

**PROPOSED AMENDMENTS TO CHARTER SCHOOL REGULATIONS  
603 CMR 1.00**

- Presented to the Board of Elementary and Secondary Education for initial review and vote to solicit public comment: **March 23, 2010**
- Period of public comment: **through May 6, 2010**
- Final action by the Board of Elementary and Secondary Education anticipated: **May 25, 2010**

**Background:**

Chapter 12 of the Acts of 2010, *An Act Relative to the Achievement Gap*, was signed into law on January 18, 2010 and took effect immediately. Among other things, the new law amended the charter school statute, Mass. General Laws chapter 71, section 89. The Board of Elementary and Secondary Education proposes to revise its current Charter School Regulations, 603 CMR 1.00, to make them consistent with and implement the amended statute.

**Proposed amendments are indicated in this document by underscore (new language) and ~~overstrike~~ (deleted language).**

**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 with the availability of application information and extending through the receipt of final charter school applications for review, ending no later than the following February when the Board of Elementary and Secondary 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 Elementary and Secondary Education.

**Board.** The Board of Elementary and Secondary 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. A board of trustees may be authorized to hold more than one charter.

Charter. A license issued by the Board 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: (i) a non-profit business or corporate entity; (ii) 2 or more certified teachers; or (iii) 10 or more parents; provided, however, that for profit business or corporate entities shall be prohibited from applying for a charter. 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. AnThe application for a charter school may be filed in conjunction with a college, university, museum, or other similar non-profit entity, or any combination thereof.

Charter School. A public school operated under a charter granted by the Board. 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 Commonwealth charter school is considered a local education agency for all purposes. A Horace Mann charter school is a local education agency for most purposes and is a school or part of a school that operates under a charter approved and granted pursuant to CMR 603 1.04.~~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 and a Memorandum of Understanding with the local district and collective bargaining unit, 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 and the Memorandum of Understanding with the local district and collective bargaining unit.~~

Commissioner. The Commissioner of Elementary and Secondary Education or his designee.

Department. The Department of Elementary and Secondary Education.

Memorandum of Understanding. An agreement or agreements among~~between~~ a Horace Mann charter school, the school committee of the district in which the charter school is located, and the collective bargaining unit for the district that, at a minimum, defines any modifications of the relevant collective bargaining agreement(s), services, and facilities provided by the district to the charter school, and funding of the charter school by the district.

Proven Provider. A proven provider is:

- (a) two or more persons who had primary or significant responsibility serving, for at least three years, in a leadership role in a school or similar program that has a record of academic success and organizational viability;
- (b) a non-profit education management organization or non-profit charter management organization, in operation for at least five years, that has a record of academic success and organizational viability;
- (c) the board of trustees of an existing charter school that has a record of academic success and organizational viability; or
- (d) an education management organization or charter management organization that has a record of academic success and organizational viability and with which an applicant proposes to contract.

Qualifications for proven providers shall be as described in 603 CMR 1.05(2).

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 specified region containing more than one district.

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 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 may waive the applicability of one or more provisions of 603 CMR 1.00, provided that all such requests:

- (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 to support the special circumstances or the need for relief.

Waivers of 603 CMR 1.00 shall be considered only under circumstances the Board 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 businesses or corporate entities~~corporations~~ may not apply for a charter.

#### **1.04: Charter Application and Procedures for Granting Charters**

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

(a) Horace Mann applications shall be accepted in three categories:

- i.(i) A Horace Mann application submitted with the approval of the local collective bargaining unit and the school committee in the district in which it is located.
- ii.(ii) A Horace Mann application submitted as a conversion of an existing public school, filed with the approval of the school committee. Horace Mann conversion applications may be submitted at any time but shall participate in the two-stage application process, with similar periods of time for review of prospectuses, final applications, and charter granting, and may not open until completion of the opening procedures process.
- iii.(iii) A Horace Mann application to create a new school, submitted with the approval of the school committee. An agreement with the local collective bargaining unit is not required prior to board approval.

(b) Horace Mann charter schools may be exempt from provisions of local collective bargaining agreements, provided that employees of the school will continue:

(i) to be members of the local collective bargaining unit;

(ii) to accrue seniority; and

(iii) 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 and the memorandum of understanding with the local district, collective bargaining unit, or as voted by teachers as defined in M.G.L. c. 71, § 89.

~~(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 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.~~

(2) -Applications for Horace Mann charter schools shall describe in the charter application and a Memorandum of Understanding:

(a) the type of Horace Mann charter the applicant seeks;

(b) the proposed opening date of the school;

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

(d) the memorandum or memoranda of understanding under which the school proposes to operate, including at a minimum:

(i) the services and facilities provided by the district;

(ii) any waivers to applicable collective bargaining agreements; and

(g)(iii) the basis for calculating tuition payments from the district to the school.

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

(h)(e) (e) the school's first annual budget allocation from the district, consistent with the allocation for other public schools in the district and the basis on which future tuition allocations will be made.

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

(3) Review Process: ~~(a)~~ The Department 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 will conduct interviews with all final applicants in order to better assess their qualifications and capacity to start and operate a charter school.

(4) ~~(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 is expected to enroll students. The Board and the Department, for final applications, shall hold ~~one or more~~ public hearings in the school district in which a proposed charter school is to be located ~~on final applications~~ and solicit and review comments on the application from the school committees of the school district(s) from which the applicant is expected to enroll students and any contiguous districts. ~~Such hearings shall be held in locations convenient to the affected districts.~~ At least one member of the Board shall attend each public hearing soliciting comment on the merits of pending applications and shall report to the Board on the hearing.

~~(b)(5)~~ ~~(e)~~ The Board will grant new charters in February or, for Horace Mann conversion schools in 603 CMR 1.04(1)(a)(ii), at such other times as designated. The Board and Department 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.

(6) Granting of Charters.

- (a) ~~(a)~~ The Board shall grant charters to ~~approved~~ charter boards of trustees ~~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) ~~(b)~~ A charter granted by the Board shall be effective for five years, beginning July 1st of the first fiscal 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) ~~(e)~~ Should the Board 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) ~~(d)~~ The Board 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.
- (e) ~~(e)~~ The Board will use the most recent United States Census estimate to determine the population of a city or town proposed as the location for a charter school.

(f) Private and parochial schools are not eligible to become charter schools. If a private or parochial school plans to close or closes around the time of receiving a charter, it creates a rebuttable presumption that the private school was itself seeking to become a charter school. To rebut this presumption, the private or parochial school must establish facts sufficient for the Department to conclude that the closure of the school is unrelated to the receipt of a charter and the establishment of a charter school. In making a determination, the Department will compare characteristics of the private or parochial school and characteristics of the charter school.

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

- (1) Criteria for Assessment and Approval of Charter Applications. The Department will review charter applications to ensure that the applicant has, at a minimum, demonstrated the 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 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 assure that the charter school will implement its recruitment and retention plan;
  - (e) to assure that the charter school will involve parents as partners in the education of their children;
  - (f) to describe how elements of the proposed program, either separately or as a whole, or other aspects of the school, will enhance options for students in the district(s) served;
  - ~~(d)~~(g) to demonstrate that the applicant will collaborate with other school districts to be able to provide disseminate innovative practices; educational models, including programs, curriculum, and teaching methods that can be replicated by other public schools;
  - ~~(e)~~(h) 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)~~(i) to assure that students will meet the same performance standards and assessment requirements set by the Board for students in other public schools;
  - ~~(g)~~(j) to develop an accountability plan that meets criteria established by the Department, 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)~~(k) to administer its educational programs, school operations, and finances effectively;
- ~~(i)~~(l) to establish a process to provide to students, parents, the Board, 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)~~(m) to develop an enrollment policy consistent with 603 CMR 1.06;
- ~~(n)~~ to develop a recruitment and retention plan consistent with M.G.L. c. 71, § 89;
- ~~(o)~~ to ensure the thoroughness and accuracy of the charter school application;
- ~~(p)~~ to demonstrate that the applicant ~~will provide~~~~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;
- ~~(q)~~ to demonstrate the capacity of a charter school's board of trustees to effectively manage more than one school, if applicable;
- ~~(r)~~ to describe, if applicable, the applicant's intention to build a network of schools in more than one municipality.

#### (2) Qualifications to Achieve Proven Provider Status

In districts performing in the lowest 10 percent statewide, under M.G.L. c. 71, § 89, and in which the 9 percent net school spending cap is, or would be exceeded, applications will be considered from proven providers.

To qualify as a proven provider, such provider must demonstrate academic success and organizational viability through evidence including, but not limited to, performance on the Massachusetts Comprehensive Assessment System, if available; and, for other proven providers, performance on a similar assessment or evidence of academic success through external evaluation.

Such evidence of academic success must be for cohorts of students over a consecutive three-year period who are similar to those the proposed school seeks to serve from the categories identified in M.G.L. c. 71, § 89, when compared to state averages on the Massachusetts Comprehensive Assessment System, national standards for other tests, or other measures of academic success.

Organizational viability may be demonstrated through appropriate organizational records. If the proven provider is currently or has been previously employed at or contracted with charter schools, the Department will consider whether the schools have received an unconditional renewal at the end of the last charter term.-

~~(32)~~ Conditions for Awarding Charters to ~~Approved New Applicants or Applicants for Renewal~~. Charters shall be awarded subject to the conditions listed in 603 CMR 1.05(2)(a) through ~~(j)~~, and, for new applicants, any additional conditions that the Board 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 new charter school on probation.

- (a) the charter applicant shall submit to the Department 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 organizational 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's approval the terms of said contract;
- (c) the charter applicant shall submit to the Department a copy of the school's criteria and procedures for expulsion of students;
- (d) the charter applicant shall provide the Department 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 with a copy of the school's enrollment policy;
- (f) the charter applicant shall provide the Department with a copy of the school's recruitment and retention plan;
- (g) the charter applicant shall provide the Department 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;
- (h) the charter applicant shall provide the Department 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;
- (i) if explosives or flammable compounds or liquids are used in connection with courses taught at the school, the charter applicant shall provide the Department 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
- (j) the charter applicant shall provide the Department 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.

(43) 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.

(5) The Commissioner shall annually publish a ranking of all districts that are subject to charter school tuition charges, for the purpose of determining the lowest 10 percent as specified in M.G.L. c.71, § 89(i)(2) and (i)(3). Such ranking shall be calculated by combining each district's English language arts proficiency index and mathematics proficiency index for the two school years immediately preceding the current year. Additional charter school seats resulting from a district's designation in the lowest 10 percent may be awarded by the board to a new charter applicant, to existing charter schools, or to any combination thereof.

(6) In considering an application for the creation or expansion of a regional charter school, the board shall independently assess the availability of seats for each sending district within the proposed region, and may limit the number of students who may be enrolled from each such district.

### **1.06: Charter School Enrollment and Student Recruitment**

(1) (4)-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. Charter schools shall receive approval from the Department of a recruitment and retention plan that meets the requirements of M.G.L. c. 71, § 89.

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

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

—(i) (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)(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;

(ii)

~~(e)~~

~~(e)~~ the Department shall notify each Commonwealth charter school no later than February 15th 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)(iii)~~ ~~(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 conformance with M.G.L. c. 71, § 89, charter schools shall, when a student stops attending for any reason, attempt to fill vacant seats up to February 15, excluding seats in the last half of the grades offered and in grades 10, 11, and 12. A vacancy not filled after February 15 moves into the subsequent grade, to be filled the following September if such grade is in the last half of the grades offered and is not grades 10, 11, or 12. Seats for students who have accepted an offer of admission in the charter school but have never attended are exempt from this provision.

(iv) 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.

(v) In conformance with M.G.L. c. 71 § 89 (n), charter schools shall submit to the Department, no later than June 1 and as of March 15, the names, home addresses, telephone numbers, and grade levels of students who entered the lottery but did not gain admission. The same information must be submitted within 30 days of any student being admitted from the waitlist to the school to fill a vacancy in the school.

(vi) Charter schools may include, as a strategy in their recruitment and retention plan, a request to the district(s), for the addresses of all students eligible to enroll in the charter school to be sent to a third party mail house. Any vendor listed on the statewide procurement or master services agreement for mailing services shall be deemed approved for the purposes of this section. The district must provide parents/guardians with the opportunity to request that the district withhold such information. Charter schools shall provide such mailing in the languages determined to be necessary to fully implement the school's recruitment and retention plan.

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

(i) 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 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;

(ii) if there are more spaces available than eligible applicants from the school, and there are more applicants than spaces available who reside in the district 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

~~iii.~~(iii) 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 district 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 and to meet the requirements of M.G.L. c. 70, § 89(n). 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
- (2) 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 under the terms of the Memorandum of Understanding. 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 1st, 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, 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) ~~(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 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 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 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 by each charter school. Failure to submit a required enrollment report or charter

school claim form may result in the withholding of some or all of a charter school's quarterly payment. 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, the Commissioner may, at his discretion, provide a good faith estimate of the tuition payments expected to be made to a Commonwealth charter school during the current fiscal year, provided that such estimate shall not represent a commitment or obligation of the Commonwealth.

(11) Transportation.

(a) All students who reside in the school district in which a charter school is located shall be provided transportation by the district, provided that either (i) transportation is provided to district students in the same grade, or (ii) transportation is required by the student's individual education plan. If a district provides an alternative means of transportation for its students in a particular grade, such as public transportation passes, it may do so for charter school students in that grade. A district may not limit transportation to charter school students based on attendance zones or other geographic subdivisions of the district. The district shall accommodate the school day and school year specified in the school's charter, provided that the charter school shall make reasonable accommodations in setting its daily starting and ending times to foster cost-efficient transportation arrangements.

(b) A charter school shall annually notify the district in which it is located of its projected transportation needs no later than February 1 prior to the start of the school year, provided that newly chartered schools shall provide such notification as soon as practicable following receipt of its charter. Charter schools shall update their projected transportation needs by April 1 based on pre-enrollment data.

(c) If a district and a charter school are unable to reach agreement on the district's provision of transportation for all or some of the students attending said school, the charter school may provide its own

transportation. The school shall be reimbursed by the district for the actual costs incurred by the school, for the district's average per pupil cost for all in-district student transportation, or for the actual cost to the district if it transported said students, whichever is least. Said reimbursements shall be subject to the Commissioner's approval and shall be paid through the Department's charter tuition payment process.

~~School districts shall provide transportation to charter School students on the same basis as it is provided to students attending public schools operated by 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.~~

(12) Surplus determination. In fiscal year 2010 and each subsequent fiscal year, each charter school shall maintain a separate fund on its books of account for tuition revenue. The Commissioner, in consultation with the State Auditor, shall prescribe supplemental reports for the purpose of calculating the school's cumulative unspent tuition revenue, and such reports shall be submitted as part of the school's audited financial statements. Payments of excess cumulative tuition revenue due to sending districts and the commonwealth shall be made by the Commissioner through adjustments to quarterly tuition payments and quarterly local aid distributions.

## **1.09: Ongoing Review of Charter Schools**

(1) Annual Report. A charter school shall submit to the Board 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 1st 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 **unaudited** 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) a capital plan for the preceding year, including the amount held in reserve for the purchase or renovation of an academic facility;



(c) for all schools chartered before February 2011, a recruitment and retention plan for school year 2010-2011 shall be submitted that meets the requirements of M.G.L. c. 71, § 89.

(d) a report on the school's implementation of its recruitment and retention plan;

(e) an updated recruitment and retention plan for the upcoming school year;

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

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

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

(i) such other information as the Board may require in guidelines.

(2) Site Visits. The Department may send evaluation teams to visit each charter school on an annual or as-needed 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 may issue. Audits shall be filed annually by November 1<sup>st</sup>~~on or before January 1<sup>st</sup>~~ with the Department and the State Auditor.

(4) Enrollment Reports. Each charter school shall conclude its principal enrollment process no later than March 15th of each year, and shall file a pre-enrollment report annually with the Department 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 pre-enrollment.

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 a report by a date determined by the Department annually, s no later than October 15th and March 1st of actual enrollment as of October 1<sup>st</sup> and no later than March 1<sup>st</sup> of enrollment as of February 15th, respectively. The report shall be filed on a form provided by the Board.

(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 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 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. 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, 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, the Commissioner, or the Department 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, 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 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, or any other agency 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.

### **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 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) Expulsion policy;
- (e) Corrections and clarifications involving the mission statement or other sections of the charter;
- (f) School name;
- (g) Membership of the board of trustees (as specified under 603 CMR 1.05(2)(a)); or
- (h) Memorandum of Understanding (for Horace Mann charter schools).

(3) The Commissioner and the Board 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 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.

Boards of trustees seeking amendment requests to increase maximum enrollment in districts performing in the lowest 10 percent statewide, under M.G.L. c. 71, § 89, and in which the 9 percent net school spending cap is or would be exceeded, must meet the performance criteria described in 603 CMR 1.05(3).

(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.

## **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 1st of the third school year and no later than August 1st after the end of fourth school year. The Board 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 1st, the Board shall notify the charter applicant of the decision to renew or not to renew the charter and the reasons therefore no later than March 1st 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. Applications for the renewal of Horace Mann charters must be submitted with the certification of a majority vote of the school committee and local collective bargaining unit~~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, including the extent to which the school has followed its recruitment and retention plan; 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 the renewal inspection report. 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 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 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 or renewal 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, including but not limited to, mismanagement of the educational program and failure to provide a healthy and safe environment for students;
- (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 in connection with the grant or renewal of a charter.

(2) Before the Board revokes a charter, it shall notify the charter school in writing that the Board intends to revoke the charter. A vote of intent to revoke shall operate as a notice of the action and does not operate as an order to show cause. 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, and must be received within 15 days of receipt by the charter school of the notice of intent to revoke a charter. At such hearing, the school shall bear the burden of proof and present its case first.

(4) The Board 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 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. Charter schools must begin planning for closure and compliance with the closing procedures established by the Department once the Board issues a notice of intent to revoke the school's charter.

(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.