 2006-2007 market value/income aid ratio by its 2005-2006 average daily membership.

(B) Multiply the product from clause (A) by ten million seven hundred thousand dollars (\$ 10,700,000).

(C) Divide the product from clause (B) by the sum of the products of the 2006-2007 market value/income aid ratio multiplied by the 2005-2006 average daily membership for all qualifying school districts.

(ii) If the school district's market value/income aid ratio is equal to or greater than six thousand five hundred ninety-five ten-thousandths (.6595) and less than seven thousand three hundred seventy-one ten- thousandths (.7371):

(A) Multiply the school district's 2006-2007 market value/income aid ratio by its 2005-2006 average daily membership.

(B) Multiply the product from clause (A) by thirty-five million nine hundred fifty thousand dollars (\$ 35,950,000).

(C) Divide the product from clause (B) by the sum of the products of the 2006-2007 market value/income aid ratio multiplied by the 2005-2006 average daily membership for all qualifying school districts.

(iii) If the school district's market value/income aid ratio is equal to or greater than five thousand eight hundred sixty-three ten-thousandths (.5863) and less than six thousand five hundred ninety-five ten-thousandths (.6595):

A) Multiply the school district's 2006-2007 market value/income aid ratio by its 2005-2006 average daily membership.

(B) Multiply the product from clause (A) by thirteen million three hundred thousand dollars (\$ 13,300,000).

(C) Divide the product from clause (B) by the sum of the products of the 2006-2007 market value/income aid ratio multiplied by the 2005-2006 average daily membership for all qualifying school districts.

iv) If the school district's market value/income aid ratio is equal to or greater than four thousand forty-four ten-thousandths (.4044) and less than five thousand eight hundred sixty-three ten-thousandths (.5863):

(A) Multiply the school district's 2006-2007 market value/income aid ratio by its 2005-2006 average daily membership.

(B) Multiply the product from clause (A) by fifteen million six hundred thousand dollars (\$ 15,600,000).

(C) Divide the product from clause (B) by the sum of the products of the 2006-2007 market value/income aid ratio multiplied by the 2005-2006 average daily membership for all qualifying school districts.

(v) If the school district's market value/income aid ratio is less than four thousand forty-four ten-thousandths (.4044):

(A) Multiply the school district's 2006-2007 market value/income aid ratio by its 2005-2006 average daily membership.

(B) Multiply the product from clause (A) by four million five hundred thousand dollars (\$ 4,500,000).

(C) Divide the product from clause (B) by the sum of the products of the 2006-2007 market value/income aid ratio multiplied by the 2005-2006 average daily membership for all qualifying school districts.

(7) A poverty supplement calculated for qualifying school districts as follows:

(i) For a school district to qualify for the poverty supplement:

(A) the quotient of the school district's personal income valuation divided by its 2005-2006 average daily membership must not exceed ninety-one thousand dollars (\$ 91,000); or

(B) the school district's 2006-2007 market value/income aid ratio must be at least six thousand six hundred ten-thousandths (.6600).

(ii) The poverty supplement shall be calculated for qualifying school districts as follows:

(A) Multiply the school district's 2005-2006 average daily membership by fifty-five million dollars (\$ 55,000,000).

(B) Divide the product from clause (A) by the sum of the 2005-2006 average daily membership for all qualifying school districts.

(8) A foundation supplement calculated for qualifying school districts as follows:

(i) To qualify for the foundation supplement, a school district's 2004-2005 adjusted current expenditures per average daily membership must be less than the 2003-2004 median current expenditures per average daily membership increased by three and nine-tenths percent (3.9%) and its 2004-2005 equalized millage must be greater than or equal to 17.2.

(ii) The foundation supplement shall be calculated for qualifying school districts as follows:

(A) Multiply the school district's 2006-2007 market value/income aid ratio by its 2005-2006 average daily membership.

(B) Multiply the product in clause (A) by the lesser of:

(I) five hundred dollars (\$ 500), or if its 2004-2005 equalized millage is equal to or greater than 28.3 and its 2006-2007 market value/income aid ratio is equal to or greater than seven thousand five hundred sixty three ten-thousandths (.7563), eight hundred fifty dollars (\$ 850); or

(II) the difference between the value of the 2003-2004 median current expenditures per average daily membership increased by three and nine-tenths percent (3.9%) and the school district's 2004-2005 adjusted current expenditures per average daily membership; or

(III) if the school district's 2004-2005 equalized mills is less than twenty (20.0), the product of the lesser of the amount in clause

(B)(I) or (II) and the quotient of its 2004-2005 equalized mills divided by twenty (20.0).

(C) Multiply the product from clause (B) by forty-four million dollars (\$ 44,000,000).

(D) Divide the product from clause (C) by the sum of the products from clause (B).

(iii) If a qualifying school district's equalized millage is equal to or greater than twenty-three and eight-tenths (23.8), it shall receive an additional payment calculated as follows:

(A) Multiply the product from subparagraph (ii)(B) by twenty million dollars (\$ 20,000,000).

(B) Divide the product from clause (A) by the sum of the products from subparagraph (ii)(B) for qualifying school districts.

(9) A tax effort supplement calculated for qualifying school districts as follows:

(i) To qualify for the tax effort supplement, a school district's 2004 equalized millage must be equal to or greater than twenty (20) equalized mills.

(ii) The tax effort supplement shall be calculated for qualifying school districts as follows:

(A) Multiply the school district's 2005-2006 average daily membership by eleven million dollars (\$ 11,000,000).

(B) Divide the product from clause (A) by the sum of the 2005-2006 average daily membership for all qualifying school districts.

(10) A growth supplement calculated for qualifying schools districts as follows:

(i) To qualify for this portion of the growth supplement, a school district's average daily membership must have increased by at least two percent (2%) between the 2002-2003 and 2004-2005 school years, its 2004-2005 local school tax revenue divided by its 2004-2005 average daily membership must be less than its 2002-2003 local school tax revenue divided by its 2002-2003 average daily membership, and its 2006-2007 market value/income aid ratio must be equal to or greater than five thousand eight hundred sixty-three ten-thousandth (.5863). This portion of the growth supplement shall be calculated for qualifying school district as follows:

(A) Multiply the school district's 2006-2007 market value/income aid ratio by its 2005-2006 average daily membership.

(B) Multiply the product from clause (A) by five hundred thousand dollars (\$ 500,000).

(C) Divide the product from clause (B) by the sum of the products from clause (A).

(ii) To qualify for this portion of the growth supplement, a school district's 2005-2006 average daily membership must be greater than its 2004-2005 average daily membership. This portion of the growth supplement shall be calculated for qualifying school districts as follows:

(A) Subtract the school district's 2004-2005 average daily membership from its 2005-2006 average daily membership and multiply the difference by its 2006-2007 market value/income aid ratio.

(B) Multiply the difference from clause (A) by five million dollars (\$ 5,000,000).

(C) Divide the product from clause (B) by the sum of the differences from clause (A) for all qualifying school districts.

(iii) For this portion of the growth supplement, the department shall calculate the following:

(A) Subtract the school district's 1994-1995 average daily membership from its 2004-2005 average daily membership.

(B) Divide the difference from clause (A) by the school district's 1994-1995 average daily membership.

(C) Divide the school district's basic education funding allocation for the 1994-1995 school year, calculated pursuant to sections 2502.13 and 2502.29, by the school district's 1994-1995 average daily membership.

(D) Divide the school district's basic education funding allocation for the 2004-2005 school year, calculated pursuant to sections 2502.13, 2502.44 and 2504.4, by the school district's 2004-2005 average daily membership.

(E) For each school district, subtract the quotient from clause (C) from the quotient from clause (D).

(F) Divide the total basic education funding allocation for the 1994-1995 school year, calculated pursuant to sections 2502.13 and 2502.29, by the 1994-1995 average daily membership for all school districts.

(G) Divide the total basic education funding allocation for the 2004-2005 school year, calculated pursuant to sections 2502.13, 2502.44 and 2504.4, by the 2004-2005 average daily membership for all school districts.

(H) Subtract the quotient from clause (F) from the quotient from clause (G).

(I) A school district for which the quotient from clause (B) is greater than ten percent (10%) but less than twenty percent (20%) and for which the difference from clause (E) is less than the difference from clause (H) shall receive an amount equal to the difference from clause (A) multiplied by sixty dollars (\$ 60).

(J) A school district for which the quotient from clause (B) is greater than or equal to twenty percent (20%) and for which the difference from clause (E) is less than the difference from clause (H) shall receive an amount equal to the difference from clause (A) multiplied by one hundred ten dollars (\$ 110).

(iv) The amount of a school district's growth supplement under this paragraph shall be the sum of the amount calculated pursuant to subparagraph (i) and the greater of the amount calculated pursuant to subparagraph (ii) or (iii).

(11) Each school district shall receive additional funding as necessary so that the sum of the amounts under section 2502.13 and paragraphs (6), (7), (8), (9) and (10), and this paragraph shall equal at least three and five-tenths percent (3.5%) of the amount in paragraph (1).

(12) Each school district shall receive additional funding as necessary so that the sum of the amounts under sections 2502.13 and 2504.4 and paragraphs (1), (6), (7), (8), (9), (10), (11) and this paragraph shall equal the basic education funding allocation for the school district as published on the Department of Education's Internet website on February 8, 2006. Within thirty (30) days of the effective date of this paragraph, the basic education funding allocation for each school district, as published on the Department of Education's Internet website on February 8, 2006, shall be published in the Pennsylvania Bulletin.

§ 25-2591.1. Commonwealth reimbursements for charter schools and cyber charter schools

(a) For the 2001-2002 school year, the Commonwealth shall pay to each school district with resident students enrolled in a charter school, a charter school approved under section 1717-A or 1718-A which provides instruction through the Internet or other electronic means or a cyber charter school as defined pursuant to Article XVII-A an amount equal to thirty percent (30%) of the total funding required under section 1725-A(a). If insufficient funds are appropriated to make Commonwealth reimbursements under this section, the reimbursements shall be made on a pro rata basis.

(b) For the 2002-2003 school year, the Commonwealth shall pay to each school district that received funding under subsection (a) for the 2001-2002 school year and that had resident students enrolled in a charter school, a charter school approved under section 1717-A or 1718-A which provides instruction through the Internet or other electronic means or a cyber charter school as defined under Article XVII-A during the 2002-2003 school year an amount equal to the lesser of:

- (1) the payment received for the 2001-2002 school year pursuant to subsection (a); or
- (2) thirty percent (30%) of the total funding required under section 1725-A(a).

(c) For the 2002-2003 school year, the Commonwealth shall pay to each school district that did not receive funding under subsection (a) for the 2001-2002 school year and that had resident students enrolled in a charter school, a charter school approved under section 1717-A or 1718-A which provides instruction through the Internet or other electronic means or a cyber charter school as defined under Article XVII-A during the 2002-2003 school year an amount equal to thirty percent (30%) of the total funding required under section 1725-A(a).

(c.1)(1) For the 2003-2004 school year and each school year thereafter, except as provided under paragraph (2) or (3), the Commonwealth shall pay to each school district with resident students enrolled during the immediately preceding school year in a charter school, a charter school approved under section 1717-A or 1718-A which provides instruction through the Internet or other electronic means or a cyber charter school as defined under Article XVII-A, an amount equal to thirty percent (30%) of the total funding required under section 1725-A(a).

(2) For the 2006-2007 school year, the payment required under this subsection shall be equal to thirty-two and forty-five hundredths percent (32.45%) of the amount required under section 1725-A(a), where the school district has:

(i) average daily membership of resident students enrolled in a charter school, a charter school approved under section 1717-A or 1718-A which provides instruction through the

Internet or other electronic means or a cyber charter school as defined under Article XVII-A equal to or greater than twelve percent (12%) of the school district's 2006-2007 average daily membership;

(ii) a 2007-2008 market value/income aid ratio of equal to or greater than six thousand ten thousandths (.6000); and

(iii) made payments equal to or greater than one million dollars (\$ 1,000,000) as required under section 1725-A(a).

(3) For the 2007-2008 school year and each school year thereafter, the payment required under this subsection shall be equal to forty-one and ninety-six hundredths per centum (41.96%) of the amount required under section 1725-A(a), where the school district has:

(i) 2007-2008 average daily membership of resident students enrolled in a charter school, a charter school approved under section 1717-A or 1718-A which provides instruction through the Internet or other electronic means or a cyber charter school as defined under Article XVII-A equal to or greater than twelve per centum (12%) of the school district's 2007-2008 average daily membership;

(ii) a 2008-2009 market value/income aid ratio of equal to or greater than six thousand ten thousandths (.6000); and

(iii) made payments equal to or greater than one million dollars (\$ 1,000,000) as required under section 1725-A(a).

(d)(1) For the fiscal year 2003-2004 and each fiscal year thereafter, if insufficient funds are appropriated to make Commonwealth payments pursuant to this section, such payments shall be made on a pro rata basis.

(2) For fiscal year 2007-2008, when determining if sufficient funds are available, the Department of Education shall include in the calculation two million dollars (\$ 2,000,000) in addition to the funds appropriated to the Department of Education for this purpose.

APPENDIX E
TABLE OF STATE STATUTES

Alaska

Alaska Constitution, Art. VII, § 1

Alaska Stat. §14.03.25-§14.03.290

Alaska Administrative Code 4 AAC 33.410;

Alaska Administrative Code 4AAC 33.421;

Alaska Administrative Code 4AAC 33.430;

Alaska Administrative Code 4AAC 33.432;

House Bill No. 197 (2009)

Arizona

Arizona Revised Statute ARS § 15-181

Arizona Revised Statute ARS § 15-183(B)(C)

Arizona Revised Statute ARS § 15-808

Arizona Revised Statute ARS § 15-808(f)(1)

Arizona Revised Statute ARS § 15-808(F)

Arizona Revised Statute ARS § 15-901

Omnibus Senate Bill 1196 (2009)

Senate Bill 1422 (2203)

Arkansas

Act 2005, Arkansas General Assembly (2005)

Act 2325 (2005)

Acts 2007, no. 1420 § 38

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Act 1469 (2009)

Arkansas Code Annotated A.C.A. § 6-23-503 (2009)

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California

Assembly Bill 1994 (2002)

Assembly Bill 1137 (2003)

California AGO Opinion no. 06-201 (2006)

California Constitution, Art. IX §§ 1 and 5

California Constitution, Art XIII § 2

California Constitution, Art. XVI §§ 8, 8.3

California Code Revised 5 CCR § 11963.5

California Education Code § 47600 et seq.

California Education Code § 78910.10 et seq.

Senate Bill 740 (2001)

Colorado

Colorado Constitution, Article IX, §§ 2 and 7

Colorado Code of Regulations, 1 CCR 301-41 (2010)

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Idaho

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Idaho Constitution, Article IX, § 1

Idaho Code § 33-5203 et seq.

Idaho Code § 33-5202A

Idaho Code § 33-100(f)(4)

Idaho Code § 33-1619

Idaho Code § 33-5203(7)

Idaho Code § 33-5205(3)(q)

House Bill 303 (2009)

Illinois

Illinois Constitution, Article X, § 1 (2010)

Illinois Statute 105 ILCS 5/27A-5

Illinois Statute 105 ILCS 5/10-29(6)

Illinois Statute 105 ILCS 5/18-8.05

House Bill 2448 (2009)

House Bill 5168 § 10

Indiana

Indiana Constitution, Article 8, section 1

Indiana Code Annotated § 20-24-7-13

Indiana Code Annotated § 20-24-8-2

Indiana Code Annotated § 20-24-3-13

Indiana Code Annotated § 20-24-3-16

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Kansas Statute Annotated K.S.A. § 72-3711

Kansas Statute Annotated K.S.A. § 72-1903

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Kansas Statute Annotated K.S.A. § SB 669

Senate Bill 669 (2008)

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Minnesota Statute § 124D.095 et seq.

Minnesota Statute § 124D.10

Nevada

Nevada Revised Statute § 386.505

Nevada Revised Statute § 386.505

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Nevada Revised Statute § 388.842

Nevada Revised Statute § 388.846

Nevada Revised Statute § 388.850

Nevada Revised Statute § 388.854

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New Hampshire

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Ohio Revised Code § 3314.08

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Oregon

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Pennsylvania Code § 16-1615

Pennsylvania Code § 17-1717-A

Pennsylvania Code § 17-1725-A

Pennsylvania Code § 17-1743

Pennsylvania Code § 17-1743-A

Pennsylvania Code § 17-1744

Pennsylvania Code § 17-1745-A

Pennsylvania Code § 17-1747

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South Carolina

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Wisconsin Statute § 118.40(h)

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Wyoming Statute § 21-3-301

Wyoming Statute § 21-3-302

Wyoming Statute § 21-3-303

Wyoming Statute § 21-3-304

Wyoming Statute § 21-12-330

Wyoming Statute § 21-3-314

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TABLE OF CASES

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- Education Minnesota et al., v. Cheri Pierson Yecke, Commissioner, Minnesota Department of Education et al.* (2005 Minn. App. Lexis 627)
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