

Avoiding the Supreme Court's Religious Charter-School Trap: Governance Change for the New Legal Era

Appendix: Recommended Legislative Approach

Below, we build on state examples to set forth specific provisions for the shift to district-governed charter schools. The resulting charter schools will be governmental entities because they are created and controlled by governmental entities—ideally by their local school districts.

The requirement that lies at the center of all recommendations is that any school-operator “middleman” corporations between the governmental authorizer and the school do not have ultimate governance authority. This should be made clear in the state law and in the contracts (the “charters”) that create the schools. While corporations or councils can assist in operating the district-governed charter school, the school must be created and controlled by the governmental entity—again, the school district in the ideal situation.

As one concrete example of what the governance terms of district-governed charter-school contracts look like, consider the 2024 contract, [available in full online](#), between the Fairbanks North Star Borough School Board and the Watershed Charter School, serving grades K-8 in Fairbanks, Alaska. In addition to listing a host of policy waivers granted to the school (see paragraph 19), the contract includes provisions explaining how the school is part of the school district. (Key provisions showing ultimate school-district governance authority are highlighted in bold.)

Academic Policy Committee (paragraph 4)

“The APC consists of nine voting members. Five of the members are permanent **staff** members, at least three of whom must be certified teachers. Four of the members are **parents**, who are not permanent Watershed Charter School staff members, of the students currently enrolled in the school. The principal is a non-voting ex officio member of the APC, except in the case of a tie vote.”

Funding (paragraph 5)

“The School District allocates funding in accordance with State Law, less administrative costs determined by applying the Department of Education and Early Development approved 4% indirect cost. An annual budget is submitted **according to schedules established by the School District**. The Charter School’s program budget is used for operating expenses of the school’s educational program, including the purchase of

textbooks, classroom materials, and instructional aids, as well as student allotments. * * *

“The Charter School may choose to carry over up to ten percent (10%) of the current, annual expenditures into a Charter School designated ending fund balance to be available for expending the following school year.

“The Charter School may also receive revenues from grants and special revenue funds (beyond the per-pupil allocation) approved by the School District. Grants and special revenue funds received by the Charter School from the School District will pass directly into the operating fund and will be used as specified in grant requirements. All donations, gifts, and grants will be utilized to help accomplish the mission and goals of the school.”

School District Charges (paragraph 6)

“The Charter School shall account for receipts and expenditures and **comply with the [school district’s] purchasing and accounting systems**. The charter school agrees that it shall comply with all state and federal requirements for the receipt and use of public money. The Charter School will comply with all District, state, and federal audit requests.”

Budgeting (paragraph 8)

“Between December and March, the Charter School liaison will **work with the School District Business Manager to develop a budget** for the next school year. This will include the salaries of all staff at the Charter School. At this time a “projected” student count for the following year will be given. The estimate may be **finalized at the May School Board meeting**.

“The Charter School acknowledges that adjustment to the Charter School budget may be necessary if the estimated revenues are **revised due to School Board, legislative, and/or Borough Assembly action**.

“All funds will run through the **normal School District financial process**. The Charter School agrees that it shall comply with all State of Alaska and Federal requirements for the receipt and use of public funds.”

Employment (paragraph 10)

“The Charter School shall promptly **provide the School District with written notice of any permanent changes to staff**. It is agreed and understood that all **employees will be recruited and employed through School District processes** and that teachers must sign a written **contract with the School District** before providing services.

Unless the School District and any association representing a teacher or support employee agree to an exemption, all provisions of an existing negotiated or **collective bargaining agreement** applicable to employees shall remain in effect while the employee provides services at Charter School.”

Liability and Risk Management (paragraph 14)

“The Charter School agrees that it will coordinate all risk management activities **through the Borough’s risk management office**. The Charter School shall not compromise, settle, negotiate, or otherwise affect any disposition of any actual or potential demands, claims, lawsuits, fines, judgments, or liabilities **without first consulting with the School District and receiving the School District’s written approval.** *
* *

“The Charter School shall **comply with all School Board policies and regulations**, and comply with all applicable federal and state laws, concerning student welfare, safety, and health including, without limitation, School Board policies addressing the reporting of child abuse, accident prevention, and disaster response, and any state regulations governing the operation of school facilities.”

Other sections of the contract specify that “eligible employees of the Charter School shall be members of the Teachers’ Retirement System and eligible support employees shall be members of the Public Employees’ Retirement System” (paragraph 11), a required program evaluation (paragraph 16), and various provisions around termination and the like. Perhaps the most important element of the contract is what is not included: a corporate middleman between the school board and the school. The contract is with the school itself, and the governance is ultimately placed in the hands of the school district. The school’s Academic Policy Committee, made up of parents and school staff, shape the school’s educational experiences—but neither the APC nor any other body is given independent governance authority. The contract’s funding, purchasing, budgeting and employment provisions are all aligned with this structure.

We hope this concrete example is helpful to readers as we present the model provisions below for a state’s district-governed charter law. In this model, as in the Alaska example, the public school district governs the charter school and is the authorizer. Some states with independent charter schools have authorizers that are governmental entities but that are not public school districts, which creates a challenge: *Would those governmental entities be willing and able to govern the charter schools in this new era?* As explained in the policy brief, the charter school must be created by a governmental entity, but also must be governed by a governmental entity. When

public school districts serve as the authorizer, this system is straightforward. But when other governmental entities authorize charter schools, they will have to create a governance mechanism that similarly satisfies the law.

Section 1. Definitions; Status; Scope

1. *District-Governed Charter School* means a public charter school created by an Authorizing Governmental Entity (“Authorizer”) and governed by that Authorizer or by a different designated governmental entity. Unless otherwise stated, all references herein to “charter schools” mean “district-governed charter schools.”
2. *Public School District* broadly means a traditional public school district that serves to both authorize and govern a charter school, as well as alternative systems where the Authorizer is not a public school district and where that Authorizer or a different designated governmental entity governs the charter school.
3. District-governed charter schools are part of the state system of public education and are government entities and actors for all purposes under the federal and state constitutions and all federal and state laws, including open meetings, public records, ethics and conflicts, student rights, anti-discrimination and civil rights, special education, procurement, and fiscal controls.
4. *Operating Body* means the party with whom the Public School District contracts to create a charter school.
5. *Independent Charter School* means a charter school governed by a non-governmental private board. The majority of members of the governing boards of independent charter schools are privately appointed pursuant to terms set forth in the charter bylaws.

Section 2. Eligible Authorizers and Democratic Control

1. Governmental entities are the only Authorizers. [Variation: *Public school districts are the only authorizers.* We recommend that local school districts be the single authorizer, consistent with basic principles of local democratic control.]
2. Public School Districts must be subject to voter accountability or oversight by a democratically elected body.

Section 3. Creation, Governance, and Accountability

1. Charter schools shall be under the control of the Public School District’s board of education and are subject to open meetings, public records, ethics,

and conflict-of-interest laws.

2. The Public School District shall approve and control each charter's budgets, fiscal policies, staffing plans, and core school policies.
3. The charter-school contract shall be between the Authorizer and an Operating Body that is acting on behalf of the Public School District.

Section 4. Admissions; Equity; Student Rights

1. The charter school shall fully comply with all federal and state constitutional guarantees protecting the rights and liberties of individuals, including freedom of religion, expression, association, equal protection, due process, and protections against unreasonable search and seizure.
2. Student discipline shall follow state law, district code, due-process protections, manifestation determinations, and appeal procedures.
3. The charter school's admissions process shall be open and nonselective to resident students within the Public School District's jurisdiction. When applications exceed capacity, admission is by random lottery with lawful preferences (e.g., by siblings or by geographically defined attendance zones). [Note that this provision is likely not legally necessary. We recommend its inclusion because it is most consistent with principles of publicness.]

Section 5. Public Employment; Labor Relations; HR Protections

1. Employees of charter schools shall be public employees of the Public School District; employees shall have all rights and protections afforded to other comparable employees of the Public School District.
2. Employees participate in public retirement systems; credentialing, licensure, and evaluation follow state and district requirements.
3. Collective bargaining units for the Public School District extend to the employees of charter schools; due process and grievance procedures apply.

Section 6. Funding; Fiscal Controls; Transparency

1. Funding flows through the Public School District as determined by the district based on per-pupil allocations, applicable categorical funds, and federal grants
2. Schools adhere to the Uniform Chart of Accounts; undergo annual independent audits; implement internal controls; and provide quarterly fiscal reports to the

Public School District and State Department of Education (SDE).

3. Public procurement rules apply to contracts, RFPs, and awards as they would to any other contracts, RFPs, or awards within the Public School District.
4. All assets purchased with public funds, including facilities, furnishings, materials, and equipment, are public property owned by the Public School District; no private liens or encumbrances are permitted.

Section 7. Facilities; Health and Safety

1. Facilities shall be owned or leased by the Public School District. Leases with private parties must meet public procurement standards, fair-market-value determinations, and disclosure requirements.
2. All facilities must comply with building, fire, health, environmental, and ADA standards.
3. Charter schools are eligible for state facilities programs and bond financing under district sponsorship.

Section 8. Data Governance; Privacy; Reporting

1. Charter schools shall be included within, or shall mirror, the Public School District policies with regard to compliance with FERPA and state student-data privacy laws, vendor access, Data Protection Agreements and security standards, audit rights, and breach response plans.
2. Reporting on enrollment, attendance, assessments, and finance shall flow through statewide systems and comply with SDE timelines.

Section 9. Special Education; LEA Assignment

1. The Public School District is the LEA for purposes of special education compliance for charter schools.
2. Charter schools are subject to the Individuals with Disabilities Education Act (IDEA) and to Section 504 of the Rehabilitation Act of 1973. Charter schools shall implement IEPs and 504 plans under Public School District oversight; Public School Districts must allocate resources and services equitably, including specialized placements and related services; charter schools shall serve students with disabilities at levels similar to other schools governed by the Public School District. [Note that the provision concerning serving students with disabilities at levels similar to other schools is likely not legally necessary. We

recommend its inclusion because it is most consistent with principles of publicness and equity.]

3. Parents retain all procedural safeguards under state and federal law.

Section 10. Performance Framework; Academic and Equity Indicators

1. Charter schools shall presumptively participate fully in the state- and district-level accountability systems applicable to the Public School District; limited waivers may be granted by the Authorizer, pursuant to Section 11, to support innovation without undermining core obligations.
2. The Public School District shall adopt a public performance framework for its charter schools covering the following: student proficiency and growth; graduation and readiness; attendance and chronic absenteeism; subgroup outcomes; special education and English learner compliance; financial sustainability; and compliance with open and public governance. [Note that this provision is likely not legally necessary. We recommend its inclusion because it is most consistent with principles of good governance.]
3. Public School Districts shall ensure equitable access to advanced coursework (including AP/IB/CTE programs and courses), extracurriculars, and student support services. [Note that this provision is likely not legally necessary. We recommend its inclusion because it is most consistent with principles of publicness and equity.]

Section 11. Waivers and Innovation Authority

1. The Authorizer may grant time-limited waivers (e.g., for 3 years or less, renewable upon demonstrated success) from specific regulations to support instructional innovation, scheduling flexibility, or program design.
2. No waiver may diminish constitutional guarantees, civil rights and nondiscrimination, health and safety standards, transparency, admissions equity, serving students with disabilities, or financial controls.
3. Waiver requests must include objectives, equity impact analysis, metrics, and evidence of community consultation.

Section 12. Vendor Management; Guardrails Against Private Overreach

1. For discrete services (e.g., curriculum platforms, food service, and transportation) that are needed by the charter school and not already provided by the Public School District or otherwise, vendor contracts shall follow public pro-

curement law. The Operating Body may not contract with private vendors. The Public School District shall be party to those vendor contracts.

2. No contract may delegate governance authority, employment control, fiscal decision-making, or day-to-day operational control to a private entity in any way that would undermine the provisions of Section 4 (“Admissions; Equity; Student Rights”) or other provisions of this law. Management services must be advisory and cannot supersede the Public School District policy.
3. All contracts for the benefit of charter schools must include performance standards, audit access, conflict disclosures, data privacy protections, and termination-for-cause clauses.

Section 13. Integrity; Ethics; Conflicts of Interest

1. The Public School District’s board members as well as the Operating Body and officials and employees of the charter schools shall comply with school district and state ethics and conflict-of-interest statutes; related-party transactions are prohibited unless they comply with the Public School District’s rules regarding prior disclosure, independent review, and clear public benefit.
2. The Public School Districts shall conduct annual legal compliance reviews and certify adherence to governance, procurement, transparency, and ethics requirements.
3. A public registry of contracts, for the benefit of a given charter school, with vendors or others in annual totals that amount to more than \$25,000 shall be maintained by the Public School District.

Section 14. Term; Renewal; Non-Renewal; Revocation [Unless otherwise stated, these specific terms and provisions are merely suggested as part of a sound policy]

1. Initial charter term: 5 years, with a comprehensive review in Year 3.
2. Renewal decisions shall be based on the performance framework (Section 10), legal compliance, fiscal integrity, and community engagement outcomes; written findings must be published 60 days before the renewal vote. Terms of renewal shall in no case exceed five years.
3. Non-renewal or revocation requires notice, an opportunity to respond, and a public hearing; emergency closure is permitted only for substantial immediate threats to health, safety, or fiscal integrity.

4. The Public School Districts shall maintain closure plans, addressing areas such as student reassignment, records transfer, asset disposition, and staff transition; the plans are subject to SDE oversight. [Closure authority vested in the Public School District is likely legally necessary for district-governed charter status.]

Section 15. Equity Audits and Continuous Improvement

[Unless otherwise stated, these specific terms and provisions are merely suggested as part of a sound policy]

1. The Public School District shall conduct biennial equity audits of each charter school, analyzing enrollment patterns, program access, discipline disparities, staffing diversity, special education/EL services, and subgroup outcomes.
2. Charter schools shall adopt corrective action plans with measurable timelines and semiannual progress reports.
3. The SDE shall publish statewide equity findings across charter schools.

Section 16. Appeals; Procedural Safeguards [Unless otherwise stated, these specific terms and provisions are merely suggested as part of a sound policy]

1. The Authorizer's decision to revoke or non-renew a charter school is appealable to the SDE within 30 days. SDE shall review for legal compliance, sufficiency of evidence, and adherence to performance standards, with deference to Authorizer fact-finding unless unsupported.
2. An Authorizer's decision to deny an application to open or create a charter school is not appealable.

Section 17. Transition from Independent Charters to District-Governed Status [Unless otherwise stated, these specific terms and provisions are merely suggested as part of a sound policy. Transitioning from a system with independent charters to one with only district-governed charters should follow a process such as the one outlined here.]

1. As of the effective date of this legislation, no new independent charters may be authorized, and no renewals shall be granted except as a conversion, upon compliance with this legislation. Existing independent charters may apply with their potential Authorizer to convert within 24 months.
2. Conversion plans must address, at a minimum, each of the following: governance changes, staff employment conversion and bargaining unit placement,

requests for recognition of seniority, asset transfers to the Public School District, student records, existing contractual obligations, contract termination or novation, and debt resolution.

3. The Public School District may choose to assume specific leases, service contracts, or assets only after determining that the terms are:
 - a. at or below fair market value,
 - b. free of conflicts of interest or related party transactions,
 - c. compliant with state procurement laws, and
 - d. beneficial to the operation of the district-governed charter school.
4. The Public School District should decide whether to convert the independent charter school into a district-governed charter school, or alternatively to close the independent charter school, after considering overall capacity in the district, any hardships to the students currently attending the school, and any other factors the Public School District considers important in fulfilling its obligations to the families and students in the community.
5. Public School Districts shall not assume debts secured by assets that they do not take ownership of.
6. If the independent charter school owns the land and/or building where the school is located and is legally entitled to retain that land and/or building upon termination of the charter, the Public School District may, consistent with existing contractual obligations, negotiate to purchase the land and/or building, so long as the transaction is arms-length and the terms are beneficial to the Public School District.
7. If an independent charter school is converted into a district-governed charter school, and if teachers and other employees of the charter school are working under at-will contracts, the Public School District should presumptively retain those employees and bring them under the Public School District's larger system of employment and human resources, using its best judgment about placing those employees on existing salary scales. Teachers should presumptively be treated as entering employees of the Public School District with regard to tenure and other seniority based job protections. These presumptions are rebuttable, in the sense that the Public School District may, in its discretion, choose not to retain an employee or may choose to provide tenure or other seniority-based job protections to a given retained employee.
8. If an independent charter school is converted into a district-governed charter school, and if teachers and other employees of the charter school are working

under contracts that provide tenure or other seniority-based job protections, the Public School District should presumptively retain those employees and bring them under the Public School District's larger system of employment and human resources, acting in good faith to transfer those protections as part of the movement of the employee into the Public School District's system – except that the Public School District need not provide more generous protections than are provided to the Public School District's comparable employees. This presumption is rebuttable, in the sense that the Public School District may, in its discretion, choose not to retain an employee.

9. If an independent charter school is converted into a district-governed charter school, the Public School District shall act in good faith to sustain the non-salary compensation and benefits of any teachers and other employees of the charter school who are retained – except that the Public School District need not provide more generous protections than are provided to the Public School District's comparable employees.
10. SDE and Public School Districts shall provide technical assistance and may offer transitional funding, prioritizing special education and facility stabilization.
11. Independent charters that decline conversion may operate until the end of their current charter term; renewal requires compliance with this legislation.

Section 18. Annual Public Reporting to the Legislature

[Unless otherwise stated, these specific terms and provisions are merely suggested as part of a sound policy.]

1. SDE shall publish an annual report on charter performance, equity, finances, waivers and innovations, fiscal monitors, closures, and transitions, with disaggregated data and case studies.
2. The report shall include recommendations for statutory or regulatory improvements.