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A Primer on Charter Schools and the Law

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

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
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.

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