



THE LAW, POLICY, AND PROCEDURES FOR CHARTER SCHOOL CONTRACT DRAFTING AND CLOSURE PROCEDURES

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Charter School Contract Drafting

The contract between a charter school and its authorizer is of utmost importance because it details the specific policies and operating procedures the charter school agrees to implement. It also sets out legally binding accountability measures that will form the basis of the authorizer's future evaluation of the charter school's performance. The school's level of compliance with the provisions of the contract control the authorizer's decision whether to revoke or renew the school's charter. Thus, a well-drafted contract is vital to ensuring that compliance with the contract is actually related to sufficient academic achievement progress and functional operations, management, and governance at the school. The charter drafting process is governed partially by Louisiana law, but primarily by BESE policy, particularly for state-authorized charter schools (Types 2, 4, and 5). In this brief, the Louisiana Department of Education's Charter Schools Office and the Cowen Institute for Public Education Initiatives will review Louisiana law and BESE policies on the drafting of the charter school contract for state-authorized charter schools.

Louisiana Law on Charter School Contract Drafting

Louisiana law does not specifically reference the content or form of a charter school contract. Rather, the law merely mandates that charter schools perform certain tasks and meet specific requirements as a condition of continued operation. These requirements are typically addressed by the charter school application. Subsequently, these requirements and application provisions are incorporated into the charter school contract.

BESE Policy on Charter School Contract Drafting

BESE Bulletin 126 on Charter Schools explains the nature of the contract and requires that each contract include all the provisions from a "standard contract template."¹ It defines a charter school contract as "the legal agreement between BESE and the Charter Operator, which defines the rights and responsibilities of the parties."ⁱ Further, "[t]he charter school contract shall define the performance standards to which the charter school will be held accountable and the general terms and conditions under which the charter school will operate."

The required sections of the contract template include:

- Establishment of the charter school

¹ The Cowen Institute has uploaded copies of almost all current contracts for all types of charter schools (most of which are based on this template) to its website. These contracts can be viewed at our Louisiana K-12 Public Education Document Archive, located here <http://www.coweninstitute.com/resources/document-archive/>.

- Operation of the charter school
- Charter school financial matters
- Charter school personnel
- Charter term, renewal and revocation

The contract must also include exhibits that will “that provide detailed information about the terms and conditions under which the school will operate.” These exhibits must include the following:

- A copy of the approved charter school application
- Pre-opening requirements
- Education service provider contract (if applicable)
- Student discipline policy
- Student enrollment

Every charter school contract must follow the standard charter school template, but BESE may also add provisions that are specific to an individual charter operator. Each contract must also “provide for specific student performance, financial, and legal and contractual standards which must be met by the charter operator during the term of the charter contract.” Finally, Bulletin 126 mandates that the contract may only be executed once the charter operator has completed all pre-opening requirements and an officer of the board of directors of the charter operator and the president of BESE have signed the contract.

BESE policy does not specify the particular terms of the contract or the contract drafting procedures. However, based on a Cowen Institute review, most charter school contracts use the template prescribed by BESE. The template contains the mandatory sections outlined above and the addition of a “Miscellaneous” section which contains the majority of the legal considerations of the contract. Each section is then broken down into particular provisions. The typical provisions appear to be, as follows:

- Establishment of School:
 - 1) Parties; 2) Facility; 3) Pre-Opening²
- Operation of School:
 - 1) Mission Statement; 2) Purpose; 3) Governance; 4) Age, Grade Range, Number of Students; 5) Student Recruitment and Enrollment; 6) School Calendar, Hours of Operation; 7) Attendance; 8) Student Conduct and Discipline; 9) Pupil Progression Plan; 10) Student Welfare and Safety; 11) Nonsectarian Status; 12) Evaluation; 13) Curriculum; 14) Student Records; 15) Reporting; 16) Assessment of Pupil Performance and Procedures for Corrective Action; 17) Education of Students with Exceptionalities; 18) Volunteer Requirements; 19) Oversight Authority; 20) Site Visits; 21) Production of Documents; 22) Services Required to be Provided; 23) Health and Safety; 24) Non-Discrimination; 25) Notification Requirements
- School Financial Matters:

² Pre-opening procedures are included in an exhibit to the charter school contract. This exhibit is a uniform list of documents that must be submitted to the RSD (for Type 5 charters) or BESE (for Type 2 and Type 4 charters) prior to the opening of the school. A few of the required documents include: a five year enrollment plan; proof of federal tax exemption status; a student code of conduct; the principal’s resume and emergency contact information; and a detailed budget.

- 1) Funding; 2) Financial Accounting and Reporting; 3) Qualified and Competent Business Professional; 4) Tuition and Fees; 5) Financial Records; 6) Assets; 7) Insurance
- Personnel:
 - 1) Employment Matters; 2) Instructional Providers; 3) Paraprofessionals; 4) Criminal History Review
- Charter Term, Renewal, & Revocation:
 - 1) Three-Year Term; 2) Two-Year Extension; 3) Renewal; 4) Revocation; 5) Dissolution
- Miscellaneous:
 - 1) Entire Agreement; 2) Notice; 3) Indemnification and Disclaimer of Liability; 4) Waiver; 5) Assignment; 6) Applicable Law; 7) Severability; 8) No Third Party Beneficiary; 9) Counterparts, Signature by Facsimile; 10) Material Amendment; 11) Non-Material Amendment; Order of Precedence

This template virtually prohibits any variance between different charter school contracts. However, many of the standard provisions in the template reference the exhibits appended onto the contract, which include individualized documents. The particular commitments made by the charter operator in the application’s exhibits become legally binding provisions through incorporation into the contract. The application and the other exhibits serve as the tools by which the charter operator commits to specific goals and details particular procedures to achieve those goals.

Charter School Closure Procedures

A charter school may close for a variety of reasons, including surrender, revocation, or non-renewal of the charter, or dissolution of the nonprofit corporation acting as the charter operator. When a charter school closes, several critical issues arise—notification of parents and employees, transfer of student records, distribution of school property, the dispersal of schools funds, enrollment of former students in new schools, etc. While many charter school operators may wish to avoid considering the possibility their schools may be closed, Louisiana law and BESE policy mandate that charter school operators develop specific procedures to plan for the contingency of a school closure. In this brief, the Louisiana Department of Education’s Charter Schools Office and the Cowen Institute for Public Education Initiatives will review Louisiana law and BESE policies on the procedures following the surrender, revocation, or non-renewal of a charter.

Louisiana Law on Charter School Closure Procedures

Louisiana law does not provide explicit detail or procedures for school closures, but, the law does specify a few general actions a charter school should take: ⁱⁱ

- The charter school must include in its application “a statement of the procedures to be followed and disposition of facilities and equipment should the charter be terminated or not renewed.”
- If a Type 2 or Type 5 charter school closes, “all assets purchased with any public funds” become the property of BESE.
- Charter schools must “maintain records of any assets acquired with any private funds.” Property acquired with private funds remains the property of the nonprofit organization operating the charter school upon school closure.
- Upon closure, a charter school must refund any equipment and cash on hand which can be attributed to the state or local funding to the state or local school district, respectively.

BESE Policy on Charter School Closure Procedures

The majority of BESE policy restates the same requirements for closure found in Louisiana law.ⁱⁱⁱ However, BESE policy does specify one additional detail for school closure procedures: charter operators must maintain an inventory of all assets (including assets acquired with private funds) consistent with the requirements of Bulletin 1929, Louisiana Accounting and Uniform Governmental Handbook.

Both Louisiana law and policy requires that the application include a “statement” about the planned procedures the charter school will follow in the event of closure. In the 2010 RFA, the application question addressing this item was, as follows: “Provide an acknowledgement that in the event of the dissolution of the charter school, the Operator will cooperate fully with LDOE and SBESSE procedures for the transfer of students and student records and for the disposition of school assets.”

The uniform contract template addresses closure procedures in more detail. In a Type 5 charter school standard contract template from May 2007, BESE included the following requirements for a charter school facing closure:

- Within one year of the effective date of the charter school contract, the charter operator must adopt an approved dissolution plan. BESE will provide a model dissolution plan, but the charter operator has the option of creating its own dissolution plan for BESE approval. (Again, this seems to contradict the application requirement of a dissolution plan.)
- The Board of Directors of the charter school must carry out the dissolution of the school and the disposition of assets in accordance with the dissolution plan and applicable law. BESE may supervise, oversee, or direct the dissolution plan.
- All assets purchased with any public funds will automatically revert to full ownership by BESE.
- The charter operator must immediately refund all equipment and cash on hand attributable to state funding to the state. The charter operator may not use this equipment or cash for any other reason, including the payment of debts.
- The charter operator must immediately refund all equipment and cash on hand attributable to federal funding to the US Department of Education or other appropriate federal office.
- The charter operator must maintain records of assets purchased with private funds. Those assets remain the property of the charter operator after the school closes. But, if the records do not clearly establish whether an asset was bought with private or public funds, the charter operator must surrender the asset to BESE.
- All student records must be immediately transferred to BESE.
- All other school records must be immediately transferred to the RSD.

There is no noted procedure or process in the law or policy for the notification of parents, the reassignment of students, or any other matter unrelated to the disposition of assets or records.

BESE, in its role, does not have the statutory authority to promulgate policy for charter schools authorized by local school boards. While local authorizers are required to follow state law, they are given wide latitude to design their own requirements, policies, and procedures in all phases of chartering. With such freedom, local school boards have the ability to adopt BESE’s policy on charter school closure procedures as their own in whole or in part.

ⁱ The Louisiana Administrative Code, Title 28, Education, Part I. Board of Elementary and Secondary Education, Part CXXXIX., *Bulletin 126 – Charter Schools*, March 2010.

ⁱⁱ La. RS 17: 3991, La. RS 17:3995

ⁱⁱⁱ LAC 28:CXXXIX.515, LAC 28:CXXXIX.2509