

3-2014

A Primer on Charter Schools and the Law

Charles J. Russo

University of Dayton, crusso1@udayton.edu

Follow this and additional works at: http://ecommons.udayton.edu/eda_fac_pub

 Part of the [Educational Administration and Supervision Commons](#), [Educational Assessment, Evaluation, and Research Commons](#), [Educational Leadership Commons](#), [Educational Methods Commons](#), [Education Law Commons](#), and the [Other Education Commons](#)

eCommons Citation

Russo, Charles J., "A Primer on Charter Schools and the Law" (2014). *Educational Leadership Faculty Publications*. 167.
http://ecommons.udayton.edu/eda_fac_pub/167

This Article is brought to you for free and open access by the Department of Educational Leadership at eCommons. It has been accepted for inclusion in Educational Leadership Faculty Publications by an authorized administrator of eCommons. For more information, please contact frice1@udayton.edu, mschlangen1@udayton.edu.



A Primer on Charter Schools and the Law

By Charles J. Russo, J.D., Ed.D.

Officials in charter schools are accountable for the academic achievement of their students.

The charter school movement began in 1991, when Minnesota enacted the first law authorizing their creation. To date, 41 states plus the District of Columbia and Puerto Rico permit the creation of charter schools, according to the National Charter School Resource Center (n.d.).

Charter schools, public schools of choice, are usually operated as not-for-profit institutions independently or occasionally in conjunction with public organizations, such as colleges and universities. As such, they have generally survived challenges to their constitutionality.

This column provides a primer for education leaders on the legal basics associated with the operations of charter schools. It does not enter the often-heated debate over their effectiveness.

Charter School Operations

Charter schools operate under contracts, or charters, usually granted by local or state boards of education. Organizers may have limited rights of appeal if their applications to open charter schools are denied (*Berkley Elementary School Advisory Council v. School Bd. of Polk County* 2002).

Depending on state legislation, groups of parents, not-for-profit organizations, and for-profit but nonreligious organizations (*Brookwood Presbyterian Church v. Ohio Department of Education* 2010) may form charter schools as new entities or can convert them from existing public schools. Regardless, faculty and staff are public employees who usually cannot be assigned to charter schools without their consent and who are ordinarily covered by collective-bargaining agreements and state laws.

As part of their power to create school districts, state legislatures can devise and fund innovative forms of public education,

such as charter schools, and can provide them with facilities reasonably equivalent to those used by public schools. Depending on state law, charter schools are ordinarily entitled to funding that is consistent with amounts spent on public education on a per-pupil basis (*Baltimore City Board of School Commissioners v. City Neighbors Charter School* 2007). In that regard, an appellate court in North Carolina decided that state law required education officials to fund a charter school using the same method that applied to public schools (*Sugar Creek Charter School v. Charlotte-Mecklenburg Board of Education* 2008a, 2008b).

For-profit charter schools are ineligible for federal grants from state education agencies that receive monies under the Elementary and Secondary Education Act (*Arizona State Board for Charter Schools v. United States Department of Education* 2006). In addition, if charter school officials accept children who are younger than those students who have met the enrollment ages set by local boards, they do so at their own expense without public subsidies (*Slippery Rock Area School District v. Pennsylvania Cyber Charter School* 2011).

In return for being exempt from many state laws, officials in charter schools are accountable for the academic achievement of their students. Thus, charters can be nonrenewed if operators fail to demonstrate academic achievement. Although the length of charter contracts varies, most range from three to five years (*Missouri v. Williamson* 2004). When contracts expire, charter-granting entities can renew or terminate agreements to operate schools.

Although they are free from many state regulations concerning staff and curricula, Charter schools are subject to general laws. For example, the Pennsylvania Supreme

Court affirmed that since a charter school performed an essential government function, officials were obligated to comply with the Right-to-Know Law and had to disclose information about the school's financial status (*Zager v. Chester Community Charter School* 2007). Also, the Ninth Circuit ruled that operators of a charter school in Idaho could not use religious documents as textbooks because doing so violated a provision in the state constitution against the use of such materials in public schools (*Nampa Classical Academy v. Goesling* 2011, 2012).

Applications and Revocations

Before receiving charters, organizers must submit detailed plans about how schools will function. Charter schools are designed to operate free of many state laws and rules applicable to regular public schools, such as hiring at least some noncertified teachers, so as to afford parents and organizers greater control over the education of their students. Organizers and parents are free to develop school missions, curricula, and programs intended to enhance student achievement.

Not surprisingly, litigation has emerged over the denial of applications to operate charter schools. The South Carolina Supreme Court affirmed that when a county board of education failed to satisfy state statutory requirements in denying an application, the operators were entitled to the charter (*Lee County School District Board of Trustees v. MLD Charter School Academy Planning Commission* 2007). Also, officials at a for-profit charter school in Pennsylvania successfully challenged a local board's denial of their application (*Carbondale Area School District v. Fell Charter School* 2003). An appellate court affirmed that insofar as the organizers complied with appropriate statutory requirements relating to the school's operation, they were entitled to the charter.

If local boards have the power to approve or deny applications concerning the creation of charter schools, they must act in good faith. In Florida, an appellate court affirmed that where a local board denied an application based on unsupported assumptions about the quality of the education that it might have provided and its concerns about the applicants' lack of capital funding or use of operational dollars, the state board of education had the authority to overrule its action (*School Board of Osceola County v. UCP of Central Florida* 2005a, 2005b). The court reasoned that in denying the application, the board failed to act in good faith because it did not provide a legally sufficient reason for doing so.

In the same year, the Wyoming Supreme Court addressed a dispute in which the applicants sought to operate a charter school in violation of a provision in the statute forbidding schools from opening if their sole purpose was to avoid school closures or consolidations. The court held that because the local board's initial denial was unsupported by evidence that the applicants intended to avoid obeying the statute, it had to act anew on the application (*Laramie County School District No. 2 v. Albin Cats Charter School* 2005).

At the other end of the process, the Florida Supreme Court permitted the immediate termination of a charter for fiscal mismanagement (*School Board of Palm Beach County v. Survivors Charter School* 2009). In addition, intermediate appellate courts in Florida, Massachusetts, Pennsylvania, and Wisconsin have upheld the revocations of charters where organizers failed to satisfy statutory standards.

Other appellate courts agreed that as long as state officials do not act arbitrarily, capriciously, or in excess of their powers in denying renewals, charter school operators have limited rights of appeal (*Kamit Institute for Magnificent Achievers v. District*

of Columbia Public Charter School Board 2012; *Pinnacle Charter School v. Board of Regents of Univ. of State of New York* 2013a, 2013b).

Nondiscrimination Provisions

Because charter schools are subject to federal and state antidiscrimination laws, they must be open without cost to all children, including students with disabilities, and must pay for their programming, such as homebound instruction (*Golden Door Charter School v. State-Operated School District of City of Jersey City, Hudson County* 2008). In Pennsylvania, an appellate court rejected a local board's claim that a charter school designed for students who were gifted impermissibly discriminated on intellectual ability (*Central Dauphin School District v. Founding Coalition of Infinity Charter School* 2004a, 2004b). The court affirmed that charter schools may limit admissions by specialty areas and that officials demonstrated sustainable parental support, the presence of an adequate financial plan, and appropriate physical facilities.

In New Jersey, officials at two charter schools who transferred students with special needs to private schools without consulting their local boards unsuccessfully sought reimbursement for their expenses. The federal trial court granted the charter schools' motion for summary judgment on the basis that the Individuals with Disabilities Education Act (IDEA) does not grant local boards private rights of action to dispute the placements of students from charter schools unless the parties first exhaust administrative remedies under the act's provisions by means of due process hearings (*Asbury Park Board of Education v. Hope Academy Charter School* 2003).

On a different issue involving the IDEA, in the first of two cases from the District of Columbia concerning charter schools and attorney fees, the federal trial court granted a father's motion for summary

judgment to recover fees (*Brown v. Barbara Jordan P.C.S.* 2008). The court noted that the statutory cap on attorney fees was inapplicable to charter schools since it only covered disputes about schools operated by the board of education. In the second dispute, the court thought that even though a student prevailed in a due process hearing, she was not entitled to recover attorney fees because in dropping out of school, her relationship with the board was unchanged (*E.M. v. Marriott Hospitality Public Chartered High School* 2008). The court pointed out that awarding attorney fees would have been wasteful since the litigation failed to contribute to the student's welfare.

Depending on state law, local boards may have to provide transportation for children to and from their charter schools (*Mosaica Academy Charter School v. Commonwealth Department of Education* 2002). However, the Seventh Circuit affirmed that because students at an independent public charter school were not similarly situated to those who attended other schools in a local district because they had longer school days and five weeks of summer classes, officials did not violate the equal protection rights of the children in the charter school (*Racine Charter One v. Racine Unified School District* 2005).

The court explained that insofar as the charter school operated independently of the board, it was more akin to an autonomous school district than to an individual school, thereby permitting officials to exclude the students from their statutory busing duty. Similarly, the Connecticut Supreme Court agreed that state law did not require a local board to provide transportation to underage children who attended kindergarten in charter schools (*Board of Education of the Town of Hamden v. State Bd. of Educ.* 2006).

Conclusion

Regardless of one's attitude toward

charter schools, they have an effect on public education. As such, the more knowledge that school business officials, their boards, and other education leaders have about the operations of charter schools, the better able they will be to help serve the children who remain in their own districts.

References

Arizona State Board for Charter Schools v. United States Department of Education, 464 F.3d 1003 (9th Cir. 2006).

Asbury Park Board of Education v. Hope Academy Charter School, 278 F.Supp.2d 417 (D.N.J. 2003).

Baltimore City Board of School Commissioners v. City Neighbors Charter School, 929 A.2d 113 (Md. 2007).

Berkley Elementary School Advisory Council v. School Bd. of Polk County, 826 So.2d 364 (Fla. Dist. Ct. App. 2002).

Board of Education of the Town of Hamden v. State Bd. of Educ., 898 A.2d 170 (Conn. 2006).

Brookwood Presbyterian Church v. Ohio Department of Education, 940 N.E.2d 1256 (Ohio 2010).

Brown v. Barbara Jordan P.C.S., 539 F. Supp.2d 436 (D.D.C. 2008).

Carbondale Area School District v. Fell Charter School, 829 A.2d 400 (Pa. Commw. Ct. 2003).

Central Dauphin School District v. Founding Coalition of Infinity Charter School, 847 A.2d 195 (Pa. Commw. Ct. 2004a), appeal denied, 860 A.2d 491 (Pa. 2004b).

Commonwealth v. Roxbury Charter High Public School, 865 N.E.2d 1183 (Mass. App. Ct. 2007a), review denied, 871 N.E.2d 492 (Mass. 2007b).

E.M. v. Marriott Hospitality Public Chartered High School, 541 F. Supp.2d 395 (D.D.C. 2008).

Golden Door Charter School v. State-Operated School District of City of Jersey City, Hudson County, 948 A.2d 716 (N.J. Super. Ct. App. Div. 2008).

Grant of Charter School Application of Englewood on Palisades Charter School, In re, 753 A.2d 687 (N.J. 2000).

Johnson v. Burmaster, 744 N.W.2d 900 (Wis. Ct. App. 2007), review denied, 749 N.W.2d 662 (Wis. 2008).

Kamit Institute for Magnificent Achievers v. District of Columbia Public Charter School Board, 55 A.3d 894 (D.C. 2012).

Laramie County School District No. 2 v. Albin Cats Charter School, 109 P.3d 552 (Wyo. 2005).

Lee County School District Board of Trustees v. MLD Charter School Academy Planning Commission, 641 S.E.2d 24 (S.C. 2007).

Minnesota Stat. Ann. § 124D.10 (2012).

Missouri v. Williamson, 141 S.W.3d 418 (Mo. Ct. App. 2004).

Mosaica Academy Charter School v. Commonwealth Department of Education, 813 A.2d 813 (Pa. 2002).

Nampa Classical Academy v. Goesling, 447 Fed.Appx. 776 (9th Cir. 2011), cert. denied, 132 S. Ct. 1795 (2012).

National Charter School Resource Center. n.d. Understanding charter schools. <http://www.charter-schoolcenter.org/priority-area/understanding-charter-schools>.

Pinnacle Charter School v. Board of Regents of University of State of New York, 969 N.Y.S.2d 318 (N.Y. App. Div. 2013a), appeal dismissed, 972 N.Y.S.2d 213 (N.Y. 2013b).

Racine Charter One v. Racine Unified School District, 424 F.3d 677 (7th Cir. 2005).

Ronald H. Brown Charter School v. Harrisburg City School Dist., 928 A.2d 1145 (Pa. Commw. Ct. 2007). [[AQ: please cite in text or delete]]

School Board of Osceola County v. UCP of Central Florida, 905 So.2d 909 (Fla. Dist. Ct. App. 2005a), review denied, 914 So.2d 954 (Fla. 2005b).

School Board of Palm Beach County v. Survivors Charter School, 3 So.3d 1220 (Fla. 2009).

Slippery Rock Area School District v. Pennsylvania Cyber Charter School, 31 A.3d 657 (Pa. 2011).

Sugar Creek Charter School v. Charlotte-Mecklenburg Board of Education, 655 S.E.2d 850 (N.C. Ct. App. 2008a), review denied, 667 S.E.2d 460 (N.C. 2008b).

Zager v. Chester Community Charter School, 934 A.2d 1227 (Pa. 2007).

Charles J. Russo, J.D., Ed.D., vice chair of ASBO's Legal Aspects Committee, is Joseph Panzer Chair of Education in the School of Education and Health Sciences (SEHS), director of SEHS's Ph.D. program, and adjunct professor in the School of Law at the University of Dayton, Ohio. Email: crusso1@udayton.edu