

The Georgia Charter School Act of 1998: Staying True to the General Principles Embraced by the
Charter School Movement

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Introduction:

Declining academic performance along with teacher apathy has sparked a demand for education reform. As a result of public outcry, many State legislatures have enacted charter school statutes as a means of intergrading the community and the school in an effort to provide parents with academic alternatives.¹ The purpose of this paper is to provide an overview of the charter school movement and provide a detailed analysis of the Georgia Charter School Act of 1998. Section one of the paper will chronicle the charter school movement, from its early beginnings as an idea for improving one school district to its current state as a major educational reform effort in 41 states. Additionally, section one will define charter school, and list possible positives and negatives of this movement.

Section two will explore the Georgia Charter School Act of 1998. This section ask the question: Does the Georgia Charter School Act of 1998 embrace the general principles behind the charter school movement. This paper comes to the conclusion that the Georgia Charter School Act of 1998 does embrace the general principles behind the charter school movement. In addition, the Georgia legislation solves some of the noted doctrinal flaws with charter schools.

I. The National Charter School Movement: An Overview

A. Ray Budde, Albert Shanker, and the 1991 Minnesota Charter School Provision

In 1988, a New England educator named Ray Budde suggested that teachers be given “charters”² or contracts by local school boards to open new schools that would explore innovative

¹ Nancy Hubley, Seminar, *Charter Schools: Legal Implications under the IDEA*, Educ. Law Ctr., Pitt., Pa.

² Merriam-Webster Collegiate Dictionary 193 (10th ed. 1998) (defines “charter” as a grant or guarantee of rights, franchises, or privileges from the sovereign power of a state or country).

teaching methods.³ According to Budde, the local school board should allow “chartered” educators greater flexibility in developing teaching methods.⁴ In exchange for the flexibility, the teachers would be held to a higher degree of accountability for their student’s academic success.⁵

Albert Shanker, the past president of the American Federation of Teachers also contributed to the early development of the charter school movement.⁶ He advocated “the creation of new public schools that would provide opportunities for teachers to develop and implement innovative educational strategies.⁷ Additionally, the teachers would be subject to periodic evaluation to measure the progress of the new teaching initiatives.”⁸ Lastly, Shanker stressed that both parent and teacher should elect to participate in the creation of the charter school.⁹

Perhaps the Minnesota legislature was inspired by Budde’s proposal and Shanker’s advocacy, or developed the concept on its own volition¹⁰; either way, Minnesota enacted the first charter school legislation in 1991.¹¹ Minnesota listed several possible purposes behind the

³ Denise M. Kazlauskas, *EDUCATION: Elementary and Secondary Education: Provide for Charter School Status; Remove Certain Limitations Regarding Advance Capital Outlay Funding for Construction Projects to Consolidate or Reorganize Schools; Provide for Contents of Petition Charter; Provide for Approval of Charter Schools by Local and State School Boards; Provide for Operational Requirements of Charter Schools; Provide for Charter Renewals; Provide for Amendment and Termination of a Charter; Establish Duties of State Board of Education and Local School Board with Respect to Provisions of Funds to Charter Schools; Establish an Office of Charter School Compliance and Provide for Its Responsibilities; Provide for Continuing Validity of Certain Charters in Effect on July 1, 1998*, 15 Ga. St. U.L. Rev. 101, 104 (1998) (discussing Ray Budde’s contribution to the charter school movement).

⁴ Budde, Ray, *EDUCATION BY CHARTER: RESTRUCTURING SCHOOL DISTRICTS 3* (WestEd 1988) (1988)

⁵ *id.* at 3.

⁶ Walker Richmond, Article, *Charter School Accountability: Rhetoric, Results, and Ramifications*, 12 Va. J. Soc. Pol’y & L. 330, 334 (2004) (discussing Albert Shanker’s contributions to developing the charter school idea).

⁷ *id.* at 334.

⁸ *id.* at 334.

⁹ Albert Shanker, *Restructuring our schools*, Peabody Journal of Educ. v. 65, n.3, pp.92, 98 (Spring 1988).

¹⁰ Richmond, *supra* note 6 at 334 (discussing Minnesota state senator Ember Reichgoott-Junge, working alongside policy wonks Ted Kolderie and Joe Nathan to develop Minnesota’s charter school legislation).

¹¹ Jennifer J. Ridley, Note, *Charting a New Course for Public Education in Michigan – Charter Schools: A Significant Step Toward Meaningful Education Reform*, 76 U. Det. Mercy L. Rev. 607, 616 (1999) (declaring Minnesota enacted the first charter school legislation in 1991); See also MINN. STAT. § 124D.10 (2004).

statute. Purposes included increasing learning opportunities for pupils; encouraging the use of different and innovative teaching methods; requiring schools to monitor the innovative outcomes; establishing new forms of accountability for schools, and creating new professional opportunities for teachers.¹² According to the Minnesota statute, a school board could sponsor groups of licensed teachers to operate charter schools as approved by the Charter School Advisory Commission.¹³ The Commission would only approve the petitioning educators once the teachers submitted a detailed analysis on how they planned to operate the school.¹⁴

B. General Principles of the Charter School Movement

By 1999, thirty-six states, with an estimated 252,009 pupils had followed Minnesota's lead and adopted charter school legislation.¹⁵ Some states only adopted legislation that allowed "conversion" charter schools, while others adopted legislation that allowed "start-up" charter schools, while others adopted legislation that allowed both "conversion" and "start-up" charter schools.¹⁶ Each adopting state developed a unique charter school statute.¹⁷ However, there are

¹² MINN. STAT. § 124D.10(a)(1)-(6) (2004).

¹³ MINN. STAT. § 124D.10 2A (2004).

¹⁴ MINN. STAT. § 124D.10 Subd. 4 (2004).

¹⁵ National Charter School Study: Fourth-Year Report: <http://www.uscharterschools.org/cs/fs/query/q/1567?&x-title=National+Charter+School+Study>; See <http://www.ed.gov/pubs/charter4thyear/a.html#expand>, (2000, Department of Education). There are actually 41 states, including the District of Columbia (1996) and Puerto Rico with Charter School legislation: Alaska (1995), Arkansas (1995), Arizona (1994), California (1992), Colorado (1993), Connecticut (1996), Delaware (1995), Florida (1996), Georgia (1993), Hawaii (1994), Idaho (1998), Illinois (1996), Indiana (2001), Iowa (2002), Kansas (1994), Louisiana (1995), Massachusetts (1993), Maryland (2003), Michigan (1994), Minnesota (1991), Missouri (1998), Mississippi (1997), North Carolina (1996), New Hampshire (1995), New Jersey (1996), New Mexico (1993), Nevada (1997), New York (1998), Ohio (1997), Oklahoma (1999), Oregon (1999), Pennsylvania (1997), Rhode Island (1995), South Carolina (1996), Tennessee (2002), Texas (1995), Utah (1998), Virginia (1998), Wisconsin (1993), and Wyoming (1995). The states without charter school legislation are Alabama, Kentucky, Maine, Montana, North Dakota, Nebraska, South Dakota, Vermont, Washington and West Virginia, *at* http://www.uscharterschools.org/pub/uscs_docs/sp/index.htm (list the states and with and without charter school legislation).

¹⁶ "Conversion" charter schools are former traditional public schools. Depending on the state statute – a certain number of interested individuals can vote to "convert" a traditional public school into a charter school. "Start-up" charter schools are newly established. Like the "conversion" school, depending on the state statute, a certain number of interest individuals vote to establish the "start-up" school.

general definitions and principles that almost all statutes appear to follow. Most statutes define charter schools as public, nonsectarian institutions of choice that operate free from select regulations that apply to traditional public schools.¹⁷ Since charter schools are public, they can neither charge tuition nor administer admissions test.¹⁹ Additionally, charter schools are required to follow their respective state's health and safety regulation.²⁰

1. Charter Schools are Performance-Driven and Mission-Driven

The charter establishing each school is a performance-driven and mission-driven contract detailing the school's mission, program, goals, students served, methods of assessment, and ways to measure success.²¹ The charter is considered performance-driven because it relies on the fulfillment of goals and objectives, and it is mission-driven because depending on the state and statute – parents, teachers, and /or community leaders petition for the institution, i.e. the community believes there is a need for the school.²² Charter length varies, but most are granted for three to five years.²³ At the end of the term, the entity granting the charter may renew the contract for an additional three to five years.²⁴ Most charters are renewed as long as the petitioners adhere to the mission statement submitted to the regulatory body.

¹⁷ Jennifer T. Wall, Article, *The Establishment of Charter Schools: A Guide to Legal Issues for Legislatures*, 1998 BYU Educ. & L.J. 69, 70 (1998) (defining charter schools).

¹⁸ Kazlauskas, *supra* note 3, at 104 (discussing characteristics of charter schools); *See also* WestEd (2000, August). Steps to Starting a Charter School [Online]. Available at: http://www.uscharterschools.org/pub/uscs_docs/ta/steps.htm.

¹⁹ Kazlauskas, *supra* note 3, at 104 (discussing characteristics of charter schools).

²⁰ Kazlauskas, *supra* note 3, at 104 (discussing characteristics of charter schools); *See also* WestEd (2000, August). Steps to Starting a Charter School [Online]. Available at: http://www.uscharterschools.org/pub/uscs_docs/ta/steps.htm.

²¹ Kazlauskas, *supra* note 3, at 104 (discussing characteristics of charter schools); *See also* WestEd (2000, August). Steps to Starting a Charter School [Online]. Available at: http://www.uscharterschools.org/pub/uscs_docs/ta/steps.htm.

²² Jason Lance Wren, Note, *Charter School: Public or Private? An Application of the Fourteenth Amendment's State Action Doctrine to These Innovative Schools*, 19 Rev. Litig. 135, 140 (2000) (discussing the background of charter schools).

²³ *id.* at 135, 140.

²⁴ WestEd (2000, August). Steps to Starting a Charter School [Online]. Available at: http://www.uscharterschools.org/pub/uscs_docs/ta/steps.htm.

2. “Strong” Charters v. “Weak” Charters

Each state either allows “strong” or “weak” charters.²⁵ “Strong” charters grant petitioners lots of autonomy from state and local board of educations, while “weak” charters grant little autonomy.²⁶ Independence is the basic concept of charter schools because they exercise increased autonomy in return for accountability.²⁷ Charter schools are accountable to their sponsors – usually a state or local board or a combination of parents, teachers, and community leaders.²⁸ The sponsors look for the school to produce positive academic results and sound administrative policies.²⁹

3. Accountability

Traditional public schools and charter school have different types of accountability.³⁰ Traditional public schools are typically governed by the bureaucratic theory of democratic accountability.³¹ According to this theory, members of the local school board are held responsible for school performance because they are elected to provide the highest quality of education to each child in the community.³² The possible problem with this type of accountability structure is that over time, the elected officials impose “a host of unhelpful rules and regulations, usually in response to political pressure.³³ As the rules and regulations accumulate, accountability merely becomes rule-compliance and not academic effectiveness.³⁴

²⁵ Jennifer T. Wall, Article, *The Establishment of Charter Schools: A Guide to Legal Issues for Legislatures*, 1998 BYU Educ. & L.J. 69, 70 (1998) (drawing a distinction between “strong” and “weak” charter statutes).

²⁶ Wall, *supra* note 26, at 69, 70 (drawing a distinction between “strong” and “weak” charter statutes).

²⁷ WestEd (2000, August). Steps to Starting a Charter School [Online]. Available at:

http://www.uscharterschools.org/pub/uscs_docs/ta/steps.htm.

²⁸ WestEd (2000, August). Steps to Starting a Charter School [Online]. Available at:

http://www.uscharterschools.org/pub/uscs_docs/ta/steps.htm.

²⁹ WestEd (2000, August). Steps to Starting a Charter School [Online]. Available at:

http://www.uscharterschools.org/pub/uscs_docs/ta/steps.htm.

³⁰ Richmond, *supra* note 6, at 341-342 (discussing the accountability in the charter school movement).

³¹ *id.* at 341-343.

³² Richmond, *supra* note 6, at 339 (discussing the bureaucratic theory of democratic accountability).

³³ *id.* at 340.

³⁴ *id.* at 340.

Charter schools attempt to correct this problem by holding teachers accountable as opposed to elected officials.³⁵ The rationale behind holding teachers accountable is they are better suited to oversee academic performance and make appropriate changes.³⁶ In essence, charter school accountability is measured by academic effectiveness and not rule-compliance.³⁷ Teachers, along with parent and student input are better able to craft plans to meet the needs of the community school, as oppose to an elected board that may have to consider the needs of several district schools. By allowing accountability to rest in the hands of respective schools, boards can no longer claim that they are doing what is based for a district, although one school appears to be struggling.³⁸

C. Possible Benefits from Chartering a School

Both petitioners and traditional public schools benefit from the creation of charter schools. Charter schools benefit from autonomy and increased parental involvement, while traditional public schools benefit from the newly established competitive relationship between charter and traditional institutions.³⁹ In essence, all public schools improve.

1. Benefits from Increased Charter School Autonomy

Charter schools are more independent than traditional public schools.

In 1998-1999, most charter schools had primary control or authority over their administrative operations including: the budget (73 percent), purchase of supplies and equipment (88 percent), and hiring of teaching staff (88 percent). In addition, most charter schools had primary control over the operation of their educational program, including: the daily and yearly schedule (95 percent), curriculum (83 percent), discipline (87 percent), calendar (77 percent), and student assessment policies (72 percent). A lower percentage of schools reported

³⁵ *id.* at 342.

³⁶ *id.* at 340.

³⁷ *id.* at 341.

³⁸ *id.* at 342.

³⁹ Ridley, *supra* note 11, at 617-620 (1999) (discussing the three benefits of the charter school).

that they had primary control over their student admissions policies (59 percent).⁴⁰

Generally, charter institutions are only minimally accountable to laws dealing with charter development, school status, fiscal stability, student make-up, staffing and labor relations, institutional goals, and accountability procedures.⁴¹ Completely absent from the list is curriculum development. Charter schools are given great flexibility in creating their academic plan.

For example, picture a normal day at a traditional public school where students are going to class and educators are lecturing. At this school, pupils are underachieving and seem to be unresponsive to customary teaching techniques. Existing state and local regulations limit the instructor's ability to create new learning approaches. Now, picture a normal day at a charter school. Like the traditional public school, students seem to be underachieving and unresponsive to customary teaching techniques. However, unlike the educator at the traditional school, the charter school instructor is given more flexibility to craft a lesson plan that fits the needs of her students.

Perhaps, changing the lesson plan does not work and the problem lies with the educator. Some charter provisions allow schools to hire professionals, such as scientist and play writes to teach courses. The professionals may be non-certified and non-union teachers.⁴² Hiring non-certified and non-union teachers allow different perspectives into the classroom, and allow funding normally spent by teacher unions to be applied directly to pupils.⁴³ Additionally, all educators are given equal status. Good teachers with experience will be retained and bad

⁴⁰ National Charter School Study: Fourth-Year Report: <http://www.ed.gov/pubs/charter4thyear/d.html#why>, (2000, Department of Education); *See also* <http://www.ed.gov/pubs/charter4thyear/d2.html#control>.

⁴¹ WestEd (2000, August). Steps to Starting a Charter School [Online]. *Available at:* http://www.uscharterschools.org/pub/uscs_docs/ta/steps.htm.

⁴² Ridley, *supra* note 11, at 619 (discussing some charter schools ability to hire non-union and non-certified teachers).

⁴³ *id.* at 619.

teachers with experience will no longer hide behind claims of tenure.⁴⁴ This encourages all teachers to improve.

Traditional public schools generally do not have the benefit of autonomy. They are controlled by a state's entire school code.⁴⁵ True, local school districts will have idiosyncrasies, but there is an overlying state interest in having uniform schools.⁴⁶ Customary institutions follow a "one size fit all" structure.⁴⁷ Community needs are not taken into account and individual schools are not granted leeway in administering employment protocol. If the student does not fit, then she is either made to adjust or left to struggle. This limitation placed on the traditional public school restricts its effectiveness, which in turn limits potential student growth.

Additionally, traditional public schools lack fiscal flexibility. Their budget is itemized by the state or local school board. They are unable to allocate funds for different projects, while charter schools are normally exempt from budgetary constraints. Individual charter institutions have the authority to allocate their yearly budget. This is advantageous because charter schools are able to redirect resources to suitable endeavors, while traditional schools are limited by bureaucratic restrictions. Suitable endeavors may include technology upgrades, fieldtrips, and increased teacher salaries.

2. Charter Schools and Charter Students Benefit from Increased Parental Involvement

Parents are typically involved in the charting process in two ways. They are either part of the petitioning body establishing the charter school, or they elect to send their child to established charter schools. Both instances highlight parents taking an active role in their child's education by exercising choice. A major premise behind the charter movement is to cultivate an

⁴⁴ *id.* at 619.

⁴⁵ Ridley, *supra* note 11, at 619 (discussing autonomy as a key benefit of the charter schools).

⁴⁶ Molly O'Brien, *Education and the Constitution: Shaping Each Other and the Next Century: Free at Last? Charter Schools and the "Deregulated" Curriculum*, 34 Akron L. Rev. 137, 156 (2000) (discussing the uniformity of the American curriculum).

⁴⁷ O'Brien, *supra* note 46, at 156 (discussing the uniformity of the American curriculum).

environment where parents are active participants in the educational landscape of the school. Some charters require parents to sign contracts pledging their involvement.⁴⁸

There are many ways for parents to get involved at a charter school. Involvement may include serving on the schools governing board, which allows parental influence on curriculum and school administration, or simply volunteering to tutor. Charter schools invite parental input, and often parents provide it because they elect to send their children. Children benefit from parental involvement because it reinforces academic lessons and highlights the importance of education.⁴⁹

3. The Competition Created by Charter Schools Benefit ALL Public Schools

The charter movement creates an improved school system for all pupils at both traditional public institutions and charter schools.⁵⁰ Charter school students benefit from specialized curriculum. Teachers have unparalleled freedom to develop innovative learning exercises. Additionally, parents and community leaders are encouraged to participate at the school, which helps integrate the needs of the community and the school.

Traditional public schools benefit from the improved school system because of competition. In other words, customary institutions will have to compete to attract and retain students. Most states in their charter provision allow parents to send their child to a charter school even if it is outside the normal attendance district. Schools are typically funded a specific amount per child, which translates to: the more students attending a school, the more funding available that school. So, if more parents elect to send their child to a charter school, traditional schools will receive proportionally less money due to decreased enrollment.⁵¹

⁴⁸ Ridley, *supra* note 11, at 620 (1999) (discussing how parental involvement will benefit charter schools).

⁴⁹ *id.* at 621.

⁵⁰ *id.* at 619.

⁵¹ Ridley, *supra* note, at 620 (discussing how traditional schools will benefit from the creation of charter schools).

Traditional schools will be encouraged, if not forced to improve their educational product because of parental choice.⁵² This will force customary schools to possibly solicit parental involvement as a means of drawing parents into the school. Additionally, this could lead to a relaxing of bureaucratic regulations, which in turn will lead to increased autonomy in traditional public schools.

D. Alleged Problems with the Charter School Movement

1. Charter Schools will only Service the “Best” Students

Opponents argue that charter schools will negatively impact traditional public schools. The first argument alleges that charter institutions will only enroll the best pupils.⁵³ As a result, conventional schools will become a “dumping” ground for at-risk students and those difficult to educate.⁵⁴ Conventional public schools will suffer from the exodus of good students and active parents. This is hurtful because those respective groups are normally the catalyst for change in the traditional public school. Additionally, the already under budgeted traditional public school will lose per-student funding because of decreased enrollment.

This argument appears not to be valid. First, charter schools are public institutions, i.e. they are prohibited from excluding students based on specialized admissions. Second, the National Charter School Study (Fourth-Year Report) notes that 28 percent of charter schools surveyed were founded to meet the special needs of the community.⁵⁵ Additionally, the report notes that 75 percent of charter schools are founded to realize parental visions of what school

⁵² Jennifer J. Ridley, Note, *Charting a New Course for Public Education in Michigan – Charter Schools: A Significant Step Toward Meaningful Education Reform*, 76 U. Det. Mercy L. Rev. 607, 620 (1999) (discussing how traditional schools will benefit from the creation of charter schools); *See also* Molly O’Brien, *Education and the Constitution: Shaping Each Other and the Next Century: Free at Last? Charter Schools and the “Deregulated” Curriculum*, 34 Akron L. Rev. 137, 156 (2000) (discussing how freedom of education choice will improve traditional school).

⁵³ Ridley, *supra* note, at 621 (discussing the possible flaws with the charter school movement).

⁵⁴ Tiayana Marks, Arguments and Groups Affecting Current Attempts to Pass Charter School Legislation, <http://epaa.asu.edu/epaa/v3n13/legis.html>

⁵⁵ National Charter School Study: Fourth-Year Report: <http://www.ed.gov/pubs/charter4thyear/d.html#why>, (2000, Department of Education).

should be.⁵⁶ The vision mentioned is typically held by inner-city parents who opt to send their children to charter schools because their child is not succeeding in conventional schools because of gangs, drugs, high dropout rates, poor academics, and low test scores.⁵⁷

2. Charter Schools will exclude Minority Students

The next argument alleges that charter schools will only service White students and this will lead to segregated schools, where Whites attend charter institutions and minorities attend traditional public schools.⁵⁸ This argument lacks merit. According to the 1998-1999 National Charter School Survey, charter schools enroll 11 percent fewer White students (48 percent versus 59 percent) than conventional schools in 27 states with charter provisions.⁵⁹ Additionally, charter schools were more likely than all public schools to serve Black students (almost 24 percent versus 17 percent) and Hispanic students (21 percent versus 18 percent).⁶⁰

Statistics show that minorities are taking advantage of the charter school movement; however, it is important that law makers monitor the respective attendance of charter institutions and traditional public schools to ensure that minorities are not self-segregated under the auspice of providing “special needs” education. The Supreme Court held in *Brown v. Board of Education of Topeka*:

Segregation of white and colored children in public schools has a detrimental effect upon the colored children. The impact is greater when it has the sanction of the law; for the policy of separating the races is usually interpreted as denoting the inferiority of the Negro group. A sense of inferiority affects the motivation of a child to learn. Segregation with the sanction of law,

⁵⁶ National Charter School Study: Fourth-Year Report:

<http://www.ed.gov/pubs/charter4thyear/d.html#why>, (2000, Department of Education).

⁵⁷ Ridley, *supra* note 11, at 621 (discussing the possible flaws with the charter school movement).

⁵⁸ Tiayana Marks, Arguments and Groups Affecting Current Attempts to Pass Charter School Legislation, <http://epaa.asu.edu/epaa/v3n13/legis.html>

⁵⁹ National Charter School Study: Fourth-Year Report:

<http://www.uscharterschools.org/cs/fs/query/q/1567?&x-title=National+Charter+School+Study>; See <http://www.ed.gov/pubs/charter4thyear/c.html> (2000, Department of Education).

⁶⁰ National Charter School Study: Fourth-Year Report:

<http://www.uscharterschools.org/cs/fs/query/q/1567?&x-title=National+Charter+School+Study>; See <http://www.ed.gov/pubs/charter4thyear/c.html> (2000, Department of Education).

therefore, has a tendency to [retard] the educational and mental development of Negro children and to deprive them of some of the benefits they would receive in a racial[ly] integrated school system.⁶¹

According to the court, both Blacks (and all other minorities for that matter) and Whites benefit from an integrated school system. Legislature must maintain the spirit of *Brown* while promoting the purpose behind the charter school movement. Furthermore, the legislature must insert in all charter legislation a requirement for appropriate racial demographics.

3. Charter Schools Lack Appropriate Financing

Critics of charter institutions argue a major flaw is lack of financing.⁶² According to the 1998-1999 National Charter School Survey, “the most frequent barriers charter schools faced during implementation were lack of start-up capital and operating funds (49 and 37 percent respectively).”⁶³ Charter schools normally receive funding based on a state mandated per child basis, and this is typically not enough for a “start-up” charter school.⁶⁴ A lack of funding can lead to possible difficulties in building and/or renting appropriate facilities for the school, acquiring needed equipment, and providing competitive teacher salaries.⁶⁵

As a result of limited government funding, charter schools are often forced to acquire alternate funding.⁶⁶ Funding typically comes from private financing, donations, corporate sponsors, and management firms.⁶⁷ Accepting money from non-governmental groups lead to three important questions: (1) how much money should public charter schools be allowed to accept from outside sources; (2) how much influence should contributors have in operating the school; (3) do legislatures blur the line between private institutions and public institutions when they allow charter schools to accept private funding? The answers to each of these questions

⁶¹ *Brown v. Board of Education of Topeka*, 347 U.S. 483, 495 (1954).

⁶² Ridley, *supra* note 11, at 621 (discussing lack of funding in charter schools as a possible flaw).

⁶³ National Charter School Study: Fourth-Year Report: <http://www.uscharterschools.org/cs/fs/query/q/1567?&x-title=National+Charter+School+Study>; See also <http://www.ed.gov/pubs/charter4thyear/d1.html#challenge> (2000, Department of Education).

⁶⁴ Ridley, *supra* note, at 621 (discussing lack of funding in charter schools as a possible flaw).

⁶⁵ Ridley, *supra* note, at 622 (discussing lack of funding in charter schools as a possible flaw).

⁶⁶ *id.* at 622.

⁶⁷ *id.* at 622.

can and should be answer in each state's respective charter statute. One of the alleged major flaws of charter schools is a lack of financial monitoring.⁶⁸

II. Georgia Charter School Movement

A. Early Charter School Legislation

Georgia enacted its first charter school legislation in 1993.⁶⁹ Initially, the Charter School Act of 1993 only granted charters for three years and only permitted the conversion of existing traditional public schools into charter schools, as opposed to allowing start-up schools.⁷⁰ Two-thirds vote by school faculty and attending families were needed to convert a traditional school into a charter school.⁷¹ Once the two-thirds vote was achieved, the charter proposal was presented to the local school board who then submitted it to the State Board of Education for discretionary approval.⁷² Additionally, the 1993 Act did not allow individuals, parents, or private corporations to petition for a charter school.⁷³ In 1995, the Charter School Act of 1993 was amended to lower the voting requirement to a majority of faculty and families, and increased the charter length to five years.⁷⁴

B. Modern Charter School Legislation

⁶⁸ *id.* at 622; *See also*, Amy Stuart Wells, Symposium, The Politics of Accountability: California School Districts and Charter School Reform: Despite any...talk about accountability, the day-to-day experiences of people struggling to define charter school accountability [are] complicated, contradictory, and deeply enmeshed in political context, 11 *Stan. L. & Po'y Rev* 325, 334 (2000) (discussing how California legislature approve of charter school autonomy, but also such charter schools be accountable for fiscal decisions).

⁶⁹ *See* 1993 Ga. Laws 1440, 1, at 1441-45 (formerly found at O.C.G.A. 20-2-225 (1993)); Kazlauskas, *supra* note 3, at 105.

⁷⁰ Kazlauskas, *supra* note 3, at 106 (discussing the Charter School Act of 1993).

⁷¹ *See* 1993 Ga. Laws 1440, 1, at 1442 (formally found at O.C.G.A. 20-2-255(c) (1993)); Kazlauskas, *supra* note 3, at 105-106 (discussing charter school movement in Georgia).

⁷² *See* 1993 Ga. Laws 1440, 1, at 1442 (formally found at O.C.G.A. 20-2-255(c)-(d) (1997)); Kazlauskas, *supra* note 3, at 106 (1998) (discussing charter school movement in Georgia).

⁷³ Kazlauskas, *supra* note 3, at 107 (discussing charter school movement in Georgia).

⁷⁴ *See* 1995 Ga. Laws 307, 1 at 308-309 (formally found at O.C.G.A. 20-2-255(b)(1) (1997)); Kazlauskas, *supra* note 3, at 105-106 (discussing charter school movement in Georgia).

In 1998, Georgia substantially amended the Charter School Act.⁷⁵ The amended Act now allows for the creation of start-up charter schools by private individuals and community groups.⁷⁶ Georgia's amended charter school legislation can be found at *Code sections 20-2-2060 – 20-2-71*. This paper will examine each provision excluding *code sections 20-2-2068* and *20-2-2068.1* and will determine whether Georgia's charter school legislation is consistent with the general principles behind the charter school movement.

1. Code Section 20-2-2060: Short Title and Code Section 20-2-2061: Legislative Intent

Georgia's charter school act is located at *code section 20-2-2060*, under the legislative title – Charter School Act of 1998. The legislative intent behind the provision is to create an avenue where charter petitioners can seek a performance-driven contract with local or state school boards. The code section explicitly ties school autonomy with improved academic performance. At this point, the legislation is vague on who can petition and for what length. Additionally, the code section does not reveal the waived provisions. *Code section 20-2-2061* appears to be in accord with the general charter school principals because school performance is tied to the waiver of local and state regulations.

2. Code Section 20-2-2062: Definitions

Code section 20-2-2062 lays the general framework for Georgia's charter legislation by defining "charter", "charter petitioner", and noting other relevant materials concerning charter organization. The General Assembly uses a standard definition for charter: a performance-driven contract between a local board and a charter petitioner.⁷⁷ Georgia grants the local and state school boards some authority over the petitioning body by stating that both boards must approve

⁷⁵ GA.. CODE Ann. § 20-2-061 – 20-2-2068 (2004).

⁷⁶ Kazlauskas, *supra* note 3, at 105-106 (discussing charter school movement in Georgia).
GA. CODE ANN. § 20-2-2061(2) (2004).

⁷⁷ GA. CODE. ANN. § 20-2-2062 (1) (2004).

the request. The code section does not explicitly state the criteria used to approve or deny the charter petition.

The General Assembly announces that local schools, private individuals, private organizations, and public entities may submit charter petitions.⁷⁸ This code section appears to fully embrace the general principles behind the charter school movement. A wide range of Georgians are empowered to take an active role in establishing charter schools. Local schools comprised of teachers and administrators are able to petition their local board in an effort to improve community schools by loosening certain rules and regulations. Additionally, parents are given authority to petition on their own or with teachers as a means of integrating the needs of the community into the public school. Furthermore, by allowing private organizations and public entities the ability to request charter school status, the General Assembly allows for improvement in vocational programs. Perhaps as a result, there will be a merger of industry expertise and public school education.

There are several possible drawbacks from having such a liberal provision. First, the General Assembly may be allowing persons without educational training to charter a school. A learning institution is more than just teaching community needs. Schools are places where pupils need to learn about its community, while also learning how to operate in the surrounding world. In essence, schools should be a place for holistic learning. Students will be disadvantaged if they are only taught subjects pertaining to community interest they are only taught vocational skills if the school is sponsored by private organizations and public entities.

Second, the General Assembly may be allowing persons without administrative capacities to petition for a school. A school is more than just a place of learning. For people employed at the school and business working with the school, it is an industry. Local and state boards must examine the fiscal components of charter petition to insure sound fiscal management. Especially for start-up charter schools, who typically only receive state funding

⁷⁸ GA. CODE ANN. § 20-2-2062(2) (2004).

based on a per pupil requirement, and/or may receive monies from local option tax or bond referendum.⁷⁹

Code section 20-2-2062 also establishes groups barred from petitioning for charter school status. According to the General Assembly, “home study programs, sectarian schools, religious schools, private for profit schools, and private educational institutions not established, operated, or governed by the State of Georgia, or existing private schools are excluded from petitioning for charter school status.”⁸⁰ The purpose behind this exclusion appears to be that Georgia wants to explicitly establish that charter schools are public in nature and not affiliated with private institutions. Moreover, the General Assembly acknowledges that private schools are typically religious in nature⁸¹ and it would be a violation of the separation of church and state to sponsor a religious school with tax monies.⁸²

According to *code section 20-2-2062* Georgia allows both conversion⁸³ and start-up⁸⁴ charter schools. As stated above, a conversion charter schools is a former traditional public schools were the majority of attending parents and teachers opted to convert their existing school into a charter institution. While a start-up charter school did not exist as a local school prior to becoming a charter institution.

These two code sections also empower lots of Georgians. First, teachers and parents with a majority vote can petition to convert their existing traditional public school into a charter institution. This is a good option because the existing school already has valuable resources such as teachers, equipment and course materials, students, and school buildings. The petitioners can focus their request on improving school performance and maintaining the fiscal features of the school.

⁷⁹ GA. CODE ANN. § 20-2-2061(10) (2004).

⁸⁰ GA. CODE ANN. § 20-2-2062(2) (2004).

⁸¹ GA. CODE ANN. § 20-2-690(b)(1) (2004).

⁸² GA. Const. Art. I, § II, Para. VII (2004).

⁸³ GA. CODE. ANN. § 20-2-2062 (4) (2004).

⁸⁴ GA. CODE. ANN. § 20-2-2062 (14) (2004).

This differs from a start-up charter school because the start-up institution has start-up cost. Petitioners at this type of school will have to include provisions detailing how it plans on increasing performance, how it intends to acquire teachers, and how it plans on acquiring educational resources. This can delay the charter process until the petitioners acquire needed start-up capital.

However, there are positives in allowing a start-up charter school. First, new (or different) facilities may re-motivate pupils and re-encourage teachers. Second, start-up schools are allowed to pick educators and facilities to meet its educational mission statement. Third, there will not be pre-existing students. In this instance, perhaps only those who want to go to the charter school will go, as oppose to a conversion school where opposition parents may leave their children in the school because of other factors, such as convince of location.

Next, code *section 20-2-2062* establishes that all faculty and instructional staff members must be taught by certified professionals; however, it does allow for paraprofessionals to work at the school.⁸⁵ This provision is at odds with general charter school principles. Generally speaking, charter schools are allowed substantial flexibility in hiring educators.⁸⁶ Charter schools seek to hire individuals with formalized teaching certification or those with substantial work experience in an effort to accommodate different learning styles. However, charter schools may be allowed to hire experienced professionals lacking teaching certification under *O.C.G.A. § 20-2-204(a)(2)*, which allows for the hiring of permitted personnel “who may not qualify for professional certificates... but who function in the educational programs in the same manner as certificated

⁸⁵ GA. CODE ANN. § 20-2-2062(5) (2004); *See also* GA. CODE ANN. § 20-2-204(a)(1) (2004) (defining a paraprofessional as a person who may have less than professional-level certification, who relates in role and function to a professional and does a portion of the professional’s job or tasks under the supervision of the professional and does a portion of the professional’s job or tasks under the supervision of the professional, and whose decision-making authority is limited and regulated by the professional. Such a paraprofessional shall possess the minimum of a high school diploma or a general educational development (GED) diploma. If assigned to positions governed by federal regulations, the paraprofessional must meet specified federal hiring requirements.

⁸⁶ Ridley, *supra* note 11, at 619 (discussing some charter schools ability to hire non-union and non-certified teachers).

certified personnel.”⁸⁷ Their hiring is based on their work experience rather than formal education.⁸⁸

Georgia’s definition of “charter” and “charter petition” appear consistent with the general principles behind the charter school movement. Georgia’s approach seems concise and liberal. It is concise because it explicitly states which parties can petition for a charter school, and clearly states the type of school available. The code section is liberal because it allows a wide array of Georgians to petition for a charter school. This is important because the charter school movement is based on freedom of choice.

3. Code Section 20-2-2063: Minimum Requirements for Charter Petitions

The General Assembly grants the State Board of Education substantial power under *code section 20-2-2063*.⁸⁹ Under this code section, charter provisions are governed by state board rules, regulations, policies, and procedures.⁹⁰ Furthermore, the state board mandates that all charter petitions answer two questions: (1) how will the charter school benefit from the wavier of certain state board regulations; (2) in what ways will the charter school improve performance?⁹¹ After answering the above questions, according to *code section 20-2-2063*, petitioners will have to outline the charter school’s curriculum – explaining whether the school will be a verifiable academic institution, a vocationally based institution, or a verifiable academic institution and a vocationally based institution.⁹² Lastly, the petition will have to describe the types of students the school hopes to attract.

This portion of *code section 20-2-2063* eliminates a possible flaw with the charter school movement – disorganization. The code section forces the petitioning body to organize its request. It forces petitioners to craft an ironclad proposal before state resources are allocated to

⁸⁷ GA. CODE ANN. § 20-2-204(a)(1) (2004).

⁸⁸ *id.*

⁸⁹ GA. CODE ANN. § 20-2-2063 (2004).

⁹⁰ GA. CODE ANN. § 20-2-2063 (2004).

⁹¹ GA. CODE ANN. § 20-2-2063(1) (2004).

⁹² GA. CODE ANN. § 20-2-2063 (2004).

the school. Furthermore, petitioners are encouraged to create an improvement timeline, stating the length of time needed to improve the school. This causes the petitioners to concentrate on how it plans to improve the performance of the school.⁹³

This portion of *code section 20-2-2063* also eliminates another possible flaw with charter school movement – some charter provisions lack appropriate means to monitor proposed performance increases.⁹⁴ Georgia eliminates oversight problems by drafting requirements directly into the state charter provision. Petitioners are notified at the onset that the state board requires clear measurements on how performance will be accomplished and measured.

4. Code Section 20-2-2063.1: Exemption of Charter Schools from Statutory and Regulatory Requirements

Code section 20-2-2063.1 pronounces that charter schools will be exempt from Articles 1, 2, 3, 4A, 5, 7, 8, 9, 10, 11, 14, 20 and 22 of Chapter 2 of Title 20 of the Education Act unless specified in the charter provision.⁹⁵ According to the provision, charter schools are exempt from a variety of topics dealing with property and facility management, educational grants, additional state aid, community involvement in education, teacher and other personnel, students, textbooks, and liability insurance.⁹⁶ In other words, *code section 20-20-2063.1* grants charter schools autonomy. The autonomy granted in this code section allow charter schools to house schools in untraditional buildings, allows limited fiscal freedom, and allows increased community involvement in the school.

Code Section 20-2-2063.1 does include certain limitations. First, both local and state school boards are given the authority to limit school autonomy.⁹⁷ Second, this code section requires that petitioners include in the charter request explanations of why certain state

⁹³ GA. CODE ANN. § 20-2-2063(2) (2004).

⁹⁴ Richmond, *supra* note 6, at 342 (discussing that most states face a host of challenges in providing substantive oversight).

⁹⁵ GA. CODE ANN. § 20-2-2063.1 (2004).

⁹⁶ GA. CODE ANN. § 20 (2004).

⁹⁷ GA CODE ANN. § 20-20-2063 (2004).

regulations should be required. This is important because if the waiver request is not in the charter petition; the state does not have to waive the regulation.

Lastly, the last sentence of code section 20-2-2063.1 reads, “each charter school shall also be exempt from those state and local rules, regulations, policies, and procedures that do not relate to the operation of a local school.”⁹⁸ The sentence is vague because it does not explain the scope of the exemption. At its widest interpretation, this could signal complete autonomy for charter school. Looking at the entire charter act, this interpretation lacks merit.

5. Code Section 20-2-2064: Approval or Denial of Petition

The General Assembly grants the local school board the authority to approve or deny charter petitions.⁹⁹ The decision process is different for conversion and start-up petitions. Petitioners seeking to convert a traditional public school must submit a petition in writing to the local board where the conversion school will be located.¹⁰⁰ The local board can not rule on the conversion petition until a majority of the faculty and parents at the local school have agreed to vote by secret ballot whether to support or refute the petition.¹⁰¹ The General Assembly stresses the importance of the majority vote. The code section wants to limit undue influence on parents by requiring the secret vote and ensure the vote is not taken in haste by requiring at least two weeks notice prior to the vote.¹⁰²

Once a majority is established, the local school board must approve or deny the petition within 60 days of submission.¹⁰³ The petitioner can request an extension.¹⁰⁴ If the local board denies the petition, the petitioners are allowed a second opportunity to resubmit the original request with corrections addressing the deficiencies cited in the denial.¹⁰⁵

⁹⁸ GA. CODE ANN. § 20-20-2063.1 (2004).

⁹⁹ GA. CODE ANN. § 20-2-2064 (2004).

¹⁰⁰ GA. CODE ANN. § 20-2-2064(a) (2004).

¹⁰¹ GA. CODE ANN. § 20-2-2064(a)(1)-(2) (2004).

¹⁰² GA. CODE ANN. § 20-2-2064(a)(1)-(2) (2004).

¹⁰³ GA. CODE ANN. § 20-2-2064(a)(2004).

¹⁰⁴ GA. CODE ANN. § 20-2-2064(a) (2004).

¹⁰⁵ GA. CODE ANN. § 20-2-2064(a) (2004).

The local board will vote within 60 days after the petition is submitted. Once the local school board votes, the petitioners will receive written notification. If the petition is accepted, the petitioners will meet with the school board and work out deals for the conversion. If the school board denies the petition, the requesters will receive a denial statement with a list of deficiencies. As stated above, the petitioners will be given a second opportunity to resubmit its application. If neither the local board, nor the petitioners can come to an agreement, the state board can intervene and mediate.¹⁰⁶ The state board will not approve a conversion school that the local board has denied.¹⁰⁷

Petitioners seeking to create a start-up charter school must also submit a petition to the local board where the proposed school will be located.¹⁰⁸ Like *code section 20-2-2064(a)*, the school board must approve or deny the provision by a majority vote within 60 days after submission. If the board denies, then it must list in a written letter the reasons for denial. A denial of a petition by a local board shall not preclude the petitioners from resubmitting a revised petition.¹⁰⁹

6. Code Section 20-2-2064.1: Review of Charter by State Board; Charter for State Chartered Special Schools

All local charter school petitions are sent to the state board of education for final approval. If the local board approves the petition, the state board will also approve the petition. This appears to be merely a formality.¹¹⁰ Petitioners can not bypass approval by the local board. The state board will not approve any petition that has not been approved by the local board.¹¹¹

The rationale behind this is based on the general principles behind the charter school movement. The General Assembly wants communities to approve or deny charter school petitions. First, the immediate community decides whether to have a charter school by having a

¹⁰⁶ GA. CODE ANN. § 20-2-2064(d) (2004).

¹⁰⁷ GA. CODE ANN. § 20-2-2064.1 (2004).

¹⁰⁸ GA. CODE ANN. § 20-2-2064(b) (2004).

¹⁰⁹ GA. CODE ANN. § 20-2-2064(b) (2004).

¹¹⁰ GA. CODE ANN. § 20-2-2064.1 (2004).

¹¹¹ GA. CODE ANN. § 20-2-2064.1 (2004).

majority vote. If the petition survives the immediate vote, then it is subject to a district vote. At district level (local board), the petition has a reduced chance of being passed. There is a strong possibility that it will be denied and revised. Once approved, the petition goes before the State Board of Education, where there is a presumption that local communities have discussed the pros and cons of having a charter school. Based on this presumption, the Board approves the petition if the local board has approved it.

7. Code Section 20-2-2065: Requirements for Operating; Control and Management

The General Assembly grants local school boards considerable administrative power under *code section 20-2-2065*. Local boards are required to ensure that local charter institutions are public, nonsectarian, nonreligious, and not home based.¹¹² Additionally, the charter school must be nonprofit; however, according to the code, the school can contract with for-profit entities for contracted services.¹¹³ The charter school must submit to an annual financial audit¹¹⁴, and shall not charge tuition or fees to students.¹¹⁵ In addition to an annual financial audit, petitioners must submit to the control and management of the local board and the Georgia Constitution.¹¹⁶ Lastly, the charter school must submit to the supervision of the state board per agreements made in the charter.

As state above, *code section 20-2-2065* grants school boards with a considerable amount of administrative control. Petitioners are required to include many of the protections into the charter agreement. In essence, the petitioners under the Georgia Charter Act lack administrative autonomy. It appears as if the General Assembly wants to maintain basic controls of the school. This is probably a good reason because charter schools are still public institutions. Further, charter schools are subject to all federal, state, and local rules, regulations, court orders,

¹¹² GA. CODE ANN. § 20-2-2065(1) (2004).

¹¹³ GA. CODE ANN. § 20-2-2065(1) (2004).

¹¹⁴ GA. CODE ANN. § 20-2-2065(7) (2004).

¹¹⁵ GA. CODE ANN. § 20-2-2065(10) (2004).

¹¹⁶ GA. CODE ANN. § 20-2-2065(2) (2004).

and statutes relating to civil rights, insurance, the protection and safety of students, employees and visitors.¹¹⁷

The relinquished autonomy primarily deals with who the charter school answers to. Generally, charter schools typically answer to the governing board and not the local school boards. Under the Georgia statute, the charter school appears to answer primarily to the local school board. The Georgia approach appears better than the general principles behind the charter movement. Georgia provides a mechanism for monitoring the charter school. *Code section 20-2-2065* is vague on how much academic autonomy is allowed.

8. Code Section 20-2-2066: Admission, Enrollment, and Withdrawal of Students

Charter institutions will enroll any student who resides in the school system where the charter school is located.¹¹⁸ Prospective students must also submit a timely application.¹¹⁹ The only admissions limitation placed on students is the capacity of the school. In such cases, *code section 20-2-2066(a)(1)* provides that all applicants shall have an equal chance at attendance; therefore, a random selection process will choose the admitted students.¹²⁰ In any case, enrollment preferences will go to students residing in the attendance zone specified in the charter.¹²¹ Siblings of admitted students will also have preference.¹²² Consequently, students who reside outside the school system may not enroll in the local charter school except pursuant to a contractual agreement between the local board and the school board where the pupil resides.¹²³

Under this code section, all parents in the district may elect to send their child to a charter school. Freedom of choice is one of the basic rationales behind the charter school movement.

District parents outside the typical school attendance zones will have an opportunity to take

¹¹⁷ GA. CODE ANN. § 20-2-2065(5) (2004).

¹¹⁸ GA. CODE ANN. § 20-2-2066(a)(1) (2004).

¹¹⁹ GA. CODE ANN. § 20-2-2066(a)(1) (2004).

¹²⁰ GA. CODE ANN. § 20-2-2066(a)(1) (2004).

¹²¹ GA. CODE ANN. § 20-2-2066(a)(1) (2004).

¹²² GA. CODE ANN. § 20-2-2066(a)(1) (2004).

¹²³ GA. CODE ANN. § 20-2-2066(a)(2) (2004).

advantage of the charter school movement. This is beneficial in two ways: (1) parents who prefer charter schools, but lack the needed majority support to convert an existing school may take advantage of a charter education, and (2) parents who lack start-up capital to form their own charter school will still have an opportunity to take advantage of a charter school.

Additionally, parents with children in a charter school can elect to withdraw their student without penalty.¹²⁴ Under this provision, the child will be allowed to reenroll in a traditional public school. The withdrawal policy also applies to students who are suspended or expelled from a charter school as a result of a disciplinary action.¹²⁵

This is a sound policy because parents are allowed freedom of choice. Parents are allowed to experience the charter school concept, and if it does not work, parents are allowed to return to the traditional public school. The only foreseeable problem is possible transportation. Some charter provisions exempt schools from providing free transportation to the school. *Code section 20-2-2066* is silent on this matter.

Lastly, *code section 20-2-2066(b)* allows for a state chartered special school to enroll any student who resides in the attendance zone specified in the charter and who submits a timely application as specified in the charter.¹²⁶ Similarly to a local charter school, if the amount of applicants exceeds the capacity of the school, all applicants will have an equal chance of being selected.¹²⁷ In this case, students will be admitted through a random selection process.¹²⁸ This admissions policies for the state chartered special school do differ from the local charter school in that it gives an enrollment preference “to a child of a full-time teacher, professional, or other employee of the state chartered special school.”¹²⁹ A state chartered special school is defined as “a charter school created as a special school that is operating under the terms of a charter

¹²⁴ GA. CODE ANN. § 20-2-2066(d) (2004).

¹²⁵ GA. CODE ANN. § 20-2-2066(d)(2004).

¹²⁶ GA. CODE ANN. § 20-2-2066(b) (2004).

¹²⁷ GA. CODE ANN. § 20-2-2066(b) (2004).

¹²⁸ GA. CODE ANN. § 20-2-2066(b)(2004).

¹²⁹ GA. CODE ANN. § 20-2-2066(b) (2004).

between the charter petitioner and the state board.”¹³⁰ *Code sections 20-2-2062 and 20-2-2066(b)* are both vague. They do not explain when the state board will create a state chartered special school.

9. Code Section 20-2-2067: Reprisals by Local Boards or School System Employees Prohibited

Code section 20-2-2067 prohibits school systems from unlawful reprisal against any school employee who petitions to establish a charter school.¹³¹ The code defines unlawful reprisal as “an action taken by a local board of education or a school system employee as a direct result of a lawful petition to establish a charter school which action is adverse to another employee or is adverse to an educational program of the school or the school system.”¹³² The code further explicitly provide examples of unlawful reprisal: (1) Disciplinary action; (2) transfer or reassignment (temporary or permanent); (3) suspension, demotion, or dismissal; (4) unfavorable performance evaluation; (5) reduction in pay, benefits, or awards; or (6) elimination of the employee’s position without reduction in force by reason of lack of money or work.¹³³ In addition, the provision prohibits a reduction on programs and/or funding for programs as a result of local schools petitioning for charter status.¹³⁴

This code section protects teacher rights to petition for a charter. It empowers teachers to act without fear of reprisal. Since the code section is explicit and expansive in defining unlawful reprisal, rogue administrators are prohibited in a variety of ways from discouraging school officials from pursuing a charter petition. Moreover, this provision protects a teacher’s freedom of choice. Teachers are able to put forth a petition in an effort to improve community schools

¹³⁰ GA. CODE ANN. § 20-2-2062 (16) (2004).

¹³¹ GA. CODE ANN. § 20-2-2067 (2004).

¹³² GA. CODE ANN. § 20-2-2067 (2004).

¹³³ GA. CODE ANN. § 20-2-2067(1)(A)-F) (2004).

¹³⁴ GA. CODE ANN. § 20-2-2067(G) (2004).

10. Code Section 20-2-2067.1: Amendment of Terms of Charter for Charter School; Initial Term of Charter; Annual Report

This code section allows petitioners to amend the charter during the terms of the contract.¹³⁵ Additionally, this provision announces that the initial term of a charter provision is limited to a minimum of three years, with a maximum of five years.¹³⁶ The petitioners must seek approval from the local board, state board, and the charter school before it can submit a charter.

This code section grants charter petitioners the opportunity to adjust the expectations of the charter while the school operating. This is a favorable code section because it allows petitioners to make realistic assessments. Perhaps the charter school attains its initial goals sooner than predicted, or perhaps initial goals have proven to be unrealistic. Either way, this provision allows for petitioners to constantly adjust the purpose of the charter school.

However, this can become problematic if the school changes expectations without notifying parents. The legislature consequently forethought this and added that “charter schools shall provide an annual report to parents or guardians, the community, and the state board which indicates the progress made by the charter school in the previous year in implanting its charter goals.”¹³⁷

Under this provision, the legislature assigns the petitioning body with school accountability. This is an important code section because the Georgia General Assembly answers one the greatest questions against the charter school movement – how will parents determine whether the charter school is satisfying its performance-driven purpose? As stated under *code section 20-2-2063*, a charter petitioner is required to submit how the charter will measure performance. Furthermore, the petitioner is required to submit a status report to the local and state school boards. Now, under 20-2-2067.1 the charter petitioners are required to send a similar report to the parents of the school. As stated above, this requirement helps establish proper channels of accountability.

¹³⁵ GA. CODE ANN. § 20-2-2067.1(a) (2004).

¹³⁶ GA. CODE ANN. § 20-2-2067.1(b) (2004).

¹³⁷ GA. CODE ANN. § 20-2-2067.1(c) (2004).

11. Code Section 20-2-2068: Termination of a Charter

A state board may terminate a charter if a majority of parents with enrolled students, or a majority of the faculty employed at the charter school vote by a majority vote to request the termination of a charter by public meeting.¹³⁸ The meeting must have two weeks advanced notice.¹³⁹ Once a majority vote is concluded, the state board will terminate charter if it finds:

- (A) A failure to comply with any recommendation or direction of the state board with respect to *Code Section 2-14-41*;
- (B) A failure to adhere to any material term of the charter, including but not limited to the performance goals set forth in the charter;
- (C) A failure to meet generally accepted standards of fiscal management;
- (D) A violation of applicable federal, state, or local laws or court orders;
- (E) The existence of competent substantial evidence that the continued operation of the charter school would be contrary to the best interests of the students or the community; or
- (F) A failure to comply with any provision of *Code Section 20-2-2065*.¹⁴⁰

Additionally, a state board will consider termination of a local charter school if the local board request in writing for its termination. The local board must provide reasonable notice to the charter school and must submit to a hearing.¹⁴¹

The termination provision provides parents and teachers with an opportunity to terminate the charter. Much like the provision to petition for a charter, the termination provision ultimately puts the power in the hands of the local community. The state school board only rubber stamps the decision. The real decision is made during the hearing meetings, when parents and teachers are recruiting votes to support or terminate the charter. However, the code section only allows termination of a charter based on valid concerns, such as violating state regulations, violating the

¹³⁸ GA. CODE ANN. § 20-2-2068(1)(A) (2004).

¹³⁹ GA. CODE ANN. § 20-2-2068(1)(A) (2004).

¹⁴⁰ GA. CODE ANN. § 20-2-2068(2)(A)-(F) (2004).

¹⁴¹ GA. CODE ANN. § 20-2-2068(3) (2004).

charter provision, or violating public interest. This serves as a check against rogue community members. By limiting the reasons why charters can be terminated, the General Assembly is ensuring charter school stability because only claims with merit will succeed.

12. Code Section 20-2-2069: Office of Charter School Compliance

This code section establishes within the Department of Education an Office of Charter School Compliance.¹⁴² The responsibilities of office include: “(1) prepare charter school guidelines to be approved by the state board; (2) distribute charter school petition information to inquiring parties; (3) process all charter school petitions for consideration by the state board; (4) administer any state or federal charter school implementation grant program; (5) contract with an independent party to evaluate the performance of charter school; (6) compile information necessary to produce the annual report.

13. Code Section 20-2-2070: Annual Report to General Assembly

This code section requires the state board to report to the General Assembly no later than November 1 of each year on the status of the charter school program.¹⁴³ This provision is vague as to what the state board is required to report to the General Assembly. Furthermore, the provision does not comment on how the General Assembly will utilize the state board’s reports.

14. Code Section 20-2-2071: Validity of Charters in Effect on July 1, 1998

This code section validates all charter provisions granted pursuant to *Code section 20-2-255* under the old charter school statute.

III. Conclusion

¹⁴² GA. CODE ANN. § 20-2-2069 (2004).

¹⁴³ GA. CODE ANN. § 20-2-2070 (2004).

The charter school movement was conceived by educators who wanted to create a school where teachers were free to create innovative teaching strategies. In exchange for academic freedom, teachers would have increased accountability for academic performance. Minnesota was the first state to codify the charter school movement in 1991. By 1999, thirty-six states had followed suit and adopted its own charter school legislation.

Georgia adopted its first charter school legislation in 1993. The initial legislation was limited in scope. As time went on, Georgia substantially amended its charter school act in 1998. The new provisions granted a substantial number of Georgians with the ability to convert or start-up a charter school. The code section allowed great flexibility for charter petitioners, but it also granted local school boards with a considerable amount of power over the charter schools.

Georgia's charter school statute stays within the spirit of the charter school movement. Freedom of choice, academic autonomy, and waiver of certain school board regulations are present in the charter school. Additionally, Georgia corrects some of the possible flaws with the charter school by drafting measures of accountability directly into the Charter Act of 1998. At the onset, school petitioners are required to submit how the school will enhance performance, petitioners are required to submit how the school will monitor the enhancement, and petitioners are required to submit annual progress reports to both parents and the local school board. The Georgia Charter Act of 1998 not only stays within the spirit of the charter school movement, it actually expands it.

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<http://www.uscharterschools.org/cs/fs/query/q/1567?&x-title=National+Charter+School+Study>;
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Additional Notes

The organizational structures of Subsection C: Possible Benefits from Chartering a School and Subsection D: Alleged Problems with the Charter School Movement was inspired by the Jennifer J. Ridley note, *Charting a New Course for Public Education in Michigan – Charter Schools: A Significant Step Toward Meaningful Education Reform*. Please reference footnote 11 for complete cite.