

Being Informed: Important Terms and Aspects of Charter School Policy Conversations

Summary:

As the Commonwealth of Kentucky considers enacting chart school legislation, it is incumbent on community leaders and policy makers to be knowledgeable of the important concepts and components involved with charters. While the National Alliance of Public Charter Schools recommends 20 essential policy components based upon the 43 states that have passed charter school legislation, this document focuses on five overarching themes:

- Leaders in Kentucky have the opportunity to learn from the experiences of 43 states in which charter legislation has been enacted to develop policy that best positions the Commonwealth to develop legislation that is among the best in the nation.
- The development and passage of charter legislation is just the beginning of a long process that culminates in the authorization and opening of charters schools – effective charter schools are not created overnight.
- Charter school funding is a very important consideration in any charter policy development conversation.
- While charter schools may provide a strategy for improving education outcomes for all, effective legislation considers how charters schools will close the achievement gap and create equity in education.
- Effective charter school legislation creates clear accountability for both the authorizer of charter schools and the charter schools themselves.

The Commonwealth of Kentucky is one of only a few states without charter schools. The most recent state to enact charter school legislation is Alabama, which in 2015 became the 43rd state to do so. In Kentucky, charter school legislation has been introduced in the past, but has historically lacked the support of key policy-makers. As similar proposals are likely to be raised again in Kentucky, leaders have an opportunity to look at the experiences of 43 other states to ensure constructive, high quality debate. ***This brief does not seek to take a position on the issues; instead, it provides some basic concepts for community leaders to be aware of as proposals are presented and discussions occur throughout the community and in Frankfort.***

First, it is important to understand what is meant by the term “charter schools.” Charter schools are public schools that operate independently of certain Department of Education requirements. While charter schools’ standards of operation vary widely, they are set up as tuition free and offer an open enrollment process available to all students. Some states allow charter schools to be new start-ups, public school conversions, and virtual schools.

The first law allowing the establishment of charter schools was passed in Minnesota in 1991.¹ Today, only a few states including Kentucky do not have charter school legislation. These remaining states are all predominantly rural with arguably only limited urban centers – which may be important to note while developing policy in Kentucky. The other seven states are Montana, Nebraska, North Dakota, South Dakota, Vermont, Washington (which passed legislation that was subsequently struck down by the Washington Supreme Court), and West Virginia. In the other 43 states, approximately 6,825 charter schools across the country serve nearly 2.9 million students.²

While each state’s policy varies with regard to charters, the [National Alliance of Public Charter Schools](#) developed a core set of essential state charter school policy components. The National Alliance also ranks states based on how these components are addressed in state policy. In the most recent report, Indiana ranks first, followed by Alabama and Minnesota.

Based on the notion of learning from those who have gone before you, Kentucky leaders may consider looking at how Mississippi and Alabama developed charter policy. These two states are relatively similar in their geography and population to Kentucky, and recently passed charter school legislation that was built on lessons learned from other states. While Mississippi has only two charter schools up and running and Alabama isn’t expected to have schools chartered until the fall of 2017, they have both been noted in the field for their approach to charter school policy development and implementation in a useful and informed way.

Important Considerations to any Charter Discussion

Authorizing Entities and Accountability

How state legislatures define and permit authorizing entities for charter schools is one of the most important considerations to undertake. Authorizers are ultimately responsible for the quality and equity of charter schools. Stated plainly, it is not enough to name the body responsible for authorizing charter schools, there must be a transparent process for holding authorizers accountable for chartering high quality schools that provide the academic results promised in exchange for the flexibility received via the charter.

Charter school authorizers vary from state to state. State law dictates the definition, approval, monitoring, renewing, and termination of authorizers. The authorizing entity or entities also oversee charter school applications and decisions for closure. The National Association for Charter School

Alabama passed charter school legislation in 2015, and plans to open its first schools in fall 2017. Its law sets a cap of no more than 10 new start-up charter schools can be approved in a fiscal year. Alabama’s law is considered strong in autonomy, quality-control, and operational and categorical funding; however, it is considered weak on facilities funding equitability.

(<http://www.publiccharters.org/get-the-facts/law-database/states/AL>)

Authorizers (NACSA) counts more than 1,000 charter school authorizers operating in the U.S., some of which operate a single school, and some oversee hundreds of schools. Charter school authorizers can be school districts, independent statewide boards, universities, not-for-profit organizations, state education agencies, and other non-educational government entities.

Almost all states allow local school boards to serve as authorizers, although allowing multiple authorizers is also an option to consider. The NACSA recommends policy that “produces at least two high-quality authorizers in every jurisdiction” with at least one being “an alternative to the local school district (Local Educational Agency or LEA)—ideally a statewide independent charter board (ICB) established with the sole mission of chartering quality schools.”³ While quantity does not equal quality necessarily, limiting the number of authorizers to one entity can impact the capacity to create competition, allow growth, and ensure high quality.

NACSA Five Domains of Effective Authorizing:

- Agency commitment and capacity
- Application process and decision making
- Performance contracting
- Ongoing oversight and evaluation
- Revocation and renewal decision making

Indiana passed charter school legislation relatively early and allows for many different authorizers.⁴ Its policy has received some critique for setting such a wide range of authorizers, which include “local school boards, public four-year universities or their designated representative, the Mayor of Indianapolis, a state charter board, and a governing board of a nonprofit college or university that provides a four-year educational program for which it awards a baccalaureate or more advanced degree to authorize charters”.⁵

In contrast, Mississippi allows one statewide authorizer. This too has been criticized by NACSA, which recommends states set up at least one alternative authorizer. Alabama law allows any local school board to register to become an authorizer with the state department of education. It also created the Alabama Public Charter School Commission to act as an authorizer to review applications.

Several essential practices for effective authorizers include:⁶

- Publishing the authorizer’s mission statement, including standards and assessment criteria;
- Naming designated staff contracted to authorize within the organization;
- Posting timelines and materials;
- Convening expert review panels, including external members;
- Limiting initial charter schools to five years;
- Requiring and reviewing annual independent financial audits of all charters;
- Establishing and applying renewal criteria;
- Establishing and enforcing revocation criteria; and
- Providing annual evaluation report on each charter school.

Authorizer reporting must be transparent, based on objective data, and overseen by the state. In addition, the NACSA sets eight policies for autonomy, accountability, and accessibility for both authorizers and schools (*see sidebar:*⁷ *Alabama, Indiana, Maine and seven other states have adopted most if not all of the eight standards in their policies*⁸)

Funding

School funding is a very important consideration as part of any charter policy development conversation. Charter schools, along with other public schools, receive operating support from three main sources: local property taxes, state per-pupil allocations, and federal aid programs. Funding is a complicated component of any charter school proposal and must be developed thoughtfully.

There are several models for funding and this is related to how the charters schools are designated.⁹ One such model is to designate the charter schools as their own district or “local educational agency (LEA)”. Another model is to consider a charter school to be a school within a LEA. This designation is important and dictates what funding is available and how it is received. If the charter school is considered its own district, then federal dollars go directly to the schools. If charter schools are part of a district, then the federal dollars flow through the district. According to the National Alliance for Public Charter Schools, “The model law does not take a position on whether it is preferable for a public charter school to serve as its own LEA or not because there is no widely accepted best practice in this area.”¹⁰

In regards to funding, lessons can be taken from other states’ efforts. Below are some funding components to consider:

Authorizer Quality Policies

1. Who Authorizes (alternative authorizer): every charter school can be authorized by at least one body other than the local school district.
2. Authorizer Standards: the state endorses national professional standards for quality charter school authorizing.
3. Authorizer Evaluations: a state entity can evaluate authorizers on their practices or the performance of their charter schools—regularly or as needed.
4. Authorizer Sanctions: authorizers face consequences if they have poor practices or a high proportion of persistently failing schools.

School Accountability Policies

5. Reports on Performance: every authorizer publishes an annual report on the academic performance of the charter schools it oversees.
6. Performance Management and Replication: every charter school is bound by a charter contract and a set of performance expectations; high-performing charter schools are encouraged to replicate.
7. Renewal Standard: authorizers can close charter schools that don’t meet their academic performance expectations.
8. Default Closure: charter schools that perform below a certain minimum threshold are closed.

- **Clear Identification of Special Education Responsibilities**

This includes designating the LEA responsibilities for delivering special education services and how the services are funded. Eleven states include specific language in their legislation that assigns responsibilities for special education funding: Arkansas, California, Colorado, Connecticut, Maine, Massachusetts, Minnesota, New Jersey, New York, Oregon, and Pennsylvania. The law in Maine designates that for each enrolled special education pupil, the charter school will receive the “average additional allocation calculated by the state department of education for its special education students.” The law also requires that charter schools are paid directly from state or federal sources for services that the charter schools provides to students with special education needs.
- **Equitable Access to Capital Funding and Facilities**

There are several considerations in this component. Five states are considered leaders in this area: California, Colorado, District of Columbia, Indiana, and Utah. These laws include strong provisions for the following capitol and facility funding considerations:

 - Per-pupil facility allowance (equal to statewide average per-pupil capital costs);
 - Facility grant and revolving loan programs;
 - A charter school bonding authority (or access to all relevant state tax-exempt bonding authorities available to all other public schools);
 - The right of first refusal to purchase or lease at or below fair market value a closed or unused public school facility or property; and,
 - Clarity that no state or local entity may impose any facility-related requirements that are stricter than those applied to traditional public schools.
- **Access to Relevant Employee Retirement Systems**

This component includes an option for charter schools to either set up their own retirement system or set up a plan within the state’s system. Thirteen states serve as models for strong legislation: Arizona, California, Delaware, Florida, Indiana, Maine, Michigan, New Hampshire, New York, North Carolina, Oklahoma, Pennsylvania, and Utah. The model law allows public charter schools to participate in state retirement and benefits programs, creating a level playing field for teachers regardless of the schools in which they teach.
- **Equitable Operational Funding and Equal Access to All State and Federal Categorical Funding**

This includes ensuring that funding goes to charter schools quickly and in the same amount as other public schools. Aspects of this component include:

 - Equitable operational funding is statutorily driven;
 - Charter schools are given equal access to all applicable categorical federal and state funding, and clear guidance on the pass-through of such funds; and,
 - Funding for transportation similar to school districts.

Educational Equity

Regardless of the various policy considerations, all schools need to work to close the achievement gap for all of Kentucky's students. Charter schools may provide a strategy to continue to improve education outcomes for all. Any charter policy must address charter schools attendance criteria, student recruitment, and student selection. The main considerations include:

- Opening enrollment to any student in the state;
- Ensuring that lottery requirements are clearly outlined;
- Requiring enrollment preferences for previously enrolled students within conversions, prior year students within chartered schools, siblings of enrolled students enrolled at a charter school; and
- Including optional enrollment preferences for children of a school's founders, governing board members, and full-time employees, not exceeding 10% of the school's total student population.¹¹

Three states are often mentioned as having developed clear policy around student recruitment, enrollment, and lottery procedures: Alabama, District of Columbia, and Maine. For example, Alabama's law "requires that start-up charters first enroll students who reside within the school system in which the school is located. If the number of local students wanting to enroll exceeds the facility's capacity, then the school shall conduct a random selection process to enroll students who reside in the local school system. If the school has additional capacity after admitting students from the local school system, then the school shall admit any students without regard to their residency by a random selection process."¹²

Charter School Accountability

Just as important as holding authorizers accountable, charter schools to must be held accountable. At minimum, charter schools must be held to the same standards for accountability and educational outcomes as required by state law for all other public schools. Requiring "Performance-Based Charter Contracts" is one way to mandate accountability. These contracts are between the authorizers and public charter schools and should include details on academic performance expectations, operational performance expectations, school and authorizer rights and duties, and processes for renewal, nonrenewal, and revocation of authorization.

These contracts should also include transparency of performance data that is required for public schools. Additionally, all requirements regarding "health, safety, civil rights, open meeting rules, open records requests, and sound financial and accounting practices" must also be upheld.¹³ Rules regarding nondiscrimination as well as the provision of all services for students with disabilities, and continuing free and reduced meals for all qualifying students, needs also be addressed in charter school policy, planning and implementation.

Beyond academic standards and non-discrimination, leaders will need to agree on governance and oversight of charter schools.

Suggested aspects of the performance-based contract include:¹⁴

- Being created as a separate document from the application and executed by the governing board of the charter school and the authorizer;
- Defining the roles, powers, and responsibilities for the school and its authorizer;
- Defining academic and operational performance expectations by which the school will be judged, based on a performance framework that includes measures for, at a minimum, student academic proficiency and growth, achievement gaps, attendance, recurrent enrollment, postsecondary readiness (high schools), financial performance, and board stewardship (including compliance);
- Providing an initial term of five operating years (or a longer term with periodic high-stakes reviews); and,
- Including requirements addressing the unique environments of virtual schools, if applicable.

Maine, in particular, has been noted for its performance-based charter contracts. Maine's statute "defines the charter contract as a performance-based contract for a fixed term between a charter school and an authorizer that describes performance expectations, provides operational responsibilities, and outlines the autonomy and accountability for each party for the contract."¹⁵ The statute sets the initial charter term for five years, and further "requires that the charter contract define academic and operational performance expectations by which a school will be judged based on a performance framework that includes measures and metrics for, at a minimum, student academic proficiency and growth, achievement gaps, attendance, recurrent enrollment, postsecondary readiness (high schools), financial performance, and board stewardship (including compliance)."¹⁶

Where's the Conversation Headed?

Charter schools are growing nationwide and currently serve approximately six percent of the public school students in this country.¹⁷ Furthermore, the charter school policy conversation is expected to continue into the foreseeable future. Therefore, it is incumbent on community leaders and policy makers to be knowledgeable of the important concepts and components involved with charters.

It is clear from the other states that have gone before, that developing and enacting policy is

Charter schools are publicly funded, privately managed and semi-autonomous schools of choice. They do not charge tuition. They must hold to the same academic accountability measures as traditional schools. They receive public funding similarly to traditional schools. However, they have more freedom over their budgets, staffing, curricula and other operations. In exchange for this freedom, they must deliver academic results and there must be enough community demand for them to remain open.

- *National Conference of State Legislatures 2011*

<http://www.ncsl.org/documents/educ/AuthorizingCharterSchools.pdf>

only the beginning, not the end. Thoughtful implementation is critically important. As leaders in Kentucky consider policy proposals, it is critical to study what works and what constitutes “good” policy. Leaders need not recreate wheels as they craft policy that fits the Kentucky context.

Recognizing that there are arguments for and against enacting charter school legislation in Kentucky, with evidence of charter successes and failures, an open and continuing conversation about education in the Commonwealth is required, focusing on what is working and what is not. State and local policy makers must be informed on the debate, along with business leaders, educators, parents and communities. Regardless of future policy decisions, it is imperative that we can learn from charter schools’ successes in other states to bring innovative and impactful approaches to serve the students in the Commonwealth.

ENDNOTES

- ¹ <http://www.publiccharters.org/get-the-facts/law-database/states/MN>
- ² <http://www.publiccharters.org/wp-content/uploads/2016/02/New-Closed-2016.pdf>
- ³ <http://www.qualitycharters.org/research-policies/archive/state-policy-analysis-2/>
- ⁴ <http://www.publiccharters.org/get-the-facts/law-database/states/IN>
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- ⁸ http://www.publiccharters.org/wp-content/uploads/2014/01/ModelLaw_P7-wCVR_20110402T222341.pdf
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- ¹⁷ http://nces.ed.gov/programs/coe/indicator_cgb.asp