

## Charter Revocations: Legal Considerations Concerning Procedure<sup>1</sup>

By Suzanne E. Eckes and Jonathan A. Plucker

Charter schools are given greater autonomy than traditional public schools, and in return they are held more accountable to the public. As such, if a charter school fails to meet its educational objectives, the charter may be revoked or not renewed. Revocation is the withdrawal of a school's charter during its term, while renewal relates to the decision by a charter-granting authority to enter into a new contract once the term of an existing contract expires.<sup>2</sup> As of fall 2002, 194 charter schools had revoked or non-renewed charters, with these closures occurring in 26 of the 33 states and District of Columbia that had chartered schools up to that time.<sup>3</sup> Although this is slightly less than 7% of the schools that have been granted charters, the number of schools is large enough to warrant careful consideration of charter revocation and non-renewal processes.<sup>4</sup>

The details regarding revocation and non-renewal vary greatly among states. Although some states provide some guidance, others provide very little. Recent court cases contesting charter revocations suggest that several legal issues should be considered regarding revocation or non-renewal of charters. Most recently, in Kansas City, Missouri, there is litigation involving a challenge to a sponsor's right not to renew its charter. This case as well as others will be discussed.

### Context

A charter school is a publicly funded, non-sectarian, tuition-free school of choice that has greater autonomy than traditional public schools. What sets charter schools apart from other schools is their charter. The "charter," which establishes each school, is a performance contract that details the school's mission, program goals, students served, method of assessment, and ways to measure success. Functioning as a public school, a charter school receives a charter or contract from a public agency. The entity that issues the charter is known as a sponsor or authorizer. The authorizer serves as the public's primary formal agent for holding

charter schools accountable for performance.

When a charter is issued, there is a defined limited term of operation; most charters are granted for three to five years. In Indiana, a charter may be granted for "not less than three years."<sup>5</sup> As a result, if a charter school fails to meet the provisions of its charter, the authorizer may take steps to close the school. Some commentators have described this type of accountability as "public marketplaces in which a school's clients and stakeholders reward its successes, punish its failures, and send it signals about what needs to change."<sup>6</sup>

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## Charter Revocation Appeals and Procedures

Although the details vary by state, charters may be revoked if they do not meet the objectives required by state statute. In general, state statutes will allow for the revocation of a charter if there is a material violation of provisions of the charter, a failure to make reasonable progress toward the required educational objectives of the charter, a failure to comply with fiscal accountability procedures or fiscal management, or for a violation of any laws that have not been exempted by the charter.<sup>7</sup>

In Indiana, the law provides that the authorizer may revoke the charter at any time before the expiration of the charter's term if the authorizer determines that at least one of the following occurs: (1) the organizer fails to comply with the conditions established in the charter; (2) the charter school established by the organizer fails to meet the educational goals set forth in the charter; (3) the organizer fails to comply with all applicable laws; (4) the organizer fails to meet generally accepted government accounting principles; (5) one or more grounds for revocation exist as specified in the charter.<sup>8</sup> The sponsors are able to expand upon the grounds for revocation.<sup>9</sup> For example, one of the sponsors in Indiana also states that a charter may be revoked if the "Charter Schools Director believes the health or safety of students attending the Charter School may be in jeopardy."<sup>10</sup>

Although state statutes almost universally discuss the ways in which a charter may be revoked, the statutes rarely outline how the charter school organizers are to proceed once a charter has been revoked.<sup>11</sup>

As mentioned, state statutory language varies greatly concerning the procedures during charter revocation.

To illustrate, a study on charter revocation revealed that an Arizona statute required that the authorizer of a charter school establish procedures for an administrative hearing when the sponsor finds that the grounds exist to revoke a charter. Arizona law also permits judicial review of final decisions. Likewise, in Kansas there is legislation stating that the board of education has within sixty days of a hearing on the matter to revoke a charter.<sup>12</sup>

Other states such as New Jersey have statutes that are not so specific. In New Jersey, the law requires the Commissioner of Education to develop procedures to govern the possibility of revocation of a school's charter.<sup>13</sup> State statutes such as Indiana's are silent about the appeals process. Even though

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the Indiana legislature does not spell out specific procedures for revocation, the charter school sponsors provide such guidelines within the charters.

For example, one sponsor states that "procedures shall include written notice to the Organizer of intent to revoke the Charter and the grounds for revocation. The Organizer shall have an opportunity to respond in writing to the CSO [Charter School Office] Director and may request a hearing before the University Charter Schools Hearing Panel prior to the effective date of revocation."<sup>14</sup> Another Indiana sponsor

notes that the "Charter Schools Director shall provide the Organizer with written notice of such circumstances and state a date, which shall not be less than fifteen (15) business days from the date of such notice, by which time the Organizer must respond in writing (a) showing cause why the Charter should not be revoked or (b) proposing to cure the condition."<sup>15</sup>

When state statutes are unclear regarding the revocation procedures, legal challenges increase.<sup>16</sup> To illustrate, in a recent District of Columbia Court of Appeals case, charter schools that had their charters revoked argued that they had a statutory right to a contested case hearing.<sup>11</sup> Additionally, the schools argued that they had due process rights under the U.S. Constitution to a contested case hearing. The court did not permit a contested hearing because the statute only required an "informal hearing" after receiving notice of a revocation,<sup>18</sup> and the court did not agree with the charter schools' charge that the statutory language of "informal hearing" was ambiguous. The court also reasoned that due process does not require the school board to conduct a contested case hearing before deciding to revoke a public school charter. Most recently, a Court of Appeals in Missouri considered another issue regarding the statutory language concerning charters.<sup>19</sup> Specifically, Missouri law provided criteria for revocation but failed to do so about the procedures that must be followed regarding the renewal of a charter. The legislature's silence on the renewal process led to confusion for the charter schools, which eventually led to litigation. Such confusion could be avoided with clearly aligned procedures. Although these cases are not Indiana cases, they nevertheless raise important legal issues regarding the statutory language involving charters.

## Conclusions and Considerations

The revocation or non-renewal of charters raises legal issues regarding statutory language and due process.<sup>20</sup> The courts have noted the importance of clearly explaining the grounds for revocation because access to such information provides further procedural safeguards against erroneous deprivations. Further, the courts have stressed that when charter schools are well informed as to the basis for the revocation, it provides the school with an opportunity to address these findings through both oral and written testimony during the informal hearing. In addition to ambiguous statutory language, it is equally confusing when the legislature is silent about charter revocation

procedures. Fortunately, Indiana's charters explain the revocation and non-renewal procedures.

Indeed, when state legislatures pass legislation or other authorities develop guidelines regarding the revocation of charters, they should be certain to conform to state constitutional standards.<sup>21</sup> In order to do so, one commentator suggests that the legislature could grant authority to the state entity over education to set statewide procedure over the revocation process. Another option would be to have the statute itself provide the procedure.<sup>22</sup>

At the present time in Indiana, individual sponsors have addressed revocation and non-renewal issues directly in their charters, which has worked well thus far – but, then again, only one charter has been revoked, and in that case the issues appear to be largely logistical and not related to school failure to reach accountability standards. In the future, Indiana's charter schools may benefit from an examination of the procedures for revocation and non-renewal within the state statute. Codifying these procedures would create uniformity across charter school authorizers that may benefit both future sponsors and school organizers.

## Endnotes

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<sup>2</sup> Mead, J. (2003). Devilish details: Exploring features of charter school statutes that blur the public/private distinction, *Harvard Journal on Legislation*, 40, 349-379.

<sup>3</sup> Center for Education Reform. (2002). *Charter school closures: The opportunity for accountability*. Washington, DC.

<sup>4</sup> Vergari, S. (2003). Charter schools: A significant precedent in public education. *New York University Annual Survey of American Law*, 59, 495-512.

<sup>5</sup> Ind. Code Ann § 20-5.5-4-1(5)(A) (Burns, 2004)

<sup>6</sup> Finn, C., Manno, B., & Vanourek, G. (2000). *Charter schools in action: Renewing public education*. Princeton, NJ: Princeton University Press. For an analysis of the complexities involved in

charter school accountability systems, see Hess, F.M. (2001). Whaddya mean you want to close my school? The politics of regulatory accountability in charter schooling. *Education and Urban Society*, 33, 141-56.

<sup>7</sup> Wall, J. (1998). The establishment of charter schools: A guide to legal issues for legislatures. *Brigham Young University Education and Law Journal*, 1998, 69-102.

<sup>8</sup> Ind. Code Ann. § 20-5.5-9-4 (Burns, 2004).

<sup>9</sup> Mayor's Office of Indianapolis. (n.d.) Sample Charter School Agreement Retrieved on 9/7/2004 from [http://www.indygov.org/eGov/Mayor/Education/Charter/Schools/Starting/sample\\_agreement.htm](http://www.indygov.org/eGov/Mayor/Education/Charter/Schools/Starting/sample_agreement.htm)

<sup>10</sup> Mayor's Office of Indianapolis, n.d.

<sup>11</sup> Wall, 1998.

<sup>12</sup> Wall, 1998. This article was published in 1998 and some of the state statutes discussed have been amended.

<sup>13</sup> N.J. Stat. Ann. 18A:36A-17 (West 1999).

<sup>14</sup> Ball State University. (2003). Charter issued by Ball State University. Retrieved on 9/7/2004 from <http://www.bsu.edu/teachers/charter/contract2003.pdf>.

<sup>15</sup> Mayor's Office of Indianapolis, n.d.

<sup>16</sup> *Orange Av. Charter Sch. v. St. Lucie County Sch. Bd.*, 763 So. 2d 531 (Fla. Dist. Ct. App. 2000).

<sup>17</sup> *Richard Milburn Pub. Charter Alternative High Sch. v. Cafritz*, 798 A.2d 531 (D.C. 2002).

<sup>18</sup> D.C. Code § 38-1802.13(c).

<sup>19</sup> *State ex rel. Sch. Dist. of Kan. City v. Williamson*, 2004 Mo. App. LEXIS 1067 (July, 2004).

<sup>20</sup> Mead, 2003.

<sup>21</sup> Wall, 1998.

<sup>22</sup> Wall, 1998.

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