

APRIL 2015

## State Policy Snapshot: School District Facilities and Public Charter Schools

By Russ Simnick

One of the greatest challenges to the health of the public charter school movement is access to adequate facilities in which the schools operate. Public charter school facilities are rarely funded on par with school district facilities. Over the years, more states have come to realize that they have an obligation to ensure that all public school children—district and charter—have access to adequate school buildings.

Despite a growing will among state lawmakers across the nation to provide public charter schools with adequate facilities, challenges, such as a lack of available state funding, are common. While equal facilities funding for all public school children is the ideal solution to the facilities challenges facing charter schools, making available underused school district buildings is growing in popularity as a way to provide public charter schools with quick access to facilities while putting shuttered taxpayer-funded facilities back in operation for the purpose they were intended—to educate children. In fact, the National Alliance for Public Charter Schools' *A New Model Law For Supporting The Growth of High-Quality Public Charter Schools* recommends that states ensure that public charter schools have the right of first refusal to purchase or lease at or below fair market value a closed or unused public school facility or property.

Currently, 27 states have enacted policies that try to provide charter schools with better access to district facilities. Some of these policies are stronger than others. The ones that are the strongest (at least on paper) are California, D.C., Indiana, Maine, Mississippi, New Mexico, New York, Ohio, South Carolina, and Washington.

As state lawmakers consider these policies, they need to give serious thought to several issues, including:

- Creating an entity that will collect and freely share information on available buildings with charter schools.
- Giving charter schools the right of first refusal on available facilities.
- Determining what price, if any, charter schools should pay to lease or acquire available buildings.
- Determining who will pay for renovations and upkeep of the facilities once charter schools are in them.

We strongly encourage lawmakers to work closely with their state's public charter school stakeholders as they investigate this policy issue.

## Summary of Charter School Facilities Policies by State

<b>Alaska</b>	<p>Alaska law requires a school district to offer to a charter school the right of first refusal for a lease of space in a existing school district facility or in a facility within the school district that is not currently being used as a public school, if the chief school administrator determines the facility meets requirements for health and safety applicable to public buildings or other public schools in the district. If the school district requires lease payments by a charter school, the law requires the school district to negotiate a lease agreement with the charter school for an amount that does not exceed the true operational costs calculated on a square foot basis.</p> <p><i>Citation: Alaska Statute § 14.03.255</i></p>
<b>Arizona</b>	<p>Arizona law requires the state department of education, in conjunction with the state department of administration, to compile and publish an annual list of vacant and unused buildings (or portions of buildings) owned by the state or school districts that may be suitable for the operation of a charter school.</p> <p><i>Citation: Arizona Revised Statutes § 15-189</i></p>
<b>Arkansas</b>	<p>Arkansas law gives open enrollment charter schools the right of first refusal to purchase or lease at fair market value a closed public school or unused portions of a public school located in a district from which it draws its students. It also provides that a district may not require lease payments that exceed the fair market value of a property and that a district is not required to lease to an open enrollment charter school if an offer higher than fair market value is offered by an entity other than the charter school through a competitive bid process.</p> <p><i>Citation: Arkansas Code Annotated § 6-23-501</i></p>
<b>California</b>	<p>The law requires districts to provide charter schools with facilities that are sufficient to accommodate charter school needs and reasonably equivalent to other district facilities through an annual application process. It allows a district to charge a charter school only a proportionate share of its facilities costs that are paid from the general fund. The law also includes a limited option for charter schools to receive the "first right of refusal" to any surplus school district property, but only to July 1, 2016, unless the provision is extended.</p> <p><i>Citation: EC 47614 and EC 17457.5</i></p>
<b>Colorado</b>	<p>Colorado law specifies that a charter school may not be charged rent for using space in a school district facility, although other costs for facilities operations and maintenance must be negotiated between the charter school and the school district. The law explicitly allows charter schools to lease or purchase land from the state.</p> <p><i>Citation: Colorado Revised Statutes §22-30.5-104</i></p>
<b>Connecticut</b>	<p>Connecticut law creates incentives for school districts to enter into voluntary agreements with high performing charter schools that provide material support to such schools, such as the use of a district facility. By doing so, districts are given permission to count the performance of the charter school students as part of the district for state accountability purposes.</p> <p><i>Citation: Conn. Gen. Stat. § 10-223f</i></p>

<b>Delaware</b>	<p>Delaware law requires the state department of education and state department of administrative services to publish a list of all vacant and unused buildings and portions of buildings owned by the state or school districts that may be suitable for charter schools. Delaware law provides that school districts must make unused buildings or space in buildings available for charter schools and must bargain in good faith over the cost of rent, services, and maintenance related to such space.</p> <p><i>Citation: Delaware Code 14 § 504A</i></p>
<b>District of Columbia</b>	<p>D.C. law requires the mayor and the D.C. government to give charter schools a right of first offer for the purchase, lease, transfer, or use of surplus public facilities or properties.</p> <p><i>Citation: District of Columbia Official Code § 47-392.25</i></p>
<b>Georgia</b>	<p>Georgia law requires each local board of education to make available any vacant or otherwise unused facility to locally-authorized charters at no lease cost, with any additional terms of use to be negotiated by the parties.</p> <p><i>Citation: O.C.G.A. § 20-2-2068.2</i></p>
<b>Hawaii</b>	<p>Hawaii law requires the state department of education to make vacant public school facilities available to charter schools.</p> <p><i>Citation: Hawaii Revised Statutes § 302D-24</i></p>
<b>Idaho</b>	<p>Idaho law gives school districts the authority to authorize the transfer or conveyance of any surplus district-owned property to various public entities including charter schools.</p> <p><i>Citation: Idaho Statues § 33-601</i></p>
<b>Indiana</b>	<p>Indiana law requires school districts to provide a list of buildings that are closed, unused, or unoccupied for a period of two years to the state department of education and make them available for lease or purchase to any charter school. If a charter school wishes to use a school building on the list, the school district must lease the building for \$1 a year for a term at the charter school's discretion or sell the building for \$1. The charter school is required to use the building for classroom instruction no later than two years after acquiring the building. If during the term of the lease, the charter school closes or ceases using the school building for instruction, the building will be placed again on the state department of education's list.</p> <p><i>Citation: Indiana Code § 20-26-7-1</i></p>
<b>Louisiana</b>	<p>Louisiana law requires local school boards to make available to chartering groups any vacant school facilities or any facility slated to be vacant for lease or purchase at fair market value.</p> <p><i>Citation: Louisiana Revised Statutes § 17:3982</i></p>

<b>Maine</b>	<p>Maine law provides that charter schools have right of first refusal to purchase or lease at or below fair market value a closed noncharter public school facility or property or unused portions of a noncharter public school facility or property located in a school administrative unit from which it draws its students if the school administrative unit decides to sell or lease the noncharter public school facility or property. The school administrative unit may not require purchase or lease payments that exceed the fair market value of the property.</p> <p><i>Citation: Maine Revised Statutes § 20A-2-112 §2414</i></p>
<b>Maryland</b>	<p>If, with the approval of the state superintendent of education, a county school board determines that a school site or building no longer is needed for school purposes and after the county commissioners or county council have provided required notice, Maryland law requires county school boards to notify public charter schools about school sites and buildings available for occupation and use on terms determined by the county school board.</p> <p><i>Citation: Maryland Education Code Ann. § 9-111</i></p>
<b>Mississippi</b>	<p>Mississippi law provides that charter schools have right of first refusal to purchase or lease at or below fair market value a closed school facility or property or unused portions of a public school facility or property in the school district in which the charter school is located if the school district decides to sell or lease the public school facility or property.</p> <p><i>Citation: Mississippi Code Ann. § 37-7-455</i></p>
<b>New Hampshire</b>	<p>New Hampshire law allows charter schools to lease, through the school district, buildings that receive state school building aid.</p> <p><i>Citation: New Hampshire Revised Statutes XV 194-B:11</i></p>
<b>New Mexico</b>	<p>The law requires the school district in which a charter school is geographically located to provide a charter school with available facilities for the school's operations unless the facilities are currently used for other educational purposes. It allows an agreement for the use of school district facilities by a charter school to provide for reasonable lease payments.</p> <p><i>Citation: New Mexico Statute § 22-8B-4</i></p>

**New York**

New York law requires that the New York City School District provide charter schools that first commence instruction or that require additional space due to an expansion of grade level approved by their authorizer for the 2014-15 school year or thereafter and request co-location in a public school building one of two options:

- Offer at no cost to the charter school a co-location site in a public school building.
- Offer the charter school space in a privately owned or other publicly owned facility at the expense of the school district and at no cost to the charter school. The space must be reasonable, appropriate and comparable and in the community school district to be served by the charter school and otherwise in reasonable proximity.

The law gives the charter school the option of appealing the school district’s offer or failure to offer a co-location site through binding arbitration, via an expedited appeal to the state commissioner of education or a petition to the state courts. Where such an appeal is upheld, either on the grounds that the New York City School District failed to make an offer of space or that such offer was not reasonable, appropriate and comparable, New York State law specifies that the New York City School District must pay the lesser of 20% of the per pupil operating payments or the rental cost incurred by the school for those grades that are eligible for such rental assistance.

The law also allows a charter school to contract with a school district or the governing body of a public college or university for the use of a school building and grounds, the operation and maintenance thereof. Any such contract shall provide such services or facilities at cost.

Statute provides that the New York City Schools Chancellor must identify and publish which public school buildings are subject to location or co-location of charter schools. The law requires the Chancellor to develop a building usage plan that defines the allocation of classroom and administrative space between the charter and non-charter schools and the collaborative usage of shared resources and spaces (e.g., cafeterias, libraries, gyms). The law requires such allocations to result in an equitable and comparable use of public school buildings between charter and non-charter schools (including equity in any funding received for facility upgrades).

*Citation: Laws of New York 2-56 §2853*

**North Carolina**

At the request of a charter school, the local school board of the school district in which the charter school is located shall lease any available building or land to the charter school unless the board demonstrates that the lease is not economically or practically feasible or that the local board does not have adequate classroom space to meet its enrollment needs. Also, a local school board may provide a school facility to a charter school free of charge, but the charter school is responsible for the maintenance of and insurance for the school facility.

*Citation: North Carolina General Statutes § 115C-238.29E*

<p><b>Ohio</b></p>	<p>Ohio law requires local school boards to offer to sell or lease school buildings that have not been used for two years to charter schools. If there is only one offer from a charter school, the district must sell the property at its appraised fair market value. If there is more than one offer from various charter schools, the district must conduct a public auction and accept a bid that is not any lower than the property's appraised fair market value (a similar process is required for leases, but at a price no higher than the fair market value of equivalent leases). The district is allowed to dispose of the property if no charter school offers to buy or lease the building within 60 days after the district makes the offer.</p> <p><i>Citation: Ohio Revised Code § 3313.14</i></p>
<p><b>South Carolina</b></p>	<p>South Carolina law requires the state department of education to make available, upon request, a list of vacant and unused buildings and vacant and unused portions of buildings that are owned by school districts and that may be suitable for the operation of a charter school. It provides that if a school district declares a building surplus and chooses to sell or lease the building, a charter school's board of directors or a charter committee operating or applying within the school district must be given the first refusal to purchase or lease the building under the same or better terms and conditions as it would be offered to the public.</p> <p><i>Citation: South Carolina Code of Laws § 59-40-170</i></p>
<p><b>Tennessee</b></p>	<p>The law requires a local educational agency (LEA) having underutilized and vacant properties to make the properties available for use by charter schools operating in the LEA. By October 1 of each year, the law requires any LEA in which one or more charter schools operates to annually catalog all vacant properties owned or operated by the LEA and all vacant space within any educational facility owned or operated by the LEA. The law requires the LEA to submit a comprehensive listing of all such properties and space to the state department of education, which must make an LEA's list available to any charter school operating in the LEA or to any sponsor seeking to establish a public charter school in the</p> <p>LEA. The law provides that a charter school may not be required to pay a base rent for the use of any underutilized and vacant property owned or operated by the LEA and may only be required to remit payment for the maintenance and operational costs associated with the occupancy of the property or space.</p> <p><i>Citation: Tennessee Code § 49-13-136</i></p>
<p><b>Texas</b></p>	<p>Texas law requires that the board of trustees of an independent school district that intends to sell, lease, or allow use for a purpose other than a district purpose of an unused or underused district facility must give each open-enrollment charter school located wholly or partly within the boundaries of the district the opportunity to make an offer to purchase, lease, or use the facility, as applicable, in response to any terms established by the board of trustees, before offering the facility for sale or lease or to any other specific entity. It also states that the board of trustees of a school district is not required to accept an offer made by an open-enrollment charter school.</p> <p><i>Citation: Texas Statutes § Sec. 11.1542 and Sec. 11.1543</i></p>

<b>Washington</b>	<p>Washington law provides that charter schools have the right of first refusal to purchase or lease at or below fair market value a closed public school facility or property or any unused portions located in a school district from which it draws its students if the district decides to sell or lease such facility or property.</p> <p><i>Citation: Revised Code of Washington § 28A.710.230</i></p>
<b>Wisconsin</b>	<p>Wisconsin law authorizes the City of Milwaukee to sell or lease city-owned properties used for school purposes that have been deemed unused or underutilized for at least 12 consecutive months. Upon adoption by the common council of the resolution to approve the sale or lease of the property, the Milwaukee school board is required to provide the common council and city employees and agents copies of all documents related to the property and access to and entry upon and into the property for purposes related to the sale or lease.</p> <p><i>Citation: Wisconsin Statutes § 119.60</i></p>
<b>Wyoming</b>	<p>The law entitles charter schools to use available school district facilities free of rent.</p> <p><i>Citation: Wyoming Statutes: § 21-3-304</i></p>

## About the Author



Russ Simnick is senior director of state advocacy and services for the National Alliance for Public Charter Schools. He joined the National Alliance after serving for nearly five years as president of the Indiana Public Charter Schools Association (IPCSA).

As lead executive, he was responsible for overall organization, achievement of goals in the areas of advocacy, public awareness and support, governance, and organizational sustainability on behalf of the state charter movement, which grew from 11,900 students in 53 schools to more than 33,000 students in 75 schools during his tenure. Russ's key accomplishments at the IPCSA were building the organization from the ground floor to the leading voice in the state charter sector; securing a \$91 million state budget line item to pay off all charter school start-up and growth loans; blocking a strong push to impose a moratorium on new charter schools; and leading two major charter school reform bills through the legislature, which saw Indiana go from one of the weakest state laws (#29 out of 40) to a projected top state ranking.

Russ has served as a founding charter school leader and teacher; was executive vice president of one of Indiana's largest public relations firms; and has several years of legislative experience as an Indiana Senate staffer and campaign experience on a variety of campaigns at the state legislative, congressional, and gubernatorial levels.

He serves on the board of School Choice Indiana and the Policy Committee for Hoosiers for Economic Growth. He is a past board member of the National Alliance and serves as chair and vice chair of the National Alliance's State Leaders Council. Russ served on the Indianapolis Neighborhoods for Educational Opportunity steering committee and the Rose-Hulman University, Indianapolis Board of Associates. He is still involved as a founder and director of the Youth Enhancement Training Initiative, a Nepalese orphanage that is consistently ranked as one of the best in the country by the government of Nepal.

Russ is a Ph.D. candidate at Indiana State University and a graduate of the Academy of Teaching and Learning, Marian University. He holds his master of education degree from Indiana Wesleyan University and a bachelor of science degree from Ball State University.

He was recognized by the Indianapolis Business Journal as one of the city's "40 under 40" and by Junior Achievement as "Best and Brightest." He also received the Distinguished Alumnus Award from the Triton Central High School.