*****Massachusetts Department of***

***Elementary and Secondary Education***

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| Jeffrey C. Riley*Commissioner* |  |

# MEMORANDUM

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| **To:** | Members of the Board of Elementary and Secondary Education |
| **From:**  | Jeffrey C. Riley, Commissioner |
| **Date:**  | September 18, 2020 |
| **Subject:** | Charter Schools – Authorizing Activities for 2020-2021 |

Between now and June 2021, the Board of Elementary and Secondary Education (Board) will take a number of votes related to its statutory role as a charter school authorizer. Similar to prior years, this memorandum summarizes the statutory framework for charter schools and the Board's responsibilities as the state's sole charter school authorizer and provides other related updates and a tentative schedule of charter school items for the year.

**Legal Framework**

Charter schools are public schools that operate independently of traditional school districts. Across the nation, states with charter school programs have one or more charter authorizers including local school districts, municipal governments, universities, non-profit organizations, and state education agencies. In Massachusetts, the Board is the sole authorizer of charter schools.

Charter schools were first introduced to Massachusetts as part of education reform in 1993. The charter school statute is found at [G.L. c. 71, § 89.](https://malegislature.gov/Laws/GeneralLaws/PartI/TitleXII/Chapter71/Section89) The charter school statute specifies that the purposes of charter schools are:

1. to stimulate the development of innovative programs within public education;
2. to provide opportunities for innovative learning and assessments;
3. to provide parents and students with greater options in choosing schools within and outside their school districts;
4. to provide teachers with a vehicle for establishing schools with alternative, innovative methods of educational instruction and school structure and management;
5. to encourage performance-based educational programs;
6. to hold teachers and school administrators accountable for students' educational outcomes; and
7. to provide models for replication in other public schools.

Massachusetts has two types of charter schools, Commonwealth and Horace Mann. There are currently 72 Commonwealth charter schools and 6 Horace Mann charter schools in operation, serving nearly 50,000 students. The updated [Charter School Fact Sheet](http://www.doe.mass.edu/charter/factsheet.xlsx) reflects these new numbers.

Commonwealth charter schools are governed by boards of trustees, are completely independent of local districts, can draw students from many districts, and are funded by tuition payments transferred from sending districts based upon the number of district students attending the school. The charter school statute provides a schedule for reimbursement to school districts for increases in tuition payments to Commonwealth charter schools.

Horace Mann charter schools also are governed by boards of trustees and operate independently of school committees. Horace Mann charter schools, however, have a closer relationship with the local district. The local school committee and, in some cases, the local teachers' union, must approve the establishment of Horace Mann charter schools. The district must equitably fund the school. Typically, the district also provides some central administrative services pursuant to a memorandum of understanding negotiated with the charter school.

### **Board's Responsibilities**

As the sole charter school authorizer in Massachusetts, the Board is responsible for:

* awarding charters for terms of five years;
* approving major amendments to charters including, but not limited to, changes in the districts specified in a school's charter, maximum student enrollment, and grade span;
* approving contractual relationships with education management organizations; and
* determining whether charters should be renewed for subsequent five-year terms.

When deficiencies are noted in charter school operations or academic outcomes, the Board has a range of actions it can take, including imposing conditions on a charter, placing a school on probation, and revoking or not renewing a school's charter.

### **Commissioner's Responsibilities**

The Commissioner is responsible for making recommendations to the Board and providing the Board with the information needed to make well-informed decisions. The regulations authorize the Commissioner and the Board to impose or to remove conditions on a charter for specific reasons. In practice, the Commissioner typically notifies the Board before taking any action related to conditions. If the situation is serious enough to warrant a Commissioner recommendation for probation with conditions, that decision rests with the Board. Pursuant to the regulations at 603 CMR 1.10(2), the Commissioner is also responsible for granting the following amendments to the material terms of a school's charter:

* school name;
* mission;
* governance or leadership structure;
* educational programs, curriculum models, or whole-school designs that are inconsistent with those specified in the school's charter;
* bylaws;
* membership of the board of trustees;
* memoranda of understanding for Horace Mann charter schools;
* schedules (length of school year, school week, or school day);
* accountability plan;
* enrollment policy and application for admission;
* expulsion policy; and
* location of facilities, if such change involves relocating or expanding to another municipality.

At the recommendation of the Board's Charter School Committee in February 2013, the Board also delegated to the Commissioner the authority to renew charters, including renewing charters with conditions, provided such renewals do not involve probation. This delegation requires the Commissioner to notify Board members in advance of intended actions and provides Board members an option to request that the Commissioner place the matter before the full Board for discussion and action. As stated above, the Board continues to award new charters; to place a school on probation; to revoke or to not renew charters; to approve contractual relationships with education management organizations; and to grant charter amendments that change a school's grade span, maximum student enrollment, and the districts specified in the school's charter.

### **Office of Charter Schools and School Redesign**

The Department's Office of Charter Schools and School Redesign is the unit within the Center for Educational Options that provides staff support to the Commissioner and the Board with respect to charter authorizing actions, innovation schools, virtual schools, educational collaboratives, and other school redesign initiatives. The mission of the office is to support and oversee the creation and sustainability of a variety of high quality options for public schools—including, but not limited to, those that innovate in the areas of instructional practice, time, resources, and technology—to ensure that all students in the Commonwealth have equitable opportunities for success after high school.

This year, the Office of Charter Schools and School Redesign will continue to implement charter school oversight procedures that are required by the charter school statute. These include renewal determinations for schools in the fifth year of their charter term, consideration of applications for new charter schools, and consideration of charter amendment requests. Additionally, the US Department of Education (USED) recently granted Massachusetts a waiver request for its administration of the Charter School Program grant. The USED waiver will allow the Department to award approximately $4 million in remote learning subgrants to Massachusetts charter schools to meet the immediate educational needs of students impacted by the COVID-19 crisis.

### **Tentative Schedule of Charter School Authorizing Agenda Items for 2020-2021**

Attached for your information is the Tentative Schedule of Charter School Items for September 2020 through June 2021, including information about pending requests for charter amendments and charter renewal decisions that may require Board approval. The tentative schedule will be updated as needed during the year.

### **Renewals of Charters**

### The 2020-2021 year marks the 26th year of charter school operation in Massachusetts. Out of the 14 charter schools currently seeking renewal of their school charters, six have operated for 25 years. These six schools are requesting a fifth renewal of their charters. During the fall of 2020, the Department will collect evidence from all 14 schools related to the statutory requirements for renewal. Due to these unprecedented times, the Department and contracted vendors will conduct renewal inspections remotely. The Department continues to rigorously evaluate charter school performance based on the charter school performance criteria and the expectations for renewal in the charter school statute. Massachusetts charter authorizing practices have been recognized as some of the strongest in the nation; the Department will continue to uphold these practices and will adapt them as needed due to health and safety considerations. I will inform you of my intended renewal actions and recommendations during the winter.

**Commitment to Growth of High-Quality Charter Schools**

Massachusetts has one of the most successful charter school sectors in the nation. Over our
26-year history of charter authorizing, Massachusetts has earned its reputation of holding charter applicants and schools seeking an expansion to a high standard for approval. Our standard relies on the approval criteria set forth in the charter school statute, regulations, and guidance, and sets an expectation that all new or expanding charter schools authorized by the Board will substantially meet the criteria and have a high likelihood of success.

For new schools, each applicant group must not only have a strong vision for a school but also exhibit the necessary capacity and planning to demonstrate faithfulness to its charter, academic program success, and organizational viability. The Department is committed to quality programming by both proven providers[[1]](#footnote-1) and groups who have yet to establish a track record of success. Charter schools that have earned proven provider status in the Commonwealth have done so over time; they did not originally open their doors as proven providers. I fully support the continued establishment and growth of high-quality charter school options by groups with a commitment to excellence and innovation in public education and the capacity to deliver on that promise.

This summer, the Department received one proposal to establish a new Commonwealth charter school. The Department performed a review and based on the evidence compiled, I did not invite the group to submit a final application this fall. My determination was based upon a review of the initial application in relation to the application criteria. The applicant group received detailed feedback gathered during the review process and will discuss this feedback with Department staff.

The Department also received five requests from charter schools seeking to amend the terms of their charters. Two of these requests are to expand enrollment and three requests are to add district(s) to the existing charter region. When deciding whether to allow a school to amend its charter, the Commissioner and the Board consider evidence regarding the success of the school's academic program, its organizational viability, its faithfulness to the terms of its charter, and the availability of seats under current caps. As always, we will review the amendment requests according to the processes and criteria in the statute and regulations.

**Calculation of the “Lowest 10 Percent” in 2021 and 2022**

The charter school statute limits the amount of tuition that can be transferred from a sending school district to all Commonwealth charter schools in any given year. These limits are expressed as a percentage of the district's "net school spending" (NSS) for that year. For the majority of districts, the charter school statute limits the transfer of tuition to Commonwealth charter schools to 9 percent of the district's NSS. For districts in the lowest 10 percent, however, the charter school statute limits the transfer of tuition to Commonwealth charter schools to 18 percent of the district's NSS. There are no comparable tuition limits for Horace Mann charter schools.

The charter school statute specifies that the **lowest 10 percent is calculated from statewide student performance scores in the two consecutive school years prior to the submission of an application.** See G.L. c. 71, §§ 89(i)(2) and 89(i)(3); 603 CMR 1.04(9). The lowest 10 percent is calculated each year to identify the districts subject to the higher limit of 18 percent NSS. The current [2020 list of districts](http://www.doe.mass.edu/charter/enrollment/CapIncrease/sy2021analysis.xlsx) is based on the results from MCAS administrations in fiscal year (FY) 2018 and FY2019, which were released in FY2019 and FY2020. The current list of districts in the lowest 10 percent informs the decisions on new charter applications and expansion requests to be made in winter 2021; and establishes tuition caps for FY2022, with admission decisions made prior to April 2021.

Because the MCAS was not administered in the spring of 2020, no statewide student performance scores will be released this fall. Therefore, the Department will not be able to calculate the lowest 10 percent in FY2021 and FY2022 as it has previously. The Department is considering calculating the lowest 10 percent in this limited situation using **the two most recent years available of statewide student performance scores.[[2]](#footnote-2)** This approach would require a narrowly tailored change to the charter school regulations to address only this limited situation. The Department anticipates bringing a request to solicit public comment on the proposed amendment to 603 CMR 1.10 for the Board’s consideration later this year.

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If you have any questions regarding these matters or require additional information, please contact Alison Bagg, Director of Charter Schools and School Redesign (781-338-3218); Cliff Chuang, Senior Associate Commissioner for Educational Options (781-338-3222); or me.

Enclosures: [Charter School Fact Sheet](http://www.doe.mass.edu/charter/factsheet.html)

 Tentative Schedule of Charter School Items, September 2020-June 2021

1. The types of candidates eligible for proven provider status and the qualifications for proven provider are defined in 603 CMR 1.02 and 603 CMR 1.04(4). Any charter applicant or existing school seeking to serve districts that have performed on the Massachusetts Comprehensive Assessment System test (MCAS) in the lowest 10 percent statewide for two consecutive previous years and where the 9 percent net school spending cap has been or will be exceeded must qualify as a proven provider. Qualifications include school performance similar to statewide averages on English Language Arts and mathematics MCAS tests over no less than 3 years for all students and at least one student subgroup. [↑](#footnote-ref-1)
2. Using this approach, the lowest 10 percent for FY2022 would be based upon statewide student performance results released in FY2019 and FY2020, the results from MCAS administrations in FY2018 and FY2019, and, therefore, identical to the current list of districts in the lowest 10 percent. Similarly, the lowest 10 percent for FY2023 would be based upon statewide student performance results released in FY2020 and FY2022, the results from MCAS administrations in FY2019 and FY2021. The Department’s proposed approach would maintain the two-year calculation described in the charter school statute. [↑](#footnote-ref-2)