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Terms of the Deal: Elements of a Strong Charter Contract





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Let Us Hear From You

On the wall are five sheets of paper that represent the topics we will discuss today.

Those topics are: (1) Contract Formation & Negotiation, (2) Oversight & Intervention, (3) Amendments, (4) Renewal, and (5) Other

Place a Post-It note on the sheet of paper for the topic you are most interested in learning about.

If you select "Other" please write topic on the Post-It note.



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“Hot Button” issues in charter school contracting



Presented
by:

- Lisa T. Scruggs, Partner, Duane Morris LLP
- Ralph A. Rossi II, Executive Deputy Director and General Counsel, SUNY Charter Schools Institute
- Gregg Stevens, General Counsel and Petitions Manager, State Charter Schools Commission of Georgia



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Contract Formation & Negotiation

Lisa T. Scruggs,
Partner,
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WHO NEEDS A CHARTER CONTRACT?

- N.O. Contract Charter School Is Approved By District Authorizer and Opens in 2012 for an initial five year term
- Authorizer and N.O. Contract Charter School not required to execute a charter agreement. No contract is signed
- In 2014, State Board announces it will administer new PARCC assessments for all public schools, including charter schools, for 2014-15 school year
- The district authorizer informs N.O. Contract Charter School that the district accountability plan and the upcoming renewal decision will be based on the school's performance on PARCC assessment
- The district authorizer tells N.O. Contract Charter School that the current accountability plan is being scrapped and no longer applies to the school and that N.O. Contract Charter School must comply with the new plan

Common Core Assessments

 Partnership for Assessment of Readiness for College and Careers



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- Authorizer
 - Would having a charter contract improve your ability to enforce this change? Make it harder?
- N.O. Contract Charter School
 - Would you be in a better position if you had a contract that explicitly set forth the accountability plan? A contract that had a provision regarding contract amendments?



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Executing a Charter Contract is an Essential Practice

- From NACSA Principles and Standards:
“A quality authorizer executes a contract with a legally incorporated governing board independent of the authorizer”



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- The charter contract “articulates the rights and responsibilities *of each party* regarding school autonomy, funding, administration and oversight, outcomes, measures for evaluating success or failure, performance consequences, and other material terms.”
 - It is a separate from the charter application
 - It is a legally binding agreement
 - It sets clear terms and expectations for performance



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Benefits of Executing A Contract

- Schools have notice of the terms by which they will be held accountable
- Strengthens authorizer capacity to enforce accountability
- Creates environment for negotiation to meet parties' needs
- Reduces misunderstanding about each parties' affirmative obligations and consequences for failure to perform
- Provides an “expectations roadmap” for other stakeholders – students, families, the public



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Performance Contracting Basics

- A Performance Contract is fulfilled by achieving a specific outcome or set of outcomes
- Primary focus is on outcomes, not inputs (what, not how)



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Performance Contracting Basics

- Incorporate elements of application
 - Mission, location, educational approach and educational program
- Establish five year term or longer (with high stakes review at shorter terms)
- Identify which external authorities govern the charter school's operation and which ones do not apply
 - Federal education and civil rights laws, state laws and regulations, district wide or authorizer policies, waiver
 - Allocate burden for knowing about changes in the laws, regulations and rules that apply
 - Plan for changes in law and regulations and decide how to address



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Performance Contracting Basics

- Define materiality
- Establish performance standards/accountability plan
 - States expectations for academic, financial and organizational performance
 - Develop clearly defined and measurable indicators, metrics and targets
 - Allow incorporation of mission-specific performance measures
- Affirm public responsibilities
- Identify and incorporate authorizer policies on performance frameworks, opening and closure protocol, financial and student information reporting and renewal process



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Oversight & Intervention

Ralph A. Rossi II,
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Director and General
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The Catchall

“Compliance with Laws and Regulations. The [charter school] Education Corporation shall operate at all times in accordance with the [NY Charter Schools] Act and other applicable laws, rules and regulations and its schools shall meet the same health and safety, civil rights, and student assessment requirements as are applicable to other public schools, except as otherwise set forth in the Act.” (SUNY Model Charter Agreement § 7.1, available at:

<http://www.newyorkcharters.org/model-charter-agreement/>).

Any violation of law is a violation of the charter.



Progressive Compliance

Step 1:

- **Email** describing the violation and how the school can come into compliance.

Step 2:

- Formal **violation letter** (saved to the file for review at renewal) with the same information and citing the section of the charter agreement or law which has been violated.

Step 3:

- **Corrective Plan**

Step 4:

- **Probation**

Step 5:

- **Revocation**



Corrective Plan

A voluntary agreement signed by the school board chair detailing violation(s) and dates by which the school must take action to come into compliance.

1. May be used for a severe first time violation

2. Does not have to be used by the authorizer, which may move to the next step.

3. Failure to follow the Corrective Plan may result in Probation.

4. May be a stop gap for Probation if that requires decision maker approval.



Corrective Plan – Charter Agreement Language

Corrective Plans. If the [Authorizer] determine[s] that the Education Corporation or any of its schools or sites is not progressing toward one or more of the performance or education goals set forth in the Charter, that the quality of a school’s or site’s educational program or the Education Corporation’s governance practices are not satisfactory, or that the Education Corporation or any of its schools or sites is not in compliance with the terms and conditions of the Provisional Charter or the Charter Agreement including the Monitoring Plan, then the [Authorizer], in consultation with the Education Corporation, may develop and require the Education Corporation to implement a corrective plan (“Corrective Plan”). **Nothing contained herein shall require the [Authorizer] to undertake the development of a Corrective Plan or be in derogation of the [Authorizer’s] or the Regents’ ability to revoke the Provisional Charter, place the Education Corporation on probationary status, or initiate mandatory remedial action in accordance with the Act and sections 8.6 and 8.7 of the Charter Agreement.**

Flexibility



Probation

Statutory (or non-statutory remedy) that allows for the implementation of a Remedial Action Plan for the school to come into compliance by the dates set forth in the Plan or face charter revocation.

Can be used for severe first time violation

Allows for “summary” revocation if RAP is violated because notice would already have been given by the authorizer



Probation/Revocation – Charter Agreement Language

Notice and Procedures. (a) Should the [Authorizer] determine that one of the grounds for termination or revocation of the Charter as defined under the Act has occurred or is occurring, the [Authorizer] may, at their discretion, elect as follows:

- (i) to terminate the Charter; or
- (ii) terminate the Education Corporation’s authority to operate one or more programs, schools or sites, or any combination thereof; or
- (iii) to place the Education Corporation on probationary status and prepare and cause the Education Corporation to implement a remedial action plan the terms and conditions of which the Education Corporation must agree to abide by in all respects.

Flexibility



Probation – Charter Agreement Language

(c) Should the [Authorizer] elect to place the Education Corporation on probationary status, such probation shall be effective upon notice to the Education Corporation. In the event that the Education Corporation is placed on probationary status, and does not abide by the terms and conditions of the remedial action plan to the satisfaction of the [Authorizer], or refuses to implement such plan, the [Authorizer] **may** declare the Charter terminated with notice of such decision to be given to the Education Corporation Board at least five (5) days prior to the termination date set by the [Authorizer]. The terms and conditions of a remedial plan may include, but are not limited to, the termination of the authority of the Education Corporation to operate a school, site or program.



Revocation

Statutory (or non-statutory remedy) that terminates the charter agreement

May require due process beyond notice (hearing, right to counsel, right to present evidence and challenge authorizer's evidence)

Should allow for revocation or cessation of instruction at some point in the future (end of classes)

Should plan for challenge, legal and political



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Amendments & Renewal

Gregg Stevens,
General Counsel and
Petitions Manager,
State Charter Schools
Commission of
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When should charter contracts be amended?

- **What's going on in charter contracts around the country?**
 - “Many evening events take place in the gym, such as basketball games and tournaments, girl scouts, boy scouts, dances, as well as school sponsored science, math and art nights.”
 - “Assistant Superintendent of Elementary Schools’ shall be substituted for ‘Assistant Superintendent of Business Services’ at each and every place the latter job title appears...”
 - “Section 7g entitled ‘School Calendar and School Day Schedule’ is hereby deleted and replaced as follows...”



Avoiding Unnecessary Charter Amendments

1

2

3

4

- **Three ways to limit unnecessary charter amendments:**
 - Include only the contract’s “material” terms, define those terms, and only require amendments if those material terms need to be changed.
 - Incorporate laws, regulations, policies, and other documents.
 - Use generic language (and not proper names) whenever possible.



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When do changes in laws require contracts to be amended?

1 2 3

- **It Depends!**
 - Generally, changes in law will automatically apply to the charter.
 - However, if your contractual language conflicts with new law, not amending the contract can lead to confusion.
 - As a result, authorizers need to balance incorporating law by reference and explicitly stating its provisions.



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How should charter contracts be amended?

1

2

- **The process for amending a charter is in the discretion of the authorizer. Some things to consider are:**
 - All amendments to a charter contract should be in writing.
 - Try to avoid explicitly stating your process for amendments in the contract (incorporate by reference instead).
 - Consider your organizational capacity.
 - Plan for emergencies.



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A charter school in Rhode Island is being considered for renewal.

After review of the school's performance, RIDE recommends that the school not be renewed – citing, among other things, poor performance in mathematics.

The school touts its writing and reading performance.

A huge groundswell of media, public, and political pressure ensues.

The result? The Board of Regents votes to defer the recommendation and grants a two year conditional renewal.





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Clear Renewal Standards

1

2

3

- **The charter contract should provide well-defined standards for charter renewal.**
 - An incorporated Performance Framework provides an unambiguous and transparent measure for renewal.
 - References to state laws or regulations may serve as the basis for renewal.
 - While expectations and standards for renewal should be explicit, be careful about detailing the process for renewal in the contract.



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Is it possible to grant a renewal with conditions?

1

- **Authorizers can usually require schools to remediate problems or proactively prevent issues as part of the renewal process. However, authorizers should be careful to use this tool only in a manner to promote school quality rather than infringe upon autonomy.**
- **When considering this action, think about:**
 - The specific condition needed
 - The basis for the condition
 - The standards for renewal



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Is it possible to have a process for automatic charter renewals?

1

2

- **Some states do allow for the automatic renewal of charters; however, the converse of default closures may encourage school quality.**
- Conditions for automatic renewal may be provided in law or established by the authorizer.
- Automatic renewal is sometimes used as a means to hold authorizers accountable.
- Establishing a law or policy that creates minimum performance thresholds and requires closure of those schools that fail to meet those thresholds keeps the focus on school quality.



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Other Topics