

Charter School Disruption of Service in Delaware:

**MAY
2005**



prepared by
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on behalf of the
Delaware Academy for School Leadership

of the
**Institute for Public Administration
College of Human Services, Education & Public Policy
University of Delaware**

in cooperation with the
Delaware Department of Education



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Report and Recommendations

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Summary

In Delaware, both the State and school districts can authorize charter schools. Between 1994, when Delaware's charter school law was passed, and November 2004, 24 schools have received charters from the state Department of Education (DOE), and two have received charters from the Red Clay Consolidated School District. However, only thirteen are operating. Eleven of those 26 schools failed to open after receiving their charter, and two closed after beginning operations.

Few charter school proponents foresaw the number of disruptions of services that would occur because of failure at the business-operations, rather than at the academic, level. The Center for Education Reform, a national charter school support organization, found that 66 percent of charter school disruptions of service nationwide were due to financial problems or mismanagement. Since 1999, the interpretation of the charter school code has evolved so that regulations controlling the learning environment may be waived, but regulations that control the business environment cannot.

Charter schools can discontinue the delivery of services in five ways, primarily depending on the timing of the action (i.e., whether it is sudden and in the middle of a school year or at the end of a school year), and the apparent reason for the disruptions. They are: emergency disruption, closure, non-continuation, non-renewal of charter, and failure to open. Regardless of the type of discontinuation, a number of activities must be completed by a charter school and its board before it closes, including reasonable notification of staff, students, and parents, transfer of students and their records to other schools, and satisfaction of creditors.

The report contains several recommendations related to ensuring that any future disruptions of service, while still difficult and unpleasant, will occur smoothly and with the least distraction to students, staff, and parents.

- Each type of service-disruption situation should have its own written process that would be agreed to by the authorizing entity and integrated into charter school applications and/or renewal documents.
- In the case of an emergency disruption, the Secretary of the DOE should have the ability to establish and implement contingency plans that will allow students and staff to complete the school year in an orderly fashion.
- Statute should be adjusted to clearly assert that charter schools are state entities in order to clear up any ambiguity regarding the status of charter school employees and other situations. This would not preclude the option of charter schools to opt out of participation in the state's retirement system.
- The state should develop timely and appropriate mandatory training for new charter school officials and Boards of Directors beyond that which is already offered, in order to increase the number of charter schools that successfully open.

DOE should receive additional resources to coordinate and provide services to charter schools.

History and Background

When charter schools began in the early 1990s, proponents believed that charter schools would function along the model of a small business. Enterprising parents and management companies would start charter schools in the hope that students there would make better academic progress via innovative curricula, and everyone in the school would benefit from fewer regulations. Under the free-enterprise model, if a school did not meet its goals, student performance did not improve, or parents were unhappy, students would leave and the school would eventually close. To charter school advocates, disruption of educational services – in other words, the closing of a school – was seen as an ultimate check on the system. In their view, this natural outcome for poor performance was not allowed to happen to public schools.

The Delaware Legislature's intent when developing the charter school legislation in 1994 reflects this emphasis on academic improvement of the public school system. Title 14, Chapter 5, Section 501 of Delaware's code states:

This chapter is intended to improve student learning; encourage the use of different and innovative or proven school environments and teaching and learning methods; provide parents and students with measures of improved school and student performance and greater opportunities in choosing public schools within and outside their school districts; and to provide for a well-educated community.

However, few proponents foresaw the number of charter school disruptions of service that would occur because of failure at the business-operations, rather than at the academic, level. In many cases, charter school administrators have found it more difficult to keep the school financially viable, once the charter is approved, than they had anticipated. Although the particular reasons that charter schools close vary widely, the Center for Education Reform, a national charter school support organization, found that 66 percent of charter school disruptions of service were due to financial problems or mismanagement. People who were initially focused on providing an improved learning environment for children find themselves increasingly engaged in issues like funding for permanent facilities, personnel-relations procedures, and school-board management, all the while trying to understand and meet the state and federal laws for which they are still responsible.

The passage of the federal No Child Left Behind Act in 2002 has created some additional concerns. The implementation of No Child Left Behind's provisions require notification of parents, if the school is identified as needing improvement, and allows parents to transfer their children to other schools in nearby districts. Some school leaders are concerned that charter schools may lose enrollment because of the provision, which starts this year. If this is the case, more schools may begin to fail for academic reasons and the need for a smooth transition process becomes more important. In fact, one charter school is currently under formal state review.

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In October 2003, the University of Delaware's Institute for Public Administration (IPA) sponsored a statewide summit entitled *School Choice in the New Era of Federal Accountability*. One of the recommendations identified at the summit was to develop contingency plans in the event of a charter school disruption of service. To that end, IPA's Delaware Academy for School Leadership (DASL) has:

- investigated the history of charter school disruptions of service, both in Delaware and elsewhere;
- examined and compared the charter school disruption-of-service processes of several other states;
- met with and/or interviewed state and federal officials to gain a more complete view of charter schools in Delaware;
- identified five potential types of charter school disruption of service;
- proposed procedures that would smooth the process of any future charter school disruption of service; and
- prepared guidance for changes to be made in order to strengthen the business aspects of new and existing charter schools.

Between late August and early October 2004, DASL spoke with the following state and school officials:

- Nancy Wilson, Associate Secretary for Curriculum and Instructional Improvement, Department of Education;
- Larry Gabbert, Director, Charter Schools Office, Department of Education;
- John Hindman, Deputy Attorney General, Attorney General's Office;
- Tom Kirkpatrick, former Chief of Financial Management Services, State Budget Office;
- Kim Wheatley, Budget Analyst, State Budget Office;
- Trisha Neely, Director, State Accounting Office;
- Mike Morton, Chief of Fiscal Policy and Analysis, Controller General's Office;
- Dave Craik, State Pension Administrator, State Pension Office;
- Kim Vincent, Deputy Administrator, State Pension Office;
- Ron Draper, Chief Administrative Auditor, State Auditor's Office;
- Candy Casto, Field Audit Manager, State Auditor's Office;
- Gail Ralph, Government Services, State Archives;
- Dr. Robert Andrzejewski, Superintendent, Red Clay Consolidated School District;
- and
- Brett Taylor, Chief Financial Officer, Red Clay Consolidated School District.

In January and early February 2005, DASL reviewed its findings and recommendations with the following Delaware charter school officials:

- Chuck Baldwin, Commandant, Delaware Military Academy;
- Greg Meese, Director, Newark Charter School; and
- Martha Clark, Principal, MOT Charter School.

Each of these officials provided valuable insight and information regarding the disruption of educational services to the state's charter school students and staff.

The Situation in Delaware

Between the time that Delaware's charter school law was passed in 1994 and November 2004, 24 schools received charters from the state Department of Education (DOE). However, only 11 are operating (not including the two charter schools authorized by the Red Clay Consolidated District, see Appendix 1). One school, Sussex College Academy, is authorized and due to open in September 2005. Two schools experienced publicized disruptions of service a few years after they opened. The Richard T. Milburn Academy closed in 2000 because of low academic performance and disagreements within its board, and the Georgetown Charter School closed in March 2002 for financial reasons. Another ten schools, or 42 percent, initiated the application process and received charter approval but ultimately failed to open. To some degree, charter schools that close before they open must also be considered as a disruption of service, since they had begun preparations for opening. At the very least, the fact that nearly half of state-authorized schools have not opened signals a possible development-design issue somewhere in the early stages of a charter school's existence. If this problem could be solved, Delaware could have more operating charter schools in the future.

Closing a charter school disrupts the lives of many people, including students and parents, through the students' relocation and loss of both an educational program and social relations begun at the charter school. School staff are also impacted because of job loss and issues of back pay, pension eligibility, and health-insurance coverage. In addition, disruption of service also affects the work of school officials, teachers, and students in nearby schools, who may have to contend with more crowded classrooms and other unsettling consequences. More than five percent of Delaware's school children enrolled in charter schools (many of which have waiting lists), indicating a great deal of interest in the charter school movement. Clearly, no one wants to experience a service disruption that could not only cause short-term confusion but also a loss of overall trust in charter schools.

In the course of its work DASL determined that charter schools could discontinue the delivery of services in five ways, primarily depending on the timing of the action (i.e., whether it is sudden and in the middle of a school year or at the end of a school year), and the apparent reason for the disruptions (see Appendix 2). These five discontinuation of service include:

- emergency disruption – school closes because of some event, such as high winds, fire, or flooding, that temporarily or permanently renders the facility incapable of housing students and/or conducting business;
- closure – service is disrupted suddenly during the school year, either voluntarily or involuntarily, for reasons primarily within school officials' responsibility, such as financial mismanagement or fraud;
- non-continuation – disruption of service at the end of a school year but before the end of the school's charter;
- non-renewal of charter – school's charter is not renewed, either voluntarily or by the authorizing entity; and

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- failure to open – the school receives its charter and start-up funds but does not open within 18 months and either relinquishes its charter or the authorizing entity revokes the charter.

There are three methods by which a school can lose its charter: the school can surrender its charter to the authorizing entity if the board decides it cannot or wishes not to continue providing educational services, either in the middle of or at the end of its charter term; the authorizing entity can revoke the school's charter in the midst of its charter term; or the authorizing entity may choose to not renew the charter at the at end of its term. In order for its charter to be revoked or not renewed, a Delaware charter school must either commit material fraud; fail to comply with its charter; or fail to comply with the approval criteria set in the state's code. These approval criteria include goals and indicators for student academic performance, a plan for evaluating student performance and procedures for taking corrective action if the school falls below state standards, and a plan for economic viability that meets or exceeds the same standards as a school district. The code requires the state to provide written notification of the disruption of service to the school, as well as a hearing, appeal, and probation process. In reality, however, these sections are only relevant if there is enough time for the provisions to take place; that is, if the school chooses to close at the end of the school year or the charter is not renewed.

DASL identified a number of activities that must be completed by a charter school and its board before it closes. They include:

- reasonable notification of staff, students, and parents of a disruption of service;
- transfer of students and their records to other schools and facilitating that transfer;
- transfer of teacher and other staff records or safe retention for those who retire or who do not find immediate employment elsewhere;
- retention and maintenance of other records, including financial, administrative, attendance, and contractual records;
- satisfaction of creditors and distribution of assets once the school has closed; and
- other legal or financial issues, such as handling final financial audits, preparation of final tax and enrollment reports.

While the number of activities to be completed is largely the same regardless of the situation, the procedures to follow for each of these situations may be very different. This is particularly the case when a school closes suddenly in the middle of a school year, as there is very little time for students to find new schools and the charter school may have little resources with which to settle its accounts. Compounding this problem is the possibility that if the school suddenly closes due to bankruptcy, as in the case with the Georgetown Charter School, there will be no paid staff or assigned authority to carry out disruption-of-service activities. Currently, there is no oversight responsibility in Delaware statute, regulations, or guidance for either the school or the authorizing authority to ensure that these disruption-of-service procedures are carried out.

Theoretically, a school could suddenly close over a weekend, leaving schoolchildren and employees without a school or job or access to records and creditors and employees uncertain about payment for services provided. Consequently, the state should develop guidance that DOE could follow for any type of charter school service disruption.

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According to Title 14, Chapter 5, Section 503 of the Delaware Code, a charter school is “a public school... managed by a board of directors, which operates independently of any school board.” The charter school board has “the same standing and authority as a Reorganized School District Board of Education, except the power to tax.” Section 504 also states that “A charter school shall be considered a public school for all purposes.”

Because Delaware is a small state, more government – including public school – functions are handled centrally by the state government. For example, the state provides 70 percent of public school funding, and school districts are formal subdivisions of the state. Likewise, while school districts can authorize charter schools, the state Department of Education is the primary authorizer to date, having authorized 11 of the 13 charter schools currently operating. In addition, just as charter schools are considered to be public schools, charter-school teachers are considered public-school teachers. All teachers are paid through a centralized payroll system and teachers’ pensions are handled by the state. In the event of a charter school service disruption, those teachers have a property right to the years of service at that charter school. Because the state is responsible for teachers’ pensions and insurance even when they teach at a charter school, the state has a larger proportional financial stake in the successful operation of charter schools than that found in many other states. The status of charter schools as state entities has been questioned in the past, and it would help to clarify this issue.

In addition, the state has a duty to protect all student and state employee records. Several state officials identified the problem related to student and staff records in the event of charter school disruption of service. Generally, in the case of a disruption of service, the records follow the student to his or her next school and the employee to the next employer. But problems arise when (a) the school closes suddenly and no one is left to be notified as to where records should be sent and ensure that records are transferred, or (b) students do not enter another school (i.e., either they graduate or are homeschooled). In addition, many employees may obtain other employment, retire, or do not immediately re-enter the labor market. The question of which state entity should handle student and staff records was of concern to several people with whom DASL spoke. For the discontinuation of the Georgetown Charter School, DOE handled the records and still holds those for students or staff who did not enter another school or become employed at a public school district. Currently, DOE is working out a procedure with the Delaware State Archives regarding its responsibility for records like these. Traditionally, the Archives keeps student records for 100 years, and staff records are kept for 60 years. Of that total, school districts generally keep the records for one to three years before passing them along to the Archives.

While emergency situations might seem to be unlikely, they do occur. For example, Dickinson High School in the Red Clay Consolidated District experienced a destructive fire in the early 1990s and had to be closed down while it was rebuilt. Similarly, over the winter of 2002_2003, the roof of Leasure Elementary School in the Christina School District collapsed from the weight of snow. Fortunately, these districts had the authority and ability to solve these problems by moving children to other schools within the District’s jurisdiction. For operational purposes, charter schools are considered to be

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separate districts, but they may not have the resources or the ability to solve the problems caused by an emergency disruption. Since the typical charter school does not include multiple buildings, it would not have access to alternative space into which to suddenly move its school operations. In essence, if an emergency situation happens to a charter school, it will probably have to temporarily, if not permanently, close.

Currently, Title 14, Chapter 5, Section 515(g) states that if it is determined that remedial action should be taken against a school, DOE “may revoke the charter and manage the school directly until alternative arrangements can be made for students at the school or place the school on a probationary status.” This section of the code relates more to sudden closures rather than emergency disruptions, however. Both charter schools and those involved with them would benefit from the Secretary of DOE having similar authority in the case of an emergency disruption.

The Business of Charter Schools

Interviews with several state officials indicated that, currently, the two primary problems that can lead to instability within charter schools are high staff turnover and relative inexperience with business procedures. DASL heard several times that people who start charter schools are well intentioned and interested in providing a better education to children, but they do not always possess the business knowledge or skills necessary to keep the school running. Since most charter schools close for business rather than academic reasons, it is important to find a way to improve the school personnel's business skills while continuing to allow for academic flexibility.

Delaware statute provides some guidance related to the charter school business environment. Title 14, Chapter 5, Section 501 of the Delaware Code states: "this chapter offers members of the community a charter to organize and run independent public schools, free of most state and school district rules and regulations governing public education," which could be interpreted simply to mean that charter schools are free from most rules and regulations. On the other hand, the section specifically states that the rules and regulations that may be relaxed must pertain to *education* rather than facilities, personnel, or business practices.

DOE's position toward the oversight of charter schools was equivocal when the charter school law was passed, creating the perception that financial and personnel functions could be overlooked in order to concentrate on teachers and curriculum. State agencies operated under this misperception as well, treating charter schools as if they should function on their own – failure or success was up to them. Procedures created at that time reflected this belief. For instance, charter schools could choose whether to be included in the state financial and personnel systems. Since the 2000 and 2002 charter school disruptions of service, however, the state has made some changes in handling charter schools that could have a tangential effect on their financial health. After state officials decided that it would benefit both the state in its efforts to assist charter schools as well as charter schools' financial stability, participation in the state's financial and personnel systems became compulsory.

It is now the DOE's position that the regulations controlling the learning environment may be waived but those that control the business environment cannot. All charter schools, even those assisted by management companies, are required to keep their financial records through the Delaware Financial Management System (DFMS), a computerized financial management system maintained by the Accounting Office that allows DOE to monitor (though not regulate) charter schools' expenses. Charter schools are also required to use the Payroll/Human Resource Statewide Technology (PHRST) system.

While most state officials felt that the requirement to have charter schools use DFMS was a positive step, some officials noted that the DFMS system catches most large transactions but cannot provide information on obligations that are not yet entered into the system. As a result, inexperienced and untrained charter school officials could still

enter into a situation where they commit to more expenditures than that for which they have funding available. The state Accounting Office devotes one-half of a full-time employee's (FTE) time to charter schools and their directors to review the regular reports generated through DFMS, to determine whether any schools are in trouble. State Accounting Office officials said that they have intervened a few times with charter schools that appeared on the edge of financial instability. While state officials appeared willing to work with charter school officials, the DFMS system is not foolproof, and disruption of service for financial reasons could still occur. The best way to avoid financial problems, accounting officials indicated, was for school officials to use the DFMS encumbrance system, in which funds for each function, such as utilities or materials, are portioned off at the beginning and then drawn down as purchase orders are entered. However, few schools currently use this method.

Another important key to sound business practices at charter schools is appropriate and timely training of the charter school officials. Currently, DOE offers two full days of charter school orientation each summer that covers such issues as student testing, student transportation, special-education issues, and the role of the Charter Schools Office. In the past, agencies from outside of DOE such as the state Pensions Office, the state Personnel Office, the state Accounting Office, and the state Auditor's Office would also make presentations; however, that part has been discontinued. Instead, charter school officials are given contact information for the various offices in their technical assistance manuals.

One charter school principal who went through the training questioned its timeliness, stating that Phrst training was provided a year before he hired any employees. On the other hand, state Accounting Office officials noted that even when they hold one-on-one training sessions with charter school officials, at times the training materials would be left on the table. This may be caused by information overload and an overwhelming list of new responsibilities never before experienced by charter school officials. Because an effective school cannot be managed successfully without attention to personnel and financial management, it is imperative that charter school officials learn the business side, or they hire someone who already possesses these skills and knowledge. Furthermore, since the state has an interest in creating and maintaining successful charter schools, DOE should create more training opportunities and provide assistance to school administrators as they transition into these new roles.

Schools That Close Before They Open

Sometimes, schools receive charter approval but fail to open. In Delaware this is a pervasive problem. Of the 24 schools that have received a charter through the Department of Education, ten schools closed before they officially opened. People DASL spoke to from other states were surprised at the percent of chartered schools in Delaware that failed to open. However, part of the discrepancy among states may be due to differences in charter approval procedures utilized by charter school authorizers.

Potential reasons for these ten schools not opening may include confusion about or weaknesses in the post-charter/implementation process; limited staff assistance and monitoring; or a greater scarcity of school facilities than schools anticipate. Most state officials we spoke to stated that they believe the problem is that the people seeking the charter, while well-intentioned, are unprepared for the multitude of issues that arise, such as accounting, personnel, and facilities. State officials also noted that many schools have not opened because of problems securing a facility.

The high percentage of non-starts is troubling for three reasons. First, the Delaware Department of Education expends valuable resources reviewing the applications and working with individuals committed to opening charter schools that never achieve this goal. Second, the individuals who take on the task of starting a charter school also invest a great deal of time and resources in this effort. In essence, the state's school children and their parents have been deprived of choosing to enroll in ten schools that were strong enough for their applications to have been approved but, for whatever reason, did not make it through the early implementation phase.

A final reason for the concern about non-starts is that once schools receive their charters, they are eligible for federal Charter School Program start-up funds to be used over the following three years. These grants, which are traditionally passed through state education agencies to charter schools, may be used for the first 18 months for planning purposes and for no more than two years for initial implementation of a charter school.

There appears to be widespread belief that the Charter School Program's guidelines are broad and the federal government applies little oversight regarding these expenditures. According to program statute and guidance, the Charter School Program's allowable activities include:

- curriculum planning and design;
- design of an evaluation method to measure student educational progress;
- teacher and other staff professional development;
- information provision to the community about the charter school;
- purchase of equipment and supplies;
- purchase or development of curriculum materials; and
- meeting "other initial operational costs that cannot be met from state or local sources" (Section 5204 of the federal Charter School Program statute).

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DOE requires each new charter school to create a development plan that identifies how it will use its Charter School Program funds to address its needs during each of the fiscal years it will receive funds. The school must also describe how it will continue operation after its subgrant has expired.

DOE also has created guidelines and timetables for the disbursement of federal funds to new charter schools. Its disbursement schedule is as follows:

| | |
|------------------------------------|-----------------|
| Year One (April through September) | Up to \$50,000 |
| Year Two (Startup Year) | Up to \$200,000 |
| Year Three (Implementation Year) | Up to \$200,000 |

After a new school's charter is approved in April, the school fills out a subgrant application form and establishes access to the state accounting and payroll systems in order to receive its Year One funds to through the end of the federal fiscal year (September 30). Once the school shows that it has signed a building lease agreement and has created a facility construction/renovation plan by the start of the next fiscal year (October 1), the state gives each new charter school up to \$200,000 for use through the next fiscal year. Before it receives its final installment of up to \$200,000, the school must submit a Certificate of Occupancy for the school facility and open as scheduled with at least 90 percent of its approved first-year enrollment. In other words, a new charter school has approximately 17 months during which to prepare for daily operation, and the federal startup grant provides funding for this beginning phase. Of concern is that considerable personal, state, and federal resources were expended, with no positive long-term outcome in the case of these ten schools.

Charter School Disruptions of Service in Other States

In the course of its evaluation, DASL investigated other states' disruption-of-service procedures through the reading of statutes, regulations, and guidance, as well as informational interviews with various state officials and large authorizers in New York and Michigan. It found that all of the states surveyed – including Arizona, California, Minnesota, New Jersey, Ohio, and Pennsylvania – have at least a basic legal disruption-of-service process similar to Delaware's. These include reasons for charter termination and/or non-renewal; the process of notifying the school of its status and due process procedures before the school can be closed; and in some cases, an allowance for probation and emergency disruptions of service. However, as in Delaware, statutes were generally written for orderly disruptions of service that would allow plenty of time for due process and preparation for disruptions of service at the end of the school year.

DASL found that while some states have prepared for charter school disruptions of service primarily through informal guidance, others continue to handle disruptions of service on a personal, case-by-case basis (see Appendix 3 for more detail). For instance, Arizona, which (according to the Arizona Department of Education) has experienced 53 disruptions of service since 1995, relies on its six staff members to guide schools through the disruption-of-service process and has very few written materials. On the other hand, New Jersey, which (according to the Center for Education Reform) has experienced 13 disruptions of service since 2000, has produced a detailed dissolution plan and disruption-of-service flow chart for troubled schools. DASL found that most states focus on the responsibility for notifying parents and staff, waiving any deadlines to allow students to attend other schools in their home districts, handling student records, and distribution of school assets. A few states, such as New Jersey, Minnesota and (to some extent) California, also describe procedures for staff and other financial, tax, and legal records, final fiscal and attendance audits, and other matters.

In its interviews with officials from other states, DASL learned that most of the broader issues that Delaware is grappling with are not unique. Many charter schools from all over the country close for financial or mismanagement reasons, which, unlike academic problems, can cause sudden school disruptions of service. With some issues there is relatively widespread agreement. For example, because most states are more decentralized than Delaware, they tend to place the responsibility for student records on school districts. However, for some issues, such as asset distribution, each state has somewhat different policies. For instance, according to Ohio statute, assets are first used for employees' retirement, then to any employee back pay, then to private creditors, and finally, to the general revenue fund. Minnesota's law, on the other hand, requires that assets are distributed first back to special purposes or dedicated grants, then for dissolution proceedings, then for debts and liabilities, then distributed pursuant to the bylaws of the non-profit, and finally, for charitable or public use. An Arizona charter school official stated that, in large part, the assets are the school's to distribute. Additionally, some states are much more concerned with separating assets bought with federal funds from those bought with other funds.

Some of the more interesting guidance from the states surveyed includes:

- California now requires all charter schools to have a disruption-of-service procedure that encompasses a final financial audit, disposition plans, and plans for “the maintenance and transfer of pupil records.”
- Minnesota requires that the charter school administrator give written notification to area schools regarding its disruption of service.
- New Jersey requires the closing charter school to devise a plan to maintain personnel and professional certification records for at least five years.
- New Jersey requires the closing school’s board to file all federal, state, and local tax returns and issue final W-2 forms before closing.
- Some states, like Ohio, Minnesota and (to some extent) New York, require charter schools to follow the non-profit law for distribution of assets.
- New Jersey requires the school to set up an escrow account to pay for the final audit.

One of the largest differences between Delaware and several other states is the degree of centralization of charter school authorization, monitoring, and disruption-of-service procedures. In several states where the primary charter school authorizer is the school district, the state’s Department of Education has relatively little contact with charter schools, and its officials thus have little idea whether student records are being transferred correctly, unless it receives complaints. In addition, the authority for student records in most other states surveyed lies with the home school district. The only other state comparable to Delaware in terms of its centralization of functions is New Jersey, where the state Commissioner of Education is the sole charter school authorizer.

Recommendations

Over the past few years, Delaware has made strides in preparing for and helping to prevent charter school disruption of service; however, there is more to be done, particularly in meeting the state's intentions by filling in its policy gaps. This study was requested with the initial idea that DASL would evaluate the state's disruption-of-service procedures. Therefore,

DASL recommends a more integrated disruption-of-service process for each discontinuation of service situation.

This would include a written procedure on the level of state guidance for each situation, in order to ensure a timely transition toward school disruption of service and movement of students to other schools. Each procedure would cover issues of staff, parent, and student notification, safe transfer of staff and student records, distribution of assets, and other financial and legal concerns. A proposal is included as Appendix 4.

DASL also recommends that a discontinuation-of-service process be included in charter application and renewal documents.

If no changes need to be made from the state's disruption-of-service guidance, then the school can adopt the guidance as its disruption-of-service plan. Even if it appears to be redundant, requiring schools to adopt a disruption-of-service plan would require school officials to think through the possibility of disruption of service at the beginning of the process (or upon renewal) and would allow them to develop a process tailored to their school.

The State of Delaware mandates that all public schools, including charter schools, must provide education to school-age children for 180 days within each regular school year. As noted earlier, if a school experiences an emergency disruption, meeting this requirement as well as the other disruption-of-service procedures can become problematic. Consequently,

DASL recommends that, in case of disruption due to a physical event to the facility, a process be developed that allows the Secretary of the Department of Education, in consultation with the Governor and Legislature, the ability to establish and implement contingency plans that will allow students and staff to complete the school year in an orderly fashion.

The Secretary also should have the authority to assist other charter school authorizers (i.e., school districts) in the event of an emergency disruption. Depending on the circumstances, there are several ways this could be carried out, including waiving bidding regulations and protecting records and other assets, or using temporary funding from the state to rent a temporary venue or employ an interim principal and necessary staff. This move would give the Secretary the same authority as s/he has in case of emergency disruptions in other public school districts, such as access to a contingency fund.

When sharing the aforementioned recommendations with charter school leaders, it was suggested that these powers also be allowed to be used whenever there is a mid-year disruption-of-service, in order to spare students, staff, and parents some of the negative effects of a disruption. While noted earlier in the report that DASL believes the Secretary of DOE has such powers, this is an example of the confusion that exists around this issue.

Another concern is the need to clarify the status of a charter school and those who work at charter schools. Charter schools are described as public schools in state statute. Delaware charter school statute also notes that a charter school Board of Directors has the same standing and authority as a Reorganized School District Board of Education. Charter school employees are treated as public school employees via payroll and pension systems. However, there still appears to be some confusion regarding the official status of charter schools.

DASL recommends that statute be adjusted to assert that charter schools are state entities.

This would clear up any ambiguity regarding the avoidance of regulations related to the business environment, which would, in turn, allow charter school officials to focus on the academic side of running a school. By law (Title 14, Chapter 5, Section 507(e) of the Delaware Code), charter school boards may decide whether or not their employees will be part of the state's retirement system. This provision would not change that option. The ultimate goal for both the state and the charter schools is for the schools to become long-term successes, and tapping into state systems and assistance can only help them become more stable and successful.

In addition, concerns regarding the number of schools that receive charters but do not open need to be addressed. Once DOE authorizes a charter school, the state has a certain responsibility to the public for ensuring the school opens. If the primary reason that charter schools do not open is that their leaders are unprepared for managing the business environment of the school, a stronger effort on the part of the state to educate charter school directors and boards about their business responsibilities might reduce the number of early disruptions of service.

DASL recommends that the state develop timely and appropriate training, which would be mandatory for new charter school officials and Boards of Directors.

DASL envisions this training to take place in two phases. The first, focusing on the initial development of a business structure and other aspects of school operation, would take place after the school receives its initial \$50,000 installment but before it receives its second one in October. The second training session, for directors and their boards, would take place before it receive its third installment and would address the operational structure of the school, such as budgeting, payroll and accounting systems, personnel issues, and bidding, among other issues.

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Given more support and training about the business aspects of operating a charter school, more schools should be able to successfully bridge the gap between becoming authorized and opening their doors. It is understood that DOE currently does not have the support staff available to provide the increased level of service. Consequently,

DASL also recommends that the Department of Education receive additional resources to coordinate this activity and other services that could be provided to all charter schools.

This would help to keep the state's support and oversight roles separate, as well as help to assure the charter schools' stability and ultimate success.

Appendix 1: Delaware Charter Schools

DOE Authorized Charter Schools Currently in Operation (11)

Academy of Dover Charter School
Campus Community School
East Side Charter School
Kuumba Academy Charter School
Marion T. Academy Charter School
MOT Charter School
Newark Charter School
Positive Outcomes Charter School
Providence Creek Academy
Sussex Academy of Arts & Sciences
Thomas A. Edison Charter School of Wilmington*

DOE Authorized Schools that Closed After Opening (2)

Richard Milburn Academy
Georgetown Charter School

DOE Authorized Schools that Closed Before Opening (10)

Academy of Wilmington Charter School
Archway Charter School of Delaware
Cantwell's Bridge Charter Academy
Collegiate Academy Charter School
Diamond Bay Academy
Eagle Nest Charter School
Horizons Academy
Montessori Community School
SABIS International Charter School
Thomas A. Edison Charter School of Wilmington*

DOE Authorized School Due to Open in September 2005 (1)

Sussex College Academy

Schools Authorized by the Red Clay Consolidated School District (2)

Delaware Military Academy
The Charter School of Wilmington

* The Thomas A. Edison Charter School received a charter but surrendered it after a modified charter was approved.

Appendix 2: Types of Charter School Disruption of Service

| | Definition | Timing of event | School's control over situation | Examples |
|-------------------------------|--|----------------------------|--|--|
| Emergency Disruption | A physical event occurs to the facility, rendering it temporarily or permanently incapable of housing students | Immediate | Little or none | Fire, tornado or hurricane damage |
| Closure | School closes suddenly for reasons within its responsibility | Within days or a few weeks | Should have been able to avoid the situation | Bankruptcy, fraud, teaching religion, health and safety concerns |
| Non-continuation | School closes at end of school year before the end of its charter | End of school year | Usually the Board chooses not to continue and surrenders its charter | Declining enrollment, declining student performance |
| Non-renewal of Charter | School's charter is not renewed, either voluntarily or by the authorizing entity | End of school year | May have been able to avoid the situation | Declining student performance, management disagreements |
| Failure to Open | School receives charter but never actually begins operation. | Before school year begins | May have been able to avoid the situation | Inability to secure facility, other possible management issues |

Appendix 3: Statute and Rules Regarding Charter School Disruption of Service for Delaware and Other States

| | Delaware 1995 | Arizona 1994 | Minnesota 1991 | Ohio 1997 | New Jersey 1995 | Pennsylvania 1997 |
|---|---|--|--|--|--|---|
| Year of inception | 1995 | 1994 | 1991 | 1997 | 1995 | 1997 |
| Number of schools as of 9/04 | 13 | 467 | 76 | 179 | 51 | 101 |
| Number schools closed since inception | 2 | 53 | 17 | 11 | 13 | 6 |
| Found in statute or regulations? | | | | | | |
| Non-renewal by sponsor | Yes | Yes | Yes | Yes | Yes | Yes |
| Voluntary closure by school | Not mentioned | Yes | Yes | Yes | Not mentioned | Not mentioned |
| Involuntary termination of contract by sponsor | Yes | Yes | Yes | Yes | Not mentioned | Yes |
| Reasons for termination by sponsor | School or representatives commit material fraud or fails to comply with its charter or to satisfy the approval criteria set in Chapter 512 of the code. | Statute mentions breach of one or more provisions of school's charter. Guidance also mentions: overestimation of student count compared with actual 40th day count; financial insolvency over time; extensive debt; and lack of liquid assets. | Pupil performance; fiscal mismanagement; violations of law; other good cause. | Failure to meet student performance requirements; fiscal management; violation of contract; provision or state or federal law; other good cause. | Any condition imposed by the Commissioner when granting the charter that has not been fulfilled; violation of any provision of its charter; failure to correct the conditions that caused probationary status. | Violation of charter; student performance; fiscal management; violation of charter school law or other relevant laws; conviction of fraud. |
| Notification of termination of contract | The approving authority sets up an accountability committee, which investigates the claims made by the approving authority. School is given 15 days to comment on the report. Actual notification of revocation is unclear. | Sponsor must notify school 90 days prior to termination; must include reasons for revocation. Sponsor shall allow the school 90 days to correct the problem(s). | Sponsor must notify school board 60 days prior to termination; must include grounds for termination; must include notification of request for hearing. | Sponsor must notify school 90 days prior to termination; must include reasons for termination, effective date of termination, and notification of request for hearing. | Commissioner must notify school or revocation in writing and may allow a maximum of 60 days from receipt of notice to cease its operations. | Notification must include grounds for revocation and notice of date of hearing. |
| Hearing regarding termination of contract | Hearing is required following a finding by the accountability committee that there are grounds for probation or revocation. | Final determination is made at the hearing. | Board has 14 days to request hearing, if requested, sponsor must conduct a hearing before taking final action. | School has 14 days to request hearing; must be held within 70 days of receipt of request; sponsor shall issue written decision. | No official hearing, but corrective action letter and be read at a public meeting | Sponsor (school district) conducts hearing, then must wait 30 days to issue final decision, unless there is health or safety risk to the staff or students, in which case the district can take immediate action. |
| Appeal process | Appeal is handled by an Arbitrator. School and approving authority share the cost. Arbitrator's decision is final. | not mentioned | Board may appeal to the State Commissioner; no process given. | School may appeal to State Board of Education, whose decision is final. | Eligible applicant for charter school, school, district Board of Ed or State district superintendent may file an appeal. | Charter school appeal board has exclusive review of the decision. Appeal board must articulate its reasons for agreeing or disagreeing with the district. |
| Final action taken to terminate or renew contract | Approving authority may manage the school directly until alternative arrangements can be made for students. | not mentioned | By the last day of the school year | 90 days prior to termination, or the date established by the Board or State after a hearing or appeal | Non-renewal by the December before the end of the last contract year; otherwise, to be specified by the Commissioner not to exceed 60 days | Charter is in effect until disposition by the appeal board, unless school was closed due to risk to health and/or safety. |

Sources: Interviews with state officials and "Charter Schools: Changing the Face of American Education," The Center for Education Reform, 2004

Appendix 4: Proposed Procedures for Closing Charter Schools

Through its investigation of charter school disruption of service in Delaware, DASL found that schools may cease operation in five ways, and that those ways necessitated somewhat different shutdown procedures. The five service disruption types are:

- Emergency disruption, in which a physical event occurs to the school. Depending on the actions of DOE and/or the authorizing entity, the school may be moved temporarily until it can re-open or it may permanently close, in which case it uses the procedures for closure;
- Closure, in which the school closes suddenly during the school year, usually because of financial problems;
- Non-continuation, in which the school's officers decide to end school operation at the end of the school year but before the end of the school's charter;
- Non-renewal of charter, in which the authorizing entity decides not to renew the school's charter and it ceases operation at the end of the school year; and
- Failure to open, in which a school received a charter but for whatever reason does not begin operation within the following 18 months.

These five categories are not completely distinct. One type of service disruption could become a different type through the action or inaction of the authorizing entity. For instance, a temporary emergency disruption could become a permanent closure if DOE decides not to intervene, because the school would not have the resources on its own to keep itself open during repairs to the facility. Likewise, a closure could be transformed into a non-continuation if the authorizing entity has the authority and decides to take action to keep the charter school operating until the end of the normal school year.

The procedures a charter school would follow in the event of a disruption of service would vary depending on the category into which it falls. For example, emergency disruptions would be treated on a case-by-case basis, depending on the capability of the building to house students, the repair timeline, and other considerations. However, since it is not a permanent closure, a school with an emergency disruption need not concern itself with permanent closing procedures. A closure, however, is permanent and occurs over a short period of time, usually from a few days to a couple of weeks. Some activities must occur immediately, such as transferring students and their records, and securing employees' records; others, such as the distribution of assets and the preparation of a final financial audit, will take longer. One of the primary concerns with closure is ensuring that someone will take responsibility for all of the activities necessary to closing the school, as the school's leadership may dissolve and there may be no obvious payment method for anyone after the school has ceased operation.

Non-continuation and non-renewal of a charter are similar in timelines. Usually (though not always), students, parents, and employees will be given time to adjust to the charter school's closing. In the case of a non-renewal for DOE-authorized charter schools, DOE will generally notify the school of its status by February. Ideally, a charter school would make its decision to discontinue operations sometime in the spring of a school year; however, as has happened recently in California, a school can decide not to continue over

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the summer. In any case, the timelines for closing are longer, and the process can be more methodical.

Schools that are authorized but fail to open do need a closing procedure, but it need not incorporate all of the activities that fully operating schools have. These types of schools may have a few records and assets to dispose of, and Appendix 3 pertains to taking care of that type of situation.

| | Emergency disruption | Closure | Non-continuation | Non-renewal of charter | Failure to open |
|---|---|--|--|--|--|
| Definition | A physical event occurs to the facility, rendering it temporarily incapable of housing students. If the school must permanently close, it follows the procedures for closure. | School closes suddenly generally for reasons within its responsibility | School closes at end of school year before the end of its charter | School's charter is not renewed, either voluntarily or by the authorizing entity | School receives charter but never actually begins operation. |
| Notification of students, parents, staff, authorizing entity | ASAP | As soon as possible | 90 days before end of school year, or when decision is made, if earlier | 90 days before end of school year or whenever DOE announces its decision | N/A |
| Accounting for students | The authorizing entity will be given the authority to make individual determinations for an appropriate procedure regarding each case. | Students shall be admitted to the schools that they are entitled to attend. Deadlines are waived. | Students shall be admitted to the schools that they are entitled to attend. | Students shall be admitted to the schools that they are entitled to attend. | N/A |
| Student records: attendance, grades, test scores, immunization, etc. | See above | School will provide parents with a packet of student information to facilitate transfer to another school. | School will forward records to schools to which the students are transferring | School will forward records to schools to which the students are transferring | N/A |
| Staff records | See above | Any records are handed over to authorizing entity for 2 years, at which time they are prepared for and sent to the State Archives. | Any records are handed over to authorizing entity for 2 years, at which time they are prepared for and sent to the State Archives. | Any records are handed over to authorizing entity for 2 years, at which time they are prepared for and sent to the State Archives. | Any records are handed over to authorizing entity for 2 years, at which time they are prepared for and sent to the State Archives. |
| Distribution of assets | See above | All licensing documents must be submitted to DOE Restricted assets, such as those purchased with federal grants, should be returned to their source or distributed according to that grant's rules. Net assets should be used 1st to cover unpaid staff salaries; 2nd to staff retirement/pension funds; 3rd to private creditors; 4th to public creditors; and finally to the district of residence or other charter schools. | All licensing documents must be submitted to DOE Restricted assets, such as those purchased with federal grants, should be returned to their source or distributed according to that grant's rules. Net assets should be used 1st to cover unpaid staff salaries; 2nd to staff retirement/pension funds; 3rd to private creditors; 4th to public creditors; and finally to the district of residence or other charter schools. | All licensing documents must be submitted to DOE Restricted assets, such as those purchased with federal grants, should be returned to their source or distributed according to that grant's rules. Net assets should be used 1st to cover unpaid staff salaries; 2nd to staff retirement/pension funds; 3rd to private creditors; 4th to public creditors; and finally to the district of residence or other charter schools. | Restricted assets, such as those purchased with federal grants, should be returned to their source or distributed according to that grant's rules. |
| Other fiscal matters | See above | School board must take out an escrow account for costs of closing. Expenditures during closing are extremely limited. | School board must take out an escrow account for costs of closing. Expenditures during closing are extremely limited. | School board must take out an escrow account for costs of closing. Expenditures during closing are extremely limited. | N/A |
| | | School should have an independent financial audit completed within 6 months of closure. | School should have an independent financial audit completed within 6 months of closure. | School should have an independent financial audit completed within 6 months of closure. | School should have an independent financial audit completed within 6 months of closure. |



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