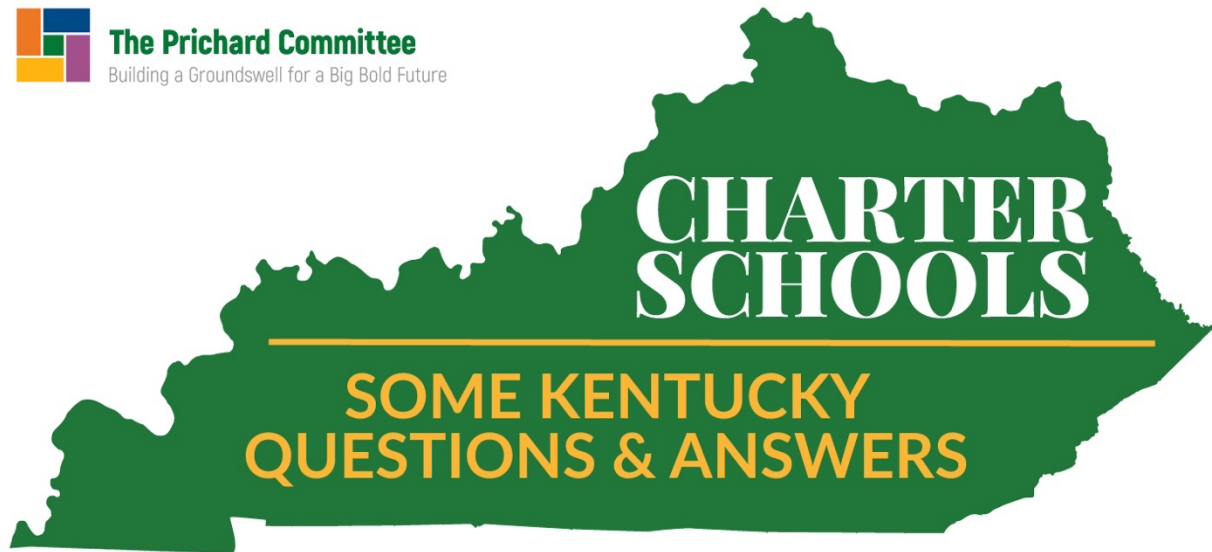




**The Prichard Committee**

Building a Groundswell for a Big Bold Future



## May 2022 Analysis

Charter School: Taking on The Questions

1. What is a charter school?
2. What student results are charter schools expected to deliver?
3. Which school laws do charter schools have to follow?
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## February 2023 Updates

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How will Northern Kentucky authorize a charter school?

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How will litigation affect authorization?

Will Madison County be the first authorizer?

This document compiles blog posts on Kentucky charter school laws originally published at [prichardcommittee.org](http://prichardcommittee.org)

# CHARTER SCHOOLS: TAKING ON THE QUESTIONS

*By Brigitte Blom, President and CEO, originally published May 11, 2022*

With the passage of 2022's House Bill 9, Kentucky has moved a step closer to having some public charter schools. That step invites many different questions about policy, impact, evidence, principles, and practicalities. Today, we're releasing a series of posts by Susan Perkins Weston, each aimed at one major question we've heard recently and also over the years since the Prichard Committee's "Exploring Charter Schools in Kentucky: An Informational Guide" came out in November 2015.

Here are the questions the series will address based on current Kentucky law:

1. What is a charter school?
2. What student results are charter schools expected to deliver?
3. Which school laws do charter schools have to follow?
4. How can students be admitted to charter schools?
5. Who can authorize charter schools?
6. Who can apply to start a charter school?
7. How can charter schools be closed if they do not deliver?
8. What funding can charter schools receive?

Bluntly, we know the charter school debates are too big to be ended by any set of essays.

These posts don't aim to end the debates, but we hope we can make the discussions more constructive and more focused on Kentucky's specific approach to implementation. We've included statute information to help readers go deeper, and we welcome questions as well as contrary interpretations of every kind. To round out the series, we've pulled together a unified list of key [new questions](#) that seem not to have definite answers in place.

The posts may also frustrate every kind of reader. For those who support charter schools, the posts identify practical challenges in need of attention. For those who expect charter schools to be an unhelpful disruption, the posts pay attention to ways charters can become effective. For those hoping for simplicity, these posts will show complexity. For those ready for complex full answers, many questions will remain.

The Prichard Committee does not support or oppose charter schools for themselves. Our goal is excellence with equity in public education. In our 2014 report, we highlighted evidence that some charter schools have successfully contributed to moving forward on that agenda, as well as noting evidence that many charter schools do not help much and some moved students in the wrong direction. As Kentucky is positioned to open some charter schools in the near future, our focus remains the same: we want excellence and equity for all Kentucky students, and we'll press for charter schools to be part of achieving that goal. We plan to be serious about quality and serious about diversity, equity, inclusion and belonging –for Kentucky public charter schools along with all the other public schools that serve our students and build our shared future.

# 1. WHAT IS A CHARTER SCHOOL?

*By Susan Perkins Weston, Senior Fellow, originally published May 11, 2022*

Under Kentucky law, a public charter school will be one that:

- Serves students whose families apply, with a lottery to award seats if there are too many applications
- Is governed by a board of directors
- Receives authorization and oversight from another public agency: a school board, mayor, university board, or collective of school board members
- Gets its funding mainly through tax dollars allocated based on the students it enrolls
- Is subject to rules on school accountability, health, safety, civil rights, disability rights, and data reporting that apply to all Kentucky schools
- Is exempt from some other rules and regulations

Legally, a Kentucky public charter school will be “**a public body corporate and politic,**” which will make it a kind of government agency, rather than a private corporation subject to for-profit or non-profit regulations. Kentucky has other entities that are set up as public bodies corporate and politic, including the Kentucky lottery corporation, water commissions, and urban renewal and community development agencies.

Practically, a charter school differs from more familiar public schools because the local school district doesn’t have the same kinds of control. For example, the school board cannot decrease funding or reassign students, and the superintendent has no role in evaluating, promoting, disciplining, or dismissing the school’s staff. If the local school board is the authorizer, it will have a limited role in overseeing the charter school and evaluating evidence on whether the school should be renewed at the end of its contract: much smaller than the board’s role with other district schools.

Kentucky law also defines three specific kinds of charter schools:

An **urban academy** is “a public charter school that includes an enrollment preference for students who live in close proximity to the school as defined in the charter contract.” In the pilot program created by 2022’s House Bill 9, the pilot charter schools in Jefferson County and Northern Kentucky must serve as urban academies.

A **virtual public charter school** is “a public charter school that offers educational services primarily or completely through an online program.” Kentucky law spells out that virtual charter schools are not allowed.

A **conversion public charter school** is an existing public school that converts to work under the charter school rules. If a school’s results are in the lowest 5% of all schools at its level, it can become a conversion charter and 60% of parents and guardians of its students sign a petition for conversion. If a school’s results are not in the lowest 5%, it can become a conversion charter if 60% of parents seek conversion, and the local school board approves the change. And a local school board can vote at any time votes to convert an existing public school over which it has authority to a charter school.

**Legal Sources:** KRS 160.1590 defines public charter schools and other key terms for those schools. 2022’s House Bill 9 amended paragraph (g) of the main charter definition and added the definition for an urban academy.

## 2. WHAT STUDENT RESULTS ARE CHARTER SCHOOLS EXPECTED TO DELIVER?

*By Susan Perkins Weston, Senior Fellow, originally published May 11, 2022*

State law on charter schools has two kinds of requirements for student results:

First, Kentucky's **school accountability system** will apply. That system includes student assessments, other kinds of data, school ratings, and support and improvement actions when schools have especially weak results. It's clear that charter schools will be part of that system, both because Kentucky charter laws say so and because it's a core federal requirement set in ESSA (the Every Student Succeeds Act passed in 2015).

Second, a **performance framework** will be required. Each charter school will operate under a contract with its authorizer, and Kentucky law requires the performance framework to be in the contract. That framework will include student academic proficiency and growth, achievement gaps, and college or career readiness at the end of grade 12, and it will also include data on school operations and on student attendance, suspensions, withdrawals, exits, and continuing enrollment from year to year. Those "performance indicators, measures, and metrics" will be used by the authorizer to evaluate the charter school.

Neither element will implement itself, so here come two concerns about the work ahead.

### ACCOUNTABILITY ROLES TO BUILD UP

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Kentucky's current rules for support and improvement at schools with low results were designed for multi-layered governance that includes a principal, a school council, a superintendent, and a school board. Accordingly, there are key steps where the principal needs the superintendent's sign-off or plans designed at the school level needs approval at the board level. Similarly, if a school has ongoing weaknesses, it is supposed to receive additional support from its district.

Charter schools will not have those layers and roles. They may only have the required charter board and one instructional leader. If that leader gets to act as principal and superintendent, that collapses a layer of checks and balances. If the charter board is both author and approver of the school improvement plan, that would also drop a layer of oversight out of the system.

Bluntly, if Kentucky is going to stand up solo schools, separated from a network of leadership roles, we need to stand up a plan for who's going to bring help and fresh thinking if the school needs support.

### FRAMEWORKS AND FIRMNESS

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The framework approach will require authorizer focus and follow-through. Before signing the contract, the authorizer should be the body checking that each performance entry is specific, measurable, achievable, relevant, and time-bound. Once the contract is in place, the authorizer needs to implement a regular process of reviewing evidence on those performance issues. There will also be puzzles on what to do if the school's actual performance is a little or a long way below the framework's expectations.

The charter concept is supposed to be a trade where the charter accepts accountability in exchange for autonomy. For that to be an honest trade, the accountability part has to work. If accountability data shows a charter school to be deeply troubled, that warrants a step-by-step plan as strong as we have for other schools, with roles as clear and settled as the ones we apply to other institutions.

Similarly, for a performance framework to have any impact at all, it has to be clear at the outset and checked consistently throughout the contract.

**Legal Sources:** *KRS 160.1596 requires the targets and the framework. KRS 160.1593 requires the assessment plan.*

### 3. WHICH SCHOOL LAWS DO CHARTER SCHOOLS HAVE TO FOLLOW?

*By Susan Perkins Weston, Senior Fellow, originally published May 11, 2022*

Exemption from legal requirements is regularly listed as a key way that charter schools can be different, usually followed by quick disclaimers that some rules will still apply. This post will offer some likely specifics on that.

Here are some important examples of Kentucky rules that charter schools probably will not have to follow:

- Primary talent pool identification and services for K-3 students (gifted and talented services for older students have to be described in the charter school application)
- Response to intervention systems for K-3 students
- Individual learning plans for grade 6-12 students
- Accelerated learning for students with identified deficiencies or strengths based on state assessments
- Advanced coursework options (Advanced Placement, International Baccalaureate, dual enrollment, or dual credit)
- Class size caps
- State teacher evaluation rules, continuing contracts (tenure), and single salary schedule
- 2% financial contingency reserves

Charter schools will also be “exempt from administrative regulations governing public schools for purposes of zoning and local land use regulation.” That exemption is direct from state law, and it seems likely to mean that a charter school can select space in any building that meets health and safety rules, without having to fit within existing rules on where homes, businesses, factories, and other uses are allowed.

These kinds of exemptions leave many other rules in place. Legally, “the public charter school shall adhere to the same health, safety, civil rights, and disability rights requirements as are applied to all public schools,” as well as other statutes that specifically say they apply to charter schools. Here are my starting lists of rules that look to me like they will definitely apply.

SOME HEALTH AND SAFETY RULES THAT WILL APPLY TO KENTUCKY CHARTER SCHOOLS	SOME CIVIL RIGHTS AND DISABILITY RIGHTS THAT WILL APPLY TO KENTUCKY CHARTER SCHOOLS
Emergency plans and drills for fire, severe weather, earthquake, and lockdowns. Health examinations, immunization records, and rules on administering medication Physical activity for grades K-5 Reasons and procedures for suspensions, expulsions, and services after expulsion Student seclusion and restraint limits and reporting Student conduct reporting to law enforcement and to school staff	Accommodations for students and staff with disabilities Alternate diplomas Constitutional requirements like free speech, freedom of religion, due process, and equal protection IEPs (individualized education programs) for students with identified disabilities Reasons and procedures for suspensions, expulsions, and services after expulsion State and federal anti-discrimination laws

*May 11, 2022, chart from [prichardcommittee.org](http://prichardcommittee.org)*

#### SOME CHARTER SCHOOL REQUIREMENTS SPELLED OUT IN KENTUCKY LAW

#### FROM CHARTER STATUTES

Education programs that meet student performance standards  
High school courses that meet state graduation requirements  
State assessments of student performance  
Instructional time of at least 1,062 hours (the equivalent of 177 six-hour days)  
Free and reduced-price meals to students meeting federal guidelines for those meals  
Fee waiver and reduction requirements, with a ban on fees for P-8 textbooks  
Compulsory attendance rules and enforcement

Instruction by certified teachers (administrators and other staff will not need certificates)  
Criminal backgrounds for staff, volunteers, governing board members, and education service provider staff  
State retirement system participation for those employed directly by the charter school (but not education service provider staff)  
Data collection for school report cards  
Open records and meeting rules  
State systems for student information and financial data (Infinite Campus and MUNIS)

Accounting principles and audit requirements followed by other Kentucky public schools  
State purchasing requirements or “a detailed monthly report of school purchases over ten thousand dollars)”

#### FROM OTHER STATUTES

Instruction consistent with the concepts and engaging the texts listed in the Teaching American Principles Act portion of 2022’s Senate Bill 1.  
Trauma-informed approach to instruction and school counselling  
Hotline numbers on student identification badges

May 11, 2022, chart from [prichardcommittee.org](http://prichardcommittee.org)

That’s not a minor set of obligations!

Reasons and procedures for **suspensions, expulsions, and services after expulsion** may well be the most important item on those lists. I put them under health and safety because the rules were substantially revised in 1998 as part of the School Safety Act. I also put them under civil and disability rights because education is a fundamental right in Kentucky. That isn’t true in all states, but it’s true here under Article 183 of our Constitution.

Suspension, expulsion and services after expulsion also top my list of legal requirements that should get further attention to work effectively for charter school students and leaders. Under current law, expulsion from public schools is a decision taken by the elected local board of education after a formal hearing. The board also has the obligation to provide services to students after expulsion (unless doing would be dangerous). How will those steps work for a charter school? The law should be clear, but this part of state law was written with no plan for charter schools to exist. Thoughtful amendments ought to be built, with veteran administrators, board members, and student advocates as key players in thinking through consistent and complete approaches.

**A concluding note:** Here’s an over-arching point about why there are substantial lists of rules to consider: education is a huge undertaking. Of Kentucky’s 4.5 million people, roughly 1 in 6 is actively engaged in that one huge effort: more than 780 thousand students and nearly 70 thousand teachers and other school staff members. Also, the work is profoundly important work: the development of young humans who will be the main builders of our shared future. No one should expect the rules to fit on a cocktail napkin.

**Legal Sources:** *KRS 160.1592 provides the overall exemption and the specific zoning and land use exemption. KRS 160.1592 provides charter schools’ overall exemption, and most of the other requirements. KRS 161.141 specifies that charter school employees will participate in state retirement systems. The other explicit requirements for charter school operation are found in 2022’s Senate Bill 1 (concept and texts), in KRS 158.4416 trauma), and in KRS 158.038 (hotline numbers)*



## 4. HOW CAN STUDENTS BE ADMITTED TO CHARTER SCHOOLS?

*By Susan Perkins Weston, Senior Fellow, originally published May 11, 2022*

In general, students who wish to attend Kentucky charter schools will be admitted. If the number wishing to attend exceeds the charter school's capacity, some preferences will apply:

- For students who already attend the school, their siblings, and students who live in the district where the school is located
- If the school chooses, for students who are eligible for free or reduced-price meals, who attend persistently low-achieving schools, or whose parents are board members or full-time employees
- At conversion charter schools, for students who attended the school before the conversion
- At urban academy charter schools, for “students who live in close proximity to the school as defined in the charter contract”

After the preferences are applied, remaining slots will be awarded by lottery.

These rules leave no place for a school to compare two applicants and choose the learner with higher test scores, better auditions, stronger recommendations, or fewer reports of behavior challenges.

That said, the rules do not create a fully level playing field. Families that know where they will be living next year will have an advantage over those with unstable housing. Similarly, families with more ability to explore options will be more likely to find and apply for charter options. Both advantages will often be tied to socio-economic privilege. And school decisions about when and where and how to advertise may also affect who applies.

Two additional enrollment issues look like they still need attention.

**First, late admissions.** If a student moves into the area on July 1 and wants to attend a charter school that has space, will the student have to be admitted? The lottery step is a solution for when there are too many applicants during the regular application season. But what if there are fewer applicants than seats, or if some who are admitted later move away or change their minds, making some seats available again? Will those seats be open to students who seek admission later on? For charters to be as public as other public schools, the answer has to be yes, but I don't think Kentucky law says that.

**Second, removals.** Our earlier post on legal requirements that apply to charter schools mentioned the need to clarify Kentucky's procedures for suspensions, expulsions, and services after expulsion, particularly regarding roles and responsibilities at schools not governed by an elected school board. Those clarifications are needed for health, safety, civil rights, and disability rights. The clarifications are also needed to build toward fairness in who attends charter schools, making sure that being admitted is not an illusion for students who are quickly pushed out for reasons or using procedures that would not be acceptable in other public schools.



## 5. WHO CAN AUTHORIZE CHARTER SCHOOLS?

*By Susan Perkins Weston, Senior Fellow, originally published May 11, 2022*

In charter school operation, the authorizer is a government body that approves an application to form a charter school, enters a contract with the school's board, provides oversight, and decides on renewal or closure of the school.

### OPTIONS AND APPEALS

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Kentucky law allows multiple authorizers for Kentucky charter schools:

- The local school board in the district where the school will be located.
- A collaborative of local boards formed to set up a regional charter school.
- The Lexington/Fayette County mayor and the Louisville/Jefferson County chief executive
- Either the trustees of Northern Kentucky University or a “collective” appointed by school boards in that region (see the Pilot Project discussion below for more detail.)
- The Kentucky Board of Education will hear appeals of rejected applications. That Board can change the outcome based on whether the application met the legal requirements and whether the denial was “contrary to the best interest of the students or community.”

### PILOT PROGRAM

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In 2022, House Bill 9 mandated a “Kentucky Public Charter School Pilot Project” that requires the approval of two “urban academy” charter schools, one in Jefferson County and one in Kenton or Campbell. As urban academies, each will give admissions preference to students who live near the school. The authorizers for each school will report each year to two legislative committees on how it is overseeing the required charter school. In addition, the Office of Education Accountability will review the school's performance each year and report to the same two committees.

For the Jefferson County charter school, the Jefferson County school board is directed to authorize a charter school by July 1, 2023. The Jefferson board will face an added challenge in its authorization and oversight work: 2022's House Bill 1 only allows that board to meet once every eight weeks.

For the Northern Kentucky charter school, there are two authorizer possibilities:

- Through January 1, 2023, the Northern Kentucky University Board of Regents can choose to be the authorizer by adopting a resolution. The board will then be required to authorize a charter school by July 1, 2023.
- On July 1, 2023, if NKU's board has not become an authorizer, a “collective” will be created, with two members from the local boards in each of the nine school districts in Kenton and Campbell counties. The collective will then be required to authorize a charter school by July 1, 2024.

### ONGOING RESPONSIBILITIES

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The authorizer's work does not end with approving an application.

Contract drafting will be an important legal challenge. Oversight to see if performance goals and operating requirements are being met will come after that. Decisions about renewal based on those issues will also be an important responsibility. If there are health and safety concerns, action may be needed to close the school. If there are other substantial weaknesses that are not legal grounds for closure, the authorizer will be responsible for raising those concerns with the charter school and perhaps for looking into other remedies.

Authorizing and oversight looks like a moderately heavy lift. A school board authorizer at least starts out with a staff that knows education law, finance, and operations. If a mayor or a university board wants to take on the role, that choice seems likely to require some new staff or a commitment of time from existing staff as well as from the officials themselves. And if a collective of school board members must form to authorize the northern Kentucky pilot, it is not clear how they can get staff or logistical support for the initial authorizing decision. To get a further sense of the scale of effort involved in authorizing, one helpful resource may be the [“Principles & Standards for Quality Charter School Authorizing”](#) offered by the National Association of Charter School Authorizers. Once the authorizer contracts for a charter school, it will be able to retain 3% of the charter school’s revenue. As a loose estimate, think of that being about \$300 per student, available to cover part of the cost of this oversight work.

*Legal Sources: KRS 160.1590 defines the authorizers. KRS 160.1594 sets authorizing process, and KRS 160.1595 provides for appeals, with some modifications made by 2022’s House Bill 9. Section 11 of House Bill 9 sets the rules for the pilot program.*

## 6. WHO CAN APPLY TO START A CHARTER SCHOOL?

*By Susan Perkins Weston, Senior Fellow, originally published May 11, 2022*

Kentucky law specifies that “teachers, parents, school administrators, community residents, public organizations, nonprofit organizations, or a combination thereof” will be able to apply. Applications for charter schools controlled wholly or partly by religious denominations will be rejected.

Each charter application will include by-laws and initial members of the school’s board of directors, which must include two parents of students at the school and must not include employees of the school or employees of educational service providers that will serve the school. The board will be sworn in after the application is approved.

Once a charter application is approved, the charter school will official be a “body corporate and politic” run by its board of directors. Legally, a Kentucky public charter school will be “a public body corporate and politic,” which will make it a kind of government agency, rather than a private corporation subject to for-profit or non-profit regulations. Kentucky has other entities that are set up as “public bodies corporate and politic, including the Kentucky lottery corporation, water commissions, and urban renewal and community development agencies. Formally speaking, the charter school cannot be owned by any other group or company.

For-profit corporations cannot apply to form Kentucky charter schools: they are not on the list of allowed applicants. For-profit corporations also cannot own charter schools, because each charter school must be a “body corporate and politic.”

However, for-profit corporations can be “education service providers,” and a charter school board can sign a contract with that sort of provider. If a charter school plans to contract with an education service provider, the planned terms of the contract will be included in the charter application. Kentucky law defines an education service provider as “an education management organization, school design provider, or any other partner entity with which a public charter school contracts for educational design, implementation, or comprehensive management.” This provision means that for-profits can play a major role in how a charter school is started, though only with some type of agreement with others.

The contract will determine what the provider does for the charter school and its board. That means that the charter might buy or rent its facilities, furniture, equipment, technology, books, and supplies. Many of those things can be used over more than one school year, so there is a valid question about who gets to keep those items if the school closes or chooses to work with different providers. Yes, a skilled and experienced provider can push a less-well prepared charter school board toward a contract that gives big advantages to the outside company. At the same time, it’s worth noticing that a charter school starts from scratch. It does not have a financial reserve or bond proceeds it could use to buy any of those big-ticket items, so rental contracts may be the only way the school can begin.

**Legal sources:** *KRS 160.1593 governs applications to run a charter school. KRS 160.1593 governs charter applications, including how education service providers are to be identified in applications. KRS 160.1590 establishes charters’ “body corporate and politic” status and defines education service providers.*

*To look at look at other “bodies corporate politic,” good starting places may be KRS 65.355 for land bank authorities, KRS 74.450 for water commissions, KRS 99.350 for urban renewal and community development agencies, KRS 154A.020 for the Kentucky Lottery Corporation, KRS 262.010 for soil and water conservation districts and KRS 342.803 Kentucky Employers’ Mutual Insurance Authority.*

## 7. HOW CAN CHARTER SCHOOLS BE CLOSED IF THEY DO NOT DELIVER?

*By Susan Perkins Weston, Senior Fellow, originally published May 11, 2022*

Kentucky charter schools will have five-year contracts and be able to seek renewal for additional years.

Charter authorizer will be able to refuse to renew a charter school's contract if the school:

- Fails to “meet or make significant progress toward” performance expectations
- Persistently fails to correct violations of its contract, the charter school law, or financial management standards
- Substantially violates material provisions of laws that apply to the charter school.

There will be a formal process for hearing evidence for and against renewal, and renewal decisions will be subject to appeal to the Kentucky Board of Education.

Before the five-year renewal decision, the charter authorizer will be able to revoke a charter school's contract immediately if a violation threatens student health and safety.

That is a very narrow rule for revocation before the renewal date . It's possible to imagine a charter school that provides health, safety, and instruction that is very brief or very weak or very far out of line with state standards or very different from what was promised in the application and the charter contract. Under Kentucky's charter school law, there isn't an explicit provision that allows the authorizer to close a school that is operating with that kind of problem.

There may be other ways to address severe problem. The authorizer (or any other concerned anyone) can call on the charter school to fix the weakness, and the charter school may respond seriously. If that does not work, the authorizer may be able to sue under the breached contract. Or parents may be able to go to court. Federal procedures may help, particularly if the problems affect the rights of students with disabilities. State accountability procedures may also kick in if the school's scores are especially weak or its assessment implementation doesn't follow state requirements.

Even so, charter schools will have some important insulation from their critics, because voters cannot vote out a charter's board and because only that board can evaluate or fire charter school leaders.

That narrow provision for revocation means that best time to check that a charter school is going to be able to good work is at the beginning, in the application phase. Authorizers should be looking for charters led by people with relevant knowledge and skill, instructional designs that show deep understanding, and operation plans that allow robust implementation. Rejecting applications that don't show those things will also be an important step in making sure each charter school has the capacity to contribute excellence and equity to Kentucky's system of common schools.

**Legal Sources:** *KRS 160.1598 includes the grounds for nonrenewal and immediate revocation. KRS 160.1696 specifies that charter contracts will last five years.*

## 8. WHAT FUNDING CAN CHARTER SCHOOLS RECEIVE?

*By Susan Perkins Weston, Senior Fellow, originally published May 11, 2022*

In 2022, House Bill 9 added rules for funding Kentucky charter schools. Those new provisions call for each charter school to share in most of federal, state, and local revenue available in their “district of location.” With that intent quite clear, the implementation is still going to be challenging. My big suggestion for working on the challenges is that we start building prototypes: models of what sample charter schools might receive based on the students they serve and the districts where they are located. Here, I’m going just dive in and show my understanding of key calculations, starting with SEEK base funding.

### SEEK BASE BASICS

SEEK is short for Support Education Excellence in Kentucky, our main formula for funding public education. With only small modifications, we’ve used this approach since 1990, with a base guarantee for every pupil and a set of add-on amounts for students with additional needs. Here’s an illustration for an imaginary district. It starts with total students, counted based on average daily attendance, and then shows each group of students that receives an add-on. For simplicity, it uses the \$4,000 guarantee amount being used this fiscal year.

SAMPLE SEEK BASE CALCULATIONS FOR A SCHOOL DISTRICT			
	STUDENTS	BASE PER STUDENT	BASE FUNDING
Students (Adjusted Average Daily Attendance)	6,000	\$4,000	\$24,000,000
Students with Severe Disabilities	200	\$9,400	\$1,880,000
Students with Moderate Disabilities	600	\$4,680	\$2,808,000
Students with Speech Delays	200	\$960	\$192,000
Students Eligible for Free Meals	4,000	\$600	\$2,400,000
Students with Limited English Proficiency	300	\$384	\$115,200
Students Receiving Home/Hospital Services	20	\$3,900	\$78,000
SEEK Base Total (Omitting Transportation)			\$31,473,200
<i>This prichardcommittee.org table uses prototype student counts to illustrate the SEEK base guarantee.</i>			

Local school boards use their taxing powers to raise 30¢ for every \$100 of taxable property in their districts, and that taxation raises varying amounts depending on districts’ assessed property values. The state then pays whatever is needed to complete the guarantee, which means state contributions are higher in districts with less property wealth and lower in districts with more.

## SEEK BASE FOR CHARTER SCHOOLS

Under HB 9, a public charter school is to receive:

“The amount that is proportional to the public charter school’s enrollment or average daily attendance in comparison with the overall district qualifying numbers for:  
Funds that are related to students’ attendance and enrollment and allocated to the district of location pursuant to KRS 157.360.”

KRS 157.360 is the statute that sets up the base part of the SEEK formula, so here’s my prototype of that step for two imaginary charter schools. These schools have matching numbers of total students but quite different student needs. Like the district numbers above, it begins with total students in average daily attendance and follows with the add-on amounts that go with the current \$4,000 base guarantee.

SAMPLE SEEK BASE ALLOCATIONS FOR TWO CHARTER SCHOOLS				
	CHARTER A STUDENTS	CHARTER B STUDENTS	CHARTER A BASE FUNDING	CHARTER B BASE FUNDING
Students (Average Daily Attendance)	300	300	\$1,200,000	\$1,200,000
Students with Severe Disabilities	20	0	\$188,000	\$0
Students with Moderate Disabilities	60	0	\$280,800	\$0
Students with Speech Delays	20	0	\$19,200	\$0
Students Eligible for Free Meals	300	0	\$180,000	\$0
Students with Limited English Proficiency	30	0	\$11,520	\$0
Students Receiving Home/Hospital Services	2	0	\$7,800	\$0
SEEK Base Total (Omitting Transportation)			\$1,887,320	\$1,200,000
Share of District’s Students			5.0%	5.0%
Weighted Share of Qualified Enrollment and District’s Revenue			6.0%	3.8%
<i>This prichardcommittee.org table uses prototype student counts to illustrate the SEEK base guarantee.</i>				

This part of the funding will be the same everywhere in the state, though in future years the amounts per pupil will likely be at least little higher. Each charter school will receive these dollars from its “district of location,” but the amounts won’t vary based on the school’s address.

## TIER 1 OPTIONAL EQUALIZATION

In addition to the guaranteed base, the SEEK formula allows districts to get some further state equalization called Tier 1, up to a maximum of 15% of the district's SEEK base total. All districts are taking that maximum. The part the district puts in depends once again on its taxable property, but this time I want to illustrate how that works at three different levels of property wealth:

SAMPLE TIER 1 CALCULATIONS			
	EXAMPLE 1	EXAMPLE 2	EXAMPLE 3
Total Property	\$2,400,000,000	\$3,600,000,000	\$4,800,000,000
Calculated SEEK	\$31,473,200		
Tier 1 Maximum of 15%	\$4,720,980		
Needed Tax Rate	8.7¢ per \$100		
Local Share of Tier 1	\$2,088,000	\$3,132,000	\$4,176,000
State Share of Tier 1	\$2,632,980	\$1,588,980	\$544,980
Total Tier 1	\$4,720,980	\$4,720,980	\$4,720,980
<i>This prichardcommittee.org table uses prototype student counts to illustrate Tier 1 equalization funding.</i>			

Because of the equalization, the property wealth doesn't matter to what districts receive. Will it matter when districts pass dollars to charters? Maybe.

## TIER 1 FOR CHARTER SCHOOLS

When Tier 1 dollars are shared out:

Will charter schools get shares based on qualified enrollment with all the weighting, giving Charter A 6% or the revenue and Charter B 3.8%? That would add about \$283 thousand for Charter A and \$179 thousand for Charter B.

Or will each get 5% and \$236 thousand, based just on the count of pupils and ignoring the add on needs?

Or (take a deep breath), will they get the state dollars based on qualified enrollment and the local dollars per pupil? If it's done that way, the district's property assessments will matter. The richer the district, the more revenue will be local. The more the revenue is local and handed out without weights, the less the Charter A's higher need students will receive.

As an advocate for equity that meets student needs, I definitely prefer the qualifying enrollment approach.

Here's the thing: after a week of reading HB 9's funding provisions over and over again, I see how others could argue for either of the other methods. I also think the stakes are big enough that key players are likely to argue hard for the version that works best for the students they expect to serve. Here's a table showing how differently the three approaches could work.



SAMPLE TIER 1 ALLOCATIONS FOR TWO CHARTER SCHOOLS			
	EXAMPLE 1	EXAMPLE 2	EXAMPLE 3
ALLOCATING TIER 1 BY QUALIFYING ENROLLMENT			
Charter A 6.0%	\$283,259	\$283,259	\$283,259
Charter B 3.8%	\$179,397	\$179,397	\$179,397
ALLOCATING TIER 2 PER PUPIL			
Charter B 5%	\$236,049	\$236,049	\$236,049
Charter A 5%	\$236,049	\$236,049	\$236,049
ALLOCATING LOCAL TIER 1 PER PUPIL AND STATE TIER 1 BY QUALIFYING ENROLLMENT			
Charter A 5% Local & 6% State	\$262,379	\$251,939	\$241,499
Charter B 5% Local & 3.8% State	\$204,453	\$216,981	\$229,509
<i>This prichardcommittee.org table illustrate ways Tier 1 funding could flow to two prototype charter schools in districts with three different levels of assessed property values.</i>			

## OTHER PUZZLES

For each other part of school funding, my hunch is that there will be other puzzles to work through. Those other parts include:

- SEEK transportation
- SEEK Tier 2 (unequalized local dollars capped at 30% of base plus Tier 1)
- SEEK-funded stipends for National Board Certified Teachers
- SEEK funds for a variety of facilities costs
- State funding for school technology
- State funding for other categorical programs
- Federal funding for categorical programs

Each of these streams is worth prototyping the charter allocations and discussing with care. This is about big money and there will be big concerns. The best time to start working on those big issues is now, with maximum time to think through implications, consider any proposals to clarify the legal language, and (if possible) dependable information for all concerned.

## IMPACT ON OTHER SCHOOLS

None of this is going to be easy for any district where families choose a charter option. For example:

Districts have multi-year commitments to staff, equipment, utilities and building upkeep, and none of those commitments will shrink by 5% if enrollment changes by that proportion.

For any “district of location” where a charter school opens, in addition to amounts to be paid, there will be timing issues. Local revenue often comes from property taxes paid between November and January, so it will matter how much has to be paid out to each charter school before that November cash flow arrives.

For those districts of location, there will also be the disruption of having their local tax revenue divided up to pay for students whose homes (and family tax contributions) are in other school districts.

For other districts, when students leave to go to charter schools in other areas, there will also be disruptions. Eligibility for each kind of state and federal funding may decline. If local revenue is stable, that will offer the most cushioning to districts where the highest taxable property produces the largest local contribution.

At least for moment, try thinking of this as similar to the financial implications of a divorce with children involved. To give just one example, even if the division of property and income is done perfectly, the money that paid for one home will not pay for two homes at the same level of comfort. Dividing education revenue among more schools is going to require stretching the same dollars to cover more spaces and equipment and sorting out those changes will involve new negotiations, drafts and revisions, compromises and conflicts.

Some readers are sure to think charters will have benefits worth the effort. Others are sure to think they won't. Over time, some on either side may move toward the other view. For now, I want to offer a simpler point: funding charter schools is going to take effort. There are puzzles to be solved, and those solutions are likely to generate more puzzles. That work is right in front of us, and it needs attention.

**Adding a caveat:** The prototype possibilities shared above are the best I can figure out on my own. It's completely possible that readers who follow school funding will immediately see flaws in my reasoning. That's kind of the point of sharing a prototype: it lets us find the glitches early. So please, bring on the questions, concerns, and alternate views of how this will work.

***Legal sources:** In 2022's House Bill 9, Section 7 has the rules for funding charter schools. (See pages 30 to 35). KRS 157.360 shows most of the rules for SEEK base funding, with the add-on for students with limited English proficiency shown only in budget legislation like 2022's House Bill 1. House Bill 1 also provides that the SEEK base guarantee will move up from \$4,000 to \$4,100 next year and \$4,200 the year after: the calculations above kept the \$4,000 figure because it makes the arithmetic easier to follow. KRS 157.440 shows the Tier 1 and Tier 2 rules.*

## FEBRUARY 2023 UPDATES

*Prepared By Susan Perkins Weston, Senior Fellow on February 20, 2023*

In April 2022, the General Assembly passed HB 9, setting charter school funding and deadlines for pilot charters in Jefferson County and northern Kentucky. In August, our blog series summarized those rules. [www.prichardcommittee.org/charter-schools-taking-on-the-questions](http://www.prichardcommittee.org/charter-schools-taking-on-the-questions)

Here's a briefing on five newer developments: updated regulations, Northern Kentucky University's board decision not to take on a charter role, the lack of Jefferson County applications, the arrival of a Madison application and new charter funding litigation

### WHAT'S IN THE NEW REGULATIONS?

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In October, the Kentucky Board of Education amended state charter school regulations. Although KBE regulations can change operating rules for state initiatives, these amendments simply added what HB 9 required and deletes some terms that HB 9 removed from state law.

*Emergency versions of the amended regulations are in effect now. KBE adopted the emergency versions to provide clarity for charter applications to be filed early in 2023. Permanent versions will move more slowly through a legislative review process.*

### HOW WILL NORTHERN KENTUCKY AUTHORIZE A CHARTER SCHOOL?

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The Northern Kentucky University board will not become a charter school authorizer. HB 9 gave them 1/2/2023 deadline to opt into that role, but the board's December 2022 meeting, no director made a motion to take it up.

Concerns listed in an NKU press release included "lack of start-up funding available to the authorizer," the approval timeline, legal costs and "the financial viability of a small-scale charter schools" operation. [nku.edu/news/2022/December/BORCharterSchools.html](http://nku.edu/news/2022/December/BORCharterSchools.html)

Since NKU bowed out, a charter must be authorized in Kenton or Campbell County by 7/1/2024, approved by a collective of 22 school board members: two each from Bellevue, Campbell, Covington, Dayton, Erlanger-Elsmere, Fort Thomas, Kenton, Ludlow, Newport, and Southgate.

### WHEN WILL JEFFERSON COUNTY AUTHORIZE A CHARTER?

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In January, no one applied to form a Jefferson County charter school. 1/23/23 was the JCPS board's deadline to apply for a 2024-25 opening date. House Bill 9 calls for that board to approve a charter by 7/1/23, but approval seems impossible without any applications.

Earlier, Dr. Veda Pendleton had filed a notice of intent for a "LYCEE of Louisville" charter, listing its mission, governing board, and enrollment plan, but she did not file a full application by 1/23/23. [www.jefferson.kyschools.us/schools/charter-schools/charter-school-archives](http://www.jefferson.kyschools.us/schools/charter-schools/charter-school-archives)

### HOW WILL LITIGATION AFFECT AUTHORIZATION?

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In December, the Ky Supreme Court ruled that “education opportunity accounts” violated state constitutional rules. Though not about charter schools, the ruling may set precedent for K-12 funding cases. [www.wymt.com/2022/12/15/kentucky-supreme-court-issues-ruling-about-controversial-education-bill/](http://www.wymt.com/2022/12/15/kentucky-supreme-court-issues-ruling-about-controversial-education-bill/)

In January, the Council for Better Education, joined by Jefferson and Dayton school boards, filed suit saying that charter funding violates Ky constitutional rules. [www.courier-journal.com/story/news/education/education/2023/01/10/jcps-public-school-leaders-sue-over-kentuckys-new-charter-school-law/69727860007/](http://www.courier-journal.com/story/news/education/education/2023/01/10/jcps-public-school-leaders-sue-over-kentuckys-new-charter-school-law/69727860007/)

Litigation like the new charter case will take months for initial motions, followed by hearings, briefings, a ruling, and appeals. The case may or may not be resolved in time for charter schools to open with clear financial resources in the summer/fall of 2024.

## **WILL MADISON COUNTY BE THE FIRST AUTHORIZER?**

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In January, Madison County did receive a charter application. Gus LaFontaine, co-founder of LaFontaine Preparatory School and LaFontaine Early Learning Center, said his planned school will lower class sizes and raise teacher pay.

[www.kentucky.com/news/local/education/article271704392.html](http://www.kentucky.com/news/local/education/article271704392.html)

Madison County has more than 7,500 students, so the board cannot block the application by refusing a memorandum of agreement. Instead, the board must act on the application within 60 days. If the board finds deficiencies, the applicant can ask for another 60 days to fix those problems.

Taking all these developments together, Kentucky may open one charter school in 2024 in Madison County, but a second charter looks unlikely before at least 2025.