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Brokering Education: A Study of Charter Receipt, Renewal, and Revocation in Louisiana's Charter Schools

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**BROKERING EDUCATION:
A STUDY OF CHARTER RECEIPT, RENEWAL,
AND REVOCATION IN LOUISIANA'S CHARTER
SCHOOLS**

*Amy Moore**

I. INTRODUCTION:

Hurricane Katrina made devastating landfall on August 29, 2005 and created a tragedy that lingers even today. However, before the hurricane it was already clear that Louisiana schools, and especially New Orleans schools, were failing.¹ The travesty of Hurricane Katrina merely compounded the multiplicity of problems underneath which the state government was already buried.

Justice Brandeis noted, “[i]t is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country.”² After the storm, Louisiana encountered a unique chance to act as a laboratory in the field of education and redesign its educational system from the ground up. There is no doubt that this natural disaster devastated the city of New Orleans, displacing all 65,000 public school students and damaging at least thirty-five percent of the buildings.³ But the hurricane offered the state an uncommon opportunity to change the system. The Louisiana State Legislature transferred over 100 schools from the Orleans Parish School Board to a newly-created entity, the

* Assistant Professor of Law, Thomas Goode Jones School of Law, Faulkner University. Special thanks to Leigh Moffett, for always being the first to proof-read my work and to Stephanie Stephens, my research assistant, for all her hard work on this project.

1. THE SCOTT S. COWEN INSTITUTE FOR PUBLIC EDUCATION INITIATIVES AT TULANE UNIVERSITY, THE STATE OF PUBLIC EDUCATION IN NEW ORLEANS: 2008 REPORT, 9 (The Scott S. Cowen Institute, 2008) (“[M]ost public schools in the decade before Katrina were low-performing and composed almost entirely of African-American and low income students.”).

2. *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932).

3. THE SCOTT S. COWEN INSTITUTE, 2008 REPORT, *supra* note 1, at 10.

Recovery School District (“RSD”).⁴ The Legislature created this new school district to take over schools that were failing throughout the state in the hopes that new leadership would renew them. Both the Orleans Parish School Board and the RSD now oversee charter schools in New Orleans, creating a two-district model.⁵ Additionally, approximately sixty percent of public school students attend charter schools, more than any other urban school district in the country.⁶ There is an exceptional chance to learn from such a situation, and Louisiana would likely love nothing more than to export a thriving model of charter schools to other states.

The Louisiana State Legislature has never been unclear on the experiment factor of charter schools. In 1995, when the Charter School Demonstration Programs Law (commonly referred to in the literature as “Charter Law”) was first passed, the Legislature noted that the act would “authorize experimentation” and

provide a framework for such experimentation by the creation of such schools, a means for all persons with valid ideas and motivation to participate in the experiment, and a mechanism by which experiment results can be analyzed, the positive results repeated or replicated, if appropriate, and the negative results identified and eliminated.⁷

This is still the hope of the Legislature as articulated in the law’s current form. The need for experimentation has grown and changed shape since 1995 and has exploded since 2005, but charter schools have continued to be an experiment in how to operate essentially public schools in innovative and flexible ways. Recently Louisiana has nixed the cap for the number of charter schools that may be run throughout the state, and almost every school could conceivably become a charter school at some point. In fact, that is the “grand plan” in place for Louisiana education.⁸

However, in order for the Louisiana system to function as a model for other states trying to drastically increase the number of effective charter schools available to their children the current system must be worth exporting. Scholars have focused endlessly on the success or failure of charter schools through standardized testing.⁹ This type of scholarship

4. *Id.*

5. THE SCOTT S. COWEN INSTITUTE, 2008 REPORT, *supra* note 1, at 10.

6. *Id.* at 2.

7. LA. REV. STAT. ANN. § 17:3972(A) (2009).

8. *The Newshour with Jim Leher, New Orleans Charter Schools Produced Mixed Results* (PBS television broadcast, May 6, 2009).

9. See CENTER FOR RESEARCH ON EDUCATION OUTCOMES, MULTIPLE CHOICE: CHARTER SCHOOL PERFORMANCE IN 16 STATES (Stanford University, Jun. 2009) available at http://credo.stanford.edu/reports/MULTIPLE_CHOICE_CREDO.pdf; Kenneth J. Saltman,

certainly has its place in evaluating charter schools, but the real export is the system itself and the mechanics by which schools receive and maintain a charter with the state government. The “success” of the students hinges on whether the process in place is effective or ineffective.

Although schools in New Orleans “continue to struggle in difficult circumstances” there has recently been research that points to at least modest success in Louisiana charter schools.¹⁰ This article provides a study of the process of creating and maintaining charter schools in Louisiana that will hopefully illuminate the reasons behind this success and the caution for early exportation. The charter school life cycle includes three potential phases: receipt of a charter, renewal of a charter, and revocation of a charter. Charter schools must initially receive a charter from the state to open a school, and must renew that charter contract periodically in order to stay in business. In some cases, the charter school may have its charter revoked and no longer be able to operate that school. As an overlay to this analysis and gathering of description, it will be helpful to examine what is different about charter schools as far as state regulation and what motivates the State Legislature to create the system it has.

Louisiana has a system in place with both positive and negative aspects. The State Board of Elementary and Secondary Education (“State Board”) has a clear process in place with direction from the State Legislature. However, the current system needs more transparency and more experience before it can be modeled by other states. Transparency and the accessibility that accompanies it will become the cornerstones that will make the charter system accountable not only to the state government, but ultimately to the people of Louisiana. The system also needs more experience; the 2009-2010 school year will be only the fourth school year since Hurricane Katrina. More time, and more experience with the reality of its rules and regulations will help Louisiana become a model system. Other states should embrace the success factor available from Louisiana, but they must be wary of implementing a system that has not stood even a few years of the test of time.

II. OBJECTIVES & DESCRIPTION OF CHARTER SCHOOLS:

The Louisiana legislature has described charter schools as

Putting the Public Back in Public Schooling: Public Schools Beyond the Corporate Model, 3 DEPAUL J. FOR SOC. JUST. 9,28 (2009) (“The central idea of efficiency defined by ever increasing test scores is cast as the only way to understand quality [in charter schools].”)

10. THE SCOTT S. COWEN INSTITUTE, 2008 REPORT, *supra* note 1, at 10. See also, CENTER FOR RESEARCH ON EDUCATION OUTCOMES, MULTIPLE CHOICE: CHARTER SCHOOL PERFORMANCE IN 16 STATES (Stanford University, Jun. 2009) available at http://credo.stanford.edu/reports/MULTIPLE_CHOICE_CREDO.pdf.

“independent public school[s] that provide a program of elementary or secondary education, or both, established pursuant and in accordance with the [Charter Law] to provide a learning environment that will improve pupil achievement.”¹¹ Charter schools themselves are created as the result of a charter school agreement, unlike traditional public schools that are brought into being by unilateral legislation and school board decisions. A charter school agreement in Louisiana must be entered into by two parties: a nonprofit organization or school board seeking the charter, and a charter authority capable of granting the charter.¹² The purpose of having a charter is that it allows the entity seeking the charter what amounts to a license to run a particular school. Chartering authority stems from either “a local school board or the State Board of Elementary and Secondary Education.”¹³ This creates two different tracks for charter schools: those chartered by local school boards and those chartered by the State Board. Local school boards can charter with applicants for Type 1 or Type 3 charters and the State Board charters with applicants for a Type 2, Type 4, or Type 5 charter.

There are five different types of charter schools prescribed by Louisiana law:

Type 1: A “Type 1” charter school is a new school that opens and operates pursuant to a charter between it and a local school board. Because the chartering authority is the local school board, only children that were eligible to attend a public school operated by the local school board in that area will be eligible to attend a charter school governed by that school board.¹⁴

Type 2: A “Type 2” charter school may be either a new school or a preexisting public school that is being converted to a charter school. This school will operate pursuant to a charter between it and the State Board of Elementary and Secondary Education. Because the State Board oversees the school, any child from within the state will be eligible to attend the school. If a preexisting school is being converted, the conversion must be approved by the professional faculty and staff of the preexisting school and the parents and guardians of the children enrolled in the school.¹⁵ Usually, once a charter applicant has been rejected by the school board for a Type 1 or Type 3 charter agreement, it will then apply to be a Type 2 charter school. In fact, the State Board now requires rejection from a local school board

11. LA. REV. STAT. ANN. § 17:3973(2)(a) (2009).

12. LA. REV. STAT. ANN. § 17:3991(A)(1)(a) (2009).

13. LA. REV. STAT. ANN. § 17:3973(3) (2009).

14. LA. REV. STAT. ANN. § 17:3973(2)(b)(i) (2009).

15. § 17:3973(2)(b)(ii).

before an applicant may apply for a Type 3 charter.¹⁶

Type 3: A "Type 3" charter school is very similar to a Type 1 charter school in that the school will open and operate pursuant to a charter between it and the local school board. However, a Type 3 school is not a new school but rather a preexisting school that is being converted to a charter school. As with a Type 1 school, children attending a Type 3 school must be eligible to attend a public school operated by the local school board. As with a Type 2 school, the conversion must be approved by faculty, staff, and parents.¹⁷

Type 4: A "Type 4" charter school is a conversion school, meaning that it is a conversion of a preexisting public school into a charter school. Type 4 schools are governed by a charter between the local school board and the State Board. A Type 4 school is the only type of school that is run not by a non-profit applicant, but rather by the local school board itself. However, unlike Type 2 schools that are also governed by the State Board, only children eligible to attend a public school operated by the local school board may attend the new charter school. This geographical restriction may be lifted only by an agreement with another city or parish school board. Again, the conversion itself must be approved.¹⁸

Type 5: A "Type 5" charter school is perhaps the most interesting type of charter school for which Louisiana law provides, and certainly the one with the strongest intention to meet the goal of serving the best interests of at-risk pupils. Type 5 schools are also conversions of preexisting schools but are schools that have been transferred to the Recovery School District. These schools are operated on the basis of a charter between the school and the State Board. Upon renewal, this charter may be transferred back to the local school board or other public entity. Like Type 1, 3, and 4 schools, Type 5 schools are limited in attendance by the geographical area of children who would have been eligible to attend a public school governed by the local school board. In addition, any pupil eligible to participate in a school choice program may attend a Type 5 school if there is room in the school. The law mandates that maximum capacity by grade will be provided in the charter agreement.¹⁹

Uniquely, the law provides that the chartering authority must review each Type 5 charter proposal in compliance with the Principles and Standards for Quality School Authorizing as promulgated by the National

16. LA. ADMIN. CODE tit. 28, § 503(A)(5) (2008).

17. LA. REV. STAT. ANN. § 17:3973(2)(b)(iii) (2009).

18. § 17:3973(2)(b)(iv).

19. § 17:3973(2)(b)(v).

Association of Charter School Authorizers.²⁰ This language does not appear in the detailing of the previous four types of charter schools.

However, for a Type 5 charter school, the charter school's proposal may not be approved and the charter school may not operate unless the person or entity running the school has at least "five years of significant experience, as determined by the State Board, operating or working for or with a person who operates a public, private, or charter school, a public or private postsecondary institution, or a for-profit business or a non- or not-for-profit entity which provides academic instruction to students."²¹

For all five types of charter school collectively, the Legislature gives a clear mandate as to what these schools must seek to accomplish. A charter school created in Louisiana must exist in order to fulfill one or more of six stated objectives. The law requires that a charter school must seek to do at least one of the following:

- 1) improve pupil learning and the public school system in general,
- 2) increase learning opportunities and access to quality education,
- 3) encourage the use of different and innovative teaching methods, a variety of governance, management, and administrative structures,
- 4) require appropriate assessment and measurement of academic learning results,
- 5) account better and more thoroughly for educational results,
- 6) create new professional opportunities for teachers and other school employees, including the opportunity to be responsible for the learning program at the school site.²²

In other words, charter schools must seek to do something different and something innovative and new rather than drudge through the same old process in the same old way. However, there is nothing in these objectives that is uniquely only for charter schools. Public schools, given the proper mandate and funding from the government, could seek to do these things as well. The State Legislature has chosen charter schools specifically as its vehicle for education reform.

20. § 17:3973(2)(b)(v)(aa). See also NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS, PRINCIPLES & STANDARDS FOR QUALITY CHARTER SCHOOL AUTHORIZING (NACSA, 2007) available at http://www.qualitycharters.org/files/public/final_PS_Brochure.pdf.

21. LA. REV. STAT. ANN. § 17:3983(F)(2) (2009).

22. LA. REV. STAT. ANN. § 17:3972(B)(1) (2009).

Interestingly, the Legislature does not merely purport to put the best interests of students as a top priority, but specifically provides that “the best interests of at-risk pupils shall be the overriding consideration in implement[ation of the Charter Law].”²³ What is an “at-risk” pupil? According to the legislature, a pupil is “at-risk” if one or more of the following is true:

The pupil “is eligible to participate in the federal free or reduced lunch program by demonstrating that he meets the income requirements established for participation in the program, not necessarily by participating in the program.”

The pupil “is under the age of twenty and has been withdrawn from school prior to graduation for not less than one semester.”

The pupil “is under the age of twenty and has failed to achieve the required score on any portion of the examination required for high school graduation.”

The pupil “is in the eighth grade or below and is reading two or more grade levels below grade level as determined by one or more of the tests required . . . [by law].”

The pupil “has been identified as an exceptional child as defined . . . [by law], not including gifted and talented.”

The pupil “is the mother or father of a child.”²⁴

The qualification for the free or reduced lunch program has been called a “proxy for low income households.”²⁵ At-risk children thus include poorer children, displaced children, children who are struggling academically, special education children, and children who are parents themselves. However, the charter school law evinces the strongest desire to help poorer children. An example of the way the Legislature promotes the support for “at-risk” children is located in the statutorily mandated enrollment requirements for charter schools. Charter schools are designed to be accepting to all children, at least as far as the law is concerned. Schools are directed to enroll any child who is eligible for admission to the school via the residency requirements and makes a timely application to the

23. LA. REV. STAT. ANN. § 17:3972(A) (2009).

24. LA. REV. STAT. ANN. § 17:3973(1) (2009).

25. CENTER FOR RESEARCH ON EDUCATION OUTCOMES, CHARTER SCHOOL PERFORMANCE IN LOUISIANA, 5 (Stanford University, Jun. 2009) available at http://credo.stanford.edu/reports/LA_CHARTE%20SCHOOL%20REPORT_CREDO_2009.pdf.

school, unless capacity is an issue.²⁶ If the charter school has room to accept all pupils who apply and are eligible to attend the school, it must do so.²⁷ If the charter school does not have room to accept all those pupils, then it must hold a lottery for admission, keeping in mind the enrollment requirements for at-risk and general population children.²⁸ There are only two venues for preference of certain students by charter schools. The first is for schools that result from a conversion may give preference to children that were enrolled in the preexisting school for that initial year of enrollment.²⁹ The second is for all charter schools, once children have been enrolled, so in the second year and after that, schools may also exercise a preference for students previously enrolled and their siblings.³⁰

However, Type 1 and Type 2 newly-created charter schools must have a certain percentage of their students designated as "at-risk" pupils.³¹ These school types must have at least "eighty-five percent of the average percentage of pupils enrolled in local public school districts from which the charter enrolls its students who are eligible to participate in the federal free and reduced lunch program."³²

For example, say that in School District X there are currently three K-6 schools. School 1 has 75% of its students eligible for free or reduced lunch; School 2 has 61% of its students eligible for free or reduced lunch, and School 3 has 44% of its students eligible for free or reduced lunch. In this scenario, School District X has an average population of 60% of students "at-risk" in this particular way (being eligible for free or reduced lunch).

26. LA. REV. STAT. ANN. § 17:3991(C)(1)(a) (2009). Charter schools are able to select their own period to accept applications, but it cannot be less than one month or more than three months. Every successive year must have an established application period. § 17:3991(C)(1)(b)

27. § 17:3991(C)(1)(c)(i).

28. § 17:3991(C)(1)(c)(i) (2009).

29. § 17:3991(C)(1)(c)(ii). This section also mandates that the application procedure should be structured to give ample opportunity for students to take advantage of this preference.

30. § 17:3991(C)(1)(c)(iii). Of course, the schools must still comply with the enrollment math for the purposes of serving at-risk children.

31. § 17:3991(B)(1)(a)(i). There is an exception for any charter school established with the educational mission of meeting the need of students who are the dependent children of military personnel if the school predominantly enrolls such children, all dependent children of military personnel who seek admission to the school and who are also at-risk are admitted to the school, and for any general population students the school admits, they school complies with the required math for that population. § 17:3991(B)(ii).

32. LA. REV. STAT. ANN. § 17:3983(B)(1)(a)(i) (2009). This number is calculated based on the October first pupil membership who are at-risk. The at-risk percentage for the city or parish school system remains fixed during the term of the approved charter, unless otherwise specified in the charter.

Thus, a new school that is entered into School District X must also be willing to serve a population of students that includes 60% of at-risk children. If Charter School Y proposes placement in School District X with an enrollment projection for 100 children, it must serve at least 60 at-risk children. The law dictates that at least 51 of those children must be eligible for free or reduced lunch (85% of 60%), and at least 9 more must qualify for some at-risk category, either free or reduced lunch or something else. While this mathematical computation might seem tricky, it is necessary, from the Legislature's point of view, to ensure that at-risk children, particularly poorer children, are a priority for new charter schools.

To complicate matters slightly, for Type 2, 3, and 4 charter schools in any parish that has between 20,500 and 21,000 persons, the number of children enrolled in the charter school that are eligible for free or reduced lunch should not be *more* than the percentage of the total number of pupils enrolled in the public and state-approved nonpublic schools located in the district who are eligible for free or reduced lunch.³³ In other words, in so far as it is practicable, if the school district has an average of 60% of children who are at-risk in this manner, the charter school should try to serve that *precise* amount of at-risk children, neither more nor less. However, no charter school, as near as practicable, should have fewer than 50% students who are eligible for free or reduced lunch.³⁴ Therefore, even if a school district has a 40% average of children who were at risk in this particular way, a charter school with a projected enrollment of 100 should have at least 50 children eligible for free or reduced lunch, which surpasses the required 40%, but moves serving at-risk kids to the top of the priority list. Of course, the focus is still on poorer children as opposed to any other at-risk category.

What about conversion schools? A Type 2, Type 3, or Type 4 charter school that converts a preexisting public school into a charter school must have at least the same percentage of children eligible for free or reduced lunch in the converted school as the public school had the previous year.³⁵

Charter schools not only behave differently from public schools in terms of enrollment, but also in terms of funding. A charter school cannot charge any tuition or attendance fees to supplement its state and school board provided income. As a public school, a charter school must get

33. LA. REV. STAT. ANN. § 17:3991(B)(1)(b)(ii) (2009). The population number is according to the most recent federal decennial census.

34. § 17:3991(B)(1)(b)(ii).

35. LA. REV. STAT. ANN. § 17:3991(B)(1)(b)(i) (2009). Again, this number is based on the October first pupil membership of at-risk children who fall into the free or reduced lunch category of risk.

funding from the local school board and/or the state initially and then supplement that funding with federal money or private donations.

For the purposes of funding, Type 1, 3, and 4 charter schools are considered as an approved public school of the local school board entering into the charter agreement.³⁶ Acting in this capacity allows the charter schools to receive a per pupil amount from the local school board's funds.³⁷ Type 2 charter schools receive a per pupil amount from the Department of Education using state funds that are specifically provided for this purpose.³⁸ The per pupil amount received by a Type 1, 2, 3, or 4 charter school is computed each year and must be at least the same per pupil amount received by other schools in the school district in which the charter school is located.³⁹ Clearly the money is meant to follow the student. That means if a charter school can attract more pupils, it will receive more money. As a corollary, if a school district invites a charter school into its system, it must divert money to the new school while running the already existing schools with less money.

Without this system of per-pupil spending, local school districts would be more adverse to accepting charter schools. If the state gave a certain amount of money to each district that it had to split among its schools, including charter schools that turned on some other basis, it would behoove a local school board to reject a charter school as Type 1 or Type 3. A Type 2 school would be run by the state, and funded by the state, but located in the same school district that rejected it. Thus the school district would benefit from the charter school and receive full money from the state, but lose control over the school itself. Because the money follows the students, this perverse incentive does not apply, and local school boards are more likely to engage with charter school applicants.

The per pupil amount that a school district receives is gathered from two sources. First, there is a state-funded per pupil allocation received by the district pursuant to the most recent minimum foundation program formula.⁴⁰ Second, local revenue may come from sales and use taxes, ad valorem taxes, or earnings from sixteenth section lands owned by the school district.⁴¹ Although initially this funding is based on expectations, it

36. LA. REV. STAT. ANN. § 17:3995(A)(1) (2009).

37. § 17:3995(A)(1). The per pupil amount for each year is based on the October first membership count of the charter school.

38. *Id.* The per pupil amount for Type 2 charter schools after July 1, 2008 is based on the Minimum Foundation Program approved formula.

39. § 17:3995(A)(1). Again this is based on an October first membership count.

40. LA. REV. STAT. ANN. § 17:3995(A)(1)(a) (2009).

41. § 17:3995(A)(1)(b). This revenue is less any tax collection fee paid by the school district

can be adjusted to reflect actual enrollment and costs later in the year.⁴²

During the application period and the first year of the charter school's operation, a chartering authority may charge each charter school it authorizes a fee for administrative overhead costs incurred by the chartering authority for considering the application, providing monitoring and oversight, collecting and analyzing data, and reporting on the school's performance.⁴³ This fee may not exceed two percent of the total per pupil amount given to the school during this time.⁴⁴ However, this fee may be increased to three percent of the total per pupil amount in the second year of charter school operation and each year thereafter.⁴⁵ Notably, these administrative overhead costs may not include any cost of the chartering authority to provide purchased services to the charter school.⁴⁶

A charter school may contract with its chartering authority (or with the Recovery School District if it is a Type 5 charter school) for certain services in addition to the administrative overhead costs.⁴⁷ These services may include "food services, special education services, transportation services, custodial and maintenance services, media services, technology services, library services, health services, and health benefits."⁴⁸ The charter school must receive these services at the actual cost incurred by the chartering authority, and the charter school must pay for the services pursuant to an amount recorded in a written agreement entered into for this purpose.⁴⁹ A charter school is able to negotiate with the local school board in whose jurisdiction it is located for the provision, operation, and maintenance of facilities, for transportation of students, and for other support services that the school board provides to other public schools in its system.⁵⁰ This system theoretically prevents local school boards from taking advantage of charter schools and forces funding to flow to these school from their legislatively mandated sources.

and excludes any portion which has been specifically dedicated by the legislature or by voter approved capital outlay or debt service.

42. § 17:3995(A)(2).

43. § 17:3995(A)(4)(a). This fee is withheld from the per pupil amount in monthly increments and is not applicable to any federal money or grants received by the charter school.

44. *Id.*

45. § 17:3995(A)(4)(a) (2009). This fee is to be negotiated between the charter school and the chartering authority, but may not exceed three percent.

46. *Id.*

47. § 17:3995(A)(4)(b).

48. *Id.*

49. *Id.* "Absent such an agreement, the chartering authority ... shall have no authority to withhold from the charter school any funds relative to providing such services."

50. L.A. REV. STAT. ANN. § 17:3991(D)(1) (2009).

Once the chartering authority receives funds to which the charter school is entitled, whether state, local, or other funds, the chartering authority has fifteen days to make these funds available for use by the charter school.⁵¹

Charter schools are not limited to the per pupil funds allocated by a school district or the state. Approved charter schools are also eligible for other federal and state funding, subject to the qualifications or restrictions for those funds.⁵² Charter schools may also solicit, accept, and administer donations and other financial assistance which do not contravene the constitution or any other law.⁵³ In addition to other funds received, each charter school that is created as a new charter school, as opposed to a conversion of a preexisting public school, will receive funds for facility acquisition and construction services.⁵⁴ If a charter school simply fails to open or closes for any reason, it must refund all equipment and cash on hand which can be attributed to state or local funding.⁵⁵

Any assets that a Type 1, 2, 3, or 5 charter school acquires are property of that school for the duration of the charter agreement.⁵⁶ If the charter of any of these schools is revoked or the school ceases to operate, any asset purchased with public funds becomes the property of the chartering authority (either the State Board or the local school board).⁵⁷ Charter schools must maintain records to delineate which assets were purchased with public funds.⁵⁸ Assets of Type 4 schools are property of the local school board.⁵⁹

Charter schools were intended by the Legislature to serve a certain purpose. They are dedicated to the concept of providing education in a new and different manner in a way that serves at-risk students. In order to do this, charter schools must engage in the special process of being scrutinized before they can receive a charter. Individuals that run the charter school must be committed to success before the school and its students can ever succeed; and public schools do not undergo the same type of scrutiny

51. LA. REV. STAT. ANN. § 17:3995(A)(5) (2009).

52. § 17:3995(C) (2009).

53. § 17:3995(D).

54. § 17:3995(G). This amount is based on the daily membership in the charter school for the first five years of its existence and equals the average per student budgeted amount for each of those five years by the district in which the charter school is located. This subsection applies only if and to the extent that funds are appropriated by the legislature.

55. § 17:3995(E).

56. § 17:3991(H).

57. § 17:3991(H).

58. *Id.*

59. *Id.*

before opening their doors.

III. CHARTER RECEIPT: PARTIES, PROPOSAL, & PROCESS

A. PARTIES:

A charter agreement exists between two parties: the charter school applicant and the chartering authority. The Legislature has given state chartering authority to both the State Board and local school boards. More specifically, the Legislature has given the State Board the ability to administer certain loans, enter into charters that comply with the law, adopt rules necessary to undertake its duties, review proposed charters, and determine policy and provide direction to the state Department of Education for charter school oversight for those schools chartered with the State Board.⁶⁰ However, along with these grand powers, the Legislature also provides guidance to the State Board. For instance, the Board must review and take action on every application it receives.⁶¹ When reviewing charters, the State Board must be timely and review each charter in the order it was submitted.⁶² In order to approve a charter, the State Board must find that it is "valid, complete, financially well-structured, and educationally sound proposal that offers potential for fulfilling the purposes [articulated by the Legislature]."⁶³

The State Board set aside a section of its rules to clearly explain its responsibilities as a chartering authority, or rather as an entity capable of charter authorization.⁶⁴ It envisions its responsibility to Type 2, Type 4, and Type 5 charter schools as being six-fold. The initial responsibility is that imposed onto it by the State Legislature: the State Board recognizes that charters must be reviewed in a timely manner for the purposes of finding compliance and whether or not the application complies with the requirements of the legislature.⁶⁵ In order to achieve this goal, the State Board has a self-imposed responsibility to "implement a comprehensive application process with fair procedures and rigorous criteria that results in applications recommended to demonstrate strong capacity for establishing and operating a quality charter school."⁶⁶

After this application process has concluded, the State Board will only

60. LA. REV. STAT. ANN. § 17:3981 (2009).

61. LA. REV. STAT. ANN. § 17:3983(A)(3)(a) (2009).

62. LA. REV. STAT. ANN. § 17:3981(4) (2009).

63. § 17:3981(2).

64. LA. ADMIN. CODE tit. 28, § 303 (2008).

65. § 303(A)(2). (citing LA. REV. STAT. ANN. § 17:3981(2)).

66. § 303(A)(1).

enter into a charter if it has made a specific determination that the proposed school meets the requirements laid out in state law.⁶⁷ Once an application for a charter is concluded, the State Board will "enter into performance contracts with approved charter schools that articulate the rights and responsibilities of each party regarding school autonomy, expected outcomes, measures for evaluating success or failure, performance consequences, operating terms, and other material terms."⁶⁸ With these contracts in place, the State Board will also endeavor to "implement a transparent and rigorous process that uses comprehensive academic, financial, legal, and contractual reporting and compliance to make merit-based recommendations for charter extension, renewal, and revocation."⁶⁹ Overall the State Board endeavors to put a clear, structured process in place for charter school applicants and the schools it will eventually run. Developing and publishing this process is a good first step towards transparency of the entire system. The Legislature may create the general rubric, but it is the chartering authorities themselves that are on-the-ground administering the system. It is imperative that they have a structure to follow.

To help Type 2, 4, and 5 charter schools the State Board has also dedicated itself to work with the Department of Education to provide "adequate administrative and programmatic support and oversight; monitoring compliance; measuring progress; and implementing interventions, when necessary."⁷⁰

The State Board also has several self-professed duties that it owes to Charter Schools. Most of these duties are imported from what the Legislature provides, and the Board purports to "fulfill all other obligations created by state and federal law with respect to students attending charter schools" in addition to these stated duties.⁷¹ As directed by the Legislature, the Board must administer loans for "assisting in meeting the costs required to establish a charter school as well as the costs of operation."⁷² It must also help to determine policy and provide direction to the Department on how to provide oversight of the operation of State Board chartered schools.⁷³ If a school system with less than 5,000 students requests help, the State Board must provide "technical assistance . . . in determining the financial impact

67. § 303(A)(3).

68. § 303(A)(4).

69. § 303(A)(6).

70. § 303(A)(5).

71. § 305(A)(6).

72. § 305(A)(1). This distribution is subject to the availability of funds and done pursuant to the Charter School Law.

73. § 305(A)(2).

of any proposed charter school on the operation of the system.”⁷⁴ Moreover the Board must notify local school boards if it receives any Type 2 charter application for a school which is purposed to be located in that school board’s district.⁷⁵ After that notification, the local board and other interested parties must be allowed to present information and provide written information at a scheduled public meeting of the State Board before any official decision is made.⁷⁶

Local school boards are the second legislatively-created chartering authorities and the Legislature has also given them specific responsibility. The rules are more specific for local school boards than for the State Board. For instance, while the State Board is instructed to be merely “timely” in its review of proposed charters, a local school board must review and formally act on each proposed charter within thirty days of its submission.⁷⁷ This thirty-day deadline need not culminate in a final decision of approval or disapproval from the local school board, only an indication of its interest in the charter school group and the establishment of a timeline and procedures that will culminate in the final decision.⁷⁸ If the school board expresses no interest in working with the group, or allows sixty days to pass with no final decision after the proposal has been submitted, the chartering group may then submit its proposal to the State Board for review.⁷⁹ However, a local school board’s review of a purposed charter during the initial thirty days is still for the purpose of finding whether or not the proposal is “valid, complete, financially well-structured, and educationally sound, and whether it offers potential for fulfilling the purposes of . . . [the Charter Law].”⁸⁰ Once the local school board enters into a charter, it must be reported to the State Board within two business days.⁸¹ The local school boards that act as chartering authorities must also report to the State Board each year on the number of schools chartered, the status of those schools, and any recommendations the local school boards make about those schools.⁸²

Not all local school boards are eligible to be chartering authorities. If a local board has been declared to be in “academic crisis” then that local board may not consider, review, or act upon any charter applications for a Type 1 charter but must refer any proposal to the State Board to be

74. § 305(A)(3).

75. § 305(A)(5).

76. *Id.*

77. LA. REV. STAT. ANN. § 17:3982(A)(1)(a).

78. § 17:3982(A)(2).

79. *Id.*

80. § 17:3982(A)(1)(a).

81. LA. REV. STAT. ANN. § 17:3983(A)(4)(b).

82. LA. REV. STAT. ANN. § 17:3998(A)(1). This report is due by July first of each year.

considered as a Type 2 proposal.⁸³ A school district is in an academic crisis when “more than thirty [of its] schools are academically unacceptable or more than fifty percent of its students that attend schools that are academically unacceptable.”⁸⁴ “Academically unacceptable” means that a school is acting unacceptably pursuant to a uniform statewide program of school and district accountability established pursuant to rules adopted by the State Board.⁸⁵ The State Board has tied this definition to what is called a School Performance Score or “SPS”.⁸⁶ Schools are academically unacceptable when they receive an SPS score that is lower than 60.0.⁸⁷

The State Board has created a section on the duties of a local school board, again with pieces of the rules imported from the statutory text.⁸⁸ The Board also requires a public process to review charter proposals offered to local school boards, and public meetings for the purpose of considering proposals and receiving public input.⁸⁹ Local school boards must make available to chartering applicants any vacant facilities, or facilities slated to be vacant, they have available for lease or purchase at fair market value.⁹⁰ If for some reason the facilities were constructed at no cost to the local school board, then the facilities, including everything within such facilities, is to be provided to the charter school at no cost as well.⁹¹

The other party involved in the charter contract is the non-profit organization or, in the case of a Type 4 arrangement, a school board that seeks the charter. The law prescribes who may form a nonprofit corporation for the purposes of proposing a charter, however any group submitting a charter must include “three or more persons holding valid and current Louisiana teaching certificates.”⁹² The other groups that may form a

83. LA. REV. STAT. ANN. § 17:3982(A)(1)(b) (2009). This is an example on when a Type 1 “denial” may proceed as a Type 2 application.

84. LA. REV. STAT. ANN. § 17:10.6(B)(1). (2009)

85. § 17:10.6(B)(2)(a).

86. LA. ADMIN. CODE tit. 28, § 1101(A) (2008).

87. *Id.* See also LA. ADMIN. CODE tit. 28 in its entirety for more detail on the SPS score and performance labels, as well as how schools become academically unacceptable and how they can rise above that status.

88. LA. ADMIN. CODE tit. 28, § 307(A)(1), (5) (2008) (discussing the thirty day review and the two business days allotted to report to the State Board are discussed above from LA. REV. STAT. ANN. § 17:3982).

89. LA. ADMIN. CODE tit. 28, § 307(A)(2), (4) (2008). The public meeting “shall be held after reasonable efforts have been made by the local school board to notify the public of the meeting and its content.”

90. § 307(A)(3). If the school board is dealing with a Type 2 school created as a result of conversion, the school shall be made available to the applicant under similar terms.

91. *Id.* Items within the facility include equipment, books, instructional materials, and furniture.

92. LA. REV. STAT. ANN. § 17:3983(A)(1). (2009)

nonprofit corporation are a group of three or more teachers, a group of ten or more citizens, a public service organization,⁹³ a business or corporate entity registered to do business in Louisiana,⁹⁴ a Louisiana college or university,⁹⁵ the faculty and staff of any city or parish public school or any local school board, or the state Department of Education.⁹⁶

B. PROPOSAL:

Louisiana state law gives a list of requirements for what is necessary for a proposed charter in the way of content.⁹⁷ The list is quite exhaustive. The proposed charter must include:

- 1) If the proposed charter is for a Type 1, Type 2, Type 3, and Type 4 charter school, it must detail the school's compliance with the at-risk enrollment requirements outlined;
- 2) A statement of the school's role, scope, and mission;
- 3) Admission requirements;
- 4) A description of the jurisdiction that the charter school will cover that makes children eligible for admission;
- 5) A financial and accounting plan sufficient to permit a governmental audit;
- 6) A description of how the charter school would fulfill one or more of the purposes articulated by the Legislature;
- 7) A description of the education program offered by the school and how that program will meet the needs of the at-risk pupils to be served;

93. § 17: 3983(A)(1)(c). A public service organization is legally defined as "any community-based group of fifty or more persons incorporated under the laws of [Louisiana] that ... ha[s] a charitable, eleemosynary, or philanthropic purpose ... [and is] qualified as a tax-exempt organization under Section 501(c) of the United States Internal Revenue Code and is organized for a public purpose." LA. REV. STAT. ANN. § 17:3973(5) (2009).

94. LA. REV. STAT. ANN. § 17: 3983(A)(1)(d) (2009). This section excludes any businesses or corporate entity subject to the provisions of LA. REV. STAT. ANN. § 18:1505.2(L) as provided in §18:1505.2(L)(3). Subsection L characterizes itself as concerning "persons substantially interested in the gaming industry in this state." § 18:1505.2(L).

95. LA. REV. STAT. ANN. § 17: 3983(A)(1)(e) (2009). The college or university must be licensed by the Board of Regents, pursuant to R.S. 17:1808.

96. § 17: 3983(A)(1). The state Department of Education may form a nonprofit corporation for this purpose subject to the approval of the State Board. § 17:3983(A)(1)(g).

97. LA. REV. STAT. ANN. § 17:3991(B) (2009).

- 8) The specific academic and other education results to be achieved, the timelines for such achievement, and how results will be measured and assessed;
- 9) An agreement to provide a report at the end of each semester to parents of children enrolled at the school, the community at large, the local school board, and the State Board indicating progress towards meeting the objectives stated in the charter;
- 10) The organizational, governance, and operational structure of the school with qualifications that would be required of administrators and governing board members;
- 11) Policies, programs, and practices to ensure parental involvement;
- 12) Personnel policies and employment practices applicable to the school's officers and employees;
- 13) The manner in which teachers and other school employees will be evaluated;
- 14) School rules and regulations applicable to pupils including disciplinary policies and procedures;
- 15) Information concerning school location and the adequacy of facilities and equipment, including a statement of procedures to be followed and a plan for the disposition of the facilities and equipment should the charter be terminated or not renewed;
- 16) Management and accounting practices to be employed;
- 17) Provisions regarding liability issues;
- 18) Types and amounts of insurance coverage provided;
- 19) The methods and procedures to be used for monitoring the charter school by the chartering authority;
- 20) A requirement that curriculum will be focused on the intellectual domain with intellectual development defined as an acquisition of discrete technical and academic skills (no charter school curriculum should limit the ability of a student to attend a school in the public school system that he/she would otherwise attend if not for the charter school);
- 21) A requirement that the charter school regularly assess the academic progress of its pupils, include the participation of its pupils in state testing programs, and share this information with parents;

- 22) A requirement that a pupil shall have mastery of grade-appropriate skills before the pupil can be recommended for promotion or promoted;
- 23) and provisions regarding the security of the school.⁹⁸

The State Board was instructed to and did indeed provide rules to govern the implementation of state law regarding charter schools.⁹⁹ Bulletin 126 (now incorporated into the Louisiana Administrative Code) was written to set forth requirements for applying for a charter, procedures for monitoring and evaluating charter schools, and procedures for the amending, reviewing, and revoking of charters to be approved by the State Board.¹⁰⁰ A large part of the bulletin is dedicated to reifying what the Legislature had already passed into law.¹⁰¹

The State Board directs charter school applicants to answer all questions contained in a “request for applications” that the Board will distribute.¹⁰² These questions fall into the areas of school education program, governance, leadership and management, financial plan, facilities, and a required executive summary of application information.¹⁰³ The State Board also requires answers to questions that provide “a description of the school’s recruitment, enrollment, and admission process; . . . a description of how the charter school will meet the needs of students with exceptionalities; . . . [and a] staffing plan, including the number of teachers and employees.”¹⁰⁴

The most recent Request For Applications or “RFA” was released in May 2009 for charter schools that would open no earlier than Fall 2010.¹⁰⁵ Paul G. Pastorek, the state superintendent of education, wrote that “[b]y adopting a set of transparent standards and a cohesive application process

98. LA. REV. STAT. ANN. § 17:3991(B)(1)-(23) (2009). This section also provides that if a local school board provides security services for its school then it shall also make those services available to its Type 1, 3, and 4 charter schools on terms as provided within the charter agreement.

99. LA. ADMIN. CODE tit. 28, § 101(A) (2008).

100. § 101(B), (C) (2008). Part (C) explicitly details the fact that this Bulletin will bind all charter schools approved by the State Board.

101. See LA. ADMIN. CODE tit. 28, § 105 (detailing the purpose of charter schools); § 107 (detailing the types of charter schools);

102. LA. ADMIN. CODE tit. 28, § 515(C). The twenty three requirements for charter applications from the Charter School Law are also included in this section, with a few additions. § 515(D)(1)-(25), excluding (5), (9), and (14).

103. § 515(C).

104. § 515(D)(5),(9), and (14). These are the additional application components that the State Board listed with those required by the Legislature.

105. LOUISIANA DEPARTMENT OF EDUCATION, REQUEST FOR APPLICATIONS (Louisiana DOE, May 2009).

for charter schools, [the State Board] is instituting consistency in the level of support and expectations for Types 2, 4, and 5 charter schools."¹⁰⁶ The RFA is a ninety-four-page document intended to guide the potential charter school applicant through the lengthy and rigorous process. A timeline is also included, taking the applicant from the initial release of the request for applications in May until the approval time in October.¹⁰⁷ In the interim, applicants must submit a letter of intent and file their application but the State Board provides information sessions for applicant and applicant support workshops.¹⁰⁸

The application a hopeful charter school must produce is just a part of the process, at least for Type 2, 4, and 5 charter schools who apply via the State Board. For the State Board's approval, a charter school must complete an entire application process, which includes "an eligibility review, a completeness review, a due diligence review, an application review, and an applicant interview."¹⁰⁹ The RFA conceives of this as essentially a twelve-step process: pre-submission support for applicants (the workshops and documentation), a letter of intent from the applicant to the Board, an eligibility review, submission of application and completeness review, a due diligence review, an application evaluation, a site visit, an applicant interview, evaluator recommendations, recommendations submitted to the State Board, potential conditional requirements imposed on the applicant, and final approval.¹¹⁰ These voluminous steps flesh out the application process.

C. PROCESS:

Initially, a proposal for a Type 1 or a Type 3 charter school will be made to the local school board that governs the area where the school is to be located.¹¹¹ If that school board is in academic crisis, then the applicants should submit a Type 2 charter school proposal to the State Board.¹¹² The school board may attempt to put conditions on the charter provided that those entering into the charter agree with those conditions.¹¹³ If the school board either denies the proposal or places conditions on the proposal that the applicants find unacceptable, the applicants may also submit a Type 2

106. *Id.* at 2.

107. *Id.* at 12.

108. *Id.*

109. LA. ADMIN. CODE tit. 28, § 513(A) (2008).

110. REQUEST FOR APPLICATIONS, *supra* note 105, at 13-16.

111. LA. REV. STAT. ANN. § 17:3983(A)(2)(a)(i) (2009).

112. § 17:3983(A)(2)(a)(ii).

113. § 17:3983(B)(2).

charter school proposal to the State Board.¹¹⁴ Any Type 2 charter school proposal received by the State Board results in notification to the local school board district in which the proposed school would be located.¹¹⁵ This provides the local school board and other interested groups with a chance to provide written information to the Board regarding the proposal, and to present information at a scheduled public meeting of the Board regarding any determination being made by the Board for that particular proposal.¹¹⁶

Before the local school board may approve a charter for a Type 1 or Type 3 charter school, the local school board must hold a public meeting for the purpose of considering the proposal and receiving public input on the issue.¹¹⁷ Reasonable effort must be made by the school board to notify the public of the meeting and its subject matter.¹¹⁸ After this meeting, approval by the school board will require an affirmative vote of a majority of the members on the board.¹¹⁹

Type 4 and Type 5 charter school proposals are made directly to the State Board, with proposals for Type 5 charter schools only being considered upon the recommendation of the administering agency of the Recovery School District.¹²⁰ In order to approve the charter proposal, there must be an affirmative vote of at least six members of the State Board.¹²¹

If the charter proposal intends to convert a preexisting school as opposed to start a new school, an approval process must take place.¹²² In order to receive approval by the faculty and staff of the school, there must be a favorable vote of two-thirds of the members of the faculty and staff.¹²³ Each faculty or staff member has one vote, and the vote must be held at the preexisting school at a "secret-ballot" election held for that exact purpose.¹²⁴ Schools may only have one such election per year, although a charter applicant may try again in subsequent elections.¹²⁵ In order to receive approval by the parents and guardians of the school, there must be a

114. § 17:3983(A)(2)(a)(i).

115. § 17:3983(A)(3)(b).

116. *Id.*

117. § 17:3983(D).

118. *Id.*

119. § 17:3983(E)(1).

120. § 17:3983(A)(2)(b)-(c).

121. § 17:3983(E)(2).

122. § 17:3983(C). This approval process is reified by State Board rules. LA. ADMIN. CODE tit. 28, § 507 (2008).

123. LA. REV. STAT. ANN. § 17:3983(C)(1)(a) (2009).

124. *Id.* The number needed for approval shall be determined by the number of eligible employees assigned to the school on the October first preceding the election.

125. § 17:3983(C)(1)(b).

favorable vote of a majority of the parents or guardians of children enrolled in the school at the time of the election.¹²⁶ Only one vote may be cast per student enrolled at the school.¹²⁷

The State Board has rules in place for the application process. The Board decreed that all applications are to be "received, reviewed, and approved pursuant to a charter application cycle."¹²⁸ Applications are not considered outside of these cycles, which are approved by the State Board itself.¹²⁹ At least one cycle must occur each year for Type 2, 4, and 5 charters, although the Board is free to approve additional cycles as well.¹³⁰ Prospective applicants must have at least 90 days from the release of the request for applications to the due date for their applications, except when the Board recognizes exceptional circumstances.¹³¹ The Board may recognize such circumstances, but when the Department requests an application cycle with less than 90 days, it must demonstrate to the Board that circumstances exist necessitating a shorter time period.¹³² This means that it is the Department of Education, Charter School Office which requests the application cycles which are subsequently approved by the State Board.

Each application cycle encases a competitive process, and any entity that meets the eligibility requirements is eligible to participate in this process.¹³³ The release of an RFA requires public notice, as well as notice to national, regional, and state organizations that support charter schools, and notice to all other interested parties.¹³⁴

As discussed earlier, after the application is made, the charter applicant undergoes "an eligibility review, a completeness review, a due diligence review, an application review, and an applicant interview."¹³⁵ The first step is that of eligibility review, as each charter applicant must meet the eligibility criteria set forth in the Request for Applications offered by the Board.¹³⁶ Each RFA must structure the eligibility section so that it at least

126. § 17:3983(C)(2). The vote may only be counted if the total number of votes from the election is at least fifty percent of the number of students enrolled at the school.

127. *Id.*

128. LA. ADMIN. CODE tit. 28, § 511(A)(1) (2008).

129. § 511(A)(2)-(3).

130. § 511(A)(4)-(5).

131. § 511(A)(6).

132. § 511(A)(6)(a).

133. § 511(B)(1).

134. § 511(B)(3).

135. § 513(A).

136. § 513(B).

complies with the requirements set forth in Bulletin 126.¹³⁷ Of course, failure to meet any of these basic ineligibility requirements renders an applicant ineligible to apply for a charter.¹³⁸

The Board has rules to clearly dictate the minimum eligibility for Type 2, 4, and 5 schools, the only types of charter school over which the Board has chartering authority. In order to be minimally eligible to apply for a Type 2 charter, the applicant group must first be organized as a non-profit organization under Louisiana law and recognized as a non-profit corporation under federal law.¹³⁹ The group must have a board of directors with at least three members and include at least three people who hold valid and current Louisiana teaching certificates.¹⁴⁰ Moreover, the group must have previously submitted a Type 1 or Type 3 proposal to a school board and been denied in some way.¹⁴¹ The only exception to this previous submission and denial requirement would be if the local school system in which the charter school would be is currently in academic crisis.¹⁴² If the group desires a conversion of a preexisting school, of course the approval process for that conversion must be met.¹⁴³ This basic set of eligibility requirements appears in the State Board's rules but a RFA may impose more eligibility requirements.¹⁴⁴ If more requirements are proffered by the RFA, the eligibility review will also consist of determining whether those are met as well.

In order to be minimally eligible for a Type 4 charter, the applicant group must be a local school board which includes at least three or more people with valid, current Louisiana teaching certificates that are involved in the development of the application.¹⁴⁵ The school board must also have completed the approval process if it is intending to convert a preexisting school into a charter school.¹⁴⁶ Additionally, more requirements may be imposed by any given RFA.¹⁴⁷

137. LA. ADMIN. CODE tit. 28, §§ 503, 505, 509 (2008).

138. *Id.*

139. LA. ADMIN. CODE tit. 28, § 503(A)(1)-(2) (2008).

140. § 503(A)(3)-(4).

141. § 503(A)(5). Such denial would include outright denial evidenced by a motion or resolution of the local school board, unacceptable conditions placed on the charter, an indication of no interest by the local school board within 30 days, or no final decision by the local school board within 60 days.

142. § 503(B).

143. § 503(A)(6). This refers to the approval process set out in §507.

144. § 503(C).

145. LA. ADMIN. CODE tit. 28, § 505(A)(1)-(2) (2008).

146. § 505(A)(3).

147. § 505(B).

In order to meet the minimally eligibility requirements for a Type 5 charter, the applicant group must (like a Type 2 charter applicant) be organized and recognized as a non-profit corporation under the law.¹⁴⁸ The group must have a board of directors with at least three members and contain the three people with current, valid teaching certificates that are involved in the process.¹⁴⁹ However, in a new twist, Type 5 applicants must include a person or entity with at least five years of significant experience in the area of school operation, as required by state law.¹⁵⁰

The January 2009 RFA attempts to limit certain sections by page numbers to keep the applications as brief as possible while still maintaining a sense of thoroughness. For instance, for one section of the application an applicant must detail the education program, including philosophy, curriculum, and instructions; provisions for special education and student evaluation; professional development; student recruitment, enrollment, and admissions; school climate and culture; and community engagement in fifty pages or less.¹⁵¹ This section should describe "how and why the education program will be successful at the school they are proposing to operate, rather than a general description of how program elements might be successful in any given school."¹⁵² The State Board must strike a balance between requiring brevity for the sake of efficiency and gathering enough data to make an informed decision in any given applicant's case. Even with these limitations, applications are still fairly lengthy. For example, a Type 5 application from 2008 for American Scholars Academy for Boys, Inc. was approximately 225 pages.¹⁵³ Public disclosure is to be made of all applications submitted to the State Board because of state law governing public records.¹⁵⁴ The State Board has said that it will publish a listing of all applications received with some base data.¹⁵⁵

Applications include, among the many things that state law requires, goals for the school. American Scholars Academy for Boys set an academic goal of having all "continuously enrolled . . . students perform at basic or above on all state criterion-referenced tests . . . at a rate higher than similar

148. LA. ADMIN. CODE tit. 28, § 509(A)(1)-(2) (2008).

149. § 509(A)(3)-(4).

150. LA. ADMIN. CODE tit. 28, § 509(A)(5) (2008). (originally in LA. REV. STAT. ANN. § 17:3983(F)(2) (YEAR).

151. REQUEST FOR APPLICATIONS, *supra* note 105, at 27-34.

152. *Id.* at 27.

153. AMERICAN SCHOLARS ACADEMY FOR BOYS, INC., TYPE 5 CHARTER SCHOOL APPLICATION OF AMERICAN SCHOLARS ACADEMY FOR BOYS, INC. (2008) (on file with author).

154. REQUEST FOR APPLICATIONS, *supra* note 105, at 18 (citing LA. REV. STAT. ANN. § 44:1 (18) (2007)).

155. *Id.*

schools demographically and geographically.”¹⁵⁶ Audubon Charter School set a goal for students to “outperform their same grade peers” on various standardized tests while making “sufficient progress toward meeting the state’s ten-year goal” on those tests.¹⁵⁷

After the applications are submitted, the second step in the application process is that of a completeness review, where each application is reviewed to determine if all questions requiring a response have been completed.¹⁵⁸ Any failure to respond as the request for application directs may result in an applicant not being permitted to proceed in the application cycle.¹⁵⁹

The third step is that of a due diligence review, which may include a background and reference check of board members and individuals associated with the application, analysis of school performance and nonprofit corporation and management company financial performance, and school site visits for those currently operating other schools.¹⁶⁰

The fourth step is that of an application evaluation by a team of evaluators: the Board assembles teams of local, state, and national evaluators with expertise in charter schools and charter school authorization, curriculum, governance, management, and finance to review applications.¹⁶¹ Each review team is between three and seven evaluators and uses a “uniform evaluation rubric” to record their evaluations.¹⁶²

The fifth step is that of an applicant interview, where the evaluators interview the applicant to “assess the overall capacity of the charter applicant and to address questions in reference to the charter school application.”¹⁶³ Once all these steps have been completed, evaluators make recommendations to the Department of Education for approval or denial of each charter school application.¹⁶⁴

If the charter school application is approved by the State Board, a

156. AMERICAN BOYS APPLICATION, *supra* note 153, at 6.

157. AUDUBON CHARTER SCHOOL, AUDUBON CHARTER APPLICATION, 15 (Dec. 2005) (on file with author). Audubon’s charter application is 126 pages in length.

158. LA. ADMIN. CODE tit. 28, § 513(C) (2008). The first step in the application process is clearly to submit an application.

159. *Id.*

160. § 513(D). While the due diligence review may include all of the above, it does not have to be limited only to those items.

161. § 513(E)(1).

162. § 513(E)(2)-(3).

163. § 513(F).

164. § 513(G).

charter school contract is created, which represents the legal agreement between the State Board and the charter operator and defines the specific rights and responsibilities of the parties.¹⁶⁵ This contract, which commonly incorporates all the data from the application, defines the performance standards to which the charter school will be held accountable and the general terms and conditions that govern the operation of the charter school.¹⁶⁶ Each contract is based on a template created by the board, and every contract contains the standard template, but the Board is free to add other provisions that may be specific to an individual charter operator.¹⁶⁷ For example, as to purpose, a charter may include the following language:

The Charter Operator shall provide educational services according to the educational standards established by law, the Charter Contract, and the Charter Application/Proposal; measure pupil progress toward stated goals; and participate in pupil assessments required by law, regulation and [State Board] policy. The Charter Operator shall manage the charter school in a financially prudent manner and provide [the State Board] with timely and accurate reporting.¹⁶⁸

Contracts are much shorter in length than applications – the Delhi Charter Contract excerpted above is only thirteen pages total. However, the lengthy applications are incorporated into the contract and include a “list of assurances, which is an integral part of [the] contract.”¹⁶⁹ Largely the contract serves to restate state law and the applicant’s promises into a binding legal agreement.

A charter may be amended. The charter school’s governing authority must propose the amendment and it must purport to better permit the charter school to achieve its stated objectives.¹⁷⁰ The amendment will be approved by the chartering authority if at least a majority of its membership

165. LA. ADMIN. CODE tit. 28, § 701(A).

166. § 701(B).

167. § 701(C). This template shall include, but not be limited to: “provisions regarding the establishment of the charter school; the operation of the charter school charter school financial matters; charter school personnel; charter term, renewal, and revocation; and other provisions determined necessary by [the State Board]. The charter school contract shall also include exhibits that provide detailed information about the terms and conditions under which the school will operate, including, but not limited to, the approved charter application; pre-opening requirements; education service provider contract, if applicable, student discipline policy; and student enrollment. Bulletin 126, §701(B).

168. DELHI CHARTER SCHOOL, CHARTER SCHOOL CONTRACT, 2 (Jun. 2004) (on file with author).

169. *Id.*

170. LA. REV. STAT. ANN. § 17:3992(A)(3)(b) (2009). This same section specifies that no amendment can be the basis of extending the duration of the original charter.

votes favorably.¹⁷¹ The State Board classifies such modifications of the provisions of a school's charter as material or non-material.¹⁷²

A material amendment to a charter is one that "makes substantive changes to a charter school's governance, operational, or academic structure."¹⁷³ Material amendments can be anything from a change in a school's legal status, to a change in its mission, location, curriculum, or which grade levels it is purported to serve.¹⁷⁴ In order for a material amendment to become valid, the charter operator must submit a request for amendment to the Department of Education.¹⁷⁵ Then, the Department makes a recommendation to the State Board on whether or not the amendment should be adopted.¹⁷⁶ If at least a majority of the Board votes yes, then the amendment becomes valid.¹⁷⁷

A non-material amendment to a charter is one that "makes non-substantive changes to a school's charter."¹⁷⁸ Non-material changes can be a change to the designated contact person for the school or an amendment to the charter operator by-laws.¹⁷⁹ The charter operator must provide the State Board with written notification of such an amendment.¹⁸⁰ The amendment will become effective ten days following this notification unless the State Board or the Department contact the charter operator and notify this entity or person of some objection to the proposed amendment.¹⁸¹

Once the charter agreement has been approved and signed, and any pre-opening requirements imposed by the Board on the school have been completed, a Type 2, 4, or 5 school has 24 months to begin operation.¹⁸² If

171. § 17:3992(A)(3)(b).

172. LA. ADMIN. CODE tit. 28, § 1901(A)(1) (2008). Part B of this section states that all charter amendment requests or notices must be submitted by the charter operator. Section 1907 states that notification shall still be given by the charter operator for amendments that do not fall into these two categories, and the Department of Education Charter School office will determine if the State Board must approve the amendments.

173. LA. ADMIN. CODE tit. 28, § 1903(A) (2008).

174. § 1903(A)(1)-(12). This section provides twelve different examples of what a material amendment examples.

175. § 1903(C). This section provides that such a request must be submitted in accordance with any rules or timelines set forth by the Department of Education Charter School Office.

176. § 1903(D).

177. § 1903(B).

178. LA. ADMIN. CODE tit. 28, § 1905(A) (2008).

179. § 1905(A)(1)-(5). This section provides five different examples of what a material amendment examples.

180. § 1905(B). Again, this request must be submitted in accordance with any guidelines available from the Department of Education Charter School Office.

181. § 1905(C).

182. LA. ADMIN. CODE tit. 28, § 705 (2008) (contract execution); LA. ADMIN. CODE tit. 28, §

the school is to be a Type 2 or Type 4 charter school, it must wait eight months to being operation and open in July, August, or September of a given year.¹⁸³ If the school does not open within the proper time period, the charter must be automatically revoked and a new charter proposed in a later application cycle.¹⁸⁴

The critical piece of transparency missing from this process is that local school boards do not have disclosed, repeatable processes for charter school applicants. Unlike the State Boards clear requirements for applicants and a structured timeline of review for those applications, the local school board process is largely *ad hoc* beyond what the State Government requires. Before an analysis of the process can even take place on the local school board level, that process must be brought to light. The National Association of Charter School Authorizers (NACSA) assembles principles and standards on quality authorizers.¹⁸⁵ In terms of the application process, a quality authorizer has fair procedures, rigorous criteria, and thorough, well-documented, prompt decisions.¹⁸⁶ This process is transparent on the state level but not on the local school board level. Moreover, even with a clear, efficient process in place, more time must pass for process testing and experience with the system to create an effective model for other states.

The end-goal of charter school application is that an applicant may govern a school with a charter contract between it and some arm of government. NACSA suggests that these contracts “clearly articulate the rights and responsibilities of each party regarding school autonomy, expected outcomes, measures for evaluation success or failure, performance consequences, and other material terms.”¹⁸⁷ With the State Board’s use of boilerplate language, literally filling in the name and location data on a school and incorporating a well-scrutinized application, it essentially commits to be transparent through its stated rules and equalize the process for each applicant.

IV. RULES & REGULATIONS FOR CHARTER SCHOOLS

Charter schools are famous for the lack of statutory mandates and rules put upon them by legislative bodies. The State Board thinks that

519 (2008) (pre-opening procedures); Bulletin 126, §901 (timeline for opening). A charter school may have 36 months to begin operation if it is engaged in desegregation compliance. LA. ADMIN. CODE tit. 28, § 901(A) (2008).

183. § 901(C)-(D).

184. § 901(B).

185. NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS, PRINCIPLES & STANDARDS FOR QUALITY CHARTER SCHOOL AUTHORIZING (2007 Revised Edition).

186. *Id.* at 8.

187. NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS, *supra* note 185, at 9.

charter schools will exercise “substantially greater authority to make decisions related to . . . personnel decisions, school management and operations, finances, curriculum, school day and calendar, [and] education service provider agreements.”¹⁸⁸ It is this autonomy and freedom that separates charter schools even from public schools that are meticulously well-maintained and driven to increase student performance.

Charter schools are indeed exempt from most rules and regulations of the state board and rules and regulations of any local school board that are applicable to public schools and to public school officers and employees.¹⁸⁹ However, there are numerous exceptions to this blanket exemption, mostly included for the safety and well being of the children enrolled.¹⁹⁰ Charter schools are also exempt from most statutory mandates and other statutory requirements that apply to public schools and public school officers or employees. This exemption comes with several exceptions as well.¹⁹¹ The State Board must review all information regarding the laws, regulations, and policies from which charter schools are exempt to determine if these exemptions “assisted or impeded schools in meeting their stated goals and objectives.”¹⁹² Presumably as long as the exemptions help charter schools achieve their goals (and only to that extent), such exemptions will be allowed.

The law does require that charter schools comply with state and federal regulations regarding civil rights, individuals with disabilities, and any collective bargaining agreement entered into by the local school

188. REQUEST FOR APPLICATIONS, *supra* note 105, at 5.

189. LA. REV. STAT. ANN. § 17:3996(A) (2009).

190. *Id.* These exceptions include rules and regulations pertaining to building maintenance, facility accessibility, asbestos detection and abatement, the Sanitary Code, pesticide use and safety, fire safety, safe work environments, the possession and safe use of weapons and hazardous materials, adolescent health initiatives and school health centers, hearing and vision screenings, immunizations and health records, communicable disease prevention, drug use prevention, eye safety and the use of protective goggles, missing children identification procedures, teacher certification except as otherwise provided, and school and district accountability system.

191. § 17:3996(B). These exceptions apply to charter schools as it would to public schools with the same grades: school entrance age, corporal punishment and suspension of students, expulsion of students, school year, attendance reporting, admission of home study students, unauthorized use of electronic communication devices, smoking, open meetings, public records, teaching regarding the United States Constitution, teaching regarding the Federalist Papers and the Declaration of Independence, teaching regarding free enterprise, teaching regarding civics, teaching regarding sex, religious liberty of students, pupil assessment, any school and district accountability system required by law of a public school of similar grade or type, public bids for the erection, construction, alternation, improvement, or repair of a public facility or immovable property, and the Code of Governmental Ethics. This section provides corresponding statutory citations for each exception.

192. § 17:3996(B).

board.¹⁹³ Additionally, a charter school is subject to appropriate financial audits in accordance with the law.¹⁹⁴ Charter schools are also required by state law to conduct pupil assessments as required by the state board, comply with any court-ordered desegregation plan applicable to their location, comply with *Brumfield v. Dodd*, and be nonsectarian.¹⁹⁵

However, charter schools still have many rules to follow which are unique to their status as charter schools. Statutory state law also provides some rules to govern charter school employees.¹⁹⁶ The State Board has created rules for charter school governance, fiscal responsibilities, school recruitment and enrollment, rules for staff, and mandatory complaint procedures.¹⁹⁷ Some of these rules stem from state law regarding charter schools. For example in the area of governance the Legislature mandates that no elected official, member of the State Board, or member of any city, parish, or other local public school board can be a member of the governing or management board of any Type 5 charter school within their purview.¹⁹⁸

Moreover, a charter school may not employ any member of the governing or management board of its school,¹⁹⁹ and conversely the members of that governing or management board may not receive compensation from the school other than reimbursement of actual expenses incurred while fulfilling duties as a member of such a board.²⁰⁰ The governing body of a charter school, whatever it is called in the context of that particular school plan, is given broad powers by the Legislature to “exercise any power and perform any function necessary, requisite, or proper for the management of the charter school not denied by its charter, the [Charter Law], or other laws applicable to the charter school.”²⁰¹

The law mandates certain requisites for teachers. All charter “types” with the exclusion of a Type 5 charter school must employ teachers that are certified by the State Board or the French Ministry of Education for at least

193. §§ 17:3996(C) and (D).

194. § 17:3996(F).

195. LA. REV. STAT. ANN. § 17:3991(C)(2)-(5) (2009). *Brumfield v. Dodd*, 405 F. Supp. 338 (E.D. La. 1977) (referring to desegregation compliance).

196. LA. REV. STAT. ANN. § 17:3997 (2009).

197. LA. ADMIN. CODE tit. 28, §§ 21, 25, 27, 29, 33 (2008).

198. LA. REV. STAT. ANN. § 17:3973(2)(b)(v)(cc) (2009). Thus, no member of the SBESE can be a member of any school because the entire state is under them. No member of a local school board may be a member of any school within their jurisdictional area. No elected official, or someone who was an elected official for a year prior to their appointment, may be appointed to such a board.

199. LA. REV. STAT. ANN. § 17:3991(A)(1)(c)(i) (2009).

200. § 17:3991(A)(1)(b).

201. § 17:3991(A)(2).

75% of the instructional staff.²⁰² The rest of the instructional staff must either be authorized to teach temporarily while seeking a regular teaching certificate or have at least a bachelor's degree, ten years of experience related to the field in which he/she is teaching, or demonstrate exemplary skills in his/her field of expertise.²⁰³ If a teacher is employed because of degree, experience, or exemplary skills, he/she must be under the supervision of a certified teacher and employed based on a determination of his/her qualifications by the charter school.²⁰⁴

What about Type 5 charter schools? By their second year of operation, Type 5 charter schools must have at least the same percentage of certified teachers as the school did before its transfer to the Recovery School District.²⁰⁵ By their third year of operation, Type 5 charter schools must have certified teachers teaching every core subject.²⁰⁶ All other instructional staff may be employed as in the paragraph above, either through temporary authorization or degree, experience, or exemplary skills.²⁰⁷

As for enrollment, a charter school may not enroll more than 120% of the number that has been approved in its charter without formally amending the charter.²⁰⁸ Any student who is enrolled in a charter school who decides not to attend the charter school must be allowed to attend the public school that he/she would otherwise attend if not enrolled in the charter school.²⁰⁹

A charter school is prohibited from being supported by or affiliated with any religion or religious organization or institution, result from a conversion of a private school or a home study program, charge any pupil tuition or any attendance fee, or discrimination among potential employees, employees, or students in violation of any federal or state law.²¹⁰ Moreover, a charter school may not hire a person who has been convicted of or has plead no contest to certain crimes.²¹¹

202. § 17:3991(C)(6)(a)(i).

203. § 17:3991(C)(6)(a)(ii). This portion of the instructional staff is still subject to state law relative to background checks applicable to the employment of public school personnel.

204. § 17:3991(C)(6)(a)(ii)(bb).

205. § 17:3991(C)(6)(b)(i).

206. § 17:3991(C)(6)(b)(ii). The State Board has designated English/language arts/reading, math, science, foreign languages, arts, and social science subjects as core subjects. L.A. ADMIN. CODE tit. 28, § 505(c)(1) (2008).

207. L.A. REV. STAT. ANN. § 17:3991(C)(6)(b)(iii) (2009).

208. § 17:3991(C)(1)(c)(iv).

209. § 17:3991(G).

210. § 17:3991(E)(1)-(4).

211. § 17:3991(E)(5)(a). The crimes in question are listed in R.S. 15:587.1 and the section is entitled "Provision of information to protect children." The State Board has also been instructed to establish regulations, requirements, and procedures to determine whether an applicant has been

Charter schools also have state-specified graduation requirements. In order to graduate from a charter high school, a child must be able to “demonstrate competency in the content of every course required for high school graduation” by the state.²¹² The State Board will provide rules to help determine whether or not such competency has been achieved.²¹³ Any examination required by the State Board or by the Legislature as a requirement for graduation from public high school also applies to students in charter schools.²¹⁴ Charter schools may choose to have their students demonstrate course competencies in a manner other than taking specific courses, but the proposal for the charter must specify how the school plans to work with the public higher education management boards regarding the acceptance of this method by institutions of higher education.²¹⁵

V. CHARTER RENEWAL: EVALUATION & EXTENSION:

Unless a charter is revoked, an approved school charter is valid for an initial period of five years, but that validity is contingent on results reported at the end of the third year.²¹⁶ At the end of five years, the charter may be renewed for additional periods of not less than three and not more than ten years.²¹⁷ However, this process is not optional because at the conclusion of the expiration of the initial charter contract from the State Board, a charter operator no longer has a continuing right to operate a charter school.²¹⁸ The process for renewal is just like the initial application process, and involves a thorough review by the approving charter authority of the charter school’s operations and compliance with charter requirements.²¹⁹

A written report is provided annually to the chartering authority regarding the school’s academic progress during that year.²²⁰ A charter may be revoked for failure to meet agreed-upon academic results as specified in the charter.²²¹ Absolutely no charter can be renewed unless the renewal applicant can demonstrate *some* improvement in the academic performance

convicted of or plead no contest to such crimes

212. LA. REV. STAT. ANN. § 17:3996(E) (2009).

213. *Id.*

214. *Id.*

215. *Id.* The traditional method of taking specific courses is described in the section as the Carnegie unit approach.

216. LA. REV. STAT. ANN. § 17:3992(A)(1) (2009).

217. *Id.*

218. LA. ADMIN. CODE tit. 28, § 1501(A) (2008). This is a rule specifically for Type 2, 4, or 5 charters, as local school boards may have other rules regarding renewal.

219. LA. REV. STAT. ANN. § 17:3992(A)(1) (2009). *See also* LA. ADMIN. CODE tit. 28, § 1501(A) (2008) (“Renewal of Charter”).

220. LA. REV. STAT. ANN. § 17:3992(A)(1) (2009).

221. *Id.*

of students over the term of the charter.²²² However, there is no mandate that a charter school live up to the lofty promises made in its application. A school may fall far short of its own goals, and evidence some improvement over its previous state, and still be approved for renewal.

Schools under the purview of the State Board are reviewed annually in the context of student performance, financial performance, and legal and contract performance.²²³ The State Board is *emphatic* that student performance is the “primary measure of school quality.”²²⁴ The only way for the Board to measure student performance is to rely on state assessment and accountability programs as “objective and verifiable measures of student achievement and school performance.”²²⁵

Charter schools are evaluated differently in their first few years, because the data to evaluate them is not available as it is for public schools.²²⁶ The State Board uses the data it creates in such a manner to track student performance by the assignment of an “assessment index.”²²⁷ This assessment index is used until sufficient data exists to create a school performance score (SPS).²²⁸ SPS scores are calculated using a formula that gives 90% weight to student performance on standardized test, 10% on attendance rates for grades K-6, and 5% on attendance rates/5% on dropout rates for grades 7-12.²²⁹

In a charter school’s first year, for those schools governed by the State Board, a school receives a diagnostic assessment index.²³⁰ This index consists of the test results of students enrolled in the school from their previous spring tests, if that information is available.²³¹ Once the school participates in testing itself, it receives an assessment index for the second

222. *Id.* This improvement can only be demonstrated using standardized test scores. This rule is repeated by the State Board for its charters. LA. ADMIN. CODE tit. 28, § 1501(F) (2008).

223. LA. ADMIN. CODE tit. 28, § 1101(B) (2008).

224. § 1101(D)(1) (“[The State Board] will heavily factor all annual evaluations and contract extensions and renewal decisions on a school’s achievement of the student performance standards.”).

225. *Id.*

226. § 1101(D)(2).

227. *Id.* (“An assessment index represents student performance on state assessments, as opposed to student performance on state assessments combined with other data like attendance and dropout rates.”)

228. *Id.* In contrast, a SPS score includes student performance on state assessments combined with other data like attendance and dropout rates. LA. ADMIN. CODE tit. 28, § 301(I)(4) (2008).

229. § 301(I)(4).

230. LA. ADMIN. CODE tit. 28, § 1101(D)(5)(a) (2008).

231. § 1101(D)(5)(b).

year.²³² All of this data paves the way for a baseline SPS and an assessment index in the third year of operation.²³³ Louisiana releases school report cards and principal report cards based on student assessment data each year, but this data includes SPS scores only and not the assessment and diagnostic assessment scores.²³⁴ This means that true, accurate, and comprehensive data analysis about charter schools may take some years to accomplish as most charter schools are brand new and do not currently have an available SPS and will not have one until their third year.

At the end of its third year of operation, every charter school must submit a comprehensive report to its chartering authority.²³⁵ If the school is achieving its stated goals and objectives pursuant to its approved charter, then the chartering authority will extend the charter for an additional two years, for a total of five years at the start.²³⁶ For State Board purposes, it looks at the assessment index that measures growth over a two-year period.²³⁷ Each school is required to make certain gains in terms of school performance in order to be renewed.²³⁸

Although school performance is the primary measure by which to judge a school, it is not the only measure used by the State Board. The Board also evaluates financial performance to "ensure the proper use of public funds and the successful fiscal operation of the charter school."²³⁹ Type 2, 4, and 5 charter schools must engage in proper financial practices, reporting, and audits as required by law.²⁴⁰ The schools are evaluated annually on the "timely submission of budgets, audits, annual fiscal reports, and all other financial reporting and compliance with applicable financial budgeting; accounting; and auditing laws, and regulations, and procedures."²⁴¹ All budgets in existence must be balanced using realistic and responsible assumptions.²⁴² All financial reports must be timely filed and complete.²⁴³ All financial obligations must be in good standing.²⁴⁴ And

232. § 1101(D)(6)(a). The school no longer needs a "diagnostic" index because it has now participated in state testing.

233. § 1101(D)(7). This type of data gathering continues into the sixth year of operation and thereafter, consisting of assessment indices, a baseline SPS, and a growth SPS. § 1101(D)(8)-(10).

234. See LOUISIANA DEPARTMENT OF EDUCATION, <http://doe.louisiana.gov/lde/saa/2900.asp> (last visited Oct. 2, 2009).

235. LA. REV. STAT. ANN. § 17:3998(A)(2) (2009).

236. LA. REV. STAT. ANN. § 17:3992(A)(2) (2009).

237. LA. ADMIN. CODE tit. 28, § 1101(D)(7)(b) (2008).

238. § 1101(D)(7)(c).

239. § 1101(E)(1).

240. *Id.*

241. § 1101(E)(2).

242. § 1101(E)(3).

243. § 1101(E)(3).

all audits must result in no major findings.²⁴⁵ An audit finding is major if it indicates “a deliberate act of wrongdoing, reckless conduct, or causes the loss of confidence in the abilities or integrity of the school or seriously jeopardizes the continued operation of the school.”²⁴⁶

The third area for evaluation of a charter school by the State Board is that of legal and contract performance. The Board must determine that the school is in compliance with its “statutory, regulatory, and contractual obligations and all reporting requirements.”²⁴⁷ Specifically, the Board looks at special education and ELL (English Language Learner) programs, student enrollment, student discipline, health and safety, governance, and facilities.²⁴⁸ A charter school runs afoul of the Board if there is evidence of anything, with financial performance for instance, that indicates “deliberate wrongdoing, reckless conduct, or [something that] causes a loss of confidence in the abilities or integrity of the school or seriously jeopardizes the rights of students, safety of students, or the continued operation of the school.”²⁴⁹

While the Board regularly engages in this standard review of charter schools, a school’s charter may provide for an alternate evaluation system.²⁵⁰ The State Board would approve such an alternate evaluation if the school served a unique populations or unique populations or had students in grades that did not participate in the state mandated assessments.²⁵¹

Although the State Board reviews its schools each year, the third year is a critical because contracts may be extended, put on probation, or revoked at that crossroad.²⁵² Each charter school provides a comprehensive report to the State board, which is used along with the third year evaluation to determine the school’s contract status.²⁵³ If after the third year a school has meet all financial performance standards, all legal and contractual standards, and has either an SPS for year two at 60.0 or above or an

244. *Id.* Financial obligations include, but are not limited to pension payments, payroll taxes, insurance coverage, and loan payment and terms. § 1101(E)(5).

245. § 1101(E)(3).

246. § 1101(E)(4).

247. § 1101(F)(1).

248. § 1101(F)(2).

249. § 1101(F)(3).

250. LA. ADMIN. CODE tit. 28, § 1103(A) (2008).

251. § 1103(B).

252. LA. ADMIN. CODE tit. 28, § 1303 (2008). This is not to suggest that contracts can not be revoked at other times as well, just that a decision is made with regard to the contract after the third year review.

253. § 1303(A)-(B).

Assessment Index for year two at 60.0 or above, its contract will be extended for two years.²⁵⁴ The school must meet these standards by January of its third year of operation. If it meets these standards by June of its third year of operation (allowing for a required growth of 10 points if the assessment index or SPS numbers are not met) its contract may still be extended.²⁵⁵

If a school has made at least a 5 point increase, but not a 10 point increase, it may receive a one-year probationary extension in June of its third year.²⁵⁶ A school that does not meet all the standards for extension will still receive a one-year extension coupled with probation as long as the report has been submitted, at least one student performance measure has been met, and three or fewer financial standards or legal and contractual standards or a combination thereof have not been met.²⁵⁷ A charter school that does not meet enough standards must be recommended for revocation of its charter and receive a revocation hearing.²⁵⁸

As the law is constantly changing, this process of renewal may not remain static for long. In a new draft for renewal policy, the Board and Department claim that it is their responsibility "to hold the charter school accountable for achieving the student, financial, and legal contract performance standards by evaluating performance against these standards and by making decisions about charter renewal based on such evaluations."²⁵⁹ The action list available for the Board under the draft is renewal, non-renewal, and revocation.²⁶⁰ This allows a venue for schools to simply fade out of being by being non-renewed, rather than invoking complicated revocation procedures. Of paramount importance to the board is school performance, which remains the "primary indicator of school quality."²⁶¹

The Board has determined that it must "articulate clear performance standards" and a significant change from the current policy is to assign charter schools a performance label based on their SPS score.²⁶² The

254. § 1303(B).

255. § 1303(B)(1)(b).

256. § 1303(B)(2)(a). The school must still submit the comprehensive third year report and meet all financial performance, legal, and contractual standards.

257. § 1303(B)(2)(b).

258. § 1303(B)(3).

259. LOUISIANA DEPARTMENT OF EDUCATION, LOUISIANA BOARD OF ELEMENTARY AND SECONDARY EDUCATION POLICY FOR THE RENEWAL OF CHARTER SCHOOLS, 4 (Draft as of 7/28/2009).

260. *Id.*

261. DRAFT RENEWAL POLICY, *supra* note 260, at 1.

262. *Id.* at 1-2.

performance label will also correspond to a maximum renewal term, with better performing schools allowed to be renewed for a longer term.²⁶³

School Performance Labels and Maximum Charter Renewal Terms:²⁶⁴

Performance Label	SPS (School Year 2008- 2009)	Maximum Renewal Term
Academically Unacceptable	Below 60.0	3 years
*	60.0 – 79.9	3 years
**	80.0 – 99.9	5 years
***	100.0 – 119.9	10 years
****	120.0 – 139.9	10 years
*****	140.0 and above	10 years

A school will only be allowed a maximum of two 3-year renewal terms, effectively making charter schools perform at the 2 star or above level after the first 6 years of operation.²⁶⁵ A charter school receiving a label of academically unacceptable will generally not be eligible for renewal, however the State Superintendent may recommend such a school for renewal under some circumstances.²⁶⁶

The plan is to move the initial renewal of the contract charter from the third year to the fifth year.²⁶⁷ The school will submit a request for renewal and the Department will recommend to the State Board what action should be taken on that school's charter.²⁶⁸ If the school is renewed, it will submit another report at the end of its renewal term to request a new renewal.²⁶⁹ However, it may request a longer renewal term in any year that its performance label would qualify it for a longer-term renewal than its current contract provides.²⁷⁰ This means if charter school X operated for five years and was a two star school, it would be renewed for five years (assuming all other standards are met). If during that five years it becomes a three star school in any year, it may apply for the ten-year extension at that time; School X does not have to wait until the end of its five year renewal

263. *Id.*

264. *Id.*

265. *Id.* at 2.

266. DRAFT RENEWAL POLICY, *supra* note 280, at 2.

267. *Id.* at 4.

268. *Id.* The action requested may be renewal for the maximum term, some shorter term, or non-renewal. The Department may even recommend that a new charter provider operate the school.

269. *Id.* at 5.

270. *Id.*

period.

This new system and timeline of evaluation would not obviate the need for “regular performance evaluations, which may include reviews of student achievement data, financial performance data, and legal and contractual performance data, as well as formal and informal site visits.”²⁷¹ A school who is under long-term renewal (5 or 10 years) which declines academically for three consecutive years will be subject to a formal evaluation and contract review.²⁷²

NACSA provides that quality authorizers of charter schools will have a transparent process, comprehensive data, and merit-based decisions for renewal decisionmaking.²⁷³ The State Board has clearly articulated the process and the criteria for renewal and purports to analyze data and make decisions based on student performance. However, comprehensive data is still lacking as it takes time to create such data and the State is heavily relying on standardized testing as the only barometer for achievement. Moreover, there has been an explosion of new charter schools since 2005, many of which have not even reached the critical third year evaluation. Local school boards, the other track in Louisiana’s chartering process have not even published repeatable renewal procedures beyond the mandates of what is written in state statutes. They are completely opaque on renewal process beyond the desire that some gains must be made in student performance.

VI. CHARTER REVOCATION: PROOF & PROCEEDINGS:

A. PROOF:

Charter school law provides the limits of revocation. The simplest issue of revocation for charter schools is one that occurs automatically with the passage of time. A charter school must open within twenty-four months of the final approval of its charter (or within thirty-six months if the school is engaged in desegregation compliance issues).²⁷⁴ If the charter school does not commence operation within the prescribed time-frame, its charter will be automatically revoked.²⁷⁵ However, a new charter may be proposed.²⁷⁶

A charter may be revoked under state law if the charter school, its officers or employees, did any of the following:

271. *Id.* at 5.

272. *Id.*

273. NATIONAL ASSOCIATION OF CHARTER SCHOOL AUTHORIZERS, *supra* note 185, at 11.

274. LA. REV. STAT. ANN. § 17:3983(A)(4)(d) (2009).

275. § 17:3983(A)(4)(d).

276. *Id.*

- 1) "Committed a material violation of any of the conditions, standards, or procedures provided for in the approved charter;
- 2) Failed to meet or pursue within the agreed timelines any of the academic and other educational results specified in the approved charter,
- 3) Failed to meet generally accepted accounting standards of fiscal management.
- 4) Violated any provision of law applicable to a charter school, its officers, or employees."²⁷⁷

The State Board has extended the reasons for which a charter may be revoked for the charters that it governs, noting that if "the health, safety, and welfare of students is threatened; [the school] fail[s] to meet the minimum standards for continued operation . . . after four years of operation; [or] any other reasons for revocation [exist as] listed as such in a charter school's contract" then a charter may be revoked.²⁷⁸

However, a school's charter may not be revoked for reasons outside of what the law (or the State Board) provides. The First Circuit Court of Appeals in Louisiana found that not only was the charter agreement a binding contract, but that a school board's attempt to "withdraw its approval or rescind the contract without having any of the statutory grounds for such action" qualified as a breach of that contract.²⁷⁹ In that case, the school board was trying to revoke Pine Grove's charter because a financial estimate showed them that the financing of other schools in the parish would suffer with the inclusion of a new charter school.²⁸⁰ The charter was already approved by the time this financial information was received, and funding is not a statutorily provided ground for revocation. St. Helena School Board also attempted to stall the legal proceedings so that it could claim that the charter school did not commence operations by the appropriate date.²⁸¹ The court said "the purposes of underlying the Charter School Law would be completely undermined if a local school board could, simply by stalling and delaying, prevent a charter school from opening even when it is proceeding in good faith and reliance on that board's contractual approval of its existence."²⁸² The Charter School of Pine Grove is now

277. LA. REV. STAT. ANN. § 17:3992(C) (2009).

278. LA. ADMIN. CODE tit. 28, § 1701(A)(5)-(7) (2008).

279. *Charter Sch. of Pine Grove, Inc. v. St. Helena Sch. Bd.*, 9 So.3d 209, 213, 218 (La. App. 1 Cir. 2009).

280. *Pine Grove*, 9 So. 3d at 218.

281. *Id.* at 219.

282. *Pine Grove*, 9 So. 3d at 219..

scheduled to open in the fall of 2010.²⁸³

B. PROCEEDINGS:

Revocation proceedings may be initiated by either the Department of Education making a recommendation to the State Board or by the State Board commencing a proceeding on its own.²⁸⁴ If the Department of Education would like to recommend that a charter be revoked, it must first inform the charter operator of its recommendation and may meet with the charter operator to discuss the issue.²⁸⁵ Following this notification, the Department must make its recommendation at a State Board meeting, and the recommendation may not be considered until at least the *next* State Board Meeting unless the health, safety, and welfare of the students is at issue.²⁸⁶ The State Board decides whether it will follow the Department's recommendation and commence a revocation proceeding.²⁸⁷

Once the State Board has determined that a revocation may be necessary, the charter operator gets an opportunity to have a hearing.²⁸⁸ This hearing will take place before the Legal Due Process Committee or the Board Administration Relations Committee of the State Board, as the State Board determines.²⁸⁹ The committee chosen conducts the actual hearing and makes a recommendation to the State Board, who ultimately votes whether to revoke the charter or not.²⁹⁰ A charter operator must be provided reasonable notice of this hearing at least fifteen calendar days prior to the hearing.²⁹¹

283. Marilyn Goff, *Charter to Open in Fall 2010*, THE BATON ROUGE ADVOCATE, June 13, 2009.

284. LA. ADMIN. CODE tit. 28, § 1703(A) (2008).

285. § 1703(A)(2). This section details that this meeting between the Department of Education and the charter operator takes place upon request of the charter operator after the notice has been transmitted.

286. § 1703(A)(1).

287. § 1703(A)(3).

288. § 1703(B)(1).

289. § 1703(B)(2). The Legal/Due Process Committee is charged with considering legal issues and matters of litigation and to serve as an administrative court of last resort prior to adjudication in the judicial court system. § 1703(B)(6). The Board Relations/Strategic Planning/Administrative Committee is partially charged with considering routine administrative matters of the board, developing policies and procedures for charter school approval, and implementation and to administer loan fund activities of charter schools. § 1703(B)(3).

290. § 1703(B)(2).

291. § 1703(D)(1). This notice must include "a statement of the time, place, and nature of the hearing, a statement of the legal authority and jurisdiction under which the hearing is to be held, a reference to the particular sections of statutes, rules, and/or the charter school contract involved, and a short and plain statement of the matters asserted." § 1703(D)(1)(a). The State Board is also authorized to provide a range of dates for the hearing instead of the exact notice and time, but it

At the hearing, the Department of Education acts as the prosecuting authority and presents evidence supporting a recommendation for revocation of a school's charter.²⁹² The State Board assigns a hearing officer to "preside over the revocation hearing and carry out certain adjudicative functions."²⁹³ Critically, the hearing officer does *not* make a determination or decision with respect to charter revocation.²⁹⁴

However, the hearing officer does have a full plate of duties to attend to in the context of a revocation hearing. The hearing officer sets procedures and deadlines for the exchange of information and other motions and discovery, rules on pre-hearing motions and requests, directs parties to appear and confer for certain issues, issues subpoenas under the State Board's authority, administers oaths and affirmations, regulates the course of the hearing and the conduct of counsel, rules on offers of proof and receives relevant evidence, rules on objections to evidence presented, consider and rule upon procedural requests, directs witnesses to testify and set limits on testimony, and assist the chair of the committee hearing the revocation and/or the president of the State Board in preparing findings of fact and conclusions of law consistent with the determinations made by the committee or the State Board.²⁹⁵

At the hearing, all parties are permitted to "respond and present evidence on all issues of fact involved and argu[e] on all issues of law and policy involved and to conduct such cross-examination as may be required for a full and true disclosure of the facts."²⁹⁶ Any evidence, including documents and records possessed by the Department or the State Board is to be offered and made a part of the record.²⁹⁷

On the issue of evidence, the State Board "shall give probative effect

must supply a supplemental notice with the exact date and time at least 7 calendar days prior to the hearing date. § 1703(D)(2). The manner in which notice is to be provided also appears in this section. § 1703(D)(5).

292. § 1703(B)(3). The Department of Education acts through its charter school office and legal division.

293. § 1703(C)(1). This term is also defined previously in the bulletin. § 1703(M).

294. § 1703(C)(2).

295. § 1703(C)(1). The hearing officer has the ability to exclude incompetent, irrelevant, immaterial, and unduly repetitious evidence. § 1703(C)(1)(h). He/she may limit the number of any times a witness may testify, limit repetition or cumulative testimony and set reasonable limits on the amount of time each witness may testify., § 1703(C)(1)(j). The issuance of subpoenas is covered in § 1703(E).

296. § 1703(F)(1).

297. § 1703(F)(2)(a). This same section dictates that these items shall be "made a part of the record, and all such documentary evidence may be received in the form of copies or excerpts, or by incorporation by reference. In the case of incorporation by reference, the materials so incorporated shall be available for examination by the parties before being received in evidence."

to evidence which possesses probative value commonly accepted by reasonably prudent men in the conduct of their affairs and shall give effect to the rules of privilege recognized by law."²⁹⁸ Moreover, the hearing officer may take notice of judicially cognizable facts or generally recognized or technical or scientific facts within the Department or the Board's specialized knowledge.²⁹⁹ Parties must be notified either before or during the hearing in some fashion that notice is being taken in order to have an opportunity to contest the material.³⁰⁰ The Department's "experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence."³⁰¹ It seems that at least in the realm of evidence, the prosecutorial Department of Education receives the benefit of the doubt.

After a hearing has concluded, the chosen committee submits its recommendation to the State Board, who votes on the ultimate fate of a charter. A charter is revoked only upon an affirmative vote for revocation by at least six members of the State Board.³⁰² This decision is considered the final decision and must be in writing or stated in the record.³⁰³ The decision must contain findings of fact and conclusions of law, and the charter operator must be notified in writing of the decision.³⁰⁴ No appeal process past the initial revocation hearing appears in this section.

Although there is certainly a detailed process in place for revocation proceedings, the State Board has not had much opportunity to use these rules and regulations. Of the ten charter schools that have been closed since the adoption of the Charter School Law, only seven of them were chartered by the State Board.³⁰⁵ According to the State Board, only three schools have been closed involuntarily through a revocation of the charter, all other schools have relinquished their charter voluntarily or simply been left

298. § 1703(F)(2).

299. § 1703(F)(2)(b).

300. *Id.*

301. *Id.*

302. § 1703(G)(1).

303. § 1703(G)(2).

304. § 1703(G)(3)-(4).

305. CENTER FOR EDUCATION REFORM, CLOSED CHARTER SCHOOLS BY STATE, NATIONAL DATA 2009, 34-35 (February 2009) (Bayou Charter School, closed in 2001 for financial reasons; Education 2000, closed in 2001 for mismanagement; Edward Hynes Charter School, closed in 2007 due to the hurricane; KIPP Phillips Charter School, closed in 2005 due to the hurricane; New Orleans Charter Middle School, closed in 2005 due to the hurricane; Right Step Academy of Excellence, closed in 2002 for academic reasons; School of Hope, closed in 2000 for district reasons; St. Landry Charter School closed in 2002 for mismanagement; Street Academy Charter School closed in 2003 for unknown reasons; and Tensas Charter School closed in 2003 for financial reasons.).

unfunded or unrenewed.³⁰⁶

VII. EFFECTS & CONCLUSIONS:

The process for creating and maintaining a charter school may be complicated, but what the public cares about most is whether the process is worth it and whether charter schools are an effective lever for education reform. One of the most recent studies involving charter school effectiveness, from Stanford University's Center for Research on Education Outcomes, said that for Louisiana, charter schools are indeed good for the state of education over the long term.³⁰⁷ The data from that study suggests that while charter school students receive no significant impact on learning in reading or math compared to their counterparts in traditional public schools for the first year, in subsequent years (years two and three) there is a gain and this impact stays positive and significant through the fourth year of attendance and beyond.³⁰⁸ It seems that once students acclimate to the charter school environment, overall, they do better than their traditional public school peers.

Charter schools are also demonstrably doing their job when it comes to at-risk children. Students in poverty, defined by the study as those students eligible for the free or reduced lunch program, who are enrolled in charter schools do significantly better in reading and math compared to their counterparts in traditional public schools.³⁰⁹ The results also show that in Louisiana, African-American and Hispanic students enrolled in charter schools do significantly better in reading and math compared to their counterparts in traditional public schools.³¹⁰ In fact, "[c]harter schools do better than traditional public schools in all respects."³¹¹

The Stanford study on Louisiana was part of a study in a broader context of sixteen states.³¹² The researchers freely admit that "[c]harter school performance is a complex, and difficult matter to assess."³¹³ Of the sixteen states studied, only five states had "significantly higher learning

306. Chart prepared by Mr. Collins, attorney for the State Board of Elementary and Secondary Education, received 7/27/2009 (on file with author). The chart shows that for some schools the charter merely expired or funding was not appropriated.

307. CENTER FOR EDUCATION REFORM, LOUISIANA, *supra* note 305 at 4.

308. *Id.* at 4.

309. *Id.* at 6.

310. CENTER FOR EDUCATION REFORM, LOUISIANA, *supra* note 305, at 4-5. The baseline of comparison for each result is the performance of the average Caucasian student who does not qualify for free or reduced lunch, special education services, or English language learner support.

311. *Id.* at 11.

312. *Id.* at 2.

313. *Id.* at 2.

gains for charter school students than would have occurred in traditional schools.”³¹⁴ Importantly, the study concludes that “[t]he academic success of charter school students was found to be affected by the contours of the charter policies under which their schools operate.”³¹⁵ However, these conclusions do not mean that Louisiana’s system is well-established and ready to be exported to other states. It is a good start, but Louisiana is not finished crafting a model process.

The Center For Education Reform ranks Louisiana as twenty-third of the forty-one states with some charter school system in place.³¹⁶ Louisiana receives a C ranking as an average state.³¹⁷ The Center proposes that there are ten necessary elements for a strong charter school: the number of schools, multiple chartering authorities and a binding appeals process, a variety of applicants permitted, new schools over conversions, schools starting without third-party consent, an automatic waiver from laws and regulations, legal/operational autonomy, guaranteed full funding, fiscal autonomy, and an exemption from collective bargaining agreements/district work rules.³¹⁸ The Center is focused on grading the process, not merely judging Louisiana by positive educational gains inside the process.

It should be noted that there are some hiccups to the results as well as the process. New Orleans is a special case because it has the highest concentration of charter schools, and some charter schools of each type 1-5. When evaluating the 2007-2008 SPS scores, there are 31 charter schools in New Orleans to evaluate.³¹⁹ Although more schools were in existence by 2007-2008, it takes three years to generate a school performance score. On average, these schools had an SPS of 80.7 or one and a half stars. The state

314. CENTER FOR EDUCATION REFORM, LOUISIANA, *supra* note 305, at 2.

315. *Id.*

316. CENTER FOR EDUCATION REFORM, CHARTER SCHOOL LAWS ACROSS THE STATES: RANKINGS AND SCORECARD, 9 (2008).

317. *Id.*

318. CENTER FOR EDUCATION REFORM, *supra* note 316, pg. 6.

319. Einstein Charter School, International School of Louisiana, Milestone SABIS Academy of New Orleans, Audubon Charter School, Benjamin Franklin High School, Edward Hynes Charter School, Lake Forest Elementary Charter School, Lusher Charter School, New Orleans Charter Science and Mathematics High School, Priestley School of Architecture/Constructions, Robert Russa Moton Charter School, Warren Easton Senior High School, Alice Harte Elementary Charter School, Edna Karr Secondary School, Dr. MLK Charter School for Science & Technology, Dwight D. Eisenhower Elementary School, Harriet Tubman Elementary School, James M. Singleton Charter School, KIPP Believe College Prep (Phillips), KIPP McDonogh 15 School for the Creative Arts, Lafayette High School, Martin Behrman Elementary School, McDonogh #28 City Park Academy, McDonogh #32 Elementary School, Nelson Elementary School, New Orleans Free Academy, O.P. Walker Senior High School, P.A. Capdau School, Samuel J. Green Charter School, Sophie B. Wright Institute of Academic Excellence, and William J. Fischer Elementary School.

average was 85.7. Seven charter schools received the label of “academically unacceptable.”³²⁰ However there was not a corresponding jump in revocation of charters. The populations of these schools was 85% eligible for free or reduced lunch and only 5% students with special needs. The fact that the district average for special needs children is 12% gives some legitimacy to the argument that charter schools are trying to bolster their numbers by helping children who may be at-risk, but have greater chance to improve and generate the needed test scores.³²¹

If one separates the district charter schools into RSD and non-RSD schools, there are slightly different results. RSD charter schools averaged an SPS of 68.6 or one star. They serviced a population that was 92% eligible for free or reduced lunch and 7% special needs. Non-RSD schools averaged an SPS of 95.3 (an almost thirty point jump) or two and a quarter stars. They serviced a population that was 76% eligible for free or reduced lunch and 4% special needs. This makes sense as RSD schools come into the RSD system failing and it is difficult to revive these schools even under an innovative and adaptable charter system. Non-RSD schools are performing well above the state average in New Orleans.

Louisiana has a good baseline for a model system, but it has not yet been perfected. The State must infuse the system with more transparency and accessibility and allow it to mature over a period of time and gain experience. Currently school boards deal with charter schools on an ad hoc basis and more publication and disclosure of the process is needed. Even when dealing with the state board, charter applications, contracts, and renewal and revocation data is not easily accessible to judge whether the system is working as it should. Additionally, there is just not enough post-hurricane data at this time to sufficiently evaluate whether charter schools are truly working, and there will be lag time between gathering data and making it accessible. The system is new in so many ways that it has not lived through the number of renewals and revocations needed for process testing. Charter schools seem to be making some progress for Louisiana in the realm of education, and that progress is something to be built upon and encouraged so that other states may learn from Louisiana’s accidental grand-scale educational experiment.

320. Priestley School of Architecture & Construction, Harriet Tubman Elementary School, James M. Singleton Charter School, McDonogh #28, City Park Academy, McDonogh #32 Elementary School, New Orleans Free Academy, and O.P. Walker Senior High School.

321. *The Newshour with Jim Leher, New Orleans Charter Schools Produced Mixed Results* (PBS television broadcast, May 6, 2009).