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CHARTER SCHOOL ACCOUNTABILITY: LEGAL CONSIDERATIONS CONCERNING NONRENEWAL AND REVOCAION PROCEDURES

*By Suzanne E. Eckes, Jonathan A. Plucker, and Sarah A. Benton**

I. INTRODUCTION

Charter schools retain greater autonomy than traditional public schools and in return have greater accountability to the public if they fail to accomplish their stated educational objectives.¹ The likely consequence of failure is that the charter will either be revoked or not renewed.² Revocation is the withdrawal of a school's charter during its term, and nonrenewal refers to the decision by a charter-granting authority to not enter into a new contract once the term of an existing contract expires.³

As of fall 2002, 194 schools' charters had either been revoked or not renewed, with these closures occurring in twenty-six of the thirty-three jurisdictions (thirty-two states and the District of Columbia) that had chartered schools up to that time.⁴ Although these closures comprise slightly less than seven percent of all charter schools, the number is large enough to warrant careful consideration of charter revocation and

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1. Chester E. Finn, Jr. et al., *Charter Schools in Action: Renewing Public Education* 15 (Princeton U. Press 2000).

2. *Id.* at 16.

3. Julie F. Mead, *Devilish Details: Exploring Features of Charter School Statutes That Blur the Public/Private Distinction*, 40 Harv. J. on Legis. 349, 370 (2003).

4. Ctr. for Educ. Reform, *Charter School Closures: The Opportunity for Accountability* 3 (Melanie Looney ed., Ctr. for Educ. Reform Oct. 2002) (available at http://www.edreform.com/_upload/closures.pdf).

nonrenewal processes.⁵ By understanding the reasons behind revocations and nonrenewals, legislators and policy makers can draft clearer charter school documents in the future that will enable schools to avoid many of the mistakes that have been made in the past.

One of the primary reasons for past problems is that state charter laws and policies set forth revocation and nonrenewal procedures in varying levels of detail, with some state laws and policies providing little guidance or specificity.⁶ This statutory vagueness creates a strong possibility that many charter schools will be involved in unnecessary legal challenges. Recent court cases in Missouri, Washington, D.C., and Florida, for example, involving charter revocations and nonrenewals suggest that charter laws and policies need more clearly-defined parameters.⁷

The purpose of this article is to address some of the legal issues surrounding revocation and nonrenewal processes and procedures. First, the article offers a general overview of the charter school concept, with a focus on the process of issuing a charter. Then, it discusses various existing revocation and nonrenewal procedures. Next, it presents a statutory analysis to demonstrate the strength of statutory language regarding revocation and nonrenewal in various states. Finally, the article analyzes recent litigation involving revocation and nonrenewal procedures. These cases demonstrate the importance of providing procedural safeguards by using clear and specific language in the statutes governing revocation and nonrenewal, specifically language that explains the grounds for the decision to revoke or not to renew. This analysis will also demonstrate the importance of adhering to constitutional requirements when developing these guidelines, and of developing a consistent and predictable appeals process for revocation or nonrenewal situations. In short, without statutory clarity of charter revocation and renewal guidelines, courts cannot guarantee consistency, nor can schools guarantee compliance, inevitably resulting in needless litigation.

II. CHARTER SCHOOLS AND THE CHARTER PROCESS

“A charter school is a publicly funded, nonsectarian, tuition-free

5. Sandra Vergari, *Charter Schools: A Significant Precedent in Public Education*, 59 N.Y.U. Annual Survey of Am. L. 495, 500–01 (2003).

6. See e.g. Utah. Code Ann. § 53A-1a-510 (2005).

7. *Richard Millburn Pub. Charter Alt. High Sch. v. Cafritz*, 798 A.2d 531 (D.C. 2002); *Orange Ave. Charter Sch. v. St. Lucie County Sch. Bd.*, 763 So. 2d 531 (Fla. 4th Dist. App. 2000); *State ex rel the Sch. Dist. of Kan. City v. Williamson*, 141 S.W.3d 418 (Mo. App. 2004).

school that has greater autonomy than traditional public schools.”⁸ What truly sets charter schools apart from other schools is its charter. The charter, a document that formally establishes the school, is a performance contract that details the school’s mission, program goals, methods of measuring success, and the types of students it will serve.⁹ A charter school functions as a public school and receives its charter or contract from a public agency such as a local school district, city office, or university.¹⁰ The entity that issues the charter is known as a sponsor.¹¹ The sponsor serves as the public’s primary formal agent for holding charter schools accountable for their performance since the sponsor has both the power to issue the charter and to terminate it.¹²

Charters generally provide for only a limited term of operation, with most charters remaining effective for three to five years.¹³ In Indiana, for example, a charter may be granted for “not less than three years.”¹⁴ If a charter school fails to satisfy the requirements of its charter, the sponsor may take steps to close the school.¹⁵ Some commentators have described this type of accountability as a “public [marketplace] in which a school’s clients and stakeholders reward its successes, punish its failures, and send it signals about what needs to change.”¹⁶ This free market approach to public education—in which schools that do not meet specific standards cease to exist—is a philosophical cornerstone of many school-choice initiatives, including the creation of charter schools.¹⁷

8. Suzanne Eckes & Jonathan Plucker, *Charter Revocations: Legal Considerations Concerning Procedure*, 2 Education Policy Briefs (newsletter of the Ctr. for Evaluation & Educ. Policy) 1, 1 (Fall 2004) (available at http://ceep.indiana.edu/projects/PDF/PB_V2N5_Fall_2005_EPB%20Charter%20Revocations.pdf); Preston Green, *Racial Balancing Provisions and Charter Schools: Are Charter Schools Out on a Constitutional Limb?*, 2001 BYU Educ. & L.J. 65 (2001).

9. Eckes & Plucker, *supra* n. 8, at 1; Jay Heubert, *Schools Without Rules? Charter Schools, Federal Disability Law and the Paradoxes of Deregulation*, 32 Harv. Civ. Rights-Civ. Libs. L. Rev. 301 (1997).

10. Finn, *supra* n. 1, at 16.

11. *Id.* at 15.

12. *Id.* at 16.

13. U.S. Dept. of Educ., *The Charter School Roadmap, Oversight, Renewal and Revocation* ¶ 2, <http://www.ed.gov/pubs/Roadmap/ch8.html> (Sept. 1998).

14. Ind. Code Ann. § 20-24-4-2(5)(A) (West 2005).

15. Finn, *supra* n. 1, at 16.

16. Bruno V. Manno, Chester E. Finn, Jr. & Gregg Vanourek, *Accountability Through A Picture Window*, 58 Sch. Adminstr. 64, 64 (Feb. 2001) (available at <http://www.aasa.org/publications/saarticledetail.cfm?ItemNumber=3950&snItemNumber=950&tItemNumber=951>). For an analysis of the complexities involved in charter school accountability systems, see F.M. Hess, *Whaddya Mean You Want to Close My School? The Politics of Regulatory Accountability in Charter Schooling*, 33 Educ. & Urb. Socy. 141 (2001).

17. Katrina Bulkley, *Educational Performance And Charter School Sponsors: The Accountability Bind*, 9 Educ. Policy Analysis Archives 37 (Oct. 1, 2001), <http://epaa.asu.edu/epaa/v9n37.html>.

Sponsors face several challenges when enforcing accountability through revocation or nonrenewal. First, sponsors are sometimes reluctant to hold charter schools accountable because they may view the closure of a single charter school as reflective of the failure of the entire charter school movement.¹⁸ A second problem facing sponsors is that it can be difficult to determine whether an acceptable level of performance and achievement is taking place at the school. This is especially true when standardized assessments are used to measure the performance of the programs.¹⁹ Recognizing the qualities that add value to charter schools cannot always be measured by standardized testing. Although these schools do not always attain the educational ideal, many parents who choose to send their children to charter schools view them as the best available educational option.²⁰ As a result, these parents often add intangible value by becoming personally invested in the success of both their child and the school.²¹

Because of the difficulties in measuring performance, sponsors often use proxies like parental satisfaction, accreditation, or the existence of a waiting list for a place in the school, to justify their determination that a school is successful.²² The consequence of using diverse indicators to measure success, however, is that sponsors must spend scarce time and resources to gather large amounts of information on each charter school.²³

Finally, perhaps the most prominent challenge facing sponsors in making decisions regarding revocation or nonrenewal is the prospect of uprooting a community which has formed around a school. Indeed, the nonrenewal or revocation of a charter creates instability in the lives of the teachers, students, and parents, the threat of which may overshadow the sponsor's need to define the standard of performance accountability.²⁴

III. CHARTER REVOCATION AND NONRENEWAL

In holding charter schools accountable, sponsors must have a reliable means of assessing the schools' performance and terminating their

18. H.R. Ed. & the Workforce Comm., *Hearing on The Success of Charter Schools*, 106th Cong. 28 (Sept. 28, 2000).

19. Bulkley, *supra* n. 17, at "Challenge 2."

20. Finn, *supra* n. 1, at 138.

21. *Id.*

22. Bulkley, *supra* n. 17, at "Challenge 2."

23. See U.S. Charter Schs., *Charter School Accountability, Using the Data*, http://www.uscharterschools.org/gb/account_auth/using_data.htm (accessed Sept. 19, 2006).

24. Bulkley, *supra* n. 17, at "Challenge 3."

contracts when charter schools fail to meet expectations.²⁵ Although the details vary by state, generally a sponsor may revoke or not renew a charter if a school fails to meet state statutory requirements. In general, state statutes allow for the revocation or nonrenewal of a charter if there is a material violation of provisions of the charter, a failure to make reasonable progress toward the required educational objectives of the charter, a failure to comply with fiscal accountability procedures or fiscal management, or for a violation of any laws that have not been exempted by the charter.²⁶ In some states, sponsors are allowed to expand upon the statutory grounds for revocation and specify their own unique terms.²⁷ For example, one Indiana sponsor's charter school agreement states that a charter may be revoked if the "Charter Schools Director believes the health or safety of students attending the Charter School may be in jeopardy."²⁸

Some sponsors approach revocation on a case-by-case basis, while others have developed more generalized protocols that apply to all of their schools. The District of Columbia, for example, has adopted such a protocol.²⁹ It published a "Table of Remedies for Substandard Performance" which clearly defines unacceptable achievement levels and behavior and describes the consequences that will follow.³⁰ The D.C. Board's policy provides charter schools with five potential "stages of status" when the adequacy of their performance is in question. Initial problems merit "notice of concern," while substantial, ongoing problems result in revocation.³¹ The Board will only move a charter school from one status to another if certain well-defined conditions are present.³² Each of the stages requires a response from the charter school.³³

As mentioned, state statutory language concerning the procedures

25. U.S. Dept. of Educ., *supra* n. 13, at ¶ 1.

26. Jennifer T. Wall, *The Establishment of Charter Schools: A Guide to Legal Issues for Legislatures*, 1998 BYU Educ. & L.J. 69, 92 (1998).

27. Mayor's Off. of Indianapolis, *Sample Charter School Agreement* § 16, http://www.indygov.org/eGov/Mayor/Education/Charter/Schools/Starting/sample_agreement.htm (accessed Sept. 19, 2006).

28. *Id.* at § 16.4i.

29. Natl. Assn. of Charter Sch. Authorizers, *Table of Remedies for Substandard Performance*, [http://www.charterauthorizers.org/files/nacsa/AnnualConf/conf04C\(Handouts\)-%20RightingBoatMidstream.pdf](http://www.charterauthorizers.org/files/nacsa/AnnualConf/conf04C(Handouts)-%20RightingBoatMidstream.pdf) (accessed Sept. 19, 2006).

30. *Id.*

31. *Id.*

32. Natl. Assn. of Charter Sch. Authorizers, *Righting the Boat Midstream: Responding to Underperformance*, "Illustration 17: Ongoing Oversight and Evaluation," <http://www.charterauthorizers.org/files/nacsa/AnnualConf/Responding%20to%20Underperformanc%20WEB.pdf> (accessed Sept. 19, 2006).

33. *Id.*

used during the charter revocation process varies greatly. For example, an Arizona statute gives fairly specific guidelines for the process that should be used. It requires that a sponsor furnish an administrative hearing when it finds grounds to revoke a charter.³⁴ Arizona law also permits judicial review of final administrative decisions.³⁵ Likewise, a Kansas statute declares that the board of education must act to revoke a charter within sixty days of a hearing on the matter.³⁶

Other states, however, have statutes that are less specific about revocation procedures. For example, New Jersey law gives the Commissioner of Education discretion to develop procedures to govern the possibility of revocation of a school's charter.³⁷ Some state statutes such as Indiana's are silent about the appeals process once the charter has been revoked.³⁸ It should be noted, however, that while the Indiana legislature does not spell out specific procedures for revocation, charter school sponsors may provide such guidelines within the charters.³⁹ For example, one sponsor states that "procedures shall include written notice to the Organizer of intent to revoke the Charter and the grounds for revocation."⁴⁰ Additionally, the charter provides that the Organizer may request a reconsideration of a decision to revoke the charter, with an opportunity to request a hearing before the University Charter Schools Hearing Panel.⁴¹ Another Indiana sponsor specified:

Charter Schools Director shall provide the Organizer with written notice of such circumstances and state a date, which shall not be less than fifteen (15) business days from the date of such notice, by which time the Organizer must respond in writing (a) showing cause why the Charter should not be revoked or (b) proposing to cure the condition.⁴²

Similar to revocation procedures, most state laws set only general parameters for the charter renewal process.⁴³ The renewal process provides an opportunity for the school to set forth its plans for the new term and highlight its accomplishments from the previous term.⁴⁴

34. Ariz. Rev. Stat. § 15-183(Q) (2005).

35. *Id.*

36. Kan. Stat. Ann. § 72-1907(d) (2005).

37. N.J. Stat. Ann. § 18A:36A-17 (2005).

38. Ind. Code Ann. § 20-24-4-1 (West 2005).

39. See e.g. Ball State U., *Charter Issued by Ball State University* 16-17, <http://www.bsu.edu/teachers/media/pdf/charter-contract.pdf> (accessed Sept. 19, 2006).

40. *Id.* at 18.

41. *Id.* at 17.

42. Mayor's Off. of Indianapolis, *supra* n. 27, at §16.5.

43. Mead, *supra* n. 3, at 372.

44. Cal. Network of Educ. Charters, *Charter School Renewal Principles*, "Mission & Vision Check," <http://www.canec.org/renewal.html> (accessed Sept. 19, 2006).

During this time, the sponsor may engage in some type of “capstone” data gathering, which it may use in evaluating the school’s success.⁴⁵ Oftentimes the sponsor or a subcommittee makes a recommendation upon which the authorizing board acts.⁴⁶ As of 2004, thirty-eight percent of state sponsors had revoked at least one charter, whereas only five percent of local districts and fourteen percent of universities had done so.⁴⁷ These sanctions were usually the result of compliance problems or financial and logistical difficulties, not from problems with academic achievement.⁴⁸

Research also indicates that the revocation and nonrenewal decisions of local compared to non-local (state and university) sponsors differ highly in the quality of their reasoning.⁴⁹ Even when a review of these decisions takes into account the size of the sponsor, local sponsors received significantly lower marks on their overall decision-making process than did non-local sponsors.⁵⁰ Bryan Hassel and Meghan Batdorff noted that local sponsors were involved in almost all of the decisions that were analyzed where political influences seemed to overtake a non-biased decision making process.⁵¹ The authors concluded, though, that many of these difficulties—both with the quality of the local sponsors’ process and their tendency to be swayed by political sentiments—could be overcome by a stricter adherence to policies and procedures and, in some cases, by simply having these policies and procedures in place.⁵² The need to stop political influence in revocation and nonrenewal decisions reinforces the importance of having statutory guidance on these issues.

Finally, although state statutes almost universally discuss to some degree the ways by which a charter may be revoked or not renewed, they rarely outline how the charter school participants (e.g. students and teachers) are to proceed once a charter has been terminated.⁵³ When a charter is revoked there may be hundreds of students that need to find a

45. U.S. Charter Schs., *supra* n. 23, at “Renewal.”

46. *Id.*

47. U.S. Dept. of Educ., Off. of the Under Sec., *Evaluation of the Public Charter Schools Program: Final Report 47* (Pub. No. 2004-08 2004) (available at <http://www.ed.gov/rschstat/eval/choice/pcsp-final/finalreport.pdf>).

48. *Id.* at 47–48.

49. Bryan Hassel & Meghan Batdorff, *High-Stakes: Findings from a National Study of Life-or-Death Decisions by Charter School Sponsors* 35 tbl. 23, <http://www.publicimpact.com/high-stakes/highstakes.pdf> (Feb. 2004).

50. *Id.*

51. *Id.* at 30–36.

52. *Id.* at 36–39.

53. Wall, *supra* n. 26 at 91.

school and teachers in need of another job. Specifically, fourteen states and Puerto Rico do not have procedures that outline an appeals process when a sponsor decides to revoke a charter.⁵⁴

IV. STATE STATUTORY LANGUAGE ON CHARTER SCHOOL REVOCATION AND NONRENEWAL

As noted, statutory language of revocation and nonrenewal procedures varies greatly among states. Using multiple legal research techniques, the authors have analyzed statutes from forty-one states that have passed charter legislation. In so doing, the statutory language was coded by the strength of the language regarding revocation and nonrenewal procedures. This statutory language analysis reveals that several states use strong and clear language to describe revocation and nonrenewal procedures. This section will first address statutes concerning charter revocation, and then consider statutes that address nonrenewal.

A. Revocation

State statutes that use strong language to explain revocation include a number of important factors that clarify proper revocation procedure. For example, New York's statute requires that when giving notice to revoke the charter, the board of trustees of the charter school must receive a statement of reasons for the proposed revocation.⁵⁵ This helps to eliminate the possibility of sponsors simply revoking a charter for spurious reasons and gives the charter school spokespeople a guide for defending their school at the hearing.

Another important factor to consider is a very specific hearing and appeals process. In New York and Oregon, statutes require notice of charter termination within a certain number of days before the termination date.⁵⁶ In specific, New York statute requires that "[n]otice of intent to revoke a charter shall be provided to the board of trustees of a charter school at least thirty days prior to the effective date of the proposed revocation."⁵⁷ And, the charter school must be allowed at least thirty days to correct the problems associated with the proposed revocation.⁵⁸ Prior to revocation of the charter, a charter school must be

54. Mead, *supra* n. 3 at 385.

55. N.Y. Educ. Law § 2855(2) (McKinney 2004).

56. *Id.*; Or. Rev. Stat. Ann § 338.105(2) (2006).

57. N.Y. Educ. Law § 2855(2).

58. *Id.*

provided an opportunity to be heard, consistent with the requirements of due process.⁵⁹ Upon the termination of a charter, “the charter school shall proceed with dissolution pursuant to the procedures of the charter and direction of the charter entity and the board of regents.”⁶⁰

Likewise, the Oregon statute provides clear procedural language governing revocation of a charter and appeals from any disagreeable decision made by a sponsor.⁶¹ The statute requires that a sponsor’s revocation notice include the grounds for termination.⁶² The charter school’s governing body may first request a hearing from the sponsor before appealing to the State Board of Education.⁶³ The statute requires that the sponsor must hold a hearing within ten days after receiving the request.⁶⁴ At the next level, Oregon’s statute requires that the State Board of Education adopt procedures to ensure a timely appeals process that is minimally disruptive to students’ education.⁶⁵ For this reason, the State Board of Education is also required to hold a hearing within ten days after receiving the appeal request.⁶⁶ These types of structured notice provisions prevent spontaneous hearings where a charter school may not be given adequate time to prepare a defense against its revocation.

Many other states’ statutes include information on what should be done with charter school assets and students after a charter revocation. In Pennsylvania, for example, the statute states:

[w]hen a charter is revoked or is not renewed . . . the charter school shall be dissolved. After the disposition of any liabilities and obligations of the charter school, any remaining assets shall be distributed on a proportional basis to the school entities with students enrolled in the charter school for the last full or partial school year of the charter school.⁶⁷

The Pennsylvania statute also details information regarding displaced students. It states that students “who attended the charter school shall apply to another public school in the student’s school district of residence. Normal application deadlines will be disregarded under these circumstances. All student records maintained by the charter

59. *Id.*

60. *Id.*

61. Or. Rev. Stat. Ann. § 338.105(2).

62. *Id.* at § 338.105(1).

63. *Id.* at § 338.105(2); *Id.* at § 338.105(4)(b).

64. *Id.* at § 338.105(4)(b).

65. *Id.* at § 338.105(3)(a).

66. *Id.* at § 338.105(4)(c).

67. Pa. Stat. Ann. tit. 24 § 17-1729(A)(6)(i) (West 2004).

school shall be forwarded to the student's district of residence."⁶⁸ Indeed, these details ease the transition for the charter school, sponsor, and students, and help to prevent misunderstandings at a very emotional time.

The following states do not address revocation procedures in their statutes: Alaska, Hawaii, Maryland, Mississippi, North Carolina, and Wisconsin. Although sponsors in these states may adopt their own procedures, the greater uniformity offered by state statutory guidance may arguably be more beneficial. The revocation of a charter is a serious matter that affects the lives of the children, teachers, and parents associated with a charter school. Unless the revocation is done with care on the part of the sponsor, many of the individuals who actively participate in charter schools may feel alienated by the sponsor's actions. Clearly indicating the revocation procedures in the state statutes before closure problems arise will enable both sponsors and charter schools to participate in the process, with neither party having an unequal concentration of power in the relationship.

B. Nonrenewal

In addition to the aforementioned statutory revocation procedures, some states require strong grounds for the nonrenewal and clearly outline due process notice and hearing requirements. In Minnesota, for example, the statute requires that sponsors notify the charter school's board of directors in writing "at least 60 days" before not renewing the contract and state the grounds for its decision in "reasonable detail."⁶⁹ The charter school's board of directors has fourteen days to request in writing, an informal hearing before the sponsor.⁷⁰ The board of director's failure to respond is considered an "acquiescence."⁷¹ If there is a timely written response, the sponsor must give reasonable notice of the hearing date to the charter school's board of directors.⁷² The sponsor then must conduct an informal hearing before taking final action.⁷³

Similarly, Tennessee's statute includes specific language regarding notification of the reason for the nonrenewal, the appeals process and the handling of charter school assets.⁷⁴ "If the chartering authority revokes or does not renew a charter agreement, the chartering authority shall state

68. *Id.* at § 17-1729(A)(6)(j).

69. Minn. Stat. Ann. § 124.D(10)(23)(a) (West 2004).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*

74. Tenn. Code Ann. §§ 49-13-110, 121-123 (2004).

its reasons for the revocation or nonrenewal.”⁷⁵ The Tennessee statute also clearly notes that a decision not to renew a charter agreement may be appealed to the State Board of Education within ten days of the decision.⁷⁶ And, the statute discusses distribution of assets upon dissolution:

Upon dissolution of a charter school for any reason or if a charter is not renewed, any unencumbered public funds from the charter school shall revert to the LEA. In the event that a charter school is dissolved or otherwise terminated, all LEA property and improvements, furnishings and equipment purchased with public funds shall automatically revert to full ownership by the LEA, subject to complete satisfaction of any lawful liens or encumbrances.⁷⁷

These critical components of the statute will reduce the number of lawsuits and misunderstandings regarding charter school rights and responsibilities.

To provide maximum clarity and avoid unnecessary legal challenges, statutes addressing nonrenewal procedures should also include guidelines on whether charter schools may seek another sponsor if their original sponsor declines to renew their contract. States such as Ohio and Minnesota include this language in their statutory scheme, and have thereby likely foreclosed legal challenges on this issue. In Ohio, “[a]ny community school whose contract is terminated under this division shall not enter into a contract with any other sponsor.”⁷⁸ The Minnesota statute also notes that “[i]f a contract is terminated or not renewed, the school must be dissolved . . . except when the commissioner approves the decision of a different eligible sponsor to authorize the charter school.”⁷⁹ This statutory language helps provide clarity to administrators, students, and teachers of charter schools.

Although many state statutes address nonrenewal protocol in varying levels of specificity, not all states have followed suit. In fact, nineteen states and Puerto Rico have not established statutory provisions specifying conditions under which a charter would not be renewed.⁸⁰ The delineation of nonrenewal procedures in these states would enable charter schools and sponsors alike to enter into their relationship with a clear picture of what will happen if a charter is not renewed. This would also provide guidance to new sponsors, who could take direction from

75. *Id.* at § 49-13-122(b).

76. *Id.* at § 49-13-122(c).

77. *Id.* at § 49-13-110(c)(1).

78. Ohio Rev. Code Ann. § 3314.07(B)(6) (West 2004).

79. Minn. Stat. Ann. § 124.D(10)(23)(b).

80. Mead, *supra* n. 3, at 388–392 tbl. 6.

statutes instead of being forced to invent their own regulations for nonrenewal.

Past practice has shown that when either statutory language or policies adopted by the sponsor are not clear, problems may arise that may lead to costly litigation. The next section focuses on three lawsuits that addressed either revocation or nonrenewal procedures. These cases highlight issues of statutory ambiguity, demonstrate the benefit of statutory clarity, and provide examples of charter schools that failed to follow state statutory requirements.

V. REVOCATION/NONRENEWAL LITIGATION

Legal challenges may arise when state statutes are unclear regarding revocation and nonrenewal procedures.⁸¹ Likewise, problems can sometimes occur when charter school organizers incorrectly interpret the statutory language.⁸² Legislatures' silence or ambiguity on the process has led to confusion, and even litigation, for charter schools in some states.⁸³ Such turmoil may have been avoided through more clearly outlined procedures or through a better understanding of those procedures. This section analyzes three cases that have focused on revocation or nonrenewal issues and that reflect the aforementioned concerns with revocation or nonrenewal procedures. Specifically, this section highlights the struggles Missouri and Washington, D.C. have experienced by trying to operate within the framework of vague statutory guidance on revocation and nonrenewal procedures. Of course, these procedures or policies could have also been outlined by the sponsor. These cases are then contrasted with a Florida case that demonstrates the benefits of clear statutory language.

A. Missouri

In a Missouri case, *State ex rel. School District of Kansas City v. Williamson*,⁸⁴ the question before the court was whether the school district revoked the charter of Westport Charter School prior to the expiration of its charter or whether the charter had expired and the district merely declined to renew it.⁸⁵ The distinction between these two

81. See e.g. *Orange Ave. Charter Sch.*, 763 So. 2d 531.

82. See e.g. *State ex rel the Sch. Dist. of Kan. City*, 141 S.W.3d 418 (Mo. App. 2004) (questioning the necessity of judicial review in this case, since judicial review for non-renewal was not clearly specified in the Act).

83. *Id.*

84. *Id.*

85. *Id.* at 421.

options was crucial in this case since governing statutory law specified the procedures that a sponsoring school district must follow in each situation before it could terminate the charter.

The question arose when the school's charter was due to expire.⁸⁶ As a result, the sponsoring district requested that the school submit a renewal application, and the school did so.⁸⁷ Following the denial, the school sought judicial review of the district's nonrenewal decision.⁸⁸ In response, the district contended that the only relevant procedure required by the Missouri Charter School Act (Act) was that the district provide the charter school with written notice of its decision regarding renewal of the charter within sixty days of receiving the renewal application, which it had done.⁸⁹ Because judicial review of nonrenewal decisions was not specified in the Act, the sponsor contended that the charter school was not entitled to any judicial review of the sponsor's decision.⁹⁰

Although the Act did not contain detailed nonrenewal procedures, it did specify such procedures for dealing with revocation of charters.⁹¹ For example, a sponsor who sought to revoke a charter was required to give written notice at least sixty days prior to acting on the proposed revocation, specifying the reasons for action.⁹² The Act also went further and specified that a revocation could only be based on certain grounds, such as a serious breach of the charter, failure to meet academic performance standards, failure to meet fiscal management standards, or violation of the law.⁹³ Additionally, a revocation would not become effective until the conclusion of the school year, unless continuation of the school's operation presented a "clear and immediate threat to the health and safety of the children."⁹⁴

The Charter School Act clearly stated that charters should be granted for no less than five years and no more than ten years and "shall be renewable."⁹⁵ Also relevant in this case was the Missouri Administrative Procedure Act ("the MAPA"), which gave charter schools the right to a hearing upon a proposed revocation and judicial review of a decision to

86. *Id.*

87. *Id.* at 423.

88. *Id.* at 426.

89. *Id.* at 425.

90. *Id.*

91. *Id.* at 422 (citing Mo. Rev. Stat. Ann. § 160.405.7 (West 2005)).

92. *Id.* (citing Mo. Rev. Stat. Ann. § 160.405.7(3)).

93. *Id.* (citing Mo. Rev. Stat. Ann. § 160.405.7(1)).

94. *Id.* (citing Mo. Rev. Stat. Ann. § 160.405.7(5)).

95. *Id.* (citing Mo. Rev. Stat. Ann. § 160.405.1(3)).

revoke a charter.⁹⁶ In contrast to the MAPA's and the Act's detailed revocation procedures, there was no discussion in either statute of the criteria for renewal or whether judicial review was permitted when a sponsor decided not to renew a charter.⁹⁷

Because nonrenewal and revocation had different procedural requirements under the relevant statutes, the court's determination of the district's action in this case was dispositive. At issue was whether the sponsor's actions constituted a revocation of the charter before it expired or whether the sponsor merely decided not to renew that charter, allowing it to expire at the conclusion of its term.⁹⁸ Resolution of this issue required determination of the length of the term of Westport's charter.⁹⁹ Although inclusion of the term of the charter was a statutory requirement,¹⁰⁰ Westport's charter failed to include this information.¹⁰¹

Both sides examined the Act itself and relied on extrinsic evidence when disputing the length of the term of the charter.¹⁰² Since the court found that the Act's language was ambiguous, it attempted to construe its meaning in light of the legislative intent behind the statute.¹⁰³ When analyzing the legislature's intent, the court emphasized that the Act's application was limited to certain urban districts with low student achievement levels.¹⁰⁴ The Act gave charter schools more autonomy from traditional restraints so they could implement more innovative approaches to improving student achievement.¹⁰⁵ In order to give charter schools sufficient time to improve achievement, the court held that the legislature intended to establish a five-year minimum for charters.¹⁰⁶

Based on the court's review of the Act and its underlying policy considerations, the court narrowly construed the Act, finding that "the legislature did not intend to commit sponsors and charter schools to a charter for more than a minimum period of five years, absent specific intent of the parties expressed within the charter."¹⁰⁷ Thus, in situations where the charter fails to set out its term, the court held that "the charter

96. *Id.* at 422.

97. *Id.*

98. *Id.* at 424.

99. *Id.*

100. Mo. Rev. Stat. Ann. § 160.405.1(3).

101. *State ex rel. Sch. Dist. of Kan. City*, 141 S.W. 3d at 424.

102. *Id.*

103. *Id.* (citing *Blue Cross & Blue Shield of Kan. City v. Nixon*, 26 S.W.3d 218, 228 (Mo. App. 2000)).

104. *Id.*

105. *Id.*

106. *Id.*; see generally Mo. Rev. Stat. Ann. § 160.405.3.

107. *State ex rel. Sch. Dist. of Kan. City*, 141 S.W.3d at 425.

is limited to a five-year term, absent renewal by the parties.”¹⁰⁸ Accordingly, Westport’s charter expired at the end of five years, which occurred at the conclusion of the school year in question.¹⁰⁹ As such, “the trial court correctly concluded that the decision before the district was not whether to revoke Westport’s charter . . . [but] whether to renew that charter, and the District decided not to renew the charter.”¹¹⁰

The court’s determination that the district had not renewed Westport’s charter was important because the Act was silent on what kind of process was due in nonrenewal situations, in contrast to the statute’s detailed revocation procedures.¹¹¹ Specifically, the Act did not discuss the standards, conditions, or criteria that the sponsor must consider when making a decision to renew.¹¹² The Act also failed to “make renewal automatic or grant either the sponsor or the charter school any right to renewal.”¹¹³ The court found that the legislature’s failure to do so here evidenced “a clear legislative intent not to impose such criteria upon the sponsor’s decision or to grant the charter school any right to renewal of its charter.”¹¹⁴

Finally, the court held that the charter school did not have a protected property interest under the Charter Schools Act with regard to renewal of its charter.¹¹⁵ Thus, the court held that the sponsor “was not required to hold a hearing prior to making its decision not to renew Westpoint’s charter.”¹¹⁶ In so doing, the court concluded that the procedures for initial charter application applied in this context and that such procedures were followed by the district.¹¹⁷

This case demonstrates the potential harms of unclear statutory language, including confusion and litigation. Litigation over the main issue in this case likely could have been avoided if the criteria for renewal and the procedures that needed to be followed during the nonrenewal process had been clearer to the parties. Indeed, this case illustrates both the need for clear statutory language from the legislature and an understanding of statutory requirements by the charter school.

108. *Id.*

109. *Id.*

110. *Id.*

111. *Id.*

112. *Id.* at 426.

113. *Id.*

114. *Id.* (citing *Conagra Poultry Co. v. Dir. of Revenue*, 862 S.W.2d 915, 917 (Mo. 1993)).

115. *Id.* at 427.

116. *Id.*

117. *Id.* at 421.

B. Washington, D.C.

In a Washington, D.C. case, *Richard Milburn Public Charter Alternative High School v. Cafritz*, the issue before the court was whether two charter schools were entitled to contested hearings in their respective revocation proceedings.¹¹⁸ In this case, two charter schools, Richard Milburn Public Charter Alternative High School (Milburn) and World Public Charter School, Inc. (World), had their charters revoked.¹¹⁹ World sought review of the District of Columbia Board of Education's (Board) decision to deny the school formal, "trial-type contested case hearing prior to the final revocation of [its] charter[s] . . .,"¹²⁰ which was based on the District of Columbia School Reform Act of 1995.¹²¹ The District of Columbia School Reform Act (School Reform Act) was passed by Congress in order to provide a process for conferring, renewing, and revoking charters.¹²² The School Reform Act provided for an "informal hearing" upon the proposed revocation of a charter, whereas the District of Columbia's Administrative Procedure Act (DCAPA), which World argued was also applicable in this case, provided for a "formal hearing."¹²³

The School Reform Act provided that a charter could be revoked if the Board determined that the school had "committed a violation of applicable laws or a material violation of the conditions, terms, standards, or procedures set forth in the charter, including violations relating to the education of children with disabilities . . ." ¹²⁴ Concerning fiscal mismanagement, a charter could be revoked if the school "(1) [had] engaged in a pattern of nonadherence to generally accepted accounting principles; (2) [had] engaged in a pattern of fiscal mismanagement; or (3) [was] no longer economically viable."¹²⁵ It is important to note, however, that under the statute, charters could not unilaterally be revoked during the first five years of a charter school's existence based exclusively on its failure "to meet the goals and student academic achievement expectations set forth in the charter."¹²⁶

The School Reform Act also detailed the procedures that must be

118. 798 A.2d 531 (D.C. 2002).

119. *Id.* at 533.

120. *Id.*

121. *Id.* (citing D.C. Code § 38-1802.13(c) (2001)).

122. *Id.*

123. *Id.* at 534 n. 1.

124. *Id.* (citing D.C. Code § 38-1802.13(a)(1)(A)).

125. *Id.* at 534-35 (citing D.C. Code § 38-1802.13(b)).

126. *Id.* at 535 (citing D.C. Code § 38-1802.13(a)(2)).

followed during the revocation process.¹²⁷ These procedures specified that the Board provide “the school a written notice stating the reasons for the proposed revocation. The notice shall inform the [school] of the right of the [school] to an informal hearing on the proposed revocation.”¹²⁸ Additionally, a charter school must provide a written request of an informal hearing within fifteen days of receiving notice.¹²⁹ Upon receiving such a request, the Board was required to set a time and date for the hearing, which had to occur within thirty days of the charter school’s written request.¹³⁰ Within thirty days of the completion of the hearing, the Board’s decision needed to be submitted in writing, and it had to indicate the reasons for revocation.¹³¹ If the charter school was not satisfied with the decision, it had a right to judicial review.¹³²

When Milburn learned that its charter would be revoked, it requested a formal, contested case hearing and informed the Board of its right to such a hearing.¹³³ Milburn noted that there was conflicting legislation over whether it was entitled to either a formal hearing or an informal hearing.¹³⁴ Additionally, Milburn alleged that a hearing was required by the Fifth Amendment Due Process clause.¹³⁵ Similarly, when World learned that its charter was being revoked, it requested a contested case hearing.¹³⁶ As such, the court consolidated both cases.¹³⁷

The charter school leaders argued that both the DCAPA and the Fifth Amendment Due Process clause mandated a formal, contested hearing.¹³⁸ The court, however, considered the schools’ claims instead under the School Reform Act, and the Fifth Amendment.¹³⁹ It held that the charter schools did not have a right to a contested hearing.¹⁴⁰

In making its decision, the court focused on whether Congress unambiguously expressed its intent in the School Reform Act, instead of the District of Columbia Administrative Procedures Act (DCAPA), for a contested case hearing to take place before the revocation of a public

127. *Id.*

128. *Id.* (citing D.C. Code § 38-1802.13 (c)(1)).

129. *Id.* (citing D.C. Code § 38-1802.13(c)(2)).

130. *Id.* (citing D.C. Code § 38-1802.13(c)(3)(A-B)).

131. *Id.* (citing D.C. Code §§ 38-1802.13(c)(4)(A)(ii), 38-1802.13(c)(4)(B)).

132. *Id.* (citing D.C. Code § 38-1802.13(c)(6)).

133. *Id.* at 536.

134. *Id.*

135. *Id.* at 536-37.

136. *Id.* at 538.

137. *Id.*

138. *Id.*

139. *Id.* at 540.

140. *Id.* at 549.

school charter.¹⁴¹ In so doing, the court found that the language of the School Reform Act provision governing revocations provided that a charter school had the right to an “informal hearing” after receiving notice of the proposed revocation of its charter.¹⁴² Because both the School Reform Act and legislative history failed to define what constituted an informal hearing, the court inferred that a contested case hearing was not required.¹⁴³ The court also determined that the Fifth Amendment Due Process Clause did not require that the Board conduct a contested case hearing before deciding to revoke a public school charter.¹⁴⁴

The court held on these grounds “that the statutory procedures and those adopted by the Board for these charter revocation proceedings were sufficiently fair and reliable to pass constitutional muster.”¹⁴⁵ The court also noted that the School Reform Act provided charter schools facing a proposed revocation with several procedural protections, including written notice of the right to an “informal hearing” and the statement of the reasons for the proposed revocation.¹⁴⁶ Therefore, the court concluded that the Board afforded the schools sufficient, unambiguous protections and procedural provisions for a proper revocation process.

C. *Florida* The final case, *Orange Avenue Charter School v. St. Lucie County School Board*,¹⁴⁷ demonstrates the benefits of clear statutory language. In this case, Orange Avenue Charter School was issued an initial school charter pursuant to a Florida statute¹⁴⁸ for the 1997–1998 school year.¹⁴⁹ The charter was renewed for the 1998–1999 school year, but was subsequently denied for the 1999–2000 school year because of poor student progress and performance.¹⁵⁰ The Florida statute stated that the sponsoring school board had the responsibility for reviewing all charter applications and was required to monitor and review the charter school’s progress toward its stated goals.¹⁵¹ Under the statute, the sponsor had the discretion to choose to not renew the charter for any of

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.* at 544.

145. *Id.*

146. *Id.*

147. 763 So. 2d 531, 532 (Fla. 4th Dist. App. 2000).

148. Fla. Stat. § 228.056(1)(a) (1999).

149. *Orange Ave. Charter Sch.*, 763 So. 2d at 532.

150. *Id.*

151. *Id.*

the following reasons: (1) failure to meet the requirements for student performance stated in the charter; (2) failure to meet generally accepted standards of fiscal management; (3) violation of law; or (4) other good cause shown.¹⁵²

The school board initially decided not to renew Orange Avenue's charter, and Orange Avenue appealed this decision to the State Board of Education.¹⁵³ The governor and the cabinet, acting as the State Board of Education, reversed the school board's decision not to renew the charter and remanded the matter for further consideration.¹⁵⁴ Following the remand, the school board conducted a full evidentiary public hearing, as required by Florida statute,¹⁵⁵ before taking final action not to renew the charter.¹⁵⁶ The court noted "that although the school board should have conducted a full informal evidentiary hearing prior to its initial decision, the board had given proper notice."¹⁵⁷ The court additionally reasoned that Orange Avenue had participated in the initial proceedings.¹⁵⁸ Moreover, the school board offered Orange Avenue an option of a full evidentiary hearing prior to consideration by the State Board of Education, and Orange Avenue rejected that option.¹⁵⁹ In presenting its case, the board based its nonrenewal decision on one of the clear statutory grounds: "the Charter School has failed to meet the requirements for student progress and performance that are stated in the charter."¹⁶⁰

The evidence further showed that Orange Avenue Charter School failed in comparison to surrounding traditional public schools.¹⁶¹ The charter school disputed the validity of drawing comparisons between its students and other "at risk" public school students in the county,¹⁶² but the court found ample support for "the board's conclusion that continuation of the school with such low levels of progress 'poses an unreasonably high risk of harm to Charter School students.'"¹⁶³

The Missouri and Washington, D.C. cases demonstrate some of the potential issues that can arise when statutory language is unclear or when

152. *Id.*

153. *Id.*

154. *Id.*

155. Fla. Stat. § 228.056(4)(c).

156. *Orange Ave. Charter Sch.*, 763 So. 2d at 532.

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.* at 532-33; Fla. Stat. § 228.056(10)(a)(1).

161. *Orange Ave. Charter Sch.*, 763 So. 2d at 534.

162. *Id.*

163. *Id.* at 534-35.

the statutory language is not properly interpreted by charter school leaders. The Florida case demonstrates how clearer guidelines benefit all interested parties. The problems seen in the first two cases could likely have been avoided by offering more explicit processes and procedures in the charter school statute, and by giving charter school leaders more guidance on statutory requirements.

VI. CONCLUSIONS AND CONSIDERATIONS

The revocation or nonrenewal of charters raises legal issues regarding statutory language and due process. The courts have noted the importance of clearly explaining the grounds for both revocation and nonrenewal because access to such information provides further procedural safeguards.¹⁶⁴ Indeed, charter school administrators may have difficulties interpreting statutory requirements.¹⁶⁵ Further, the courts have stressed that when charter schools are well informed as to the basis for the revocation, they have an opportunity to address these findings through both oral and written testimony during an informal hearing.¹⁶⁶ Additionally, when state legislatures pass legislation or other authorities develop guidelines regarding the revocation of charters, they should be certain to conform to state and federal constitutional standards.¹⁶⁷

Several protective measures could ensure clarity of revocation and nonrenewal procedures. One commentator suggested that “the contracting parties could set the terms of revocation and procedure in their contract.”¹⁶⁸ Alternatively, the legislature could grant authority to the state entity over education to set state-wide procedures over the revocation process. Still another option would be to have the statute itself provide the procedures.¹⁶⁹ For uniformity’s sake, the third option appears most desirable.

Indeed, codifying these procedures would create uniformity across charter school sponsors that may benefit both future sponsors and school organizers, especially given that closure of poorly performing charter

164. See e.g. *Orange Ave. Charter Sch. v. St. Lucie County Sch. Bd.*, 763 So. 2d 531 (Fla. 4th Dist. App. 2000) (holding in favor of the school district due to clear explanation and substantial amount of evidence supporting nonrenewal).

165. See e.g. *State ex rel the Sch. Dist. of Kan. City v. Williamson*, 141 S.W.3d 418 (Mo. App. 2004) (involving a charter school that misinterpreted legislative act as a statute of revocation, but it was in fact for renewal, since, by statute, the charter had already expired).

166. *Id.*

167. *Wall supra* n. 26, at 77–84.

168. *Id.* at 95.

169. *Id.*

schools is likely and, at least for some advocates, desired.¹⁷⁰ A 1998 U.S. Department of Education publication suggested that charter legislation should explicitly list grounds for revocation.¹⁷¹ Having only vague statutory guidance on revocation appears to guarantee expensive, time-consuming litigation (and, indeed, this litigation has already occurred). Further, an appeals process should be available as part of the revocation and nonrenewal processes. The same consistency is needed with nonrenewal procedures.

As noted in both the statutory and case analyses, several states have not adequately dealt with such procedures. Without clear procedures, a charter school closure could have a devastating, drawn-out impact on students, parents, staff, and local education systems. Statutory safeguards are necessary to prevent these avoidable situations.

170. See Frederick M. Hess, *Tough Love for Schools: Essays on Competition, Accountability, and Excellence* (AEI Press 2006); see also Andrew Rotherham, *The Pros & Cons of Charter School Closures in Hopes, Fears & Reality: A Balanced Look at American Charter Schools in 2005* (R.J. Lake & P.T. Hill eds., Ctr. on Reinventing Pub. Educ. Oct. 2005).

171. RPP Intl. et al., *A National Study of Charter Schools: Second Year Report 20–23* (U.S. Dept. of Educ., Off. of Educ. Research & Improvement 1998).

Appendix A: Statutes with Strong Revocation Language

NEW YORK	<p style="text-align: center;">APPLICATION SHALL INCLUDE PROCEDURES FOR REVOCATION</p> <p>The information provided on the application shall be consistent with the provisions of this article and other applicable laws, rules and regulations. Such information shall include: . . . (t) Procedures to be followed in the case of the closure or dissolution of the charter school, including provisions for the transfer of students and student records to the school district in which the charter school is located and for the disposition of the school's assets to the school district in which the charter school is located or another charter school located within the school district.¹⁷²</p> <p style="text-align: center;">NOTICE OF INTENT TO REVOKE CHARTER; PROCEDURES FOR DISSOLUTION</p> <p>Notice of intent to revoke a charter shall be provided to the board of trustees of a charter school at least thirty days prior to the effective date of the proposed revocation. Such notice shall include a statement of reasons for the proposed revocation. The charter school shall be allowed at least thirty days to correct the problems associated with the proposed revocation. Prior to revocation of the charter, a charter school shall be provided an opportunity to be heard, consistent with the requirements of due process. Upon the termination of a charter, the charter school shall proceed with dissolution pursuant to the procedures of the charter and direction of the charter entity and the board of regents.¹⁷³</p> <p style="text-align: center;">PROBATION</p> <p>In addition to the provisions of subdivision two of this section, the charter entity or the board of regents may place a charter school falling within the provisions of subdivision one of this section on probationary status to allow the implementation of a remedial action plan. The failure of a charter school to comply with the terms and conditions of a remedial action plan may result in summary revocation of the school's charter.¹⁷⁴</p> <p style="text-align: center;">COMPLAINTS ABOUT A CHARTER SCHOOL</p> <p>Any individual or group may bring a complaint to the board of trustees of a charter school alleging a violation of the provisions of this article, the charter, or any other provision of law relating to the management or operation of the charter school. If, after presentation of the complaint to the board of trustees of a charter school, the individual or group determines that such board has not adequately addressed the complaint, they may present that complaint to the charter entity, which shall investigate and respond. If, after presentation of the complaint to the charter entity, the individual or group determines that the</p>
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172. N.Y. Educ. Law § 2851(2)(t).

173. *Id.* at § 2855(2).

174. *Id.* at § 2855(3).

	<p>charter entity has not adequately addressed the complaint, they may present that complaint to the board of regents, which shall investigate and respond. The charter entity and the board of regents shall have the power and the duty to issue appropriate remedial orders to charter schools under their jurisdiction to effectuate the provisions of this section.¹⁷⁵</p>
<p>OREGON</p>	<p style="text-align: center;">TERMINATION; NOTICE REQUIRED</p> <p>If a charter is terminated under subsection (1) of this section, the sponsor shall notify the public charter school governing body at least 60 days prior to the proposed effective date of the termination. The notice shall state the grounds for the termination. The public charter school governing body may request a hearing by the sponsor.¹⁷⁶</p> <p style="text-align: center;">TERMINATION; APPEALS</p> <p>A public charter school governing body may appeal any decision of a sponsor that is: a) A school district board of the State Board of Education. The State Board of Education shall adopt by rule procedures to ensure a timely appeals process to prevent disruption of students' education. b) The State Board of Education to the circuit court pursuant to ORS 183.484.¹⁷⁷</p> <p style="text-align: center;">REQUEST FOR HEARING</p> <p>The public charter school governing body may request a hearing from the sponsor on the termination of the charter under this subsection [referring to closures due to the health and safety of students]. The sponsor shall hold a hearing within 10 days after receiving the request.¹⁷⁸</p> <p style="text-align: center;">APPEALS PROCESS</p> <p>The public charter school governing body may appeal a decision of a sponsor under this subsection [referring to closures due to the health and safety of students] to the State Board of Education. The State Board of Education shall hold a hearing within 10 days after receiving the appeal request.¹⁷⁹</p> <p style="text-align: center;">CLOSURE OF SCHOOL DURING APPEALS PROCESS</p> <p>Throughout the appeals process [referring to closures due to the health and safety of students] the public charter school shall remain closed at the discretion of the sponsor unless the State Board of Education orders the sponsor to open the public charter school and not terminate the charter.¹⁸⁰</p> <p style="text-align: center;">CONTINUATION AS PRIVATE OR NONCHARTERED PUBLIC SCHOOL</p> <p>Termination of a charter shall not abridge the public charter school's legal authority to operate as a private or nonchartered public school.¹⁸¹</p>

175. *Id.* at § 2855(4).

176. Or. Rev. Stat. Ann. 30 § 338.105(2) (2004).

177. *Id.* at § 338.105(3).

178. *Id.* at § 338.105(4)(b).

179. *Id.* at § 338.105(4)(c).

180. *Id.* at § 338.105(4)(d).

181. *Id.* at § 338.105(5).

	<p style="text-align: center;">DISSOLUTION; DISTRIBUTION OF ASSETS</p> <p>If a charter is terminated or a public charter school is dissolved, the assets of the public charter school that were purchased with public funds shall be given to the State Board of Education. The State Board of Education may disburse the assets of the public charter school to school districts or other public charter schools.¹⁸²</p> <p style="text-align: center;">TERMINATION AND DISSOLUTION; TIMING</p> <p>A public charter school governing body may only terminate a charter, dissolve or close a public charter school at the end of a semester. If a charter is terminated by the public charter school governing body or a public charter school is closed or dissolved, the public charter school governing body shall notify the sponsor at least 180 days prior to the proposed effective date of the termination, closure or dissolution.¹⁸³</p>
PENNSYLVANIA	<p style="text-align: center;">NOTICE OF GROUNDS FOR REVOCATION OR NONRENEWAL; HEARING</p> <p>Any notice of revocation or nonrenewal of a charter given by the local board of school directors of a school district shall state the grounds for such action with reasonable specificity and give reasonable notice to the governing board of the charter school of the date on which a public hearing concerning the revocation or nonrenewal will be held. The local board of school directors shall conduct such hearing, present evidence in support of the grounds for revocation or nonrenewal stated in its notice and give the charter school reasonable opportunity to offer testimony before taking final action. Formal action revoking or not renewing a charter shall be taken by the local board of school directors at a public meeting pursuant to the act of July 3, 1986 (P.L. 388, No. 84), known as the "Sunshine Act," after the public has had thirty (30) days to provide comments to the board. All proceedings of the local board pursuant to this subsection shall be subject to 2 Pa.C.S. Ch. 5 Subch. B (relating to practice and procedure of local agencies). Except as provided in subsection (d), the decision of the local board shall not be subject to 2 Pa.C.S. Ch. 7 Subch. B (relating to judicial review of local agency action).¹⁸⁴</p> <p style="text-align: center;">APPEALS</p> <p>Following the appointment and confirmation of the appeal board, but not before July 1, 1999, the charter school may appeal the decision of the local board of school directors to revoke or not renew the charter to the appeal board. The appeal board shall have the exclusive review of a decision not to renew or revoke a charter. The appeal board shall review the record and shall have the discretion to supplement the record if the supplemental information was previously unavailable. The appeal board may consider the charter school plan, annual reports, student performance and employee and community</p>

182. *Id.* at § 338.105(6).

183. *Id.* at § 338.105(7).

184. Pa. Stat. Ann. tit. 24 § 17-1729(A)(6)(c).

support for the charter school in addition to the record. The appeal board shall give due consideration to the findings of the local board of directors and specifically articulate its reasons for agreeing or disagreeing with those findings in its written decision.¹⁸⁵

POWER OF APPEAL BOARD TO RESCIND REVOCATION OR NONRENEWAL

If the appeal board determines that the charter should not be revoked or should be renewed, the appeal board shall order the local board of directors to rescind its revocation or nonrenewal decision.¹⁸⁶

CHARTER REMAINS IN EFFECT UNTIL FINAL DISPOSITION

Except as provided in subsection (g), the charter shall remain in effect until final disposition by the appeal board.¹⁸⁷

HEALTH OR SAFETY RISK; IMMEDIATE REVOCATION

In cases where the health or safety of the school's pupils, staff or both is at serious risk, the local board of school directors may take immediate action to revoke a charter.¹⁸⁸

APPELLATE REVIEW

All decisions of the charter school appeal board shall be subject to appellate review by the Commonwealth Court.¹⁸⁹

DISSOLUTION; DISPOSITION OF LIABILITIES AND OBLIGATIONS

When a charter is revoked or is not renewed, the charter school shall be dissolved. After the disposition of any liabilities and obligations of the charter school, any remaining assets of the charter school shall be distributed on a proportional basis to the school entities with students enrolled in the charter school for the last full or partial school year of the charter school.¹⁹⁰

REVOCATION OR NONRENEWAL; STUDENT RELOCATION

When a charter is revoked or is not renewed, a student who attended the charter school shall apply to another public school in the student's school district of residence. Normal application deadlines will be disregarded under these circumstances. All student records maintained by the charter school shall be forwarded to the student's district of residence.¹⁹¹

POWER OF APPEAL BOARD

In the case of a review by the appeal board of an application that is revoked or is not renewed the appeal board shall make its

185. *Id.* at § 17-1729(A)(6)(d).

186. *Id.* at § 17-1729(A)(6)(e).

187. *Id.* at § 17-1729(A)(6)(f).

188. *Id.* at § 17-1729(A)(6)(g).

189. *Id.* at § 17-1729(A)(6)(h).

190. *Id.* at § 17-1729(A)(6)(i).

191. *Id.* at § 17-1729(A)(6)(j).

192. *Id.* at § 17-1717(A)(h).

193. *Id.* at § 17-1741(A)(a)(3).

decision based on the criteria established in subsection (e)(2). A decision by the appeal board under this subsection or subsection (g) to grant, to renew or not to revoke a charter shall serve as a requirement for the local board of directors of a school district or school districts, as appropriate, to sign the written charter of the charter school as provided for in section 1720-A. Should the local board of directors fail to grant the application and sign the charter within ten (10) days of notice of reversal of the decision of the local board of directors, the charter shall be deemed to be approved and shall be signed by the chairman of the appeal board.¹⁹²

CYBER CHARTER SCHOOLS

Powers and duties. The department shall: . . . Revoke or deny renewal of a cyber charter school's charter under the provisions of section 1729-A. (i) Notwithstanding the provisions of section 1729-A(i), when the department has revoked or denied renewal of a charter, the cyber charter school shall be dissolved. After the disposition of the liabilities and obligations of the cyber charter school, any remaining assets of the cyber charter school shall be given over to the intermediate unit in which the cyber charter school's administrative office was located for distribution to the school districts in which the students enrolled in the cyber charter school reside at the time of dissolution. (ii) Notwithstanding any laws to the contrary, the department may, after notice and hearing, take immediate action to revoke a charter if: (A) a material component of the student's education as required under this subdivision is not being provided; or (B) the cyber charter school has failed to maintain the financial ability to provide services as required under this subdivision.¹⁹³

Appendix B: Statutes with Strong Nonrenewal Language

MINNESOTA	<p>NOTICE OF GROUNDS FOR ACTION; INFORMAL HEARING; APPEALS</p> <p>At least 60 days before not renewing or terminating a contract, the sponsor shall notify the board of directors of the charter school of the proposed action in writing. The notice shall state the grounds for the proposed action in reasonable detail and that the charter school's board of directors may request in writing an informal hearing before the sponsor within 14 days of receiving notice of nonrenewal or termination of the contract. Failure by the board of directors to make a written request for a hearing within the 14-day period shall be treated as acquiescence to the proposed action. Upon receiving a timely written request for a hearing, the sponsor shall give reasonable notice to the charter school's board of directors of the hearing date. The sponsor shall conduct an informal hearing before taking final action. The sponsor shall take final action to renew or not renew a contract by the last day of classes in the school year. If the sponsor is a local board, the school's board of directors may appeal the sponsor's decision to the commissioner.¹⁹⁴</p> <p>DISSOLUTION; TRANSFER OF SPONSORSHIP</p> <p>If a contract is terminated or not renewed, the school must be dissolved according to the applicable provisions of chapter 308A or 317A, except when the commissioner approves the decision of a different eligible sponsor to authorize the charter school.¹⁹⁵</p> <p>POWER OF COMMISSIONER TO TERMINATE SPONSORIAL RELATIONSHIP</p> <p>The commissioner, after providing reasonable notice to the board of directors of a charter school and the existing sponsor, and after providing an opportunity for a public hearing, may terminate the existing sponsor relationship if the charter school has a history of: (1) financial mismanagement or (2) repeated violations of the law.¹⁹⁶</p> <p>REVOCAION AND NONRENEWAL; STUDENT RELOCATION</p> <p>If a contract is not renewed or is terminated according to subdivision 23, a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit an application to a nonresident district according to section 124D.03 at any time. Applications and notices required by section 124D.03 must be processed and provided in a prompt manner. The application and notice deadlines in 124D.03 do not apply under these circumstances.¹⁹⁷</p>
OHIO	<p>TERMINATION OR NONRENEWAL; NOTICE OF REASONS FOR ACTION</p> <p>At least ninety days prior to the termination or nonrenewal of a contract, the sponsor shall notify the school of the proposed action in writing. The notice shall include the reasons for the proposed action in detail, the effective date of the termination or nonrenewal, and a</p>

194. Minn. Stat. Ann. § 124.D(10)(23)(a).

195. *Id.* at § 124.D(10)(23)(b).

196. *Id.* at § 124.D(10)(23)(c).

197. *Id.* at § 124.D(10)(24).

school. The LEA may not assume the debt from any contract for services made between the governing body of the school and a third party, except for a debt that is previously detailed and agreed upon in writing by both the LEA and the governing body of the school and that may not reasonably be assumed to have been satisfied by the LEA.²⁰⁹

TERMINATION OR NONRENEWAL; STUDENT RELOCATION

If a charter agreement is not renewed or is terminated in accordance with § 49-13-122, a pupil who attended the school, siblings of the pupil, or another pupil who resides in the same place as the pupil may enroll in the resident district or may submit an application to a nonresident district according to the provisions of § 49-6-3105, at any time. Applications and notices required by this section shall be processed and approved in a prompt manner.²¹⁰

209. *Id.* at § 49-13-110(c)(2).

210. *Id.* at § 49-13-123.