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CHARTER SCHOOLS AND OPEN GOVERNMENT LAW

SUMMARY

(REVISED JULY 2019)

The extent to which open records and open meetings laws should apply to charter schools is a subject of debate in Washington, D.C. though mostly settled elsewhere. Advocates for public access cite benefits of transparency in helping parents make school choices and policymakers pursue accountability.¹ Opponents say that public records requests will drain time and attention from educating students² and that heightened transparency may discourage some from serving on charter school boards.

The D.C. Open Government Coalition is dedicated to enhancing public access to government information and ensuring the transparency of government operations, including in novel hybrids of public and private action such as charters. To learn about the open government requirements now governing charter schools, the Coalition in June 2019 reviewed the law in 44 states and a number of major cities.³

We found the District is in a distinct minority of jurisdictions; most apply standard state open meetings and open records laws to individual schools and charter authorizers, while D.C. applies such laws only to its authorizer.⁴

¹ Cordilia James and Ingalisa Schrobsdorff, “D.C. Charter Schools Would Become More Transparent Under Council Bill.” *DCist* (Mar. 13, 2019). Available at: <https://bit.ly/2GxAyhF>.

² Lis Kidder, “Expanding FOIA to D.C. charter schools would do more harm than good.” *Local Opinions, Washington Post* (May 10, 2019) (asserting that “Each FOIA request requires lawyers to interpret the request, craft a list of keywords to search against the organization’s records, review responsive documents to check for relevance and any applicable exemptions, redact privileged information, and sometimes litigate if the requester disputes the adequacy of the response.”). Available at: <https://wapo.st/2XMbP3K>.

³ Six states have no charter schools: West Virginia, Vermont, Montana, Nebraska, North Dakota and South Dakota.

⁴ Our findings roughly parallel those of others. See, for example, *In the Public Interest*, “D.C. Charter School Standards Fall Short of Nationwide State Standards” (March 7, 2019) (reporting “D.C. lags behind the 39 states that require charter school operators or individual charter schools to comply with state open meetings laws and public records laws.”). Available at: <https://bit.ly/2YW9u2w>.

The Coalition believes these findings support its own conclusion that such laws are broadly supported and workable in practice. We hope the results will at least move the discussion ahead by settling the question of “how do they do it elsewhere?”

Detailed findings are presented below under headings of D.C. law, the law elsewhere (in states and selected cities), the law in nearby states. We end with examples in greater detail of current law in four very different states.

Open Government Law Affecting Schools in the District of Columbia

Pre-college enrollment of about 93,000 young people in D.C. public schools is split roughly in half between charters and traditional public schools. In 2019, 44,000 students enrolled in 123 charter schools run by 66 nonprofits, each authorized by the Public Charter School Board. (D.C. Public Schools was an authorizer until 2006.) Congress in its role as micro-manager of D.C. affairs established the board in a School Reform Act in 1996. From the beginning the law exempted charter schools from any statutes, policies, rules, and regulations established for regular D.C. public schools by any District governmental entity (with only a few exceptions for health, safety and civil rights laws).

The charter board is appointed by the mayor, supported by appropriations and subject to oversight by the D.C. Council. By statute the board must follow the D.C. Open Meetings Act and the D.C. Freedom of Information Act. These requirements include providing advance notice and agenda of meetings, minutes afterwards, and responding to requests for records as any other agency of District government.

The board does not maintain the full records of the schools. It collects selected data to evaluate academic and business performance, operates an extensive website, and sets policies for schools’ own public information. Under pressure in recent months the board has expanded these requirements, but also suggested they are now satisfactory to meet the needs of parents and the wider public.

D.C. Public Schools includes 115 schools. The system is headed by a chancellor appointed by the mayor and reporting to her through a deputy mayor for education. The system is subject to the D.C. Freedom of Information Act but it has no board that is a public body covered by open meetings law.

Open Government Law Affecting Charter Schools Elsewhere

We reviewed state law affecting charter schools and their authorizers. To check for separate municipal laws, we also reviewed several large cities and found only state law applied.⁵

For individual charter schools, we found:

- In 30 of 44 states, both open records and open meetings laws apply to charter schools.⁶
- In some other states, application of open records and open meetings laws depends on the individual school’s charter.⁷

⁵ San Diego, Los Angeles, Minneapolis, Seattle, Detroit, Boston, Philadelphia, New York, Houston and Dallas.

⁶ Colorado, Connecticut, Delaware, Florida, Hawaii, Idaho, Illinois, Iowa, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, New Hampshire, New York, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah and Virginia.

⁷ Arkansas, for example.

- Some states apply open records laws only.⁸ Some apply open meetings laws only.⁹

For charter school authorizers we found:

- 27 of 46 states apply both open records and open meetings to charter school authorizers.¹⁰
- Some state laws do not state whether charter school authorizers are subject to open records and open meetings laws.¹¹

Open Government Laws Affecting Charter Schools and Authorizers in Neighboring States

Maryland and Virginia both apply both kinds of laws to schools and authorizers.

Under the Maryland Public Charter School Act, charter schools are required to comply with the open government law governing other public schools. The public has the right to review and copy records that are not exempt from disclosure. Meetings of public bodies must be held in places that are reasonably accessible to members of the community who would like to attend. The public must be provided with advance notice of meetings. Maryland charters are authorized by local school boards (and in limited cases, the State Board of Education)—both subject to open government state laws already.

Virginia law also mandates that open records and open meetings laws apply to charter schools. Charter school authorizers appear to be included in the state law definition of a “public body” and therefore must provide access to records and meetings.

Detailed Description of Four States’ Open Government Law Applied to Charters

New York

Charter schools and authorizers are subject to the state’s Freedom of Information Law governing open records and open meetings. Charter school authorizers must designate at least two individuals as “records access officers” and “records appeals officers.” Charter schools must make their records available for public inspection and copying. With few exceptions, meetings of the charter school or charter school authorizer must be open to the general public, held in a facility that is reasonably accessible, open to being photographed, broadcast, webcast or otherwise recorded or transmitted by audio or video. Minutes must be taken at all open meetings and made available within two weeks.

Mississippi

Under Mississippi law, neither charter schools nor charter school authorizers are exempt from obligations imposed by the Mississippi Code regarding public access to public records. Therefore, the public has the right to inspect, copy, or reproduce any public records of charter schools and charter

⁸ Indiana, for example.

⁹ For example, Georgia and Nevada.

¹⁰ Alabama, California, Colorado, Connecticut, Georgia, Hawaii, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nevada, New Hampshire, New Jersey, New Mexico, New York, Ohio, Oregon and Tennessee.

¹¹ For example, Alaska and Arizona.

school authorizers in accordance with reasonable written procedures adopted by the charter school or charter school authorizer. The law sets deadlines for response. The law also requires official meetings to be open to the public except in limited circumstances.

Louisiana

More than 98 percent of New Orleans' 49,000 public school students are enrolled in public schools run by a charter organization.¹² Under Louisiana law, charter schools and charter school authorizers must adhere to Louisiana's Open Meetings Law and Public Records Law ("no person shall be denied the right to observe the deliberations of public bodies and examine public documents" since open meetings are "essential to the maintenance of a democratic society." The laws have the usual notice and record keeping requirements for meetings as well as rules for maintenance and disclosure of public records.

California

California recently amended its education laws to bring charter schools and authorizers to its Bagley-Keene Open Meeting Act and California Public Records Act. The first states that it is the public policy of California that meetings of public bodies must be conducted openly so that the public may remain informed, which includes the rights to attend the meetings and to record the proceedings with an audio or video recorder or motion picture camera. Under the second, the legislature "declares that access to information concerning the conduct of the people's business is a fundamental and necessary right of every person." Public records are to be open to inspection at all times during office hours. Charters must therefore maintain public records for inspection as well as posting some on the web.

Conclusion

Our results show D.C. is an outlier in our region and nationally, as even charter experts agree.¹³ D.C. law now entirely exempts charter schools from open meetings and public records law, placing the District in a tiny minority of states. Since neither cost nor other burdens appear to have caused other states to limit application of these standard sunshine measures, it seems safe to predict the laws would be acceptable here as well.

¹² New Schools for New Orleans, "New Orleans by the Numbers" (Spring 2019). Available at: <https://bit.ly/2XYA6P8>.

¹³ Perry Stein, "Should D.C. charter schools follow the same rules as traditional campuses?" *Washington Post* (Feb. 4, 2019) (reporting on policy debate at the D.C. Public Charter School Board on expanding its own transparency rules). Stein quoted Todd Ziebarth, senior vice president for state advocacy at the National Alliance for Public Charter Schools, a "charter advocacy group [that] pushes for jurisdictions to subject their charters to open meeting and record laws," as saying "D.C. is an anomaly" and "an exception to the rule on that front." Available at: <https://wapo.st/2Ydnnfy>. As the Alliance model law and his comments about D.C. were both widely quoted, Ziebarth issued a new statement June 28, 2019, that D.C. charters are already so transparent under charter board policy that they "meet [the] intent of our model law" and additional legal requirements are unnecessary. Available at: <https://bit.ly/2LXXU3d>.