IMPLEMENTING MAINE'S PUBLIC CHARTER SCHOOL LAW

A REPORT TO THE JOINT STANDING COMMITTEE ON EDUCATION AND CULTURAL AFFAIRS
Pursuant to Public Law 2011, Chapter 414

Submitted by the Maine Department of Education
December 2, 2011

CONTENTS

Page

- **Introduction and Executive Summary …….. 1**
- **Activities to Implement the Law …….. 2**
- **Issues for Consideration ……. 4**
  - **Geographic Limits …… 4**
  - **Grounds for Dismissal ……..…… 5**
  - **Funding ……..… 5**
  - **Preschool Programs ……..… 6**
  - **Special Education ……..……. 6**
  - **Career and Technical Education .. 9**
  - **Transportation ……. 9**
  - **Collaborating Authorizers …… 10**
  - **Conflict of Interest …… 11**
  - **Disclosure of Fees ……. 12**
  - **Sanctions ……. 13**
  - **Revocation ……. 13**
  - **Failure to Transfer Funds ……. 14**
  - **State Charter School Commission 14**
  - **Applicability of Laws …… 15**
- **Public Law 2011, Chapter 414 …….. 18**
- **Department Proposed Rule Chapter 140 ……. 44**
- **Department Proposed Legislation …… 53**
- **Maine PERS Report to the Joint Standing Committee on Appropriations and Financial Affairs Regarding Retirement Plans …….. 59**

INTRODUCTION AND EXECUTIVE SUMMARY

In the First Regular Session of the 125th Maine Legislature, the Joint Standing Committee on Education and Cultural Affairs considered legislation to make Maine the 41st state in the country to authorize the creation of public charter schools.

The legislation, LD 1553, An Act to Create a Public Charter School Program in Maine, was amended by the Committee, enacted by the Legislature and signed into law by Governor Paul LePage. On September 28, 2011, the new law took effect as Public Law 2011, Chapter 414.

Section 9 of Public Law 2011, Chapter 414 required the Department of Education to submit a report to the Education Committee, describing the status of department rules, interpretations and legislation implementing the new program. In response to that requirement, this report (1) describes activities by the Department, the State Board of Education and charter school advocates, (2) summarizes issues that should be addressed in order to guide implementation of the law; and (3) includes a copy of the Department's proposed Rule Chapter 140 and draft language for a Department bill.

In this report, the Department asks the Legislature to consider policy issues related to a student's eligibility to attend a charter school and the basis on which a student may be dismissed from a charter school.

The Department also makes recommendations for statutory amendments to clarify and improve the charter school law, including:

- Ensuring that a local school board that authorizes a charter school and takes on responsibility for providing special education services to students in the charter school receives the special education funding for those students;
- Adding conflict of interest provisions for charter school boards;
- Granting the Commissioner authority to suspend an authorizer's power to issue new charters if the authorizer is not following performance standards or complying with the law;
- Ensuring that the standards and processes for revoking a charter are clear; and
- Clarifying a charter school student's access to career and technical education programming

Finally, the report includes a detailed list of state laws, categorized by their applicability to charter schools. While some laws clearly fit into the "applicable" or "not applicable" categories, others require judgment and interpretation to properly categorize. This report includes the Department's proposed categorization of laws.

ACTIVITIES TO IMPLEMENT THE LAW

State Board of Education

- The State Board of Education is responsible for appointing members of the State Charter School Commission, the only authorizer under the law with statewide authorizing authority. At its meeting in August, the State Board heard presentations about the role of a charter school authorizer from David Hansen of the National Association of Charter School Authorizers and Roberta Tenney, who oversees the New Hampshire charter school program.
- Soon after the law took effect, the State Board appointed 3 of its members to serve on the State Charter School Commission. Those members are Jim Banks of Portland, Marilyn Tardy of Palmyra and Jana Lapointe of Falmouth.
- These 3 members of the State Charter School Commission have begun to consider nominees for the remaining 4 non-State Board members. The Education Committee will have an opportunity to interview and comment on potential nominees before the State Board votes on their appointments.

Department of Education

- The Department of Education has created a charter school website at www.maine.gov/education/charterschools. The Website will be a source of information for parents and students, charter school founders, authorizers, policymakers and the general public. Currently on the Website is a copy of the new law, a summary of the law, and a Question and Answer document addressing many common questions.
- The Department filed a major substantive rule proposal with the Secretary of State, setting forth rules for implementation of the new law. The public hearing on the rule is scheduled for November 22nd and the comment deadline is December 2, 2011. The Department expects to provisionally adopt the rule and submit it to the Legislature in early January.
- The Department is tracking activity on the federal level relating to the federal charter school grant program, which provides funding to support creation of high-quality public charter schools. The Department of Education expects to apply for this competitive grant early next year during the 2012 grant round, assuming that the program receives funding and that we meet eligibility criteria. If the Department receives a grant under this program, it would award sub-grants to charter school founders. Last year, the grant process under which State Education Agencies competed for federal grants began on January 25th, with an application deadline of March 18th.

Other Activity

The Maine Association for Charter Schools (MACS) sponsored a well-attended Forum at the Augusta Civic Center on September 17th for people interested in

networking and learning more about starting a charter school. MACS invited presenters with experience in nonprofit organization management, community charter schools, special education and development of charter school applications. MACS continues to serve as a resource and support organization for those interested in creating public charter schools.

School administrators have also had opportunities to learn about their role in the charter school law. The Maine School Management Association Annual Conference in Augusta on October 28th included a workshop session on the impact of charter schools on school boards. Attorneys from the law firm of Isaacson and Brann discussed the challenges and opportunities for school boards under the charter school law.

ISSUES FOR CONSIDERATION

As the Department of Education reviews the law and fields questions about its implementation, we have found some issues that we believe need clarification, consideration or reconsideration by the Legislature. These issues are discussed below.

With issues that raise significant policy questions, we have provided comment and a recommendation that the Legislature address the issue. On other issues, we provide a recommendation and include language to address the issue either as part of our Department bill or as part of our proposed rule, Chapter 140.

1. Geographic limits on charter school enrollment

Current law says that a charter school shall enroll all students who wish to attend the school, unless the number of students exceeds the enrollment capacity of the charter school's program, class, grade level or building[1]. DOE interprets this provision to prohibit a charter school or an authorizer from limiting enrollment to students from a specific town, county or other geographic area. Was it the intent of the Legislature to prohibit geographic enrollment limits?

If it was not the intent of the Legislature to prohibit geographic enrollment limits, the law should be amended to specifically allow such limits. Any such amendment should specify:

- Who determines the geographic limit – the authorizer or the charter school organizer?
- Are there any criteria that the limit should meet – e.g., that the designated area not exclude nearby towns with high rates of poverty, English language learners, at-risk students or students with disabilities?

If it was the intent of the Legislature to prohibit geographic limits on enrollment, it would be helpful for the Legislature to clarify whether a charter school must provide and pay for transportation for all students, regardless of distance from the school. (See Section 7 below for additional discussion of the transportation requirements of the law)

Department Recommendation:
The Department recommends that the Legislature consider allowing geographic enrollment limits in some situations. For example, local school boards and collaboratives of school boards that authorize a charter school could be allowed to limit enrollment of their charter schools to students

[1] 20-A MRSA §2404(2)(B).

within their school administrative units. Allowing the school board to limit its responsibility to students who reside in the district might encourage more school boards to consider authorizing a charter school.

The Legislature could also allow any authorizer to impose geographic limits, or to accept a charter school organizer's proposed limits. If this broader authority is given, the Legislature should consider imposing some standards, to ensure fairness in any limitations imposed.

2. Grounds for dismissing a student from a charter school

A noncharter public school may expel a student from school only in specific circumstances, such as a student's possession of guns or drugs, violence or being "deliberately disobedient or .. disorderly[2]." The school board of a noncharter public school may authorize suspension of a student who violates school rules for up to 10 days. There is no provision in law for expelling or dismissing a student from public school for failure to follow school rules, and no provision for expelling, suspending or dismissing a student because of poor academic performance.

Should charter schools be allowed to dismiss, expel or suspend students for failure to meet standards relating to academics, parent participation, attitude or other factors not involving violence or law-breaking? Some charter school models may rely for success on strong parent support and involvement, or on student attitude. What level of standards or rules should charter schools be able to set for a student who wants to remain enrolled in the school?

Department Recommendation:
The Department does not recommend allowing charter schools to suspend or expel students on grounds other than those set forth in Maine law. The Legislature may, however, want to invite comments from interested parties to determine whether any changes are needed in Maine law on this issue.

3. Funding of charter schools

One subsection of the charter school law states that "all state and local operating funds follow each student to the public charter school attended by the student…," except for the 1% that a SAU is allowed to hold back to cover administrative costs. [3]

[2] 20-A MRSA §1001, sub-§§ 9, 9-A, 9-B
[3] 20-A MRSA §2413(2)

The more detailed provisions of the funding section set forth a formula for determining the amounts to be transferred. The formula is primarily based on the Essential Programs and Services (EPS) funding formula, not on actual amounts spent on a student within his or her resident SAU. A question has been raised regarding the transfer of funds raised locally in excess of the EPS formula amounts. Must those amounts also be transferred to the charter school, on the grounds that "all state and local operating funds follow each student?"

Department Recommendation:
The Department recommends that the law be amended to clarify that the more specific formulas set forth in the law and the accompanying rule prevail over the general language regarding transfer of funds to the charter school.

See draft legislation, section 10.

4. Preschool charter school programs

Can a charter school enroll a preschool student in a pre-K program when the student's resident SAU does not provide a pre-K program for its own residents? While students may benefit from a pre-K program, the resident SAU is not receiving state subsidy or an allocation for such a program for its own residents. It does not seem appropriate, therefore, that a resident SAU be required to fund attendance at a pre-K charter school for those students who are able to attend.

Department Recommendation:
The Department recommends that a resident school administrative unit not be required to fund attendance of a student at a charter school program if the resident unit does not provide that service for its own students. If a charter school is able to take students into a program with funding from some other source, it may enroll that student.

See draft legislation, section 11.

5. Special education

Shift in responsibility
Students with disabilities have the same right to attend a charter school as any other student. When they attend a charter school they have the same rights under the Individuals with Disabilities in Education Act (IDEA) as they had when attending a noncharter public school.

As a general rule, the school administrative unit (SAU) in which a student resides is responsible for fulfilling the obligation under IDEA to identify and assess

students with disabilities, and to create, update and implement an Individualized Education Program (IEP) that provides services the student needs in order to receive the full benefits of public education.[4]

Maine's charter school law provides a different rule for students attending a charter school, if the school was (1) created by the State Charter School Commission, or (2) created by an SAU other than the student's resident SAU.[5] For a student's first transfer to a charter school, responsibility for identifying and assessing students, and creating, updating and implementing an IEP shifts from the resident SAU to a different entity.

- In the case of a student moving to a Commission-chartered school, the responsibility shifts to the charter school itself, since under Maine's charter school law, those schools are independent SAUs and LEAs (local educational agencies).

- In the case of a student moving to a charter school created by a local school board (other than the student's resident SAU), the responsibility shifts to the school administrative unit whose board authorized the charter, since under Maine's charter school law, those schools are considered part of the SAU not independent SAUs.

It is important to specify <u>when</u> the shift in responsibility occurs, since IDEA obligations are not always confined to the traditional school year.

As currently proposed in Department rules, a student will make a commitment to enroll in a charter school many months before he or she actually starts attending the school, possibly as much as 6 or 7 months before. But the student will still be enrolled in his or her noncharter public school, at least until the end of the school year.

Does the charter school or the new SAU take over responsibility as soon as the school year ends? On July 1st, which is viewed for some purposes as the beginning of a "school year"? On the first day of school at the charter school?

> **Department Recommendation:**
> The Department recommends that, for students first enrolling in a charter school, the shift in responsibility for compliance with IDEA occur on the first day of school at the charter school, unless the charter school agrees

[4] There are some exceptions to this rule, e.g., if the student has been transferred to the school from another SAU that retains legal responsibility

[5] If the student attends a charter school authorized by his or her own SAU, there is no shift in responsibility – the resident SAU continues to be responsible for complying with IDEA.

to an earlier date. This allows for continuity for students who need extended school year services, and gives the charter school time to prepare for accepting the student and providing the needed services. The noncharter school should be allowed to withhold funds from the charter school to cover the costs of any extended school year services provided after July 1st, since it will be sending the charter school funding for the entire fiscal year that begins July 1.

See draft legislation, section 9.

Funding Issues

If a local school board authorizes a charter school, that board's school administrative unit is legally responsible for meeting the special education needs of the students who attend that charter school. The charter school in this case "receives services, resources and support in the same manner as other school administrative unit noncharter public schools.[6]" The SAU is taking on responsibility for ensuring that the students receive needed services, but the law requires all funding to be sent to the charter school. If the responsibility rests with the SAU, shouldn't the funding go there as well?

Department Recommendation:

The Department recommends that a local school board that authorizes a charter school receive the special education funds for any student attending that charter school. Current law provides that all funds go to the charter school

See draft legislation, section 12.

Application of Maine Special Education Rules (MUSER)

Charter school law clearly states that charter schools are subject to all federal laws, and are responsible for meeting the requirements of "local educational agencies" under applicable federal, state and local laws.[7]

The Department interprets this language to mean that charter schools must comply with all state laws and rules that implement the federal IDEA, including those that exceed federal requirements.

Department Recommendation:

The Department recommends that the law clearly specify that the Maine Unified Special Education Rule, Chapter 101, in its entirety, applies to charter schools.

See draft legislation, section 9.

[6] 20-A MRSA §2412(2)(A)(2)

[7] 20-A MRSA §2412(2)(A)(3) and (B)(2)

6. Career and Technical Education

Under current law, a student's eligibility to attend a CTE program is based on the student's residence.[8] Each SAU is either (1) part of a CTE region or (2) an affiliated unit of a SAU that operates a CTE Center. The SAU contributes to the cost of the regional or Center CTE program, either by paying a portion of the total cost of the program as determined by the CTE governing body, or by paying per student.

The amounts paid for CTE programming by the SAU are added to the SAU's allocation under the education funding formula, and forms the basis for reimbursement of some or all of the cost through GPA.

As public school students, charter school students are eligible to attend a CTE program. Since many students will attend a charter school outside their resident SAU, which center or region should serve them, how should their participation be funded, and who is responsible for transporting the student to the CTE program?

A charter school could be required to become an affiliated unit of a CTE center or could become part of the region in which it is located. However, since most of the funding of charter schools comes from the resident SAUs of the students who attend, the charter school would have to recover those costs from the resident SAU.

> **Department Recommendation:**
> The Department recommends that the student's resident SAU continue to be the basis for the student's eligibility to attend a CTE program. The resident SAU would continue to provide funding to the Center or Regional program in which its resident students participate, even though they are attending school outside of the SAU itself. Charter schools should be required to provide transportation for the students to the resident SAU, which would then transport the student to the CTE program in the same manner as it transports students attending schools within the SAU.
>
> See draft Rule Chapter 140, section 3(3)(D) and draft legislation, section 9.

9. Transportation

A public charter school is required to "have a plan that describes how the school will meet the transportation needs of its students[9]" and to include in its

[8] 20-A MRSA §8305-A(1)
[9] 20-A MRSA §2412(4)(D)

application its "proposals for providing transportation, food service and other significant operational or ancillary services." This language doesn't clearly require that the charter school provide or pay for transportation to the school.

What transportation requirements, if any, should be imposed on charter schools? If charter schools are not responsible for ensuring that students have free transportation, transportation could become a barrier to attendance for some students.

The Department believes that the charter school law intended to give the authorizer the authority to determine whether the charter school's proposed plan for transportation is sufficient to meet the needs of its students.

However, the Department believes that any transportation provided should meet the same safety standards as transportation provided by other public schools. This would require the transportation to meet the standards of Department Rule Chapter 81, sections 081.2, 081.4, 081.5, 081.6.

> **Department Recommendation:**
> The Department recommends that transportation provided by a charter school be subject to the same safety rules as transportation provided by noncharter public schools. The Department recommends no change to the charter school law regarding the obligation of a charter school to provide transportation, since it seems clear that the only obligation is to provide a plan for transportation. Authorizers should ensure that a charter school's transportation plans meet the needs of their students.

10. Collaborating authorizers and regional charter schools

Section 2405 designates the following entities as charter school authorizers, within the following geographic realm:

A. A local school board, within its boundaries;
B. The state Charter School Commission, anywhere in the State; and
C. A collaborative of authorizers, which can set up a regional charter school.

The statute does not elaborate on the operation of an authorizer collaborative. One question would be what type of legal relationship would the collaborating parties have and how would responsibility be divided among them?

A second question would be where the collaborative charter school could be located. Presumably, a group of local school boards could only locate a charter school within the boundaries of one of its SAUs. Can the State Charter School

Commission collaborate with one or more SAUs, and if so, what, if any, limits are there on location of a charter school authorized by such a collaborative?

A third question is whether a charter school authorized by a collaborative is included in the 10-school limit set forth in section 2405(9). The limit applies to schools "approved by authorizers other than local school boards." A collaborative among local school boards could certainly be described as being authorized by local school boards. What about a charter school authorized by a Commission-local school board collaborative?

Department Recommendation:
The Department recommends that a charter school authorized by a collaborative of local school boards not be counted as part of the 10-school limit. A collaborative between the State Charter School Commission and a local school board seems unlikely, and the charter school law does not clearly set forth the standards for such a school. The Department recommends that the collaboration language be limited to collaborations among local school boards.

See draft legislation, sections 2 and 5.

11. Conflict of interest provisions

The charter school law specifies that charter school board members, leaders and managers must be legally and operationally independent of any education service provider that contracts with the charter school. However, it's not clear that the law prevents all potential conflicts of interest between charter schools and their contractors, since the term "education service provider" doesn't appear to cover all types of contracts that a school might enter into. 20-A MRSA 1004 requires noncharter school board members to comply with contracting standards under Title 30-A section 2605. Should this apply to charter school governing boards?

Should the limit on employment of school board members and their spouses in the schools they oversee apply to charter school board members? This limitation applicable to noncharter school boards appears in section 1002.

Department Recommendation:
The Department recommends that the same conflict of interest provisions apply to charter school board members as to noncharter public school board members.

See draft legislation, section 8.

12. Disclosure of authorizer's use of fee from the charter school

An authorizer may charge a charter school up to 3% of the school's per-pupil allocation, to fund the authorizer's expenses. There is no requirement that the authorizer report what expenses it has incurred in its authorizing work to justify the amount of the fee charged to the charter school. As part of its annual report to the Commissioner, an authorizer is required to report on "the oversight and services provided to [its] public charter schools" 2405(4)(D). This could be amended to include an accounting for the expenditure of any funds collected from the charter school.

> **Department Recommendation:**
> The Department recommends that charter school authorizers include in their annual report information on the fees charged to their charter schools and how the fee compares to actual costs of the authorizer to oversee the schools.
>
> See draft legislation, section 3.

13. Sanctions against authorizers

The Department of Education is authorized to investigate and, as appropriate, institute sanctions against authorizers in response to deficiencies in authorizer performance or legal compliance[10]. The law does not specify what types of sanctions may be imposed on an authorizer.

For sanctions against schools that violate Title 20-A currently, the Department may withhold subsidy payments, or may refer the matter to the Attorney General's Office to seek injunctive relief or any other remedy authorized by law.[11] The State Charter School Commission does not receive subsidy payments from the Department, so that sanction is not available. Local school boards that authorize charter schools do receive subsidy payments, but is it fair to penalize the other schools in the SAU for the school board's failures in authorizing a charter school? In both cases, the resources needed to seek injunctive relief would not be merited except in the most serious circumstances.

The National Alliance for Public Charter Schools (NAPCS) Model Law (2009) suggests revocation of authorizer status for an authorizer that fails to remedy serious defects in performance, but that applies when an authorizer is subject to approval by some state entity in order to be an authorizer. That is not the case in

[10] Section §2403(5).
[11] 20-A MRSA §6801-A.

Maine, where the State Commission is created as an authorizer by law, and any local school can authorize charter schools, without obtaining approval from any other party.

Any significant sanction should be clearly specified in statute. Before imposing a significant sanction, the Commissioner should be required to provide notice of the deficiency and an opportunity for the authorizer to cure any noted deficiencies. If the authorizer does not improve performance, the Commissioner could be given authority to:

A. Prohibit the issuance of new charters by a deficient authorizer;
B. Allow or encourage schools chartered by that authorizer to transfer the charter to a different authorizer; and
C. Prohibit the authorizer from receiving oversight funding from its charter schools, as authorized in Title 20-A section 2405(5)(B);

Department Recommendation:
The Department recommends that the Commissioner of Education be given the authority to suspend an authorizer's power to issue additional charters, if the Commissioner finds that the authorizer fails to meet standards for authorizer performance or legal compliance. The Legislature may consider whether to provide additional sanction authority to the Commissioner.

See draft legislation, section 1.

14. Revocation of a charter

Section 2411, subsection 6 allows an authorizer to revoke a charter at any time for:

A. Non-compliance with any provision of chapter 112
B. A material violation of chapter 112 or the charter contract
C. Failure to make sufficient progress toward performance expectations
D. Failure to meet generally accepted standards of fiscal management;
E. Violation of any law from which the school is not exempt.

These standards for revocation are quite general, and provide no specific process by which revocation occurs. While the law requires the authorizer to promptly notify a charter school of perceived problems and to provide opportunity to remedy the problem, it does not specifically link that requirement to the revocation process.

Department Recommendation:

An authorizer should be required to provide notice, an opportunity to correct concerns and an opportunity for a hearing to contest a proposed revocation. An authorizer should be required to lay out in its rules more clearly the grounds for revocation and a process that will be followed if revocation is being considered.

See draft legislation, sections 6 and 7.

15. Withholding of funds for failure of a SAU to transfer funds to a charter school

The SAU in which a charter school student resides is required to send funds attributable to that student to the charter school attended by the student. If the SAU fails to do so, the law requires the Treasurer of State to "deduct from any state funds that become due to the school administrative unit an amount equal to the unpaid obligation.[12]"

The Treasurer of State does not send any funds directly to school administrative units, so it's not clear whether there could be any withholding that would help charter schools receive the money they are owed.

The Office of the Treasurer does distribute Municipal Revenue Sharing funds to municipalities. There is already one provision that directs the Treasurer to withhold Municipal Revenue Sharing from a municipality that fails to pay its assessment for administration of the Land Use Regulation Commission (LURC).[13]

To achieve the purpose of enabling charter schools to receive the funds they are due from a SAU, the Legislature could amend the law to allow the Treasurer to withhold Municipal Revenue Sharing funds from municipalities within an SAU. Any such amendment should specify the priority of withholding as between Title 12 and the education provision, as well as specifying how the amount due would be allocated among municipalities within the SAU.

Department Recommendation:
Clarify the law regarding withholding of payments by the Treasurer to allow the payments to be withheld from municipalities within the SAU that is delinquent in sending funds to a charter school.

See draft legislation, section 13.

[12] 20-A MRSA §2413(2)(F).
[13] 12 MRSA §685-G, sub-§2

16. Clarification of State Charter School Commission Operations

Members of the State Board of Education have asked for clarification about membership on the State Charter School Commission. For example, is a person appointed to the Commission from the State Board able to continue on the Commission if they are no longer a member of the State Board? What happens if a vacancy occurs on the Commission?

Department Recommendation
The Department recommends that the term of a person filling one of the 3 State Board seats on the State Charter School Commission should end if the person is no longer a member of the State Board. A vacancy on the Commission should be filled by an appointment made the same manner as the original member in that particular seat on the Commission. This would include a review by the Joint Standing Committee on Education and Cultural Affairs for any person appointed to fill a non-State-Board-of-Education position.

See draft legislation, section 4.

17. Applicability of laws

The charter school law states that, as a general principle, "a public charter school is exempt from all statutes and rules applicable to a noncharter public school, a local school board or a school administrative unit" except as provided in the charter school law or the charter contract.[14]

The following laws and types of laws are specifically mentioned in the charter school law as applying to charter schools: civil rights, health and safety, student assessment, Freedom of Access, criminal history record checks and fingerprinting requirements, teacher certification (if not otherwise qualified), and all federal laws.

The tables below provide a more detailed list of the specific laws that the Department believes apply to charter schools in Maine and those that we believe do not apply. In the left-hand column in each category is a list of laws that clearly apply or can be inferred to be applicable (or not). In the right-hand column is a list of laws whose applicability status requires some Department judgment and interpretation. These laws are included in the category to which the Department proposes to assign them.

LAWS THAT APPLY TO PUBLIC CHARTER SCHOOLS

[14] 20-A MRSA §2412(5)(D)

Applicable	Applicable?

• All federal laws and regulations, including IDEA and section 504 of the Rehabilitation Act, ADA, FERPA, ESEA, Civil Rights
• Local ordinances
• State assessment system
• Fingerprinting/criminal record check
• Freedom of Access law
• Health and Safety
  ○ Health screening,
  ○ Communicable disease control
  ○ Safe water supply requirements
  ○ Air quality, HVAC
  ○ School health services (school nurse, physician)
  ○ Sanitation standards
  ○ Safety (firearms, anti-hazing)
  ○ Prohibition on use of performance enhancing substances
  ○ School substance abuse services
  ○ State Fire Marshal inspection for Fire Safety compliance
  ○ Control of hazardous chemicals
  ○ Immunization requirements
  ○ School bomb threat procedures and reporting
  ○ Emergency management planning
  ○ Medication administration procedures
  ○ Safe and efficient transportation
  ○
• State Human Rights Act
• Teacher certification (if not otherwise qualified)
• Collective bargaining same as for noncharter public school teachers
• Special education, including MUSER requirements
	• Requirement that students achieve proficiency in all content areas of the Maine Learning Results
	• Student data and records requirements and management
	• Pledge of allegiance
	• Maine Studies, Native American studies
	• Student code of conduct requirement, including reports of prohibited incidents
	• English as the language of instruction
	• Transportation safety rules
	• Requirements for library and media resources
	• Requirement for guidance and counseling services
	• Process for student expulsion or suspension
	• Juvenile reintegration team
	• Dropout prevention efforts, attendance coordinator
	
	• Post-Secondary Enrollment Options (Aspirations)
	• Option to participate in school lunch and milk program
	• Privileged communications
	• Employment reference immunity
	• Immunity for use of reasonable force
	• Early childhood education programming

• Nonsectarian	

LAWS THAT DO NOT APPLY TO PUBLIC CHARTER SCHOOLS

Not Applicable	Not Applicable?
• Election of local school board • Appointment of Superintendent • Certification of administrators • Certification of teachers (if otherwise qualified) • Budget approval referendum • Comprehensive education plan filing with DOE	• Instructional time requirements • Holidays and special observances • Staffing ratio limitations • Facilities Plan • Basic school approval by Department of Education • Requirement to participate in School Lunch and Milk Program • Transportation requirements (except safety requirements)

Public Law 2011, Chapter 414 (LD 1553, as enacted)

An Act To Create a Public Charter School Program in Maine

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-G, sub-§10-D is enacted to read:

10-D.

Sec. 2. 20-A MRSA §1, sub-§26, ¶F, as enacted by PL 2007, c. 668, §1, is amended to read:

F. A municipal or quasi-municipal district responsible for operating public schools that has not reorganized as a regional school unit pursuant to chapter 103-A; ~~and~~

Sec. 3. 20-A MRSA §1, sub-§26, ¶G, as amended by PL 2009, c. 580, §2, is further amended to read:

G. A municipal school unit, school administrative district, community school district, regional school unit or any other quasi-municipal district responsible for operating public schools that forms a part of an alternative organizational structure approved by the commissioner~~.~~; and

Sec. 4. 20-A MRSA §1, sub-§26, ¶H is enacted to read:

H. A public charter school authorized under chapter 112 by an entity other than a local school board.

Sec. 5. 20-A MRSA c. 112 is enacted to read:

CHAPTER 112

PUBLIC CHARTER SCHOOLS

§ 2401. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. At-risk pupil. "At-risk pupil" means a pupil who has an economic or academic disadvantage that requires special services and assistance to enable the student to succeed in educational programs. "At-risk pupil" includes, but is not limited to, pupils who are members of economically disadvantaged families, pupils who are identified as having special educational needs, pupils who are limited in English proficiency, pupils who are at risk of dropping out of high school and pupils who do not meet minimum standards of academic proficiency.

2. Authorizer. "Authorizer" means an entity empowered under this chapter to review applications, decide whether to approve or reject applications, enter into charter contracts with applicants, oversee and monitor public charter schools and decide whether to renew, not renew or revoke charter contracts.

3. Charter contract. "Charter contract" means a performance-based contract for a fixed term between a public charter school and an authorizer that describes performance expectations, defines operational responsibilities and outlines the autonomy and accountability for each party to the contract.

4. Conversion public charter school. "Conversion public charter school" means a public charter school that existed as a noncharter public school before becoming a public charter school.

5. Education service provider. "Education service provider" means an education management organization, charter management organization, school design provider or any other partner entity with whom a public charter school intends to contract for a limited scope of education services and resources, including education design, implementation or management.

6. Governing board. "Governing board" means the independent board of a public charter school that is party to the charter contract with the authorizer and whose members have been elected or selected pursuant to the school's application.

7. Local school board. "Local school board" means a school board exercising management and control of a school administrative unit other than a public charter school formed under this chapter.

8. Noncharter public school. "Noncharter public school" means a public school other than a school formed pursuant to this chapter.

9. Public charter school. "Public charter school" means a public school formed pursuant to this chapter that:

A. Has autonomy over key decisions, including, but not limited to, decisions concerning finance, personnel, scheduling, curriculum and instruction;

B. Is governed by a board that is independent of a school administrative unit;

C. Is established and operated under the terms of a charter contract between the governing board and its authorizer in accordance with this chapter;

D. Is a school to which parents choose to send their children;

E. Provides a program of education that:

(1) Includes one or more of the following: preschool, prekindergarten and any grade or grades from kindergarten to grade 12;

(2) May include a focus on students with special needs, such as at-risk pupils, English language learners or students involved with the juvenile justice system;

(3) May include a specific academic approach or theme, such as:

(a) Vocational and technical training;

(b) Natural resources and the environment;

(c) Farming, fishing and forestry;

(d) Foreign language and culture;

(e) Visual and performing arts;

(f) Science, mathematics and technology; and

(g) Project-based learning, experiential learning or online instruction;

F. Operates in pursuit of a specific set of educational objectives as defined in its charter contract; and

G. Operates under the oversight of the authorizer from which its charter contract is granted and in accordance with its charter contract.

10. Start-up public charter school. "Start-up public charter school" means a public charter school that did not exist as a noncharter public school prior to becoming a public charter school.

11. Virtual public charter school. "Virtual public charter school" means a public charter school that offers education services predominantly through an online program.

§ 2402. Public charter schools authorized

Charter schools may be established as public schools pursuant to this chapter to improve pupil learning by creating more high-quality schools with high standards for pupil performance; to close achievement gaps between high-performing and low-performing groups of public school students; to increase high-quality educational opportunities within the public education system; to provide alternative learning environments for students who are not thriving in traditional school settings; to create new professional opportunities for teachers and other school personnel; to encourage the use of different, high-quality models of teaching and other aspects of schooling; and to provide students, parents, community members and local entities with expanded opportunities for involvement in the public education system.

§ 2403. Role of the department; commissioner; rules

1. Information and technical assistance. The department shall disseminate information on how to form and operate a public charter school and on how to enroll in a public charter school once the school is created. The department may provide assistance and guidance to authorizers in developing effective authorization and oversight procedures.

2. Applications for federal funds. The department may apply for assistance from the federal charter school grant program on behalf of potential and actual public charter schools in the State.

3. Use of federal funds. If the department receives a grant from the federal charter school grant program on behalf of potential and actual public charter schools, the grant must be used according to the applicable federal law and primarily for planning and start-up grants to public charter school organizers and for such activities as:

A. Providing information and technical assistance to potential and actual public charter school organizers and authorizers; and

B. Allocating funds to support the work of potential and actual authorizers.

4. Principles and professional standards. The department shall establish policies and practices consistent with nationally recognized principles and professional standards for authorizers of public charter schools, including standards relating to:

A. Organizational capacity and infrastructure;

B. Soliciting and evaluating applications;

C. Performance contracting;

D. Ongoing public charter school oversight and evaluation; and

E. Charter renewal decision making.

5. Investigation and sanction of authorizers. Consistent with the policies and practices established in subsection 4, the department may investigate and, as appropriate, institute sanctions in response to deficiencies in authorizer performance or legal compliance.

6. Rules. The department shall adopt major substantive rules pursuant to Title 5, chapter 375, subchapter 2-A to implement this chapter.

7. Reports. Four years after public charter schools have been in operation, the commissioner shall issue to the Governor, the Legislature and the public a report on the State's public charter school program, drawing from the annual reports submitted by every authorizer pursuant to section 2405, subsection 4, as well as any additional relevant data compiled by the commissioner up to the school year ending in the preceding calendar year. The report must include an assessment of the public charter school program's successes, challenges and areas for improvement in meeting the purposes of this chapter and any suggested changes in state law or policy necessary to strengthen the public charter school program. The commissioner shall issue a similar report after 8 years of operation of public charter schools.

§ 2404. Public charter school eligibility; enrollment

1. Eligibility. Any student residing in the State is eligible to apply to a public charter school.

2. Enrollment. A public charter school shall enroll students in accordance with this subsection.

A. Public charter school organizers shall include all segments of the populations served by the existing noncharter public schools in their area in their recruitment efforts.

B. A public charter school shall enroll all students who wish to attend the school, unless the number of students exceeds the enrollment capacity of a program, class, grade level or building.

C. Except as provided in paragraphs H and I, if capacity is insufficient to enroll all students who wish to attend the school, the public charter school shall select students through a random selection process. A list maintained to fill potential vacancies may be carried over to the succeeding year.

D. For a school administrative unit with an enrollment of 500 or fewer students, a public charter school, unless authorized by a school administrative unit, may not enroll more than 5% of a school administrative unit's noncharter public school students per grade level in each of the first 3 years of the public charter school's operation.

E. For a school administrative unit with an enrollment of more than 500 students, a public charter school, unless authorized by a school administrative unit, may not enroll more than

10% of a school administrative unit's noncharter public school students per grade level in each of the first 3 years of the public charter school's operation.

F. A public charter school may limit enrollment to pupils within a given age group or grade level and may be organized around a special emphasis, theme or concept as stated in the school's application for a charter contract pursuant to section 2407.

G. Any noncharter public school converting partially or entirely to a public charter school shall adopt and maintain a policy that gives enrollment preference to pupils who reside within the former attendance area of that noncharter public school.

H. A public charter school shall give enrollment preference to pupils enrolled in the public charter school the previous school year and to siblings of pupils already enrolled in the public charter school.

I. A public charter school may give enrollment preference to children of a public charter school's founders, governing board members and full-time employees, as long as they constitute no more than 10% of the school's total student population.

J. A public charter school may enroll students from outside the State if space is available.

3. Discrimination prohibited. A public charter school may not discriminate on the basis of race, ethnicity, national origin, religion, gender, sexual orientation, income level, disabling condition, proficiency in the English language or academic or athletic ability, except that nothing in this subsection may be construed to limit the formation of a public charter school that is dedicated to focusing education services on at-risk pupils, students with disabilities and students who pose such severe disciplinary problems that they warrant a specific education program.

§ 2405. Authorizers

1. Eligible authorizers. The following groups may become authorizers of public charter schools:

A. A local school board with regard to creating a public charter school within the boundaries of the school administrative unit governed by that local school board;

B. The commission under subsection 8; and

C. A collaborative among authorizing entities that forms to set up a regional public charter school.

2. Powers and duties. An authorizer may:

A. Solicit, invite and evaluate applications from organizers of proposed public charter schools;

B. Approve applications that meet identified educational needs;

C. Deny applications that do not meet identified educational needs;

D. Create a framework to guide the development of charter contracts;

E. Negotiate and execute sound charter contracts with each approved public charter school;

F. Monitor the performance and compliance of public charter schools; and

G. Determine whether each charter contract merits renewal or revocation.

3. Principles and professional standards. An authorizer shall develop and maintain policies and practices consistent with nationally recognized principles and professional standards for authorizing public charter schools, including standards relating to:

A. Organizational capacity and infrastructure;

B. Soliciting and evaluating applications;

C. Performance contracting;

D. Ongoing public charter school oversight and evaluation; and

E. Charter renewal decision making.

4. Reporting and evaluation. An authorizer shall submit to the commissioner an annual report within 60 days of the end of each school fiscal year summarizing:

A. The authorizer's strategic vision for chartering and progress toward achieving that vision;

B. The performance of all operating public charter schools overseen by the authorizer, according to the performance measures and expectations specified in the charter contracts;

C. The status of the authorizer's public charter school portfolio of approved charter applications, identifying all public charter schools within that portfolio as:

(1) Approved, but not yet open;

(2) Operating;

(3) Renewed;

(4) Transferred;

(5) Terminated;

(6) Closed; or

(7) Never opened; and

D. The oversight and services provided by the authorizer to the public charter schools under the authorizer's purview.

5. Funding of authorizers. To cover costs for overseeing public charter schools in accordance with this chapter, an authorizer may:

A. Expend its own resources, seek grant funds and establish partnerships to support its public charter school office and activities; and

B. Charge up to 3% of annual per-pupil allocations received by each public charter school it authorizes. These funds must be used to cover the costs for an authorizer to oversee its public charter schools.

6. Conflicts of interest. An employee, trustee, agent or representative of an authorizer may not simultaneously serve as an employee, trustee, agent, representative, vendor or contractor of a public charter school of that authorizer.

7. Services purchased from authorizer. A public charter school may not be required to purchase services from its authorizer as a condition of charter approval or of executing a charter contract, nor may any such condition be implied.

A. A public charter school may, at its discretion, choose to purchase services from its authorizer. In such event, the public charter school and authorizer shall execute an annual service contract, separate from the charter contract, stating the parties' mutual agreement concerning any services to be provided by the authorizer and any service fees to be charged to the public charter school.

8. State Charter School Commission. The State Charter School Commission, established under Title 5, section 12004-G, subsection 10-D, is referred to in this chapter as "the commission."

A. The commission consists of 7 members appointed by the state board for 3-year terms.

(1) Three members must be members of the state board, and those 3 members shall nominate the other 4 members who must be approved by a majority vote of the state board.

(2) Members appointed to the commission must have diverse professional experience in education, social services, youth training, business startup and administration, accounting and finance, strategic planning and nonprofit governance. The following provisions apply to the appointment of the 4 other members nominated and appointed by state board members pursuant to subparagraph (1):

(a) In appointing members to the commission, the state board shall give proper consideration to candidates with experience in a noncharter public school in the State in one of the following positions: school board member, superintendent, teacher and special education director;

(b) The state board shall ensure that the joint standing committee of the Legislature having jurisdiction over education matters has an opportunity to meet and interview the candidate or candidates nominated for the commission;

(c) Within 10 days of meeting with the candidate or candidates, the joint standing committee of the Legislature having jurisdiction over education matters shall deliver to the state board its written appraisal of the strengths and weaknesses of the candidate or candidates; and

(d) The state board shall consider the appraisal of the joint standing committee of the Legislature having jurisdiction over education matters prior to appointing a candidate or candidates to the commission.

(3) A commission member may not serve more than 3 consecutive terms, but may serve again after not serving on the commission for at least one term.

(4) A commission member may not receive compensation, but may be reimbursed for travel expenses.

B. The commission shall adopt rules to develop, implement and refine its procedures for authorizing public charter schools in this State. Rules adopted by the commission pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

C. The commission shall, in keeping with its authorizing responsibilities:

(1) Engage professional and administrative staff, separate from the department;

(2) Convene stakeholder groups and engage experts; and

(3) Seek and receive state, federal and private funds.

D. The commission is the sole authorizer in this State for virtual public charter schools, except that a local school board may authorize a public charter school within its jurisdiction that integrates online and on-site instruction.

9. Transition period. The public charter school program set out in this chapter must begin with a 10-year transition period, beginning on the effective date of this chapter. During the transition period, the commissioner shall register the charters approved by all authorizers in chronological order by date of approval under this chapter. During the transition period, only 10 public charter schools may be approved by authorizers other than local school boards. Once the cap is reached, the commissioner may not accept further registrations from authorizers other than local school boards and only local school boards may approve charters until the end of the transition period.

This subsection is repealed July 1, 2022.

§ 2406. Request for proposals

1. Issuance. To invite, solicit, encourage and guide the development of high-quality public charter school applications, an authorizer shall issue and broadly publicize requests for proposals. The content and dissemination of the requests for proposals must be consistent with the purposes and requirements of this chapter.

2. Content. An authorizer's request for proposals must contain information outlined in this subsection.

A. A request for proposals must present the authorizer's strategic vision for and interests in chartering.

B. Authorizers may give priority to proposals that expand opportunities for children who are not realizing their full potential, who may be disaffected or disengaged in their current education situations and who may be at risk of failure academically, socially, economically

or personally. Authorizers may encourage proposals that include a specific academic approach or theme to address the diverse educational needs of communities in the State. A request for proposals must include a clear statement of any priority or preference the authorizer wishes to grant to particular types of applications. Notwithstanding an authorizer's statement of any priority or preference, an authorizer shall consider each application submitted to it based on the merits of that particular application.

C. A request for proposals must include or otherwise direct applicants to the performance framework that the authorizer has developed for public charter school oversight and evaluation in accordance with section 2409.

D. A request for proposals must include the criteria and standards that will guide the authorizer's decision to approve or deny an application.

E. A request for proposals must state clear, appropriately detailed questions as well as guidelines concerning the format and content essential for applicants to demonstrate the capacities necessary to establish and operate a successful public charter school.

F. A request for proposals must require applications to provide or describe thoroughly, at a minimum, all of the following essential elements of the proposed public charter school plan:

(1) The proposed public charter school's vision, including:

(a) An executive summary;

(b) The mission and vision of the proposed public charter school, including identification of the targeted student population and the community the school hopes to serve; and

(c) Evidence of need and community support for the proposed public charter school, including information on discussions with the school administrative unit where the public charter school will be located concerning recruitment and operations of the public charter school and possible collaboration with nearby school administrative units;

(2) The proposed public charter school's governance plan, including:

(a) Background information on proposed board members and any assurances or certifications required by the authorizer;

(b) Proposed governing bylaws;

(c) An organization chart that clearly presents the school's organizational structure, including lines of authority and reporting between the governing board, staff and any related bodies such as advisory bodies or parent and teacher councils, and any external organizations that will play a role in managing the school;

(d) A clear description of the roles and responsibilities for the governing board, the school's leadership and management team and any other entities shown on the organization chart;

(e) Identification of the proposed founding governing board members and, if identified, the proposed school leader or leaders; and

(f) Background information on the school's leadership and management team, if identified;

(3) The proposed public charter school's plan of organization, including:

(a) The location or geographic area of the school;

(b) The grades to be served each year for the full term of the charter;

(c) Minimum, planned and maximum enrollment per grade per year for the term of the charter;

(d) The school's proposed calendar and sample daily schedule;

(e) Plans and timelines for student recruitment and enrollment, including lottery procedures;

(f) Explanations of any partnerships or contractual relationships central to the school's operations or mission;

(g) The school's proposals for providing transportation, food service and other significant operational or ancillary services;

(h) A facilities plan, including backup or contingency plans if appropriate;

(i) A detailed school start-up plan, identifying tasks, timelines and responsible individuals; and

(j) A closure protocol, outlining orderly plans and timelines for transitioning students and student records to new schools and for appropriately disposing of school funds, property and assets in the event of school closure;

(4) The proposed public charter school's finances, including:

(a) A description of the school's financial plan and policies, including financial controls and audit requirements;

(b) Start-up and 3-year budgets with clearly stated assumptions;

(c) Start-up and first-year cash-flow projections with clearly stated assumptions;

(d) Evidence of anticipated fund-raising contributions, if claimed in the application; and

(e) A description of the insurance coverage the school proposes to obtain;

(5) The proposed public charter school's student policy, including:

(a) The school's plans for identifying and successfully serving students with the wide range of learning needs and styles typically found in noncharter public schools of the sending area;

(b) The school's plans for compliance with applicable laws, rules and regulations; and

(c) The school's student discipline plans and policies, including those for special education students;

(6) The proposed public charter school's academic program, including:

(a) A description of the academic program aligned with the statewide system of learning results under section 6209;

(b) A description of the school's instructional design, including the type of learning environment, such as classroom-based or independent study, class size and structure, curriculum overview, teaching methods and research basis;

(c) The school's plan for using internal and external assessments to measure and report student progress on the measures and metrics of the performance framework developed by the authorizer in accordance with section 2409; and

(d) A description of cocurricular or extracurricular programs and how they will be funded and delivered; and

(7) The proposed public charter school's staff policy, including:

(a) A staffing chart for the school's first year and a staffing plan for the term of the charter;

(b) Plans for recruiting and developing school leadership and staff;

(c) The school's leadership and teacher employment policies, including performance evaluation plans; and

(d) Opportunities and expectations for parent involvement.

G. With respect to the conversion of an existing noncharter public school to public charter school status, in addition to the other requirements of this subsection, the request for proposals must require applicants to demonstrate support for the proposed conversion public charter school by submitting 2 petitions, one signed by a majority of teachers in the existing noncharter public school and the other signed by a majority of parents of students in the existing noncharter public school.

If the school to be converted is the only public school option for students in the school administrative unit, the request for proposals must additionally require that the conversion be approved by voters in that school administrative unit.

H. With respect to a proposed public charter school that intends to contract with an education service provider for a limited scope of education or management services, in addition to the other requirements of this subsection, the request for proposals must require applicants to:

(1) Explain how and why the education service provider was selected;

(2) Provide evidence of the education service provider's success in serving student populations similar to the targeted population, including demonstrated academic achievement as well as successful management of nonacademic school functions if applicable;

(3) Provide information on the proposed duration of the service contract; roles and responsibilities; scope of services and resources to be provided by the education service provider; performance evaluation measures and timelines; compensation structure, including clear identification of all fees to be paid to the education service provider; methods of contract oversight and enforcement; investment disclosure; and conditions for renewal and termination of the contract;

(4) Provide a draft of the proposed service contract;

(5) Explain the relationship between the governing board, the school's leadership and management team and the education service provider, specifying how the governing board and the school's leadership and management team will monitor and evaluate the performance of the education service provider, the internal controls that will guide the relationship and how the governing board and the school's leadership and management team will ensure fulfillment of performance expectations;

(6) Provide a statement of assurance that the governing board and the school's leadership and management team is legally and operationally independent from the education service provider; and

(7) Disclose and explain any existing or potential conflicts of interest between the governing board, the school's leadership and management team and the education service provider or any affiliated business entities.

Nothing in this paragraph prohibits a virtual public charter school from entering into a contract with an education service provider for education design, implementation or comprehensive management of the virtual public charter school program.

§ 2407. Charter applications

1. Application. An applicant for approval as a public charter school must submit an application as set out in this section. An applicant may submit an application only to an authorizer that has issued a request for proposals in accordance with section 2406. An applicant may submit a proposal for a particular public charter school to no more than one authorizer at a time. The purposes of the application are to present the proposed public charter school's academic and operational vision and plans, demonstrate the applicant's capacities to execute the proposed vision and plans and provide the authorizer a clear basis for assessing the applicant's plans and capacities.

2. Conversion of existing noncharter public schools. A noncharter public school or public school program may apply to its local school board to become a conversion public charter school.

3. Start-up schools. An application for a start-up public charter school may be submitted by a nonprofit, nonreligious organization. If the organizers of a start-up public charter school have been affiliated with a previous school or education program, they must form a separate nonprofit organization in this State to be eligible for state and federal grants.

4. Application review process. In reviewing and evaluating applications, authorizers shall employ procedures, practices, criteria and standards consistent with nationally recognized principles and standards for authorizing high-quality public charter schools.

A. The application review process must include, at a minimum, substantive participation by a team of reviewers who collectively possess appropriate academic expertise and operational experience with public charter schools.

B. The application review process must include a thorough evaluation of each application, an in-person interview with the applicant and a public hearing.

C. In deciding whether to approve applications, authorizers shall:

(1) Grant charters only to applicants that have demonstrated competence in each element of the authorizer's published approval criteria and are likely to open and operate a successful public charter school;

(2) Base decisions on documented evidence collected through the application review process; and

(3) Follow charter-granting policies and practices that are transparent, based on merit and avoid conflicts of interest or any appearance of a conflict of interest.

5. Approval; denial. No later than 90 days after the filing of an application, an authorizer shall decide to approve or deny the application. The authorizer shall make and announce all charter approval or denial decisions in a meeting open to the public.

A. An approval decision may include, if appropriate, reasonable conditions that the applicant must meet before a charter contract may be executed.

B. If the authorizer denies an application, the authorizer shall clearly state, for public record, its reasons for denial. An applicant may subsequently reapply to that authorizer or apply to any other authorizer in the State.

C. Within 10 days of taking action to approve or deny an application, the authorizer shall report to the commissioner the action it has taken. The authorizer shall provide a copy of the report to the applicant at the same time that the report is submitted to the commissioner.

D. The commissioner shall register the charters approved by all chartering authorities in chronological order by date of approval.

E. An approved application may not serve as a school's charter contract nor may it be incorporated by reference into the charter contract.

F. A decision on an application must be conveyed in writing to the applicant. A decision may grant approval or conditional approval, request resubmission or reject the application and must include written reasons for the decisions.

§ 2408. Charter contracts

1. Charter contracts. When an application is approved, a charter contract must be executed in accordance with this section.

A. After approval of an application and no later than 60 days prior to the opening date of the public charter school, the authorizer and the governing board shall execute a charter contract that sets forth:

(1) Performance provisions describing the academic and operational performance expectations and measures by which the public charter school will be judged; and

(2) Administrative provisions articulating the administrative relationship between the authorizer and the public charter school, including each party's rights and duties.

B. The performance provisions set forth in a charter contract under paragraph A must include but need not be limited to applicable federal and state accountability requirements.

C. The performance provisions set forth in a charter contract under paragraph A may be refined or amended by mutual agreement of the parties to the charter contract after the public charter school is operating and has collected baseline achievement data for its enrolled students.

D. A charter contract must be signed by a designated representative of the authorizer and of the public charter school's governing board.

E. A public charter school may not commence operations without a charter contract executed in accordance with this section and approved in a meeting open to the public.

2. Virtual public charter schools. The charter contract of a virtual public charter school must require the governing board to:

A. Provide each student enrolled in the virtual public charter school with online courses that meet or exceed state standards and all instructional materials required for the student's participation in the school;

B. Ensure that the persons who operate the virtual public charter school on a day-to-day basis comply with and carry out all applicable requirements, statutes, regulations, rules and policies of the school;

C. Ensure that a parent of each student verifies the number of hours of educational activities completed by the student each school year; and

D. Adopt a plan by which the governing board provides:

(1) Frequent, ongoing monitoring to ensure and verify that each student is participating in the virtual public charter school, including synchronous contact between teachers and students and between teachers and parents to ensure and verify student participation and learning;

(2) Regular instructional opportunities in real time that are directly related to the virtual public charter school's curricular objectives, including, but not limited to, meetings with teachers and educational field trips and outings;

(3) Verification of ongoing student attendance in the virtual public charter school;

(4) Verification of ongoing student progress and performance in each course as documented by ongoing assessments and examples of student course work; and

(5) Administration to all students in a proctored setting of all applicable assessments as required by the State.

Nothing in this subsection prohibits a virtual public charter school from reimbursing families of enrolled students for costs associated with their Internet connection for use in the program.

Only students enrolled in a virtual public charter school as full-time students may be reported in the virtual public charter school's average pupil count to the department for the purposes of receiving local, state and federal funds.

§ 2409. Public charter school performance framework

1. Performance framework. The performance provisions of a charter contract must be based on a performance framework developed by the authorizer that sets forth the academic and operational performance indicators that will guide the authorizer's evaluations of each public charter school.

2. Data elements. The performance framework developed under subsection 1 must include, at a minimum, indicators for:

A. Student academic proficiency;

B. Student academic growth;

C. Achievement gaps in both proficiency and growth between major student subgroups;

D. Attendance;

E. Recurrent enrollment from year to year;

F. With respect to high school, postsecondary readiness;

G. Financial performance and sustainability;

H. Governing board performance and stewardship; and

I. Parent and community engagement.

3. Annual performance targets. Annual performance targets must be set by a public charter school in conjunction with its authorizer and must be designed to help each school meet applicable federal and state requirements and authorizer expectations.

4. Data disaggregation. The performance framework developed under subsection 1 must require the disaggregation of all student performance data by major student subgroups.

5. Reports for multiple campuses. With respect to a public charter school that contains multiple campuses operating under a single charter contract or overseen by a single governing board, the performance framework developed under subsection 1 must require the performance of each campus to be reported separately and must hold each campus independently accountable for its performance.

§ 2410. Oversight

1. Data collection; monitoring. For each public charter school it oversees, the authorizer is responsible for collecting, analyzing and reporting all data from state assessments in accordance with the performance framework developed under section 2409, subsection 1. An authorizer shall monitor the performance and legal compliance of the public charter schools it oversees, including collecting and analyzing all data to support ongoing evaluation according to the charter contract.

2. Notification of unsatisfactory performance or compliance. In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly notify the public charter school of perceived problems and provide reasonable opportunity for the school to remedy the problems.

§ 2411. Charter term and renewal

1. Initial charter term. The term for an initial charter may not commence before July 1, 2012. An initial charter must be granted for a term of 5 operating years. The charter term commences on the public charter school's first day of operation. An approved public charter school may delay its opening for one school year in order to plan and prepare for the school's opening. If the public charter school requires an opening delay of more than one school year, the

public charter school must request an extension from its authorizer. The authorizer may grant or deny the extension depending on the particular public charter school's circumstances.

2. Charter renewal term. A charter may be renewed for successive terms of 5 years, although an authorizer may grant a renewal for a term not to exceed 15 years based on the performance, demonstrated capacities and particular circumstances of each public charter school. If a charter is renewed for more than 5 years, the authorizer shall still issue a public charter school performance report every 5 years as called for by subsection 3. An authorizer may grant renewal with specific conditions for necessary improvements to a public charter school.

3. Authorizer renewal responsibilities. No later than June 30th of a public charter school's 4th year of operation under each 5-year term of a charter contract, the authorizer shall issue a public charter school performance report. If the charter of the public charter school is expiring, the authorizer shall offer charter renewal application guidance to the school.

A. The performance report required in this subsection must summarize the public charter school's performance record to date, based on the data required by this chapter and the charter contract, and must provide notice of any weaknesses or concerns perceived by the authorizer concerning the school that may jeopardize its position in seeking renewal if not timely rectified. The school must be given the opportunity to respond to the performance report and submit any corrections or clarifications for the report.

B. The renewal application guidance required by this subsection must include or refer explicitly to the criteria and standards that will guide the authorizer's renewal decisions, which must be based on the performance framework under section 2409 set forth in the charter contract and consistent with this chapter. The renewal application guidance must, at a minimum, require and provide an opportunity for the public charter school to:

(1) Present additional evidence, beyond the data contained in the performance report, supporting its case for charter renewal;

(2) Describe improvements undertaken or planned for the school; and

(3) Detail the school's plans for the next charter term.

4. Renewal application. No later than September 30th of a public charter school's 5th year of operation under a term of a charter contract or September 30th of a public charter school's final authorized year of operation under a term of a charter contract, the governing board of a public charter school seeking renewal shall submit a renewal application to the authorizer pursuant to any renewal application guidance offered by the authorizer under subsection 3.

5. Renewal decision. An authorizer shall rule by resolution on a renewal application under this section no later than 45 days after the filing of the renewal application. In making charter renewal decisions, every authorizer shall:

A. Ground its decisions in evidence of the public charter school's performance over the term of the charter in accordance with the performance framework under section 2409 set forth in the charter contract;

B. Ensure that data used in making renewal decisions are available to the public charter school and the public; and

C. Provide a public report summarizing the evidence basis for each decision.

6. Charter revocation and nonrenewal. A decision by an authorizer to revoke or not to renew the charter of a public charter school must be made in accordance with this subsection.

A. A charter may be revoked at any time or not renewed if the authorizer determines that the public charter school failed to comply with the provisions of this chapter or:

(1) Committed a material violation of any of the terms, conditions, standards or procedures required under this chapter or the charter contract;

(2) Failed to meet or make sufficient progress toward the performance expectations set forth in the charter contract;

(3) Failed to meet generally accepted standards of fiscal management; or

(4) Violated any provision of law from which the school was not exempted.

B. If an authorizer revokes or does not renew a charter, the authorizer shall clearly state, in a resolution of its governing entity, the reasons for the revocation or nonrenewal.

7. Notification to commissioner. Within 10 days of taking action to renew, not renew or revoke a charter under this section, the authorizer shall report to the commissioner the action taken and shall provide a copy of the report to the public charter school at the same time that the report is submitted to the commissioner. The report must include a copy of the governing entity of the authorizer's resolution setting forth the action taken and reasons for the decision.

8. School closure and dissolution. If a public charter school closes for any reason:

A. The authorizer shall oversee and work with the closing public charter school to ensure timely notification to parents, orderly transition of students and student records to new schools and proper disposition of school funds, property and assets in accordance with the requirements of this chapter; and

B. The assets of the public charter school must be distributed first to satisfy outstanding payroll obligations for employees of the public charter school and then to creditors of the public charter school. Any remaining funds must be paid to the Treasurer of State to the credit of the General Fund. If the assets of the public charter school are insufficient to pay all parties to whom the public charter school owes compensation, the prioritization of the distribution of assets may be determined by decree of a court of law.

9. Charter transfers. A charter contract and its oversight may not be transferred from one authorizer to another before the expiration of the charter contract term except by mutual agreement of all parties.

§ 2412. Operations

1. Legal status. Notwithstanding any provision of law to the contrary, to the extent that any provision of this chapter is inconsistent with any other state or local law, rule or regulation, the provisions of this chapter govern and are controlling.

A. A public charter school is subject to all federal laws and authorities, to local law not inconsistent with this chapter and to the charter contract.

B. A charter contract may include one or more schools, to the extent approved by the

authorizer and consistent with applicable law. Each public charter school that is part of a charter contract must be separate and distinct from any others.

C. A single governing board may be issued one or more charter contracts. Each public charter school operating under its own contract is a discrete legal entity, separate and distinct from any others.

2. Local educational agency status. The following provisions govern the status of public charter schools as local educational agencies.

A. In the case of a public charter school authorized by a local school board:

(1) The school administrative unit in which the public charter school is located remains the local educational agency and the public charter school is a school within that local educational agency;

(2) The public charter school receives services, resources and support in the same manner as other school administrative unit noncharter public schools, except that the public charter school is treated as a local educational agency for purposes of applying for competitive federal grants; and

(3) The school administrative unit retains responsibility for special education and serves students in public charter schools in a manner consistent with local educational agency obligations under applicable federal, state and local law and the charter contract.

B. In the case of a public charter school authorized by the commission:

(1) The public charter school functions for all purposes as a local educational agency and is a school administrative unit independent of the school administrative unit in which the school is located. School administrative unit status does not preclude a public charter school from developing links to local school districts for services, resources and programs, by mutual agreement or by formal contract;

(2) To the extent permitted by federal, state or local laws, the public charter school is responsible for meeting the requirements of local educational agencies under applicable federal, state and local laws, including those relating to special education, receipt of funds and compliance with funding requirements; and

(3) To the extent permitted by federal, state or local laws, the public charter school has primary responsibility for special education at the school, including identification and provision of service, and is responsible for meeting the needs of enrolled students with disabilities.

3. Powers of public charter schools. A public charter school has all the powers necessary for carrying out the terms of its charter contract, including the powers to:

A. Receive and disburse funds for school purposes;

B. Contract or cooperate with noncharter public schools for service for students with special needs, English language learner students and other specialized populations, as well as for mutually agreed administrative services;

C. Secure appropriate insurance and enter into contracts and leases, free from prevailing wage laws;

D. Contract with an education service provider for a limited scope of education services and resources related to the management and operation of the public charter school, as long as the public charter school's governing board retains authority over the oversight and management of the public charter school;

E. Incur debt in reasonable anticipation of the receipt of public or private funds, except that an authorizer is not responsible for any debt incurred by the public charter school;

F. Pledge, assign or encumber its assets to be used as collateral for loans or extensions of credit;

G. Solicit and accept any gifts or grants for public charter school purposes subject to applicable laws and the terms of its charter contract;

H. Acquire real property for use as its facility or facilities from public or private sources; and

I. Sue and be sued in its own name.

4. General requirements. A public charter school is subject to the general requirements set out in this subsection.

A. A public charter school may not discriminate against any person on the basis of race, color, sex, sexual orientation, physical or mental disability, religion, age, ancestry or national origin or on any other basis that would be unlawful if done by a noncharter public school.

B. A public charter school may not engage in any religious practices in its educational program, admissions or employment policies or operations.

C. A public charter school may not charge tuition and may only charge such fees as may be imposed by other noncharter public schools in the State. A public charter school may charge tuition to an out-of-state student admitted to the school on a space-available basis.

D. A public charter school must have a plan that describes how the school will meet the transportation needs of its students.

E. The powers, obligations and responsibilities set forth in a charter contract may not be delegated or assigned by either party, except as provided in section 2411, subsection 9.

5. Applicability of other laws, rules and regulations. The applicability of other laws, rules and regulations to public charter schools is as set out in this subsection.

A. Public charter schools are subject to the same civil rights and health and safety requirements applicable to other noncharter public schools in the State, except as otherwise specifically provided in this chapter.

B. Public charter schools are subject to the same student assessment and accountability requirements applicable to other noncharter public schools in the State, but nothing in this chapter precludes a public charter school from establishing additional student assessment measures that go beyond state requirements if the school's authorizer approves such measures.

C. Governing boards are subject to and must comply with Title 1, chapter 13.

D. Except as provided in this chapter and its charter contract, a public charter school is exempt from all statutes and rules applicable to a noncharter public school, a local school board or a school administrative unit. School administrative units may not interpret this paragraph as reducing their obligation to provide education for their residents.

E. A public charter school is exempt from the restrictions normally associated with any state-funded categorical education funding program.

F. Employees and other public charter school personnel are subject to criminal history record checks and fingerprinting requirements applicable to other noncharter public schools.

6. Teachers. This subsection governs teacher employment in a public charter school.

A. A public charter school must comply with applicable federal laws and regulations regarding the qualification of teachers and other instructional staff.

B. All full-time teachers in a public charter school must either hold an appropriate teaching certificate or become certified within 3 years of the date they are hired, except for those with an advanced degree, professional certification or unique expertise or experience in the curricular area in which they teach.

C. Teachers at a public charter school may choose to bargain collectively or form a professional group in accordance with this paragraph.

(1) Teachers who are employees of the public charter school have the same rights as other teachers in public education to organize and bargain collectively. Bargaining units at the public charter school must be separate from other bargaining units, such as a district bargaining unit. Staff at noncharter public schools converting to public charter schools have a right to employment benefits as stated in applicable collective bargaining agreements or they may vote to be represented in alternative ways.

(2) A teacher who is an employee of the public charter school may choose to be part of a professional group that operates the instructional program under an agreement with the public charter school, forming a partnership or producer cooperative that the teachers collectively own.

(3) Teachers who are employees of the public charter school may not be required to be members of any existing collective bargaining agreement between a school administrative unit and its employees. A public charter school may not interfere with civil service laws or other applicable rules protecting the rights of employees to organize and be free from discrimination.

7. External audit. A public charter school shall adhere to generally accepted accounting principles and shall annually engage an external auditor to do an independent audit of the school's finances. The public charter school shall submit the audit to its authorizer and to the department.

§ 2413. Funding

1. Enrollment count. Students enrolled in and attending public charter schools must be reported to the department, for attendance and funding purposes, as provided in department rules.

2. Revenue provisions. All state and local operating funds follow each student to the public charter school attended by the student, except that the school administrative unit of the student's residence may retain up to 1% of the per-pupil allocation described in this subsection to cover associated administrative costs.

A. For each public charter school student, the school administrative unit in which the student resides must forward the per-pupil allocation to the public charter school attended by the student as follows.

(1) The per-pupil allocation amount is the EPS per-pupil rate for the school administrative unit in which the student resides, as calculated pursuant to section 15676, based on the student's grade level and adjusted as appropriate for economic disadvantage and limited English proficiency pursuant to section 15675, subsections 1 and 2. For transportation expenses, the average per-pupil expense in each school administrative unit of residence must be calculated and a per-pupil allocation of that amount must be forwarded to the public charter school attended on the same basis as the per-pupil allocations for operating funds. Debt service and capital outlays may not be included in the calculation of these per-pupil allocations. The department shall adopt rules governing how to calculate these per-pupil allocations, including those for gifted and talented programs, vocational, technical and career education programs, and targeted funds for assessment technology and kindergarten to grade 2 programs.

(2) For students attending public charter schools, the school administrative unit of residence shall forward the per-pupil allocations described in subparagraph (1) directly to the public charter school attended. These per-pupil allocations must be forwarded to each public charter school on a quarterly basis, as follows. For each fiscal year, allocations must be made in quarterly payments on September 1st, December 1st, March 1st and June 1st. The September payment must be based on the number of students enrolled or anticipated to be enrolled in the public charter school at the opening of school for that school year, which may not exceed the maximum enrollment approved in the charter contract for that year unless a waiver is obtained from the authorizer. In February of the school year, if the number of students is higher or lower than the number of students at the beginning of the school year, adjustments must be made in the June payment, with 50% of the annual per-pupil allocation added for additional students or subtracted if the total number of students is lower.

B. The following provisions govern special education funding.

(1) For each enrolled special education pupil, a public charter school must receive the average additional allocation calculated by the department for each school administrative unit for its special education students. These allocations must be paid on the same basis as the per-pupil allocations for operating funds.

(2) The school administrative unit of residence shall pay directly to the public charter school any federal or state aid attributable to a student with a disability attending the public charter school in proportion to the level of services for the student with a disability that the public charter school provides directly or indirectly.

C. Except as otherwise provided in this chapter, the State shall send applicable federal funds directly to public charter schools attended by eligible students. Public charter schools with students eligible for funds under Title I of the federal Elementary and Secondary Education Act of 1965, 20 United States Code, Section 6301 et seq. must receive and use

these funds in accordance with federal and state law. During the first year of operation, a public charter school must receive Title I funds on the basis of an estimated enrollment of eligible students, as agreed with its authorizer.

D. A public charter school may receive gifts and grants from private sources in any manner that is available to a school administrative unit.

E. A public charter school may not levy taxes or issue bonds secured by tax revenues.

F. In the event of the failure of the school administrative unit to make payments required by this section, the Treasurer of State shall deduct from any state funds that become due to the school administrative unit an amount equal to the unpaid obligation. The Treasurer of State shall pay over the amount to the public charter school upon certification by the department. The department shall adopt rules to implement the provisions of this paragraph.

G. Any money received by a public charter school from any source and remaining in the school's accounts at the end of any budget year remains in the school's accounts for use by the school during subsequent budget years and may not revert to the authorizer or to the State.

H. Nothing in this chapter may be construed to prohibit any person or organization from providing funding or other assistance for the establishment or operation of a public charter school. The governing board of a public charter school may accept gifts, donations or grants of any kind made to the school and expend or use such gifts, donations or grants in accordance with the conditions prescribed by the donor except that a gift, donation or grant may not be accepted if subject to a condition that is contrary to any provision of law or term of the charter contract.

I. Public charter schools have the same access as other noncharter public schools to any risk pool for high-cost special education services and to any fund for fiscal emergencies.

J. The department may establish a method of transferring funds to public charter schools that is an alternative to the method provided in this subsection.

§ 2414. Facilities

1. Facilities; property. A public charter school may acquire facilities and property in accordance with this subsection.

A. A public charter school has a 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.

B. A public charter school may negotiate and contract with a school administrative unit, the governing body of a state college or university or public community college or any other public or for-profit or nonprofit private entity for the use of a school building.

C. Library, community service, museum, performing arts, theater, cinema, church, community college, college and university facilities may provide space to public charter schools within their facilities under their preexisting zoning and land use designations.

D. A public charter school may purchase or lease at or below fair market value part or all of

any surplus or unused state-owned facility or property located in the State. The state agency in control of the facility may not require purchase or lease payments that exceed the fair market value of the property.

E. The same zoning rules that apply to other noncharter public schools apply to public charter schools.

2. Inspection; building code. The municipality in which a facility of a public charter school is located is the agency that has jurisdiction for the purposes of inspection of the facility and issuance of a certificate of occupancy for the facility. If the facility is located in an unorganized area of the State, the county has jurisdiction for those purposes. A facility of a public charter school is subject to the same building codes, regulations and fees that apply to other noncharter public schools.

3. Taxes. A facility, or portion thereof, used to house a public charter school is exempt from property taxes.

§ 2415. Miscellaneous

1. Transfer of credits. If a student who was previously enrolled in a public charter school enrolls in another noncharter public school in this State, the school to which the student transfers must accept credits earned by the student in courses or instructional programs at the public charter school in a uniform and consistent manner and according to the same criteria that are used to accept academic credits from other noncharter public schools.

2. Access to extracurricular and interscholastic activities. A public charter school is eligible for state-sponsored or school administrative unit-sponsored interscholastic leagues, competitions, awards, scholarships and recognition programs for students, educators, administrators and schools to the same extent as noncharter public schools. A public charter school student is eligible to participate in extracurricular activities not offered by the student's public charter school at the noncharter public school within the attendance boundaries of which the student's custodial parent or legal guardian resides or the noncharter public school from which the student withdrew for the purpose of attending a public charter school. A public charter school student is eligible for extracurricular activities at a noncharter public school subject to eligibility standards applied to full-time students of the noncharter public school. A school administrative unit or noncharter public school may not impose additional requirements on a public charter school student to participate in extracurricular activities that are not imposed on full-time students of the noncharter public school. Public charter school students shall pay the same fees as other students to participate in extracurricular or cocurricular activities. For each public charter school student who participates in an extracurricular or cocurricular activity at a noncharter public school, the public charter school must pay a reasonable share of the noncharter public school's costs for the activity, as determined through negotiations between the schools involved.

3. Retirement. A public charter school may establish a retirement plan or plans for employees. If a public charter school chooses to set up a plan with the Maine Public Employees Retirement System, the public charter school may establish a participating local district plan with the Maine Public Employees Retirement System under Title 5, chapter 425.

Sec. 6. Review of retirement laws. The Maine Public Employees Retirement System shall review the laws governing participating local districts' retirement plans and shall submit, by December 1, 2011, a report to the Joint Standing Committee on Appropriations and Financial Affairs that includes any proposed legislation necessary to fully implement this Act.

Sec. 7. Staggered terms. Notwithstanding the Maine Revised Statutes, Title 20-A, section 2405, subsection 8, of the initial members of the State Charter School Commission, one member

who is also a member of the State Board of Education serves a 3-year term, one member who is a member of the state board serves a 2-year term and one member who is a member of the state board serves a one-year term. Two members who are approved by the state board serve 3-year terms, one serves a 2-year term and one serves a one-year term.

Sec. 8. Public charter school; operational date. Notwithstanding the Maine Revised Statutes, Title 1, section 302, a public charter school application submitted to an authorizer, as defined in Title 20-A, section 2401, subsection 2, before July 1, 2012 is subject to statutory amendments enacted or rule amendments adopted after the effective date of this Act and before July 1, 2012.

Sec. 9. Department report. The Department of Education shall submit a report to the Joint Standing Committee on Education and Cultural Affairs by November 1, 2011. The report must include the status of the following initiatives:

1. A draft version of the major substantive rules that the department determines are necessary to implement this Act, including but not limited to rules relating to the provision and funding of special education services to public charter school students, the process for transferring funds to public charter schools and standards for department oversight and authority over public charter school authorizers. The provisionally adopted rules must be transmitted to the Legislature on or before January 13, 2012;

2. The department's proposed guidelines and interpretations regarding the procedures necessary to implement the public charter school legislation and the applicability of state laws and rules to public charter schools; and

3. The draft legislation that the department plans to submit to clarify or amend the statutory provisions established by this Act or that the department determines is necessary to implement a public charter school program in the State.

Sec. 10. Appropriations and allocations. The following appropriations and allocations are made.

EDUCATION, DEPARTMENT OF

Charter School Program N083

Initiative: Provides base allocations beginning in fiscal year 2012-13 for the public charter schools program.

FEDERAL EXPENDITURES FUND	**2011-12**	**2012-13**
All Other	$0	$500
FEDERAL EXPENDITURES FUND TOTAL	$0	$500

Effective 90 days following adjournment of the 125th Legislature, First Regular Session, unless otherwise indicated.

Chapter 140: PUBLIC CHARTER SCHOOLS

SUMMARY: This rule establishes standards and procedures for implementation of Title 20-A, chapter 112, governing the authorizing, oversight and operation of public charter schools in Maine. The rule requires public notice of activities of authorizers and charter schools, sets forth student enrollment procedures, establishes standards for the performance of authorizers, clarifies the funding of public charter schools, clarifies the process for petitioning for conversion of a noncharter public school, and provides criteria for determining when a charter school governing board is sufficiently independent of an education service provider with which the board may contract.

SECTION 1. PURPOSE

This rule provides standards and procedures for implementation of Title 20-A, chapter 112, relating to the authorizing, oversight and operation of public charter schools in Maine. The rule must be read as an accompaniment to the statute, not in place of the statute because the rule does not restate all statutory provisions.

SECTION 2. AUTHORIZERS AND AUTHORIZING OF CHARTER SCHOOLS

1. Practices and procedures

An authorizer must develop and maintain policies and practices consistent with nationally-recognized principles and professional standards for authorizing public charter schools.

For purposes of determining whether an authorizer's policies and practices conform to nationally-recognized principles and professional standards, the Department of Education will evaluate the authorizer's policies and practices on the basis of the principles and standards set forth in the publication, Principles and Standards for Quality Charter School Authorizing, published by the National Association of Charter School Authorizers, copyrighted 2010. This publication is available on the Department's Website on the Internet.

2. Maintaining list of interested parties

An authorizer shall maintain a list of persons interested in the activities of the authorizer and any charter schools that it may authorize. The authorizer shall notify persons on that list when the authorizer issues a request for proposals

(RFP) or accepts a charter school application, and when a charter school it authorizes begins accepting applications for enrollment. Notice may be provided by e-mail, except that it must be provided by regular mail for people who do not have e-mail at their homes.

3. Solicitation of Charter School Applications

A. In order to invite, solicit, encourage and guide the development of high-quality public charter school applications, an authorizer shall develop a request for proposals (RFP) that meets the standards of Title 20-A section 2406.

B. An RFP must be issued not fewer than 60 days from the deadline date for submission of applications.

C. An RFP must be published as broadly as possible to ensure that all entities interested in applying for a charter have notice of the opportunity to submit an application. At a minimum, notice of the RFP must be published on two consecutive weekends in the State Paper designated in Title 1, section 551 and must be provided to interested parties as described in subsection 2. The RFP must also be submitted to the department, and the department shall include the RFP, on the Department of Education charter school Website on the Internet.

4. Oversight of chartered schools

An authorizer is responsible for monitoring the performance and legal compliance of each charter school it authorized.

5. Reporting to the Department

In addition to any other report required by law or rule, an authorizer must submit the following to the Department or the Commissioner.

A. Annual report. An authorizer must submit a report to the Commissioner, annually, within 60 days of the end of each school fiscal year, summarizing the performance of all schools it has authorized, as well as the other specific information set forth in statute.

B. Decision on charters. An authorizer must report to the Commissioner, within 10 days of taking any of the following actions:

(1) Approval or denial of an application to open a charter school;

(2) Renewal or refusal to renew a charter; or

(3) Revocation of a charter.

C. Assessment results. An authorizer must report the results of state assessments to the Department in the same manner as other school administrative units report results.

6. Department oversight and sanction of authorizers

The Department is authorized to investigate and impose sanctions on authorizers in response to deficiencies in authorizer performance or legal compliance.

For purposes of determining whether an authorizer's performance conforms to nationally recognized principles and professional standards, the Department will compare the authorizer's performance to the principles and standards set forth in the publication, Principles and Standards for Quality Charter School Authorizing, published by the National Association of Charter School Authorizers, copyrighted 2010. This publication is available on the department's charter school Website on the Internet.

7. Collaborating authorizers.

A local school board may join with other local school boards or with the State Charter School Commission to serve as authorizer of a regional public charter school. The collaborating entities must form a legal structure that sets forth the rights and responsibilities of each party in the collaborative.

A charter school must be located within the boundaries of one of the school administrative units that is a member of the collaborative. A charter school authorized by a collaborative is considered to have been authorized by a local school board, for purposes of determining when the limit of 10 charter schools has been reached under Title 20-A section 2405, subsection 9.

8. Education service providers

A public charter school may contract with an education service provider for a limited scope of education or management services. An authorizer shall ensure that the scope of services delivered through such a contract does not remove responsibility and control of essential programmatic elements of the school from the charter school's governing board.

A charter school's governing board, leaders and managers must be legally and operationally independent from any education service provider. In determining whether boards, leaders and managers are independent of the service provider, the authorizer must consider all factors, including but not limited to :

A. Whether the charter school's governing board is selected by, or includes members who are employees of, the education service provider;

B. Whether the charter school has an independent attorney, accountant and audit firm that works for the charter school and not the education service provider;

C. Whether the contract between the charter school and the education service provider was negotiated at "arms length," clearly describes each party's rights and responsibilities and specifies reasonable and feasible terms under which either party may terminate the contract;

D. Whether the fee to be paid by the charter school to the education service provider is reasonable for the type of services provided; and

E. Whether any other agreements, e.g., loans or leases between the charter school and the education service provider are fair and reasonable, documented appropriately, align with market rates, and include terms that will not change if the contract is terminated.

SECTION 3. CHARTER SCHOOL OPERATIONS

1. Notice of charter school openings

A charter school must give reasonable public notice that it has openings for student enrollment, at least 30 days before the enrollment application deadline. Notice must be provided in a manner designed to give notice to all eligible students and must include, at a minimum, publication on two consecutive weekends in the State Paper designated in Title 1, section 551 and notice to interested parties as provided in Section 2, subsection 2. Notice must also be submitted to the department, and the department shall include the notice on the Department's charter school Website on the Internet. Notice must also be provided to any person who has asked the authorizer of the school for notice of school openings.

2. Enrollment

A. Application process. A charter school may require a student to fill out an application form to indicate intent to enroll in the school, and to provide information about the student and his or her interests and experience. Information on the application may be used in discussions with a student or parent regarding enrollment in the charter school, but may not be used to prevent a student from enrolling. A charter school may encourage, but may not require, applicants or their parents to attend informational meetings or interviews as a condition of enrollment or continued

enrollment. A charter school may not condition enrollment on the results of any test of ability or achievement.

B. Deadline for declaration of student intent. A charter school shall require a written declaration of intent to enroll in the charter school in the upcoming school year from each student who wishes to enroll in the charter school, including students who have an enrollment priority or preference. The written declaration must be signed by the student's parent and submitted to the charter school not sooner than January 1st and not later than the 3rd Tuesday in January of the calendar year in which the school year will begin. If the number of students submitting declarations of intent is smaller than the number of openings in any grade, level or division of the school, the charter school shall notify the student and his or her parent of the right to enroll in the upcoming school year, and shall seek a written commitment to enroll from each student and parent.

C. Random selection process. If the number of students submitting a declaration of intent to enroll exceeds the number of openings in a school, grade, level or division, the charter school must notify students with preferences or priorities of their right to enroll and then shall conduct a random selection process to fill remaining openings.

(1) The selection process must be conducted not later than the 1st Tuesday in February. The selection must be conducted in public and must be designed to ensure that each student has an equal chance of being selected for enrollment. If the process is a lottery involving drawing of names or other objects to make a selection, a disinterested party must perform the drawing of names or objects.

(2) Reasonable public notice must be given at least one week prior to the lottery or other selection process.

(3) The names of students and the order in which they were selected must be recorded. All names must be placed in the order of selection, and any names that exceed the enrollment limit for a grade, level or division of the charter school must be placed on a waiting list for that grade, level or division.

(4) If the number of students selected for enrollment from any school administrative unit exceeds the applicable 5% or 10% limit set forth in Title 20-A, section 2404, subsection 2, paragraphs D and E, the excess names must be moved from the enrollment list to the top of the waiting list, in the order selected. If an opening occurs after the initial selection process, a student placed on a waiting list under this subparagraph may be selected for enrollment from the waiting list only if the student's enrollment is within the 5% or

10% limit; otherwise, the student's name remains on the waiting list. For purposes of the 5% and 10% limits, the charter school shall use enrollment figures for a school administrative unit (SAU) as determined by the most recent October subsidizable pupil count.

D. Commitment to enroll. By February 15th, each student who has been notified of the right to enroll in a charter school must submit to the charter school a written form committing to enroll in the charter school in the upcoming school year, signed by the student's parent. The deadline for submission of the form committing to enroll in a charter school is extended to March 1st for a student who has an Individualized Education Plan (IEP), if needed to allow time for the student's IEP Team to meet to discuss enrollment in the charter school.

E. Notice to resident SAU. Within 5 school days of receiving a commitment to enroll form, a charter school must notify the resident SAU of the student who has submitted the form.

F. Date of enrollment. Notwithstanding the commitment to enroll made under paragraph C, a student is not considered to have enrolled in a charter school until the date of actual enrollment.

3. State and local funding

The resident SAU of a student enrolled in a public charter school must transfer the following funds to the public charter school in which the student is enrolled:

A. The following operating funds:

(1) The per-pupil operating allocation amount, defined as the EPS per-pupil rate set by the department pursuant to Title 20-A, section 15676, based on the student's grade level and adjusted, as appropriate, for economic disadvantage and limited English proficiency pursuant to Title 20-A, section 15675, subsections 1 and 2.

(2) The average per-pupil transportation expense in the resident SAU, calculated by dividing the resident SAU's (Transportation – EPS allocation) by the resident SAU's (Average Calendar Year Pupils), as reported on the resident SAU's ED-279 for the year of allocation.

B. If the charter school is eligible, the resident SAU's targeted funds allocation for that student for technology, standards-based education and PreK-2 programs. To be eligible to receive targeted funds, the charter

school must file plans and receive approval from the department pursuant to DOE Rule Chapter 7.

C. If the charter school has an approved gifted and talented program, a portion of the resident SAU's Gifted and Talented program funds, in proportion to the number of its resident students who are in a gifted and talented program in the charter school. The charter school shall report its authorized gifted and talented program expenditures to the resident SAU of each student served in an approved gifted and talented program.

D. No funds for career and technical education. A charter school does not pay for its students to attend career and technical education programs, and therefore is not entitled to career and technical education funding. The school administrative unit in which the charter school student resides must pay the cost of attendance for the student at a CTE program.

4. Federal funds

A. A charter school that is a school within an SAU must receive an equitable portion of federal entitlement and grant funds from the SAU as determined by federal laws and regulations applicable to each federal funding program.

B. A charter school that is a local educational agency receives federal entitlement and grant funds directly from the department. The amounts, timing and corresponding charter school obligations are determined by the department in accordance with the federal laws and regulations governing the program.

5. Staff

As provided by statute, public charter school teachers are not required to comply with Maine teacher certification requirements if they have an advanced degree, professional certification or unique expertise or experience in the curricular area in which they teach. A teacher of a core academic subject must also meet any criteria set forth in federal law.

6. Data and reporting

A charter school shall provide the department with information that the department requests to carry out the purposes of the Essential Programs and Services Funding Act, Title 20-A, chapter 606-B. The information must be provided according to the time schedule, and in the form required by the department.

7. Fees

A charter school is subject to the same limitation on fees as other public schools, including the requirement of Title 20-A, section 4002. A charter school may not charge students or their parents an application fee.

SECTION 4. SCHOOL ADMINISTRATIVE UNITS

1. SAU as authorizer.

A school administrative unit board that intends to develop and issue an RFP for a charter school within the boundaries of the SAU must notify the department of its intent as soon as the board begins developing an RFP. The department will post notice of the SAU's intent on the department's charter school Website on the Internet.

2. Transfer of records to charter school

A school administrative unit shall comply with Title 20-A section 6001-B, subsections 1 and 2, for the purpose of providing timely transfer of education records regarding a resident student who is enrolling in a charter school.

3. Transfer of Funds to Charter School.

If a resident student of the SAU enrolls in a public charter school, the SAU must transfer funding as provided in section 4, subsection 3 and 4. A local school board may ask for assistance from the department in determining the amounts to be transferred.

4. Dispute over funds; Withholding by State Treasurer

If a dispute arises between a SAU and a public charter school over the funding to be transferred to the charter school, either party may seek informal resolution of the dispute by the Commissioner by submitting a letter setting forth their arguments.

If the SAU fails to transfer undisputed funds to a public charter school within the time frame set forth in statute, the public charter school shall inform the department of the amount due and the date on which the amount was due. The department shall certify to the State Treasurer the amount of funds to be withheld from state funds due to the school administrative unit that has failed to transfer funds to the charter school.

SECTION 5. OTHER; GENERAL

1. Petition for conversion of a noncharter public school

A person or entity that intends to seek conversion of a noncharter public school to a public charter school must collect the required number of signatures on petitions to support the conversion, as provided in Title 20-A section 2406, subsection 2, paragraph G. A school administrative unit must provide a reasonable opportunity for the person or entity to communicate with each teacher and parent about the petition, and to seek signatures, without disclosing confidential information about teachers, students or their families. For example, an SAU may allow a person seeking petition signatures to send notice home to parents in the same manner that the school sends information home to parents about other school matters.

A school administrative unit shall determine whether sufficient signatures have been collected on the petition as follows.

A. The number of signatures required to meet the standard for a majority of teachers in the existing noncharter school is determined by the number of teachers employed full-time on the date 45 days before the petition is submitted to the authorizer.

B. To meet the standard for obtaining signatures from a majority of parents of students in the existing noncharter school, the petition must contain signatures from all parents and legal guardians of record of a majority of the students in the school. The number of students in the school is determined as of the date 45 days before the petition is submitted to the authorizer. If a student has more than one parent or legal guardian of record, the petition must be signed by each parent and legal guardian to be considered valid; signatures from more than one parent or guardian of a single student are counted as one signature.

STATUTORY AUTHORITY: 20-A MRSA Section 2403(6)

EFFECTIVE DATE: _____

An Act to Amend and Clarify the Charter School Law

Emergency preamble. Whereas, acts and resolves of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, legislation enacted during the First Regular Session of the 125th Legislature authorized the creation of public charter schools in Maine; and

Whereas, charter school authorizers are studying the law and potential charter school founders are making plans for schools, which could open their doors as early as July 1, 2012; and

Whereas, the Legislature directed the Department of Education to review the new law to determine whether any clarifications were needed, prior to the authorization or opening of new charter schools; and

Whereas, charter school authorizers and founders need clarity about the law's requirements as soon as possible; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now therefore,

Be it enacted by the People of Maine as follows:

Sec. 1. 20-A MRSA 2403, subsection 5 is amended to read:

5. **Investigation and sanction of authorizers.** Consistent with the policies and practices established in subsection 4, the department may investigate and, as appropriate, institute sanctions in response to deficiencies in authorizer performance or legal compliance. <u>In addition to any other sanction authorized, the commissioner may suspend a deficient authorizer's ability to issue new charters until the commissioner is satisfied that the deficiencies have been corrected.</u>

Sec. 2. 20-A MRSA 2405, subsection 1, paragraph C is amended to read:

C. A collaborative among <u>local school boards</u> ~~authorizing entities~~ that forms to set up a regional public charter school <u>to be located</u> <u>within the area governed by those school boards</u>.

Sec. 3. 20-A MRSA 2405, subsection 4, paragraphs C, D and E are amended to read

C. The status of the authorizer's public charter school portfolio of approved charter applications, identifying all public charter schools within that portfolio as:

(1) Approved, but not yet open;
(2) Operating;
(3) Renewed;
(4) Transferred;
(5) Terminated;
(6) Closed; or
(7) Never opened; ~~and~~

D. The oversight and services provided by the authorizer to the public charter schools under the authorizer's purview; and

E. The total amount of funds collected from each school it authorized pursuant to subsection 5, paragraph B, and the costs incurred by the authorizer to oversee the school.

Sec. 4. 20-A MRSA 2405, sub 8, paragraphs A and B are amended to read:

A. The commission consists of 7 members appointed by the state board for 3-year terms. The commission shall elect a chair and such other officers as may be necessary to conduct its business. Four members constitute a quorum.

(1) Three members must be members of the state board, and those 3 members shall nominate the other 4 members who must be approved by a majority vote of the state board.

(2) Members appointed to the commission must have diverse professional experience in education, social services, youth training, business startup and administration, accounting and finance, strategic planning and nonprofit governance. The following provisions apply to the appointment of the 4 other members nominated and appointed by state board members pursuant to subparagraph (1):

(a) In appointing members to the commission, the state board shall give proper consideration to candidates with experience in a noncharter public school in the State in one of the following positions: school board member, superintendent, teacher and special education director;

(b) The state board shall ensure that the joint standing committee of the Legislature having jurisdiction over education matters has an opportunity to meet and interview the candidate or candidates nominated for the commission;

(c) Within 10 days of meeting with the candidate or candidates, the joint standing committee of the Legislature having jurisdiction over education matters shall deliver to the state board its written appraisal of the strengths and weaknesses of the candidate or candidates; and

(d) The state board shall consider the appraisal of the joint standing committee of the Legislature having jurisdiction over education matters prior to appointing a candidate or candidates to the commission.

(3) A commission member may not serve more than 3 consecutive terms, but may serve again after not serving on the commission for at least one term.

(4) A commission member may not receive compensation, but may be reimbursed for travel expenses.

(5) A Commission member who is appointed as a member of the State Board serves on

the Commission only during that person's membership on the State Board. Upon expiration of that person's State Board membership, the position on the Commission becomes vacant and must be filled in the manner provided for filling vacancies.

(6) A vacancy on the Commission must be filled in the same manner as applies to the position in which the vacancy occurs, including, if applicable, a review by the joint standing committee of the Legislature having jurisdiction over education matters. A vacancy is filled for the remainder of the unexpired term. If the person serves more than 1-1/2 years of an unexpired term, that service counts as one term for purposes of the limitation set forth in subparagraph (3).

(7) A member of the Commission may be removed, for failure to perform the duties of office, by a majority vote of the State Board of Education.

B. The commission shall adopt rules for the organization and operation of the commission and to develop, implement and refine its procedures for authorizing public charter schools in this State. Rules adopted by the commission pursuant to this paragraph are routine technical rules pursuant to Title 5, chapter 375, subchapter 2-A.

Sec. 5. 20-A MRSA 2405, subsection 9 is amended to read:

9. Transition period. The public charter school program set out in this chapter must begin with a 10-year transition period, beginning on the effective date of this chapter. During the transition period, the commissioner shall register the charters approved by all authorizers in chronological order by date of approval under this chapter. During the transition period, only 10 public charter schools may be approved by the State Charter School Commission ~~authorizers other than local school boards~~. Once the cap is reached, the commissioner may not accept further registrations from the State Charter School Commission ~~authorizers other than local school boards~~ and only local school boards may approve charters until the end of the transition period.

This subsection is repealed July 1, 2022.

Sec. 6. 20-A MRSA 2410, subsection 2 is amended to read

2. Notification of unsatisfactory performance or compliance. In the event that a public charter school's performance or legal compliance appears unsatisfactory, the authorizer shall promptly provide written notice to ~~notify~~ the public charter school of perceived problems and provide reasonable opportunity for the school to remedy the problems.

Sec. 7. 20-A MRSA 2410, subsection 6, paragraph C is enacted to read:

C. The authorizer shall include in its rules and in the charter contract a description of the standards and processes under which the authorizer may pursue revocation of the charter contract. The process must include prior written notice and opportunity to remedy

pursuant to subsection 2, as well as an opportunity for the charter school to be heard prior to a decision on revocation.

Sec. 8. 20-A MRSA 2412, subsection 5, paragraph C is amended to read:

C. Governing boards are subject to and must comply with section 1002, section 1004 and Title 1, chapter 13.

Sec. 9. 20-A MRSA 2412, subsection 5, paragraph G and H are enacted to read:

G. Charter schools are subject to the same federal and state laws, regulations and rules regarding special education as noncharter public schools. Notwithstanding any law or rule to the contrary, a charter school takes over responsibility for special education for a student transferring to the charter school on the first day of school at the charter school, unless the charter school and the transferring school agree to an earlier date.

H. A charter school student's eligibility for and funding of career and technical education programming is the same as if the student were attending school within his or her resident school administrative unit. If the charter school is located outside the student's resident school administrative unit, the charter school is responsible for ensuring that the student is transported to the career and technical education program or to a location from which the student will be transported by the resident SAU, the CTE region or the CTE center.

Sec. 10. 20-A MRSA 2413, sub-2, 1st paragraph is amended to read:

2. Revenue provisions. ~~All state~~ State and local operating funds follow each student to the public charter school attended by the student, except that the school administrative unit of the student's residence may retain up to 1% of the per-pupil allocation described in this subsection to cover associated administrative costs.

Sec. 11. 20-A MRSA, §2413, sub-§2, ¶A-1, is enacted to read:

A-1. A school administrative unit is not required to send funds to a public charter school for a student enrolled in the charter school's pre-school or pre-kindergarten program if the school administrative unit of the student's residence does not offer that program to its own residents.

Sec. 12. 20-A MRSA 2413, subsection 3, paragraph B is amended to read:

B. The following provisions govern special education funding.

(1) For each enrolled special education pupil, a public charter school must receive the average additional allocation calculated by the department under section 15681-A, subsection 2 for each school administrative unit for its special education students. These allocations must be paid on the same basis as the per-pupil allocations for operating funds.

(2) The school administrative unit of residence shall pay directly to the public charter school any federal or state aid attributable to a student with a disability attending the public charter school in proportion to the level of services for the student with a

disability that the public charter school provides directly or indirectly.

(3) The school administrative unit of residence shall pay to the public charter school any additional allocation assigned to the unit because of a high-cost in-district or high-cost out-of-district placement pursuant to section 15681-A, subsection 2, paragraph B or C in the year in which the allocation is assigned to the school administrative unit.

(4) If the charter school in which the student is enrolled was authorized by a local school board, the funds under his paragraph must be paid to the local school board that authorized the charter school, rather than directly to the charter school. The local school board that authorized the charter school is responsible for ensuring that special education services are provided to students in that school, pursuant to section 2412, subsection 2, paragraph A.

Sec. 13. 20-A MRSA 2413, subsection 3, paragraph F is amended to read:

F. In the event of the failure of the school administrative unit to make payments required by this section, the Treasurer of State shall deduct from any state funds that become due to the school administrative unit or to the municipalities within the school administrative unit an amount equal to the unpaid obligation. The Treasurer of State shall pay over the amount to the public charter school upon certification by the department. The department shall adopt rules to implement the provisions of this paragraph.

Sec. 14. 20-A MRSA 2413, subsection 3, paragraph I is amended to read:

I. Public charter schools have the same access as other noncharter public schools to any risk pool for high-cost special education services and to any fund for fiscal emergencies, provided the risk pool or the fund is operated by the State or by the charter school's authorizer.

Emergency clause. In view of the emergency cited in the Preamble, this legislation takes effect when approved.

SUMMARY

This bill amends the law authorizing creation of public charter schools.

The bill makes the following changes with regard to authorizers of public charter schools. It allows the Commissioner of Education to suspend an authorizer's ability to enter into new charter contracts if the Commissioner finds that the authorizer is deficient in performing its functions. It clarifies the functioning of local school boards that join together to form a regional charter school, and excludes charter schools formed by such collaboratives from the 10-school limit. It clarifies membership and operations of the State Charter School Commission, including specifying that members who are appointed because of their membership on the State Board of Education continue to serve on the Charter School Commission only as long as they are members of the State Board of Education. It requires charter school authorizers to give charter schools written notice of deficiencies in the school, and to provide written notice of its charter revocation procedures and criteria.

The bill makes the following changes with regard to charter schools. It provides that governing boards of charter schools are subject to the same conflict of interest provisions as noncharter public school boards. It clarifies when charter schools take over responsibility for special education services for a student transferring from a noncharter public school, and clarifies special education funding. The bill changes the law regarding payment of special education funds to a charter school authorized by a local school board by requiring that the payments be made to the local school board, not to the charter school. The bill ensures that charter school students have the same access to career and technical education programs as students in the noncharter public school in the student's resident SAU.

Under current law, if a SAU fails to make payment to a public charter school, the Treasurer of State is directed to withhold payments to that SAU. This bill provides that the Treasurer may withhold those funds from the municipalities that are members of the SAU. Finally, the bill provides that charter schools have access to high-risk pools and emergency funds operated by the State or by the school's authorizer, but not access to local high-risk or emergency funds.

maine PERS
Public Employees Retirement System

Sandra J. Matheson, *Executive Director*
John C. Milazzo, *General Counsel and Chief Deputy Executive Director*

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December 1, 2011

Senator Richard W. Rosen, Senate Chair
Representative Patrick S.A. Flood, House Chair
Members, Joint Standing Committee on Appropriations and Financial Affairs
5 State House Station
Augusta, ME 04333-0002

Dear Senator Rosen, Representative Flood and Members of the Appropriations Committee:

The law (PL 2011, c. 414) enacted during the First Regular Session of the 125th Legislature that allows for the establishment of charter schools in Maine permits those schools to establish a retirement plan for its employees, including that of a participating local district with the Maine Public Employees Retirement System ("MainePERS"). Section 6 of the law requires MainePERS to review its laws governing participating local districts' retirement plans and to submit a report that includes any proposed legislation necessary to implement the Act. This letter serves as that report.

Enclosed for your consideration is proposed legislation that MainePERS believes is necessary to implement the charter school law as it relates to retirement plan coverage through MainePERS. We recommend that the definition of "local district" be expanded to include charter schools, to ensure that those schools are eligible to participate in MainePERS as participating local districts.

Participating local districts are public entities that have chosen to provide retirement plans to their employees through MainePERS. The costs of participation are paid by the participating local district employers and employees. The State does not contribute towards the cost of MainePERS benefits for participating local district employees.

Based on our understanding of the law, teachers in charter schools, including those who leave employment with a public school to teach at a charter school, will no longer be covered by the current MainePERS State Employee and Teacher Retirement Program, but rather, will need to be covered by a retirement plan established by the charter school. Therefore, we recommend making clear in retirement law that the definition of "public school" does not include charter schools and have provided proposed legislation to that effect.

LOCATION: 96 Sewall Street (Corner of Capitol and Sewall) MAILING ADDRESS: 46 State House Station, Augusta, ME 04333-0046
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www.mainepers.org

The exclusion of teachers in charter schools from membership in the MainePERS State Employee and Teacher Retirement Program means that the State is not responsible for payment of the employer portion of the retirement contributions, as it currently is for teachers in public schools. If the charter school becomes a participating local district with MainePERS, the school will be responsible for payment of any employer retirement contribution.

The Internal Revenue Service ("IRS") has recently published an advance notice of public rulemaking concerning the definition of the term "governmental plan under Section 414(d) of the Internal Revenue Code. Employees of a charter school can only participate in a governmental plan such as the one adopted by a participating local district if the charter school is considered a governmental unit under tax law. Pension counsel has advised MainePERS that one of the items under discussion is whether a "charter school" is a governmental unit. Although it is impossible to predict what position the IRS will eventually take on this question, we believe that the structure of the charter schools as set forth under Maine law argues strongly that the schools are properly considered "governmental units."

We are available to discuss this matter further with the Committee at its convenience.

Sincerely,

Sandy Matheson
Executive Director

Enclosure
cc: Members, Board of Trustees
Maureen Dawson, Office of Fiscal and Program Review
Chris Mann, Assistant Attorney General

Sec. 1. 5 MRSA Section 17001, subsection 19, as enacted by PL 1985, c. 801, §§5, 7 is amended to read:

19. Local district. "Local district" means:

A. Any county, municipality, quasi-municipal corporation or incorporated instrumentality of the State or of one or more of its political subdivisions;

B. Any incorporated association of employees of the State or employees of any of the entities set out in paragraph A;

C. Any incorporated association of any of the entities set out in paragraph A;

D. Any entity eligible to become a participating local district before January 1, 1976;

E. Any entity participating in the retirement system before January 1, 1976;

F. Any educational institution in the State teaching courses equivalent to or higher than secondary institutions; or

G. A public charter school, as authorized by Title 20-A, chapter 112.

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Sec. 2. 5 MRSA Section 17001, subsection 30, as enacted by PL 1985, c. 801, §§5, 7 is amended to read:

30. Public school. "Public school" is defined as follows.

A. "Public school" includes:

(1) Any public school conducted within the State under the authority and supervision of a duly elected board of education, superintending school committee or school directors; and

(2) Any school which received any direct state aid in 1950 and municipal tuition funds amounting to at least the amount of that state aid during 1950.

B. "Public school" does not include:

(1) Maine Wesleyan Seminary and College, commonly known as Kents Hill School, as of September 23, 1971;

(2) Bridgton Academy, as of September 1, 1979;

(3) Gould Academy, as of September 1, 1979;

(4) North Yarmouth Academy, as of September 1, 1979; and

(5) Public Charter Schools, as authorized by Title 20-A, chapter 112.

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