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| Charter School Administrative and Governance Guide |
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| An Overview of the Laws and Regulations that Schools Leaders and Boards of Trustees Need to Know**November 2007**Massachusetts Department of Education350 Main Street, Malden, MA 02148Phone 781-338-3000 TTY: N.E.T. Relay 800-439-2370[www.doe.mass.edu](http://www.doe.mass.edu) |

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Dear Friends:

Welcome to *The Charter School Administrative and Governance Guide: An Overview of the Laws and Regulations That Boards of Trustees and School Leaders Need to Know*, the Massachusetts Department of Education’s guide to the legal requirements that apply to charter schools in Massachusetts.

The Department of Education is distributing *The Charter School Administrative and Governance Guide* to give Boards of Trustees, leaders, and administrators of charter schools guidance regarding their legal responsibilities. Charter schools are one important aspect of the education reform initiative in Massachusetts. Since their authorization thirteen years ago, charter schools have demonstrated success with a variety of educational approaches and innovations, in exchange for accountability for results. Charter schools are independent public schools, and their boards, leaders, and staffs need to be familiar with the legal requirements of public school administration. It is the hope of the Department that this guide will help charter school leaders and their Boards of Trustees to understand the legal responsibilities that accompany the charters they have been granted by the Board of Education.

All members of the Board of Trustees, the charter school leader, and relevant members of the school administration should read and understand the *Charter School Administrative and Governance Guide*. Charter schools should use it as a starting point to access legal information, although it is not intended to be a comprehensive source of legal advice. For example, it is beyond the scope of this document to fully explain all of the provisions of the federal No Child Left Behind Act (NCLB), even though Massachusetts charter schools, like all public schools in the country, are subject to its requirements.. When a question about a legal responsibility arises, it is important to read the relevant law or regulation as well as any technical advisories or publications on the issue produced by the Department or other governmental body. Most importantly, the Department strongly encourages Boards of Trustees to retain legal counsel well versed in public school law and to make sure that at least one Board member possesses legal expertise.

The Department of Education plans to periodically update the Charter School Administrative and Governance Guide. The guide will be published on the Department’s website, [www.doe.mass.edu](http://www.doe.mass.edu). I hope you find this document to be informative and useful.

Sincerely,

Jeffrey Nellhaus

Acting Commissioner of Education

# I. Responsibilities of the Board of Trustees

As public agents authorized by the state, the members of the Board of Trustees of a charter school are responsible for governing the schools and hold the charter for the school, as it is granted by the Board of Education. A strong Board of Trustees defines the mission of the school, develops school policies and changes them when appropriate, hires qualified personnel to manage the school’s day-to-day operations and holds them accountable for meeting established goals, and formulates a long-range plan and charter school Accountability Plan that will ensure the school’s continued stability. In addition to its many other responsibilities, the Board must ensure that the school is complying with all of the state and federal laws that apply to the school and that the Board itself is operating in accordance with the rules set out by all applicable Massachusetts laws and regulations. Finally, the Board is responsible for operating the school in accordance with its charter and with any approved amendments to its charter.

This section summarizes the major legal responsibilities of Boards of Trustees of charter schools. Please be aware that the information that follows provides an overview of key regulatory issues and is not intended to be comprehensive. In order to make sure that charter schools are in compliance with all laws that apply, the Department of Education (Department) strongly encourages each Board to hire legal counsel familiar with public school law. Nevertheless, this section should provide each Board member with a better understanding of the major requirements that apply to charter schools and will assist each Board to manage its role as the governing body of the school more effectively.

## A. Duties of Individual Board Members

By agreeing to serve on a charter school Board, individual Board members accept dual responsibilities: those of public employees and those similar to non-profit board members. To serve effectively, Board members must keep both sets of duties in mind.

Although charter schools are public entities rather than private non-profit organizations, Board members should be guided in part by the same principles that guide board members of private non-profit organizations. Like board members of non-profit organizations, members of Boards of Trustees of charter schools have a **duty of care** to the school – they must be diligent about fulfilling their Board responsibilities and make decisions carefully, based upon full and complete information. The **duty of loyalty**, another duty of non-profit board members, forbids board members from profiting personally because of their involvement in an organization.

As public employees who have been granted authority by the state, charter school Board members first and foremost have the responsibility to ensure that the school meets statutory and regulatory requirements and is (1) an academic success, (2) a viable organization, and (3) faithful to the terms of its charter. A school’s performance in these three areas is the basis for the Board of Education’s decision on whether to renew the school’s charter. The state’s conflict of interest law, which applies to all public employees, specifies additional obligations that are designed to protect the integrity of the charter school and its governing board.

The duties listed below are individual Board member’s paramount responsibilities and should guide every decision a Board member makes. Following these legal requirements not only shields a trustee from liability and increases the likelihood that the state will renew a school’s charter, but also leads to more effective management by the Board of Trustees.

### 1. Duty of Care

The duty of care is a legal principle designed to hold individual Board members responsible for the management of the organizations they serve. In legal terms, it means that each trustee must act with such care as any ordinarily prudent person would in the trustee’s position. In practical terms, Board members should follow the principles listed below.

* Always act in the best interests of the school, rather than the interests of any individual.
* Attend Board meetings and participate actively.
* Carefully consider every vote made as a Board member, using informed judgment and common sense.
* Review on a regular basis the school’s charter, Accountability Plan, budget, code of conduct, financial reports, contracts with outside management organizations (if any), leases for facilities, loan agreements, curriculum, and other significant documents and policies.
* Delegate responsibility to qualified staff while making sure the staff implements the Board’s decisions as intended.
* The Board as a whole must make sure that the school is in compliance with the law. It should raise relevant questions and discuss issues fully before deciding upon them.[[1]](#footnote-1)

**EXAMPLES**

Delegating all control of the management of the school to a school director or educational management organization violates Board members’ duty of care. Although the Board of Trustees can and should delegate the day-to-day responsibilities of running the school, it must stay informed, continue to make policy decisions, and oversee the management of any crisis situations that arise.

Deciding to enter into a lease for a school building without exploring alternatives, confirming that the school is paying fair market value, or failing to determine if the school can afford the lease may violate the duty of care.

Failure to regularly attend meetings of the Board of Trustees may violate a member’s duty of care.

### 2. Duty of Loyalty

Like the duty of care, the duty of loyalty is a legal principle that governs the actions of individual Board members. Specifically, it prohibits them from doing anything that would allow them to profit personally or indirectly because of their position. To comply with the duty of loyalty, trustees must:

* Not knowingly do anything that would harm the school; and
* Not vote on any matter in which they have a personal interest.

**EXAMPLES**

A trustee who takes an action in his or her business or personal life that is detrimental to the mission of the charter school violates the duty of loyalty to the charter school board.

A trustee who seeks special privileges in school admission or other educational benefits for a member of his or her family violates the duty of loyalty to the charter school board.

### 3. State Conflict of Interest Law

Closely related to the duty of loyalty, the conflict of interest law generally prohibits Board members from taking advantage of their position to gain improper benefits for themselves, their relatives, their associates, or their friends. G.L. c. 268A; G.L. c. 71, § 89(v).

There are a variety of circumstances that may affect a proposed Board member’s ability to lawfully serve on a school’s Board of Trustees*.* Civil and criminal penalties may apply to Board members who violate the state’s conflict of interest law. G.L. c. 268A, § 9. The Charter School Office strongly recommends that prospective Board members consult with the State Ethics Commission regarding any potential conflicts of interest prior to beginning service. The State Ethics Commission can be reached at 617-727-0060 and has a website containing more information, <http://www.mass.gov/ethics>.

Generally speaking, trustees of a charter school, as special state employees, may not have a financial interest in contracts of the charter school absent an exemption from the Governor. G.L. c. 268A, § 7. This restriction also applies to current Board members who have a contract with an agency separate from the school and who wish to enter into a contract with the school through that agency (such as in a consulting capacity).

However, this restriction may not apply to all charter school employees in all cases, depending on the terms of the school’s charter. For example, the State Ethics Commission has sanctioned the membership of teachers and/or school leaders to the school’s Board of Trustees under certain circumstances, such as when:

* The school’s charter or bylaws mandate teacher membership on the Board of Trustees, emphasizes teacher participation in decision making, and/or requires the school leader to serve as a Board member in an *ex officio* capacity;
* Teachers and/or the school leader are hired with the expectation that possible service on the Board of Trustees may become part of the individual’s job expectations.

The State Ethics Commission has stated that under such conditions, the school employees in question (teachers and/or school leader) hold the position of Board member by virtue of their employee position, and that the contractual interest cannot be separated.

Even though employees and others with a financial interest may sometimes serve on a charter school’s Board of Trustees, the law restricts Board members from voting on or discussing matters affecting their financial interest and limits the circumstances under which they can receive anything “of value” because of their official position. G.L. c. 268A, § 2. Trustees cannot participate in a vote, take any action or even enter into a discussion regarding an issue when one of the groups below will receive a financial benefit:

1. The trustee, his/her immediate family (spouse, parents of trustee and parents of spouse, children of trustee and children of spouse, siblings of trustee and siblings of spouse), or his/her business partner;
2. A business organization in which the trustee is serving as officer, director, trustee, partner, or employee; or
3. Any person or organization with which the trustee is negotiating or has any arrangement concerning prospective employment. G.L. c. 268A, § 6.

**EXAMPLES**

Teachers and administrators who sit on the Board are restricted from acting on all votes and discussions relating to their salary.

A trustee who works for a company that is doing any business with the charter school must abstain from participating as a trustee in any discussion or vote on that particular matter.

A charter school has entered into a partnership with a community organization, which among other things rents space to the school. At a minimum, the Board member of the school who is also on the board of the partnering community organization must abstain from voting on the lease agreements and should consult with the state Ethics Commission.

Board members are also restricted from accepting anything “of value” because of their official position. G.L. c. 268A, § 2. In addition, Board members are bound by the general code of conduct for public employees, set forth in G.L. c. 268A, § 23. The State Ethics Commission’s web site lists examples of activities prohibited by these provisions of the conflict of interest law, though it notes that exceptions may apply.[[2]](#footnote-2) For example, Board members:

* May not use their position to obtain unwarranted privileges or special treatment for themselves or for anyone else;
* May not accept gifts of $50 or more from people with whom they have official dealings;
* May not hire family members;
* May not use charter school resources, including computers, phones, or copiers, for private purposes;
* May not disclose confidential information learned from participation on the Board’; and
* Must avoid conduct that creates a reasonable impression that they are likely to act, or fail to act, because of undue influence by any person.

### 4. Disclosure of Financial Interests

Every year, charter school Board members must complete and file a disclosure form to inform the state if, in the prior year, they or a family member had a financial interest in any charter school in the Commonwealth or in any other state or with any person doing business with any charter school.

Because the disclosure requirements are quite broad, Board members should read the form carefully and make sure they disclose all applicable financial interests. The trustee should then return the form to the Charter School Office at the Department of Education and send a copy to the State Ethics Commission and the clerk for the city or town in which the charter school is located, as specified on the form. G.L. c. 71, § 89(v). Filling out the disclosure form is a condition of serving as a trustee; Board members who refuse to submit the forms will not be allowed to serve.

New Board members and former Board members who have served on the Board for at least 30 days during any calendar year must file disclosure forms. Board members must file their disclosure before September 1 each year for their service **in the prior calendar year**; new Board members must file a disclosure **for the prior calendar year** **within 30 days** of becoming a Board member. For instance, a new Board member who starts service on a Board in November of 2006, must file a disclosure form for 2005 within 30 days of approval by the Department, and by September 1 of 2007 must file a disclosure form for 2006.

### 5. State Approval of New Board Members

When a charter school’s Board of Trustees votes to accept new members, and before those individuals may take official action, the following steps must be taken to receive approval of the new members from the Commissioner of Education:

1. The Chairperson of the Board, or an individual authorized by the Board, must submit a letter to the Charter School Office to request approval, from the Commissioner of Education, of the new member(s). The letter should include a statement that the charter school's Board of Trustees voted to accept the new Board member(s) on [DATE] at a meeting held in compliance with the Massachusetts Open Meeting Law. See Appendix 5, *Template Letter to Request Approval of New Board Members* for a sample letter.
2. A copy of each proposed Board member’s resume must be submitted along with the letter requesting approval.

1. New Board members must also submit financial disclosure forms. These forms may be submitted with the letter requesting approval, and, in any event, must be submitted no later than 30 days after becoming an approved Board member. See the section of this Guide on **Disclosure of Financial Interests** for more information.

**SUGGESTION**: Charter schools may choose when to hold elections and have new Board members start their terms. Many charter schools choose to hold an annual meeting in May or June, elect Board members then, and schedule their terms to begin when the following school year starts in September. This approach allows charter schools sufficient time to obtain approval of the change from the Charter School Office. 603 CMR 1.11(2) and (4).

In the event of a resignation or removal of a trustee, a charter school may have to appoint a new Board member unexpectedly. If this occurs, the school should supply the Charter School Office with all required information about the new Board member as soon as possible. The new Board member must wait for approval from the Charter School Office before serving.

**Schools are required to notify the Charter School Office when members leave the school’s Board of Trustees, whether it is a resignation, the expiration of a term, or a removal.**

## B. Duties of the Board of Trustees

As a corporate body, a charter school’s Board of Trustees has the responsibility to set policies that will foster a successful school. Forming an effective Board is a complicated task; explaining it is beyond the scope of this section. A number of sources, several of which are listed in the Resources section of this guide, can help Boards govern their schools more effectively. The Department **strongly encourages** Boards to consult these and other sources.[[3]](#footnote-3) In addition to its more general responsibilities, the Board as a whole has a number of specific legal duties that every member of the Board should keep in mind. This section lists the chief legal duties of charter school Boards and explains the steps that Boards need to take to comply with them.

### 1. Ensuring a Successful Charter Renewal

Charter school boards of trustees have a special responsibility to ensure that the school’s five-year charter is renewed by the state Board of Education. See the *Accountability Handbook* at [www.doe.mass.edu/charter/acct.html](http://www.doe.mass.edu/charter/acct.html) and the section of this Guide on Charter Renewal. The state grants the charter to the school’s Board of Trustees, not to the school’s administration. When the school’s charter comes up for renewal in year five, the decision by the Board of Education on renewal is “based on the presentation of affirmative evidence regarding the success of the school’s academic program; the viability of the school as an organization; and the faithfulness of the school to the terms of its charter.” 603 CMR 1.12(3).

The Board of Trustees must approve the school’s Accountability Plan and be familiar with the goals within the Plan and the school’s progress toward meeting those goals. Boards should consider requiring frequent reports from school leaders and establishing a committee that will examine these questions periodically to make sure the school will be able to present affirmative evidence at the time of renewal.

Boards of Trustees should be aware of the requirements of the federal No Child Left Behind Act (NCLB) for Adequate Yearly Progress (AYP) for all public schools and how those requirements fit with the state’s accountability system for charter schools. As public schools, charter schools are held accountable for making AYP, a designation that is based, in part, on results from the Massachusetts Comprehensive Assessment System (MCAS) for each school. MCAS results, and therefore AYP ratings, are an important component of the overall evidence that is collected and analyzed to determine whether a charter school has met the criteria for renewal at the end of its five-year charter. It is important to note, however, that AYP ratings do not replace the state’s accountability system for charter schools. See the *Accountability Guide* at [www.doe.mass.edu/charter/acct.html](http://www.doe.mass.edu/charter/acct.html) and the section of this Guide on Charter Renewal. Additional information on the state’s accountability system, including AYP, is available at www.doe.mass.edu/sda/.

### 2. Bylaws

Developing bylaws, the document that governs the activities of the Board, is one of the activities of a charter school Board. In order to be awarded a charter, a charter applicant or applicant group must submit proposed bylaws to the Department. 603 CMR 1.05(2)(a). The Department will review the bylaws and if necessary, require and suggest changes.

In drafting its bylaws, the Board of Trustees should take the school’s mission and educational philosophy into account, review examples of Board bylaws from other charter schools, and consult sources such as the Charter School Office Bylaws Checklist (Appendix 8). In addition, charter schools may consider consulting resources such as BoardSource’s *The Nonprofit Board’s Guide to Bylaws* that is available at [www.boardsource.org](http://www.boardsource.org). However, charter school Boards of Trustees are cautioned that they are entities of the state, and that they must comply with state law and regulations that do not, in general, apply to most non-profit organizations. The Charter School Office strongly encourages each Board of Trustees to review their proposed bylaws with the Board’s own legal counsel, as many of the legal responsibilities of the Board and its members should be incorporated within the bylaws. Substantive modifications to a Board’s bylaws require an amendment to the school’s charter and must be submitted to the Commissioner of Education for approval. 603 CMR 1.11 and Appendix 9, *Charter Amendments - Technical Advisory 06-1*.

### 3. Budget and Curriculum

The charter school statute gives the school’s Board of Trustees the responsibility to determine the school’s curriculum, in consultation with the school’s leaders, and to develop the school’s annual budget. G.L. c. 71, § 89(x). While the Board may discuss these issues with the school staff and/or its outside contractor, the Board has the ultimate decision-making responsibility in these areas.

### 4. Charter Amendments

From time to time, a charter school Board of Trustees will need to make policy changes to ensure that the school continues to operate effectively. The Board has the responsibility to identify when changes in policy are necessary. The regulations, 603 CMR 1.11, define the circumstances under which a charter school must seek approval, either from the Commissioner of Education or the Board of Education, for a major or minor amendment request. Information on how to file an amendment request can be found in Appendix 9, *Charter Amendments – Technical Advisory 06-1*.

If a charter school plans to make a major change to its operations that will fundamentally affect the school’s mission, organizational structure, or educational program, its Board must seek approval of an amendment from the Board of Education for the intended change. 603 CMR 1.11(1). Such changes include, but are not limited to:

* Educational philosophy or mission;
* Governance or leadership structure;
* Contractual relationships with an educational management organization providing or planning to provide substantially all the school’s educational services;
* Curriculum models or whole-school designs that are inconsistent with those specified in the school’s charter;
* Location of facilities, if such change involves relocating or expanding to another municipality;
* Maximum enrollment; or
* Grades served.

If a charter school plans to make a minor change to its operations that will not fundamentally alter the school’s organizational structure or educational program, its Board must seek approval in writing from the Commissioner of Education for the intended change. Such changes include, but are not limited to:

* Bylaws;
* Schedule (length of school year, school week or school day);
* Enrollment Process;
* Code of Conduct;
* Corrections or clarifications involving the mission statement or other sections of the charter;
* School Name; or
* Membership of the Board of Trustees (as specified under 603 CMR 1.05(2)(a))

Other important rules relating to the amendment process are as follows:

1. The Commissioner and the Board of Education may consider a charter school’s compliance with applicable state, federal, and local law and the evidence the school has provided regarding the three areas governing renewal, set forth in 603 CMR 1.12(3), in reaching a determination regarding a school’s request to amend its charter. 603 CMR 1.11(3).
2. Charter school Boards of Trustees should use the *Template Letter of Request for Charter Amendment Approval* that is attached as Appendix 10, to inform the Charter School Office of its intent to amend the school’s charter.
3. Major amendment requests for maximum enrollment increases, changes in the grade levels served, districts specified in the charter (i.e., the school’s “region”), or relocation to a different municipality must be submitted to the Department by **August 1** of each year. In such cases, the Department will provide a copy of the request to the superintendents of the affected districts and provide them notice of their right to submit written comment to the Commissioner within 15 days. 603 CMR 1.11(5). If the Commissioner recommends approval of the request, it will generally be submitted to the Board of Education for action at the October meeting, barring any extenuating circumstances. Enrollment increases approved by the Board will take effect for the following school year, unless otherwise designated.
4. The Department strongly encourages charter school Boards of Trustees to submit all other amendment requests between March 1 and April 1.
5. The Charter School Office will work with the school’s Board of Trustees and/or school leader to ready the amendment request for presentation to the Commissioner or the Board of Education
6. The Board of Education or the Commissioner shall endeavor to approve or deny complete amendment requests within 60 days of their receipt. 603 CMR 1.11(4).
7. Should the Commissioner deny an amendment request, the charter school’s Board of Trustees may seek review of the Commissioner’s decision by the Board of Education.
8. The Board of Trustees of a Horace Mann charter school must receive approval from the local school committee and local teachers’ union on amendments that would change the school’s operations in any of the areas defined above and must also submit amendments for approval on the schedule described above. 603 CMR 1.11(4), Appendix 9, Charter Amendments – Technical Advisory 06-1.

### 5. Compliance with the Open Meeting Law

Because the Board of Trustees of a charter school is a governmental body, it must comply with the Open Meeting Law governing state entities.[[4]](#footnote-4) G.L. c. 30A, § 11A½. The law requires Boards to hold open, public discussions regarding their actions (unless a specific exemption permits an executive session), inform the public of all meeting times, and keep accurate records of what occurs at their meetings.[[5]](#footnote-5) The law requires the physical presence of trustees at a meeting for purposes of a quorum or voting. Therefore, participation in a meeting by telephone or by videoconference is not permissible for purposes of having a quorum of members or for voting.

#### Meetings Subject to the Open Meeting Law

Boards of Trustees must comply with the Open Meeting Law every time that a quorum of the Board meets. Unless otherwise specified in the bylaws of the Board of Trustees, a quorum is defined as a simple majority. The law applies to a Board’s regularly scheduled meetings, emergency meetings, and other meetings the Board may hold at which any public business or public policy matter over which the Board has supervision, control, jurisdiction, or advisory power is discussed or considered. On-site inspections of programs and “chance” or “social” meetings at which Board business is not discussed by a quorum, are not subject to the Open Meeting Law. G.L. c. 30A, § 11A½. All meetings must be held in a location that is accessible to persons with disabilities.

In addition, the law applies to Board committees or subcommittees. As with meetings of the full Board, the law applies to all subcommittee meetings. Task forces comprised of Board members and members of the school community that discuss and make recommendations in an area that is the responsibility of the school leader are not subject to the requirements of the Open Meeting Law provided a quorum of the Board is not present.

**EXAMPLES**

If representatives of a management company make a sales presentation to the full Board, the meeting is subject to the Open Meeting Law even if the Board is not planning to decide whether to hire the company at that meeting.

If three of the four members of a board committee meet for lunch to discuss whether to hire a full-time development director, that meeting must comply with the Open Meeting Law. If the subject came up as the board members weretalking during theintermission of a school play, however, the law would not apply provided the committee members did not reach a final decision, did not use this as a strategy to avoid discussing the matter in an open meeting, and did not use this opportunity to deliberately evade the Open Meeting Law.

#### Notice of Meetings

At least 48 hours, including Saturdays but not Sundays and legal holidays, before every meeting of a Board of Trustees, the Board must post the date, time, and location of the meeting in the Secretary of State’s office, with a copy to the Executive Office for Administration and Finance. Notice may be waived if the Board calls an emergency meeting, though the Board must still take reasonable steps to publicize the meeting. G.L. c. 30A, § 11A½.

A Board of Trustees may satisfy the notice requirement for regularly scheduled meetings by posting a yearly schedule of meetings in the charter school’s office and mailing a schedule to the Secretary of State’s office with a copy to the Executive Office for Administration and Finance. Boards of Trustees are also encouraged to post a notice in the local town hall. The schedule must list the date, day of week, time, and location of meetings, and the Board must actually meet at the scheduled times. The addresses for the Secretary of State and Executive Office are:

Secretary of State

State Publications and Regulations

One Ashburton Place, Room 1613

Boston, MA 02108

Telephone: 617-727-2831

Telecopier: 617-742-4822 (9 a.m. to 5 p.m. **only**)

Executive Office for Administration & Finance

State House, Room 373

Boston, MA 02133

Telephone: 617-727-2040

Fax: 617-727-2779

#### Records

The Board must keep a detailed, accurate record of every meeting and make the record available to the public upon request. The record must include the date, time, and location of the meeting; the members present or absent; and all action taken at the meeting, including a list of the issues discussed and a record of the formal votes taken. Balloting by proxy is not permitted nor are secret ballots allowed. G.L. c. 30A, § 11A½(7).

**SUGGESTION**: Charter schools should consider posting the minutes of each meeting on their web sites and/or on a school bulletin board to inform parents, students, and staff of current issues and recent decisions.

#### Executive Sessions

In certain very limited situations specified in G.L. c. 30A, §11A½, the Board of Trustees may hold executive sessions that are not open to the public. If the Board decides to hold an executive session, it may do so only:

* After first convening in open session;
* After the presiding officer of the Board cites the reason for meeting in executive session and whether the Board will reconvene in open session after the executive session; **and**
* After a majority of Board members vote, through a roll call vote recorded in the minutes, to meet in executive session.

Minutes must be taken and votes recorded through roll call votes during executive session. Records remain secret only so long as publication may defeat the lawful purposes of the executive session. G.L. c. 30A, § 11A½(7).

Under G.L. 30A, § 11A½, Boards may hold executive sessions only in seven limited situations, including:

1. To discuss the “reputation, character, physical condition or mental health rather than the professional competence” of a particular individual.

1. To consider the discipline or dismissal of an employee, or to hear complaints or charges brought against a public officer, employee, staff member, or individual.

**NOTE**: If the Board is meeting in executive session under either of these two prior exceptions, the individual in question is afforded certain rights, including the right to have notice of the meeting, the right to be present, the right to have counsel attend, and the right to speak on his/her own behalf.

1. To discuss strategy relating to litigation or collective bargaining.
2. To discuss the deployment of security personnel or devices.
3. To investigate charges of criminal misconduct or to discuss the filing of criminal complaints.
4. To consider the purchase, exchange, lease, or value of real property, if an open discussion may have a detrimental effect on the negotiating position of the governmental body with a person, firm, or corporation.
5. To comply with the provisions of any general or special law or federal grant-in-aid requirements.

#### Consequences

If a Board of Trustees does not comply with the Open Meeting Law, it may face a variety of sanctions. Three or more registered voters, as well as the Attorney General or the District Attorney may bring suit to enforce the Open Meeting Law by filing a complaint in the Superior Court or the Supreme Judicial Court alleging a violation of the Law by any governmental body. The court may then enter an order requiring that the board be in compliance with the Open Meeting law in the future, invalidating any action taken at any meeting in which the Law has been violated, and/or requiring that the records of the meeting be made public, in addition to any other remedy available under the law. [[6]](#footnote-6)

#### Resources

 Schools should direct specific questions of compliance to their legal counsel.

### 6. Complaint Procedures

Each charter school must have a procedure for responding to any complaints filed under G.L. c. 71, §89(jj), and 603 CMR 1.10.

#### Complaints Regarding the Violation of Charter School Law or Regulations

A party has the right to file a written complaint with the Board of Trustees in accordance with G.L. c. 71, § 89(jj), and 603 CMR 1.10 if the party believes the school has violated any provision of the charter school law or regulations. After receiving the complaint, the Board of Trustees must send a written response to the party within 30 days. 603 CMR 1.10(2). In addition to following up on any such complaints, the Board may periodically conduct reviews to ensure that the school is in compliance with the charter school law and regulations. 603 CMR 1.10(3).

If the Board does not address the complaint to the party’s satisfaction, the party may submit the complaint to the Commissioner of Education, who will investigate the complaint and respond to the complaining party. 603 CMR 1.10(4). The Department will take the action it deems appropriate, including but not limited to the withholding of funds and action regarding the school’s charter. 603 CMR 1.10(5).

#### Complaints Regarding the Violation of State or Federal Law

Complaints may also be filed with the Department of Education, Office of Program Quality Assurance by anyone who believes that the charter school has violated or is violating any applicable federal or state law or regulation other than those specified in the charter school statutes and regulations.

#### Complaints Regarding Harassment or Acts of Discrimination

An individual who believes that he/she is the victim of harassment or any form of discrimination as a member of one of the fourteen protected classes[[7]](#footnote-7) may report such harassment or discrimination to the identified individual in the charter school building who has received training in handling such accusations. Charter schools must ensure that such an individual has been identified and received the appropriate training.

#### Other Complaints

Many charter schools have adopted preliminary procedures to deal with complaints before they reach the attention of the Board. For example, a charter school’s policy could include the following procedure:

Step 1: The complaining party should go directly to the staff member with direct responsibility for the problem and try to work the problem out.

Step 2: If Step 1 fails, discuss the problem with the school leader.

Step 3: If Step 2 fails, meet with several individual Board members or the whole Board before filing a formal complaint.

Step 4: If Step 3 fails, file a formal complaint with the school’s Board of Trustees.

Step 5: If Step 4 fails, file a complaint with the Commissioner of Education.

###

### 7. Liability of the School

For purposes of liability, Boards of Trustees of charter schools are considered public employers and charter school employees are considered public employees. G.L. c. 71, § 89(aa). Therefore, an action brought against the school is subject to the Tort Claims Act, G.L. c. 258. The Tort Claims Act specifies the venue where employees may be sued andthe amount for which they may be liable. If such a claim is brought against a charter school, Board members should discuss the provisions of G.L. c. 258 in detail with legal counsel.

In addition, before the charter school begins operations, the Board of Trustees must provide evidence to the Charter School Office of compliance with any required insurance coverage. 603 CMR 1.05(2)(i). The Board should consider purchasing liability insurance and discuss the issue with the school’s legal counsel. Horace Mann charter schools may obtain insurance through their school district’s central office.

### 8. Moving to a New Location or Leasing or Buying New Property

Charter schools must be physically located in the district or municipality that was specified on their application for a charter. Any change in the school district or municipality of location constitutes a material change to the school’s charter and must be approved by the Board of Education before it can go into effect. The amendment process described in this Guide, must be followed to request approval. 603 CMR 1.11(1). A lease/purchase agreement entered into by a charter school that involves a move to another school district must therefore reflect the conditional nature of the Board of Trustee’s consent for the agreement if it is executed prior to receiving the approval of the Board of Education. If a Board of Trustees is planning to change the charter school’s location within its current district and municipality, it must inform the Charter School Office of the change in location.

If a school is obtaining a loan that will extend beyond the five-year term of the charter, the school must also receive approval from the Board of Education. Guidance on how to request this approval can be found at <http://www.doe.mass.edu/charter/tech_advisory/05_1.html> .

### 9. Applying for a Waiver from the Charter School Regulations

A Board of Trustees of a charter school may request that the Board of Education waive the applicability of a specific provision of the charter school regulations. The Board of Trustees must apply for the waiver in writing, specify the duration of the waiver and the reason for it, include a certification that the waiver applicant has made a good faith effort to comply with the provisions that it wants waived, and submit evidence documenting why the circumstances justify granting the waiver. The Board of Education will grant waivers only under circumstances it deems exceptional. 603 CMR 1.03(2).

### 10. Non-profit Foundations Associated with Charter Schools

Although charter schools are public entities and therefore may not incorporate, they may establish a separate non-profit foundation under I.R.C. § 501(c)(3) for the purpose of fundraising or to obtain private grants. The non-profit foundation, unlike the charter school, may be incorporated. This entity should have a name different from that of the school and should include the word foundation in its name.

The charter school and its non-profit foundation are separate legal entities and their respective Boards of Trustees must act accordingly. The Boards of the foundation and the charter school must hold separate meetings, have different officers, and operate under different bylaws. Generally, a limited number of trustees of the Board of the charter school may serve on the Board of the foundation, provided that the foundation exists solely to support the school. Both the Board of the charter school and the Board of the foundation, however, should have some members who serve on only one of the two Boards. The members of each Board may want to consult with legal counsel on steps they should take to minimize the potential for a conflict of interest.

Most importantly, the assets of the charter school must be kept separate from the assets of the foundation. Public funds transferred from the Commonwealth to the charter school for student tuition payments must go directly to the charter school. The distinction between the charter school and its fundraising entity must be maintained to preserve the status of the charter school as a public school**.** In many cases, these foundations may be considered “component units” of the school, which has certain financial reporting implications. See the *Charter School Audit Guide* for more details.

# II. Joint Responsibilities of the Board of Trustees and the School Administration

## A. Reporting Requirements

In order to oversee charter schools effectively, the Commonwealth requires charter schools to submit a variety of information. School staff members and Board members share the responsibility for submitting this information. Although not an exhaustive list, this section lists the deadlines for reporting specific information to the state and the frequency with which charter schools must submit this information. Additionally, the Charter School Office posts, on an annual basis, a list of reporting requirements. To see the posting for 2007-2008, go to <http://www.doe.mass.edu/charter/news/2007/bts.html> . This posting is updated annually.

### 1. Accountability Plan

Before the start of its second year of operation under a new or renewed charter, a charter school must submit an Accountability Plan to the Charter School Office for approval. The plan must articulate goals in each area of charter school accountability – academic success, organizational viability, and faithfulness to the terms of the charter. It must also include performance objectives that define how progress toward these goals will be measured. The school’s annual report serves as the vehicle for reporting annual progress and site visits by the Department to the school are an opportunity for the Department to corroborate the information found in the annual report.

Guidelines for Writing Charter School Accountability Plans are available on the DOE website, at <http://www.doe.mass.edu/charter/acct.html>. The Charter School Office provides schools with limited guidance and consultation for the development of Accountability Plans, and approves each plan once it is sufficiently clear, coherent, comprehensive, measurable, and consistent with high academic standards. The school will be held to its approved Accountability Plan, and any changes to the Plan must be approved by the Charter School Office.

### 2. Audit (Annually – January 1)

Each charter school must send a financial audit to both the Charter School Office and the State Auditor every year by January 1. G.L. c. 71, § 89(hh); 603 CMR 1.09(3). The audit must be:

* conducted by an independent auditor; and
* consistent with generally accepted accounting principles.

The Department of Education has issued a document entitled *Commonwealth of Massachusetts Charter School Audit Guide*, which is available online at [www.doe.mass.edu/charter/reports/2003/auditguide.pdf](http://www.doe.mass.edu/charter/reports/2003/auditguide.pdf) and by contacting the Charter School Office. Auditors are required to adhere to the requirements within this document, and charter schools are strongly encouraged to review this document with their auditor.

### 3. Enrollment Reports

All Massachusetts public schools, including charter schools, must submit data to the Department concerning all enrolled students three times each year. The SIMS (Student Information Management System) report requires the submission of 52 data elements on each enrolled student. Data must be submitted regarding the school’s enrollment as of October, March, and the end of the school year by deadlines established annually. In addition, charter schools must submit the Charter School Claim Form by March 15. This form requires the school to submit supplemental data used to calculate the final charter school tuition payment.

### 4. Pre-Enrollment Report (Annually – March)

State law requires that local school districts receive notification by no later than April 1 of the number of students who are planning to attend charter schools from the school district the following September, as well as the number of new students transferring from the district to charter schools the following September. G.L. c. 71, § 89(o). To ensure that local school districts receive the information by April 1, charter schools must complete a Pre-Enrollment Report through the security portal of the Department website by a date between set annually by the Department of Education that will fall sometime between March 15 and April 1. The report will include, in the aggregate, the number of students currently attending the charter school combined with those transferring to the school from each local district. The annual Pre-Enrollment Report forms the basis for the school’s first quarterly tuition payment in the next fiscal year.

### 5. Annual Report (every year – August 1)

By August 1 of each year, charter schools must submit an annual report for the preceding school year to the Charter School Office. In addition, every school must send the report to its local school committee and make the report available to every parent or guardian of its enrolled students and to every parent or guardian who expresses interest in enrolling their child or children in the school. Pursuant to G.L. c. 71, § 89(gg), and 603 CMR 1.09(1), the annual report must include the following:

* Evidence of the school’s progress toward achieving its academic goals as detailed in its charter and Accountability Plan;
* Evidence that the school is developing or has provided models for replication and best practices in education;
* A financial statement setting forth the school’s revenue and expenditures for the fiscal year just ended, and a balance sheet setting forth the school’s assets, liabilities, and fund balances or equities; and
* Projections of income and expenses for the upcoming school year.

Charter schools should refer to the current *Annual Report Guidelines* that are posted each year on the Department of Education website for specific information regarding required components of the annual report.

### 6. Plan to Disseminate Information

#### Commonwealth Charter Schools

Commonwealth charter schools must provide models for replication and best practices in education to the Commissioner and to other public schools in the district where they are located and must document having done so. G.L. c. 71, § 89(ll); 603 CMR 1.09(1)(d). The Department will look at the school’s dissemination efforts as one of the criteria in deciding whether to renew a school’s charter.

Charter schools satisfy the requirement to disseminate these models in a number of ways. Examples of how some schools have fulfilled the requirement are listed below, but the Department also encourages schools to come up with imaginative ways to share their innovative practices.

**EXAMPLES**

Taking part in a dissemination program funded by a federal grant in which the charter school is sharing its best practices with district schools. Contact the Charter School Office’s Coordinator of Research and Finance for more information.

Exchanging ideas between charter school teachers and teachers in local districts in an organized manner.

#### Horace Mann Charter Schools

For Horace Mann charter schools, the school committee in the district where the school is located is responsible for disseminating the innovative practices of the school. G.L. c. 71, § 89(r). Horace Mann charter schools, like all charter schools, must include information about the dissemination of innovative practices in the annual report that it submits to the Department. 603 CMR 1.09(1)(d) and Appendix 3, *Charter School Technical Advisory 03-1: Horace Mann Charter Schools*.

## B. Charter Renewal and Revocation

### 1. Charter Renewal

The Board of Education is obligated by the charter school law and regulations to conduct an ongoing review of charter schools and by the fifth year of a school’s operation, decide whether a school’s charter should be renewed. The *Accountability Guide*, published by the Charter School Office, is available at <http://www.doe.mass.edu/charter/acct.html>, and provides an overview of the state’s accountability process over the five years of a school’s charter.

A charter school seeking renewal of its charter must submit an application for

renewal no earlier than March 1 of its third school year and no later than August 1 after the end of its fourth school year. The *Application for Renewal of a Public School Charter* is available online at <http://www.doe.mass.edu/charter/acct.html> or by contacting the Charter School Office. Applications for the renewal of Horace Mann charters must be submitted with the approval of the local teachers’ union and the local school committee. 603 CMR 1.12(1). The Board of Education, through the Charter School Office of the Department of Education, reviews applications for charter renewal and arranges for a 3-4 day, on-site renewal inspection of the school according to a set protocol. 603 CMR 1.12(3). The *Renewal Inspection Protocol* is available on-line at <http://www.doe.mass.edu/charter/acct.html> or by contacting the Charter School Office.

In the fifth year of a school’s charter, in conjunction with a recommendation of the Commissioner of Education, the Board of Education may renew the school’s charter based upon the presentation of affirmative evidence regarding the school’s academic program; the viability of the school as an organization; and the faithfulness of the school to the terms of its charter. The Board of Education of Education may also choose to renew a school’s charter with conditions or to not renew the charter.

An academically successful charter school is one that demonstrates that student performance has significantly improved and/or has been persistently strong on internal and external academic assessments. An organizationally viable charter school is financially stable and solvent, has an enrollment that is stable and near capacity, and has a sound governance and administrative structure. A charter school that is faithful to the terms of its charter has a program that has been consistent with the terms of its charter and has been within the bounds of all applicable statutory and regulatory requirements. An indicator of success in all three areas is that the school has met or has made progress toward meeting the goals established in its approved Accountability Plan. The charter school must also demonstrate that it has provided models for replication of some of its innovative practices to other public schools in the district as well as to the Department. G.L. c. 71, § 89(ll).

The Department will gather evidence regarding these issues from the school’s renewal application and from other information, including but not limited to the school’s annual reports, financial audits, test results, site visit reports, and renewal inspection. Further guidance for schools on Accountability Plans, annual reports, site visits, and the renewal inspection is available on-line at <http://www.doe.mass.edu/charter/acct.html>. All charter schools will be evaluated on the same performance criteria, provided, however, that the criteria will take into account each school’s charter and Accountability Plan (603 CMR 1.12(3)).

### 2. No Child Left Behind & Adequate Yearly Progress

Boards of Trustees and administrators of charter schools must also understand the requirements of NCLB for Adequate Yearly Progress (AYP) and the consequences for failing to meet AYP. NCLB requires all public school students to reach proficiency on state standards by 2013-14. AYP represents the minimum level of improvement that states, school districts, and schools must achieve each year in order to meet this goal. The Commonwealth has defined an accountability system for all public schools that, consistent with NCLB, tracks schools’ progress toward meeting the goal of all students achieving proficiency by 2013-14. This system is based on MCAS results and other indicators that together determine an AYP rating. As public schools, charter schools are held accountable for making AYP. Schools can find further information regarding AYP and the Massachusetts School and District Accountability System at <http://www.doe.mass.edu/sda/> .

MCAS results, and therefore AYP ratings, are an important measure in the overall evidence that is collected and analyzed to determine whether a charter school has met the criteria for renewal at the end of its five-year charter. It is important to note, however, that AYP ratings do not replace the accountability system that has been established for Massachusetts charter schools. Simply put, AYP ratings alone do not drive a charter renewal decision that is based upon the three areas discussed above.

Charter schools, however, should by no means overlook the importance of AYP. Failure to meet AYP ratings may result in certain actions for all public schools, including charter schools. As the number of consecutive years that a school does not meet its AYP targets increases, so do the severity of the sanctions. The most severe sanctions could put a school’s charter in jeopardy of being revoked or not renewed. See Appendix 4, *Charter School Technical Advisory 03-2: the Impact of NCLB on Massachusetts Charter Schools* and the Department’s web site on NCLB requirements at <http://www.doe.mass.edu/sda/>.

### 3. Charter Revocation

Under 603 CMR 1.13(1), the Board of Education may revoke a charter during its five-year term for cause. Possible causes that could lead to revocation include but are not limited to:

* A material misrepresentation in the application for approval of the charter;
* Failure to comply substantially with the terms of the charter, with any of the applicable provisions of G.L. c. 71, § 89, or with any other applicable law or regulation;
* Failure to fulfill any conditions imposed by the Board of Education in connection with the grant of the charter;
* Insolvency, mismanagement, or misappropriation of funds; and
* Fraud, gross mismanagement, or criminal convictions on the part of the charter school’s administrators or Board of Trustees.

The Board of Education may choose to place a school on probation to allow it to correct the problem rather than revoking its charter. If the Board of Education does intend to revoke the charter, the school may request a hearing in accordance with G.L. c. 30A, §13, and 801 CMR 1.00. If the charter is revoked or if it is not renewed, title to all of the school’s property vests in the Commonwealth, subject to any obligations to other parties the charter school may have. Charter schools must comply with the closing procedures established by the Department and described in the Closing Procedures Protocol available from the Charter School Office. 603 CMR 1.13.

## C. Enrollment Policy

Charter schools are public schools and are open to all students who reside in the Commonwealth. Massachusetts law is clear; charter schools may not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or in a foreign language, or academic achievement in admitting students, and charter schools may not set admissions criteria that are intended to discriminate or that have the effect of discriminating on any of these bases. A student must be a resident of Massachusetts at the time of application to be eligible for a charter school’s enrollment process. The charter school must hold a lottery to determine which students to admit if there are more applications received than seats available. Every time an admissions lottery takes place, the process must be fair and all rules must be consistently applied. See Appendix 11, *Memorandum on Enrollment Policies*.

The following section describes the lottery process, explains the non-discrimination requirement, and details the eligibility criteria that charter schools may and may not set. G.L. c. 71, § 89(l). Charter schools must make sure to complete lottery processes before March 15 to allow for the timely submission of pre-enrollment reports by the date set annually by the Charter School Office. See the section of this Guide on **Pre-Enrollment Report**.

Typically, the Board of Trustees works with the administration of the charter school to develop the specific procedures for the lottery and ensures that the procedure is in compliance with applicable laws. The Department requires every charter school to have clearly written lottery procedures.

**EXCEPTION**: If a charter school is located in a district with an intra-district school choice enrollment program, the school may choose to integrate its enrollment process with that of the school district. 603 CMR 1.06(8). The Board remains responsible, however, for ensuring that the process complies with all other provisions of 603 CMR 1.06, such as the timely submission of the pre-enrollment reports and the anti-discrimination requirement.

### 1. Enrollment Lottery – Commonwealth Charter Schools

Before beginning the admissions process, Commonwealth charter schools must take the following steps:

* Determine the spaces available in each grade based on the school’s capacity and the estimated number of returning students.
* Set a deadline or deadlines for accepting student applications.
* Publicize the application deadline(s) with reasonable notice of at least one month before the deadline. 603 CMR 1.06(3).
* Set a date for the lottery with reasonable public notice given at least one week prior to the lottery. 603 CMR 1.06(7). Set a final date for students to accept enrollment and the actual date of enrollment.
* Charter schools must conduct their lotteries in public, with a disinterested party drawing the names. 603 CMR 1.06(7). A “disinterested” person is someone who is not affiliated with the school.

**EXAMPLE**

To meet the requirement of “reasonable notice,” one charter school obtained the names of non-profit organizations throughout its city and sent notices to all of them advertising the school. The school posted notices in various locations across the city and held nine well-publicized informational meetings; two at the school and seven others in different neighborhoods. In addition, the school ran advertisements in the city’s major commercial and community newspapers.

Following the application due date, charter schools should divide all applications into categories:

* **Siblings** are **potential** students who currently have a sibling attending the charter school at the time of the lottery. Siblings of alumni/ae are not given a preference. Siblings of applicants who have been accepted for admission but are not yet attending, (including twins), are not given a preference. Siblings of students who are due to graduate at the end of the school year in which the lottery is held are given preference. No students are entitled to a sibling preference during the lottery for the year that a school opens. Siblings are children who share a common biological or legal parent as opposed to children who may live in the same household but do not share a common parent. For example, a foster child does not receive sibling preference. However, children who live in different households but share a common parent are siblings for purposes of sibling preference. If a student moves out of the local city or town but remains enrolled, that student’s siblings have preference in admission even though they are nonresidents at the time of application.
* **Residents** arestudents who live in the city or the town in which the charter school is located. Residents enrolled in district, charter, private, or parochial schools get equal preference. In the case of a regional charter school, residents are students who live in the school districts specified in the school’s charter. Students must be residents of the relevant city, town or school district at the time of application.

* **Non-residents** are students who live within Massachusetts but outside the city or town in which the charter school is located. For regional charter schools, non-resident students are those students who live outside of the school districts specified in the school’s charter.

If there are more eligible applicants than spaces available, the charter school must hold a lottery to determine which applicants will fill the available spaces. 603 CMR 1.06(4)(a). Schools should hold two lotteries: one for siblings and residents, and one for non-residents. Even after all spaces in the school are filled through a lottery, schools must continue to draw the names of all students who apply and place the names of students not selected for an available space on a waiting list in the order the names were drawn from each category. Siblings will receive two numbers. The first designates their place on the sibling wait list; the second designates their place on the resident wait list. 603 CMR 1.06(4)(d); 603 CMR 1.06(7).

First preference in admission is given to siblings of those students actually attending the charter school at the time of the lottery. If the school has not reached capacity after admitting all eligible siblings, then it must admit residents and, if still not at capacity, then non-residents.

If the principal enrollment process fails to fill all the available slots, a charter school may repeat the process, provided that the school completes all enrollment processes and submits the *Pre-Enrollment Report* to the Charter School Office by the specified deadline. 603 CMR 1.06(6); 603 CMR 1.09(4).

Charter schools must avoid enrolling students in excess of a sending district’s net school spending cap. See G.L. c. 71, §89(i). If the enrollment of a student would cause the sending district to exceed its tuition cap, then the charter school must skip over the student and put him/her on the school’s waiting list. The exception to this circumstance is siblings. See the section on **Waiting Lists**. 603 CMR 1.06(4)(d).

A student is considered to be enrolled in a charter school if an offer of admission is made and an acceptance is received, either in writing or orally. After the student is enrolled, the school may determine through placement testing provided to all students, that the student needs to be placed in a grade other than the one for which he/she applied. If this is the case, the charter school is obligated to provide a space in the appropriate grade.

Once a student is enrolled in a Commonwealth charter school, that student has a right to continue attending the school. This right to continued attendance exists even if the student’s district of residence within the Commonwealth changes. The only exception to this rule would be if the new district of residence is at or above its net school spending cap and, for that reason, the school would not receive a per pupil tuition for that student.

### 2. Enrollment Lottery – Horace Mann Charter Schools

Because Horace Mann charter schools may involve the conversion of all or part of an existing public school into a charter school, admission procedures at a Horace Mann charter school differ from those at a Commonwealth charter school. 603 CMR 1.06(5).

If a charter application is approved that creates a Horace Mann charter school and it is a conversion of an existing school, the students and their siblings who are enrolled in the public school when the Horace Mann charter application is filed with the Board of Education are entitled to preference in admission. If there are fewer spaces than eligible applicants, the school must hold an admissions lottery. If there are spaces still available after the initial enrollment period, the school must give preference to students currently enrolled in *public* schools in the district in which the charter school is located. Again, the charter school must hold a lottery if there are more eligible public school students than spaces available. Finally, the Horace Mann charter school must open admission to all students who reside in the district and hold a lottery if there are more resident student applications than spaces available.

Students may also enter a Horace Mann charter school through intra-district school choice or specific agreements with the district. See Appendix 3, *Charter School Technical Advisory 03-1: Horace Mann Charter Schools.*

Once a student is attending a Horace Mann charter school, that student has a right to continue attending the school as long as they remain a resident of the district of location, unless they have entered the school through intra-district school choice or another specific agreement with the district.

### 3. Non-discrimination Requirement

The anti-discrimination requirement is at the core of charter school enrollment law. Schools may not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement. G.L. c. 71, § 89(l); 603 CMR 1.06(1). Charter schools may not administer tests to potential applicants or predicate enrollment on results from any test of ability or achievement. 603 CMR 1.06(2).

At the same time, charter schools have an interest in making sure that prospective students and their families understand the mission and focus of the school and that they are interested in being part of that school community. To that end, charter schools may have enrollment requirements, including but not limited to attendance at informational meetings and interviews, provided those requirements are not designed, intended, or used to discriminate unlawfully. 603 CMR 1.06(2). Meetings with parents/guardians, for example, must be designed to inform them about the school rather than to discourage certain types of students from attending the school.

**ACCEPTABLE ELIGIBILITY CRITERIA**

* Charter schools **may** require students to successfully complete the grade preceding the grade the student plans to enter, as determined by the sending school.
* Charter schools **may** strongly encourage or require parents/guardians to attend informational sessions.
* Charter schools **may** ask students and parents/guardians to sign compacts or memos of understanding that demonstrate their agreement with the school’s mission.

**UNACCEPTABLE ELIGIBILITY CRITERIA**

* Charter schools **may not** give preference to children of staff members or Board members.
* Charter schools specializing in music or art **may not** give preferences based on auditions.
* Charter schools **may not** make statements that are intended to discourage parents/guardians of students with disabilities, English language learners, or any other protected group of students from submitting an application to the school.

Charter schools are expected to make proactive efforts to reach out to students and families throughout the community in recruiting new students and to administer their enrollment process in a way that is open, inclusive, and fair. Failure to do so may indicate that the school is using its enrollment process to discriminate and may result in sanctions by the Department.

**EXAMPLES**

If a charter school is located in a city that is racially and socio-economically diverse, the school should hold informational meetings in a range of neighborhoods that reflect the city’s diversity.

If a charter school is located in a city with a large number of Spanish-speaking residents, it should provide written materials in Spanish or have a translator at any required informational meeting.

Charter schools should make sure that required meetings are held in locations accessible to persons with physical disabilities.

### 4. Waiting Lists

Charter schools may keep waiting lists as a result of one or more lotteries held throughout the year and must specify rules for creation and maintenance of waiting lists clearly and in writing as part of their enrollment policies. The order of a student’s placement on a waiting list may change depending on preferences that exist at the time an offer of admission is extended, such as a student moving up on a waiting list due to a sibling or residential status. If a school chooses, it may roll its waiting list over from one year to the next and enroll students from the waiting list in the next school year prior to accepting new applicants.

If a space becomes available and the enrollment of a student from the waiting list would cause his or her sending district to exceed their net school spending cap, the charter school should skip over that student but keep them on the waiting list. 603 CMR 1.06(4)(d). If the student on the waiting list is a sibling of a student currently enrolled at the charter school, however, the school may enroll that student and the Commonwealth of Massachusetts will pay the tuition to the charter school, subject to the availability of state appropriations. 603 CMR 1.06(4)(d).

### 5. Changes in Enrollment Policy

If a school decides to change its enrollment policy, the Board of Trustees must approve and then submit an amendment request as described in the section of this Guide on Major Policy Changes and Charter Amendments as well as in the Technical Advisory on charter amendments found at <http://www.doe.mass.edu/charter/tech_advisory/05_2.html>. Any change in the enrollment policy must comply with the requirements set out above or as designated in 603 CMR 1.06.

**NOTE:** At no time during the school year may any charter school's actual enrollment exceed the pre-enrollment figure submitted to the Department in March of the previous school year.

Schools should contact the Charter School Office if they require additional information or assistance with enrollment policies.

## D. Facilities

### 1. Certificate of Occupancy and Other Inspections

Prior to its occupation of a facility, a charter school must obtain the following:

* Certificate of Occupancy
* Fire Inspection Certificate
* Building Safety Inspection
* Flammable Compounds and Liquids Certificate (if applicable) G.L. c. 148, 603 CMR 1.05(2)(f-h)
* Health Inspection
* Asbestos Inspection and Management Plan 453 CMR 6.00
* PCB Inspection
* Lead Paint (if applicable)

These documents must be kept current and available for inspection by the Department at all times and must be included in the Application for Renewal. If a school should change locations, the school must obtain these certificates and inspections prior to occupying any new facility. In such cases, the charter school should begin the process of obtaining the Certificate of Occupancy and other required local facility inspections by contacting the inspectional services department of the municipality in which the school’s new facility is or will be located.

The process for obtaining a Certificate of Occupancy will vary, depending in part upon the history of use of the building to be occupied and the school’s location. If the building was never previously used as a school or has been vacant for some time, it may be subject to more intensive inspections by the city or town. Some municipalities will conduct one comprehensive inspection covering the fire code, health code, and other applicable laws and regulations. In other municipalities, inspectors from different departments, such as the Fire Department, will conduct individual inspections. The Department encourages schools to obtain as much information as possible about the process in the specific municipality where they are located. All charter school facilities must be accessible to persons with disabilities.

### 2. Construction and Renovation of New Facilities

When charter schools decide to construct new facilities or perform building or construction work on their present facility, there are a number of federal and state laws with which they need to comply. Schools should hire outside legal counsel familiar with public construction toensure compliance with all applicable laws.

Among other laws, charter schools must comply with the Commonwealth’s public bidding and prevailing wage laws. When undertaking construction or renovation, charter schools should seek advice from the Office of the Attorney General and the Division of Occupational Safety regarding the applicability of these laws and the advice of the school’s legal counsel regarding individual construction projects. Failure by a charter school to comply with these laws, particularly when a decision has been issued by the appropriate state agency, may result in probationary status, revocation of the school’s charter, non-renewal of the school’s charter, or the withholding of quarterly tuition payments.

#### Public Bidding Law

The public bidding law applies to the “construction, reconstruction, installation, demolition, maintenance, or repair of any building by a public agency estimated to cost more than twenty-five thousand dollars.” G.L. c. 149, § 44A(2). The law defines “public agency” as “a department, agency, board, commission, authority, or other instrumentality of the commonwealth.” Charter schools are public agencies under this statute.

The Office of the Attorney General is charged with enforcing the public bidding law. G.L. c. 149, § 44H. The Office of the Attorney General “shall have all necessary powers to require compliance therewith including the power to institute and prosecute proceedings in the superior court to restrain the award of contracts and the performance of contracts in all cases where, after an investigation of the facts, he has made a finding that such award resulted in violation directly or indirectly, of [the public bidding law].” G.L. c. 149, § 44H. Violations of the public bidding law are punishable by significant fines and possible imprisonment. G.L. c. 149, § 44J.

#### Prevailing Wage Statute

Similar to the public bidding law, the prevailing wage statute requires payment of a minimum hourly wage rate for certain classifications of labor performed on state and local public construction projects. G.L. c. 149, §§ 26-27D. In determining whether prevailing wage rates must be paid, the Division of Occupational Safety determines: 1) whether the project is being undertaken by the “Commonwealth, or by a county, town, authority or district;” 2) whether the project involves a “public work;” and 3) whether the project is “construction” as defined in the prevailing wage statute.

The Division of Occupational Safety issues prevailing wage schedules for construction projects covered by the prevailing wage statute and determines whether the prevailing wage statute applies to particular construction projects. The Office of the Attorney General is charged with investigating alleged violations of and enforcing the prevailing wage statute. Penalties for violating the prevailing wage statute include significant fines and possible imprisonment. G.L. c. 149, § 27C.

Should you require additional information regarding the aforementioned laws, please contact the Office of the Attorney General at <http://www.ago.state.ma.us> and the Division of Occupational Safety at <http://www.state.ma.us/dos/> for guidance.

Several additional resources can provide more information to charter schools related to the construction of new facilities. In addition, several state and federal programs can provide funds for charter schools seeking to renovate or construct new facilities. Additional sources of information include the US DOE Charter Schools Program at [www.uscharterschools.org](http://www.uscharterschools.org); and the Massachusetts Charter Public School Association at <http://www.masscharterschools.org>.

## E. Purchasing

### 1. Purchasing Goods or Services

#### Commonwealth Charter Schools

Commonwealth charter schools must follow sound business practices and generally accepted government auditing standards as conditions of their charters. The designated procurement officer of each Commonwealth charter school must participate in the public purchasing official certification program conducted by the Office of the Inspector General. A training program specifically for charter schools is offered annually. For information on this program and other training regarding the procurement of goods and services, visit the Inspector General's web site at <http://www.magnet.state.ma.us/ig/mcppo/igmpo.htm>.

To develop procurement policies, Commonwealth charter schools should consult the following publications:

1. *Charter School Recommended Fiscal Policies and Procedures Guide.* Published by the Department, this guide provides recommended fiscal policies and procedures for Massachusetts charter schools. This guide is available online at <http://finance1.doe.mass.edu/charter/guide05.pdf>.
2. *Municipal, County, District and Local Authority Procurement of Supplies, Services and Real Property*. Published by the Inspector General's office, this manual outlines and describes legal requirements, recommended practices, and sources of assistance. The manual is available online at <http://www/mass.gov/ig/igch30b.htm>.
3. *Procurement Policies and Procedures Handbook.* Published by the Operational Services Division, the handbook is available online at <http://mass.gov/agency/documents/osd/policy/phand.pdf>.

Although Commonwealth charter schools are not subject to the requirements of the Uniform Procurement Act, G.L. c. 30B, the Department strongly encourages all schools to follow the requirements of G.L. c. 30B.

#### Horace Mann Charter Schools

Horace Mann charter schools are subject to the requirements of the Uniform Procurement Act, G.L. c. 30B. The procurement officer for the school must comply with the Act’s requirements.

### 2. Sales Tax Exemption

As state governmental entities, charter schools are exempt from state sales tax. G.L. c. 64H, § 6(d). Charter schools can apply for a Certificate of Exemption by filling out a TA-1 Form and submitting it to the Massachusetts Department of Revenue (DOR). By presenting the certificate to vendors, charter schools will receive the exemption. For more information and a copy of the TA-1 Form, visit the DOR’s home page at: [www.state.ma.us/dor](http://www.state.ma.us/dor).

### 3. Purchasing Services from an Educational Management Organization (EMO)

Perhaps the most important procurement decision that a Board of Trustees can make is the decision to choose an EMO to provide educational and/or administrative services[[8]](#footnote-8) to the school. This decision is critical to the success of a charter school and should be made with the utmost care. Boards should follow their normal procurement procedures, use sound business practices, and “shop around” to maximize competition when choosing an EMO.

Once a Board of Trustees has decided with which EMO it plans to contract, the Department strongly recommends that the Board hire legal counsel to help draft the contract. Most Boards of Trustees have less experience with such contracts than do the EMOs and, absent the assistance of legal counsel, may be at a disadvantage during this process. Boards of Trustees should realize that the educational services field is highly competitive, that there are many options for them to choose from, and that they have a good deal of leverage.

After a Board has chosen an EMO, it must continue to maintain its independence from the company. For example, it is very unwise for a representative of an EMO to serve on the Board of Trustees of a charter school. If such representatives do serve on the school’s Board, these individuals must take particular care to ensure that they do not violate the state’s conflict of interest law or breach their duty of loyalty to the school. See the sections of this Guide covering **Duty of Loyalty** and **State Conflict of Interest Law**.

Resources

The Department **strongly encourages** Boards of Trustees of charter schools exploring contracting with EMOs to consult the resources listed below before drafting the contract.

1. The *Inspector General’s Report: A Management Review of Commonwealth Charter Schools*.[[9]](#footnote-9)
2. EMO contracts executed by charter schools. Contact the Charter School Office for samples.

#### Department Review of Contracts for Educational Services

The Board of Education must approve the terms of charter school contracts with individuals or companies for “substantially all educational services.” G.L. c. 71, § 89(j)(5). The Department has developed standards and procedures for reviewing and approving the contracts. Boards of Trustees of charter schools should review the information below to better understand the standards the Department will use to evaluate contracts with EMOs. EMO contracts are not valid or in effect prior to receiving final approval by the Board of Education. Charter schools may not construe inaction by the Board of Education regarding a request for approval of an EMO contract as approval of, or waiver of objection to, the contract or any provision contained in the contract.

In deciding whether to approve a contract with an EMO, the Department conducts a careful review. All contracts must include the required elements listed below. Once submitted for approval, if a contract fails to include one of these elements, the Department will require the Board of Trustees to change the contract.

Though the Department reserves the right to require any changes based on its overall review of the contract, its review primarily focuses on the issues listed below. The Department may either require the Board of Trustees to change the contract or suggest changes, depending on the specific provision in question.

***Required Elements of Contracts for Educational Services*[[10]](#footnote-10)**

1. The contract must comply with all applicable laws and regulations. The contract’s choice of law provision, a standard provision in most contracts, must specify that Massachusetts law applies to any legal proceeding arising out of a dispute between the Board of Trustees and the EMO.
2. Boards should pay special attention to the public records law, G.L. c. 66, that requires schools to provide access to certain records to any member of the public upon request.
3. The term of the contract with the EMO may not exceed the term of the school’s charter.
4. The Board cannot abdicate its legal or fiduciary responsibilities as the entity holding the charter. For example, the contract must provide for sufficient Board oversight of the EMO and the school cannot assign to the EMO the Board’s responsibilities as defined in G.L. c. 71, § 89.
5. The contract must include provisions dealing with ownership of physical and intellectual property developed by the EMO or by the school’s employees. Keep in mind that the charter school has an obligation to disseminate information to other schools in the Commonwealth. G.L. c. 71, § 89(ll). All contract provisions must conform to this requirement.
6. The contract must include a description of how the parties will develop, approve, and oversee the school’s budget and curriculum and how the Board of Trustees will monitor and oversee the EMO’s financial and management services.
7. The contract should reflect that the Board of Trustees has the ultimate responsibility for establishing the school’s budget and determining its curriculum. G.L. c. 71, § 89(x).
8. The contract should include clear methods for determining the EMO’s compensation. Ideally, methods of compensation should create incentives for the EMO that parallel the Board’s goals for the school. The method of compensation should indicate all contract payments, lease payments, management fees, administrative fees, licensing fees, expenses, and other amounts payable to the EMO and under what conditions these amounts are payable.
9. The contract should indicate upon what sources of revenue the fee is based, especially if it is based upon a percentage of the school’s revenues.
10. The contract should include a provision specifying that the Board of Trustees hires the school’s independent auditor. G.L. c. 71 § 89(hh).
11. The contract should require that the EMO furnish the charter school with all information deemed necessary by the school for the proper completion of the budget, financial reports, and audits.
12. The contract should indicate that all financial reports provided or prepared by the EMO will follow generally accepted auditing principles and will also comply with the Department’s prescribed format for charter school reporting.
13. All loans to, or investments in, the charter school by the EMO must be evidenced by appropriate documentation. In the case of investments, such documentation must explain how the investment will be treated on the books of the charter school and clearly state the EMO’s expected return on equity.
14. Budgets prepared by the charter school should include all revenue anticipated and all actual expenses, as well as anticipated expenses and incidentals, associated with the operation and management of the charter school. The EMO must submit invoices and supporting documentation to justify expenses.
15. The contract must include a description of the specific services that the EMO will provide and the Board of Trustees’ responsibilities. All responsibilities required of the charter school by law, such as the development of an annual report, must be addressed.
16. The contract must include termination provisions. The contract should protect the Board of Trustees from unwarranted termination by the EMO and give the Board an opportunity to terminate the contract if the EMO fails to meet mutually agreed upon goals or standards.
17. The contract must include a description of the relationship between the EMO and the Board. For example, the contract should clarify how the parties will hire, evaluate, and dismiss the school leader.
18. The contract must include a direct reference to the school’s accountability plan as approved by the Department, a commitment by the EMO to achieve the goals stated in the plan, and a description of how the Board will evaluate the EMO’s progress toward achieving the plan’s goals.

#### Process for Submitting Educational Services Contracts for Department Review

Once a charter School has selected an EMO and obtained legal counsel, it can begin drafting the contract. To ensure that the Board of Education approves a contract for “substantially all educational services” before the school begins operating, schools should follow the following procedure for submitting the contract to the Department for approval.

**Step 1**: With the assistance of legal counsel, draft the contract.

**Step 2**: Send a draft of a proposed contract to the Charter School Office at least 120 days in advance of an intended start date for the contract. To allow for consistent referencing in the case of multiple drafts, the draft should be numbered and dated on the cover page and all subsequent pages.

**Step 3**: The Charter School Office will review the contract based on the criteria above and attempt to return it to the school within 30 days, along with an EMO Contract Action Letter. If the contract is satisfactory, the Action Letter will state that and may note concerns that the parties should consider. Otherwise, the Action Letter will list specific changes that must be made, raise general areas of concern that the parties must address, and suggest changes that the parties may want to consider.

**Step 4**: The Board of Trustees, consulting with its legal counsel, should meet with the EMO to review the Department’s response and to discuss areas of concern. The Board can use the Action Letter as a guide for this meeting.

**Step 5**: The parties then must redraft the contract, clearly indicating any changes that have been incorporated in the new draft, and resubmit the contract to the Charter School Office. The parties must resubmit the contract at least 60 days before the intended starting date of the contract. The contract is not valid until it is approved by the Board of Education. G.L. c. 71, § 89(j)(5).

**Step 6**: If a Board of Trustees wants to change any contract provisions or terminate the contract after it has been approved, it must submit a written request for a charter amendment to the Department for Board of Education approval that follows the procedures in 603 CMR 1.11 and Appendix 9, *Charter Amendments - Technical Advisory 06-1*. The Board of Education shall endeavor to approve or deny an amendment request within 60 days of receiving a complete amendment request. 603 CMR 1.11(4).

## F. Employment Issues

The laws and regulations governing the employment of faculty and staff at charter schools involve many complicated issues that are beyond the scope of this Guide. The following information simply raises major issues for Boards of Trustees to consider. This section first discusses employment-related issues that apply to both Commonwealth and Horace Mann charter schools, and then outlines some issues specific to each type of charter school.

### 1. Issues That Apply to both Commonwealth and Horace Mann Charter Schools

### *Criminal Background Checks*

As is the case with all schools, public or private, charter schools must conduct a criminal background check on all current and prospective employees, volunteers, school transportation providers, and others that may have direct and unmonitored contact with children, before they are hired and at least every three years during their term of service with that school. G.L. c. 71, § 38R; 603 CMR 1.05(2)(d). The charter school must obtain criminal offender record information (CORI) from the Criminal History Systems Board (CHSB) - the state agency authorized to provide CORI to certified agencies. In addition, charter schools may conduct CORI checks on subcontractors or laborers commissioned to do work on school grounds that may have direct and unmonitored contact with children.

### *Teacher Retirement System Requirements*

The Massachusetts Teacher Retirement System (MTRS) is a contributory retirement system designed to provide benefits to Massachusetts teachers and administrators. G.L. c. 32. Teachers employed by charter schools are eligible for membership in and required to join the system. Under MTRS, charter school administrators must:

* Enroll employees in the system, after determining their eligibility and contribution rate;
* Report retirement deductions monthly; and
* Verify employees’ lengths of service and salary benefits.

Schools’ responsibilities under the MTRS are quite detailed and are explained in an employer manual produced by the MTRS Board. All charter schools should receive two copies of the manual from the MTRS. If you do not have a manual or have specific questions about the system, contact the MTRS at 617-727-3661, ext. 2895 or visit its web site at <http://www.state.ma.us/mtrb> (click on “Downloadable Forms”).

### *Personnel Handbook*

The Department of Education encourages each Board of Trustees of a charter school, in conjunction with the school administration, to develop appropriate policies and procedures regarding the employment of teachers and staff. These policies should be communicated to all teachers and staff in a handbook.

### 2. Issues that Apply Only to Commonwealth Charter Schools

#### Collective Bargaining

All Commonwealth charter school employees have the right to organize and the right to form or join an employee organization for the purpose of collective bargaining. G.L. c. 150E, § 2. If they choose to exercise this right, their employee organization will negotiate with the school’s Board of Trustees, as the “public employer” under G.L. c. 150E. G.L. c. 71, § 89(aa). Additionally, employees in Commonwealth charter schools whose charters were issued after August 10, 2000 have the right to designate an employee organization through authorization cards. G.L. c. 71, § 89(aa).

#### Leaves of Absence

A teacher employed by a school district is entitled to request and receive a leave of absence of two years in order to teach in a Commonwealth charter school. After two years, teachers can choose to return to their former teaching position or continue to teach at the charter school. G.L. c. 89, § 71(bb) and (cc).

#### Qualifications for Commonwealth Charter School Teachers

Under G.L. c. 71, § 89(qq), and 603 CMR 1.07, teachers hired in Commonwealth charter schools after August 10, 2000 must either:

1. Take and successfully pass, within the first year of employment at a charter school, the Massachusetts Test for Educator Licensure (MTEL); or
2. Be already certified to teach in Massachusetts.

In addition, the federal No Child Left Behind Act (NCLB) places additional federal requirements on charter school teachers. NCLB requires that all public school teachers, including charter public school teachers, of all core academic subjects, be “Highly Qualified.” Core academic subjects are defined asEnglish, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. Appendix 13, Technical Advisory 07-01, *Teacher Qualifications in Massachusetts Charter Schools*, is available on the Department of Education website at: <http://www.doe.mass.edu/charter/tech_advisory/07_1.html> .

### 3. Issues That Apply only to Horace Mann Charter Schools

#### Collective Bargaining & Licensure

The school committee of the school district in which the Horace Mann charter school is located is the public employer for collective bargaining purposes under G.L. c. 150 and G.L. c. 71, § 89(aa). To the extent provided in the terms of their charters and as memorialized in a Memorandum of Understanding with the district, Horace Mann charter schools may be exempt from provisions of local collective bargaining agreements and their employees may be exempt from union and school committee work rules. Employees of the charter school, however, must continue:

* To be members of the local collective bargaining unit;
* To accrue seniority; and
* To receive, at minimum, the salary and benefits established by the local collective bargaining agreement. G.L. c. 71, § 89(u); 603 CMR 1.02.

Non-teaching staff are required to be members of the local collective bargaining unit if the positions they hold are covered in a collective bargaining agreement with the district. For example, custodial staff in a school district are usually covered by a collective bargaining agreement with the school committee that remains in effect and covers staff at the charter school. A school district, of course, may negotiate with any bargaining unit for waivers or exemptions for employees at a Horace Mann charter school. See Appendix 3, *Charter Schools Technical Advisory 03-1: Horace Mann Charter Schools,* also available at <http://www.doe.mass.edu/charter/tech_advisory/03_1.html>. Horace Mann charter schools are required to be licensed and to meet Highly Qualified standards.

#### Hiring, Evaluation, and Dismissal of the Principal or Staff

With respect to the hiring, evaluation, and dismissal of the school’s principal or staff, Horace Mann charter schools must comply with the charter school statute as well as the laws that apply to traditional public schools. G.L. c. 71, §§ 41, 42. Board members and leaders of Horace Mann charter schools should consult Appendix 3, *Charter Schools Technical Advisory 03-1: Horace Mann Charter Schools* for more details in this area.

## G. Compliance with Health and Safety Requirements

The Board of Trustees and school administration must provide the Department written documentation that the school is in compliance with all other applicable federal and state health and safety laws and regulations, including evidence of compliance with any required insurance coverage. 603 CMR 1.05(2)(I). The day-to-day management of the charter school as a safe and healthy environment, however, is the responsibility of the school administration. See the sections of this Guide covering **Health Policy** and **Safety Issues** for additional information.

# III. Responsibilities of the School Administration

In conducting the day-to-day management of their schools, charter school leaders and other administrators must comply with a wide range of applicable laws. Some of these laws apply specifically to charter schools; others apply to every public school in the state. This section separates these responsibilities into four categories:

* Issues primarily financial in nature, such as establishing sound financial practices;
* Issues related to the administration of programs for student support, such as health and nutrition;
* Student conduct and records; and
* Issues related to academic programs such as special education and services for students with limited English proficiency.

This section summarizes the major legal responsibilities of charter school leaders and administrators. Please be aware that this information provides an overview of key regulatory issues and is not intended to be comprehensive. To understand their legal responsibilities more fully, charter school leaders and administrators should read the text of the applicable law or regulation; refer to the resources provided; and, most importantly, consult the school’s legal counsel whenever they have questions.

## A. Financial Issues

Schools must establish adequate internal controls over all aspects of the school’s financial operation. Internal financial control policies provide the charter school with the foundation to properly safeguard its assets, implement management’s internal policies, comply with state and federal laws and regulations, and produce timely and accurate financial statements. Charter schools should refer to the Department’s *Charter School Recommended Fiscal Policies and Procedures Guide*, available at http//finance1.doe.mass.edu/charter/guide05.pdf or from the Charter School Office, when developing their own policies and procedures.

### 1. Charter School Funding

### *Commonwealth Charter School Funding*

Commonwealth charter schools receive tuition payments from the state based on their enrollment and a per-pupil amount that is roughly proportional to the average cost per student in the district where their students live. This section should help charter school leaders better understand the funding process.

#### Charter School Receipt of State Tuition Payments

In order to receive quarterly tuition payments from the state, charter schools are required to submit timely enrollment reports. A charter school must submit a pre-enrollment report to the Department in mid March. The report includes the number of students the charter school has enrolled by a date set on an annual basis from each sending district for the upcoming school year. 603CMR 1.08(8); 603 CMR 1.09(4). The payment that a charter school receives on September 30 is based upon the number of children the school reported in this pre-enrollment report.

To receive the final three quarterly payments, charter schools must submit two additional enrollment reports, the first in November based on enrollment as of October 1 and the second by March 1, based on enrollment as of February 15. 603 CMR 1.09(4). See the **Reporting Requirements** section of this Guide for additional information. The state uses these two enrollment reports to calculate the three final payments that schools receive on December 30, March 31, and June 30. These three payments are adjusted for any under- or over-payments that may have occurred in the first quarter.

#### How State Tuition Payments are Calculated

The method for calculating state tuition payments is set forth in G.L. c. 71, § 89(nn). Full details can be found at <http://finance1.doe.mass.edu/charter> . The State Treasurer, not the local school district, disburses the funds to the charter school. G.L. c. 71, § 89(nn).

#### Sales Tax Exemption

As state governmental entities, charter schools are exempt from state sales tax. G.L. c. 64H, § 6(d). Charter schools can apply for a Certificate of Exemption by filling out a TA-1 Form and submitting it to the Massachusetts Department of Revenue (DOR). By presenting the certificate to vendors, charter schools will receive the exemption. For more information and a copy of the TA-1 Form, visit the DOR home page at: [www.state.ma.us/dor](http://www.state.ma.us/dor).

#### Miscellaneous School Funding Provisions

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* Commonwealth charter schools may take out loans, but the loan may not extend beyond the term of the charter without the approval of the Board of Education. G.L. c. 71, § 89(j)(6). See Appendix 14, Technical Advisory 05-1, Approval of Loans Beyond Charter Terms, available online at: <http://www.doe.mass.edu/charter/tech_advisory/05_1.html> , for information on the process necessary to receive approval.
* Commonwealth charter schools receive no funds through the School Building Assistance Program. G.L. c. 70B. 71, § 89(mm).

#### Resources

Charter schools can find additional information regarding school finance on the Department’s web site at <http://finance1.doe.mass/charter/>. The site describes how Commonwealth charter school tuition payments are calculated, charter school tuition rates and reimbursements for current and previous fiscal years, and contains other information that charter schools may find useful. Schools can also contact the Coordinator of Research and Finance in the Charter School Office for more information.

### *Horace Mann Charter School Funding*

Horace Mann charter schools are funded through the local school district. The charter school must submit an annual budget request to the superintendent and school committee in accordance with the budget schedule of the local school district and no later than April 1. The school committee shall act on the charter school budget request in conjunction with its approval of the district’s overall budget. The charter school’s budget allocation must be consistent with the allocation of other public schools in the district. The charter school’s Board of Trustees may appeal a disproportionate budget allocation to the Commissioner of Education, who shall determine an equitable funding level for the school and shall require the school committee to provide such funding. In the case of budget reductions in the school district, a Horace Mann charter school’s budget may not be reduced disproportionately to other schools in the district. In addition, Horace Mann charter schools retain any budget surplus at the end of the fiscal year. 603 CMR 1.08(1) and Appendix 3, *Charter Schools Technical Advisory 03-1: Horace Mann Charter Schools*. Also available online at: <http://www.doe.mass.edu/charter/tech_advisory/03_1.html> .

### 2. Transportation

The Massachusetts charter school statute, G.L. Ch. 71 § 89(ff), requires the school district in which a charter school is located to provide transportation to all students enrolled in the charter school who reside within its boundaries on the same basis as it provides transportation to other students enrolled in district public schools. Technical Advisory 07-2, *Charter School Transportation* is available at: <http://www.doe.mass.edu/charter/tech_advisory/07_2.html> to provide additional information.

**EXAMPLE**

If students attending the district's schools ride school buses for a maximum of 1/2 hour and charter school students ride school buses for up to 1 1/2 hours, the district would be out of compliance with the law.

In providing such transportation, districts shall accommodate the particular school year and school day of the charter school. If the charter school and the district cannot reach an agreement on a transportation schedule, the charter school may choose to transport these pupils at its own expense and seek reimbursement from the district for the costs incurred, as described below in [*Local District Transportation Reimbursement*](#_Local_District_Transportation). In cases where the charter school does not choose to transport these pupils at its own expense, the school district must make arrangements to provide the transportation. It is important to remain in communication with the Charter School Office regarding transportation questions and issues. When the school district provides transportation, charter school leaders should identify when and how their local school committee sets its budget so communication between the district and the charter school can be conducted in a timely manner.

#### Charter School Transportation Obligations

All school districts, including charter schools, are required to provide transportation for eligible students as described below:

* All Massachusetts students in grades K-6 who reside more than two miles from their school must be provided with transportation to school by their school district, with a bus stop being not more than one mile from the student’s residence. If a charter school opts to provide local transportation at its own cost and be reimbursed, then the charter school becomes responsible for meeting this requirement.
* Every charter school must ensure that students with Individualized Education Plans or Section 504 Plans are provided transportation if it is a service requirement of their plan.

* A charter school must provide transportation to homeless students in accordance with the McKinney-Vento Homeless Education Assistance Act if the student chooses to remain at the charter school after becoming homeless.

#### Local District Transportation Reimbursement

When a charter school chooses to transport local district pupils at its own expense, it may seek reimbursement from the district for the costs incurred. To receive reimbursement, charter schools report to the Department the number of students transported in a given year as well as the costs associated with such services. The Department will use this data to determine an average transportation cost per student for the school. Charter schools should be aware that the school would receive transportation reimbursement for only costs incurred in transporting children that are eligible for services under the local school district’s policy. In addition, the reimbursement per eligible rider will be the lower of the district’s average per pupil transportation cost or the average per pupil transportation cost of the charter school in a given fiscal year. 603 CMR 10.09. Local transportation reimbursements are distributed through the quarterly charter school tuition payment schedule.

If a charter school is operating a transportation program for its students, the administrator should refer to the Department’s *Pupil Transportation Guide: A Guide for Massachusetts School Administrators*, available at <http://finance1.doe.mass.edu/transport/guide_1.html>.

#### Regional Transportation Reimbursement

In accordance with G.L. c. 71, § 89(ff), a regional charter school is reimbursed for transportation costs incurred in transporting students who reside outside of the school’s local school district and in the charter school’s region as specified in its charter. . To be eligible for reimbursement through the state regional transportation reimbursement program, a charter school must:

1. be designated a regional charter school by the Board of Education; and
2. have a charter that provides for the transportation of all students who reside in the charter school’s designated region but outside the district in which the charter school is located.

The reporting mechanism for reimbursement under this program is identical to that used for reimbursement for within-district transportation. No reimbursement is available for a charter school that provides transportation for students residing outside of its designated region.

**EXAMPLE**

A charter school transports children living outside the local school district but within the region specified in its charter. After the end of the school year, the school will complete a report provided by the Department to document the costs associated with their regional transportation program. The Department will reimburse those costs, subject to appropriation, in the next academic school year.

Full details about transportation obligations and reimbursement programs can be found in *Charter School Technical Advisory 07-2*: Transportation, available online at <http://www.doe.mass.edu/charter/tech_advisory/07_2.html>. Charter schools may also contact the Coordinator of Research and Finance in the Charter School Office for a detailed explanation of the Department’s transportation reimbursement process.

### 3. Federal and State Grants

Charter schools are eligible for entitlement and allocation grants in certain program areas where money is distributed based upon school enrollment and can apply for competitive grants. Entitlement and allocation grants are for such programs as Title I for low-income students and special education for children with special needs. To download requests for proposal, review a list of available grants and their application deadlines, find out more information about the grant application process, or access the booklet, *Grants for Schools: Getting Them and Using Them*, charter schools should visit the Department’s web site at [**http://finance1.doe.mass.edu/grants**](http://finance1.doe.mass.edu/grants). Schools can also contact the Coordinator of Research and Finance at the Charter School Office or the Grants Management unit in the Department at 781-338-6565 for more information. Charter schools should understand that their charter does not exempt them from grant compliance. They are bound by the terms and conditions stated in each grant, as are all other public schools receiving grants.

## B. General Administrative Issues

### 1. Schools’ Duty to Not Discriminate

Under federal and state law, public schools (including charter schools) and their employees cannot discriminate based upon race, color, national origin, religion, gender, disability, or sexual orientation. See Title I and Title II of the Americans with Disabilities Act of 1990, Title VI of Civil Rights Act of 1964, Title IX of the Education Amendments of 1972, Section 504 of the Rehabilitation Act of 1973, and G.L. c. 76, § 5. In addition, the Massachusetts charter school law specifies that a charter school may not discriminate against students in admissions based on race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement. G.L. c. 71, § 89(l); 603 CMR 1.06(1).

Charter schools must take a number of concrete steps to make sure they are not discriminating. Representative examples include:

* Making charter school buildings and programs accessible to people with disabilities;
* Establishing enrollment policies that are not designed, intended, or used to discriminate against applicants or potential applicants on the basis of a protected characteristic, 603 CMR 1.06(1) and (2);
* Developing grievance procedures for students, parents/guardians, and employees covering complaints of discrimination or harassment based on race or national origin, gender, sexual orientation or disability; and
* Developing an anti-discrimination policy and providing notice of the policy prominently on all recruiting materials, the student/parent handbook, the staff handbook, and other informational materials.

**NOTE**: A sample anti-discrimination notice reads as follows: “\_\_\_\_ Charter School is committed to ensuring that all of its programs and facilities are accessible to all members of the public. We do not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement.”

The Department’s Program Quality Assurance (PQA) Services unit evaluates charter schools’ compliance with state and federal anti-discrimination laws. This evaluation is based on the criteria listed in the PQA booklet, *Civil Rights Methods of Administration*, available at <http://www.doe.mass.edu/pqa/review/cpr/default.html>or from PQA at 781-338-3700.

### 2. Department Oversight in Specific Program Areas

Program Quality Assurance Services (PQA) is the unit within the Department that oversees compliance by all public schools, including charter schools, with federal and state education laws and regulations. Charter schools should refer to PQA’s web site at [www.doe.mass.edu/pqa](http://www.doe.mass.edu/pqa) for a more complete description of the office and its responsibilities. PQA oversees compliance through its Problem Resolution System – the Department’s process for receiving, reviewing, and resolving concerns regarding schools that are not providing required services or procedural protections for students.

Additionally, in a charter school’s second or third year of operation and every six years thereafter, a team from PQA conducts a Coordinated Program Review (CPR) of each charter school in the Commonwealth. PQA also conducts a CPR of every school district and any Horace Mann charter schools within a district once every six years. The schedule is available on-line at [[www.doe.mass.edu/pqa](http://www.doe.mass.edu/pqa)](http://www.doe.mass.edu/pqa/cpr). The team visits the school to review student records, observe classrooms and facilities, and conduct interviews to make sure the school is in compliance with the law in the following areas:

1. Special Education;
2. English Language Learners;
3. Anti-discrimination Requirements/Civil Rights;
4. Title I;
5. Nutrition Programs and Services; and
6. Safe and Drug-Free Schools and Communities Act.

After the first CPR visit, the PQA team issues a written report on the school’s compliance with the law, noting practices the team found to be commendable. In areas where the charter school is not in full compliance with the law, the school must propose actions to bring these areas into compliance. To assist schools, PQA has prepared informational booklets for each program area of the Coordinated Program Review, which lists the compliance criteria and procedures that PQA uses to evaluate compliance in that area. The booklets are available on-line at [www.doe.mass.edu/pqa](http://www.doe.mass.edu/pqa) or by contacting PQA at 781-338-3700.

In addition to monitoring compliance, PQA and other program units within the Department provide technical assistance, such as training sessions, to public schools around the state in order to help them understand and comply with the law. Each charter school has a designated PQA representative, and schools are encouraged to contact PQA at 781-338-3700 with questions and concerns.

### 3. Public Records

In general, charter schools must provide any record, including data files, letters, memoranda or other documentary materials made or received by an officer or employee of the school, to any member of the public who requests it. See G.L. C. 4, §7 (26); G.L. c. 66. The law lists specific exemptions that protect the confidentiality of certain records. For example, if the information pertains to an individually identifiable student, then the school may be restricted from providing the information. See the section of this Guide that covers Student Records for more information regarding records that relate to students.

To learn more about the public records law and its exemptions, and to access information about the process required for providing records, charter school administrators should contact the office at 617-727-2832 or visit the Public Records Division’s web site, at <http://www.sec.state.ma.us/pre/preidx.htm>.

### 4. Health Policy

Every charter school must develop policies addressing health services in accordance with state law. A comprehensive school health service program should focus on health risk factors, take into account the diversity of student needs, and use specially trained staff to deliver the program. Charter school health policies must comply with Massachusetts Department of Public Health (DPH) statutes and regulations for schools, including, but not limited to, the following requirements:

* Schools must appoint one or more school physicians and registered nurses and provide students with access to at least one physician and one registered nurse. G.L. c. 71, § 53. Charter schools may meet this requirement in various ways, including hiring a part-time physician or sharing a physician with other charter schools or with the public school system in their community.
* Students must have a physical examination in the six months preceding their entry into the school or during their first year of attendance and every three to four years thereafter. G.L. c. 71, § 57; 105 CMR 200. Physical examinations are also required for students who are frequently absent due to unexplained illness, or who have known physical conditions requiring repeated appraisal. In addition, annual physical examinations are required prior to participation in competitive athletics. The child's primary care provider who knows the child's health history best should perform physical examinations. The physician for the charter school may perform the health assessments on students who do not have access to a primary care provider. The results of the examination must be recorded on forms approved by DPH.
* In the absence of a waiver from the DPH, the hearing and vision of every public school child must be screened annually. G.L. c. 71, § 57; 105 CMR 200.
* All schools must provide postural screening to all students in grades five through nine. G.L. c. 71, § 57; 105 CMR 200. If a parent or guardian refuses to have a postural screening done by the school, the parent or guardian must submit written documentation of a postural screening from the child's primary care provider.
* In the absence of a waiver from DPH, school-aged children must be weighed and measured annually. G.L. c. 71, § 57; 105 CMR 200. Measurements should be both accurate and plotted on standardized National Center for Health Statistics sex-specific growth charts.
* Schools may arrange for the administration of prescription medications during school hours by using either licensed professionals, such as nurses, physicians, and dentists; or by using certain unlicensed personnel to administer medications if the school is registered with DPH to administer medications in this manner. G.L. c. 94C; 105 CMR 210.000.
* DPH requires certain immunizations for students before admission to school. 105 CMR 220.000; G.L. c. 111, § 5-7, and c. 76, § 15 and 15C.

**NOTE**: DPH recommends that charter schools establish collaborations with the nurse leader or school health director in the district in which the charter school is located. Local school districts must agree to establish these collaborations if they are recipients of an Enhanced School Health Services Grant from the Department.

For additional information, charter schools should consult the Comprehensive School Health Manual published by DPH. The manual is a comprehensive resource with basic information, guidelines, and recommendations. The manual can be purchased from the State House Bookstore by calling 617-727-2834 and a summary is available at <http://www.mass.gov/dph/fch/schoolhealth/cshm.htm>. Charter schools should visit the School Health Services web page at

<http://www.mass.gov/dph/fch/schoolhealth/index.htm>. In addition, charter school leaders may contact the School Health Advisor from DPH at 617-624-6060 who provides consultation for their community.

### 5. Nutrition Policy

State law requires that all public schools, including charter schools, make lunches available to students. G.L. c. 69, § 1C. In addition, all public schools that have operated a lunch program for two years must make breakfast available to students in certain circumstances. G.L. c. 69, § 1C. Schools must provide breakfast and lunch on terms set out by federal and state regulations. The federal government partially subsidizes the cost of all lunches, fully subsidizes lunches for students from families with incomes below the poverty line, and may also donate agricultural commodities to school lunch programs.

Charter schools can fulfill the requirement to serve lunch in three different ways. Irrespective of which option is used, the charter school remains responsible for complying with the law. The options available include:

1. Contracting with a food service management company.
2. Contracting with a neighboring charter school or the local school district.
3. Setting up a cafeteria. If schools choose this option, they can contact the Department of Education’s Nutrition Health and Safety unit for a booklet on cafeteria design and equipment.

Under 7 CFR 210.11, charter schools should pay special attention to the following federal nutrition requirements:

* Planning a menu with a specified nutritional content;
* Determining annually, at the start of the school year, student eligibility for federal free- and reduced-price meals;
* Documenting program costs and maintaining accurate records; and
* Not providing food that would compete with the government-subsidized program.

**EXAMPLES**

Schools cannot sell a la carte meals and use the proceeds from the sale to fund school field trips. Revenues received for food service are to be used only for the operation or improvement of the food service program.

Vending machines cannot be located in the same area as the school’s food service program.

The Department conducts periodic reviews to make sure that schools comply with these requirements. Schools can find federal regulations, as well as the forms used to determine student eligibility for free- and reduced-price lunch on the web site for the U.S. Department of Agriculture at <http://www.fns.usda.gov/cnd>. See 7 CFR §§ 210, 245. For more information on state nutrition requirements, charter schools can contact the Director of Federal Programs in the Charter School Office or contact the Department’s Nutrition, Health and Safety Services unit at [www.doe.mass.edu/cnp](http://www.doe.mass.edu/cnp) or by phone at 781-738-6498.

### 6. Reporting Child Abuse

If any staff person in a charter school has cause to believe that a student is suffering from physical abuse, emotional abuse, or neglect, he or she *must* report the condition to the Department of Social Services. G.L. c. 119, § 51A. If a staff person believes that a child is showing signs of abuse or neglect but is unsure, the staff person or school leader should visit the DSS web site, [**http://www.state.ma.us/dss/**](http://www.state.ma.us/dss/) which includes in the “Key Resources” section, a detailed description of the signs of physical and emotional abuse and neglect.

To report the information, the staff person should call 1-800-792-5200 or the DSS office serving the town in which the child resides. The information required in the report is specified by law and includes the child’s name, address, age and gender, the nature and extent of the abuse or neglect, and the circumstances by which the person required to report the abuse or neglect became aware of the injuries. G.L. c. 119, § 58A.

**7. Weapons Possession**

Charter school personnel *must* report in writing to the school leader any incident involving a student’s use or possession of a dangerous weapon. G.L. c. 71, § 37L. When the school leader receives such a report, he or she must file it with the local chief of police and DSS. For more information, schools should refer to the Department’s *Advisory Opinion On Student Discipline*, availableat

<http://www.doe.mass.edu/lawsregs/advisory/discipline/AOSD1.html>.

### 8. Legal Custody Issues

#### In General

From the time a student is accepted to a charter school, the administrative staff of the charter school should keep up-to-date information regarding the legal custody status of every student for which a court order regarding custody has been issued. The court order may impact rights of access to a student and access to student records, as well as other issues. Charter school leaders should also read the Commissioner’s September of 2006 memorandum, *Access to Student Records by Non-Custodial Parents – Final Regulation* concerning the rights of non-custodial parents, that is available online at <http://www.doe.mass.edu/news/news.asp?id=3063>.

### 9. Schools’ Involvement with Religion

Both charter schools and traditional public schools are subject to federal laws regarding the involvement of religion in public education. All public schools, for example, may not provide religious instruction and must allow students to express their personal religious views if the expression does not violate school rules. Charter schools should refer to the U.S. Department of Education website at [www.ed.gov/policy/gen/guid/religionandschools/prayer/guidance.html](http://www.ed.gov/policy/gen/guid/religionandschools/prayer/guidance.html) for more information on this issue.

### 10. Safety Issues

#### Evacuation Plan

Under section 363 of Chapter 159 of the Acts of 2000, each school must develop a “multi-hazard evacuation plan” to be used to evacuate students in case of a fire, hurricane, bomb threat, or other emergency. The law requires school leaders to meet with the fire chief and police chief of their municipalities to develop a plan that includes the following elements:

* Establishment of a crisis response team;
* Designation of a team leader and designation of substitutes for the leader;
* A communication plan;
* Crisis procedures for safe entrance to and exit from the school by students, parents, and employees; and
* Policies for enforcing school discipline and maintaining a safe and orderly environment during the crisis.

Schools must annually review the plan and update it if necessary. In addition, schools must inform students about the plan.

#### General Safety Plans and Procedures

All charter schools should have safety plans and procedures in place to protect their students and staff from harm and to protect the schools themselves against potential tort liability. Plans and procedures that schools should develop include the following:

* When and by whom students may be searched for prohibited items;
* When and by whom parents will be called about problems involving students;
* Protocol on when the school may call police and who makes the call;
* Code of conduct for staff (including policies on physical contact between staff and students, whether staff can transport students in their vehicles, rules about supervision of students, etc.);
* Protocol for staff on reporting intruders, hazardous conditions, or other potential safety threats;
* Safety rules for science labs and other places where special precautions may be needed;
* Conspicuous posting of emergency numbers for police, fire, ambulance, and poison hotlines;
* Availability of first aid kits; and
* Basic building security.

## C. Student Conduct and Records

### 1. Student Code of Conduct

New charter schools must develop policies with respect to student conduct and submit them to the Charter School Office for approval. 603 CMR 1.05(2)(c). The Commissioner of Education must also approve any subsequent changes to a school’s code of conduct through the charter amendment process. 603 CMR 1.11(2). Any disciplinary action taken by charter school personnel must conform to the school’s established discipline policy. All charter schools must publish their codes of conduct and provide them to any person upon request. G.L. c. 71, § 37H. Charter high schools must prepare a student handbook with information about the school’s discipline policy and distribute it to each student. State law identifies topics, such as procedures assuring due process, that all schools must address in their published code of conduct. G.L. c. 71, § 37H. In addition, high school discipline policies must contain certain provisions as specified in G.L. c. 71, § 37H. Charter schools should read this statute carefully before developing a discipline policy.

For restrictions on schools’ discipline policies and details about information that discipline policies must include, charter school administrators should review the Department’s *Advisory Opinion* *on Student Discipline* that is available at: <http://www.doe.mass.edu/lawsregs/advisory/discipline/AOSD1.html>.

### 2. Student Freedom of Expression

State law explicitly gives students the right of freedom of expression in public schools. G.L. c. 71, § 82. Freedom of expression includes the right of students:

* To express their views through speech and symbols;
* To write, publish, and disseminate their views; and
* To assemble peaceably on school property for the purpose of expressing their opinions.

All public schools, including charter schools, can limit the right of students to express themselves only if the exercise of their right would cause disruption or disorder within the school. The Massachusetts Supreme Judicial Court has interpreted the statute broadly; it is likely that schools would have to prove substantial disruption of the functioning of the school before a court would allow it to prohibit expression.[[11]](#footnote-11) Charter schools should consult with their legal counsel if a freedom of expression issue arises.

Courts will be more likely to uphold a school’s actions if they restrict the time, place, and manner in which the expression is made, rather than completely prohibiting the expression.

**EXAMPLE**

A student wants to distribute a flyer criticizing a decision made by the charter school’s Board of Trustees. The school would likely not be allowed to forbid the student from distributing it but it may be able to restrict when, where, and how the student distributes it (i.e. only in the cafeteria or not during class periods).

### 3. School Uniforms

As schools of choice, charter schools may require students to wear a school uniform. Schools requiring a school uniform should choose a uniform that is reasonable and affordable. The uniform policy and consequences for failing to adhere to the policy should be well documented.

### 4. Student Attendance

Charter schools have the authority to develop reasonable attendance policies under G.L. c. 76, § 1. The school leader, in consultation with the Board of Trustees, should establish an attendance policy and communicate it to every student and his or her parent/guardian in writing. Charter schools may choose to communicate the policy by including it in the student handbook. Schools should review student attendance laws carefully and comply with all applicable requirements before drafting the policy. See G.L. c. 76 and G.L. c. 72, § 8.

Student attendance provisions contain the following requirements with which charter schools must comply:

* Appointing a supervisor of attendance to investigate truancy cases. G.L. c. 76, § 19.

SUGGESTION: Charter schools could satisfy this requirement by: 1) making arrangements with their local police department; 2) sharing an attendance supervisor with their home school district; or 3) sharing an attendance supervisor with other charter schools in the area.

* Ensuring that students under the age of 16 comply with the state’s compulsory attendance law, G.L. c. 76, § 2, and following the procedures set out in G.L. c. 76, § 18, if a student does not comply with the law.
* Establishing a procedure that allows parents to notify the school in the case of a student absence and enables the school to contact the parent if a student was absent and a parent did not call the school. G.L. c. 76, § 1A.
* Keeping accurate records of attendance and making the records available for inspection by the Department. G.L. c. 72, § 8.
* Crafting attendance policies carefully, especially if schools plan to academically penalize students for absences. One such policy was invalidated for lack of specificity.[[12]](#footnote-12)

### 5. Student Records

Both state and federal laws govern the rights of parents and students in regard to student records. Federal law governing student records is found in the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, and its accompanying regulations, 34 C.F.R. Part 99. The Massachusetts Student Records Law, G.L. c. 71, §§ 34A-H, and its implementing regulations, 603 CMR 23.00, are consistent with FERPA.

#### Content of the Student Record

The student record consists of two components: the transcript and the temporary record. The transcript includes the minimum information necessary to reflect the student’s educational progress: name, address, course titles, grades, credits, and grade level completed. The temporary record contains all other information maintained by the school about the student, including such things as standardized test results, class rank, evaluations by teachers and counselors, disciplinary records, and student health records. 603 CMR 23.02.

Student records include anything with the student’s name or information that identifies the student, such as an identification number, kept anywhere in the school. For example, a student’s math test or a complaint concerning a student that is filed with an administrator both qualify as student records for the purposes of federal and state law, even if they are not kept in the student’s official file.

#### Specific Issues Covered by State and Federal Regulation:

Issues covered in both federal and state regulations that charter school leaders should keep in mind include:

* Limits on disclosure of student records to third parties;
* Increased rights of access to records for students age 14 and older and for students over the age of 18;
* Access to records of non-custodial parents and by guardians;
* Records of students who transfer to or from the school;
* Requirement of confidentiality with respect to student records; and
* Rights of parents or students to request amendments to the student’s record or a hearing challenging a school’s decision with respect to the student’s records.

#### Annual Notification

All schools must annually notify parents and eligible students of their rights with respect to student records. The school must make sure that parents who have a primary or home language other than English receive “effective” notification. 34 CFR § 99.7(b)(2). Federal and state regulations set out the information that must be included in this notification. 603 CMR 23.00; 34 CFR § 99.7.

#### Resources

Charter school leaders are advised to read the regulations governing student records carefully. The applicable state regulations and the publication *Student Records: Questions, Answers and Guidelines*, are available on the Department’s web site at <http://www.doe.mass.edu/lawsregs/603cmr23/>.

## D. Academic Program Issues

### 1. District Curriculum Accommodation Plan

Every school district and Commonwealth charter school must develop a District Curriculum Accommodation Plan (DCAP). These plans are intended to assist school leaders in planning and providing a general education program that is able to accommodate students' diverse learning needs and avoid unnecessary referrals to special education. The plan shall be designed to assist the regular classroom teacher in analyzing and accommodating diverse learning styles of all children in the regular classroom and in providing appropriate services and support within the regular education program including, but not limited to, direct and systematic instruction in reading and provision of services to address the needs of children whose behavior may interfere with learning. The plan shall include provisions encouraging teacher mentoring and collaboration and parental involvement. See G.L. 71, 38Q1/2 and 603 CMR 28.03(3) for more information.

### 2. Special Education Law

Charter schools cannot discriminate against students with special needs. Once admitted, charter schools must develop an individualized education program (IEP) for each student with special needs in accordance with state and federal law. See G.L. c. 71, § 89(t); G.L. c. 71B; 603 CMR 28.00; 20 U.S.C. 1400 et seq.; 34 CFR § 300.000 et seq.

EXCEPTION: A charter school, along with personnel from a student’s home district, may determine that a student requires day or residential placement outside of the charter school. In such cases, the charter school must invite the sending district to the Team meeting to determine placement. G.L. c. 71, § 89(t); 603 CMR 28.03(4)(i).

#### Fundamental Special Education Legal Responsibilities

The fundamental special education responsibilities of all public schools, including charter schools, include the following:

* Developing a local special education plan, with assurances;
* Having a special educator on staff, 603 CMR 28.03(2);
* The establishment and maintenance of an educationally sound program designed to address the needs of students with disabilities;
* Complying with all state and federal reporting requirements;
* Keeping a detailed record of the students with special needs and the services provided for them. Failure to do so may disqualify a school from receiving federal and state special education funds;
* Developing appropriate discipline policies for students with special needs;
* Providing for involvement of parents/guardians and notification of parents/guardians’ rights as required by law, 603 CMR 28.07.

A number of helpful documents, including the applicable federal and state laws and regulations, are posted at [**http://www.doe.mass.edu/sped**](http://www.doe.mass.edu/sped). If charter schools have questions or would like to request additional documents, they may contact PQA, which provides technical support to schools in the area of special education, or contact the Coordinator of Federal Programs at the Charter School Office.

### 3. Services to English Language Learners

As public schools, charter schools cannot discriminate against students with limited English proficiency or who are English language learners. Effective December 5, 2002, the Commonwealth’s bilingual education laws for all schools were significantly changed. The new law and its requirements regarding assessment, instruction, staff qualifications, and waivers are summarized on the Department’s web site at <http://www.doe.mass.edu/ell>.

### 4. MCAS and Other Testing Requirements

Charter schools must administer the MCAS to students in accordance with state law. The school must administer the test in one of three ways: as regularly scheduled, with accommodations, or by using an alternate assessment. G.L. c. 69, § 1D-1J; 603 CMR 30.00. For general information on the MCAS, visit the Department’s web site at [**http://www.doe.mass.edu/mcas**](http://www.doe.mass.edu/mcas). Bilingual and special education students must take the test as well.

### 5. School Schedule and Structured Learning Time Requirements

#### School Schedule

Each charter school shall establish a school year schedule based on the particular learning needs of students within the school. The schedule must include at least 185 days to allow for emergency school closings due to weather emergencies, and the school must actually operate at least 180 days. Schools may exceed the minimum number of school days and offer extended day and extended year programs that expand student learning opportunities. 603 CMR 27.03.

#### Structured Learning Time Requirements

Every elementary school student must be scheduled to receive a minimum of 900 hours per school year of structured learning time, and every secondary school student must be scheduled to receive a minimum of 990 hours per school year of structured learning time. For a specific description of what constitutes structured learning time and what does not, charter schools should refer to 603 CMR 27.00.

## Conclusion

Please note that the *The Charter School Administrative and Governance Guide* is available online at [**www.doe.mass.edu/charter**](http://www.doe.mass.edu/charter). As laws change and as accepted practices evolve, the Department will attempt to update the *Administrative and Governance Guide*. All charter schools, however, have the responsibility to ensure that the laws and regulations they are following are current.

In particular, charter schools should make sure that this information they obtain from the web is accurate and up-to-date and keep in mind that web addresses for some of the listed resources may change. If schools find that the information in the guide has changed, or if they have other issues they would like the guide to cover, they should contact the Charter School Office.

# IV. RESOURCES

## A. Resources Specifically Referenced in the Binder

This section contains a listing of the resources referenced in the binder. Along with an address, telephone number, and web site for most resources, the section includes information regarding the resource that charter schools may find helpful.

Disclaimer: Reference in this list to any specific commercial products, processes, or services, or the use of any trade, firm, or corporation name is for the information and convenience of the public and does not constitute endorsement or recommendation by the Massachusetts Department of Education.

**Massachusetts Government Resources**

**Massachusetts Department of Education**

350 Main Street

Malden, MA 02148

Telephone: (781) 338-3000

E-mail: www@doe.mass.edu

Website: <http://www.doe.mass.edu>

**Charter School Office within the Department of Education**

350 Main Street Malden, MA 02148

Telephone: (781) 338-3227 Fax: (781) 338-3220

E-mail: charterschools@doe.mass.edu

Web site: <http://www.mass.doe.edu/charter>

**State Ethics Commission**

One Ashburton Place

Room 619

Boston, MA 02108

Telephone: (617) 727-0060

Web site: <http://www.state.ma.us/ethics>

Office of the Attorney General

One Ashburton Place

Boston, MA 02108-1698

Telephone: (617) 727-2200 ext. 2674 (office of publications)

Web site: <http://www.ago.state.ma.us>

Publisher of *Attorney General's Guide for Members of Boards of Charitable Organizations*, available at <http://www.ago.state.ma.us/pubs/board.pdf>

Publisher of "Open Meeting Law Guidelines", available at <http://www.ago.state.ma.us/pubs/oml.pdf>

**Secretary of State**

State Publications and Regulations

One Ashburton Place, Room 1613

Boston, MA 02108

Telephone: (617) 727-2831

Web site: <http://www.state.ma.us/sec/spr/spridx.htm>

**Executive Office for Administration & Finance**

State House, Room 373

Boston, MA 02133

Telephone: 617-727-2040

Fax: (617-727-2779

Schools can send notice of board meetings to the above two addresses to comply with the Open Meeting Law.

**Auditor of the Commonwealth of Massachusetts**

One Ashburton Place

Room 1819

Boston, MA 02108

Telephone: (617) 727-6200

Web site: [www.state.ma.us/sao](http://www.state.ma.us/sao)

Address where schools can send annual audit

Publisher of “State Auditors Report on Establishing Standardized Accounting and Reporting Methods for Massachusetts Charter Schools”

**Office of the Inspector General**One Ashburton Place

Room 1311

Boston, MA 02108

Telephone: (617) 727-9140

Web site: <http://www.state.ma.us/ig>

Publisher of*A Management Review of Commonwealth Charter Schools*, available at: <http://www.state.ma.us/ig/publ/chscrpt.pdf>, *Municipal, County, District and Local Authority Procurement of Supplies, Services and Real Property*, available at: <http://www.state.ma.us/ig/publ/30bmanl.pdf>, and *Designing and Constructing Public Facilities*, available at <http://www.state.ma.us/ig/publ/dcmanual.pdf>.

For information on training programs related to procurement, visit:

<http://www.state.ma.us/ig/mcppo/igmpo.htm>.

**Operational Services Division**

One Ashburton Place

Room 1017

Boston, MA 02108-1552
Telephone: (617) 720-3300

Web site: [www.state.ma.us/osd](http://www.state.ma.us/osd).

Publisher of *Procurement Policies and Procedures Handbook*, available at <http://mass.gov/agency/documents/osd/policy/phand.pdf>.

**Massachusetts Teacher Retirement Board**

69 Canal Street, 3rd Floor

Boston, MA 02114-2006
Telephone: (617) 727-3661

Web site: [www.state.ma.us/mtrb](http://www.state.ma.us/mtrb).

**Department of Revenue**

Bureau of Desk Audit, Exempt Organizations Unit

200 Arlington Street, Room 4300

Chelsea, MA 02150

Telephone: (617) 887-6970

Web site: [www.dor.state.ma.us/](http://www.dor.state.ma.us/).

Schools can contact the Exempt Organizations Unit to find out more about qualifying for sales tax exemption.

For the downloadable TA-1 Form that they must complete to receive an exemption, schools can visit <http://www.dor.state.ma.us/forms/formlist.htm>.

**Public Records Division**

Secretary of State

One Ashburton Place, Room 1719

Boston, Massachusetts 02108

Telephone: (617) 727-2832

Web site: <http://www.state.ma.us/sec/pre/preidx.htm>.

Provides advice regarding and processes appeals under the Commonwealth’s public records law.

**Department of Public Health**

250 Washington Street, 4th Floor

Boston, MA 02108-4619

Telephone: (617) 624-6000

Web site: <http://www.state.ma.us/dph/>

**State House Bookstore**

State Publications and Regulations

State House, Room 116

Boston, MA 02108

Telephone: (617) 727-2834

Web site: <http://www.state.ma.us/sec/spr/sprcat/catidx.htm>

Schools can purchase the Comprehensive School Health Manual and certain other state publications at the Bookstore.

**Department of Social Services**

24 Farnsworth Street
Boston, Massachusetts 02210
Telephone: (617) 748-2400

Web site: [www.state.ma.us/dss](http://www.state.ma.us/dss)

**Department of Transitional Assistance**

Telephone: 1-800-249-2007

Web site: [www.state.ma.us/dta](http://www.state.ma.us/dta)

For location of office near your school, visit DTA's home page.

For more information on DTA’s Learnfare program and its relationship to schools, visit <http://www.doe.mass.edu/mailings/1997/cm091797.pdf>.

**Division of Occupational Safety**

Department of Labor and Workforce Development

399 Washington Street, 5th Floor

Boston, MA 02108

Telephone: (617) 727-7047

Fax: (617) 727-7568

Website: <http://www.state.ma.us/dos/>.

## B. Other Massachusetts Resources

**Massachusetts Center for Charter Public School Excellence**

John Tarvin, Executive Director

89 South Street, Suite 601

Boston, MA 02111

Telephone: 617-443-1057

Email: jtarvin@mccpse.org

Website: <http://www.mccpse.org/cont.html>

**Massachusetts Charter Public School Association**

Marc Kenen, Executive Director

11 Beacon Street, Suite 430

Boston, MA 02108

Telephone: (617) 973-6655

Email: Kenen@masscharterschools.org

Website: [http://www.m](http://www.masscharterschools.org)[asscharterschools.org](http://www.masscharterschools.org)

## C. National Information Resources

**United States Department of Education**

Public Charter Schools Program

U.S. Department of Education

400 Maryland Avenue, SW., Room 3C148

Washington, D.C. 20202-6140

Telephone: (800) USA-LEARN Fax: (202) 401-0689

Website: [http://www.usc](http://www.uscharterschools.org)[harterschools.org](http://www.uscharterschools.org)

**National Association of Charter School Authorizers**

1125 Duke Street

Alexandria, VA 22314

Telephone: (703) 683-9701 Fax: (703) 683-9703

Email: info@charterauthorizers.org

Website: [http://www.chart](http://www.charterauthorizers.org)[erauthorizers.org](http://www.charterauthorizers.org)

**Center for Education Reform**

1001 Connecticut Ave. NW, Suite 204

Washington, D.C. 20036

Telephone: (800) 521-2118 Fax: (202) 822-5077

E-mail: cer@edreform.com

Website: [http://ww](http://www.edreform.com)[w.e](http://www.edreform.com)[dreform.com](http://www.edreform.com)

**Education Commission of the States**

700 Broadway, #1200

Denver, CO 80203-3460

Telephone: (303) 299-3600 Fax: (303) 296-8332

E-mail: ecs@ecs.org

Website: [http://w](http://www.ecs.org)[ww.ecs.org](http://www.ecs.org)

**Hudson Institute**

Herman Kahn Center

5395 Emerson Way

Indianapolis, IN 46226

Telephone: (317) 545-1000 Fax: (317) 545-9639

Email: info@hudson.org

Website: <http://www.hudson.org>

**The Thomas B. Fordham Foundation**
1627 K Street, NW, Suite 600
Washington, DC 20006
Telephone: (202) 223-5452 Fax: (202) 223-9226
Email: backtalk@edexcellence.net

Website: <http://www.edexcellence.net/foundation/global/index.cfm>

**RAND Education**

1700 Main Street P.O. Box 2138

Santa Monica, CA 90407-2138

Telephone: (310) 393-0411 x7515 Fax: (310) 451-7039

E-mail: education@rand.org

Website: <http://www.rand.org/education/>

**New American Schools**

Education Performance Network – New School Services

Education Entrepreneurs Fund

675 North Washington Street, Suite 220

Alexandria, VA 22314

Telephone: (703) 647-1600 Fax: (703) 647-1700

E-mail: info@nasdc.org

Website: <http://www.newamericanschools.org>

**National Charter School Clearinghouse**

3900 East Camelback Road, Suite 312
Phoenix, AZ 85018

Telephone: (602) 954-1414 Fax: (602) 954-1415

Website: <http://www.ncsc.info>

**Consortium for Policy Research in Education (CPRE)**

Monroe C. Gutman Library, 4th Floor
6 Appian Way
Cambridge, MA 02138

Ph: (617) 496-4815 Fax: (617) 496-3095

Website: <http://www.cpre.org>

**Board Source**

1828 L Street, NW

Suite 900

Washington, DC 20036-5104

Telephone: 800-883-6262

Web site: <http://www.boardsource.org/>

Publisher of *Ten Basic Responsibilities of Non-Profit Boards,* *Guide to Bylaws: Creating a Framework for Effective Governance* andother publications designed to improve the board governance of non-profit organizations

**National Association of Independent Schools**

1620 L Street, NW

Washington, DC 20036-5605

Telephone: (202) 973-9700

Web site: [www.nais-schools.org](http://www.nais-schools.org)

Publisher of *Trustees Handbook*

**National Alliance for Charter Public Schools [formerly Charter Friends Network]**

1295 Bandana Boulevard, Suite 165

St. Paul, MN 55108

Telephone: 651-644-6115 or 651-644-0433

Web site: [www.publiccharters.org](http://www.publiccharters.org)

**U.S. Department of Agriculture**

Web site: [www.fns.usda.gov/cnd](http://www.fns.usda.gov/cnd)

Eligibility forms for free and reduced meals in a number of languages are on-line at: <http://www.fns.usda.gov/cnd/Translations/Default.htm>

# Appendices

1. Charter School Statutes and Regulations

Online at [www.doe.mass.edu/lawsregs/](http://www.doe.mass.edu/lawsregs/) and look for c. 71 § 89 and 603 CMR 1.00

2. About Charter Schools

Online at <http://www.doe.mass.edu/charter/about.html>

3. Technical Advisory 03-1 - Horace Mann Charter Schools

Online at [www.doe.mass.edu/charter//tech\_advisory/](http://www.doe.mass.edu/charter//tech_advisory/)

4. Technical Advisory 03-2 – *The Impact of NCLB on Charter Schools*

Online at [www.doe.mass.edu/charter//tech\_advisory/](http://www.doe.mass.edu/charter//tech_advisory/)

5. Template Letter to Request Approval of New Board Members

 Online at [www.doe.mass.edu/charter/governance/board.doc](http://www.doe.mass.edu/charter/governance/board.doc)

6. Template Letter to Notify CSO of Board Member Resignation

7. Disclosure of Financial Interest Form

Online at [www.doe.mass.edu/charter/governance/](http://www.doe.mass.edu/charter/governance/)

8. Guidance on Charter School Bylaws

9. Technical Advisory 03-3 – *Charter Amendments*

 Online at[**www.doe.mass.edu/charter//tech\_advisory/**](http://www.doe.mass.edu/charter//tech_advisory/)

10. Template Letter of Request for Charter Amendment Approval

11. Memorandum on Enrollment Policies

Online at <http://www.doe.mass.edu/charter/news/2004/0128.html>

12. Technical Advisory 98-1 – *Procurement Guidelines*

Online at [www.doe.mass.edu/charter//tech\_advisory/](http://www.doe.mass.edu/charter//tech_advisory/)

13. Technical Advisory 07-01, *Teacher Qualifications in Massachusetts Charter Schools*,

 Online at <http://www.doe.mass.edu/charter/tech_advisory/07_1.html>

14. Technical Advisory 05-1, *Approval of Loans Beyond Charter Terms*, Online at

 <http://www.doe.mass.edu/charter/tech_advisory/05_1.html>

15. Technical Advisory 07-2, *Transportation*,

 Online at <http://www.doe.mass.edu/charter/tech_advisory/07_2.html>

## Appendix 1: Charter School Statute and Regulations

**General Laws of Massachusetts**

**Chapter 71, § 89: Charter Schools**

   Section 89. (a) A commonwealth charter school shall be a public school, operated under a charter granted by the board of education, which operates independently of any school committee and is managed by a board of trustees. The board of trustees of a commonwealth charter school, upon receiving a charter from the board of education, shall be deemed to be public agents authorized by the commonwealth to supervise and control the charter school.

  (b) A Horace Mann charter school shall be a public school or part of a public school operated under a charter approved by the local school committee in which the school is located and by the local collective bargaining agent; provided, however, that all charters shall be granted by the board of education. Horace Mann charter schools shall be operated and managed by a board of trustees independent of the school committees which approve said schools. The board of trustees may include a member of the school committee.

   (c) For the purposes of this chapter, the words "charter school'' or "charter schools'' shall refer to both commonwealth charter schools and Horace Mann charter schools unless specifically stated otherwise.

   (d) The purposes for establishing 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.

   (e) Persons or entities eligible to submit an application to establish a charter school shall include, but not be limited to a non-profit business or corporate entity, two or more certified teachers or ten or more parents; provided, however, that no for profit business or corporate entity shall be eligible to apply for a charter. Said application may be filed in conjunction with a college, university, museum or other similar non-profit entity. Private and parochial schools shall not be eligible for charter school status.

   (f) The board of education shall establish the information needed in an application for the approval of a charter school; provided, however, that said application shall include but not be limited to a description of: (1) the method for admission to a charter school; (2) the mission, purpose, innovation and specialized focus of the proposed charter school; (3) procedures for teacher evaluation and professional development for teachers and administrators; (4) the school governance and bylaws; (5) the financial plan for the operation of the school; (6) the educational program, instructional methodology and services to be offered to students; (7) the number and qualifications of teachers and administrators to be employed; (8) the organization of the school in terms of ages of students or grades to be taught along with an estimate of the total enrollment of the school; (9) the provision of school facilities and pupil transportation; and (10) a statement of equal educational opportunity which shall state that charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language, and academic achievement. In the case of a Horace Mann charter school, the application shall include a statement of the non-instructional services which will continue to be provided by the local school district. There shall be no application fee for admission to a charter school.

   (g) An application submitted for the establishment of a commonwealth charter school shall: (1) be submitted to the board of education for approval pursuant to this section; and (2) be filed with the local school committee for the school district in which the charter school is to be located. Before final approval to establish a commonwealth charter school the board of education shall hold a public hearing on said applications, and solicit and review comments on the application from the local school committee for the school district in which said charter school is to be located.

   (h) Applications to establish a charter school shall be submitted to the board each year by November 15. The board shall review the applications and grant new charters in February of the following year.

   (i) The board of education shall make the final determination on granting charter school status and may condition charters on the applicant's taking certain actions or maintaining certain conditions. Not more than 120 charter schools shall be allowed to operate in the commonwealth at any time. In any fiscal year, no public school district's total charter school tuition payment to commonwealth charter schools shall exceed 9 per cent of said district's net school spending; provided, however, the commonwealth shall incur charter school tuition payments for siblings attending commonwealth charter schools to the extent that their attendance would otherwise cause said school district's charter school tuition payments to exceed 9 per cent of said school district's net school spending. Of the total number of charter schools in the state, 48 shall be reserved for Horace Mann charter schools and 72 shall be reserved for commonwealth charter schools. Under no circumstances shall the total number of students attending commonwealth public schools exceed 4 per cent of the total number of students attending public schools in the commonwealth. Not less than three of the new charters approved by the board in any year shall be granted for charter schools located in districts where overall student performance on the statewide assessment system approved by the board of education pursuant to section 1I of chapter 69 is at or below the statewide average in the year preceding said charter application. In any year, the board shall approve only one regional charter school application of any commonwealth charter school located in a school district where overall student performance on the statewide assessment system is in the top 10 per cent in the year preceding charter application. The board may give priority to schools that have demonstrated broad community support, an innovative educational plan and a demonstrated commitment to assisting the district in which it is located in bringing about educational change. The board shall not approve a new commonwealth charter school in any community with a population of less than 30,000 unless it is a regional charter school.

   (j) A charter school established under a charter granted by the board shall be a body politic and corporate with all powers necessary or desirable for carrying out its charter program, including, but not limited to, the following:--

   (1) to adopt a name and corporate seal; provided, however, that any name selected must include the words "charter school'';

   (2) to sue and be sued, but only to same extent and upon the same conditions that a town can be sued;

   (3) to acquire real property, from public or private sources, by lease, lease with an option to purchase, or by gift, for use as a school facility; however, in the case of a Horace Mann charter school, the approval of the local school committee shall be obtained before acquisition of any such real property owned or controlled by such body;

   (4) to receive and disburse funds for school purposes;

  (5) to make contracts and leases for the procurement of services, equipment and supplies; provided, however, that if the charter school intends to procure substantially all educational services under contract with another person, the terms of such a contract must be approved by the board either as part of the original charter or by way of an amendment thereto; provided, further that the board shall not approve any such contract terms, the purpose or effect of which is to avoid the prohibition of this section against charter school status for private and parochial schools;

   (6) to incur temporary debt in anticipation of receipt of funds; provided that a Horace Mann school shall obtain the approval of the local school committee and appropriate local appropriating authorities and officials relative to any proposed lien or encumbrance upon public school property or relative to any financial obligation for which the local school district shall become legally obligated; and provided further that notwithstanding any law to the contrary, the terms of repayment of any charter school's debt shall not exceed the duration of the school's charter without the approval of the board;

   (7) to solicit and accept any grants or gifts for school purposes;

   (8) to have such other powers available to a business corporation formed under chapter 156B that are not inconsistent with this chapter.

   (k) Charter schools shall not charge any public school for the use or replication of any part of their curriculum subject to the prescriptions of any contract between the charter schools and any third party providers.

   (l) Charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language or a foreign language, and academic achievement. Charter schools may limit enrollment to specific grade levels and may structure curriculum around particular areas of focus such as mathematics, science, or the arts.

   (m) Preference for enrollment in a commonwealth charter school shall be given to students who reside in the city or town in which the charter school is located. Priority for enrollment in a Horace Mann charter school shall be given first to students actually enrolled in said school on the date that the application is filed with the board of education and to their siblings; second to other students actually enrolled in the public schools of the district where the Horace Mann charter school is to be located and third, to other resident students.

   (n) If the total number of students who are eligible to attend and apply to a charter school and who reside in the city or town in which the charter school is located, or are siblings of students already attending said charter school is greater than the number of spaces available, then an admissions lottery, including all eligible students applying, shall be held to fill all of the spaces in that school from among said students. If there are more spaces available than eligible applicants from the city or town in which said charter school is located and who are siblings of current students, and more eligible applicants than spaces left available, then a lottery shall be held to determine which of said applicants shall be admitted; provided, however, that any lottery conducted for Horace Mann charter schools shall reflect the enrollment priorities of this section. Notwithstanding the provisions of this subsection, upon application by the board of trustees of a charter school or by the persons or entities seeking to establish a charter school, the board of education may amend or grant a charter designating such school a regional charter school; provided, however, that such regional charter school shall be exempt from the local preference provision of this paragraph; provided further, that such regional charter school shall continue to grant a preference of siblings of currently enrolled students; and provided further, that if the number of applicants remaining is greater than the number of spaces available, such regional charter school shall conduct a single lottery to determine which applicants shall be admitted. There shall be no tuition charge for students attending charter schools.

   (o) Each charter school shall annually, no later than April 1, notify each public school district in writing of the number of students who will be attending the charter school from that district the following September as well as the number of new students who will be transferring from that district to the charter school in the following September. In 1997 charter schools shall provide the required enrollment information no later than August. Tuition for charter school students shall only be paid for the number of students for whom notification has been reported by April 1. Tuition for charter school students shall be paid only for students actually enrolled in said school.

   (p) A student may withdraw from a charter school at any time and enroll in another public school where said student resides. A student may be expelled from a charter school based on criteria determined by the board of trustees, and approved by the board of education, with the advice of the principal and teachers; provided, however, that charter school policies shall be consistent with sections 37H and 37H 1/2.

   (q) A charter school may be located in part of an existing public school building, in space provided on a private work site, in a public building, or any other suitable location. A charter school may own, lease or rent its space. Nothing contained in this section shall preclude computer, cable, or other technology-based learning in conjunction with classroom based learning.

   (r) The school committee of each district where a Horace Mann charter school is located shall develop a plan to disseminate innovative practices of said charter school to other public schools within the district subject to the provisions of any contract between the Horace Mann charter school and any third party provider.

   (s) The commissioner shall facilitate the dissemination of successful innovation programs of charter schools and provide technical assistance for other school districts to replicate such programs.

   (t) A charter school shall operate in accordance with its charter and the provisions of law regulating other public schools; provided, however, that the provisions of sections 41 and 42 shall not apply to employees of commonwealth charter schools. Charter schools shall comply with the provisions of chapters 71A and 71B; provided, however, that the fiscal responsibility of any special needs student currently enrolled in or determined to require a private day or residential school shall remain with the school district where the student resides. If a charter school expects that a special needs student currently enrolled in the charter school may be in need of the services of a private day or residential school, it shall convene an individual education plan team meeting for said student. Notice of the team meeting shall be provided to the special education department of the school district in which the child resides at least five days in advance. Personnel from the school district in which the child resides shall be allowed to participate in the team meeting concerning future placement of the child.

   (u) Horace Mann charter schools shall be exempt from local collective bargaining agreements to the extent provided by the terms of its charter; provided, however, that employees of the Horace Mann charter school shall continue to be members of the local collective bargaining unit and shall accrue seniority and shall receive, at a minimum, the salary and benefits established in the contract of the local collective bargaining unit where said Horace Mann charter school is located. Employees of Horace Mann charter schools shall be exempt from all union and school committee work rules to the extent provided by said school's charter. Employees in Horace Mann charter schools shall be required to work the full work day and work year to the extent provided by the terms of the individual charter school proposal.

   (v) Notwithstanding the provisions of this section or any other general or special law to the contrary, for the purposes of chapter 268A: (i) a charter school shall be deemed to be a state agency; and (ii) the appointing official of a member of the board of trustees of a charter school shall be deemed to be the commissioner of education. Members of boards of trustees of charter schools operating under the provisions of this section shall file a disclosure annually with the state ethics commission, the department of education, and the city or town clerk wherein such charter school is located. The form of the disclosure shall be prescribed by the ethics commission and shall be signed under penalty of perjury. Such form shall be limited to a statement in which members of the board of trustees shall disclose any financial interest that they or a member of their immediate families, as defined in section 1 of said chapter 268A, have in any charter school located in the commonwealth or in any other state or with any person doing business with any charter school.

   Each member of a board of trustees of a charter school shall file such disclosure for the preceding calendar year with the commission within 30 days after becoming a member of such board of trustees, on or before September 1 of each year thereafter that such person is a member of such board and on or before September 1 of the year after such person ceases to be a member of such board; provided, however, that no member of a board of trustees shall be required to file such disclosure for the year in which he ceases to be a member of such board if he served less than 30 days in such year.

   (w) Students in charter schools shall be required to meet the same performance standards, testing and portfolio requirements set by the board of education for students in other public schools.

   (x) The board of trustees, in consultation with the teachers, shall determine the school's curriculum and develop the school's annual budget. The board of trustees of each Horace Mann charter school shall annually submit to the superintendent and school committee of the district in which such school is located a budget request for the following fiscal year. The school committee shall act on such budget request in conjunction with its actions on the district's overall budget. Each Horace Mann charter school shall receive in response to the budget request not less than it would have under the district's budgetary allocation rules. The board of trustees may appeal any disproportionate budgetary allocation to the commissioner, who shall determine an equitable funding level for such school and shall require the school committee to provide such funding.

   (y) Following the appropriation of the district's operating budget for the fiscal year, the amount approved by the local appropriating authority for the operation of each Horace Mann charter school shall be available for expenditure by the board of trustees of such school for any lawful purpose without further approval by the superintendent or the school committee. In no case shall a Horace Mann charter school expend or incur obligations in excess of its budget request; provided, however, that a Horace Mann charter school shall be authorized to spend federal and state grants and other funds received independent of the school district not accounted for in said charter school's budget request without prior approval from the superintendent or the school committee.

   (z) Upon approval of a Horace Mann charter school by the board of education, the superintendent of the school district where the Horace Mann charter school is to be located shall reassign, to the extent provided by the terms of its charter, any faculty member who wishes to be reassigned to another school located within said district.

   (aa) Employees of charter schools shall be considered public employees for purposes of tort liability under chapter 258 and for collective bargaining purposes under chapter 150E. The board of trustees shall be considered the public employer for purposes of tort liability under said chapter 258 and for collective bargaining purposes under said chapter 150E; provided, however, that in the case of a Horace Mann charter school, the school committee of the school district in which the Horace Mann charter school is located shall remain the employer for collective bargaining purposes under said chapter 150E. Teachers employed by a charter school shall be subject to the state teacher retirement system under chapter 32 and service in a charter school shall be "creditable service'' within the meaning thereof.

   A charter school shall recognize an employee organization designated by the authorization cards of 60 per cent of its employees in the appropriate bargaining unit as the exclusive representative of all the employees in such unit for the purpose of collective bargaining.

   (bb) Each local school district shall be required to grant a leave of absence to any teacher in the public schools system requesting such leave in order to teach in a commonwealth charter school. A teacher may request a leave of absence for up to two years.

   (cc) At the end of the second year the teacher may either return to his former teaching position or, if he chooses to continue teaching at said commonwealth charter school, resign from his school district position.

   (dd) Notwithstanding section 59C, the internal form of governance of a charter school shall be determined by the school's charter.

   (ee) A charter school shall comply with all applicable state and federal health and safety laws and regulations.

   (ff) The children who reside in the school district in which the charter school is located shall be provided transportation to the charter school by the resident district's school committee on the same terms and conditions as transportation is provided to children attending local district schools. In providing such transportation, said school committee shall accommodate the particular school day and school year of the charter school; provided, however, that in the event that a school committee limits transportation for district school students, the school district shall not be required to provide transportation to any commonwealth charter school beyond said limitations. During fiscal year 1998, any charter school operating pursuant to a charter granted on or before January 1, 1997, whose students are not transported by the district of residence, but who would be eligible for transportation to and from such charter school based on the same terms and conditions as students attending local district schools shall receive the entire average transportation cost per student amount, as calculated by the department of education, for each such student, regardless of any transportation costs at such charter school. Schools operating pursuant to a charter granted after January 1, 1997, and all charter schools during fiscal year 1999 and thereafter, shall not receive funds for transportation above the amount actually required by such charter school for the provision of transportation services to eligible students. If the sending district provides an alternative method of transportation for students enrolled in the sending district's public schools, it shall not be assessed for transportation costs which exceed the per pupil cost of said alternative. Costs for transportation shall be included only if transportation is provided for students in the same program and grade level as those in the charter school. Students who do not reside in the district in which the charter school is located shall be eligible for transportation in accordance with section 12B of chapter 76. A regional charter school as designated by the board of education, and whose charter provides for transportation of all students from charter municipalities shall also be reimbursed by the commonwealth under section 16C of chapter 71 for transportation provided to pupils residing outside the municipality where the charter school is located, but no reimbursement for transportation between the charter school and home shall be made on account of any pupil who resides less than one and one-half miles from the charter school, measured by a commonly traveled route.

   (gg) Each charter school shall submit to the board of education, to the local school committee, to each parent or guardian of its enrolled students, and to each parent or guardian contemplating enrollment in that charter school an annual report. The annual report shall be issued no later than August 1 of each year for the preceding school year. The annual report shall be in such form as may be prescribed by the board and shall include at least the following components: (1) discussion of progress made toward the achievement of the goals set forth in the charter; and (2) a financial statement setting forth by appropriate categories, the revenue and expenditures for the year just ended.

   (hh) Each charter school shall keep an accurate account of all its activities and all its receipts and expenditures and shall annually cause an independent audit to be made of its accounts. Such audit shall be filed annually on or before January 1 with the department of education and the state auditor and shall be in a form prescribed by said auditor. Said auditor may investigate the budget and finances of charter schools and their financial dealings, transactions and relationships, and shall have the power to examine the records of charter schools and to prescribe methods of accounting and the rendering of periodic reports.

   (ii) If a charter school student previously attended a private or parochial school or was home schooled, the commonwealth shall assume the first year cost for that student and shall not reduce the sending district's chapter 70 aid for that student's tuition in that fiscal year.

   (jj) Individuals or groups may complain to a charter school's board of trustees concerning any claimed violations of the provisions of this section by the school. If, after presenting their complaint to the trustees, the individuals or groups believe their complaint has not been adequately addressed, they may submit their complaint to the board of education which shall investigate such complaint and make a formal response.

   (kk) A charter granted by the board of education shall be for five years. The board may revoke a school's charter if the school has not fulfilled any conditions imposed by the board in connection with the grant of the charter or the school has violated any provision of its charter. The board may place the charter school on a probationary status to allow the implementation of a remedial plan after which, if said plan is unsuccessful, the charter may be summarily revoked.

   (ll) The board of education shall develop procedures and guidelines for revocation and renewal of a school's charter; provided, however, that a charter for a Horace Mann charter school shall not be renewed by the board without a vote of support from the school committee and local collective bargaining agent in the district where said charter school is located; provided that a commonwealth charter shall not be renewed unless the board of trustees of the charter school has documented in a manner approved by the board of education that said commonwealth charter school has provided models for replication and best practices to the commissioner and to other public schools in the district where the charter school is located.

   (mm) Notwithstanding any other provision of this section, no school building assistance funds, so-called, shall be awarded to a commonwealth charter school for the purpose of constructing, reconstructing or improving said school.

   (nn) Commonwealth charter schools shall be funded as follows: The commonwealth shall pay a tuition amount to the charter school, which shall be the sum of the tuition amounts calculated separately for each district sending students to the charter school. Tuition amounts for each sending district shall be calculated by the department of education using the formula set forth herein, to reflect, as much as practicable, the actual per pupil spending amount that would be expended in the district if the students attended the district schools. The tuition amount shall be calculated separately for each district sending students to a charter school, and for each charter school to which a district sends students. Each district's per pupil tuition amount for each charter school to which it sends students shall include a per pupil foundation budget component, adjusted to reflect the actual net school spending in the sending district.

   In calculating the per pupil foundation budget component, the department shall calculate a foundation budget for the students from each sending district attending the charter school in the previous fiscal year, pursuant to the provisions of section 2 of chapter 70; provided, that the department shall not include in said calculation the assumed tuitioned-out special education enrollment, nor any amounts generated by said assumed enrollment, as defined by said section 2. The per pupil foundation budget component shall be the district's foundation budget for the charter school, as so calculated, divided by the number of students attending the charter school from the sending district in the previous fiscal year. The per pupil foundation budget component shall be calculated separately for each charter school to which a district sends students. The foundation budget for a charter school shall be the sum of the foundation budgets for the charter school for each district sending students to the charter school.

   In adjusting the per pupil foundation budget component, the department shall calculate for each sending district an above foundation spending percentage, which shall be the percentage by which the district's actual net school spending exceeds the foundation budget for the district, as calculated pursuant to the provisions of chapter 70. The department shall further calculate the percentage of actual net school spending reported by the sending district associated with tuition costs for tuitioned-out special education students, including education that occurs in educational collaboratives, and with spending on health care costs for retired employees, for any district for which such costs are included in net school spending, and shall reduce the district's above foundation spending percentage proportionately. The per pupil foundation budget component for each charter school to which the sending district sends students shall be increased by said adjusted above foundation spending percentage.

   The total tuition amount owed by a sending district to a charter school shall be the per pupil tuition amount as defined above, multiplied by the total number of students attending the charter school from that district in the current fiscal year. The sending district's total charter school tuition amount for purposes of the following paragraphs shall be the sum of the district's tuition amounts for each charter school to which the district sends students, calculated using the provisions of this section. The receiving charter school's total charter school tuition amount shall be the sum of the tuition amounts calculated for the charter school for each district sending students to the charter school.

   The state treasurer is hereby authorized and directed to deduct a district's total charter school tuition amount, as calculated herein, from the total state school aid, as defined in section 2 of said chapter 70, of the district in which the student resides prior to the distribution of said aid. In the case of a child residing in a municipality which belongs to a regional school district, the charter school tuition amount shall be deducted from said chapter 70 education aid of the school district appropriate to the grade level of the child. If, in a single district, the total of all such deductions exceeds the total of said education aid, this excess amount shall be deducted from other aid appropriated to the city or town. If, in a single district, the total of all such deductions exceeds the total state aid appropriated, the commonwealth shall appropriate this excess amount; provided, however, that if said district has exempted itself from the provisions of chapter 70 by accepting section 14 of said chapter 70, the commonwealth shall assess said district for said excess amount.

   The state treasurer is hereby further authorized and directed to disburse to the charter school an amount equal to the charter school's total charter school tuition amount as defined above.

   The department shall, subject to appropriation, provide funding to charter schools for a portion of the per pupil capital needs component included in the charter tuition amount. The department shall calculate a statewide per pupil average expenditure from state and local sources for capital costs solely associated with payments, including interest and principle payments, for the construction, renovation, purchase, acquisition, or improvement of school buildings and land, shall multiply said amount by the number of students the district sends to charter schools, and shall reimburse these sending school districts for said costs. In making these calculations, the department shall use data from the most recent year for which actual district expenditures have been reported by districts to the department.

   The board of education shall adopt regulations for implementing the provisions of this subsection, including, but not limited to, regulations for determining the actual per pupil net school spending amounts in districts, and for calculating charter school tuition amounts. In adopting said regulations, the department shall consult with the executive office for administration and finance.

   (oo) Beginning in fiscal year 1999, any district whose total charter school tuition amount is greater than its total charter school tuition amount for the previous year shall be reimbursed by the commonwealth in accordance with this paragraph and subject to appropriation; provided, however, that no funds for said reimbursements shall be deducted from funds distributed pursuant to chapter 70. The reimbursement amount shall be equal to 100 per cent of the increase in the year in which the increase occurs; 60 per cent of that amount in the first year following; and 40 per cent of that amount in the second year following.

   (pp) The commissioner of education shall collect data on the racial, ethnic and socio-economic make-up of the student enrollment of each charter school in the commonwealth. The commissioner shall also collect data on the number of students enrolled in each charter school who have individual education plans pursuant to chapter 71B and those requiring English language learners programs under chapter 71A. Said data shall be filed annually with the clerks of the house and senate and with the joint committee on education, arts and humanities not later than December 1.

   (qq) No teacher shall be hired by a commonwealth charter school who is not certified pursuant to section 38G unless the teacher has successfully passed the state teacher test as required in said section 38G.

   (rr) The commissioner shall provide technical assistance to public school districts to assist in the development of proposals for Horace Mann schools.

**Appendix 1 (con’t): Charter School Statute and Regulations**

**603 CMR 1.00: Regulations on** Charter Schools

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| **Section:** |
| [1.01:](http://www.doe.mass.edu/lawsregs/?section=01) | Scope, Purpose, and Authority |
| [1.02:](http://www.doe.mass.edu/lawsregs/?section=02) | Definitions |
| [1.03:](http://www.doe.mass.edu/lawsregs/?section=03) | General Provisions |
| [1.04:](http://www.doe.mass.edu/lawsregs/?section=04) | Charter Application and Procedures for Granting Charters |
| [1.05:](http://www.doe.mass.edu/lawsregs/?section=05) | Criteria for Assessment and Approval of Charter Applications, Awarding of Charters |
| [1.06:](http://www.doe.mass.edu/lawsregs/?section=06) | Charter School Enrollment |
| [1.07:](http://www.doe.mass.edu/lawsregs/?section=07) | Charter School Staff |
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| [1.09:](http://www.doe.mass.edu/lawsregs/?section=09) | Ongoing Review of Charter Schools |
| [1.10:](http://www.doe.mass.edu/lawsregs/?section=10) | Complaint Procedures |
| [1.11:](http://www.doe.mass.edu/lawsregs/?section=11) | Amendments to Charters |
| [1.12:](http://www.doe.mass.edu/lawsregs/?section=12) | Renewal of Charter |
| [1.13:](http://www.doe.mass.edu/lawsregs/?section=13) | Revocation and Probation |
| [1.14:](http://www.doe.mass.edu/lawsregs/?section=14) | Severability Clause |
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*Most Recently Amended by the Board of Education: January 25, 2005*



1.01: Scope, Purpose and Authority

1. **Purpose.** The purpose of 603 CMR 1.00 is to provide uniform rules and procedures governing the

establishment of charter schools.

(2) **Authority**. 603 CMR 1.00 is promulgated under the authority of M.G.L. c. 69, § 1B, c. 71, § 89.

1.02: Definitions

As used in 603 CMR 1.00, unless the context clearly requires otherwise, terms shall have the following meanings:

**Administrator.** Any individual duly authorized by a charter school's Board of Trustees to manage the programs and operations of the charter school in accordance with its charter as well as federal and state laws and regulations.

**Application Cycle**. The period beginning in the summer and extending through the receipt of final charter school applications for review, ending no later than the following February when the Board of Education makes final decisions on awarding new charters. The various stages of the application cycle occur in accordance with the schedule established by the Department of Education.

**Board.** The Board of Education or a person duly authorized by the Board.

**Board of Trustees.** Public agents authorized by the state to supervise and control the charter school. The Boards of Trustees shall be considered public employers for purposes of tort liability under M.G.L. c. 258. Boards of Trustees of Commonwealth charter schools shall be considered public employers for collective bargaining purposes under M.G.L. c. 150E. In the case of Horace Mann charter schools, the school committee shall be considered the public employer for purposes of collective bargaining under M.G.L. c. 150E.

**Charter.** A license issued by the Board of Education under the provisions of M.G.L. c. 71, § 89, and 603 CMR 1.00, allowing the grantee to operate a charter school for a period of five years.

**Charter Applicant**. A charter applicant shall include but is not limited to: individuals; groups; not-for-profit corporate entities; two or more certified teachers; or ten or more parents qualified under M.G.L c. 71, § 89, to apply for a charter. An application for a charter school may be filed in conjunction with a college, university, museum, or other similar entity, or any combination thereof.

**Charter School.** A public school operated under a charter granted by the Board of Education. This term encompasses Commonwealth and Horace Mann charter schools unless otherwise specified. A charter school is managed by a board of trustees and operates independent of any school committee. A Horace Mann charter school is a school or part of a school that operates under a charter approved by the local school committee and the local teachers' union and granted by the Board of Education. To the extent provided by the terms of their charters, Horace Mann charter schools may be exempt from local collective bargaining agreements, provided that employees of the school will continue:

1. to be members of the local collective bargaining unit,

(b) to accrue seniority, and

(c) to receive at minimum, the salary and benefits established by the local collective bargaining agreement. Employees will be exempt from all union and school committee work rules to the extent provided by their charter.

**Commissioner**. The Commissioner of Education or his designee.

**Department**. The Department of Education.

**Regional Charter School.** A charter school with a charter designating it as "regional" is required to give preference in enrollment to students residing in a region containing more than one municipality.

**Sending District.** A Massachusetts city, town, or regional school district in which a charter school student resides and where the student would otherwise attend a public school. If a charter school has a residential component, the sending district is the city, town, or regional school district in which the parent or legal guardian of the charter school student resides or, if no parent or legal guardian can be identified, the school district in which the student last attended school.

1.03: General Provisions

(1) **Administrative Bulletins**. The Board and the Department of Education may, from time to time, issue administrative bulletins to interpret, implement, and provide guidance on 603 CMR 1.00.

(2) **Waivers**. Upon written request from a charter applicant or charter school Board of Trustees, the Board of Education may waive the applicability of one or more provisions of 603 CMR 1.00, provided that all such requests and approvals:

(a) are in writing, signed by the waiver applicant;

(b) specify the provisions of 603 CMR 1.00 to be waived, the duration of the waiver, and the circumstances to which the waiver applies;

(c) include a certification that the waiver applicant has made a good faith effort to comply with said provisions; and

(d) are accompanied by supporting documentation considered sufficient by the Board of Education to support the special circumstances or the need for relief.

Waivers of 603 CMR 1.00 shall be considered only under circumstances the Board of Education deems exceptional and shall be granted only to the extent allowed by law.

(3) **Prohibitions**. Private and parochial schools are not eligible for charter school status. Charter schools may not charge students an application fee or tuition. Charter schools may not charge their students any fee related to the provision of required educational programs. Charter schools may not charge any public school for the use of their curriculum, subject to the restrictions contained in any contract between charter schools and third party providers. For-profit corporations may not apply for a charter.

1.04: Charter Application and Procedures for Granting Charters

(1) **Charter Application Process**. There shall be a two-stage application process leading to the granting of a charter. Applicants shall submit to the Department of Education prospectuses and final applications in accordance with the schedule, application form, and guidelines established by the Department. Following the submission of prospectuses, the Commissioner will invite selected applicants to submit final applications.

(2) **Local Approval of Horace Mann Applications.** Teachers, parents, and others may petition school committees to convert, in whole or in part, a public school in the district to a Horace Mann charter school. A school committee shall notify the Department of Education within ten days of receiving such a petition. The school committee shall send to the Department a written explanation of the action taken by the committee on a petition within 60 days of receiving said petition. Applications for Horace Mann charter schools shall describe:

(a) the elements of the local collective bargaining agreement that apply to employees of the school, other than those already mandated by law;

(b) the services the school district will provide to the school; and

(c) the school's first annual budget allocation from the district, consistent with the allocation for other public schools in the district.

A valid application for a Horace Mann charter school shall have the approval of the local teachers' union and the school committee.

(3) **Review Process.**

(a) The Department of Education shall review each prospectus and each final application submitted by the required deadlines. Prospectuses and final applications will be reviewed and evaluated according to criteria outlined in 603 CMR 1.05 and in the charter school application itself. In addition, the Department of Education will conduct interviews with all final applicants in order to better assess their qualifications to start a charter school.

(b) Each applicant submitting a prospectus and a final application for a Commonwealth charter school shall also send a copy of the application to the superintendent of the school districts from which the applicant intends to draw students. The Board and the Department of Education shall hold a public hearing on final applications and solicit and review comments on the application from the school committees of the school districts from which the applicant intends to draw students. At least one member of the Board of Education shall attend public hearings soliciting comment on the merits of pending applications.

(c) The Board of Education will grant new charters in February. The Board and Department of Education may be assisted in this process by review panels comprised of individuals appointed by the Commissioner. Members of these panels may review applications but the reviewers' role shall be solely advisory.

(4) **Granting of Charters.**

(a) The Board of Education shall grant charters to approved charter applicants under M.G.L. c. 71, § 89, and under such conditions and at such time as the Board specifies under 603 CMR 1.05 (2).

(b) A charter granted by the Board of Education shall be effective for five years, beginning July 1 of the first year the school enrolls students, unless revoked pursuant to M.G.L. c. 71, § 89, and 603 CMR 1.12. If no students are attending a charter school within 19 months from the date the charter was granted, the charter will be null and void.

(c) Should the Board of Education elect to award fewer than the number of charters specified under M.G.L. c. 71, § 89, in any given cycle, the Board may grant those charters not awarded in any subsequent application cycles in addition to the number of charters scheduled to be awarded and notwithstanding any limitations on the number of new charters authorized in such year.

(d) The Board of Education may award any charter revoked or returned to the Board in subsequent application cycles in addition to the number of charters scheduled to be awarded and notwithstanding any limitations on the number of new charters authorized in such year.

1.05: Criteria for Assessment and Approval of Charter Applications, Awarding of Charters

(1) **Criteria for Assessment and Approval of Charter Applications**. The Department of Education will review charter applications to ensure that the applicant has demonstrated ability:

(a) to further the purposes for establishment of charter schools specified in M.G.L. c. 71, § 89.

(b) to conform with M.G.L. c. 71, § 89, and all other applicable laws and regulations, including any guidelines the Board of Education may issue, and including those related to English learners and students with disabilities;

(c) to assure that the charter school will meet its enrollment projections through demonstration of need and support for the proposed charter school in the communities from which students would be likely to enroll;

(d) to demonstrate that the applicant will be able to provide educational models, including programs, curriculum, and teaching methods that can be replicated by other public schools;

(e) to develop a management structure and plan which enables the charter school to achieve the goals and mission set forth in its charter, including the selection, role, and responsibilities of the Board of Trustees;

(f) to assure that students will meet the same performance standards and assessment requirements set by the Board of Education for students in other public schools;

(g) to develop an accountability plan, at the end of the first year of the school's charter, establishing specific five-year performance objectives to help measure the school's progress and success in raising student achievement, establishing a viable organization, and fulfilling the terms of its charter;

(h) to administer its educational programs, school operations, and finances effectively;

(i) to establish a process to provide to students, parents, the Board of Education, other interested parties, and the public all information required by law and regulation, as well as to provide other information the Board may request;

(j) to develop an enrollment policy consistent with 603 CMR 1.06;

(k) to ensure the thoroughness and accuracy of the charter school application; and

(l) to demonstrate that the applicant has access to school facilities that are in compliance with municipal building codes and other applicable laws, affordable, and adequate to meet the school's program requirements.

(2) **Conditions for Awarding Charters to Approved Applicants**. Charters shall be awarded subject to the conditions listed in 603 CMR 1.05(2)(a) through (i), and any additional conditions that the Board of Education may specify. The Board may temporarily waive such conditions and award a charter, provided that the applicant submits adequate written assurance that all such conditions will be met prior to the opening of the school. Failure to comply with any specified condition prior to the opening of the school shall constitute grounds for placing a charter school on probation.

(a) the charter applicant shall submit to the Department of Education the names, home addresses, and employment, and educational histories for the proposed members of the Board of Trustees and a plan for the administration and management of the school, including the organization structure and by-laws;

(b) in such cases where the charter school Board of Trustees intends to procure substantially all educational services under contract with another person, the Board of Trustees shall provide for the Board of Education's approval the terms of said contract;

(c) the charter applicant shall submit to the Department of Education a copy of the school's code of conduct outlining the criteria and procedures for expulsion of students;

(d) the charter applicant shall provide the Department of Education with written documentation that a criminal background check has been performed on all employees of the school;

(e) the charter applicant shall provide the Department of Education with a copy of the school's enrollment policy;

(f) the charter applicant shall provide the Department of Education with written documentation that the facilities to be used by the charter school are approved for use as a school by the building inspector in the municipality in which the building is located;

(g) the charter applicant shall provide the Department of Education with written documentation that the facilities occupied by the charter school have been inspected by the Fire Department of the municipality in which the facilities are located;

(h) if explosives or flammable compounds or liquids are used in connection with courses taught at the school, the charter applicant shall provide the Department of Education with written documentation that approval under M.G.L. c. 148 has been secured from the licensing authority of the municipality in which the building is located; and

(i) the charter applicant shall provide the Department of Education with written documentation that the school is in compliance with all other applicable federal and state health and safety laws and regulations, including evidence of compliance with any required insurance coverage.

(3) **Information for Distribution of Public Funds**. Upon receiving its charter, a charter school shall provide the Department with a federal tax identification number issued solely to the charter school, and banking information regarding a bank account solely in the name of the charter school, as required by the State Treasurer for the transfer of public funds.

1.06: Charter School Enrollment

(1) Eligibility for enrollment may be consistent with the school's grade levels. Charter schools shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, or prior academic achievement.

(2) Charter schools may not administer tests to potential applicants or predicate enrollment on results from any test of ability or achievement. Requirements for enrollment in a charter school, including but not limited to attendance at informational meetings and interviews, shall not be designed, intended or used to discriminate.

(3) Schools shall give reasonable public notice, of at least one month, of all application deadlines.

(4) In conformance with M.G.L. c. 71, § 89, enrollment in Commonwealth charter schools shall be conducted as follows:

(a) in such cases where there are fewer spaces than eligible applicants who reside in the city or town in which a Commonwealth charter school is located, or who are siblings of students already attending said charter school, the charter school shall hold an enrollment lottery for all such applicants;

(b) if there are more spaces available than eligible applicants from the city or town in which said Commonwealth charter school is located and who are siblings of current students, and there are more eligible applicants from outside of that city or town than spaces available, the charter school shall hold an enrollment lottery;

(c) the Department of Education shall notify each Commonwealth charter school no later than February 15 of any limitation on the number of students from a district that may be enrolled in charter schools for the upcoming school year; and

(d) Charter schools shall place names of students not selected in an enrollment lottery on a waiting list in the order the names were drawn. Students on the waiting list may be enrolled as space becomes available. In cases where the enrollment of a student, who is not a sibling of another previously enrolled student, from the waiting list would exceed the district charter tuition cap, the student should be skipped over but kept on the waiting list. In cases where the enrollment of a student who is a sibling of a student already attending a charter school would exceed the district charter school tuition cap, the sibling may be enrolled with the Commonwealth of Massachusetts providing tuition for said sibling, subject to appropriation.

(5) In conformance with M.G.L. c. 71, § 89, enrollment in a Horace Mann charter school shall be conducted as follows:

(a) priority shall be given first to any students actually enrolled in said school on the date that the final application is filed with the Board of Education and to their siblings. In such cases where there are fewer spaces in a Horace Mann charter school than eligible applicants who were enrolled in said school, the charter school shall hold an enrollment lottery;

(b) if there are more spaces available than eligible applicants from the school, and there are more applicants than spaces available who reside in the city or town in which the charter school is located and who are currently enrolled in the public schools of the district in which the Horace Mann charter school is located, the charter school shall hold an enrollment lottery for all such applicants; and

(c) if there are more spaces available than eligible applicants from the school or district, and there are more applicants than spaces available who reside in the city or town in which the Horace Mann charter school is located, the charter school shall hold an enrollment lottery for all such applicants.

(6) If the principal enrollment process fails to produce an adequate number of enrolled students, a school may repeat the process more than once, if necessary, providing such process is fair and open, with reasonable public notice given at least one week prior to the application deadline. As spaces become available during the school year, a school may repeat the enrollment process to fill these openings. No student entering an enrollment process may be admitted ahead of other eligible students who were previously placed on a waiting list during a prior enrollment process, except in cases described in to 603 CMR 1.06 (4) (d). The total number of students attending a charter school in a given school year cannot exceed the total number of students reported to the Department in the previous spring in accordance with 603 C.M.R. 1.09(4).

(7) All lotteries shall be conducted in public, with a disinterested party drawing names, and with reasonable public notice given at least one week prior to the lottery.

(8) A school may integrate its enrollment process with that of the school district, provided that the enrollment application is submitted in conjunction with the local school district and such district maintains an intra-district school choice enrollment program.

(9) A school shall specify age thresholds and ceilings for kindergarten and/or high school programs, respectively.

1.07: Charter School Staff

Charter school teachers hired after August 10, 2000 must either:

(1) take and pass, within their first year of employment at a charter school, the Massachusetts Tests for Educator Licensure; or

1. be already certified to teach in Massachusetts.

1.08: Charter School Funding

(1) Horace Mann charter schools shall be funded through the local school district. A Horace Mann charter school shall submit a budget request annually, in accordance with the budget schedule of the local school district and no later than April 1, to the superintendent and school committee of the district in which the charter school is located. The school committee shall act on the charter school budget request in conjunction with its approval of the district's overall budget. A Horace Mann charter school's budget allocation shall be consistent with the allocation of other public schools in the district. In the case of budget reductions in the school district, a Horace Mann charter school's budget may not be reduced disproportionately to other schools in the district. The charter school board of trustees may appeal any disproportionate budget allocation to the Commissioner of Education, who shall determine an equitable funding level for the school and shall require the school committee to provide such funding.

(2) Each operating Commonwealth charter school shall receive tuition payments from each school district whose students attend the charter school. Such tuition payments shall be equal to the appropriate charter school tuition rate, as determined in accordance with 603 CMR 1.08(3), multiplied by the number of students attending the charter school from the sending district in the current year. For students who attend the charter school for less than the full year, the tuition payment shall be reduced based on the number of days of enrollment. Such tuition payments shall be paid in accordance with 603 CMR 1.08(6).

(3) For each sending district, a separate foundation budget dollar amount and charter school tuition rate shall be calculated as follows for each charter school to which the district sends students.

(a) The foundation budget dollar amount shall be calculated, based on the foundation budget factors used for the distribution of Chapter 70 aid in the current year, provided that the out-of-district special education tuition component of the foundation budget shall be excluded from the calculation. The student data for this calculation shall be the foundation enrollment information reported by the charter school as of October 1 of the prior school year. The tuition rate shall equal the foundation budget dollar amount divided by the number of students. If no students attended a particular charter school from a particular sending district in the prior year, then the sending district's average foundation budget per pupil will be used as the tuition rate.

(b) Each tuition rate shall be increased by the ratio of the sending district's current year budgeted net school spending, as reported on schedule 19 of the Department's end of year pupil and financial returns, to the sending district's total current year foundation budget. Amounts reported on schedule 19 for out-of-district special education tuition and retired teachers' health insurance shall be excluded from this calculation.

(c) The Department shall annually calculate the statewide average of district expenditures per pupil for the acquisition, construction, and improvement of school buildings, and for the acquisition of land for such buildings, and for debt service thereon, and shall add such capital component to each of the tuition rates calculated above.

(4) Any amounts appropriated under line item 7010-0030 for the purpose of per pupil facilities aid for Commonwealth charter schools shall be used to reimburse sending districts for the capital component of the tuition payments, as calculated in 603 CMR 1.08(3)(c), but shall not affect the payments due to Commonwealth charter schools.

(5) For each sending district, the sum of its tuition payment to each Commonwealth charter school, less any charter school capital facility reimbursement received pursuant to 603 CMR 1.08(4), shall be used as the district's "total charter school tuition payment" for the purposes of M.G.L. c.71, § 89(i) and shall be used as the district's "total charter school tuition amount" for the purposes of M.G.L. c.71, § 89(oo).

(6) The State Treasurer shall make quarterly payments to Commonwealth charter schools. In making such payments, the Commonwealth shall reduce each sending district's M.G.L. c. 70 allocation by an amount sufficient to meet its charter school obligations for the quarter. If there are insufficient M.G.L. c. 70 funds to meet a district's obligation, the Commonwealth shall reduce other state aid allocated to the applicable cities and towns. If there are insufficient state aid funds of any kind to meet a district's obligation, the Board of Education shall recommend to the Governor and legislature that a supplemental appropriation be made to pay any remaining obligation to the charter school(s).

(7) The Department of Education shall notify both the Commonwealth charter school and the sending district(s) of the amount of these M.G.L. c. 70 reductions.

(8) The first quarterly payment to Commonwealth charter schools shall be based on each charter school's pre-enrollment report, filed with the Department of Education pursuant to 603 CMR 1.09(4). The remaining three quarterly payments of each fiscal year shall be based on updated enrollment reports, submitted to the Department of Education by each charter school. Although each quarterly payment is intended to equal approximately one quarter of the projected annual amount, payments in the later quarters of each fiscal year shall include adjustments to correct any over- or under-payments in earlier quarters.

(9) In its first year of operation, a Commonwealth charter school may be paid its first quarterly payment within 45 days after the start of the Commonwealth's fiscal year. The remaining three payments shall occur at the end of the Commonwealth's second, third, and fourth fiscal quarters. After its first year of operation, a Commonwealth charter school shall receive all of its quarterly payments, including its first quarter payment, at the end of the Commonwealth's fiscal quarters. The timing of all payments to charter schools is subject to the timely enactment of the Commonwealth's annual budget.

(10) In order to facilitate the acquisition of cash-flow financing, charter schools may be eligible for advance certification of quarterly payments, issued by the Board of Education and the Secretary of Administration and Finance. At least five days prior to the close of each fiscal quarter, the Commissioner of Education and the Secretary of Administration and Finance will certify to eligible charter schools the amount the Commonwealth will pay to such schools at the end of the subsequent quarter, barring a failure of the school to continue operations or a suspension or revocation by the Board of Education of the school's charter. To be eligible for advance certification a charter school shall submit to the Board of Education, prior to each quarterly certification, financial data necessary to ascertain the school's financial stability and solvency. Such data shall include an updated month-by-month cash flow statement for the current fiscal year and any other data that the Commissioner of Education may specify. If a charter school receiving advance certification of its quarterly payments ceases operations or if its charter is suspended, revoked, or not renewed, the actual quarterly payment by the Commonwealth to the charter school may be less than the certified amount, if a lesser amount is sufficient to satisfy any outstanding loan balances to any secured party holding a perfected security interest.

(11) Transportation. School districts shall provide transportation to charter school students on the same basis as it is provided to regular public school students in the district. In providing such transportation, districts shall accommodate the particular school year and school day of the charter school, in accordance with M.G.L. c. 71, § 89. If a district and a charter school cannot reach agreement about the service to be provided, and if the charter school finds an alternative that costs the same as or less than the average cost of transportation per student in the district, the charter school may provide its own transportation services to students eligible for transportation. In such cases, the costs for such services will be deducted from a district's M.G.L. c. 70 account on a quarterly basis as described in 603 CMR 1.08(6), based on estimated and actual expenditures for transportation.

1.09: Ongoing Review of Charter Schools

(1) **Annual Report**. A charter school shall submit to the Board of Education and the local school committee and make available to every parent or guardian of its enrolled students and to every parent or guardian who expresses interest in enrolling in that charter school, an annual report. The annual report shall be issued no later than August 1 of each year for the preceding school year. The annual report shall include the following information:

(a) a financial statement setting forth by appropriate categories the revenue and expenditures for the year just ended, and a balance sheet setting forth the charter school's assets, liabilities, and fund balances or equities;

(b) projections of income and expenses for the upcoming school year;

(c) discussion of progress made toward achievement of the goals of the charter and accountability plan;

(d) evidence that the charter school is developing or has provided models for replication and best practices in education; and

(e) such other information as the Board of Education may require in guidelines.

(2) **Site Visits.** The Department of Education may send evaluation teams to visit each charter school on an annual basis to corroborate and augment the information provided in the annual report in accordance with guidelines issued by the Department. Site visit teams may also gather any other evidence relevant to the school's performance. The written reports from these site visits shall become part of the charter school's record, along with any written addendum that the school wishes to submit in response to a report.

(3) **Financial Audits.** In accordance with M.G.L. c. 71, § 89, each charter school shall have an independent audit conducted of its accounts, consistent with generally accepted auditing principles, and consistent with any guidelines the Department of Education may issue. Audits shall be filed annually on or before January 1st with the Department of Education and the State Auditor.

(4) **Enrollment Reports**. Each charter school shall conclude its principal enrollment process no later than March 15 of each year, and shall file a pre-enrollment report annually with the Department of Education in accordance with deadlines established by the Department. The Department will report to districts the aggregate number of students who are anticipated to attend charter schools during the upcoming school year from their districts and the total enrollment for each charter school. No charter school shall receive tuition payments that exceed the total enrollment for that charter school as it was reported to the Department.

In their pre-enrollment reports, charter schools must notify the Department of:

(a) the school's total enrollment for the subsequent academic year;

(b) the projected number of students, by grade, to be enrolled in the charter school from each sending district for the subsequent academic year, and

(c) the number of students, by grade, from each sending district on the waiting list, who, as a result, may be enrolled in the charter school in the subsequent academic year.

Each charter school shall also submit reports no later than October 15 and March 1 of actual enrollment as of October 1 and February 15, respectively. The report shall be filed on a form provided by the Board of Education.

(5) **Additional Reports**. The charter school shall be responsible for filing any data reports or school returns as required under public school law and regulations, in accordance with guidelines published by the Department of Education ensuring that charter schools are not asked for the same data more than once.

(6) As required by the Department, the charter school shall submit written documentation that the school remains in compliance with all building, health, safety, and insurance requirements established as conditions for charter granting in 603 CMR 1.05 (2) and that all related inspections and approvals are current.

(7) **Notification of New Circumstances**. The charter school shall notify the Department of Education in writing immediately of any change in circumstances that may have a significant impact on a charter school's ability to fulfill its goals or mission as stated in its charter. Within 30 days after receiving such notice, the Commissioner shall determine whether any remedial action is required, and shall recommend such action to the Board of Education. Such actions may include suspension or revocation of the charter or placing the charter school on probation under 603 CMR 1.12.

(8) **Additional Information**. At the discretion of the Board of Education, charter schools may be required to submit additional information other than that specifically required by 603 CMR 1.00.

(9) **Signatory Authorization.** Any information supplied to the Board of Education, the Commissioner, or the Department of Education by the charter school under 603 CMR 1.00 shall be signed by an individual given signatory authorization by the charter school Board of Trustees. All such information is submitted under penalty of perjury.

1.10: Complaint Procedure

(1) A parent, guardian or other individuals or groups who believe that a charter school has violated or is violating any provision of M.G.L. c. 71, § 89, or 603 CMR 1.00 may file a complaint with the charter school's Board of Trustees.

(2) The Board of Trustees shall respond no later than 30 days from receipt of the complaint in writing to the complaining party.

(3) The Board of Trustees shall, pursuant to a complaint received under 603 CMR 1.10, or on its own initiative, conduct reviews to ensure compliance with M.G.L. c. 71, § 89, and 603 CMR 1.00. The charter school and the specific individuals involved shall cooperate to the fullest extent with such review.

(4) A complaining party who believes the complaint has not been adequately addressed by the charter school Board of Trustees may submit the complaint in writing to the Commissioner of Education, who shall investigate such complaint and make a written response.

(5) In the event the charter school is found in non-compliance with M.G.L. c. 71, § 89, or 603 CMR 1.00, as a result of a complaint or upon investigation, the Commissioner or Board of Education may take such action as it deems appropriate, including but not limited to suspension or revocation of the charter under 603 CMR 1.13, or referral of the matter to the District Attorney or the Office of the Attorney General for appropriate legal action.

(6) A parent, guardian or other individuals or groups who believe that a charter school has violated or is violating any state or federal law or regulation regarding special education may file a complaint directly with the Department of Education.

1.11: Amendments to Charters

(1) If a charter school plans to make a major change in its operations, the school's Board of Trustees shall submit in writing to the Board of Education a request to amend its charter. Major changes are defined as those that fundamentally affect a school's mission, organizational structure, or educational program. Such changes include, but are not limited to:

(a) Educational philosophy or mission;

(b) Governance or leadership structure;

(c) Contractual relationships with an education management organization providing or planning to provide substantially all the school's educational services;

(d) Curriculum models or whole-school designs that are inconsistent with those specified in the school's charter;

(e) Location of facilities, if such change involves relocating or expanding to another municipality;

(f) Districts specified in the school's charter;

(g) Maximum enrollment; or

(h) Grades served.

(2) If a charter school plans to make a minor change in its operations, the school's Board of Trustees shall submit in writing to the Commissioner a request to amend its charter. Minor changes are defined as changes that do not fundamentally alter a school's organizational structure or educational program. Such changes include, but are not limited to:

(a) Bylaws;

(b) Schedule (length of school year, school week, or school day);

(c) Enrollment process;

(d) Code of conduct;

(e) Corrections and clarifications involving the mission statement or other sections of the charter;

(f) School name; or

(g) Membership of the Board of Trustees (as specified under 603 CMR 1.05(2)(a)).

(3) The Commissioner and the Board of Education may consider a charter school's compliance with applicable state, federal, and local law and the evidence the school has provided regarding the three areas set forth in 603 CMR 1.12(3) in reaching a determination regarding a school's request to amend its charter.

(4) The Board of Education or the Commissioner shall endeavor to approve or deny amendment requests within 60 days after receiving complete requests. An amendment request for a change to a Horace Mann charter school's operations requires the approval of the local teachers' union and the local school committee.

(5) If a Commonwealth charter school seeks an amendment to change its maximum enrollment (including grades served), the municipality of its location, or the districts specified in its region; the Department will provide a copy of the request to the superintendents of the affected districts and provide them notice of their right to submit written comment to the Commissioner within 15 days.

(6) Should the Commissioner deny an amendment request, the charter school's Board of Trustees may seek review of the Commissioner's decision by the Board of Education.

1.12: Renewal of Charters

A charter school seeking renewal of its charter shall proceed as follows:

(1) The charter school shall submit its application for renewal of a charter under 603 CMR 1.00 no earlier than March 1 of the third school year and no later than August 1 after the end of fourth school year. The Board of Education will review renewal applications pursuant to the criteria set forth in 603 CMR 1.05 and M.G.L. c.71, § 89. For renewal applications received on or before August 1, the Board of Education shall notify the charter applicant of the decision to renew or not to renew the charter and the reasons therefore no later than March 1 following receipt of the renewal application. In the event the renewal is denied, the charter school shall have all rights of review as provided in M.G.L. c. 30A and 801 CMR 1.00.

(2) The charter school may apply for renewal of its charter under renewal application guidelines established by the Board of Education. Applications for the renewal of Horace Mann charters must be submitted with the approval of the local teachers' union and the local school committee.

(3) The Department shall issue guidelines describing the evaluation process to be followed in reviewing applications for charter renewal, including protocols for renewal inspections. The decision by the Board to renew a charter shall be based upon the presentation of affirmative evidence regarding the success of the school's academic program; the viability of the school as an organization; and the faithfulness of the school to the terms of its charter. The Department will gather evidence regarding these issues from the renewal application and from other information, including but not limited to, a school's annual reports, financial audits, test results, site visit reports, and renewal inspection. All charter schools will be evaluated on the same performance criteria as provided in the guidelines, provided, however, that the criteria will take into account each school's charter and accountability plan.

(4) Charters that are renewed shall be for five years from the expiration of the previous charter under such conditions as the Board of Education may establish under 603 CMR 1.05 (2). Charters of schools that do not file renewal applications shall expire at the end of the fifth year of the charter school's operation, subject to 603 CMR 1.13.

1.13: Charter Revocation, Probation, Suspension, and Non-Renewal

(1) The Board of Education may suspend or revoke (hereinafter, "revoke") a charter for cause, including but not limited to:

(a) a material misrepresentation in the application for approval of the charter;

(b) failure to comply substantially with the terms of the charter, with any of the applicable provisions of M.G.L. c.71, or with any other applicable law or regulation;

(c) financial insolvency;

(d) misappropriation, conversion, mismanagement, or illegal withholding of funds or refusal to pay any funds that belong to any person otherwise entitled thereto and that have been entrusted to the charter school or its administrators in their fiduciary capacities;

(e) fraud or gross mismanagement on the part of charter school administrators or Board of Trustees;

(f) criminal convictions on the part of the charter school or its Board of Trustees; or

(g) failure to fulfill any conditions imposed by the Board of Education in connection with the grant of a charter.

(2) Before the Board of Education revokes a charter, it shall notify the charter school in writing that the Board intends to revoke the charter. In the case of a Horace Mann charter, the Board shall also notify the district in which the school is located. Except in an emergency, the Board shall send the notice 60 days before the revocation takes effect.

(3) Upon receiving a notice of intent to revoke a charter, or notice of an emergency revocation where the health, safety or education of the school's students is at immediate risk, the school shall have all rights of review as provided in M.G.L. c. 30A, § 13, and 801 CMR 1.00. All requests for hearings, where hearings are provided by said statutes, shall be in writing, addressed to the Board of Education, and must be received within 15 days of receipt by the charter school of the notice of intent to revoke a charter.

(4) The Board of Education may place a charter school on probation, rather than revoke its charter, in order to allow for the implementation of a remedial plan approved by the Board. If after 60 days, or such longer period as the Board may specify, said plan is unsuccessful in remedying the problem or alleviating the causes of the probation, the Board may summarily revoke the charter.

(5) The Department may also impose certain conditions on a school's charter for violations of law or failure to comply with the terms of the school's charter.

(6) The Board of Education may withhold payments to any charter school placed on probation or whose charter has been suspended, revoked, or not renewed or that has failed to comply with conditions imposed by law or under 603 CMR 1.13(5).

(7) Charter schools must comply with the closing procedures established by the Department.

(8) Upon the revocation, non-renewal, or voluntary return of a Commonwealth charter, title to all of the property of the charter school shall immediately vest in the Commonwealth, subject to the rights of any secured party holding a perfected security interest in the property of such charter school. Any funds remaining after the satisfaction of the charter school's obligations shall be deposited in the General Fund. 603 CMR 1.13(6) shall not apply to the extent the charter school or any other interested party demonstrates that charter school property was purchased solely by, or solely with funds paid to the school by, persons or entities other than the Commonwealth, in which case ownership of the property shall be transferred to such persons or entities, unless otherwise voted by the Board of Trustees.

(9) Upon the revocation, non-renewal, or voluntary return of a Horace Mann charter, title to all of the property of the charter school shall immediately vest in the school district in which the school is located, subject to the rights of any secured party holding a perfected security interest in the property of such charter school. This regulation shall not apply to the extent the charter school or any other interested party demonstrates that charter school property was purchased solely by, or solely with funds paid to the school by, persons or entities other than the district or Commonwealth, in which case ownership of the property shall be transferred to such persons or entities, unless otherwise voted by the Board of Trustees.

1.14: Severability Clause

If any section or portion of a section of 603 CMR 1.00, or the applicability of 603 CMR 1.00 to any person, entity or circumstance is held invalid by a court, the remainder of 603 CMR 1.00 or the applicability of such provisions to other persons, entities or circumstances shall not be affected thereby.

Regulatory Authority
603 CMR 1.00: M.G.L. c. 69, § 1B; c. 71, § 89

## Appendix 2: About Charters Schools and Common Questions and Answers

## About Charter Schools

Authorized by the Commonwealth of Massachusetts' Education Reform Act of 1993, charter schools are independent public schools that operate under five year charters granted by the Commonwealth's Board of Education. Charter schools are usually proposed by teachers, school leaders, parents, non-profit organizations, or other members of the community.

The increased freedom coupled with increased accountability infuses all aspects of the Department of Education's oversight of charter schools, beginning with the rigorous application process that groups must go through to receive a charter. Once the Board of Education has awarded a charter on the basis of a successful [Application for a Public School Charter](http://www.doe.mass.edu/charter/app/default.html?section=toc) (step 1), the new charter school has the freedom to organize around the core mission, curriculum, theme, or teaching method described in the application. It is allowed to control its own budget and hire (and fire) teachers and staff. In return for this freedom, a charter school must demonstrate good results within five years or risk losing its charter.

The Board of Education is obligated by Massachusetts General Law, Chapter 71, Section 89, and regulations under 603 CMR 1.00 to conduct an ongoing review of charter schools and, by the fifth year of a school's operation, decide whether its charter should be renewed. Specifically, the [renewal of a public school charter](http://www.doe.mass.edu/charter/acct.html) is based on affirmative information in three areas of inquiry:

Academic program success

Organizational viability

Faithful to the terms of the charter

Common Questions and Answers

**Definitions**

**Q. What is a charter school in Massachusetts?**

**A.** A charter school is a public school that is governed by a board of trustees and operates independently of any school committee under a five-year charter granted by the Board of Education. It has the freedom to organize around a core mission, curriculum, theme, and/or teaching method and to control its own budget and hire (and fire) teachers and staff. In return for this freedom, a charter school must attract students and produce positive results within five years or its charter will not be renewed. There are two types of charter schools, Commonwealth charter schools and Horace Mann charter schools. They operate under the same set of rules as described above, with the following exceptions. First, a Horace Mann charter school must have its charter approved by the local school committee and the local teacher’s union in addition to the Board of Education. Second, to the extent provided by their charters, Horace Mann charter schools may be exempt from certain provisions in local collective bargaining agreements. Third, employees of a Horace Mann charter school remain members of the local collective bargaining unit; continue to accrue seniority; and receive, at a minimum, the salary and benefits established by the local collective bargaining agreement.

**Application process**

**Q. Who may apply for a charter?**

**A.** Any group or entity may apply for a public school charter, with the exception of for-profit companies and private schools. Typically, charter applicant groups include a mix of parents, teachers, non-profit organizations, and community leaders.

**Q. How many total charters are available to be granted in February 2006?**

**A.** Not more than 120 charter schools (48 Horace Mann and 72 Commonwealth) may operate in the Commonwealth at any one time. There are 19 Commonwealth charters available[[13]](#footnote-13) and 40 Horace Mann charters available to be granted in the 2005-2006 application cycle.Bear in mind that only those applications that meet the criteria will be considered for charters; therefore, not all of the charters that are available in a given year will necessarily be granted.

**Q. If we miss the September deadline for the prospectus, can we still submit a final application in November?**

**A.** No. Only those prospectuses submitted by the August deadline are eligible to receive a possible invitation by the Commissioner of Education to submit a final application in November.

**Q. What are the limits on the number of charter schools that can be established in a given city or town?**

**A.** Notwithstanding the number of total charters available, state law limits the number of charters by type and location that the Board of Education can grant as follows:

* In any one year, the Board may approve **only one** regional Commonwealth charter school application to be located in a district where overall student performance on the Massachusetts Comprehensive Assessment System (MCAS) was in the top 10% in the preceding year.
* The Board of Education may not approve a Commonwealth charter in any community with a population of less than 30,000 unless it is a regional charter school.
* **Not less than three** charters approved in any year must be granted for charter schools located in districts where overall student performance on the MCAS is at or below the statewide average in the preceding year.

There is also a statutory limit on the amount of funds that can be transferred to charter schools from any one district for the purpose of charter school tuition. A district’s total charter school tuition payment to Commonwealth charter schools cannot exceed 9 percent of that district’s net school spending. Currently, several districts are at or approaching their cap for charter tuition spending. More information may be found in Appendix A. Please contact the Department of Education’s Charter School Office (CSO) for further information if you have questions in regard to a specific district.

**Q. Will the Board of Education give preference to certain kinds of applications and applicant groups?**

**A.** The Board of Education will give preference to those applications and applicant groups that demonstrate the greatest probability of creating public schools of the highest quality by meeting the comprehensive criteria of the rigorous application process. The Board of Education may also give preference to applications for charter schools located in low-performing districts.

**Q. Who will review and evaluate charter school applications and the capacity of applicant groups?**

A. Each charter school prospectus and final application will be reviewed by Charter School Office staff as well as review panels comprised of individuals outside the Massachusetts Department of Education who have education, business, non-profit, financial, legal, and organizational expertise. The Charter School Office will then interview the applicant groups that submitted final applications. The Commissioner of Education will then make final recommendations to the Board of Education regarding the award of charters.

**Q. What role do external reviewers play in the application process?**

**A.** The role of external reviewers is solely advisory. Teams of reviewers — current and former teachers; researchers; charter school founders; and school, business, and public policy leaders — evaluate the prospectuses and final applications against the stated criteria. The questions raised by review panels regarding final applications serve as the basis of the applicant group interviews.

**Q. How much weight will be given to written comments from superintendents and testimony at public hearings?**

**A.** All public comment, including written comment from superintendents, will be considered in the review process. Public hearings on the final applications are conducted during December and January. Written or oral opposition alone is not reasonable grounds for denial of a charter. Similarly, strong public support alone does not constitute reasonable grounds for granting a charter. Any substantial issues raised in public comment that demonstrate weaknesses in a specific final application as measured against the stated criteria will be taken into account and addressed during the applicant group’s interview with the Charter School Office.

**Q. By what point in the application process should an applicant secure a facility?**

**A.** During the application process, applicant groups must describe a process for identifying a potential facility for the proposed charter school. Applicants who enter into lease or purchase agreements in advance of receiving a charter from the Board of Education, however, do so at their own risk.

**Q. On what grounds may a charter application not receive approval?**

**A.** Applications that are submitted after the deadline or those that do not meet the submission criteria will be immediately rejected. Applications and the capacity of applicant groups to establish a successful charter school are judged on the application materials, the final interview, and public comment received. The Commissioner of Education will not recommend that the Board of Education award charters to applicant groups whose applications do not meet the stated criteria for a charter in the application, as corroborated in the final interview of the applicant group by the Charter School Office.

**Q**. **Can the Board of Education’s decisions on charter applications be appealed?**

**A**. No. A decision of the Board of Education on a charter application is final. The application process leading up to the Board’s decision has been designed to afford applicant groups and others several opportunities to clarify the proposal made in an application and to make the case for, or against, the award of a charter. Applicants who are not awarded a charter in 2006 may reapply in the future.

**Q. Are preferences given to applications for charter schools that plan to open in 2006?**

**A.** No. Applicant groups that propose to open in 2006 or 2007 will be evaluated using the same criteria. However, the Board of Education may award a charter conditional on the school opening in 2007 even if the applicant group applies to open in 2006.

**Funding**

**Q. How are Commonwealth charter schools funded?**

**A.** For each child that a Commonwealth charter school enrolls, it receives a tuition amount from the state equal to a per-pupil amount calculated by the Department’s School Finance Unit. The state then deducts the same amount from the sending district’s (school district pertaining to the municipality in which the student resides) state aid account. Like other public schools, Commonwealth charter schools are eligible to receive federal and state grant funds. Commonwealth charter schools may apply for private grants and receive contributions. For more detailed information about how the state calculates tuition payments for Commonwealth charter schools, visit <http://finance1.doe.mass.edu/charter/>.

**Q. How are Horace Mann charter schools funded?**

**A.** Funding for a Horace Mann charter school comes directly from the school district in which the school is located, through a Memorandum of Understanding with the district. An application for a Horace Mann charter school will specify a total budget allocation that the School Committee has approved for the charter school’s first year. Each year thereafter, the Board of Trustees of a Horace Mann charter school will submit a budget request for the following fiscal year to the superintendent and School Committee of the district. Under the law, a Horace Mann charter school cannot receive less than it would have under the district’s standard budgetary allocation rules. A school may appeal a disproportionately small budget allocation to the Commissioner of Education. Depending upon the terms of its charter and the Memorandum of Understanding, a Horace Mann charter school may receive its share of federal and state grant funds from the district or receive the funds directly. Horace Mann charter schools may apply for private grants and receive individual contributions.

**Q. Will charter recipients be given start-up funding?**

**A.** The Massachusetts Department of Education has received funding for FY06 and FY07 from the federally funded charter school grant program, through which new charter schools are provided start-up funding in their planning period and first two years of operation. The availability of future start-up funding beyond this period is contingent upon continued support through this program or new state appropriations. A number of charter schools have also received start-up funding from non-governmental sources.

**Q. Are charter schools eligible for School Building Assistance funds?**

**A.** The charter school statute states that "no school building assistance funds shall be awarded to a Commonwealth charter school for the purpose of constructing, reconstructing, or improving said school.” The Massachusetts Legislature, however, has included a facilities component for charter schools as part of the tuition paid to charter schools. For more detailed information about how the state calculations tuition payments for Commonwealth charter schools, visit <http://finance1.doe.mass.edu/charter/>. Some charter schools may be eligible to apply for qualified zone academy bonds. The qualified zone academy bond (QZAB) program allows school districts and charter schools to obtain interest-free financing for the purpose of establishing "qualified zone academies." Qualified zone academies are schools, or programs within a school, which are located in economically distressed areas and whose curriculum is designed through school/business partnerships. See <http://finance1.doe.mass.edu/sbuilding/qzab_rfp.html> for more information.

**Q. How does transportation work for charter schools?**

**A.** The charter school statute states that “The children who reside in the school district in which the charter school is located shall be provided transportation to the charter school by the resident district’s School Committee on the same terms and conditions as transportation is provided to children attending local district schools.” There are three mechanisms in place for charter schools to receive reimbursement for costs associated with transporting children to school. The first reimbursement mechanism applies to the transportation of children residing in the district in which the charter school is located. If a charter school chooses to provide transportation for their students in this category, they are eligible for transportation reimbursement from the local school district only for the students for whom the charter school is accruing transportation costs and who are eligible for transportation according to the local school district's transportation policy. Second, a more recent change in the charter school statute expanded reimbursement eligibility to regional charter schools transporting children that reside outside of the district in which the charter school is located, but within the boundaries of the charter school's regional designations. Schools will be reimbursed by the state, subject to appropriation, in the year following that in which costs were incurred. Third, the Department of Education administers a state transportation reimbursement program for low-income children attending charter schools outside their own school district. To be eligible for such reimbursement, a child must be attending a charter school outside their own school district and be eligible for free or reduced lunch. However, this program has not been funded for several years. For more information about transportation reimbursement rates, please contact Cliff Chuang in the Charter School Office at (781) 338-3228 or cchuang@doe.mass.edu.

**Q. Are charter schools entitled to federal funds?**

**A.** Yes. Charter schools are eligible for federal funds that go to public schools such as Special Education, Title 1, and Safe and Drug Free Schools. Please visit <http://finance1.doe.mass.edu/grants/> for specific details about each grant program, or contact Cliff Chuang in the Charter School Office at (781) 338-3228 or cchuang@doe.mass.edu with questions.

**Laws and regulations**

**Q. Do charter schools serve students with special needs and students who are English language learners?**

**A.** Yes. Charter schools cannot discriminate in admissions on the basis of special need or English language proficiency. Once admitted, students who are special needs or English language learners must be appropriately identified, assessed, and served in accordance with federal and state requirements. For special education, this requires a special education teacher delivering services in the general education classroom and in pull out settings or resource room settings, as needed. See <http://www.doe.mass.edu/lawsregs/603cmr28/> for more information on special education laws and regulations. English language learners must be supported in their acquisition of the English language through a program of sheltered English immersion and instructed by appropriately qualified and certified staff. See <http://www.doe.mass.edu/lawsregs/603cmr14.html> for more information on the laws and regulations relating to English language learners.

**Q. Are laws and regulations waived for charter schools?**

**A.**  Charter schools must follow the same state educational standards, administer the same state tests, and abide by almost all the same state and federal laws and regulations as other public schools in the Commonwealth. Commonwealth charter schools however, are not subject to local school district rules and may operate without collective bargaining agreements. Horace Mann charter schools, depending on the terms of their charters, may be exempt from some local school district rules and some provisions of the local collective bargaining agreement and regulations. (As is the case for other public schools, charter schools may request waivers from state regulations.)

**Q. How do we know if our proposed charter school should serve a region?**

**A.** If the charter school intends to enroll students from a number of cities or towns or be located in a small and/or rural town of less than 30,000 in population, applying for regional status is appropriate. A regional charter school is authorized to serve, and give preference in enrollment to, students residing within a specified region of more than one municipality. In applying for a regional charter, applicants should specify the districts that comprise the region to be served and a rationale for the proposed region.

**Q. May we give our applicants an entrance exam?**

**A.** No. State law prohibits a charter school from discriminating in its enrollment process on the basis of academic achievement. Charter schools may create eligibility thresholds for enrollment that are consistent with their areas of focus or grade levels, but a school’s methods for determining eligibility for enrollment — including meetings, interviews, and recommendations — cannot be designed, intended, or used to discriminate on the basis of a child’s knowledge or skills. For instance, a charter high school may deny admission to students who have not completed the 8th grade but it may not deny admission to students on the basis of their inability to do 8th grade level work. Diagnostic exams may be given once the students are enrolled.

**Q. How does the Federal No Child Left Behind Act affect Massachusetts charter schools?**

**A.** Because Massachusetts charter schools are public schools, the NCLB requirements are applicable to charter schools in the Commonwealth. See the federal No Child Left Behind Act home page at <http://www.ed.gov/nclb/landing.jhtml?src=pb>, the Massachusetts Department of Education’s Technical Advisory *The Impact of NCLB on Massachusetts Charter Schools* at <http://www.doe.mass.edu/charter/tech_advisory/03_2.html>, and the *Opening Procedures Handbook* at http://www.doe.mass.edu/charter/docs/ophandbook.pdf for further guidance.

**Q. What are the certification/training requirements for charter school teachers?**

**A.** State law requires that all Massachusetts charter school teachers hired after August 10, 2000 must ***either*** be certified ***OR***pass the appropriate Massachusetts Test(s) for Educator Licensure (MTEL) within one year of their date of employment. For more information on this requirement or alternative certification, please contact the Department’s Office of Educator Quality at (781) 338-6600. Additional information on determining Highly Qualified Teacher status may be found online through the federal No Child Left Behind website at <http://www.ed.gov/nclb/methods/teachers/hqtflexibility.html>.

**Q. What do the state curriculum frameworks and state tests mean for charter schools?**

**A.**  All public schools, including charter schools, must administer the Massachusetts Comprehensive Assessment System (MCAS) tests. These tests are based on the curriculum frameworks adopted by the Board of Education. Charter schools must also administer any other assessment the Board of Education may require. MCAS results are used in the charter school accountability process and are central in evaluating whether a school is an academic success.

**Q. Are for-profit companies allowed to manage charter schools?**

**A.** Yes. While for-profit education management organizations (EMO) may not apply directly for a charter in Massachusetts, state law explicitly allows charter school Boards of Trustees to procure education management services from non-profit and for-profit entities. The Board of Education must approve all contracts between charter school Boards of Trustees and EMOs for substantially all educational services, prior to the contract taking effect. If any application for a charter proposes a school that would be managed by a non-profit or for-profit contractor, it should describe why the particular entity was selected, describe what due diligence the applicant group has performed on said entity, and provide a draft of a management contract.

**Q. What types of resources are available on the Massachusetts Department of Education’s website?**

**A.** Many guiding documents for charter schools are available on the Massachusetts Department of Education’s general website (www.doe.mass.edu) and the Charter School Office web site (www.doe.mass.edu/charter), including but not limited to the *Charter School Administrative and Governance Guide*; the *Opening Procedures Handbook*; charter school news and headlines; contact information for all Massachusetts charter schools including school and district profiles; application for a public school charter; charter school laws and regulations; technical advisories on specific topics; individual charter school reports; Charter School Office staff contact information; the Massachusetts Curriculum Frameworks; Massachusetts Comprehensive Assessment System statistics and information; school finance; teacher certification; and a calendar of Department of Education events. See the Resource List for additional information. The Department encourages charter schools to visit the Department of Education and Charter School Office web sites on a regular basis for updates.

**Q. What is a charter, and how does a school amend its charter?**

**A.** A school’s charter is made up of certain material terms. If these terms are modified significantly by a charter school’s Board of Trustees, they must request and receive approval from the state before the changes may be implemented. These material terms are the school’s educational philosophy and mission; governance and leadership structure; a contract with an education management organization that is providing or planning to provide substantially all of the school’s educational services; curriculum models or whole-school change designs; location of facilities, if such change involves relocating or expanding to another municipality; districts specified in a regional school’s charter; bylaws; schedule (e.g. length of school year, school week, or school year); enrollment process; code of conduct; school name; or membership of the board of trustees. The Department of Education’s Technical Advisory *Charter Amendments* is available on-line at <http://www.doe.mass.edu/charter/tech_advisory/03_3.html>.

## Appendix 3: Technical Advisory 03-1 - Horace Mann Charter Schools

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| To: | Superintendents and Charter School Leaders |
| From: | David P. Driscoll, Commissioner of Education |
| Date: | June, 2003 |



The purpose of this technical advisory is to interpret, clarify, and provide guidance on the application of the charter school statute (M.G. L. c. 71, §89) and the charter school regulations (603 CMR 1.00) to Horace Mann charter schools. This technical advisory updates the answer to question no. 7 in schools technical advisory no. 98-2.

**Introduction**

Horace Mann charter schools were authorized by a July 1997, revision of the charter school statute (M.G.L. c. 71, § 89). This new type of charter school is defined in the statute as follows:

A Horace Mann charter school shall be a public school or part of a public school operated under a charter approved by the local school committee in which the school is located and by the local collective bargaining agent; provided, however, that all charters shall be granted by the board of education. Horace Mann charter schools shall be operated and managed by a board of trustees independent of the school committees which approve said schools.

The regulations on charter schools (603 CMR 1.00) similarly offer the following definition of Horace Mann charter schools:

A Horace Mann charter school shall be a public school or part of a public school that operates under a charter approved by the local school committee and the local teachers' union and granted by the Board of Education. To the extent provided by the terms of their charters, Horace Mann charter schools may be exempt from local collective bargaining agreements, provided that employees of the school will continue:

(a) To be members of the local collective bargaining unit;
(b) To accrue seniority; and,
(c) To receive, at minimum, the salary and benefits established by the local collective bargaining agreement. Employees will be exempt from all union and school committee work rules to the extent provided by their charter.

Operating funds for a Horace Mann charter school come directly from the school district in which the school is located. (Horace Mann charter schools are eligible for state and Federal start-up grants.) An application for a Horace Mann school will specify a total budget allocation the school committee has approved for the school. Each year thereafter, the Board of Trustees of a Horace Mann school will submit a budget request for the following fiscal year to the superintendent.

Under the law, a Horace Mann charter school's budget allocation shall be consistent with the allocation to other public schools in the district. A school may appeal a disproportionate budget allocation to the Commissioner of Education, who, according to the law, "shall determine an equitable funding level for the school and shall require the school committee to provide such funding." (G.L. c. 71, § 89(x))

The charter school statute makes few distinctions between Horace Mann charter schools and Commonwealth charter schools. For Horace Mann schools, however, the statute stipulates the following:

1. The school committee and local union must approve a charter application;
2. Teachers must continue to be members of the union;
3. The school committee of the school district in which the school is located shall remain the employer for collective bargaining purposes under chapter 150E (the state law regarding public employee labor relations);
4. The minimum salary and benefit requirements as stipulated in the district's collective bargaining agreement must apply;
5. All union and school committee work rules apply to the extent specified in the charter;
6. The school's funding must be appropriated by the district at a level that is consistent with the allocation to other schools in the district;
7. A school must give enrollment preference to students actually enrolled in said school on the date the charter application was filed, their siblings, and then to other students enrolled in the public schools of the district where the school is located;
8. The school committee and local union must approve a charter renewal application; and
9. The school committee must develop a plan to disseminate innovative practices of said charter school to other public schools within the district.

The local school committee has responsibility for evaluating and disseminating innovative practices of a Horace Mann charter school. The Board of Education has responsibility for oversight and evaluation of the performance of a Horace Mann charter school. Under law and regulations, these schools must develop an accountability plan, file annual reports and independent financial audits with the state, and be subject to the same evaluation process as Commonwealth charter schools. A Horace Mann charter school should also send copies of annual reports, audits, and evaluations to the local school committee.

Except for the approval of its annual budget, the operation of a Horace Mann charter school should be independent of the local school committee. There are, however, several situations in which the collective bargaining agreement or state law may require the superintendent, rather than the school's board of trustees or leaders, to make final decisions, e.g. hiring or firing of teachers or principals.

In regard to specific areas that are not addressed by this advisory, the Department's general guidance is for Horace Mann charter schools to be structured in a way that allows for independence from the school district whenever it is possible to do so. Such independence should promote accountability and innovation, while encouraging cooperation and collaboration between a Horace Mann school and other public schools in the district.

**Technical Advisory (98-2): Questions & Answers**

1. **What constitutes school committee and local teacher union approval of a Horace Mann charter?**

A Horace Mann charter school application must have the approval of the school committee and the local teachers' union of the district in which the school would be located. A statement certifying this approval signed by the School Committee Chairperson and the local teachers' union president must accompany a valid Horace Mann application on the date such applications are due to the Department of Education. A Horace Mann charter application must specify the total annual budget amount the charter school will receive from the local district, as well as what provisions of the district's collective bargaining agreement will apply to teachers in the Horace Mann charter school. Once an application is submitted to the Department, and the Board of Education grants a charter based on the application, a school committee or local teachers' union cannot rescind its approval of said application. A charter may be amended with the approval of the Commissioner of Education, who, according to regulation, "shall consult with the school committee and local teachers' union on amendments that would substantially change the program or governance of a Horace Mann charter school."

1. **How much funding per student should Horace Mann schools receive?**

Neither the law nor the regulations specify an amount per student that Horace Mann schools must receive. The school's annual appropriation will be an amount agreed upon by the school and the school committee. As previously noted, a Horace Mann charter school should receive an allocation that is consistent with the allocation to other public schools in the district, and it may appeal a disproportionate budget allocation to the Commissioner of Education. The Department encourages Horace Mann charter schools and districts to begin with the average cost per student in the district or in comparable schools in the district, and then deduct appropriate amounts for services that the school will "purchase" from the district. One such service, liability insurance, should be provided by the district for the school and its trustees. Other services could include payroll, special education services, food services, or procurement. Other factors that must be considered, of course, are the salary and benefit requirements, as stipulated in the district's collective bargaining agreement. Districts will be asked to report on their end-of-year report cash payments to Horace Mann charter schools as well as the dollar value of in-kind services provided.

1. **How should schools receive/control their funds?**

The statute stipulates that a Horace Mann school's budget allocation "shall be available for expenditure by the board of trustees of such school for any lawful purpose without further approval by the superintendent or school committee." (G.L. c. 71, § 89(y)) As a result, Horace Mann charter schools should have direct control of their operating funds. This means districts should transfer a school's budget allocation to an account controlled solely by trustees and officers of the charter school. Horace Mann charter schools must have their own Federal taxpayer identification number if they open their own bank account. When or how often operating funds are transferred to a charter school should be determined by the charter school and the school district.

1. **By what date should a Horace Mann school submit its annual budget request to the school district?**

The regulations dictate that a Horace Mann charter school "shall submit a budget request annually, in accordance with the budget schedule of the local school district and no later than April 1, to the superintendent and school committee of the district in which the charter school is located." The statute further requires that the school committee act on such budget request in conjunction with its actions on the district's overall budget. As a result, the superintendent should establish a deadline for receipt of a school's budget request that is both reasonable and consistent with what is expected of other schools and departments within the district.

1. **Should schools apply directly for entitlement and/or competitive grants?**

In accordance with the charter school statute, a Horace Mann charter school may apply to the Department directly for Federal and state program funds. Such funds may be used for any lawful purpose, consistent with the terms of the grant program, without prior approval from the superintendent or school committee. Grants for which a Horace Mann charter school may be eligible include entitlement grants and competitive grants.

Current entitlement/allocation grants include programs such as (Title I, IDEA, Perkins Act, Title VI, Eisenhower, and Safe and Drug-Free Schools). Through the funding formulas specific to each grant program, each school district has an entitlement or allocation based on its count of eligible students in the previous school year.

In the first year that a Horace Mann charter school operates, the entitlement or allocation has already been determined for the school district as a whole, based on the data it submitted for the previous school year. Consequently, in the first year that a Horace Mann charter school is in operation, the entitlement or allocation grant will be made to the school district as a whole. The Horace Mann charter school leader and the superintendent should determine together how the students in the charter school will benefit from the entitlement/ allocation funds awarded to the district.

In the second and subsequent years of a Horace Mann charter school's operation, the Department will calculate an entitlement/allocation for the school as well as for the district, based on prior year student data. At that point, the Horace Mann charter school may choose either to apply for entitlement/allocation funds itself, or it may assign its entitlement to the school district and make arrangements with the superintendent so that the charter school students will benefit from the funds. The Department's booklet, [*Grants for Schools: Getting Them and Using Them - A Procedural Manual*](http://finance1.doe.mass.edu/Grants/procedure/), provides the assignment form (Schedule A) as well as additional information about the grants process.

Competitive grant programs do not involve formula-driven allocations to each school district. Consequently, starting in its first year of operation, a Horace Mann charter school has a choice. The charter school may apply to the Department directly for a competitive grant for which it qualifies, and may use the funds for purposes consistent with the grant, without prior approval from the superintendent or school committee. Alternatively, if the charter district apply collaboratively for and receive a competitive grant, the charter school may receive grant funds (or services funded through the grant) from the district, as part of its budget allocation.

1. **What requirements must Horace Mann charter schools follow when procuring goods and services?**

Because Horace Mann charter school employees are, for some purposes, employees of municipal entities, and because the schools are funded directly by municipalities, they are by definition subject to the procurement requirements of G.L. c. 30B, the Uniform Procurement Act. Horace Mann charter schools must keep accurate accounts and obtain and file an independent audit for the previous fiscal year on or before January 1 of each year with the Department of Education and the State Auditor. The procurement officer of each Horace Mann charter school must participate in the public purchasing official certification program conducted by the Office of the Inspector General in order to earn a Massachusetts public purchasing official certificate. A Horace Mann charter school may procure goods and services through a district's procurement office.

1. **May members of the local school committee serve on the Board of Trustees of a Horace Mann charter school?**

Yes. The restrictions contained in the Commonwealth's conflict of interest statute, G.L. c. 268A, §§ 4, 6, 17, 23, and the charter school statute, however, may restrict the activities of such individuals and require that they not participate in the consideration of, and decisions on, a number of matters that usually come before a Board of Trustees. For example, among other things, the Commonwealth's conflict of interest statute restricts public employees from participating in any matter in which he or she has a financial interest, from acting as an agent for anyone other than the public employer regarding any matter in which the employer has a direct and substantial interest, and from acting in any manner that would lead a reasonable person to conclude that anyone can improperly influence them. Trustees who are also school committee members of the school district should seek the advice of the State Ethics Commission and their local counsel regarding these restrictions. The charter school statute specifically states that "Horace Mann charter schools shall be operated and managed by a board of trustees independent of the school committees which approve said schools." As a result, school committee members should not participate to the extent that such participation may undermine or compromise the independence of the board of trustees.

1. **May the superintendent of schools for the local school district, a principal of a school subject to the control of the local school committee, or a teacher in the local school district serve on the Board of Trustees of a Horace Mann charter school?**

Yes. The restrictions contained in the Commonwealth's conflict of interest statute, G.L. c. 268A, §§ 4, 6, 17, 23, and the charter school statute, however, may restrict the activities of such individuals and require that they not participate in the consideration of, and decisions on, a number of matters that usually come before a Board of Trustees. For example, among other things, the Commonwealth's conflict of interest statute restricts public employees from participating in any matter in which he or she has a financial interest, from acting as an agent for anyone other than the public employer regarding any matter in which the employer has a direct and substantial interest, and from acting in any manner that would lead a reasonable person to conclude that anyone can improperly influence them. Trustees who are also employees of the school district should seek the advice of the State Ethics Commission and their local counsel regarding these restrictions.

1. **May other employees and officials of the municipality in which a Horace Mann charter school is located serve on the Board of Trustees?**

Yes, for the most part. As a general matter, other employees and officials of the municipality in which a Horace Mann charter school is located may serve on the Board of Trustees. As with teachers in the local school district who also serve on the Board of Trustees of a Horace Mann charter school, the restrictions contained in G.L. c. 268A, §§ 4, 6, 17, and 23, discussed in response to Question 8, may restrict the activities of such employees and officials. Municipal employees and officials should seek the advice of the State Ethics Commission and their local counsel.

1. **May the principal, teachers, and other employees of a Horace Mann charter school serve on the Board of Trustees?**

Yes. The participation of employees of a Horace Mann charter school does not compromise the ability of a Board of Trustees to operate and manage a charter school independent of the school committee governing the school district in which the charter school is located. Charter schools, however, should limit the number of employees who also serve as members of its Board of Trustees. If the membership of a Board of Trustees becomes synonymous with the staff of the charter school it operates and manages, it will hinder the Board's ability to operate and manage the charter school effectively. Additionally, the restrictions contained in G.L. c. 268A, §§ 4, 6, 17, and 23, discussed in response to Question 8, may restrict the activities of such employees. Charter school employees should seek the advice of the State Ethics Commission and their local counsel regarding these restrictions.

1. **Who employs the staff (principal, teachers, support staff) of a Horace Mann charter school? Who has authority over hiring, evaluation and dismissal of staff at a Horace Mann charter school?**

Several provisions of the charter school statute support the view that the board of trustees employs the charter school staff, and has authority over hiring, evaluation and dismissal. First, under G.L. c. 71, § 89 (b), a Horace Mann charter school is "operated and managed by a board of trustees independent of the school committee." The responsibility to "operate and manage" a school generally carries with it authority over hiring, evaluation and dismissal of school staff, especially the principal, to whom a board delegates significant responsibility.

Second, the board of trustees is "considered the public employer for purposes of tort liability" under Chapter 258. (§ 89 (aa)) If the board of trustees is potentially liable for acts or omissions of charter school staff, that must mean the board has control over the hiring, discipline and dismissal of its employees.

Third, the statute requires the charter school application to specify, among other things, "the number and qualifications of teachers and administrators to be employed." (§ 89 (f)(7)) This suggests that the charter school, through its board of trustees, has autonomy over hiring decisions.

The charter school statute, however, does not expressly state that the board of trustees is responsible for hiring, evaluation, discipline and dismissal of charter school staff. Section 89 (aa) specifies that "in the case of a Horace Mann charter school, the school committee of the school district in which the Horace Mann charter school is located shall remain the employer for collective bargaining purposes under chapter 150E." In addition, it is not clear whether the charter school statute was intended to supersede G.L. c. 71, § 59B, under which "the superintendent of a school district shall appoint principals for each public school within the district at levels of compensation determined in accordance with policies established by the school committee."

Section 59B further provides that "principals employed under this section shall be responsible, consistent with district personnel policies and budgetary restrictions and subject to the approval of the superintendent, for hiring all teachers, athletic coaches, instructional or administrative aides and other personnel assigned to the school, and for terminating all such personnel, subject to review and prior approval by the superintendent and subject to the provisions of this chapter."

Finally, the charter school statute, at § 89 (t), provides that G.L. c. 71, §§ 41 and 42 will apply to Horace Mann charter schools. Among other things, §§ 41 and 42 concern professional teacher status, dismissal and arbitration procedures and rights. With respect to dismissal, § 41 states, "Only a superintendent may dismiss a principal," and "A principal may dismiss or demote any teacher or other person assigned full-time to the school, subject to the review and approval of the superintendent."

The ambiguities in the charter school statute may be clarified through legislative amendment. Until that happens, it is necessary to reconcile the various provisions of state law in a way that protects statutory rights while enabling the Horace Mann charter schools, through their boards of trustees, to replicate, where possible, the autonomy, innovation and accountability that are central to the Commonwealth charter school model. To that end, we recommend the following approach to employment matters:

* 1. Hiring and dismissal of the principal: The board of trustees should select the principal and set his or her salary. The superintendent must make the appointment and approve the salary. And shall not unreasonably withhold approval of the appointment. Only the superintendent may dismiss the principal (G.L. c. 71, § 41), but the dismissal should be based on a recommendation by the board of trustees.
	2. Hiring and dismissal of teachers, aides and other personnel assigned exclusively to the school: The principal of the Horace Mann charter school hires and may dismiss teachers, aides and other personnel assigned exclusively to the school, subject to review by the board of trustees and approval by the superintendent (per § 59B and §§ 41 and 42). The superintendent shall not unreasonably withhold approval. For employees covered by collective bargaining, the provisions of the local collective bargaining agreement(s) will apply to the extent specified in the charter.
	3. Evaluation of the principal, teachers and other school staff: The board of trustees evaluates the performance of the principal, and the principal evaluates the performance of the teachers and other staff at the school. The performance standards and evaluation procedures are specified by state law (G.L. c. 71, § 38 and 603 CMR 35.00), by the applicable portions of the collective bargaining agreement (for those employees covered by collective bargaining), and by the terms of the charter.
1. **Are non-teaching staff required to be members of a union?**

Non-teaching staff are required to be members of a union if the position is covered in a collective bargaining agreement with the district. For example, custodial staff in a school district are usually covered by a collective bargaining agreement with the school committee. That agreement remains in effect and covers staff at the charter school. A school district, of course, may negotiate with any bargaining unit for waivers or exemptions for Horace Mann school employees.

1. **Must teachers, principals, and other personnel employed at a Horace Mann charter school be certified by the Department of Education?**

Yes. Because employees of a Horace Mann charter school are essentially employees of a school district, state law requires them to be certified for their respective positions.

1. **Must Horace Mann charter schools be located in district school buildings?**

No. The law does not require Horace Mann charter schools to be located in district buildings per se, but it does require a Horace Mann charter school to be located within the district and to obtain the approval of the local school committee relative to any financial obligation for which the local school district shall become legally obligated. Under G.L. c. 71, § 89(j), a Horace Mann charter school must have the approval of the local school committee before acquiring "real property, from public or private sources, by lease, lease with an option to purchase, or by gift, for use as a school facility." The approval of the school committee should not be unreasonably withheld. Further, under the law, a Horace Mann charter school must receive a budget allocation consistent with the allocation of other public schools in the district, and should, therefore, be provided with facilities or the funds with which to pay for facilities. As a result, if a Horace Mann charter school is not to be located in an existing district facility, the school committee must share responsibility for findings, and must work with the Horace Mann school's board of trustees to secure, an adequate facility for the school.

1. **May a district spend school building assistance funds on a building occupied by a Horace Mann school? May a Horace Mann charter school occupy a facility built or previously renovated with such funds?**

Yes. A district may spend school building assistance funds on buildings occupied by a Horace Mann charter school. A school also may occupy a facility built or previously renovated with school building assistance funds, provided that such use is generally consistent with the district's application for such funds.

1. **Do district rules apply to Horace Mann charter schools?**

Only those district rules specified in the charter apply to a Horace Mann charter school. The Board of Trustees is responsible for the educational program and its implementation consistent with the charter, as well as state laws and regulations. For example, a Horace Mann charter school must adopt a student code of conduct, which may be the same as, or different from, the district's code of conduct. Enrollment in a Horace Mann charter school, as an another example, must be done in accordance with the law and regulations, which stipulate that "charter schools shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in the English language or a foreign language, and academic achievement." (G.L. c. 71, § 89(l))

1. **Do district or state testing requirements apply to Horace Mann charter schools?**

Horace Mann charter schools must administer all applicable state-mandated tests, such as MCAS. While a charter school is under no obligation to follow district testing requirements, it may find it beneficial in demonstrating the academic progress of its students to continue administering the standardized tests used by the district. Plans for the formal assessment of the academic progress of students should be specified in a charter application.

1. **Are Horace Mann charter school students considered to be enrolled in the district?**

In many cases, yes, Horace Mann students are considered to be enrolled in the district. Districts, however, should not include these students in their own enrollment reports to the Department of Education. Enrollment data for Horace Mann schools will be reported to the Department directly by each Horace Mann school, as required by law. For calculation of foundation enrollment and foundation budget, the Department will merge the data so that the district will receive full credit for these students.

1. **Who grants diplomas to graduating seniors of a Horace Mann charter school: the school or the district?**

A Horace Mann charter school should adopt its own graduation requirements, and it may grant its own diplomas to students who meet those requirements. Nothing in the law, however, prevents a district from recognizing a Horace Mann charter school's program for the purpose of granting diplomas to the school's graduates. In such cases, the charter school retains responsibility for the education of its students, but the district may expect the school's graduates to meet district graduation requirements before awarding diplomas to them.

1. **In what ways must a Horace Mann charter school be part of a district and in what ways must it be independent?**

As described above, there are several significant ways in which the law considers the school to be part of the district, namely: hiring and firing of school personnel, employment for purposes of collective bargaining; school facility; funding; and the dissemination of innovative practices. In other aspects, especially regarding its educational program, the Horace Mann charter school should be functionally distinct from the district. Horace Mann charter schools are expected to collaborate with other public schools in the district and work cooperatively with a superintendent and other district personnel.

## Appendix 4: Technical Advisory 03-2 –

## the Impact of NCLB on Charter Schools

TO: Charter School Leaders

FROM: David P. Driscoll, Commissioner of Education

DATE: July 2, 2003

SUBJECT: The Impact of NCLB on Massachusetts Charter Schools

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**I. Introduction**

On January 8, 2002, President Bush signed into law the reauthorization of the Elementary and Secondary Education Act, commonly known as *No Child Left Behind* (“NCLB”). The four pillars of the new legislation -- accountability, flexibility, scientifically-based research, and options for parents -- call for a multi-faceted approach to holding public schools accountable for improving the academic achievement of their students. Like all public schools in the country, Massachusetts charter schools are subject to the requirements of NCLB and should be well versed with this comprehensive legislation. The United States Department of Education (“US DOE”) and the Massachusetts Department of Education (“MA DOE”) have released, and will continue to issue as needed, documents that provide guidance on implementing the numerous components of NCLB. A majority of these documents can be found on the NCLB website of the US DOE (http://www.ed.gov/offices/OESE/asst.html) and the NCLB website of the MA DOE (<http://www.doe.mass.edu/nclb/>.) Charter school leaders should refer to these documents when seeking detailed information on specific elements of NCLB. The purpose of this technical advisory is to provide information that is specific to the unique issues and impact of NCLB on Massachusetts charter schools.

**II. Teacher/Paraprofessional Quality**

**Teacher Quality**

NCLB requires **all** public school students to be taught by highly qualified teachers in the core academic subjects (English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography) by the end of the 2005-2006 school year. This requirement applies to charter schools as well as other public schools. **More immediately, NCLB requires all teachers who teach core academic subjects in a Title I program and who were hired after January 8, 2002 to meet the highly qualified requirements as a stipulation of employment. Again, this general requirement applies to charter schools as well as to other public schools.**

The US DOE issued *Title II, Part A (Improving Teacher Quality) Non-Regulatory Guidance* on December 19, 2002 that specifically defines the requirements that teachers in charter schools must meet in order to be considered highly qualified.

Charter school teachers who teach core academic subjects must

comply with any provision in a State’s charter school law regarding

certification or licensure requirements. A teacher in a charter school

does not have to be licensed or certified by the State if the State does not

require such licensure or certification. However, teachers of core academic subjects in charter schools must meet the other requirements that apply to

public school teachers, including holding a four-year college degree and demonstrating competence in the subject area in which they teach. *(United States Department of Education. Title II, Part A Non-Regulatory Guidance, Page 91.)*

Because Massachusetts law does not require charter school teachers to be certified, such teachers do not need to be certified to meet the definition of a highly qualified teacher. In order to be considered highly qualified, however, a charter school teacher in Massachusetts must:

1. hold a bachelor’s degree, AND
2. demonstrate subject matter competency in the areas in which they teach.

The MA DOE has defined the mechanisms by which teachers, including charter school teachers, can demonstrate subject matter competence in the areas in which they are teaching. These options are outlined in the MA DOE’s *NCLB Policy Draft on Highly Qualified Teachers* dated February 10, 2003 that is available online at <http://www.doe.mass.edu/nclb/news03/0210policy.html>**.** Charter schools, like other public schools, that have Title I programs must report annually the percentage of their teaching staff that is highly qualified via the school report cards required by NCLB (See **Report Cards** below.)

It is important to note that the teacher requirements found in the Massachusetts charter school law represent the minimum threshold for charter school teachers. The Massachusetts charter school law requires teachers in charter schools who were hired after August 10, 2000 to take and pass, within their first year of employment at a charter school, the Massachusetts Tests for Educator Licensure (“MTEL”), or be certified to teach in Massachusetts. While teachers hired by a charter school before August 10, 2000 do not need to meet such requirements under state law, all teachers in charter schools must meet the additional federal requirements of NCLB.

**Paraprofessional Quality**

The requirements that NCLB places on instructional paraprofessionals working in Title I programs are applicable to these paraprofessionals working in charter schools. These include:

1. possessing a high school diploma or its equivalent (e.g., GED); AND
2. earning an Associate’s (or higher) degree; OR one of the following:
3. completing at least two years, or 48 credit hours, of full-time study at an institution of higher education; or
4. taking and passing a formal state or local assessment measuring one’s knowledge of and ability to assist classroom teachers in reading, writing, and mathematics.

Additional information regarding the requirements of instructional paraprofessionals in a Title I program can be found in the MA DOE’s *Working Draft on Paraprofessional Qualifications* dated January 3, 2003 and available online at <http://www.doe.mass.edu/nclb/news03/paraqual_memo.html>.

**NCLB Key Question Reference- Teacher/Paraprofessional Quality**

1. Have all the Title I teachers hired by your school after January 8, 2002:
* received a bachelor’s degree?
* demonstrated subject area competency in the areas in which they teach?
1. By 2005-2006, will **all** your core academic subject teachers:
* hold a bachelor’s degree?
* have demonstrated subject area competency in the areas in which they teach?
1. Have all instructional paraprofessionals working in your Title I programs and hired after January 2, 2002:
* received a high school diploma?
* earned an Associate’s degree, completed 48 credit hours of study at an institution of higher learning, or passed the ParaPro or Act WorkKeys Assessment?
1. By 2005-2006, will all paraprofessionals working in your Title I programs and hired before January 2, 2002:
* have received a high school diploma?
* have earned an Associate’s degree, completed 48 credit hours of study at an institution of higher learning, or passed the ParaPro Assessment, Act WorkKeys Assessment, or locally a designed assessment?

**III. Adequate Yearly Progress (“AYP”)**

NCLB requires all students to reach proficiency on state standards by 2013-2014. Adequate Yearly Progress (“AYP”) represents the minimum level of improvement that states, school districts, and schools must achieve each year in order to meet this goal. Massachusetts has defined an accountability system for all public schools that, consistent with NCLB, tracks schools’ progress toward meeting the goal of all students achieving proficiency by 2013-2014. This system is based on MCAS results, and beginning in 2003 and beyond attendance and dropout/graduation rate indicators, that measure the proficiency and improvement levels achieved, and in turn, determine an AYP rating. As public schools, charter schools are held accountable to making AYP. Further information regarding Massachusetts’ School and District Accountability System can be found on the Department’s website at http://www.doe.mass.edu/ata/NCLBapproval.html.

MCAS results, and therefore AYP ratings, are an important measure in the overall set of evidence that is collected and analyzed to determine whether a charter school has met the criteria for renewal at the end of its five-year charter. It is important to note, however, that AYP ratings do not replace the accountability system that has been established for Massachusetts charter schools. Simply put, AYP ratings alone do not drive a charter school renewal decision that is based upon the success of the school’s academic program, the viability of the school as an organization, and the faithfulness of the school to the terms of its charter.

Charter schools, however, should by no means overlook the importance of AYP ratings. Not only do these ratings serve as a critical measure for the Department and the public in evaluating the effectiveness of public schools, failure to meet them may result in certain actions, including those outlined in the NCLB legislation. NCLB defines sanctions for all public schools, including charter schools, with an emphasis on those schools receiving Title I funds that fail to make AYP. According to federal law, a Title I school that fails to make AYP for two consecutive years must be designated as a “School In Need of Improvement.” Like their local district school counterparts, charter schools are subject to these sanctions. As the number of consecutive years that a school does not meet its AYP targets increases, so do the severity of the sanctions placed on such schools. The most severe sanctions could put a school’s charter in jeopardy of being revoked or not renewed. (See **Supplemental Services, Restructuring, and Reconstitution** below.)

**IV. Charter Schools and the Consequences For Failing To Meet AYP**

**School Choice**

NCLB requires all schools that fail to make AYP in two consecutive years to send notification to parents that the school has not made AYP. Furthermore, a Title I school that has not made AYP in two consecutive years and is a “School In Need of Improvement” must notify parents of their right to request that their child be transferred to a different school that has made AYP in the district. While the parental notification requirement is the same for charter schools as it is for other public schools, the “transfer” provision is different for a charter school.

Massachusetts charter schools are, by definition, schools of choice; students are not “assigned” to attend a charter school. Rather, parents and/or students choose to attend a charter school instead of their district offering(s). At any time, regardless of whether a charter school has made AYP or not, parents and/or students can choose to return to their district school. Thus, a charter school that is designated as a “School In Need of Improvement” has the responsibility of informing parents of the school’s status but does not need to provide parents with other school options beyond the choice to return to their local district school(s).

NCLB also requires that a percentage of the Title I funds of a school “In Need of Improvement” be set aside to pay for the costs associated with transporting a student or students to a school that has made AYP. Because the intent of this provision is to ensure that students have options to attend high-performing public schools, it is not applicable to charter schools as they are schools of choice. Thus, a charter school that is “In Need of Improvement” is not required to set aside funds for transporting students to other schools but may provide such services should they desire to do so.

Parents of students from local district schools or neighboring school districts that have not made AYP may submit an application to a charter school for their child. Because charter schools are required to enroll students by lottery, students from schools designated as a “School In Need of Improvement” may not receive preference in enrollment. Applications from such students must be considered in the same manner as an application from any other student when filling available slots at a charter school.

**Supplemental Services, Restructuring, and Reconstitution**

Title I schools, including charter schools, that are “In Need of Improvement” for a third consecutive year are obligated to commit a portion of their Title I funding to offer supplemental services to their students. Additional information regarding the responsibilities of Title I schools required to provide supplemental services can be found in the MA DOE’s *NCLB Implementation Memorandum #4,* dated December 20, 2002 and available online at <http://www.doe.mass.edu/ses/02news/1220memo4.html>.

If a school receiving Title I funds is “In Need of Improvement” for a fourth consecutive year, federal law requires the school to implement one or more “corrective actions.” Such actions include, but are not limited to, replacing certain school staff; implementing a new curriculum; extending the school day or year; or restructuring the internal organization of the school. If the school does not make AYP in a fifth consecutive year, it must begin planning for “restructuring.” During restructuring, one of the following actions is implemented: converting the school to charter school status; replacing all or most of the school staff; contracting with an entity with a demonstrated record of effectiveness, such as a private management company, to operate the public school; turning the operation of the school over to the state educational agency; or any other major restructuring of the school's governance arrangement that makes fundamental reforms (*No Child Left Behind Act of 2002 Sec. 1116(8)(A); 20 U.S.C. 6316(8)(A).*

Additional information regarding the responsibilities and timelines for schools “In Need of Improvement” can be found in the MA DOE’s *NCLB Implementation Memorandum #3,* dated December 20, 2002 and available online at http://www.doe.mass.edu/nclb/news02/memo3\_1.pdf.

While NCLB outlines specific actions for restructuring a failing school, Massachusetts charter school law states additional possible consequences for a “failing” charter school. These consequences include revocation or non-renewal of the school’s charter by the state Board of Education. Therefore, charter schools should be aware that a very real possibility for “restructuring” may be revocation or non-renewal of its charter.

District public schools that are required to restructure may consider converting to charter school status. The Massachusetts charter school statute defines the process by which persons and entities can apply for a public school charter. Restructuring an existing district school into a charter school, under either the Commonwealth or Horace Mann models, requires following the application process as defined by state law and policy.

**School Improvement Plans**

NCLB requires that schools, both Title I and non-Title I, that have not made AYP for two consecutive years, develop a School Improvement Plan that sets forth concrete actions for improving student achievement. A charter school that has not made AYP for two consecutive years should review the necessary components of the School Improvement Plan to align its requirements with the documents already guiding the school’s academic and non-academic programs, in particular the school’s charter and accountability plan. The purpose of the School Improvement Plan is to establish annual, measurable goals and overall improvement objectives (related especially to achievement of AYP), analyze why the school has not yet achieved its goals, and describe what strategies the school will use to improve performance. Most of the elements required in the School Improvement Plan should already be included in the charter school’s accountability plan and annual reports on the school’s progress toward meeting its goals. While a separate document may be needed to articulate clearly every point in the School Improvement Plan, a charter school should not view this document as distinct and unconnected to the goals and objectives outlined in its accountability plan. Doing so could create confusion over what the school intends to do for students. Rather, there should be a clear connection between these guiding documents that leads to increased academic achievement.

Additional information regarding School Improvement Plans can be found in the MA DOE’s *NCLB Implementation Memorandum #3,* dated December 20, 2002 and available online at <http://www.doe.mass.edu/nclb/news02/1220memo3.html>.

**NCLB Key Question Reference- Consequences For Failing To Meet AYP**

1. If your school has not made AYP for *two* consecutive years, have you sent notification to parents explaining your “AYP status?”
2. If your school has not made AYP for *two* consecutive years, have you drafted a School Improvement Plan?
3. If your school receives Title I funds and has not made AYP for *three* consecutive years, have you made provisions to offer your students supplemental service?
4. If your school receives Title I funds and has not made AYP for *four* consecutive years, have you implemented one or more “corrective actions?”
5. If your school receives Title I funds and has not made AYP for *five* consecutive years, have you begun to “restructure?”

**V. Report Cards**

NCLB requires that all districts and schools, including charter schools, that receive Title I funds annually prepare and disseminate report cards. The law specifies the following data that must be reported: dropout/graduation rates; professional qualifications of the teaching staff; state standardized test (MCAS) results; and AYP determinations. Additional information may be included at the school’s discretion. The MA DOE has designed a report card application that can support schools in meeting these requirements. Schools, however, are not obligated to use it. Additional information and guidance about the report card requirements of NCLB can be found on the Department’s website at <http://www.doe.mass.edu/nclb/reportcard>.

Massachusetts charter school law requires that charter schools submit an annual report on August 1st of each year. The NCLB report card requirement does not exempt a charter school from this responsibility. In its annual report, a charter school is required to present a comprehensive picture of the recently completed school year with a particular focus on its progress towards meeting the academic and non-academic goals set forth in the school’s accountability plan. This requirement extends beyond the data elements that are required on the NCLB report card.

Currently, there is no requirement regarding the date by which these report cards must be issued; therefore, including the NCLB-mandated data in the charter school’s annual report satisfies the NCLB report card requirement. It is important to note that NCLB requires public schools to "publicly disseminate [the report card] to . . . parents of students attending those schools" whereas the Massachusetts charter school regulations require annual reports to be made *“available to every parent or guardian of its enrolled students.”* Thus, if a charter school chooses to satisfy the report card requirement through its annual report, the charter school will be responsible for ensuring that parents and guardians of all students attending the school receive a copy of the annual report.

**NCLB Key Question Reference- Consequences For Failing To Meet AYP**

1. For schools that receive Title I funds, have you distributed an annual report card containing:

dropout/graduation rates;

the percent of teachers that meet the NCLB definition of “highly qualified”;

MCAS results; and

AYP determinations?

1. If meeting the NCLB report card mandate by reporting the required data in the school’s annual report, have you ensured that each parent receives a copy of this report?

**VI. NCLB and The Role of the Charter School Authorizer**

The passage of NCLB marked a new level of accountability for all public schools, including charter schools. Its passage, however, does not diminish the responsibility of charter school authorizers to hold charter schools accountable. Section 1111(b)(2)(K) of NCLB (20 U.S.C. 6311(b)(2)(K)) and Section 200.49(f) of the final federal Title I regulations require that accountability for charter schools be overseen in accordance with state charter school law. In accordance with federal and state laws, the Massachusetts Board of Education will continue its oversight of Massachusetts charter schools. Collectively, the MA Board of Education and MA Department of Education provide the oversight required by NCLB and the charter school accountability system.

The remainder of this Technical Advisory is a series of more specific *Questions and Answers* regarding how the NCLB requirements apply to Massachusetts charter schools and what schools need to do to satisfy those requirements. These *Questions and Answers* and this Technical Advisory will be available online at the Charter School Office website at <http://www.doe.mass.edu/charter/acct.html> and will be updated as necessary.

**VII. Questions and Answers:**

Q1. Does NCLB require a teacher in a Massachusetts charter school to be certified in

 order to be considered “highly qualified?”

No. Because Massachusetts charter school law does not require teachers in charter schools to be certified, charter school teachers do not need to be certified in order to meet the NCLB definition of “highly qualified.” Charter school teachers, however, must meet the other NCLB requirements to hold a bachelor’s degree and demonstrate subject matter competency in the areas they teach, in order to be considered “highly qualified.”

Q2. Are the instructional paraprofessional qualifications mandated by NCLB applicable

 to charter schools receiving Title I funds?

Yes. Paraprofessionals with instructional support duties in charter schools receiving Title I funds must meet the same NCLB requirements as instructional paraprofessionals in district schools receiving Title I funds.

Q3. Are charter schools subject to meeting adequate yearly progress (AYP)?

Yes. Charter schools, like all Massachusetts public schools, are subject to the state’s accountability requirements, including the requirement to make AYP.

Q4. Are AYP targets the only measure by which charter schools will be held

 accountable?

No. Massachusetts Charter School Regulations (603 CMR 1.00) provide that the charter school accountability process shall be based on whether the academic program of the school is a success; whether the school is a viable organization; and whether the school has been faithful to the terms of its charter. While AYP determinations are an important measure that informs a charter renewal decision, the Board of Education will continue to look at each of the three questions of charter school accountability to determine whether a school’s charter should be renewed.

Q5. How are AYP ratings determined?

AYP ratings for Massachusetts public schools, including charter schools, are issued every two years (a “cycle”), on even numbered years, based on an analysis of a school’s MCAS results. Two measures, performance ratings and improvement ratings, inform an AYP determination. In order to receive a performance rating, a school must have data for both years of the rating cycle as well as enough students tested to meet the minimum size requirements. Performance ratings are issued when a school has 20 or more students tested per year, on average, and no fewer than 15 students in any one year. Improvement ratings are issued once a school has administered MCAS for four consecutive years, allowing for baseline and review years. A school needs to have test results for 50 or more students per year on average during the years under review and no fewer than 40 in any one year to receive an improvement rating. A school will be found to have made AYP when **performance** is at or above the state performance target **or** when **improvement** is rated *On Target* or *Above Target*.

Q6. When should a new charter school expect to receive its first AYP rating?

An AYP determination can be made based solely on a performance rating if the school’s performance is above the state target; otherwise an improvement rating is needed. Thus, a charter school could receive an AYP rating once the school has administered two years of MCAS tests falling in the same cycle.

For example, the next time that AYP determinations are made will be in Cycle III after the release of Spring 2004 MCAS results (analyzing the Spring 2003 and Spring 2004 MCAS administration). ABC Charter School opens its doors for the first time in the Fall of 2003 serving grades 6-8. ABC Charter School will not receive an AYP rating in Cycle III as it will not have the data required (no Spring 2003 administration - the school was not open then). ABC Charter School will have to administer the Spring 2005 and Spring 2006 MCAS to meet the threshold for an AYP rating in Cycle IV. An AYP rating may be determined depending on the school’s performance against the state’s performance target. If the performance is above the state’s target, that school will have made AYP. If the school’s performance is below the state’s target, additional years of data will be needed for an improvement rating to support the determination.

Q7. Many charter schools have small enrollment numbers in each grade. Will such

 schools receive an AYP rating?

Performance ratings are issued when a school has 20 or more students tested per year, on average, and no fewer than 15 students in any one year. Improvement ratings are issued when a school has 50 or more students per year on average during the years under review and no fewer than 40 in any one year. Previously the Department rated each grade separately, for grades 4, 7/8, and 10. Thus, the minimum sample size requirements applied to the individual grades. Moving forward, the Department will rate the entire school, not individual grades, so even if a school has small enrollment in each grade, if there were enough students tested across all the MCAS testing grades, then the school could receive an AYP determination.

Q8. Are charter schools subject to the sanctions of NCLB when AYP is not met?

Yes. The sanctions outlined by NCLB for public schools, both Title I and non-Title I, that fail to make AYP are applicable to charter schools.

Q9. When AYP is not met, are the consequences for schools, including charter schools,

 that do not receive any Title I funds the same as those for schools that receive Title

 I funds?

NCLB requires **all** public schools, whether they receive Title I funds or not, to notify parents when AYP is not made. Furthermore, under NCLB **all** public schools must develop School Improvement Plans when AYP is not made in two consecutive years. The sanctions of providing supplemental services, corrective action, and restructuring, however, are only applicable to schools that receive Title I funding. Furthermore, only schools that receive Title I funds are required to issue annual report cards as defined in the NCLB legislation. The charter school accountability process applies equally to all charter schools.

Q10. Do charter schools identified as “In Need of Improvement” that receive Title I

 funds need to provide choice options for students to attend a school that has made

 AYP?

No. Title I schools that have not met AYP for two consecutive years must notify parents of their right to attend another school in the district that has met AYP. Charter schools, however, are schools of choice. Because no student is “assigned” a charter school to attend, parents and students can choose to leave the charter school at any time, regardless of whether the school made AYP or not. Thus, a charter school that does not make AYP is required to notify parents of their AYP status, but has no obligation to provide another schooling option other then notifying parents of the right to attend the school(s) in their district of residence.

Q11. Are charter schools that fail to meet AYP required to offer transportation for

 students wishing to attend a school other than the charter school?

No. The law requires, to the extent practicable, that districts set aside funds to cover the costs of transporting a student attending a “School In Need of Improvement” to a school that has made AYP. Because this provision is intended to ensure that students have options to attend high-performing public schools, it is not applicable to charter schools as they are in themselves are schools of choice.

Q12. Can charter schools give preference in enrollment to students who attend a school

 that has not made AYP?

No. The Massachusetts charter school statute requires charter schools to conduct a lottery in a non-discriminating manner when enrolling students. Giving preference in enrollment to a student solely because they are seeking to attend a higher-performing school is not allowed under the Massachusetts charter school statute.

Q13. Are charter schools that do not make AYP for two consecutive years required to

 create a School Improvement Plan?

Yes. NCLB requires all public schools, including charter schools, that do not make AYP for two consecutive years to develop School Improvement Plans that set forth concrete actions for improving student achievement. Such charter schools should review the necessary components of the School Improvement Plan to incorporate its requirements into the documents already guiding the school’s academic and non-academic programs, specifically the school’s charter and accountability plan. While a separate document may be needed to clearly articulate the substance necessary in the Improvement Plan, a charter school should not design goals and objectives that create multiple lines of accountability. Rather, there should be a clear crosswalk between these guiding documents that leads to increased academic achievement.

Q14. What would it mean to “restructure” a charter school?

NCLB outlines specific actions for restructuring a failing school, including but not limited to, contracting out the management of the school to a private company or the state or significantly changing the governance structure of the school. Meanwhile, Massachusetts charter school law defines additional consequences for a “failing” charter school: revocation or non-renewal of the school’s charter. Therefore, charter schools should be aware that a very real option for restructuring their school could be for the MA Board of Education to revoke or not renew their charters.

Q15. NCLB states that schools that have not met AYP for five consecutive years must

 plan for restructuring and that converting to charter school status is a potential

 restructuring action. How would a district school convert to charter school status?

The Massachusetts charter school statute defines the process by which persons and entities apply for a public school charter. Restructuring an existing school into a charter school, under both the Commonwealth and Horace Mann charter school models, would require following the application process as defined by state law and policy.

Q16. Are charter schools required to issue school report cards as defined by NCLB?

Only charter schools that receive Title I funds are required to produce and disseminate the data required in school report cards as defined by NCLB: dropout/graduation rates, qualifications of teaching staff; state standardized test (MCAS) results; and AYP determinations.

Q17. Can a charter school incorporate the data elements of the NCLB report card into its

 annual report and thereby meet the requirements of NCLB?

Yes. As there is currently no date by which NCLB report cards need to be issued each year, a charter school can choose to use its annual report as the mechanism for reporting the data mandated by NCLB. If a charter school decides to incorporate the NCLB report card requirement into its annual report, however, the parents or guardians of every student attending the charter school must receive a copy of the school’s annual report in order to meet the dissemination requirements of the NCLB report card.

Q18. NCLB requires school districts to provide “equitable service to private schools.” Is

 this requirement applicable to Massachusetts charter schools?

No. Although charter schools are considered LEAs for the purpose of receiving federal entitlement funds, they are not subject to the provisions regarding equitable participation to private schools. Such participation is provided to private schools through local school districts.

**VIII. Resources:**

*U.S. Department of Education Resources:*

http://www.ed.gov/offices/OESE/asst.html

NCLB-related implementation publications and documents coming from the federal government

<http://www.nclb.gov>

General information about NCLB for parents and the public

<http://www.ed.gov/offices/OII/choice/charterguidance03.doc>

Non-regulatory guidance that provides general information on how NCLB impacts charter schools, including details on accountability requirements; public school choice; supplemental educational services; and teacher and paraprofessional qualifications

*MA Department of Education Resources:*

<http://www.doe.mass.edu/nclb>

NCLB-related publications and documents issued by the MA DOE

<http://www.doe.mass.edu/titlei/nclb/>

Provides information about Title I programs for Massachusetts schools

<http://www.doe.mass.edu/charter/default.html>

Provides information about charter schools in Massachusetts

<http://www.doe.mass.edu/ata/>

Provides information on the accountability system for Massachusetts public schools

## Appendix 5: Template Letter to Request Approval of New Board Members

[DATE]

Massachusetts Department of Education

Charter School Office

350 Main Street

Malden, MA 02148

To Whom It May Concern:

On [DATE], the Board of Trustees voted in accordance with Open Meeting Law to accept [NAME OF PROPOSED BOARD MEMBER] and [NAME OF PROPOSED BOARD MEMBER] as members of the [CHARTER SCHOOL] Board of Trustees, pending approval from the Commissioner of Education. Enclosed are the resumes and Disclosure of Financial Interest forms for each individual for review and approval. Providing that these members are approved, our Board will then consist of [TOTAL NUMBER OF BOARD MEMBERS] approved members. All Board members and their positions are listed below. Thank you and I look forward to hearing from you regarding their status.

Ms. Mary Brown, Chair

Mrs. Lisa Macafee Vice- Chair

Mr. Harry Thomas Treasurer

Mr. Daniel Johnson Clerk

Mr. Alex Moran Trustee

Sincerely,

Contact Person

Title

## Appendix 6: Template Letter to Notify Charter School Office of Member Resignation

 [DATE]

Massachusetts Department of Education

Charter School Office

350 Main Street

Malden, MA 02148

To Whom It May Concern:

On [DATE], [NAME OF RESIGNING MEMBER] resigned from the [CHARTER SCHOOL] Board of Trustees. The Board voted [NAME OF PROPOSED BOARD MEMBER] as the new [BOARD POSITION].

Sincerely,

Contact Person

Title

Appendix 7: Disclosure of Financial Interest

FILING FOR CALENDAR

YEAR:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date Received: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BY A CHARTER SCHOOL TRUSTEE

**AS REQUIRED BY G.L. c. 71, § 89(v)**

G.L. c. 71 § 89(v) provides that: “Members of boards of trustees of charter schools operating under the provisions of this section shall file a disclosure annually with the state ethics commission, the department of education, and the city or town clerk wherein such charter school is located. The form of the disclosure shall be prescribed by the ethics commission and shall be signed under penalty of perjury. Such form shall be limited to a statement in which members of the board of trustees shall disclose any financial interest that they or a member of the immediate families, as defined by section one of chapter 268A,[[14]](#footnote-14) have in any charter school located in the commonwealth or in any other state or with any person[[15]](#footnote-15) doing business with any charter school.

 Each member of a board of trustees of a charter school shall file such disclosure **for the preceding calendar year** with the commission within 30 days after becoming a member of such board of trustees, on or before September 1 of each year thereafter that such person is a member of such board and on or before September 1 of the year after such person ceases to be a member of such board; provided however, that no member of a board if he served less than 30 days in such year.”

1. Trustee’s name (print): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

2. Position on board (i.e., chair, treasurer, committee chair, etc.): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Beginning Term: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Term Expires: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

3. Home address: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Business Address:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

4. Daytime phone: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 5. Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

6. Name of charter school: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

7. Address of charter school: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 8. Is Trustee an

 employee of the school? \_\_\_\_\_\_\_\_

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

9. Identify each charter school located in the Commonwealth of Massachusetts in which, during the previous calendar year, you and/or immediate family member had a financial interest. If there was no financial interest, write none.

|  |  |  |  |
| --- | --- | --- | --- |
| School Name | School Address | Financial Interest(describe) | Trustee and/or Immediate Family (name) |
|  |  |  |  |

10. Identify each charter school located in any other state in the United States in which, during the previous calendar year, you and/or an immediate family member had a financial interest. If there was no financial interest, write none.

|  |  |  |  |
| --- | --- | --- | --- |
| School Name | School Address | Financial Interest(describe) | Trustee and/or Immediate Family (name) |
|  |  |  |  |

11. Identify each individual, business, corporation, union, association, firm, partnership, committee, proprietorship, franchise, holding company, joint stock company, business or real estate trust, non-profit organization, or other organization or group of people doing business with any charter school **and** in which, during the previous calendar year, you and/or your immediate family member had a financial interest. If there was no financial interest write none.

|  |  |  |  |
| --- | --- | --- | --- |
| School Name | School Address | Financial Interest(describe) | Trustee and/or Immediate Family (name) |
|  |  |  |  |

Signed under the penalties of perjury, for the preceding calendar year, \_\_\_\_, as specified

in G.L. c. 71, § 89.

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature Date

*Also file copy with:*

State Ethics Commission

One Ashburton Place, Room 619

Boston, MA 02108

*File* ***original*** *with:*

Department of Education

Charter School Office

350 Main Street

Malden, MA 02148

*And file copy with:*

the clerk for the city or town in which the charter school is located.

## Appendix 8: Guidance on Charter School Bylaws

***Bylaws Must:***

* 1. state the name and purpose of the school and that the school is a public school chartered by the Commonwealth of Massachusetts.
* 2. cite MGL Chapter 71 Section 89.
* 3. state that the Board of Trustees is a public entity.
* 4. state that individual Board members are considered special state employees.
* 5. state that the Board of Trustees holds the charter from the state and is therefore responsible for ensuring that the school and Board members:
	+ comply with all applicable laws and regulations.
	+ ensure that the school is an academic success, organizationally viable, faithful to the terms of its charter, and earns charter renewal.
* 6. state that the Board of Trustees may not discriminate against potential members on the basis of age, sex, sexual orientation, race, national origin, ancestry, religion, marital status, or non-disqualifying handicap or mental condition.
* 7. require that notice be given of the date, time and location of all meetings in accordance with the law pertaining to the open meetings of governmental bodies (Mass. Gen. Laws c. 30A, § 11A½ ).
* 8. require that a record of every meeting be adopted and kept, including the time, date, and location of the meeting, the members present or absent, and all action taken at the meeting, including formal votes taken.
* 9. require that trustee participation occur in person for purpose of a quorum or vote.
* 10. determine the minimum and maximum number of trustees.
* 11. specify the number of trustees that shall constitute a quorum.
* 12. state that action by the Board requires a majority vote of a quorum of seated trustees.
* 13. define a number of years that shall constitute a term.
* 14. set a specific, reasonable, limit on successive or total terms that a member may serve.
* 15. require a formal vote of the Board of Trustees to accept all new members.
* 16. specify that the school’s fiscal year begins on July 1 (and ends on June 30 of the following calendar year).
* 17. specify a process for making amendments to the bylaws, subject to the approval of the Board of Trustees and the Department of Education (and School Committee/Teacher's Union if a Horace Mann.).
* 18. determine general school policies, in compliance with state and federal law.
* 19. manage the financial affairs of the school and approve the annual budget.
* 20. not refer to the school as a non-profit corporation, a charitable organization, a 501(c)(3), or use descriptions indicating that the school is anything other than a public entity.
* 21. not allow an entity other than the Board of Trustees to select or remove trustees.
* 22. not allow the Board of Trustees to exercise managerial powers over the day-to-day operations of the school.
* 23. not allow members to participate in meetings by email or proxies.
* 24. not allow the Board of Trustees to select, appoint, evaluate, and/or remove the school staff other than school leadership.
* 25. not allow membership of a majority of the Board of Trustees to be bound or affected by any other entity.
* 26. expressly require a voting teacher representative in the board's composition if the school intends to have any paid voting teacher member(s) serve on the board.

***Strong suggested for inclusion:***

* 1. specify the process through which a trustee may resign.
* 2. specify the process through which a trustee may be removed.
* 3. allow a trustee to be removed with or without cause.
* 4. require that the Board of Trustees meet at least quarterly or as needed.
* 5. require an annual meeting of the Board of Trustees.
* 6. specify the situations for which approval may require a special majority.
* 7. establish a process for electing officers.
* 8. specify the number and titles of officers (Chair, Vice-Chair, Secretary, and Treasurer).
* 9. describe the responsibilities of each officer.
* 10. allow the Board of Trustees to select, appoint, evaluate, and/or remove the school director(s).
* 11. allow the formation of committees and/or task forces, either permanent or as needed.
* 12. include the school’s mission statement.

## Appendix 9: Technical Advisory 03-3 – Charter Amendments

TO: Charter School Leaders

 Chairpersons, Boards of Trustees of Charter Schools

FROM: David P. Driscoll, Commissioner of Education

DATE: July 2003

SUBJECT: Charter Amendments

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

When a school receives its original charter and any subsequent renewals of that charter from the Board of Education, the state approves the charter school’s broad academic and organizational plans for the next five years. Any substantive changes to those plans require the approval of the Commissioner and/or Board of Education for an amendment to the school’s charter **before** the changes are effective.

This memorandum has three purposes. First, it provides guidance to charter schools on the changes to their operations, as defined in 603 CMR 1.11, that require approval from the Commissioner and/or Board of Education for an amendment to the school’s charter **before** the school can implement the changes. Second, it outlines the process that a charter school must follow in making an amendment request. Third, it informs charter schools of changes at the school level and the Board of Trustees level about which they must notify the Charter School Office in a timely fashion.

A Horace Mann charter school’s amendment request for a major or minor change in its operations requires the approval of the local teachers’ union and school committee. In the event that a Memorandum of Understanding between a Horace Mann charter school and the local school district is modified due to these changes in a school’s operations, the school must submit the modified Memorandum of Understanding to the Commissioner of Education at the time of the amendment request.

Unless stated otherwise, the use of “charter school” in this document refers to both Horace Mann charter schools and Commonwealth charter schools.

**I. Major Changes in a Charter School’s Operations that Require the Board of Education’s Approval for an Amendment to the School’s Charter**

Under section 1.11 of the Regulations on Charter Schools (603 CMR 1.00), “if a charter school wishes to make a major change in its operations, the school’s Board of Trustees shall submit in writing to the Board of Education a request to amend its charter.” Major changes in a charter school’s operations are defined as those that “fundamentally affect a school’s mission, organizational structure, or educational program.” Such changes include, but are not limited to, major changes in a school’s:

* Educational philosophy or mission;
* Governance or leadership structure;
* Contract with an education management organization that is providing or planning to provide substantially all the school’s educational services;
* Curriculum models or whole-school change designs that are inconsistent with those specified in the school’s charter;
* Location of facilities, if such change involves relocating or expanding to another municipality (whether or not a school is regional);
* District(s) specified in a regional school’s charter;
* Maximum enrollment; or
* Grades served.

**II. Minor Changes in a Charter School’s Operations that Require the Commissioner of Education’s Approval for an Amendment to the School’s Charter**

Under section 1.11 of the Charter School Regulations (603 CMR 1.00), “if a charter school wishes to make a minor change in its operations, the school’s Board of Trustees shall submit in writing to the Commissioner of Education a request to amend its charter.” Minor changes in a charter school’s operations are defined as those that change the school’s design and operations but that “do not fundamentally alter its mission, organizational structure or educational program.” Such changes include, but are not limited to, changes to a school’s:

* Bylaws;
* Schedule (e.g. length of school year, school week, or school day);
* Enrollment process;
* Code of conduct;
* Corrections and clarifications involving the mission statement or other sections of the charter that do not fundamentally affect the school’s mission, organizational structure, or educational program;
* School name; or
* Membership of the Board of Trustees, to be approved before they become voting members (as specified under 603 CMR 1.05(2)(a)).

**III. Process for Review of Amendment Requests**

The chairperson of a charter school’s board of trustees, or an individual authorized by the board of trustees, must submit amendment requests to the Commissioner of Education with a copy to the Associate Commissioner for Charter Schools. The school must submit a cover letter and may attach supporting documents. The Commissioner will determine whether an amendment request requires action by the Board of Education and, if so, whether he/she will recommend approval. The cover letter for an amendment request is submitted under the penalties of perjury and should:

* summarize the request (what currently exists in the charter and what changes are proposed);
* explain the reasons for the requested changes;
* include a statement that the charter school’s Board of Trustees voted to request this amendment to its charter on [DATE] at a meeting held in compliance with the Massachusetts Open Meeting Law;
* include a statement that the Board of Trustees authorized the individual sending the letter to make the request on their behalf if the Board Chairperson is not the author; and
* in the case of Horace Mann charter schools, include certification that the local school committee and local teachers’ union have approved the request.

The Charter School Office will oversee the process of review for the Commissioner of Education and the Board of Education. In submitting an amendment request, accurately presenting the requested changes in a letter with the above elements enhances a school’s credibility and the efficiency with which we can then process the request. A charter school can submit a request to amend its charter at any time. The Charter School Office will work with the school regarding any necessary revisions or additional information. The Commissioner and/or the Board of Education will endeavor to approve or deny complete amendment requests within 60 days after receiving them. If the Commissioner denies a charter school’s amendment request, the school’s Board of Trustees may seek review of that decision by the Board of Education.

Please note that suggested timelines are subject to the complexity of the issues involved and the schedules of the Commissioner and the Board of Education. Charter schools are strongly encouraged to plan ahead regarding amendment requests, particularly those that are major in nature. For instance, a school’s request to increase its maximum enrollment that is received by the DOE in February will likely not receive approval prior to the mid-March deadline for pre-enrollment reports.

If a Commonwealth charter school seeks an amendment to change its maximum student enrollment (including grades served), the municipality of its location, or the districts specified in its region (in the case of regional charters), the Department will provide a copy of the amendment request to the superintendents of the affected school districts and provide them notice of their right to submit written comment to the Commissioner within 15 days.

**IV. Criteria for Approval or Denial of an Amendment Request**

Section 1.11 of 603 CMR 1.00 contains several criteria that the Commissioner and the Board of Education may consider in reaching a determination regarding a school’s request to amend its charter. First, “the Commissioner and the Board of Education may consider a charter school’s compliance with applicable state, federal, and local law.” Second, the Commissioner and the Board of Education may consider the evidence regarding the success of the school’s academic program, the viability of the school as an organization, and the faithfulness of the school to the terms of its charter.

**V. Changes at a School About Which the School Must Notify the Charter School Office**

There are also changes at a charter school about which the school must inform the Charter School Office in a timely fashion, but that do not require an amendment request. These include changes in:

* Individuals in school leadership positions (Executive Director/Principal);
* Location of the school’s facilities within the same municipality;
* Documentation of the school’s compliance with all fire, health and safety laws for a move to new facility or for renovations to the same facility;
* Officers of the school’s Board of Trustees;
* General contact information (phone #, mailing address, and email) for the school and the school’s Board of Trustees;
* Main contact persons for the school and the school’s Board of Trustees.

In addition, like all public school districts and public schools in the state, charter schools are required to provide information to the DOE through the School and District Profiles. Charter schools view, add, update and delete their own information over the web to make sure that the information is as up-to-date and accurate as possible. Schools should contact 781-338-DATA or data@doe.mass.edu with any questions about this process.

## Appendix 10: Template Letter of Request for Charter Amendment Approval

*[date]*

Commissioner of Education

Massachusetts Department of Education

350 Main Street

Malden, MA 02148

Dear Commissioner,

On behalf of the *[insert school name]* Board of Trustees, I respectfully request your approval of an amendment to change our charter to *[insert the change, making sure to summarize what is in the current charter and what is proposed – this could be a paragraph or more if a complicated request or multiple requests]*. These changes to our charter will be effective *[either upon the approval of the Commissioner or the Board of Education, as appropriate, or at some later date specified by the school]*.

The *[insert school name]* Board of Trustees wishes to make this change because *[insert reasons again; this could be a paragraph or more if a complicated request – and can reference any attachments to further describe the reasons]*.

The *[insert school name]* Board of Trustees voted to approve this request on *[insert date]* at a meeting held in compliance with Massachusetts Open Meeting Law G.L. c. 30A, s. 11A1/2. At that meeting, the Board of Trustees authorized me to submit this request on their behalf *[only if the undersigned is the school’s Director or other individual other than the Board chairperson]*. I have also enclosed certification that the *[insert district name]* school committee and *[insert district name]* teachers’ union has approved this request *[if the request is from a Horace Mann charter school]*.

The *[insert school name]* is an academic success, is a viable organization, and is faithful to the terms of its charter. *[The following can be a paragraph or more, but should focus on the positive highlights in each of those three areas – examples might include recent renewal without conditions, MCAS absolute and trend performance, strong and stable leadership, financial strength, and being true to its charter – and can reference any attachments that support these statements]*.

The *[insert school name]* Board of Trustees requests that the Board of Education approve this request at its *[insert particular BOE meeting date]* if possible. *[If a minor request just needing the approval of the Commissioner of Education, then read as follows instead]*. The *[insert school name]* Board of Trustees requests your approval of this amendment as soon as possible.

Please contact [insert contact name, email and phone number] if you have any questions about this request.

Sincerely,

*[Insert individual]*

cc. *[School or Board personnel as appropriate]*

 *[Mary Street, Director of Charter Schools]*

Enclosures

## Appendix 11: Criteria for Approval of Enrollment Policies

***For Commonwealth Charter Schools:***

The General Policy Statement (or Introduction):

* Describes the school’s expansion plan, if applicable. 603 CMR 1.06(1)
* States the ages/grades at which the school enrolls (or does not enroll) new students. Ch. 79 § 89(l); 603 CMR 1.06(1); 603 CMR 1.06(9)

The description of the Initial Application Process:

* States that notice of all application deadlines must be given one month in advance. 603 CMR 1.06(3)
* Includes a complete statement of non-discrimination. 603 CMR 1.06(1)
* The application has been attached to the policy. 603 CMR 1.06(2)
* Sets a deadline for accepting student applications. 603 CMR 1.06(3)

The section on Eligibility Criteria:

* States that the applicant must be a resident of Massachusetts at the time of application.
* States other criteria specified by the school (if any). 603 CMR 1.06(2)
* Includes a policy statement about how schools handle cases wherein an applicant fails to meet eligibility criteria. 603 CMR 1.06(2)

The description of the Lottery Procedures:

* States that the school will determine the number of spaces available by grade level. Ch. 79 § 89(l); 603 CMR 1.06(4)
* States that at least one week notice must be given prior to the lottery. 603 CMR 1.06(7)
* States that an individual that is not connected with the school will draw the lottery. 603 CMR 1.06(7)
* States that siblings of students who are already in attendance at the school in the year of application have preference for admission over non-sibling resident students. 603 CMR 1.06(4)(a)
* States that residents of the municipality(ies) served by the school have preference over non-resident students. Ch. 79 § 89(m); 603 CMR 1.06(4)(b)
* States that those students for whom enrollment in the school would cause the sending district to exceed the 9% tuition cap may not be offered admission. Ch. 79 § 89(i); 603 CMR 1.06(4)(d)
* States that for those students to whom the above policy applies but who are also siblings of students currently in attendance at the school the state may pay the child’s tuition, subject to appropriation. 603 CMR 1.06(4)(d)
* States that all applicants for a given application and enrollment process will be drawn in the lottery and assigned a number. 603 CMR 1.06(4)(a); 603 CMR 1.06(4)(d)
* Sets a final date for students to accept enrollment and the actual date of enrollment. (CSAGG[[16]](#footnote-16) p. 22).

The Waiting List policy:

* States how wait-listed students will be informed of an offer of admission. (CSAGG p. 26).
* States the school’s policy for students who have declined an offer of admission. (CSAGG p. 26).
* States the school’s policy on the waiting list from year to year (Does it roll-over? Do applicants need to reapply?). (CSAGG p. 26).
* States the school’s policy on applications submitted after the initial application and lottery process (The CSO strongly encourages schools to engage in regular application and enrollment processes). 603 CMR 1.06(6)

The other Enrollment Requirements include:

* Proof of residency (except in the case of homeless students)

***For Horace Mann Charter Schools:***

The General Policy Statement (or Introduction):

* Describes the school’s expansion plan, if applicable. 603 CMR 1.06(1)
* States the ages/grades at which the school enrolls (or does not enroll) new students. Ch. 79 § 89(l); 603 CMR 1.06(1); 603 CMR 1.06(9)

The description of the Initial Application Process:

* States that notice of all application deadlines must be given one month in advance. 603 CMR 1.06(3)
* Includes a complete statement of non-discrimination. 603 CMR 1.06(1)
* The application has been attached to the policy. 603 CMR 1.06(2)
* Sets a deadline for accepting student applications. 603 CMR 1.06(3)

The section on Eligibility Criteria:

* States that the applicant must be a resident of Massachusetts at the time of application.
* States other criteria specified by the school (if any). 603 CMR 1.06(2)
* Includes a policy statement about how schools handle cases wherein an applicant fails to meet eligibility criteria. 603 CMR 1.06(2)

The description of the Lottery Procedures:

* States that the school will determine the number of spaces available by grade level. Ch. 79 § 89(l); 603 CMR 1.06(5)
* States that at least one week notice must be given prior to the lottery. 603 CMR 1.06(7)
* States that an individual that is not connected with the school will draw the lottery. 603 CMR 1.06(7)
* States that students enrolled in the school on the date that the application is filed with the Board of Education and their siblings are entitled to preference in admission in the initial lottery of the school’s first year. Ch. 79 § 89(m); 603 CMR 1.06(5)(a)
* States that siblings of students who are already in attendance at the school in the year of application to the charter school have preference for admission over non-sibling applicants in all subsequent lotteries. Ch. 79 § 89(n)
* States that students enrolled in public schools in the district in which the charter school is located on the date the application is filed with the Board of Education receive second preference in admission. Ch. 79 § 89(m); 603 CMR 1.06(5)(b)
* States that students residing in the district where a Horace Mann charter school is located receive third preference for admission. Ch. 79 § 89(m); 603 CMR 1.06(5)(c)
* States that all applicants for a given application and enrollment process will be drawn in the lottery and assigned a number. 603 CMR 1.06(5)
* Sets a final date for students to accept enrollment and the actual date of enrollment. (CSAGG p. 22).

The Waiting List policy:

* States how wait-listed students will be informed of an offer of admission. (CSAGG p. 26).
* States the school’s policy for students who have declined an offer of admission. (CSAGG p. 26).
* States the school’s policy on the waiting list from year to year (Does it roll-over? Do applicants need to reapply?). (CSAGG p. 26).
* States the school’s policy on applications submitted after the initial application and lottery process (The CSO strongly encourages schools to engage in regular application and enrollment processes). 603 CMR 1.06(6)

The other Enrollment Requirements include:

* Proof of residency (except in the case of homeless students)

## Appendix 12: Technical Advisory 98-1 – Procurement Guidelines

**TO:** Charter School Leaders

**FROM:** David P. Driscoll, Commissioner of Education (Interim)

**DATE:** July 1, 1998

**SUBJECT:** Procurement Guidelines for Commonwealth Charter Schools

This memorandum is intended to clarify the processes and procedures Commonwealth charter schools must employ in the procurement of goods and services.[[17]](#footnote-17)

Summary

Commonwealth charter schools, which operate under a charter granted by the Board of Education, are, as a matter of law, instrumentalities of the state. They are established and operated independent of any municipal or regional school committee. As a result, these schools are not subject to the procurement requirements of the Uniform Procurement Act (G.L. c. 30B), which governs “governmental bodies” of cities, towns, districts, and counties.

While the Uniform Procurement Act does not apply to these schools, they are required to follow sound business practices and generally accepted government auditing standards as conditions of their charter. Commonwealth charter schools should consult sections 40-48 of OMB Circular A-110, the Operational Services Division’s *Procurement Policies and Procedures Handbook*, and the Inspector General’s *Chapter 30B Procurement Manual*, for guidance in establishing and evaluating their procurement procedures.

Commonwealth charter schools must comply with the statutes governing public construction procurement (G.L. c. 30, § 39M and c. 149 §44 A et seq.) and the payment of wages on public construction projects (G.L. c. 149, §§26-27H). These statutes apply whenever public funds are expended by a public agency for building or other public construction work.

All charter schools must keep accurate accounts and obtain and file an independent audit on or before January 1 of each year with the Department of Education and the State Auditor. The procurement officer of each charter school must participate in the public purchasing official certification program conducted by the Office of the Inspector General in order to earn a Massachusetts public purchasing official certificate.

Background

In 1995 and 1996, the former Executive Office of Education, which at the time administered the charter school program, advised charter schools that they were subject to the requirements of Chapter 30B, the Uniform Procurement Act[[18]](#footnote-18), and Chapter 149, the statute governing public construction. Subsequent legislation transferred charter school administration to the Board and Department of Education, and also substantially revised the charter school law (G.L. c. 71, § 89).

In response to questions we have received about charter school procurement, the Department of Education recently revisited the issue of the applicability of Chapter 30B and Chapter 149 to charter schools. The Department sought guidance from the Office of the Inspector General, the Office of the Attorney General, and the Commonwealth’s Operational Services Division. Based on the guidance we have received from these agencies, we have determined that, as a matter of law, the Uniform Procurement Act does not apply, and public construction laws do apply, to Commonwealth charter schools.

The Uniform Procurement Act does not apply to Commonwealth charter schools because they are not a “governmental body” as that term is defined in G.L. c. 30B, § 2. Commonwealth charter schools are instrumentalities of the state. They are established and operate independent of any municipal or regional school committee.

Even though the Uniform Procurement Act does not apply as a matter of law to Commonwealth charter schools, they are required to follow sound business practices and generally accepted government auditing standards as conditions of their charter. For guidance in the establishment of evaluation of procurement procedures, Commonwealth charter schools should consult sections 40-48 of OMB Circular A-110, the Operational Services Division’s *Procurement Policies and Procedures Handbook*, and the Inspector General’s *Chapter 30B Procurement Manual*.

Whenever public funds are expended by a public agency for building or other public construction work, the agency must comply with the statutes governing public construction procurement (G.L. c. 30, § 39M and c. 149 §44 A et seq.) and the payment of wages on public construction projects (G.L. c. 149, §§26-27H). Charter schools are public agencies for the purpose of these statutes.

In accordance with § 11 of Chapter 46 of the Acts of 1997, all charter school administrators who are the procurement officers for their schools must “participate in the Massachusetts public purchasing official program conducted by the Office of the Inspector General in order to earn a Massachusetts public purchasing certificate”. This provision will assist Commonwealth charter school administrators in the employment of sound and defensible business practices by familiarizing them with the letter and spirit of this municipal procurement code.

State law also requires charter schools to keep accurate accounts and to obtain and file an independent audit on or before January 1 of each year with the Department of Education and the State Auditor. The audit must be consistent with generally accepted government auditing standards.

The Office of the Inspector General is authorized by law to study charter school operations and practices, including “an analysis and evaluation of contracting procedures and related matters and whether any procedures, practices, programs, or measures may be employed or implemented to ensure that the charter schools are in conformance with state laws governing contracting, related-party transactions, record keeping, and the expenditure of public funds.”

Questions and Answers

*What constitutes “sound business practice” and “responsible procurement policies”?*

Within the context of procurements by a Commonwealth charter school, sound business practice means those activities that a prudent purchaser would consider to be reasonable under the circumstances. In this sense, sound business practices and reasonable procurement policies would, at a minimum, include documentation of the following:

1. A system of internal controls, including generally accepted accounting principles that ensure that funds are appropriately received, expended, and accounted for.
2. A procurement process that provides for the greatest amount of competition, gives potential bidders sufficient information upon which to base their bid or quote, and employs a process of evaluating bidders’ responses which enables the charter school to determine the best value proposal.
3. Policies and procedures that ensure the procurement process is consistent with and based upon the internal control system of the organization, and which provide sufficient documentation for audit purposes.

Depending on the nature and monetary value of the procurement, sound business practice and reasonable procurement policies may be comprised of simply obtaining three or more written quotes and selecting the lowest quote that offers the required goods or services. This practice may be most applicable when the procurement is intended to be relatively small in value (under $5,000). For larger or more complex procurements, sound business practice and reasonable procurement policies may require formal request for response, a formal response, and an evaluation process, which both defines and produces the best value result of the procurement.

*If a charter applicant group intends to procure substantially all education services under contract with another entity (including a private for-profit or not-for-profit corporation), what procedures must if follow?*

The charter school statute, G.L. c. 71, § 89(e), allows persons or entities including but not limited to a non-profit corporation, two or more certified teachers or ten or more parents, to apply for a charter from the Board of Education. The statute prohibits for-profit corporations from applying for a charter, but it allows for charter schools to contact with for-profit or not-for-profit corporations for educational management services. It specifies in § 89(j)(5) that “if the charter school intends to procure substantially all educational services under contract with another person, the terms of such a contract must be approved by the board [of education] either as part of the original charter or by way of an amendment thereto.”

The charter school regulations, 603 CMR 1.05 (2) (b), stipulate as a condition of a charter that, “in such cases where the charter school Board of Trustees intends to procure substantially all educational services under contract with another person, the Board of Trustees shall provide, for the Board of Education’s approval, the terms of said contract.”

The Uniform Procurement Act does not apply to the educational services contract procured by a charter applicant group or a Commonwealth charter school, since neither is a “governmental body” as defined in that statute. Any contract between a charter school board of trustees and an educational services contractor, however, is subject to careful scrutiny and must be approved by the Department of Education. Moreover, any application for a charter that proposes a school that would be managed by a non-profit or for-profit contractor should describe why the particular entity was selected and what due diligence that the applicant group has performed on said entity.

*Does this technical advisory apply to state and federal grants a charter school may receive? Does this apply to grants from private sources, such as foundations?*

This technical advisory applies to all state and federal funds a charter school may receive, including state and federal grants. It also applies to any direct funding from private sources that is granted to, controlled, and expended by a charter school.

 *Where should charter school leaders or business managers go with questions about procurement processes?*

For written guidance, charter schools should consult the Operational Services Division’s *Procurement Policies and Procedures Handbook* in order to assess their own procurement practices (see http:/www.magnet.state.ma.us/osd/). They should also consult the Inspector General’s *Chapter 30B Procurement Manual* (available from the Inspector General’s office), and sections 40-48 of OMB Circular A-110 (available from the Department of Education’s charter school office).

A certified public accountant hired by a charter school should be able to provide answers to questions regarding procurement practices that are consistent with generally accepted government auditing standards as well as with federal guidelines for organizations receiving federal grants.

The Office of the Inspector General, (617) 727-9140, is available to answer questions about responsible procurement policy, Chapter 30B, and the public purchasing certification program.

The Commonwealth’s Operational Services Division, (617) 727-7500, is available to answer questions and provide information about procurement of goods and services through the state’s blanket contracts and vendor pools.

Questions regarding the application of the prevailing wage and public bidding law should be directed to the Attorney General’s Fair Labor and Business Practices Division, (617) 727-3476.

Questions about the applicability of various state or federal laws and regulations to charter schools not addressed in this technical advisory should be directed to the Department of Education’s Charter School Office at (781) 338-3227.

## Appendix 13: Technical Advisory 07-01:Teacher Qualifications in Massachusetts Charter Schools

|  |  |
| --- | --- |
| To: | Charter School Leaders |
| From: | David P. Driscoll, Commissioner of Education |
| Date: | April 11, 2007 |



The No Child Left Behind Act (NCLB) and the Massachusetts Charter School Statute & Regulations
The No Child Left Behind Act (NCLB) requires all students to be taught by highly qualified teachers in core academic subjects. The initial deadline by which all teachers were required to be highly qualified was June 30, 2006. This has now been extended to June 30, 2007. This federal requirement is in addition to the requirements of the charter school statute and regulations regarding the professional qualifications of teachers in charter schools. This Technical Advisory is intended to clarify the requirements of NCLB and the charter school statute. It is not intended to be a detailed explanation of state and federal professional qualification requirements. School leaders and others are strongly encouraged to use the links embedded in the document for additional information.

In the Commissioner of Education's October 13, 2006 Update to the NCLB Highly Qualified Teacher (HQT) Requirements and District Action Steps for the Coming Year, school superintendents, charter school leaders and principals were informed about specific initiatives that will ensure the goals and requirements of Education Reform and the federal law are met; that is, to enable designation of all teachers of core academic subjects as highly qualified (HQT). This memorandum signals changes that will take effect on July 1, 2007, some of which apply to teachers in charter schools. In December 2006, school districts and charter schools submitted HQT Plans to the Department for approval. The Department has reviewed these plans and each district should have received a response from the Department regarding the status of the plan. In Spring 2007, school districts and charter schools will be required to submit a mid-year progress report, outlining the district's overall progress and individual school progress in meeting the HQT goals/strategies. Refer to the Commissioner's 10/13/06 Memorandum at: <http://www.doe.mass.edu/nclb/hq/101306memo.html>.

1. Meeting Federal and State Requirements
NCLB requires all public school teachers of core academic subjects to be highly qualified. Core academic subjects are defined as English, reading/language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography. In order to be considered highly qualified, non-charter public school teachers of core academic subjects must:
	* possess a bachelor's degree,
	* demonstrate subject matter competence in each of the core academic subjects they teach, and
	* possess an active and valid MA license to teach.

Teachers in Commonwealth charter schools must meet all of the same requirements, except that of licensure. The licensure component of the federal highly qualified definition is waived for Massachusetts Commonwealth charter school teachers because it is not a requirement of the state charter school statute and regulations (M.G.L. c.71,   89 (qq) and 603 CMR 1.07). Because Commonwealth charter school teachers are not required to be licensed, school leaders cannot submit waivers for educator licensure to the Department. Teachers in Horace Mann charter schools are required by M.G.L. c.71,   38G to hold an appropriate Massachusetts teaching license because employees of a Horace Mann charter school are, for collective bargaining purposes, employees of a school district.

1. Highly Qualified Teachers & the Massachusetts Charter School Statute

The Charter School Statute, G.L.c.71,   89 (qq), provides as follows:

*No teacher shall be hired by a commonwealth charter school who is not certified pursuant to section 38G unless the teacher has successfully passed the state teacher test as required in said section 38G.*

Section 1.07 of the Charter School Regulations, (603 CMR 1.00) provides as follows:

*Charter school teachers hired after August 10, 2000 must either: (1) take and pass, within their first year of employment at a charter school, the Massachusetts Tests for Educator Licensure; or (2) be already certified to teach in Massachusetts.*

The Massachusetts's charter school statute and regulations, which predate the authorization of NCLB, allow non-certified (non-licensed) teachers, including special education teachers, to be employed by a Commonwealth charter school. Under the charter school regulations, teachers have the full first year of employment to take and pass the appropriate Massachusetts Tests for Educator Licensure (MTEL), the state's two-part testing program for licensure. Teachers are required to pass (1) a test of Communication and Literacy and (2) the relevant PreK-12 subject matter knowledge test(s).

However, the timing in the charter school regulations (within the first year of employment) may not meet the NCLB requirement of designating all core academic teachers as highly qualified by June 2007 and at time of hire. At the beginning of each school year, all school districts and charter schools must submit teacher data, including highly qualified status information to the Department. Teachers who are hired and cannot yet be designated as highly qualified may limit the charter school's capacity to demonstrate compliance with NCLB.

* + Meeting the Standards
	In order to meet the highly qualified teacher requirements, all teachers, including charter school teachers, must hold a bachelor's degree and demonstrate subject matter competence in the core academic subjects they teach. The options for demonstrating subject matter competence are outlined below with additional information on meeting the charter school statute. Please keep in mind that it is the expectation of the Department that districts and charter schools have been providing documentation to educators denoting their Highly Qualified status. In addition, districts/charter schools must keep an attestation on file confirming the Highly Qualified status of their educators.
		1. Elementary Teachers
			1. Elementary teachers who pass the MTEL General Curriculum subject matter knowledge test meet the federal highly qualified (HQT) subject matter competency requirement.
			2. Kindergarten teachers who pass either the MTEL General Curriculum or the Early Childhood subject matter test meet the federal highly qualified (HQT) subject matter competency requirement.
			3. Content Area Specialists teaching the core academic subjects of Music, Art, Reading, and Foreign Languages at the elementary level, are treated, for purposes of meeting federal Highly Qualified standards, the same as teachers of core academic subjects at the middle and secondary level. They must meet the HQT requirement for each core academic subject to which they are assigned (See section 2 below for the information regarding options for middle and secondary teachers.)
			4. Available only to English as a Second Language/English Language Learner and Special Education teachers: Massachusetts High Objective Uniform State Standard of Evaluation (MAHOUSSE). (See description of 'MAHOUSSE' below.)

Meeting the Charter School Statute
Elementary teachers must also meet the requirements of the charter school statute and regulations. The statute and regulations require that all MTEL tests required for licensure be taken and passed within the first year of employment. For additional information on which tests are required, charter school leaders should refer to the MTEL subject matter test requirement chart provided on the MTEL website at: <http://www.doe.mass.edu/mtel/testrequire.html>

* + 1. Middle and Secondary Teachers
		NCLB allows additional options for middle and secondary teachers to meet the HQT requirement. A middle or secondary teacher may demonstrate subject matter competency by meeting one of the following options:
			1. Passing the appropriate MTEL subject matter test(s) or;
			2. Possession of an academic major in the appropriate subject(s) or;
			3. Possession of a graduate degree in the appropriate subject(s) or;
			4. Successful completion of coursework equivalent to an undergraduate academic major in the appropriate subject(s) or;
			5. National Board Certification.
			6. Available only to English as a Second Language/English Language Learner and Special Education teachers: Massachusetts High Objective Uniform State Standard of Evaluation (MAHOUSSE). (See description of 'MAHOUSSE' below.)

Meeting the Charter School Statute
It should be noted that in order to satisfy the requirements of the charter school law and regulations, middle and secondary teachers must still pass the following MTEL tests within one year of employment: the Communication and Literacy Skills test and the relevant subject matter knowledge test(s), unless option a) above has already been met. For additional information on which tests are required, charter school leaders should refer to the MTEL subject matter test requirement chart provided on the MTEL website at: <http://www.doe.mass.edu/mtel/testrequire.html>

* + 1. Requirements of Teachers of Non-Core Subjects
		Charter school teachers who do not teach a core academic subject (i.e., physical education, health, business, and instructional technology) do not have to meet the federal highly qualified requirements, but must continue to meet the requirements of the state charter school statute and regulations. This distinction allows these teachers, hired after August 10, 2000, to pass the appropriate two-part MTEL examinations within the first year of employment or to be already licensed to teach in Massachusetts.
		2. English as a Second Language/English Language Learner Highly Qualified Teacher Requirements
		English as a Second Language (ESL)/English Language Learner (ELL) teachers, at all levels, who teach core academic subjects as part of their teaching assignment are required to be highly qualified and meet the NCLB subject matter knowledge requirement. At the elementary level they must meet the same requirement as elementary education teachers. At the middle and secondary levels, they must meet the subject matter knowledge requirements in each core academic subject(s) they are teaching. In addition, ESL and ELL teachers must meet the additional requirements of the charter school statute.
	+ Meeting the Standards - Special Education
		1. Special Education Highly Qualified Requirements
		Changes to IDEA in 2004 require that special education teachers of core academic subjects meet the same highly qualified standards as all teachers under NCLB. In accordance with IDEA-2004, all special education teachers, must demonstrate subject matter competence in order to be considered highly qualified. In addition, special education teachers teaching in Horace Mann charter schools must also be licensed. At the elementary level they must meet the same requirements as elementary teachers. At the middle and secondary levels, special education teachers can meet the HQT requirements in each subject taught through the same options available to non-special education teachers.

The IDEA-2004 special education teacher qualifications requirements are complex, refer to: <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=08f31438f3d7d30c52a3c42fbb30e4fa&rgn=div5&view=text&node=34:2.1.1.1.1&idno=34-34:2.1.1.1.1.1.36.17>

Meeting the Charter School Statute
To satisfy the state charter school statute and regulations, all charter school special education teachers must pass the state's two-part MTEL, which consists of the Communication and Literacy Skills test and the relevant subject matter knowledge test(s), within one year of employment.

* + 1. Definitions of Special Education Instructional Arrangements and their Implications for Highly Qualified Teacher (HQT) Requirements
			1. Consultation: is a teaching arrangement in which the special educator provides support or consultation to the classroom teacher. The classroom teacher remains the primary instructor responsible for curriculum planning and student assessment. The special educator is not subject to the HQT requirements when he or she is providing consultative or case management services. The classroom teacher is expected to meet the HQT requirements for the core academic content taught. Such support may take many forms such as:
				- Providing guidance or modeling in instructional techniques, resources, or accommodations that will enable a particular student to succeed in the curriculum.
				- Instructing an individual or small group on a specific aspect of a core curricular area (e.g., conducting a reading or spelling group or providing one-on-one instruction in a specific basic skill area) with the classroom teacher retaining primary responsibilities for instruction in that core academic subject for that child.
			2. Team Teaching: is an instructional arrangement whereby a classroom teacher and special educator are jointly responsible for the primary instruction of a student or group of students including curriculum planning and student assessment. In a team teaching situation, at least one of the individuals in the partnership must meet the HQT requirements for each core academic area(s) being taught.
			3. Primary Instruction: is defined as one in which the special educator provides the primary instruction in any of the core academic subject(s) to one or more students, including planning and assessment of student performance in that content area. The instruction may take place in the regular classroom or outside it. This includes special educators who supervise paraprofessionals who provide primary instruction to special education students in one or more core academic subjects. The special educator must meet the HQT requirements for each core academic subject(s) being taught.
	+ Massachusetts' High Objective Uniform State Standard of Evaluation (MAHOUSSE)
	Effective July 1, 2007, the Department of Education will discontinue the use of the MA HOUSSE option for all teachers of core academic subjects who have not yet been deemed "highly qualified" by their district, with the exception of teachers in the shortage areas of English as a Second Language/English Language Learner and Special Education teachers. The MAHOUSSE option may be used by teachers from these categories to demonstrate subject matter competency requirements, so long as they are highly qualified in language arts, mathematics, or science at the time of hire.

Refer to the Department's Options for Demonstrating Subject Matter Competency at: <http://www.doe.mass.edu/nclb/hq/smc.pdf> or <http://www.doe.mass.edu/nclb/hq/smc.doc> and Massachusetts' Highly Qualified Teacher Policy Changes Effective July 1, 2007 at: <http://www.doe.mass.edu/nclb/hq/101306memo.html?section=II>

For technical assistance on the federal Highly Qualified Teacher requirements, charter school leaders may contact: hqthelp@doe.mass.edu.

* + Paraprofessional Requirements
	In addition to the highly qualified requirements for teachers of core academic subjects, NCLB sets minimum credentialing standards for Title I paraprofessionals with instructional duties:
		1. A high school diploma or equivalent; AND
		2. An Associate's (or higher) degree; OR
			1. Completion of 48 credit hours at an Institution of Higher Education; OR
			2. Completion of a formal Local Assessment Program that is aligned with DOE Guidelines; OR
			3. Completion of one of the formal Massachusetts-endorsed Assessments: Parapro or WorkKeys.
	+ The work of all instructional paraprofessionals must be overseen by a highly qualified teacher.
	+ All paraprofessionals hired after January 8, 2002 must comply with these requirements as a prerequisite of employment. All paraprofessionals hired before that date must meet these standards by the end of the 2006-2007 school year.
	+ Unlike the highly qualified teacher requirements, the new standards for paraprofessionals apply only to instructional paraprofessionals whose salaries are funded by Title I. In schools operating "schoolwide" Title I programs, that means every instructional paraprofessional in the school. In Title I 'targeted assistance' schools, these requirements apply only to paraprofessionals in the Title I program. The NCLB requirements for paraprofessionals apply to charter schools in the same manner as they apply to other public schools.
	+ Refer to the Department's 8/03 Update Regarding the Formal Assessments of Instructional Paraprofessionals at:
	<http://www.doe.mass.edu/nclb/hq/0820parapro.html>
	+ Refer to the Department's 7/03 Paraprofessionals in Title I Programs: Implementation of NCLB's Paraprofessional Requirements at:
	<http://www.doe.mass.edu/nclb/hq/paraprof_policy.pdf>
1. Hiring Highly Qualified Teachers in Charter Schools
The federal standard for hiring highly qualified teachers has changed the way in which charter schools might choose to address the hiring of core academic subject teachers. The Massachusetts Charter School Regulations, Section 603 CMR 1.07, require all Commonwealth charter school teachers hired after August 10, 2000 to either: (1) take and pass, within the first year of employment, the two-part MTEL; or (2) be already certified (licensed) to teach in Massachusetts. However, unless the teacher holds a license issued after 1998, the state statutory allowance of the full first year of employment to pass the MTEL does not fully satisfy the additional federal requirement for teachers of core academic subjects to be designated as highly qualified by June 30, 2007. It is advised that teachers of core academic subjects, take and pass the relevant MTEL PreK-12 subject matter knowledge test(s) component prior to being hired for the subsequent school year.

A teacher receives the highly qualified designation from his/her charter school director in the form of a document, a copy of which must also be kept in the teacher's personnel file. Once a teacher is designated as highly qualified by passing the appropriate MTEL subject matter knowledge test, that portion of the two-part MTEL test is complete and does not need to be taken again to satisfy the state charter school statutory requirements. A teacher who is designated as highly qualified in the core academic subject(s) taught, continues to be highly qualified unless the teaching assignment and subjects taught changes.

In addition, although teachers hired by charter schools before August 10, 2000 are not required to meet the state charter school statutory requirements, all core academic teachers in charter schools must meet the federal highly qualified requirements.

Additional resources:

Massachusetts Tests for Educator Licensure (MTEL)
<http://www.doe.mass.edu/mtel/testrequire.html>
<http://www.doe.mass.edu/mtel/>
<http://www.mtel.nesinc.com/MA10_prek12education.asp>

Massachusetts Tests for Educator License (MTEL) practice tests
<http://www.mtel.nesinc.com/MA_PT_opener.asp>

Massachusetts Charter School Laws and Regulations
<http://www.doe.mass.edu/charter/laws.html>

NCLB Title II-A: Preparing, Training, and Recruiting Highly Qualified Teachers and Principals
<http://www.doe.mass.edu/nclb/title_iia.html>

Additional Massachusetts NCLB Policy Guidance
<http://www.doe.mass.edu/nclb/hq/>
For technical assistance on HQT requirements, charter school directors, may send an email to hqthelp@doe.mass.edu.

## Appendix 14: Charter School Technical Advisory 05-1:Approval of Loans Beyond Charter Terms

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| --- | --- |
| To: | Chairpersons, Boards of Trustees of Charter Schools Charter School Leaders Business Managers at Charter Schools |
| From: | David P. Driscoll, Commissioner of Education |
| Date: | August 22, 2005 |



Under the charter school statute, G.L. c. 71, § 89(j)(6), the Board of Education must approve the term of repayment of any charter school's debt if it exceeds the duration of the school's charter. This includes instances in which a charter school may guarantee a loan with a repayment term that exceeds the duration of the school's charter. This Technical Advisory outlines the timeline and process required in order to submit such a request for consideration by the Commissioner and possible placement on the agenda for a meeting of the Board of Education.

The Board of Education considers approving such loan requests, upon at recommendation of the Commissioner, at one of its regularly scheduled meetings. The schedule for Board of Education meetings can be found at <http://www.doe.mass.edu/boe/boedate.html>.

In order for the Commissioner to consider recommending to the Board of Education that they approve a school's request, the school must submit a number of documents to the Charter School Office. The Charter School Office must receive the documents at least 20 days before the Board of Education meeting at which the school would like the Board to consider its request. These documents, submitted under penalties of perjury, include:

* A letter from the school's Board of Trustees requesting approval of the term of repayment of the charter school debt, addressed to the Commissioner and the Board of Education, with a copy to the Charter School Office. This letter must
	+ provide a description of the proposed loan; including its purpose and term length, a description of the financing arrangements, and a statement about how the loan will benefit the school;
	+ include a statement that the school's Board of Trustees "voted to request approval of the term of repayment of this financing on [DATE] at a meeting held in compliance with the Open Meeting Law;" and
	+ include a statement that the Board of Trustees has authorized the person signing the letter to make the request on their behalf.
* A five-year operating budget for the school that includes repayment of the proposed loan(s).
* Loan agreement(s) or commitment letter(s), if available. The loan agreement(s) or commitment letter(s) must contain the following language:

The parties to the loan(s) acknowledge and agree that the Commonwealth of Massachusetts, including but not limited to the Board and the Department of Education, provides no representations or guarantees with respect to these loans and has no liability for any portion of the loans. Furthermore, specifically and without limitation, the Board's approval of the loan has no impact on any action that the Massachusetts Board of Education may choose to take in the future with respect to probation, revocation, or renewal of the School's charter.

* If the loan agreement(s) or commitment letter(s) is not yet available or the language quoted above is not contained therein, a letter from the school's proposed lender(s) outlining the anticipated terms of the loan and the lender's understanding that
	+ the Commonwealth of Massachusetts, including but not limited to the Board and the Department of Education, provides no representations or guarantees with respect to these loans and that the Commonwealth of Massachusetts, including but not limited to the Board and the Department of Education, has no liability for any portion of the loans;
	+ the approval by the Board of Education of the term of repayment of loan(s) has no impact on any action that the Massachusetts Board of Education may choose to take in the future with respect to probation, revocation, or renewal of the School's charter; and
	+ any approval of the term of repayment by the Board of Education would be explicitly conditioned upon the inclusion of this language in the loan agreement(s).

Please note that the submission of these documents is required before the Commissioner will consider recommending that the Board of Education approve the term of repayment of any charter school debt that exceeds the duration of a school's charter. The suggested timelines are subject to the complexity of the issues involved and the schedules of the Commissioner and the Board of Education. Charter schools are strongly encouraged to plan ahead regarding requests for approval of a term of repayment that exceeds the duration of the school's charter.

## Appendix 15: Charter School Technical Advisory 07-2: Transportation

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| To: | Charter School Leaders and Superintendents |
| From: | David P. Driscoll, Commissioner of Education |
| Date: | July 24, 2007 |



The purpose of this technical advisory is to interpret, clarify, and provide guidance about the obligations to provide transportation to charter school students and the reimbursement programs currently available to charter schools for the provision of transportation services.

### I. Legal obligations to transport charter school students

The Massachusetts charter school statute, [M.G.L. Ch. 71 § 89(ff)](http://www.mass.gov/legis/laws/mgl/71-89.htm) states, in part (emphasis added):

The children who reside in the school district in which the charter school is located shall be provided transportation to the charter school by the resident district's school committee on the same terms and conditions as transportation is provided to children attending local district schools. In providing such transportation, said school committee shall accommodate the particular school day and school year of the charter school; provided, however, that in the event that a school committee limits transportation for district school students, the school district shall not be required to provide transportation to any commonwealth charter school beyond said limitations.

* "School district"
The local district boundary for residency in the case of a single-municipality school district such as the Boston Public Schools is the municipality's geographic boundaries. In the case of regional school districts, the local district boundary consists of the geographic boundaries of the member municipalities (e.g., the local district boundaries for the Wachusett Regional School District is the town limits of its five member municipalities: Holden, Paxton, Princeton, Rutland, and Sterling).
* "On the same terms and conditions"
The Department interprets this to mean that there should be no significant differences in the transportation services offered to students attending district schools and charter schools. If the district provides transportation to students beyond that required by law (e.g., to regular education high school students in a local district or to students who participate in after-school extracurricular activities), then the same services should be provided to similarly situated charter school students. Drop-off and pick-up distances and riding times to and from the charter school should be comparable to those of students attending district schools. Charter school families would not be exempt from paying any additional fees that may be imposed by districts that provide transportation beyond that required by law. Districts that utilize neighborhood zones to establish eligibility for transportation services for its students may not arbitrarily define a neighborhood zone around a charter school in order to restrict availability of transportation services to charter school students.
* "Accommodate the particular school year and school day of the charter school"
Charter school calendars and schedules are approved by the Board of Education upon the school's chartering, and can only be changed upon approval from the Commissioner of Education. In many cases, these schedules may deviate significantly-including early dismissals and extended programming-from that of the district in which the charter school is located. Nevertheless, the law requires that the district make arrangements to accommodate the charter school's schedule, even if that requires scheduling additional bus runs at times when the district normally does not pick-up or drop-off students. However, the Department strongly encourages charter schools to work cooperatively with their local school district-including the consideration of requesting the Commissioner to approve an amendment to their schedules-in order to achieve the most cost-efficient transportation service plans, particularly in the case of transporting small numbers of students.

Charter schools and their host districts are strongly encouraged to work cooperatively to ensure that all eligible students receive the appropriate transportation services. Charter school leaders should identify when and how the district's local school committee sets its budget so that they can proactively inform the committee of the charter school's needs in a timely manner.

A charter school may voluntarily choose to provide transportation to some or all of its eligible students, in lieu of having the district provide it. In these cases, the charter school will receive reimbursement as described below in [*Local District Transportation Reimbursement*](http://www.doe.mass.edu/charter/tech_advisory/#_Local_District_Transportation).

In the event that a district fails to meet its obligations to provide transportation for eligible students, a charter school should contact the Department's Charter School Office (<http://www.doe.mass.edu/charter/contact.html>) for more information.

The following table summarizes the types of charter school students who are eligible under state and federal law for free transportation services:

|  |  |  |
| --- | --- | --- |
| **Eligible Students** | **Statutory/Regulatory Reference** | **Transportation provider** |
| All students in grade K through 6 (or K-12 for regional school districts) who live in the district where the school is located and who reside more than two miles from their school. | Massachusetts public school transportation law: [M.G.L. Ch. 71 § 68](http://www.mass.gov/legis/laws/mgl/71-68.htm). | All students in grades K through 6 who reside more than two miles from their school must be provided with transportation to school by their school district, with a bus stop being not more than one mile from the student's residence. All students in grades K through 12 who reside in a regional school district must be provided with transportation to school by their school district. However, if a charter school opts to provide transportation at its own cost and be reimbursed as described below in [*Local District Transportation Reimbursement*](http://www.doe.mass.edu/charter/tech_advisory/#_Local_District_Transportation), then the charter school becomes responsible for meeting this requirement. |
| Disabled students who have transportation specified as a related service in their [Individualized Educational Plans](http://www.doe.mass.edu/sped/iep/) (IEPs) and/or [Section 504 Plans](http://www.doe.mass.edu/pqa/ta/faq_a.html#7) | Individuals with Disabilities Education Act: [34 C.F.R. § 300.24(b)(15)](http://www.access.gpo.gov/nara/cfr/waisidx_06/34cfr300_06.html). Section 504 of the Rehabilitation Act of 1973: [34 C.F.R. § 104.37](http://www.ed.gov/policy/rights/reg/ocr/edlite-34cfr104.html#S37) | For students who reside in the district in which the charter school is located, the school district is obligated to provide all transportation on the charter school's behalf, unless the charter school opts to provide these services and be reimbursed as described below in [*Local District Transportation Reimbursement*](http://www.doe.mass.edu/charter/tech_advisory/#_Local_District_Transportation). For students who are enrolled in a regional charter school and reside outside of the district in which the charter school is located, the regional charter school is obligated to provide these services, whether or not the charter school provides transportation to any regular education students or participates in any transportation reimbursement program. |
| Homeless Students | [*McKinney-Vento Homeless Education Assistance Act: McKinney-Vento Homeless Education Assistance Act Advisory 2002-3: School Selection and Transportation Requirements for Homeless Students*](http://www.doe.mass.edu/mv/haa/02_3.html). | Homeless students may have additional transportation rights under McKinney-Vento, even if they reside outside the district where the charter school is located. Contact the Department's Office for the Education of Homeless Children and Youth (<http://www.doe.mass.edu/mv>) for further information. |

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### II. Reimbursement programs for charter school transportation

There are currently two programs through which charter schools can receive reimbursement for transportation services provided: [*Local District Transportation Reimbursement*](http://www.doe.mass.edu/charter/tech_advisory/#_Local_District_Transportation) if the charter school chooses to transport children who reside in the district in which it is physically located; and [*Regional Transportation Reimbursement*](http://www.doe.mass.edu/charter/tech_advisory/#_Regional_Transportation_Reimbursement) for costs incurred by a regional charter school for transporting children located within its chartered region, but outside of the district in which it is physically located.

#### Local District Transportation Reimbursement

If the charter school chooses to transport pupils who reside in the district in which the school is located at its own expense and seek reimbursement for the costs incurred, reimbursement is determined by multiplying the eligible pupil full-time equivalency membership (FTE) by a reimbursement rate determined for particular charter school. The eligible pupil FTE is determined by the dates of enrollment for each pupil, provided to the Department of Education (DOE) by the charter school on the February 15th Charter School Claim Form. The reimbursement rate is the lesser of the district or charter school's average transportation cost per student. In general, the data used to generate average cost per pupil is based on prior year school transportation cost data submitted by both the charter and the local school district. The charter school provides this data on Schedule 7C in the [*Charter School End of Year Financial Report*](http://finance1.doe.mass.edu/charter/charter_audit.html). The local school district provides transportation data on Schedule 7 of the End of Year Pupil and Financial Report. However, if a charter school is in its first year of providing new or substantially different transportation services, no comparable prior year data may be available. In this circumstance, the charter school **must** contact the Charter School Office **prior** to the provision of transportation service for further instructions in order to receive reimbursement.

According to the DOE [*Guidelines for Student and Financial Reporting*](http://finance1.doe.mass.edu/account/guide_index.html), the computation of transportation expenditures should include the annual cost of leased bus services based on the cost of fuel, operation, and common line maintenance of school buses; salaries of student transportation supervisors; school bus drivers and bus monitors; employee benefits; insurance programs; and other related leased bus expenditures. Schools that own vehicles should refer to the Guidelines when computing their transportation expenditures.

Local reimbursement is distributed as part of quarterly charter tuition payments (see [603 C.M.R. 1.08(11)](http://www.doe.mass.edu/lawsregs/603cmr1.html?section=08)). If a school submitted a claim for local transportation reimbursement in the prior year, it will receive approximately one-fourth of the prior year amount as part of its first quarterly tuition payment. After transportation and enrollment data has been processed from the February 15th Charter School Claim Form, the charter school will receive any balance due to them as part of its fourth and final quarterly tuition payment.

#### Regional Transportation Reimbursement

In order to be eligible for reimbursement through the state regional transportation reimbursement program, a charter school must:

* 1. Be designated a regional charter school by the Board of Education; and
	2. Have a charter that provides for the transportation of all students who reside in the charter school's designated region but outside the district in which the charter school is located.

If the charter school meets both of these conditions, the charter school is entitled to claim reimbursement for those students who reside outside the municipality in which the charter is located and reside 1½ miles or more from the charter school (see [M.G.L. Ch. 71 § 89(ff)](http://www.mass.gov/legis/laws/mgl/71-89.htm) and [M.G.L. Ch. 71 § 16C](http://www.mass.gov/legis/laws/mgl/71-16c.htm)). This program is funded by the state as a specific line item in the state budget and as such, is subject to appropriation. It has been funded at varying levels, from 47% to 100% of the costs eligible for reimbursement, from FY96 through FY07.

Each charter school's reimbursement under this program is determined by multiplying the total allowable claimed costs by the funding percentage determined by that year's budget appropriation. The cost data for this program is also collected on the Schedule 7C in the [*Charter School End of Year Financial Report*](http://finance1.doe.mass.edu/charter/charter_audit.html).

Schools receive the reimbursement in one or two installments during the year following the school year in which the costs are incurred. For example, costs incurred during the 2006 - 2007 school year are reimbursed during the 2007 - 2008 school year.

Questions about information contained in this advisory should be directed to the Department's Charter School Office (<http://www.doe.mass.edu/charter/contact.html>).

1. Wheeler, Henry and Bannish, Robert G., “Duties and Liabilities of Directors and Officers,” Massachusetts Non-Profit Organizations No. 5, Vol. 1 (MCLE, 1998) [↑](#footnote-ref-1)
2. Information taken from *Introduction to the Conflict of Interest Law for Public Officials and Public Employees* on the State Ethics Commission web site: <http://www.state.ma.us/ethics> . [↑](#footnote-ref-2)
3. Representative examples include:

*Trustee Handbook*, published by the National Association of Independent Schools

*Ten Basic Responsibilities of Non-Profit Boards*, published by Board Source

*The Attorney General’s Guide for Board Members of Non-Profit Organizations*

 See the Resources section for contact information. [↑](#footnote-ref-3)
4. Please note that there is another section of the general laws defining the Open Meeting law rules as they relate to municipalities, G.L. c. 39 §23. This section is similar but not identical to G.L. c.30A §11, and does not control charter schools. [↑](#footnote-ref-4)
5. “Open Meeting Law Guidelines,” Middlesex County District Attorney’s Office (1993), p. 3. [↑](#footnote-ref-5)
6. “Open Meeting Law Guidelines,” Commonwealth of Massachusetts Office of the Attorney General (2005). [↑](#footnote-ref-6)
7. I.e., race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability, age, ancestry, athletic performance, special need, proficiency in the English language or a foreign language, prior academic achievement [↑](#footnote-ref-7)
8. Examples of administrative services that Boards of Trustees may choose to contract for include:

Payroll and accounting services;

Preparation of reports for the Department and other state entities;

Selection and procurement of instructional materials, equipment or supplies; and

Operation and/or maintenance of school facilities. [↑](#footnote-ref-8)
9. The *Inspector General’s Report, A Management Review of Commonwealth Charter Schools*, published in November 1999, is available on-line at [**http://www.state.ma.us/ig/igpubl.htm**](http://www.state.ma.us/ig/igpubl.htm) [↑](#footnote-ref-9)
10. The following criteria and protocol are effective for all contracts that have not yet been approved and apply to all contracts upon expiration of the term of the contract. [↑](#footnote-ref-10)
11. Pyle v. School Committee of South Hadley, 667 N.E.2d 869 (Mass. 1996) [↑](#footnote-ref-11)
12. Newman v. Winchendon School Comm., No. 90-1243 (Mass. Super. 1991). School committees, however, generally have broad discretion in these matters. See Leonard v. School Committee of Attleboro, 349 Mass. 704 (1965). [↑](#footnote-ref-12)
13. Schools whose charters have been revoked or non-renewed as of June 30, 2005 pending appeal are included in this analysis. [↑](#footnote-ref-13)
14. G.L. c. 268A, § 1(e) defines “immediate family” as the employee and his spouse and their parents, children, brothers, and sisters. [↑](#footnote-ref-14)
15. Pursuant to G.L. c. 4, § 7, cl. 23, the word, “person” includes corporations, societies, associations, and partnerships. [↑](#footnote-ref-15)
16. *The Charter School Administrative and Governance Guide* [↑](#footnote-ref-16)
17. The question of which processes and procedures Horace Mann charter schools must employ in the procurement of goods and services is addressed in a separate technical advisory (98-2) on the establishment of Horace Mann charter schools. [↑](#footnote-ref-17)
18. This act applies to contacts for the procurement of supplies, services, or real property and for disposing of supplies or real property by a governmental body. G.L. c. 30B, § 2 defines “governmental body” as “a city, town, district, regional school district, county, or agency, board, commission, authority, department or instrumentality of a city, town, district, regional school district or county.” [↑](#footnote-ref-18)